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Shareholder Activism: A European Perspective

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Introduction

In recent years, there has been significant growth in shareholder activism. These activist shareholders are fund managers, typically hedge funds, who usually acquire minority interests in listed public companies and then actively seek to influence the board of the company with a view to generating profits for themselves and other shareholders.

This growth has been partially driven by the success that activist shareholders have enjoyed. Returns generated by activist hedge funds have generally exceeded other categories of hedge funds. In 2016, activist hedge funds returned 10.43 per cent, making activism one of 2016's most lucrative hedge fund strategies. As a result, these hedge funds have grown in size, and these activist shareholders are looking beyond the traditional US market and, in particular, are considering opportunities in Europe.

In practice, the expression "shareholder activism" covers a broad range of strategies. This ranges from hostile and even litigious battles with the company in question to constructive and consensual discussions with the company's board. The objective may be to improve long-term performance rather than to generate short-term profits. In any event, every activist shareholder needs a clear understanding of the legal framework applicable to the company, as well as the wider business and cultural issues in order to formulate and successfully execute its strategy.

For their part, companies will need to understand and engage with activist shareholders. Thus, companies need to be familiar with the various legal tools available to help them resist approaches that will not benefit the company and its shareholders as a whole.

Each European jurisdiction has its own characteristics and, to some extent, its own laws. This publication aims to explain the landscape across Europe's main markets, and to highlight the key differences in each of those markets. It starts with an overview of the European legislative framework to identify those areas where laws are largely or fully harmonised. It then analyses in detail the position of each individual jurisdiction.

Overview of European regulatory framework

There has been significant progress over the years in Europe in harmonising the law as it relates to corporate governance and the operation of financial markets. As a result, the rules are substantially the same in many European jurisdictions.

In the context of shareholder activism, the following Directives are particularly relevant and have been implemented in material EU markets (excluding Switzerland which is a member of EFTA, not the EU).

Note that in some cases member states have opted to "gold plate" the Directive, that is to impose a more onerous requirement: for example, in the UK, disclosure of a material holding begins at 3% not 5%, with disclosure at every percentage point thereafter.

Directive	Key Provisions
Shareholder Rights Directive 2007/36/EC[1]	— The company must provide equal treatment for all shareholders who are in the same position in relation to participation and the exercise of voting rights at a general meeting (Article 4); — Shareholders (acting individually or collectively) have the right: • to put items on the agenda of a general meeting, provided that such items are accompanied by a justification or a draft resolution to be adopted in the general meeting; and • to table draft resolutions for items included or to be included on the agenda of a general meeting. These shareholder rights may be subject to the requirement that the shareholder(s) hold a minimum stake in the company (not to exceed 5% of the share capital) (Article 6); — Shareholders may ask questions about items on the agenda of a general meeting and those questions must be answered by the company (Article 9); and — Measures to facilitate voting at general meetings, including in relation to: • voting by proxies and corporate representatives (Article 10); • electronic participation in general meetings (Article 8); and • the abolition of the chairman's casting vote.
Transparency Directive 2004/109/EC	— A shareholder who acquires or disposes of shares that are admitted to trading on a regulated market and to which voting rights are attached must inform the issuer when certain thresholds are reached (Article 9). The issuer must, in turn, give this information to the market. A shareholder must notify the issuer when the proportion of voting shares held reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%; — Requirement to disclose major holdings in financial instruments also applies to holdings in all instruments with similar economic effect to holding shares and entitlements to acquire shares (Article 13); and — An issuer must ensure that all the facilities and information necessary to enable shareholders to exercise their rights, including by proxy, are available in its home member state (Article 17).

[1] In 2015, the European Commission published proposals to amend the Shareholder Rights Directive to, among other things (i) require listed companies to seek shareholder approval for their policy on directors' remuneration; (ii) make certain transactions between a company and a "related party" subject to shareholder approval; (iii) improve the ability of shareholders to communicate with the company and exercise their votes, through intermediaries; and (iv) improve the quality of recommendations provided by proxy advisors to their institutional investor clients. The proposals are still being considered by the EU institution but are likely to result in changes to member states' laws within the next three years.

Directive	Key Provisions
Market Abuse Regulation (596/2014)	— It is an offence (either civil or criminal, depending on the country concerned) for a person to: • use inside information (i.e. confidential, price-sensitive information relating to a listed company) to deal in the company's shares or financial instruments relating to those shares, or to encourage another person to do so (insider dealing); • disclose inside information to a person who has no legitimate business knowing it (improper disclosure); or • engage in a course of conduct, transaction or other behaviour that gives a false or misleading impression about the price of, or demand for, shares or financial instruments relating to shares (misleading or manipulative behaviour). — Certain types of behaviour are permitted (safe harbours) but none of these are likely to help an activist shareholder. However, it is not market abuse for a person to use knowledge of his own intention to deal in a company's shares.

Directive	Key Provisions
Takeovers Directive 2004/25/EC	— Member States must designate supervisory authorities (which must act independently of parties to a bid) (Article 4.1); — A "mandatory bid rule" must require a person acquiring a controlling stake in a target company to make a bid to all holders of securities at an equitable price (highest price paid by the bidder during a fixed period). The level constituting "control" will be defined by the Member State in which the target company has its registered office (Article 5); — Decision to make a takeover bid must be made public. Detailed provisions regarding the content of the takeover offer document. Parties to a bid must provide supervisory authorities with information related to the bid (Article 6); — An offer, unless the competent authority agrees otherwise, must remain open for acceptance for at least 2 weeks but no longer than 10 weeks (Article 7); — Obligations on the board of the offeree company, including the obligation not to take action to frustrate the bid without the approval of shareholders at the time of the bid and to draw up and to make public a statement containing their views on the effects of implementation of the bid (Article 9); — Companies must publish detailed information on their share and control structures, etc. in their annual report and must present an explanatory report on such matters to the AGM of shareholders (Article 10); — In certain circumstances, provisions in the articles of companies and contractual arrangements related to restrictions on transfer and voting rights of shares may be overridden (Article 11); — Member States must introduce a "squeeze-out" right enabling a bidder to compulsorily purchase the shares of minority shareholders following a successful takeover bid (either where a bidder holds 90% of the target voting shares or where a bidder acquires 90% of the voting shares which are the subject of the offer) (Article 15); and — Member States must introduce a "sell-out" right enabling minority shareholders to require a bidder to compulsorily purchase their shares following a successful takeover bid (Article 16).

Directive	Key Provisions
Acquisitions Directive 2007/44/EC	— Potential acquirers reaching certain thresholds of "qualifying holdings" in a financial services firm (thresholds of 10%, 20%, 30% and 50%) must obtain supervisory approval before the acquisition can proceed; — Prescribed deadlines within which supervisory authorities must make their assessments (60 working days). Supervisory authorities have the power to interrupt this 60-day period only once to ask for additional information from the potential acquirer, and then for no more than 20 days. Further requests for information may be made, but these will not "stop the clock"; and — Criteria that supervisory authorities must use when making their assessments including: • the reputation of the acquirer; • the reputation and experience of any person who will be directing the business post acquisition; • the financial soundness of the acquirer, particularly in relation to the business pursued and envisaged in the target; • the ability of the financial institution to comply on an ongoing basis with particular prudential requirements; and • whether there are reasonable grounds to suspect money laundering or terrorist financing, or increased risk of either.
2nd Company Law Directive 2012/30/EU	— Equity securities issued for cash must initially be offered on a pre-emptive basis to existing shareholders in proportion to their holdings; and — Purchases by public companies of their own shares require shareholder approval and a holding by a public company of its own shares is subject to a limit of 10% of subscribed capital (Article 13).

Austria

Note: This section addresses the position for Austrian companies with a listing on a regulated market of the Vienna Stock Exchange. There will be differences in rules for non-Austrian companies listed on the Vienna Stock Exchange, and for Austrian companies which do not have a listing on a regulated market of the Vienna Stock Exchange.

1. Is shareholder activism common in Austria?

In general, shareholder activism has not played a very significant role in Austria due to the prevalence of listed companies being firmly controlled by one shareholder or a group of shareholders. However, in recent years shareholders of listed companies have started to make more active use of their rights resulting in, among other matters, a higher number of opposing votes in the elections of supervisory board members. International proxy advisors increasingly support the strategies of activist shareholders in Austria. An example of this is the general meeting of Conwert, the Austrian property investment group, where activist shareholders (supported by proxy advisors) successfully challenged the core shareholders' candidates for the board of directors. Very recently, an activist campaign has been launched in relation to Immofinanz, Austria's largest real estate company.

Moreover, shareholders also increasingly take advantage of the possibilities provided to them by corporate law, such as the possibility to contest shareholder resolutions in court or to have the share exchange ratio in a corporate restructuring examined by a court.

Activist shareholders can also benefit from several legal measures that force companies to engage constructively with them, such as the right to request a shareholder meeting or the right to include items on the agenda of the annual general meeting.

2. What is the threshold for disclosure of a shareholding?

Under the Austrian Stock Exchange Act **("Börsegesetz"),** a shareholder must publicly disclose its shareholding to the Austrian Financial Market Authority **("Finanzmarktaufsicht")** and the issuer, if it reaches, exceeds or falls below 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% or 90% of the voting rights of the company, either directly or indirectly or through financial instruments or derivatives. A shareholder must make the disclosure immediately and in any event within two trading days, and each time its shareholding meets, exceeds or falls below a relevant threshold.

Shareholders acting in concert are aggregated for purposes of compliance with disclosure thresholds. The articles of association may lower the disclosure threshold to 3%.

A violation of the disclosure obligations can result in administrative penalties and an automatic suspension of voting rights attached to the shares for which the disclosure was omitted (the articles of association may generally extend such suspension to all voting rights of the non-compliant shareholder). The voting rights can be exercised again after a period of six months following due disclosure of the shareholding (certain exceptions apply).

3.

What is the trigger for a mandatory bid for the company?

Under the Austrian Takeover Act **("Übernahmegesetz"),** a party (or a group acting in concert) must launch a mandatory offer to acquire the remaining shares in a listed company upon having obtained control. Control is generally constituted by a shareholding representing, directly or indirectly, at least 30% of the voting rights. In addition, a mandatory offer is also triggered by way of "creeping-in", i.e. when a controlling, but non-majority shareholder, acquires an additional 2% or more of the voting rights over any 12-month period.

Certain exceptions apply to this general rule, for example where another shareholder holds the same or a higher percentage of voting rights or where the shareholding would not represent a simple majority of the votes at shareholder meetings.

Under the Austrian Takeover Act, shareholdings and voting rights of concert parties are aggregated. "Acting in concert" is defined as jointly seeking control of or exercising control over the company on the basis of an arrangement **("Absprache"),** not necessarily amounting to an enforceable agreement.

A (rebuttable) presumption of "acting in concert" applies where the parties in question belong to the same group of companies or participate in arrangements regarding the election of supervisory board members. Generally, the Austrian Takeover Commission will closely scrutinise any contact between major shareholders, if their aggregated shareholding exceeds 30%, regarding the appointment and removal of supervisory board members and other sensitive measures that it considers "control seeking".

In order to determine whether two or more shareholders are concert parties, the Austrian Takeover Commission considers a very broad range of indicative behaviour. In particular, it views any communication (e.g. written, oral, tacit) by a shareholder that can reasonably be expected to cause another shareholder to exercise its voting or other shareholder rights in a particular manner as an arrangement between such shareholders, regardless of whether or not such communication has a binding effect. Recently, the Austrian Takeover Commission decided that an activist shareholder acting in concert with another (previously) non-controlling shareholder had violated its offer obligation.

4.

Can a shareholder require the company to answer its questions?

Shareholders do not have a general right to request information from the company outside of a general meeting. However, a shareholder is entitled to speak at a shareholder meeting and may ask questions where the answers are necessary to duly assess an item on the agenda. The company may only refuse to provide such answers under certain conditions, i.e. where it would not be in the interests of the company.

If the company refuses to answer a question without a justification, or provides incomplete or wrong answers and objective shareholders had viewed those responses as a material requirement for the appropriate exercise of their rights of attendance and membership, the resolutions of the general meeting would be voidable.

Any voluntary disclosure of information by a company to activist shareholders outside of a general meeting has to comply with the principle of equal treatment of all shareholders.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

A shareholder or a group of shareholders holding at least 5% of the share capital of the company may demand that items be put on the agenda of a general meeting. The request must include a proposed resolution and, for each item, a statement explaining the request. The requesting shareholder or shareholders must have held the shares for at least three months prior to the request.

Moreover, a shareholder or a group of shareholders holding at least 1% of the share capital of a listed company may make resolution proposals in relation to each item on the agenda of a general meeting and request that such proposals be published on the company's website together with an explanatory statement.

6.

What is the threshold to requisition a shareholder meeting?

A shareholder or a group of shareholders holding at least 5% of the share capital of the company may require the company to convene a shareholder meeting to consider one or more resolutions put forward by those shareholders.

The request must include the agenda to be dealt with at the meeting, the proposed resolution for each item on the agenda as well as a statement explaining the request. The requesting shareholder or shareholders must have held their shares for at least three months prior to making the request and until their request has been assessed. If the request complies with all legal requirements, the management board (or the supervisory board) is required to convene the shareholder meeting without undue delay.

If the management board or the supervisory board does not comply with the request, a court may authorise the requesting shareholders to convene the general meeting.

7.

How often must directors offer themselves for re-election?

Austrian stock corporations are governed by a two-tier board system, comprising the (non-executive) supervisory board **("Aufsichtsrat")** and the management board **("Vorstand").** The shareholders of a joint stock company do not appoint the management themselves. Instead, the shareholders elect the members of the company's supervisory board, which in turn appoints the members of the management board.

The statutory term of office is five years for members of the management board and approximately five years for members of the supervisory board. Re-election is possible. The resolution on the re-appointment may generally be passed up to one year prior to the expiry of the initial term. It is common that board members are appointed for a shorter period than the maximum statutory term, e.g. for three years. The appointment for a term of less than one year may be deemed unlawful since it appears to unduly interfere with the independence of the management board.

8.

What is the threshold to appoint or remove a director?

In general, the supervisory board elects and removes the members of the management board by resolution passed with a simple majority of votes. Please note that the removal of a member of the management board by the supervisory board prior to expiry of his/her term requires a cause, such as a gross breach of duty, the inability to duly manage the company, or a no-confidence vote at the shareholder meeting.

The appointment of a member of the supervisory board requires a shareholder resolution with a simple majority of those voting on the resolution, unless otherwise stipulated in the articles of association. However, in order to remove a supervisory board member, a resolution with a majority of at least 75% of the votes cast is required, unless the articles of association provide for a different threshold. If a general meeting is to elect at least three supervisory board members at the same time, the provisions regarding the election of a "minority representative" apply. In this case a candidate will be deemed elected for the last vacant board position without any further vote, if at least one third (but less than 50%) of all votes casts in the preceding rounds of elections for the other board positions were cast in favour of this candidate.

9.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of the company generally requires the approval of 75% of the share capital represented at the vote. The articles of association themselves may and often do provide for different thresholds, e.g. a simple majority.

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

As a general rule, the members of the management board of an Austrian joint stock company are not bound by "instructions" issued by the company's shareholders in relation to the management of the company. In fact, Austrian law requires the board to manage the company on its own authority, in the best interests of the company and in consideration of the interests of the company's shareholders, its employees and the public. Indirect influence on the management board may, however, be exercised through the supervisory board, whose members are appointed by a simple majority or, in the case of a minority representative (see 8. above), one third of the votes.

As a practical measure, minority shareholders regularly attempt to influence the management board by the threat of requesting a special audit, which requires 5% of the share capital.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

In this regard, a distinction has to be made between companies that have issued bearer shares **("Inhaberaktien")** and those that have issued registered shares **("Namensaktien").** The shares of listed Austrian joint stock companies are generally bearer shares, which are not registered in a share register.

If a company has registered shares, it is required to maintain a share register **("Aktienbuch").** Shareholders are generally entitled to inspect the share register according to the case law of the Austrian Supreme Court.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

There are different ways for activist shareholders to use litigation as part of their strategy:

First, each shareholder may generally request at a shareholder meeting that the shareholders resolve on the appointment of special auditors investigating the past management of the company. If the shareholder meeting rejects the request, a shareholder (or group of shareholders) holding at least 10% of the share capital may apply to the court to request a special audit of such acts, provided they occurred in the last two years and the applying shareholders are able to demonstrate the basis for their suspicion that the company has been harmed. The requesting shareholder or shareholders must have held their shares for at least three months prior to the relevant shareholder meeting and until their application has been decided on.

Secondly, a shareholder (or a group of shareholders) holding at least 10% of the share capital may request the assertion of damage claims by the company against shareholders, members of the management board or the supervisory board or certain third parties, if the petitioned claims are not manifestly unfounded. Moreover, a shareholder (or a group of shareholders) holding at least 5% of the share capital may request the assertion of damage claims by the company against these persons, if a report by special auditors reveals a possible basis for liability. The requesting shareholders must have held their shares for at least three months prior to the relevant shareholder meeting and until the legal proceedings have been completed.

Thirdly, a shareholder may try to contest shareholder resolutions as part of its activist strategy. This can delay the implementation of resolutions, if they become effective only upon registration in the companies' register (e.g. changes to the articles of association or capital increases), because the commercial register court may decide to suspend the proceedings to register a shareholder resolution in the case of a pending challenge. Activist shareholders could use this strategy to apply pressure on the management. The cost risk of litigation, however, often deters shareholders from bringing such claims.

In addition, a shareholder may petition a court to examine the share exchange ratio in the context of a merger or certain other corporate restructurings (e.g. a squeeze-out), which may lead to additional compensation payments or the granting of additional shares without, however, holding up the merger or restructuring.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

The company's articles of association may, for example, lower the statutory threshold for the disclosure of significant shareholdings to 3%. In addition, a company may adopt a threshold of less than 30% of the voting rights for a mandatory offer. It may also introduce voting caps **("Höchststimmrechte"),** higher voting thresholds or additional voting requirements compared to the statutory voting requirements as well as the right of certain shareholders to nominate supervisory board members, and/or staggered boards. Moreover, the company may issue additional securities to increase the costs of a takeover offer.

Once the target company gains knowledge of a bidder's intention to launch a bid, the target company's management or supervisory board must obtain the general meeting's consent for any measures (other than seeking alternative bids) that could impair the takeover bid. This applies, in particular, to the issuing of securities that could prevent the bidder from acquiring control of the target company. Other measures requiring approval may include the sale of material assets (sale of "crown jewels"), the purchase of other businesses or material changes to the financing structure. The general meeting's prior consent is also required for the implementation of any board decisions (that are outside the ordinary course of business and could impair the offer) that were taken prior to the point in time the target company gains knowledge of the bidder's intention to launch a bid and have not been (at least partially) implemented by that time. The general meeting's consent is not required for any measures the board is already obliged to take at that time.

The target company's management board and supervisory board must also not take any measures that could impair the shareholder's opportunity to make a free and informed decision on the offer ("board neutrality rule").

14.

What other factors may affect shareholder activism?

There are a number of other factors to be noted:

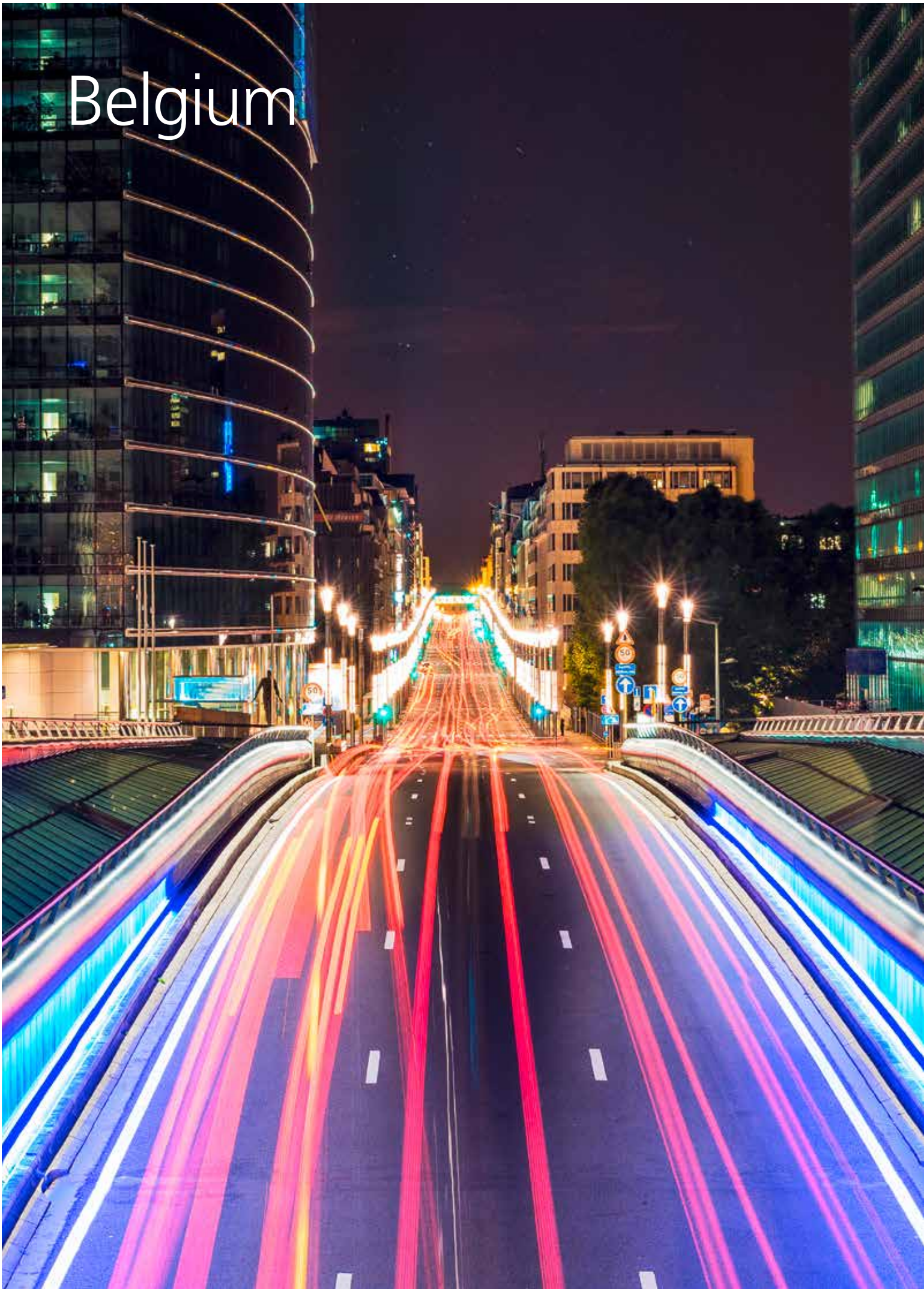
14.1 Shareholders must adhere to insider dealing and market abuse regulations. In certain circumstances, shareholders may be in possession of insider information and therefore will be unable to trade in a company's shares or to disclose the information to other shareholders or third parties.

14.2 Prior regulatory approval is required for an acquisition of 10% or more of the shares or voting power in an investment firm **("Wertpapierunternehmen"),** or a financial services provider **("Wertpapierdienstleistungsunternehmen")** which is regulated by the Austrian Financial Market Authority **("Finanzmarktaufsicht").** Again, shareholdings of concert parties are aggregated.

14.3 Historically, shareholder attendance at general meetings in Austria is comparatively low (but rising). As a result, shareholders with less than 30% of the voting rights may in fact control the vote, which is usually met with criticism by activist shareholders. On the other hand, low attendance at general meetings may increase the activist shareholders' influence and assist them in gaining the support of other shareholders, which may in turn change the balance of power.

14.4 Unlike in many other EU member states, shareholders in Austrian joint stock companies are not currently entitled to vote on the compensation scheme of the management board members or on an annual report on directors' remuneration.

Belgium



Note: This section addresses the position for Belgian companies with a listing on a regulated market of the Brussels Stock Exchange. There will be differences in rules for non-Belgian companies listed on the Brussels Stock Exchange, and for Belgian companies which do not have a listing on a regulated market of the Brussels Stock Exchange.

1.

Is shareholder activism common in Belgium?

As in the case of other European Member States, the wave of shareholder activism has also reached Belgium. However, unlike the United Kingdom, Switzerland and the Netherlands where institutional investors mostly take the lead in shareholder activism or where there is a high exposure to US funds, activism in Belgian companies has mainly been initiated or supported by local activists. Similar to France or Italy, activism in Belgium is in many cases driven by high net worth individuals, e.g. André Barsy or Mark Coucke.

For example, during the worldwide economic crisis of 2008, some of Fortis' shareholders were unhappy with the board's decision to dismantle the company and to sell part of its activities (branch of activity) to the French company BNP Paribas. They were under the opinion that a resolution of the general meeting of the company was mandatory in order to take such a decision. Some of Fortis' shareholders filed a brief in summary proceedings before the Commercial Court of Brussels in order to freeze the decision of the board dismantling the company and to have the shareholders consulted on the matter beforehand. The Court of Brussels did not grant those rights to the shareholders. As a result thereof, a judicial battle started between the shareholders and Fortis' board which was finally settled by a transaction agreement.

André Barsy recently fiercely opposed the manner in which the newly appointed CEO seized power over the listed company Immobel and how the independent board members performed their duties. More specifically, he did not agree to the planned merger with Alfin and therefore used the minority shareholders' right to ask questions during a marathon session of the company's general meeting, where he even questioned the independence of the independent board members.

Even more recently, the shareholders' activist group Starboard – also known for campaigning against the Internet group Yahoo – bought a stake of 4.6% within the American company Perrigo, which in turn just purchased Omega Pharma from Mr. Mark Coucke. Starboard immediately addressed a letter to the board claiming that it had destroyed a lot of value by wrongly integrating Omega Pharma and that it should change its focus to prescription free medicines.

2.

What is the threshold for disclosure of a shareholding?

According to Belgian law, any person that directly or indirectly acquires voting securities of a Belgian listed company must notify its shareholding to the FSMA (Belgian market authority) and the relevant company if the securities represent 5% or more of the total voting rights exercisable at the time of the acquisition. A similar disclosure is required when the acquirer through subsequent direct or indirect acquisitions acquires securities representing voting rights that are 5% multiples of the total voting rights or when the shareholding drops below such levels. In addition, the company's articles of association may provide that the disclosure obligation applies at other thresholds (being 1%, 2%, 3%, 4% or 7.5%).

The same disclosure requirement applies if a person transfers the direct or indirect control of a legal entity that itself owns a percentage of the voting rights of the listed company that exceeds one of the applicable thresholds. Similarly, if as a result of events changing the breakdown of voting rights, the percentage of the voting rights reaches, exceeds or falls below any of the thresholds set out above, a disclosure is required even when no acquisition or disposal of securities has occurred e.g. as a result of a capital increase or decrease. Finally, a disclosure must also be made when persons acting in concert enter into, modify or terminate their agreement, which results in their voting rights reaching, exceeding or falling below any of the above thresholds.

The disclosure statements must be addressed to the FSMA and to the issuer at the latest on the fourth trading day following the day on which the circumstance giving rise to the disclosure occurred. The issuer must publish the information contained in a disclosure statement within three trading days of its receipt.

Failure to disclose or inadequate disclosure qualifies as a criminal offence and may also result in administrative fines and civil sanctions, the suspension of the voting rights attached to the relevant shares.

3.

What is the trigger for a mandatory bid for the company?

If a person, as a result of its own acquisition or an acquisition by persons acting in concert with that person, directly or indirectly holds more than 30% of the voting rights in a Belgian company whose securities are admitted to trading on a regulated market, Alternext or the NYSE Euronext Brussels Free Market, that person must make a mandatory bid on all outstanding securities with voting rights or granting access to voting rights.

By way of exception, Belgian law does not impose the obligation to launch a mandatory bid in a number of situations where the 30% threshold is exceeded, including among others:

3.1 in the event of an acquisition resulting from a voluntary takeover bid;

3.2 in the event of transfers between affiliated companies;

3.3 if it can be shown that a third party effectively controls the target or has a larger shareholding than the person that would otherwise be required to launch a mandatory bid;

3.4 in the framework of a subscription to a capital increase of a company in financial difficulties pursuant to Article 633 of the Belgian Companies Code or a subscription to a capital increase with preferential subscription rights, as approved by the shareholders' meeting;

3.5 in the context of a merger, insofar a person that (individually or with persons acting in concert) holds more than 30% of the voting rights of the absorbing of the newly incorporated company did not exercise the majority of the voting rights at the shareholders' meeting of the absorbed company – if listed – that approved the merger;

3.6 when the threshold is exceeded by a maximum of 2%, provided that the excess shares are transferred within 12 months and the voting rights attached to the excess shares are not exercised; and

3.7 if the acquisition results from a hard underwriting commitment or the enforcement of a pledge, provided that the excess shares are transferred within 12 months and the voting rights attached to the excess shares are not exercised.

4.

Can a shareholder require the company to answer its questions?

Any shareholder can ask questions, which the directors will answer, during the general meeting or in writing with regard to their reports or the items on the agenda, insofar as the communication of data or facts is not of a nature to be detrimental to the business interests of the company or the confidentiality to which the company and its directors have committed themselves.

Any shareholder can equally ask questions, which the statutory auditor of the company in turn will answer, during the meeting or in writing with respect to his report, insofar as the communication of data or facts is not of a nature to be detrimental to the business interests of the company or the confidentiality to which the company, its directors or the statutory auditor have committed themselves. They are entitled to speak during the general meeting with regard to the execution of their mandate. If different questions deal with one and the same topic, the directors and the statutory auditor may give one reply to these questions.

The shareholders can ask questions in writing, which will be answered during the meeting by, as the case may be, the directors or the statutory auditor, insofar as the shareholders have fulfilled the formalities required to be admitted to the meeting, as described in the notice.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

One or more shareholders who together hold at least 3% of the share capital of a listed company, can put forward items to be discussed on the agenda of the general meeting and submit proposals of the resolution with regard to the items listed or to be listed on the agenda.

Shareholders who would like to make use of the aforementioned right give evidence on the date that they submit an item or proposal of the resolution as described above, that they own at least 3% of the share capital of the company, either

5.1 by virtue of the certificate of registration of the shares in the company's share register or

5.2 by virtue of a certificate drawn up by a recognised account holder or settling agency that states that the number of dematerialised shares has been transferred to the account in their name.

The items to be discussed and the proposals of the resolution will only be discussed if the portion of the capital mentioned above has been registered in accordance with the provisions under Article 536, § 2 of the Belgian Companies Code.

The requests must be submitted in writing and, as the case may be, accompanied by the texts of the items to be discussed and the corresponding proposals of the resolution, or the texts of the proposals of the resolution to be listed on the agenda.

6.
What is the threshold to requisition a shareholder meeting?

The board of directors of the company are to convene the shareholders' meeting wherever the interests of the company so require, or at the request of one or more shareholders representing at least 20 per cent of the registered capital.

7.
How often must directors offer themselves for re-election?

Directors are appointed by the shareholders' meeting, usually by a simple majority vote. Unless the company's articles of association provide otherwise, whenever a vacancy occurs, the remaining directors may temporarily fill the vacancy until the next shareholders' meeting makes the final appointment. The appointment of a director is only effective once the mandate has been accepted.

Directors may be removed at any time, without cause and without any notice period or damages being due, by a simple majority vote of the shareholders. This power cannot be excluded by the articles of association of the company or otherwise.

Directors are appointed for a renewable maximum term of six years. If a director is appointed for a longer period, the term of his/her mandate is reduced to six years. Directors should remain in office until replaced.

8.
What is the threshold to amend the constitution of the company?

Subject to more stringent rules included in the company's articles of association, a company's constitution or its articles of association can only be amended if both quorum and majority thresholds are met:

8.1 the shareholders present or represented at the meeting must represent at least 50% of the registered capital. If the quorum is not met, a second meeting is to be convened at which no quorum applies; and

8.2 75% of the votes present or represented at the meeting (abstentions and blank votes are counted as negative votes) must vote in favour of the amendment.

9.

What is the threshold to force the board of the company to take (or not to take) any particular action?

As a general rule, the general meeting merely has the powers which have been granted by the Belgian Companies Code, such as the appointment and dismissal of the board members.

All remaining subjects fall within the competence of the board of directors. Certain powers may be delegated to the general meeting, allowing the shareholders to make certain decisions instead of the board or allowing them to be consulted on certain subjects on which the board needs to decide or to give binding instructions.

However, such delegation of power to the general meeting is not allowed in respect of the board's core tasks. These tasks can be described as the determination of strategy, policy and daily tasks of the company. On those topics, the general meeting must never interfere with the powers of the board, forcing it to make certain decisions by giving instructions.

If the shareholders are dissatisfied with the policy being pursued by the board members, they may simply dismiss the directors with whom they are dissatisfied – which would require a decision by a simple majority of votes of the shareholders present or represented at the general meeting (unless the bylaws of the company impose a different majority). Indeed, as a general principle, the director's mandate can be revoked at any time, without requirements regarding motivation, compensation or period of notice.

The general meeting may also decide not to approve the annual accounts or to discharge the directors and/or issue a liability claim vis-à-vis the decision made by the board.

10.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

Article 436 of the Belgian Companies Code imposes the obligation for limited liability companies to keep a register for each type of registered securities (shares, bonds or profit certificates). This is even more the case due to the Belgian Act of 14 December 2005, abolishing the possibility to hold or issue bearer securities, which allowed shareholders to remain anonymous. Limited liability companies will thus no longer be able to issue all shares in the form of bearer shares and will no longer be able to avoid the obligation of keeping such share register.

The share register will contain information regarding the shareholder's identity, the number of shares in his/her possession, every transfer of shares, etc., meaning that in the event of a "poison pill" strategy with the issuance of new shares, this will have to be mentioned in the share register. Shareholders have the right to access the whole register, and thus have access to the identity of the remaining shareholders listed therein. The company may provide the shareholder with a copy of the whole register, but is not obliged to do so.

The above legal provisions apply to listed companies as well. However, certain listed companies will have difficulties keeping up with all changes regarding registered shares. The legal possibility to keep the share register in electronic form may therefore be a useful solution for such companies to be compliant with Belgian law. In practice, Euroclear Belgium provides for a service called "Capitrack level 2", which companies may use for the management of the register of shares.

However, the share register may not contain the identity of all remaining shareholders due to the option for limited liability companies to issue dematerialised shares (which are represented by an entry on an account with an authorised account holder or provider of settlement services). In that case, Belgian law merely foresees that the number of issued dematerialised shares will have to be registered in the name of the authorised account holder or provider of settlement services.

11.

What scope is there for an activist shareholder to use litigation as part of its strategy?

In recent years, more shareholders have used litigation in order to recover losses inflicted on them as investors in the company. They mostly do so through organisations such as Deminor, mandated by the shareholders to act on their behalf. Due to their (legal) expertise in these matters, such organisations can act as a very effective way for shareholders to put pressure on the company/board during such litigation.

On the other hand, the scope for a shareholder to recover loss in worth of his/her shares, which solely consists of a reflection of the damages inflicted on the company's assets, is limited. The Belgian Supreme Court **("Hof van Cassatie"/"Cour de Cassation")** and the International Court of Justice indeed do not allow such claims in liability issued by the shareholders vis-à-vis third parties who created the damages. Consequently, only the company may issue such claim to recover such losses.

The general meeting of shareholders may also decide (by a simple majority, except for a specific provision in the bylaws of the company) to issue liability claims vis-à-vis the company's directors, for management errors, non-compliance with the Belgian Companies Code or the company's bylaws and undue financial advantage. An individual shareholder does not have the right to issue such claim (not even on behalf of the totality of shareholders), which limits the number of such actions issued in Belgium.

As such liability claims require a decision of the general meeting (and thus a simple majority), this mostly benefits majority shareholders. The Belgian Companies Code also provides for the possibility for minority shareholders to issue such claims. They will have to meet specific conditions, namely

11.1 representing at least 1% of all votes connected to the totality of the issued shares **or** owning securities representing at least EUR 1.25m of the capital **and**

11.2 not having approved the discharge of the directors, or having approved but having disputed the discharge afterwards.

Shareholders may furthermore issue nullity claims for decisions by the board for non-compliance with specific legal formalities at hand. Other possibilities for an activist shareholder to use litigation towards the board involve requesting an expert opinion during litigation, the appointment of a temporary representative to perform acts instead of the directors (in very exceptional cases), and interim relief proceedings (e.g. to force the director if the latter refuses to convene the general meeting).

12.

Can a company adopt a "poison pill" to deter activist shareholders?

There are certain restrictions concerning "poison pills" in the context of takeover bids. Under the Belgian Companies Code, only the general meeting of a limited liability company is allowed to confer any rights influencing the assets of the company or creating an obligation or debt charged to the company, when exercising these rights depends on

12.1 the launch of a public takeover bid regarding the shares of the company, or

12.2 a change of control is exercised on the company. This means that in such cases the board will not be authorised to adopt most "poison pills", but merely the shareholders by shareholder resolution. Moreover, such decision by the general meeting must be deposited at the commercial court's registry.

Another rule restricts the ability of the board to decide to increase the company's capital within the context of the authorised capital. The power to decide to increase the capital of the company is principally attributed to the general meeting. However, the general meeting may authorise the board, in the bylaws of the company, to increase the capital of the company within certain limits and while respecting certain conditions. In that case, as from the moment the FSMA has been notified of the existence of a public takeover bid and until the end of the bid, the board will not be allowed to increase the company's capital. The board, with minor exceptions, will also not be able to issue securities with voting rights whether or not representing the company's share capital, nor securities that entitle the holders thereof to the subscription to or acquisition of such securities, when the named securities or rights have not been offered preferably to the shareholders in proportion to the capital represented by their shares.

This rule is tempered by the fact that

12.3 the board may be able to finalise such operations in a timely manner before receipt of the notification by the FSMA and by the fact that

12.4 after receipt of the aforementioned notification, the general meeting is still allowed to adopt "poison pills" (as mentioned in the first paragraph).

13.

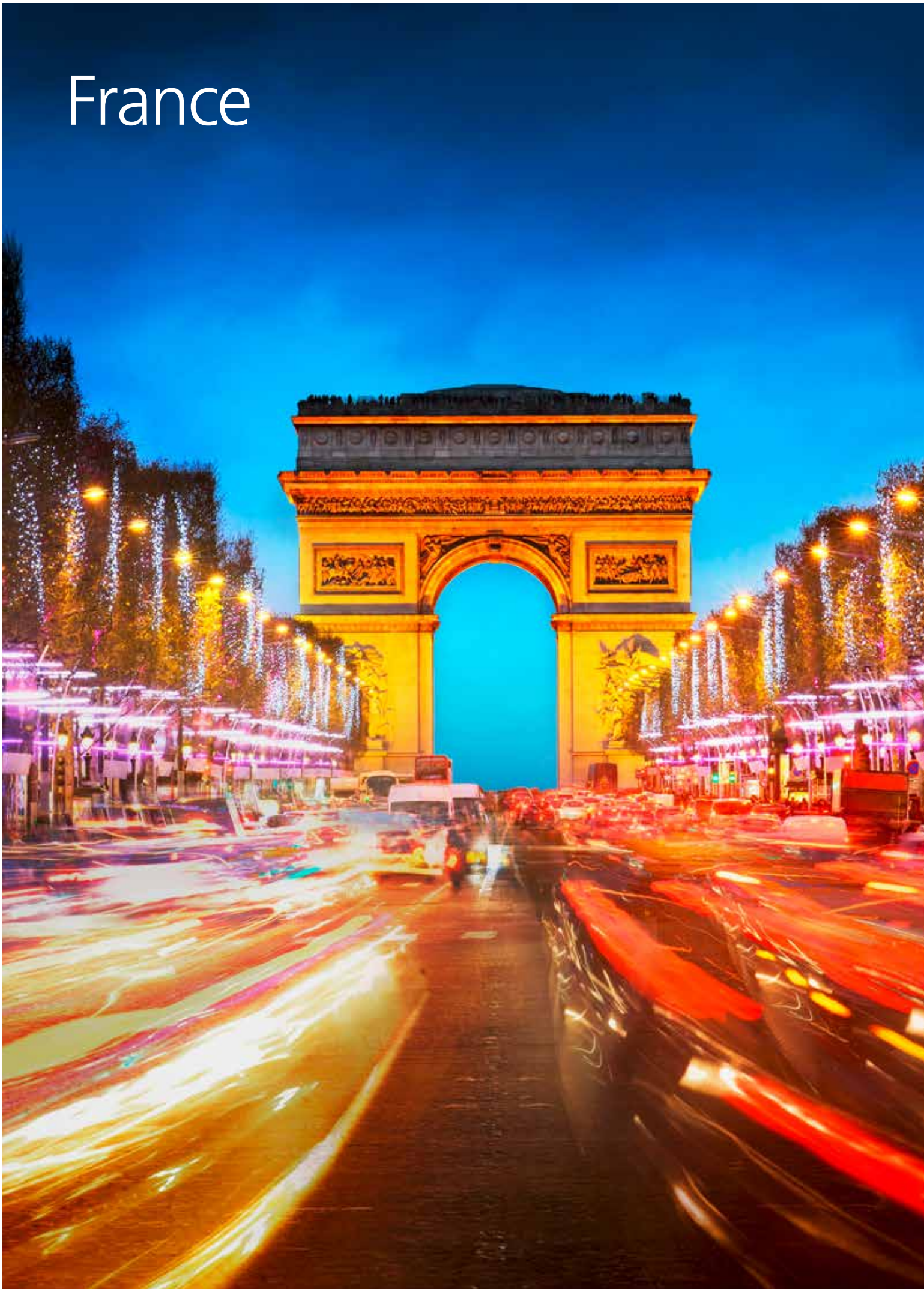
What other factors may affect shareholder activism?

Although its impact may have been limited within the context of shareholder activism, corporate governance regulation has and may in the future affect shareholders' rights to participate in the company.

In more recent years, corporate governance has focused more on the involvement of shareholders in the company, not only between shareholders, but also between the relationship between shareholders and the board. An example of such rules is the Act of 20 December 2000 concerning the exercise of certain rights of shareholders of listed companies, implementing European Directive 2007/36/EG. The underlying rationale of that Directive was fact that investors who disagree with the company's policy may hastily sell their participation in the company, which may impact the stock or share price in a negative manner. By allowing them or giving them tools to participate in the decision-making process within the company, shareholders could make a positive contribution in determining the company's policy.

Various bills are being introduced in Parliament or at European level (e.g. the proposal amending Directive 2007/36/EG as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement – COM/2017/0213), giving various stakeholders and shareholders of the company more rights to participate in the company.

France



Note: This section addresses the position for French companies with a listing on the French regulated market "Paris Euronext". There will be diffewrences in these rules for non-French companies listed on the Paris Euronext and for French companies which are listed on Alternext Paris (the French organised Multilateral Trading Facility which is similar to AIM).

1.

Is shareholder activism common in France?

Shareholder activism in France has been quite high, particularly in recent years, and tends to be part of the market structure.

Mostly led by hedge funds such as The Children's Investment Fund (the **"TCI"**), Third Point or Amber Capital, this activism is also driven by individual investors who tend to either lend support or engage themselves. Such was the case in Vivendi (Media group) where Vincent Bolloré successfully called for strategic reorganisation with a 4% stake and became chairman. In addition, P. Schoenfeld Asset Management (PSAM) reached its objective of significant dividend distribution with a less than 1% stake, when Vivendi announced its undertaking to redistribute EUR 6.75bn to its shareholders over the 2015–2017 period. However, Vivendi so far has resisted demands for "dismantlement" of the group, and is supported by PSAM which speaks in terms of "group value optimisation".

Thus, the growing trend of shareholder activism in French listed companies welcomes the influence of Anglo-Saxon hedge funds and simultaneously develops its own roots in the traditional French shareholding capitalism.

TCI has also been active in two other major cases. With a 3% stake in Safran (aerospace leader), it called for an improved capital allocation and, among other things, asked for the sale of the company's stake in Ingenico and for the capital raised to be returned to its shareholders via a special dividend. As a result, Safran has reduced its stake in Ingenico from 23.6% in capital to 3.6% with an intention of selling this residual stake soon. TCI has also called for the full sale of the 46% capital stake held by Airbus in Dassault Aviation since 2013, and in April 2015 Airbus reduced its shareholding to 23.36%.

The impact of proxy voting agencies on hedge funds and more generally towards non-French residents has encouraged companies to form closer relationships with minority shareholders to discuss draft resolutions before general assembly meetings.

Shareholder activism has also been encouraged by legislation promoting long-term shareholding (in particular, the Florange law dated March 2014). In companies whose shares are admitted to trading on a regulated market, shares held in registered form **("inscription nominative")** by the same holder for more than two years are automatically allocated double voting rights. Only a statutory provision adopted by a 2/3 majority in an extraordinary general meeting can negate this principle. Most activist shareholders have attempted to reject this legislative innovation either by urging boards to present such resolutions or by themselves submitting these proposals when possible.

Under the Florange law, an extraordinary general meeting is necessary to introduce the "passivity rule" in the company's articles of association, under which (in the event of a takeover bid for the company) the board of directors is required to obtain the prior authorisation of the general meeting of shareholders before it can implement defensive measures. Thus, the passivity rule is no longer automatic and the ability of boards of directors to defend the company against hostile bids has increased.

2.

What is the threshold for disclosure of a shareholding?

Under the French Disclosure and Transparency Rules, the AMF (French market authority) and the company must be notified as follows:

2.1 Any natural person or legal entity, acting alone or jointly, who comes into possession of a number of shares representing more than 5%, 10%, 15%, 20%, 25%, 30%, one third, 50%, two thirds, 90% and 95% of the capital or voting rights must inform the AMF and the company of the total number of shares or voting rights, no later than the close of trading on the fourth trading day after the shareholding threshold has been crossed. The same obligation applies whenever the shareholding falls below these thresholds.

2.2 These thresholds shall be calculated on the basis of the shares and voting rights actually owned, plus the shares and voting rights treated by law as if they were owned by the person, for example shares held on behalf of the person or by a company controlled by that person.

2.3 Furthermore, the person required to provide the information indicated above is also required to make a declaration of intent (to both the AMF and the company) regarding the objectives to be pursued during the next six months whenever the thresholds of 10%, 15% 20%, or 25% of the capital or voting rights are exceeded. This declaration has to be made no later than the close of trading on the fifth trading day after the shareholding threshold has been crossed. In practice, this declaration of intent is given alongside the declaration of the increased shareholding.

A declaration of intent includes: the methods of financing the acquisition and the arrangements therefor; whether the acquirer is acting alone or in concert; whether it plans to cease or continue its purchases; whether it intends to take control of the company; the strategy it intends to pursue in relation to the issuer; the operations for carrying out that strategy; any financing arrangements involving the shares or voting rights of the issuer; and whether it intends to request the appointment of one or more persons as a director on the executive board or supervisory board.

2.4 Failure to declare shares crossing a threshold results in the removal of the voting rights attached to the shares for which the disclosure was omitted for any shareholders' meeting held within two years of the date of effective notification.

3.

What is the trigger for a mandatory bid for the company?

A mandatory bid for the company must be launched where:

3.1 A natural or legal person, acting alone or in concert, comes to hold more than 30% of a company's equity securities or voting rights. The 30% threshold will take into account the maximum number of issued shares that the holder is entitled to acquire alone under an agreement or a financial instrument, without set-off against the number of shares that the said holder is entitled to sell under an agreement or a financial instrument. Financial instruments are, **inter alia:**

3.1.1 bonds exchangeable for shares;

3.1.2 future and forward contracts; and

3.1.3 options, whether these are exercisable immediately or at the end of a maturity period, and regardless of the level of the share price relative to the option strike price. If an option can be exercised only if the share price reaches a threshold stipulated in the contract, it shall be treated in the same way as a share once this threshold is reached.

3.2 More than 30% of the shares or voting rights of a company whose corporate seat is in France and whose equity securities are admitted to trading on a regulated market in a Member State of the European Union or EEA are held by another company (the "holder") and constitute an essential asset of the holder's assets and:

3.2.1 a person acquires control of the holder, within the meaning of the law and regulations applicable to that holder; or

3.2.2 a group of persons acting in concert acquires control of the holder, within the meaning of the law and regulations applicable to that holder, unless one or more of them already held control and remains predominant, and in that case, as long as the balance of the respective holdings is not significantly altered.

3.3 "Acquisition Speed Limit": persons, acting alone or in concert, and directly or indirectly holding between 30% and 50% of the total number of equity securities or voting rights, increase such holdings by 1% or more of total equity securities or voting rights within a period of less than 12 consecutive months.

Since October 2014, mandatory offers are conditional upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 50% of the company's equity interests or voting rights. In the event that the offeror, and persons acting in concert with it, do not obtain an amount in aggregate equal to more than 50% of the company's equity interests or voting rights, the offer lapses. As a result of the lapse of the offer, voting rights of the securities

3.3.1 held by the offeror and persons acting in concert with it and

3.3.2 exceeding 30% of the voting rights or exceeding the number of securities held before the mandatory offer plus 1%, shall be frozen for each shareholders' meeting until the offeror holds 50% of the company's equity interests or voting rights.

In addition to the freezing of the aforesaid voting rights, the offeror shall only be authorised to increase its holding of securities in the company through a new takeover bid and after prior disclosure to the AMF.

4.

Can a shareholder require the company to answer its questions?

Under French law, shareholders are entitled to the following specific information rights:

4.1 Right to receive documents prescribed by law relating to general conduct of the company's business.

4.2 Right to ask written questions either before a general meeting (without a minimum stake requirement) or twice a fiscal year provided that the shareholder holds a minimum 5% capital stake and that the question relates to any matter likely to jeopardize the continued operation of the company.

4.3 Right to have an expert appointed by court to report on one or more management operations, provided that the shareholder holds a minimum 5% capital stake alone or with other shareholders.

During the general meeting, the board of directors is required to answer all written questions submitted by shareholders but can give a common answer to questions having the same content. The company is presumed to have answered such questions when it has published these answers on its website in the dedicated section (at the very latest at the end of such general meeting, whether ordinary, extraordinary or special).

The company may refuse to answer a question in certain prescribed circumstances, including where providing an answer would contravene business secrecy.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

A member or members holding at least 5% of the total capital in the company (when such capital does not exceed EUR 750,000) can require a resolution or resolutions to be included on the agenda of an annual general meeting.

When such company's capital exceeds EUR 750,000, the shareholders must represent a fraction of the capital determined as follows:

5.1 4% for the first EUR 750,000;

5.2 2.5% for the capital portion between EUR 750,000 and EUR 7.5m;

5.3 1% for the capital portion between EUR 7.5m and EUR 15m; and

5.4 0.5% for the portion exceeding EUR 15m.

6.

What is the threshold to requisition a shareholder meeting?

General meetings shall be convened by the board of directors or the executive board.

Failing this, a general meeting can also be convened by one or more shareholders who together hold more than 5% of the share capital; by an association of shareholders in accordance with the conditions laid down by law; or by certain other persons in certain prescribed circumstances.

7.

How often must directors offer themselves for re-election?

Under French law, the duration of directors' terms of office is set by the by-laws, and must not exceed six years.

Nonetheless, under the Corporate Governance Code of Listed Corporations **(AFEP-MEDEF Code),** the duration of directors' terms of office should not exceed a maximum of four years.

Terms should be staggered so as to avoid replacement of the entire body and to favour a smooth replacement of directors.

The annual report should detail the dates of the beginning and expiry of each director's term of office, so that existing staggering is clear. It should also give, for each director, the list of offices and positions held in other corporations, his or her nationality, age, and principal position. The members of each board committee must also be listed.

When a shareholder meeting is asked to appoint a director or extend his or her term, the notice calling the meeting must contain items required by statute and a biographical notice outlining his or her curriculum vitae.

8.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of the company requires the approval of two-thirds of shareholders, present or represented, holding, if convened on first notice, at least one-fourth and, if convened on second notice, at least one-fifth of total voting shares.

9.

What is the threshold to force the board of the company to take (or not to take) any particular action?

This will depend on a company's articles of association, but articles will often provide that instructions may be given by the shareholders to the board by a resolution passed by a 75% majority of the votes cast.

The articles of association may seek to increase the powers of the ordinary general meeting. These changes should not affect the rights of minority shareholders, or those of third parties.

In some cases, the articles of association may require that certain acts of management be previously authorised by the general meeting. Moreover, it is possible for there to be a division of power between the general meeting of shareholders and the board of directors, provided that such division does not deprive the board of its own powers as specified by law (such as convening the general meeting, appointing or dismissing the president of the board of directors, etc.).

10.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

Every meeting of shareholders gives rise to the holding of an attendance sheet **("feuille de présence")** for the verification of the existence of a quorum and to calculate the majority required for the adoption of resolutions. It indicates the name and address of each shareholder present or represented, the number of shares he holds and the number of votes attached to those shares. It can be consulted in paper form, scanned or electronically. At any time, the shareholder has the right to obtain any attendance sheets issued during any meeting (ordinary or extraordinary) held over the past three years.

It is the responsibility of the shareholder to protect this information from disclosure to third parties, an invasion of privacy of the persons named on the attendance sheet, or any resulting damage to them.

Finally, if the company refuses shareholders access to the attendance sheet, shareholders may request the president of the commercial court to order, under financial compulsion, the disclosure of the attendance sheet.

11.

What scope is there for an activist shareholder to use litigation as part of its strategy?

Several resources are made available to shareholders in order to protect the interests of the company and minority shareholders:

11.1 The right to convene a general meeting of shareholders is a specific power of the board of directors. However, one or more shareholders representing at least 5% of the capital may request that the judge appoint a representative responsible for convening the general meeting. In urgent cases, any shareholder may request the measure.

11.2 Without the company's action itself, one or more shareholders may, in the name of the company, initiate "ut singuli" action in order to seek the responsibility of the manager for violation of laws and regulations, violation of the by-laws or management fault.

11.3 One or more shareholders representing at least 5% of the capital may request the president of the commercial court, ruling in summary proceedings, to appoint one or more experts to report on one or more management operations.

12.

Can a company adopt a "poison pill" to deter activist shareholders?

French companies are not allowed to adopt US style "poison pills".

However, in the course of the transposition of European Directive 2004/25/CE, France implemented in its legislation a new form of securities called offer warrants **("bons d'offre").** These offer warrants can be issued within the framework of a (hostile) takeover bid and are a way to deter activists from entering into a target company's capital. They can be issued by the target company during the course of the offer, by decision of an extraordinary general meeting. Offer warrants are granted for free to all shareholders and can be issued on preferential terms.

Offer warrants may therefore be used to hinder a person who makes a hostile takeover bid from taking control of the target by diluting his stake in the target company substantially.

13.

What other factors may affect shareholder activism?

There are several factors to consider in terms of shareholder activism:

13.1 The general meeting of shareholders is able to appoint directors, except those representing employees. The general meeting is also able to dismiss directors.

13.2 Agreements between the company and its executives, between the company and a shareholder holding at least 5% of the voting rights, are subject to special regulation to prevent abuse as a result of conflicts of interests ("regulated agreements" or **"conventions réglementées").** When the shareholder is a legal person, the same regulation applies to agreements concluded with the person that controls that shareholder. Regulated agreements must be authorised by the board of directors prior to their conclusion. The annual general meeting is required to ratify these agreements, and also on an annual basis to reassess these agreements when they are still in force.

13.3 The rules regarding determination and adoption of remuneration of executive officers (in particular the chairman of the board, chief executive officer, deputy chief executive officers) have been substantially amended by recent legislation ("say on pay", Sapin II law, dated 9 December 2016), and are now subject to a two-step control by the shareholders. First, principles and criteria of remuneration proposed by the board of directors must be approved annually by the general meeting of shareholders. Such approval is also required when any aspect of those principles and criteria is amended, and when an executive officer is appointed for a new mandate. If the resolution is not approved, the previously approved principles will continue to apply. Secondly, variable or exceptional elements of remuneration will be payable to executive officers subject to prior approval by shareholders at a general meeting.

Germany

Note: This section addresses the position for German companies, particularly stock corporations ("Aktiengesellschaften"), with a listing on the Regulated Market. There will be differences for companies which are traded on the Regulated Unofficial Market only ("Freiverkehr").

1.

Is shareholder activism common in Germany?

The significance of shareholder activism has increased in Germany in recent years. It is likely that this trend will continue in the future.

Germany is an attractive jurisdiction for activist shareholders for both legal and factual reasons. There are numerous potential target companies which have not previously been the focus of global activist investors. Moreover, several potential target companies have a wide free float and the average attendance at the general meetings of German listed companies is comparatively low. The increasing role of proxy advisors who often support the strategies of activist shareholders and the increasingly professional approach of activist investors also contribute to this. From a legal perspective, the regulations in favour of minority shareholders and the often low thresholds for asserting shareholder rights are beneficial to activist shareholders.

2.

What is the threshold for disclosure of a shareholding?

Pursuant to § 21 Securities Trading Act **("Wertpapierhandelsgesetz")** a shareholder is obliged to issue a voting rights notification if the 3% threshold of the voting rights of an issuer is reached or exceeded. The notification has to be made to the issuer and to the German Federal Financial Supervisory Authority **("BaFin").** When calculating the relevant shareholding, voting rights that belong to a subsidiary of the notifying party, or to a third party that holds the voting rights on behalf of the notifying party, are attributed to the notifying party. In the event of acting in concert, such voting rights are also attributed to the notifying party.

In addition, pursuant to § 25 Securities Trading Act, the notifying party has to notify the issuer and BaFin if it holds certain financial instruments and a threshold of 5% of the voting rights of that issuer is reached or exceeded. Instruments which fall under the scope of § 25 Securities Trading Act are, for example, forwards/futures, call options, reclaims from repurchase agreements, irrevocables, contracts for difference and swaps.

Moreover, the notifying party has to notify the issuer and BaFin of the sum of the voting rights and financial instruments it holds if a threshold of 5% of the voting rights of the same issuer is reached or exceeded pursuant to § 25a Securities Trading Act.

A violation by the notifying party of its notification obligations results in a temporary loss of the rights attaching to the shares and can result in an administrative fine.

The issuer has to publish voting rights notifications and information on financial instruments which it receives without undue delay. A violation by the issuer of its publication obligations can result in an administrative fine.

Finally, if an investor has a shareholding of at least 10% pursuant to § 27a Securities Trading Act it has to provide information on its aims, the origin of funds used for the acquisition, and in particular whether it seeks to influence corporate governance. However, the constitution of an issuer may include a waiver of the provisions of § 27a Securities Trading Act, in which case it is not necessary to provide information on the motivation to acquire shares.

3.

What is the trigger for a mandatory bid for the company?

Under § 35 German Securities Acquisition and Takeover Act **("Wertpapier-erwerbs- und Übernahmegesetz"),** a party that directly or indirectly obtains control over the target company is required to submit a mandatory offer. Control in this context means holding at least 30% of the voting rights in the target company. § 30 German Securities Acquisition and Takeover Act provides for various scenarios in which voting rights held by other parties are attributed to the bidder. This includes, inter alia, voting rights held by a subsidiary of the bidder, if a third party holds voting rights on behalf of the bidder or in the event of acting in concert.

4.

Can a shareholder require the company to answer its questions?

Shareholders have a right to information at the general meeting of the company. The right to information covers all matters of the company insofar as the information is required to duly assess an item on the agenda. The company may only refuse to provide information under certain conditions, for example if providing information could cause harm to the company. In practice providing information is a significant feature of the general meeting. The consequence of an unjustified refusal to provide information or of providing incomplete answers to questions is that resolutions of the general meeting are voidable, if the correct answer to the question would have been relevant to the voting behaviour of the shareholders.

The company is not required to answer questions from shareholders outside of a general meeting. If a shareholder is nevertheless given information outside of a general meeting, then under the principle of equal treatment of all shareholders the information has to be provided to each of the other shareholders upon request at the next general meeting, even if the information is not required to properly assess an item on the agenda.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

Shareholders whose shares together total 5% of the share capital or amount to at least EUR 500,000 of the share capital can demand in writing from the management board that items be put on the agenda and announced. An explanation or a proposed resolution has to be enclosed with the new agenda items. The request has to be delivered to the listed company 30 days prior to the general meeting. If the management board unjustly refuses to put the item on the agenda, a court can authorise shareholders to announce the agenda item.

In addition, shareholders have the right to submit counter-motions to items on the agenda or suggestions for the election of supervisory board members or auditors. If such motions are received by a listed company no later than 14 days before the general meeting, the company is obliged to make them accessible on its website with the respective grounds.

A further shareholder right is issuing a special audit request on which the general meeting has to resolve pursuant to § 142 Stock Corporation Act **("Aktiengesetz").** Through a special audit, matters concerning incorporation or management of the company can be reviewed, primarily to assess whether there is evidence to support claims for compensation against members of the management board or the supervisory board. If the general meeting rejects a request for a special audit, shareholders whose shares jointly amount to 1% of the share capital or to at least EUR 100,000 of the share capital can under certain conditions appoint a special auditor through the court.

6.

What is the threshold to requisition a shareholder meeting?

Pursuant to § 122 (1) Stock Corporation Act the management board must convene a general meeting if shareholders who hold shares of at least 5% of the share capital so request in writing indicating the subject matter upon which resolutions should be passed. The shareholders have to prove that they have held the shares for at least 90 days and will hold them until the decision is made on the motion. When the management board receives an admissible request to convene a general meeting, it must convene the meeting without undue delay and place the agenda items requested by the petitioner on the agenda. If the management board unjustly refuses to convene the general meeting, a court can authorise shareholders to convene the general meeting.

7.

How often must directors offer themselves for re-election?

Under the two-tier system in Germany, a stock corporation has a management board **("Vorstand")** and a supervisory board **("Aufsichtsrat").**

Under § 84 Stock Corporation Act members of the management board are not appointed by the general meeting, but rather by the supervisory board. The maximum term in office permissible under statute is five years and is set by the supervisory board in the appointment resolution. Apart from that, the general meeting has to pass a resolution each year with respect to discharge of the members of the management board. However, refusal to pass a resolution discharging the management board has no implication for the term of office of members of the management board.

The shareholder representatives in the supervisory board are elected by the general meeting for a maximum term of five years. The term of office for the members of the supervisory board is determined through the election resolutions. The election of supervisory board members for a five-year term is common practice in Germany. In addition, the general meeting passes resolutions on discharge of the members of the supervisory board annually. However, such discharging resolution has no effect on the term of supervisory board members.

8.

What is the threshold to appoint or remove a director?

Appointing and removing members of the management board from office does not fall within the competence of the general meeting, but is rather decided by a resolution of the supervisory board. A simple majority of the votes cast is sufficient for this, subject to particularities concerning codetermination rights. Premature removal from office of a member of the management board by the supervisory board does, however, require good cause. The general meeting can only pass a vote on withdrawal of confidence regarding a member of the management board. Such a vote of no confidence by the general meeting constitutes good cause, on the basis of which the supervisory board can then remove the management board member from office prematurely.

The election of a shareholder representative to the supervisory board requires a resolution of the general meeting passed by simple majority, unless otherwise stipulated in the constitution of the company. As a rule, a minimum majority of 75% of the votes cast is required to prematurely remove from office a member of the supervisory board elected by the general meeting. The constitution of the company may stipulate another threshold, especially a lower majority.

9.

What is the threshold to amend the constitution of the company?

An amendment to the constitution of the company may be made through a resolution of the general meeting, which as a rule requires a majority of 75% of the share capital represented when the resolution is passed. The constitution of the company may set a different capital majority. In practice, the constitutions of most companies require a simple majority (except for an amendment to the object of the company).

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

As a rule management measures fall strictly within the responsibility of the management board and are not within the sphere of influence of the shareholders. Therefore, the general meeting cannot instruct the management board to carry out certain measures or to refrain from certain actions. The case differs if there is a control agreement with a controlling shareholder. In this case the controlling shareholder can issue instructions to the management board of the dependent company, which the management board must observe. A control agreement must be approved by a resolution of the general meeting with a majority of 75% of the share capital represented when the resolution is passed.

The general meeting may only make decisions on management issues at the request of the management board, § 119 (2) Stock Corporation Act. If, following such a request, the general meeting makes a decision that a management measure should be taken, then the management board is obliged to carry out such measure. Conversely, the management board must refrain from any management measure if the general meeting has passed a resolution to this effect.

Therefore, in general, it is only possible for activist shareholders to influence matters "informally", for example through "one-to-one" meetings or by launching public campaigns in the media. Conversely the management board can in principle commit itself to carry out certain measures which fall within its competence vis-à-vis an activist shareholder. However, this requires a prior entrepreneurial decision by the management board in the interest of the company and – if necessary – the consent of the supervisory board. In addition, the management board has to have the option to revise its decision if the circumstances change.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

In this regard, it is necessary to distinguish between companies that have issued bearer shares **("Inhaberaktien")** and those that have issued registered shares **("Namensaktien").**

If a company has issued bearer shares, there is no share register. In this case, shareholders can only obtain information on the shareholdings of other shareholders through voting rights notifications if they reach certain notification thresholds.

If registered shares have been issued, there is a share register. However, a shareholder does not have a general right to inspect the share register. A shareholder only has the right to obtain information on his own data.

In addition, shareholders may view the list of participants at the general meeting of the shareholders.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

In the past, a widespread strategy of shareholders was to file actions to set aside resolutions of the general meeting. This makes it possible to delay implementation of resolutions if they only become effective when they are entered in the commercial register (e.g. amendments to the constitution, capital increases, squeeze-outs or inter-company agreements). This register ban can be overcome in some cases through a clearance procedure before the action to set aside is completed. This strategy of shareholders has, however, become less common in the past few years.

Moreover, if in the context of a structural measure such as a control agreement or a squeeze-out, the shareholders are granted a severance or compensation payment, the shareholders can have the appropriateness of such payment reviewed by a court by way of compensation settlement proceedings **("Spruchverfahren").** Such court proceedings are very common and can last several years.

Finally, pursuant to § 148 Stock Corporation Act, shareholders whose shares jointly amount to at least 1% of the share capital or to at least EUR 100,000 of the share capital have the right under certain conditions to assert compensation claims of the company in their own names against members of company bodies if such claim is admitted by court. However, this possibility to take court action has not been of significance in practice to date.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

Measures by a company taken when there is no specific takeover situation or (preventative) measures prior to a potential takeover situation are as a rule permissible, however they have to be in the interests of the company and must not harm the company. In contrast, after the decision to submit a takeover bid has been published by a bidder, the management board of a listed target company may – in principle – not carry out any measures which could hinder the success of the offer. Also, German companies are not able to adopt US style "poison pills".

14.

What other factors may affect shareholder activism?

The following factors may also be noted:

14.1 Activist shareholders are subject to insider trading rules. If they are in possession of inside information, they are in principle not allowed to make use of the information to acquire or dispose of the respective shares, to disclose or make available the information to a third party without the authority to do so and to recommend that a third party acquire or dispose of the shares.

14.2 As mentioned above, in Germany, investors only have to provide information on aims, origin of funds and planned influence on the management of the company if they have a share of 10%, whereas such information is required in other countries with much lower pro rata shareholdings.

14.3 In Germany, listed companies are not required to hold an annual vote on remuneration of the management board members. Rather, the shareholders meeting of a listed company may resolve on the approval of the compensation scheme. However, such a resolution does not give rise to any rights or obligations. Changes in this respect could result from the future implementation of the EU directive on shareholders' rights.

14.4 The following companies could be particularly susceptible to activist shareholders: companies with a conglomerate structure which could be broken up, those with a high cash position or a below-average share price or below-average growth on the market in comparison to competitors, or those with a wide free float.

Italy

Note: This section addresses the position of Italian companies listed on the Italian Stock Exchange. Specific rules (not dealt with herein) may apply to issuers operating in specifically regulated markets (banks, insurances etc.)

1.

Is shareholder activism common in Italy?

In the past there has not been a significant number of examples of shareholder activism in Italy.

Historically, the reason for the low impact of activists on the Italian market lies in the structure of the Italian capital market where the ownership of listed companies is relatively concentrated and there are strong controlling shareholders (both by means of holding the majority of the voting rights and by other means, such as shareholders' agreements). However, things seem to be changing in line with international trends.

In 2016 the funds Amber Capital, Elliot Management and Bluebell Partners obtained an increase in the price offered by Hitachi Rail Italy Investments S.r.l. (Hitachi group) in its tender offer on the Ansaldo Sts S.p.A. shares.

Elliot did not accept the tender offer launched by Hitachi Rail Italy Investments S.r.l. and is still the second shareholder of Ansaldo Sts S.p.A. with approximately 20% of the corporate capital of Ansaldo Sts S.p.A., behind Hitachi. In its capacity as minority shareholder, Elliot is still struggling for an improvement in the corporate governance of Ansaldo Sts S.p.A. and has recently launched a website (http://www.fairtreatmentforsts.com), in English and Japanese, to make publicly available certain information, documents and other materials, which addresses matters in connection with Ansaldo Sts S.p.A. and the Hitachi tender offer. This is particularly for the benefit of other minority shareholders and the market.

Furthermore, in Q1 2017 Amber Capital has recently obtained an increase in the price of the tender offer launched by Lactalis on approximately 12% of the corporate capital of Parmalat aimed at the delisting of the latter company.

2.

What is the threshold for disclosure of a shareholding?

Pursuant to the Italian disclosure and transparency rules, a shareholder must disclose its shareholding to the issuer and to Consob (the supervisory authority) if it exceeds a 3% interest in the shares with voting rights of the issuer. This minimum threshold is increased to 5% where the issuer is an SME. If issued pursuant to the by-laws, double voting rights shares and/or multiple votes shares must be taken into consideration in calculating the thresholds. Disclosure must also be given if the shareholding returns below 3% (or 5% in the case of an SME).

In addition to the above, the disclosure must be given each time the shareholding reaches, exceeds or falls below the following percentage points: 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6% and 90%.

When calculating the above thresholds, any shares and voting rights held through nominees, fiduciary companies or subsidiaries must be included in the calculation. There are a small number of exemptions, for example for market makers and custodians.

Breaching this disclosure obligation results in sanctions, including the suspension of the voting rights attached to the shares for which the disclosure was omitted. In addition, any resolution of the shareholders' meeting adopted with the "casting vote" of the shares for which the disclosure was omitted can be challenged.

These provisions concerning the disclosure of relevant shareholdings also apply to Italian companies listed on the Stock Exchanges of other EU countries, unless Consob excludes such application on a case-by-case basis.

Following recent cases, the Italian government is evaluating the opportunity to introduce additional disclosure obligations requiring shareholders who exceed certain thresholds to supply to the market more details on their future plans regarding the targeted issuer.

3.
What is the trigger for a mandatory bid for the company?

According to Italian takeover rules, any person who:

3.1 acquires shares conferring 30% or more of the voting rights in the issuer (the same applies if the 30% threshold is reached due to the holding of double voting rights shares); or

3.2 acquires shares conferring 25% or more of the voting rights in the issuer, provided there are no other shareholders who own a higher percentage (this rule does not apply to SMEs); or

3.3 passes the different thresholds set by the by-laws of an SME, if any (the by-laws of the SMEs can set thresholds different from those indicated in point 1 above, between a minimum of 25% and a maximum of 40%),

must launch a mandatory offer to acquire the remaining shares in the issuer. For this purpose a person must aggregate his shareholding (and voting rights) with the shares (and voting rights) held by subsidiaries, nominees and fiduciary companies as well as by "concert parties".

Concert parties are defined as "any persons who pursuant to an agreement, express or implicit, written or oral, valid and effective or not, cooperate to obtain, maintain or strengthen the control over the issuer or in order to oppose the obtainment of the targets of a tender offer". Various categories of persons are deemed by operation of law to be acting in concert.

In specific circumstances, cooperation amongst shareholders may not be considered as a "concert", for example when the shareholders cooperate for the purpose of filing the lists for the appointment of the members of the management and controlling body of the issuer, provided that such lists designate less than the majority of the members to be appointed or are aimed at appointing the representatives of the minority shareholders. However, in order to avoid creating a concert party in such cases, attention has to be paid to the specific circumstances of the case.

4.
Can a shareholder require the company to answer its questions?

This right exists but is limited to the items on the agenda of any shareholders' meeting of the issuer. In particular, shareholders entitled to vote are also entitled to raise questions pertaining to the items on the agenda of the meeting. Such right can be exercised during the shareholders' meeting or, in writing, before the shareholders' meeting within defined timelines. With regards to the latter, replies by the issuer are given or made available at the shareholders' meeting at the latest.

Shareholders (including activists) are also entitled to have access to the minutes of the resolutions of the shareholders' meeting of the issuer (which can be a useful means of understanding the issues discussed at the shareholders' meeting).

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

The right to include a proposed resolution on the agenda can be exercised by shareholders entitled to vote either before the shareholders' meeting or at the shareholders' meeting (different thresholds apply in the two cases).

The right applies to any shareholders' meeting (not only to the annual general meeting).

Prior to the shareholders' meeting (normally not later than ten days from the publication of the notice of the shareholders' meeting) the right can be exercised by shareholders holding (alone or jointly) a participation in the corporate capital of the issuer equal to at least 2.5%. At the meeting, the right can be exercised by shareholders individually and regardless of the percentage of the corporate capital held.

If the directors do not proceed to include the proposed resolution on the agenda following a request from the entitled shareholder/s, the competent tribunal, upon request and after hearing the directors, may order the inclusion if the refusal to do so was not justified.

In specific cases, the right for shareholders (jointly or individually) to include a proposed resolution on the agenda of a shareholders' meeting is prohibited by law (i.e. with respect to matters on which the shareholders' meeting must, as a matter of law, resolve on the basis of a proposal submitted by the board of directors, such as the proposal to approve the draft statutory financial statements, and the proposal of a merger/de-merger plan).

6.

What is the threshold to requisition a shareholder meeting?

Shareholders holding, individually or jointly, at least 5% (unless the by-laws of the issuer permit a lower percentage) of the voting share capital of the issuer can require directors to convene a shareholders' meeting in order to resolve upon the agenda put forward by the shareholders. The call, at the request of minority shareholders, shall be performed by the directors "with no delay" (i.e. Italian law does not set a specific deadline for the calling).

If the directors do not proceed to call the meeting following a request from the entitled shareholder/s, the competent tribunal, upon request and after hearing the directors, will order the calling of the shareholders' meeting and appoint the chairman of the meeting, if the refusal to call was not justified.

In specific cases, the right of shareholders (jointly or individually) to request the call of the shareholders' meeting is prohibited by law (i.e. with respect to matters on which the shareholders' meeting must, as a matter of law, resolve on the basis of a proposal submitted by the board of directors, such as the proposal to approve the draft statutory financial statements, and the proposal of a merger/de-merger plan).

7.

How often must directors offer themselves for re-election?

Italian law and the Italian Corporate Governance Code do not impose an obligation on the directors to offer themselves for re-election.

8.

What is the threshold to appoint or remove a director?

A resolution to appoint or remove a director can be passed by a simple majority of those attending the shareholders' meeting (unless there are different provisions in the by-laws of the issuer).

A director who is removed without proper grounds is entitled to damages from the issuer.

9.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of the issuer requires the approval of at least two-thirds of the capital represented at the shareholders' meeting, provided that at least one-fifth of the corporate capital is in attendance (unless there are different provisions in the by-laws of the issuer).

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

The board of the issuer cannot be forced by any shareholder holding any percentage of the corporate capital or by any resolution adopted by whatever majority to take (or not to take) any action falling within the powers granted, by the law or by the by-laws, to the board of directors.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

The shares of Italian listed companies are mandatorily dematerialised (i.e. they exist as registrations in the accounts held by duly authorised intermediary banks in the name of the relevant shareholders). Consequently, the updated data concerning the identification of the shareholders and the number of shares owned by each of them in the issuer are held by the competent intermediary banks holding the accounts of the shareholders.

If the by-laws of the issuer allow it and the relevant shareholder has not expressly forbidden the communication of its identification data, shareholders representing at least 1.25% (or the lower percentage fixed annually by Consob) of the share capital of the issuer can ask the issuer to request the intermediary bank to communicate

11.1 the identification data of the shareholders; and

11.2 the number of shares belonging to each such shareholder.

If the by-laws of the issuer do not contain such provision or the relevant shareholder has expressly forbidden the communication of its identification data, each shareholder individually can file a request to the issuer to have access to the shareholders' book of the issuer.

The issuer is obliged to make the shareholders' book available to the requesting shareholders (including the address of the shareholders and the number of shares held). However, it can be the case that at the time of the request the shareholders' book of the issuer is not fully up to date due to the fact that:

11.3 the issuer is obliged to update the shareholders' book on the basis of the communications received from time by time by the intermediary banks holding the accounts of the various shareholders; but

11.4 the competent intermediary banks are not always bound to communicate changes when they occur, but only upon the occurrence of specified circumstances (for example, if mandatory provisions of law impose them or if the relevant shareholder has requested the intermediary bank to provide a certification for the exercise of a right vis-à-vis the issuer).

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

The main possible grounds for litigation by an activist shareholder (neither of which are particularly attractive) are the following two.

Firstly, shareholders representing 2.5% (or the lower percentage set forth in the by-laws) of the voting corporate capital of the issuer can bring a claim on behalf of the company against directors for breach of the duties imposed on them by the laws or the by-laws. Any damages awarded will be payable to the issuer rather than to the shareholders initiating the claim. If successful, the issuer will reimburse the shareholders for the costs sustained in connection with the claim.

Secondly, dissenting or abstaining shareholders representing 0.0001% (or the lower percentage set forth in the by-laws) of the voting corporate capital of the issuer can challenge any resolution of the shareholders' meeting which they consider to be non-compliant with the law or the by-laws (i.e. a resolution of approval of the annual statutory financial statements). If successful, the resolution is declared null and void, and the directors are bound to take any actions necessary in order to implement the award. However, those who acquired a right versus the issuer on the basis of such a resolution will retain such right.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

Under Italian law poison pill strategies are expressly regulated once an attempt of takeover by means of a tender offer has been made, and in general companies do not seek to put poison pill structures in place.

14.

What other factors may affect shareholder activism?

The additional factors which may affect shareholders' activism may depend on the final aim of their activism (to influence the management strategies and transactions, to replace top management etc.).

In general, the following can be taken into consideration:

14.1 Depending on the circumstances of the case, shareholders may be subject to insider dealing and market abuse rules which may limit their operations.

14.2 The acquisition of relevant shareholdings in the corporate capital of issuers operating in certain sectors (e.g. the banking sector) may require prior regulatory approval.

14.3 Issuers are required to hold an annual vote on

14.3.1 the remuneration policy of the directors and top managers for at least the next financial year; and

14.3.2 the procedures adopted for the implementation of such policy. The vote, favourable or not, is not binding. However, it offers activists a powerful way to express disapproval of directors' actions.

The Netherlands

Note: This section addresses the position for public limited liability companies ("naamloze vennootschappen") incorporated under Dutch law and whose shares are admitted to trading on Euronext Amsterdam, the regulated market in the Netherlands. There will be differences in rules applicable to non-Dutch companies listed on Euronext Amsterdam and to (Dutch or foreign) companies traded on a multilateral trading facility in the Netherlands.

1.

Is shareholder activism common in the Netherlands?

There have been numerous examples of activism in the Netherlands in recent years. Although this has often been led by hedge funds, in practice other institutional shareholders have shown a willingness to lend support and to become engaged in individual cases. There are two main approaches adopted by activist shareholders in the Netherlands. The most common is the hostile approach. In this event, the shareholder acquires an interest in a company with the intention of effectuating a strategic change within the company, irrespective of the wishes of the management of the company. Examples include the role of

1.1 TCI with respect to ABN AMRO,

1.2 Boskalis with respect to Fugro and

1.3 América Móvil with respect to KPN.

The other approach is based on the intention to create a long-term relationship, including an ongoing dialogue with the company.

Shareholder activism has been boosted by the Dutch Corporate Governance Code (the **"Code"**) which entered into force on 1 January 2004. The Code (as amended) includes principles, elaborated in best practice provisions, that regulate relations between the management board, the supervisory board and the (general meeting of) shareholders of all companies whose registered offices are in the Netherlands and whose shares or depository receipts for shares have been admitted to trading on a regulated market or a comparable system, as well as all large companies whose registered offices are in the Netherlands (balance sheet value > EUR 500m) and whose shares or depository receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system. Pursuant to section 2:391(5) of the Dutch Civil Code (**"Burgerlijk Wetboek",** the **"DCC"**), such companies must either apply the Code unconditionally or provide an explanation for any departure from the Code.

Increasing shareholder activism was one of the reasons why the Code's monitoring committee published a consultation document regarding the relationship between companies and shareholders in the Dutch corporate governance model in December 2006. On 1 July 2013, legislation entered into force that led to the following changes:

1.4 an increase of the threshold for the right of shareholders to place items on the agenda of public limited liability companies;

1.5 the introduction of a new lower threshold of 3% for the notification regarding share capital and voting rights in listed companies;

1.6 the introduction of a notification requirement for a shareholder of its short position in listed companies; and

1.7 the introduction of a regulation for listed companies to identify their shareholders.

2. What is the threshold for disclosure of a shareholding?

Under the Dutch Financial Supervision Act (**"Wet op het financieel toezicht",** the **"FSA"**), an obligation to notify the Netherlands Authority for the Financial Markets (**"Autoriteit Financiële Markten",** the **"AFM"**) without delay applies to any (legal) person who acquires or disposes of a substantial holding of share capital or voting rights in a public limited liability company incorporated under Dutch law and whose shares are admitted to trading on a regulated market where, as a result, that person's percentage of share capital or voting rights (directly or indirectly) reaches, exceeds or falls below the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% or 95%. The same applies to each (legal) person who acquires or disposes of financial instruments that reflect a short position with respect to shares, as a result of which that person knows or should know that the short position it holds, expressed in a percentage of the capital, reaches, exceeds or falls below the aforementioned thresholds. It should be noted that if, as a result of changes in a company's share capital or voting rights, a person's direct or indirect interest in the company reaches, exceeds or falls below substantial holding thresholds, this must also be disclosed to the AFM. Further, if, as a consequence of a different composition through a conversion of, inter alia, a negotiable instrument (other than an option), an option, or a financial instrument or contract (within the meaning of section 5:45(10) of the FSA) into shares or depository receipts for shares or through the exercise of rights pursuant to an agreement to acquire voting rights, any (legal) person, in relation to its previous notification, reaches, exceeds or falls below the aforementioned thresholds, it shall notify the AFM of this fact within four trading days after the date that it knows or should have known this.

In addition, pursuant to section 49(b)(1) of the Securities Bank Giro Transaction Act (**"Wet op het giraal effectenverkeer",** the **"Giro Act"**), a public limited liability company incorporated under Dutch law (not being a collective investment scheme as defined in section 1:1 of the FSA) whose securities are listed on Euronext Amsterdam may request that certain financial enterprises that hold equity securities issued by the company or equity securities issued with the concurrence of the company in deposit provide information regarding, among others, the identity of its shareholders and the share interest of the shareholders. However, the Giro Act provides that these financial enterprises must not provide any information regarding any shareholder representing less than 0.5% of the share capital in the company. Furthermore, the company can only make such a request within the period of 60 days up to and including the day on which a general meeting of shareholders will be held.

3.
What is the trigger for a mandatory bid for the company?

Under the FSA, the obligation to make a mandatory offer arises when a party, by itself or together with parties with whom it is acting in concert, directly or indirectly acquires "predominant control" in a public limited liability company with its registered office in the Netherlands and whose shares or depository receipts for shares, issued with the public limited liability company's concurrence, are admitted to listing on a regulated market. "Predominant control" is defined as the ability to cast at least 30% of the votes at the shareholders' meeting of the company.

Under the FSA, "persons with whom it is acting in concert" has been defined as natural persons, legal persons or companies collaborating under a contract with the aim of acquiring predominant control in a public limited liability company or, if the target company is one of the collaborators, of frustrating the success of an announced public takeover bid for that company. The following categories of natural persons, legal persons or companies are deemed in any case to act in concert:

3.1 legal persons or companies which together form part of a group as referred to in section 2:24b of the DCC; and

3.1 natural persons, legal persons or companies and the enterprises controlled by these persons or companies.

No obligation to launch a mandatory offer exists if a party has decreased its shareholding to below 30% within a 30-day grace period, unless the loss of predominant control is the result of a transfer of a holding to a natural person, legal person or company that may invoke an exemption from the requirement to make a mandatory offer or if the controlling party has made use of its voting rights during that period.

4.
Can a shareholder require the company to answer its questions?

Pursuant to section 2:107 of the DCC, the board of directors and the supervisory board of a public limited liability company shall provide the general meeting of shareholders with all requested information, unless a substantial interest of the company opposes this. In addition, the right of the general meeting of shareholders to receive information is subject to the standards of reasonableness and fairness **("redelijkheid en billijkheid")** under section 2:8 of the DCC.

5.
What is the threshold to include a resolution on the agenda of the annual general meeting?

Where one or more holders of shares representing, either solely or jointly, at least 3% of the issued share capital of a public limited liability company have requested in writing that a specific subject be raised at the general meeting of shareholders, this subject must be included in the convening notice or announced in a similar manner, provided the public limited liability company has received the reasoned request or a proposal for a resolution no later than the 60th day prior to the general meeting of shareholders.

The articles of association may reduce the shareholding threshold and may shorten the notice period for making the request.

6.

What is the threshold to requisition a shareholder meeting?

Pursuant to section 2:109 of the DCC, the board of directors and the supervisory board of a public limited liability company are authorised to convene a general meeting of shareholders. The articles of association may grant this power also to others, for example, to the general meeting of holders of priority shares or to each director separately. If the persons who are empowered (under section 2:109 of the DCC or the articles of association) to convene the general meeting of shareholders fail to hold the annual general meeting of shareholders or as required pursuant to section 2:108a of the DCC, any shareholder may, upon its application, be authorised by the provisional relief judge of the District Court **("voorzieningenrechter van de rechtbank")** to convene such a meeting himself.

Under section 2:110 of the DCC, one or more shareholders who jointly represent at least 10% of the issued share capital of a public limited liability company or such lesser amount as specified for this purpose in the articles of association may also, upon their application, be authorised by the provisional relief judge of the District Court to convene a general meeting of shareholders. If the judge is not satisfied that the applicants have previously requested the board of directors and the supervisory board in writing to convene a general meeting of shareholders (with a precise description of the matters to be discussed at such meeting) and is satisfied that neither the board of directors nor the supervisory board – which in this case are equally empowered to do so – have taken the necessary measures to ensure that the general meeting of shareholders could be held within six weeks of the request being made, the judge will reject the application. Where shares in the public limited liability company or depository receipts for shares issued in cooperation with the public limited liability company are admitted to a regulated market for trading as specified in Article 1:1 of the FSA, the period will be eight weeks.

After the company has been heard or summoned to appear in court, the court shall grant the requested authorisation to convene a general meeting of shareholders if the applicants have shown summarily that the requirements referred to above are satisfied, and that they have a reasonable interest in holding the meeting. The court shall determine the formal procedure and the period for convening the general meeting of shareholders. It may also appoint someone to lead the general meeting of shareholders.

7.

How often must directors offer themselves for re-election?

Under Dutch law, there is no obligation for directors of public limited liability companies to offer themselves for re-election. Directors may be appointed for either an indefinite period or a specific period of time. However, public limited liability companies that apply the Code unconditionally, as referred to in our answer to question 1, shall appoint directors for a maximum period of four years pursuant to best practice provision 2.2.1 of the Code. A director may be re-appointed for a term of not more than four years at a time, which re-appointment should be prepared in a timely fashion. Best practice provision 2.2.1 of the Code also prescribes that the diversity objectives from best practice provision 2.1.5 of the Code should be considered in the preparation of the appointment or re-appointment of a director. As regards the body or person that is empowered to appoint the directors of a public limited liability company, see our answer to question 8 below.

Unless the supervisory board is authorised to appoint any directors, the articles of association of a public limited liability company may provide that the general meeting of shareholders shall appoint a director from a list of nominated candidates pursuant to section 2:133(1) of the DCC. However, the general meeting of shareholders may at all times overrule the binding effect of such nomination by means of a resolution passed with two-thirds of the votes cast that represent more than one-half of the issued share capital. In addition, if the list of nominees only mentions one candidate for a vacancy to be filled, the resolution on the nomination shall have the effect that this candidate is appointed, unless the binding effect is overruled.

The articles of association may also limit the circle of eligible persons that may be appointed as director by setting requirements which such directors have to meet under section 2:132(2) of the DCC. These requirements may be set aside by a resolution of the general meeting of shareholders passed with two-thirds of the votes cast which represent more than one-half of the issued share capital.

8.

What is the threshold to appoint or remove a director?

Under section 2:132(1) of the DCC, the first directors of a public limited liability company are appointed in the notarial deed of incorporation and subsequent directors are appointed by the general meeting of shareholders. A resolution of the general meeting of shareholders to appoint a director requires an absolute majority of the votes of the general meeting of shareholders, unless the articles of association provide otherwise. However, the general meeting of shareholders is not authorised to appoint any subsequent directors, if the supervisory board of the public limited liability company has the right to appoint the directors of the company pursuant to section 2:162 of the DCC.

Pursuant to section 2:134(1) of the DCC, each director may at all times be dismissed by the body or person empowered to appoint him. If the general meeting of shareholders is empowered to remove the directors of the company, a resolution to dismiss a director shall be passed with an absolute majority of the votes of the general meeting of shareholders, unless the articles of association provide otherwise. In the event that the articles of association of a public limited liability company indicate that a resolution to dismiss a director may only be passed by an enhanced majority of the votes cast at a general meeting of shareholders where a certain part of the capital is represented, this enhanced majority must not exceed two-thirds of the votes cast which represent more than one-half of the share capital. In addition, public limited liability companies that unconditionally comply with the Code may provide in the articles of association that the majority with which a resolution to dismiss a director must be passed should represent a given proportion of the issued capital, but this proportion must not exceed one-third.

Best practice provision 2.2.3 of the Code provides that a member of the management board should retire early in the event of inadequate functioning, structural incompatibility of interests, and in other instances in which this is deemed necessary by the supervisory board. In the event of the early retirement of a member of the management board, public limited liability companies that unconditionally comply with the Code should issue a press release mentioning the reasons for the departure.

9.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of a public limited liability company requires an absolute majority of the votes of the general meeting of shareholders, unless the articles of association provide otherwise. In the event that the articles of association exclude the possibility to amend the articles of association, the general meeting of shareholders is nevertheless empowered to amend the articles of association by a unanimous vote at a general meeting of shareholders where the entire issued share capital is represented. In addition, in the event that an article in the articles of association

9.1 restricts the possibility to amend one or more other articles of the articles of incorporation or

9.2 excludes the possibility to amend one or more other articles of the articles of association, this article can only be amended
- 9.2.1 with due observance of the same restriction or
- 9.2.2 by unanimous votes cast at the general meeting of shareholders at which the entire issued share capital is represented, respectively.

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

Subject to any restrictions under the articles of association, the board of directors is empowered with the management of the public limited liability company under section 2:129(1) of the DCC. Pursuant to Dutch case law, the management authority of the board of directors implies that the general meeting of shareholders is not allowed to give instructions to the board of directors to perform certain actions that fall within the authority of the board of directors pursuant to legal or statutory provisions. However, under section 2:129(4) of the DCC, the articles of association may provide that the board of directors shall behave according to the instructions of a body of the public limited liability company on the general policy which is to be pursued in areas set out in the articles of association.

In addition, in intra-group relations, a parent company could in practice enforce its guidelines and instructions that it has given to the board of directors, if it can dismiss and replace the directors of the company pursuant to, respectively, section 2:134(1) and 2:132(1) of the DCC.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

No, pursuant to section 2:85 of the DCC, only the board of directors of a public limited liability company that has issued registered shares is obliged to keep a shareholders register and deposit this shareholders register at the office of the public limited liability company for inspection by its shareholders and by the usufructuaries and pledgees who are entitled to exercise their rights. A shareholder, usufructuary or pledgee shall upon request and free of charge, be provided by the company with an extract from the register in respect of its entitlement to a share and information regarding any encumbrances thereon. As Dutch public limited liability companies that are listed on Euronext Amsterdam will typically not have issued any registered shares, the board of directors of such company shall not be obliged to keep and deposit a shareholders register.

However, at the written request of a shareholder that holds either solely or jointly with other shareholders at least 10% of the issued capital of a public limited liability company under Dutch law (not being a collective investment scheme as defined in section 1:1 of the FSA) whose securities are listed on Euronext Amsterdam, such company shall be obliged to identify its shareholders of equity securities that it issued or equity securities issued with its concurrence by means of requesting certain financial enterprises as referred to in section 49(b)(1) of the Giro Act to provide information regarding, among others, the identity of its shareholders and the share interest of its shareholders. Reference is also made to our answer to question 2 above. A written request by a shareholder must be made within a period from 60 days up to 42 days prior to the day on which a general meeting of shareholders will be held.

If the company has been provided with information pursuant to section 49(b)(1) under (b), (c) or d) of the Giro Act, the company shall also be obliged, at the written request of a shareholder that solely or jointly with other shareholders holds at least 1% of the issued capital of a company or is entitled to an amount of shares or depository receipts thereof with a joint value of at least EUR 250,000, to send information, which has been provided by the shareholder that made the written request and is connected to an item that has been placed on the agenda of the general meeting of shareholders of the company, to the (identified) shareholders of the company, unless an exemption applies.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

As part of its strategy, an activist shareholder can make a written request to the Enterprise Chamber **("Ondernemingskamer")** of the Amsterdam Court of Appeal to appoint one or more persons to conduct an investigation into the policy and the state of affairs of a legal person, either in full or with respect to some part thereof or to a certain period, if it is entitled to do so under section 2:345 and 2:346 of the DCC.

Under section 2:345 and 2:346 of the DCC, one or more holders of shares or depository receipts for shares in a public limited liability company with either

12.1 an issued share capital of a maximum of EUR 22.5m or

12.2 more than EUR 22.5m, are entitled to make such written request, if these holders respectively:

- 12.2.1 solely or jointly represent at least 10% of the issued share capital or are solely or jointly entitled to an amount of shares or depository receipts for shares to a nominal value of EUR 225,000 or of a lower sum specified for this purpose in the articles of association or
- 12.2.2 solely or jointly represent at least 1% of the issued share capital or, if the shares or depository receipts for shares are admitted to trading on a regulated market or a multilateral trading facility, as referred to in article 1:1 of the FSA, or a comparable system thereof in a state that is not an EU Member State, EUR 20m according to the closing price on the final trading day prior to the filing of the request, or a lower sum specified in the articles of association. In addition, one or more holders of shares or depository receipts of shares in a public limited liability company may also have been granted such right in the articles of association or in an agreement with the company.

An applicant would need to argue that there has been serious mismanagement by the legal person and an independent expert investigation would need to confirm this. The Enterprise Chamber will only award the request if there appear to be well-founded reasons to doubt that the policy or state of affairs is or has been correct. If the Enterprise Chamber orders an investigation to be carried out, and if the report of the investigation indicates that there has been a mismanagement of affairs, then the Enterprise Chamber may, among others, at the request of the original applicants, order that one or more preliminary injunctions **(voorzieningen)** be taken. In that event, the Enterprise Chamber has the power to force a legal person to take corrective measures including, **inter alia,**

12.3 a suspension or annulment of a resolution of the directors, members of the supervisory board, the general meeting of shareholders or any other body of the public limited liability company and

12.4 suspension or dismissal of one or more directors or members of the supervisory board.

In the event that an activist shareholder, which meets the requirements of section 2:345 and 2:346 of the DCC, would like to prohibit, for example, the execution of a resolution of the board of directors during the investigation, such shareholder may also request the Enterprise Chamber to order an immediate measure effective for, at most, the duration of the proceedings. If an immediate measure is required in connection with the interests of the shareholder or in the interests of the investigation, the Enterprise Chamber may order such an immediate measure at any stage of the legal proceedings. Such activist shareholder may, in addition to a request for an investigation to the Enterprise Chamber, also initiate preliminary relief proceedings to request an interim injunction.

Any party that has a legitimate interest may also request the competent court to declare a resolution voidable:

12.5 if it has been passed in conflict with the provisions of law or the articles of association that regulate the making of resolutions;

12.6 if it is in conflict with an internal regulation of the legal person; or

12.7 if it is in conflict with the principle of reasonableness and fairness ("redelijkheid en billijkheid") as provided for in Dutch law.

The right to claim the nullification of a resolution ceases to exist one year after the day on which either sufficient publicity has been given to the resolution or the interested party has become aware of the resolution or has been given sufficient notice thereof.

In the event of a request for nullification of a resolution, the request does not in itself prohibit the execution of the resolution. However, a party could initiate, in addition and as aforementioned, preliminary relief proceedings. In preliminary relief proceedings, the party may request the court to order an interim injunction, e.g. in the form of a prohibition for a company to execute the resolution, until a final decision has been made in the proceedings on the merits.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

Under Dutch law, the implementation of anti-takeover measures may under certain circumstances be justified, if this measure is necessary for, among other things, the continuity of (the policy of) the company and the interest of the parties involved.

Whether the implementation of an anti-takeover measure such as a "poison pill" is justified will depend on whether the board of directors of the target company has reasonably determined that the anti-takeover measure is necessary in order to maintain the status quo and therefore to prevent, without sufficient negotiations, changes from being implemented as regards the composition of the board of directors or the policy of the company, which are in the opinion of the board of directors not in the interest of the company and the parties involved.

In addition, pursuant to section 2:359b of the DCC, the articles of association of companies whose shares are admitted to trading on a regulated market as referred to in article 1:1 of the FSA, which are not open-end investment companies **("beleggingsmaatschappijen")** or open-end companies for collective investment in transferable securities **("maatschappijen voor collectieve belegging in effecten"),** may include that the company will not implement any ad hoc anti-takeover measures in the event of the publication of a public bid, and that any bidder that has acquired 75% or more of the issued share capital may convene a general meeting of shareholders wherein the special rights of shareholders as regards the appointment and dismissal of directors and members of the supervisory board do not apply.

14.

What other factors may affect shareholder activism?

There are a number of other factors to be noted:

14.1 Shareholders will be subject to insider dealing and market abuse rules. In certain circumstances, shareholders may be in possession of inside information and therefore unable to trade in a company's shares. In these cases they must also be careful not to disclose inside information to other shareholders or third parties.

14.2 The Netherlands benefits from free and vigorous business media that allow both companies and shareholders to obtain publicity for their views and strategies.

Spain

Note: This section addresses the position of Spanish companies listed on the Spanish Stock Exchanges.

1.

Is shareholder activism common in Spain?

Battles for control of listed companies in Spain are not uncommon. The most famous example concerned ENDESA, S.A., and lasted almost two years. During this period three Spanish companies (Gas Natural, Iberdrola, and Acciona), and two international players (E.On and Enel), fought for control over the company.

The volume of shareholder activism in Spain has increased in recent years and is likely to grow significantly in the near future. Proxy advisors have been strong advocates of this recent trend and have greatly contributed to the growth of this phenomenon.

Traditionally, Spanish listed companies have either been controlled by a significant shareholder, or by the board of directors relying upon proxies received from the majority of minority shareholders. This style of control has meant that Spanish listed companies have not always observed best international corporate governance practice. As a result, the voting recommendations of international proxy advisors often conflict with resolution proposals made by the board of directors (in particular, those related to the separation of the offices of the Chairman and Managing Director, and to the remuneration of directors). This conflict may encourage shareholder activism.

Unlike many other jurisdictions, Spanish law does not recognise the concept of "beneficial ownership". Instead, institutional and/or qualified investors who act on behalf of clients are the legal owners of any shares that they acquire in Spanish listed companies. A recent amendment to Spanish law allows investors who act on behalf of clients to divide their votes and cast them in accordance with the instructions given by their clients. It is likely that this amendment will further contribute to the growth of shareholder activism in Spain.

2.

What is the threshold for disclosure of a shareholding?

Disclosure obligations are primarily regulated by the Spanish Royal Decree 1362/2007 on the disclosure of significant stakes in listed companies (the **"Royal Decree 1362/2007"**). The decree contains detailed regulations surrounding disclosure, including, inter alia, rules determining the persons subject to disclosure obligations, disclosure triggers and exceptions, specific attribution and aggregation rules, transaction notification deadlines, disclosure obligation triggers, and notices submitted to the public registry of the Spanish National Securities Exchange Commission (the **"CNMV"**).

According to Royal Decree 1362/2007, the ownership or acquisition of shares of a listed company, whether directly or through other securities/financial instruments which grant a right to acquire securities carrying voting rights, must be reported within four trading days to the company and the CNMV. This is only necessary when the acquisition results in a person or group holding voting rights at, or over, 3% (or 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 60%, 70%, 75%, 80% or 90%) of the company's total voting rights.

Stricter disclosure obligations apply if the person obliged to disclose has residency in:

2.1 a country considered to be a tax haven by the Spanish authorities; or

2.2 a country/territory with zero taxation; or

2.3 a country/territory that does not share information with the Spanish authorities.

In such cases the initial threshold for disclosure is reduced to 1% (and successive multiples of 1%).

3.

What is the trigger for a mandatory bid for the company?

3.1 Tender offers are governed by the Spanish Securities Markets Act and Royal Decree 1066/2007. This decree implemented Directive 2004/25/EC of the European Parliament and European Council (the **"Royal Decree 1066/2007"**).

3.2 Mandatory public tender offers must be made for all of the shares of the target company, or other securities that may directly or indirectly give the right to subscription or acquisition of shares (including convertible and exchangeable bonds), at an equitable price and without any conditions, when a person acquires control of a Spanish company:

3.2.1 by means of the acquisition of shares or other securities that directly or indirectly give voting rights in the company; or

3.2.2 through agreements with shareholders or other holders of the said securities; or

3.2.3 as a result of other similar circumstances as stated in the regulations (i.e. indirect control acquired through mergers, share capital decreases, target's treasury stock variations, or securities exchange or conversion).

3.3 A person is deemed to have obtained control of a target company, individually or jointly with concerted parties, when:

3.3.1 they acquire, directly or indirectly, a percentage of voting rights equal to or greater than 30%; or

3.3.2 they have acquired less than 30% of the voting rights and appoint, in the 24 months following the acquisition, a number of directors that, together with those already appointed (if any), represent over half of the members of the target company's board of directors. Royal Decree 1066/2007 sets forth certain circumstances where directors are deemed to have been appointed by the bidder or persons acting in concert with them unless evidence that proves otherwise is provided.

4.

Can a shareholder require the company to answer its questions?

From the date of publication of the notice of the general shareholders' meeting until the fifth day prior to the date of the meeting (as first called), shareholders may request from the board of directors information/clarifications that they consider necessary for any of the agenda items. Shareholders can also present in writing any questions that they deem relevant. They may also request information/clarifications, or submit questions in writing, on publicly available information that the company had supplied to the CNMV from the date of the last general shareholders' meeting and on the auditor's report.

During the general shareholders' meeting shareholders may verbally request the same information/clarifications.

The board of directors is obliged to provide any information requested in accordance with the above framework, except in cases where:

4.1 such information is not necessary for protecting the relevant shareholder's rights; or

4.2 there are objective reasons to consider that it could be used for non-corporate purposes; or

4.3 its disclosure might damage the company or its affiliates.

Provision of information may not be denied if the relevant request is supported by shareholders holding shares representing at least 25% of voting rights.

In the event that prior to the request the corresponding information is clearly and directly available to all shareholders on the corporate website of the company under the question-answer format, the board of directors may limit its answer to a reference to this information.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

Shareholders holding shares that represent at least 3% of a company's voting rights may demand the publication of a supplement to the notice of the annual general shareholders' meeting containing one or more items to be added to the agenda. The new items must be accompanied by a rationale or, if applicable, a duly substantiated resolution proposal.

Any additional items must be published at least 15 days prior to the date on which the annual general shareholders' meeting is to be held. Failure to publish this supplement in time constitutes legitimate grounds for challenging the validity of the meeting.

Likewise, shareholders holding shares representing at least 3% of the company's voting rights may submit resolution proposals on the items included in the agenda. The company shall ensure that these proposals, and any accompanying documents, are distributed among the shareholders.

6.
What is the threshold to requisition a shareholder meeting?

The board of directors of a company must convene a general shareholders' meeting if requested by shareholders holding shares representing at least 3% of the company's voting rights.

When requesting a general shareholders' meeting, the shareholders must set out the items to be included in the agenda. In the event of an amendment to the by-laws, the request shall include the precise text of any proposed amendment resolution and a report justifying the proposal.

The general shareholders' meeting must be convened within two months of the directors receiving the notarial request. The agenda of the general shareholders' meeting shall contain the points raised by the shareholders in the request.

If the board of directors does not meet the request to call the general shareholders' meeting in time, the competent court may itself convene the meeting subject to a prior hearing of the board of directors.

7.
How often must directors offer themselves for re-election?

According to Spanish law the articles of association of listed companies must state the term of office for directors. Terms of office must be the same for all directors and cannot exceed four years.

Directors can be re-elected (once or many times) for the term set out in the articles of association.

In order for a director to be re-elected, the board of directors must submit the corresponding re-appointment resolution proposal to the general shareholders' meeting together with a report from the board of directors justifying their proposal. The report must assess the competence, experience, and merits of the candidate.

8.
What is the threshold to appoint or remove a director?

In most circumstances directors need to be appointed, reappointed and removed by means of a resolution adopted by the general shareholders' meeting. Such a resolution must be passed by a simple majority of the shareholders present in person or by proxy, unless the articles of association require a greater majority.

Under certain circumstances, primarily the existence of a vacancy in the board of directors at the time of holding the general shareholders' meeting, Spanish law provides for the use of a proportional representation system. Provided that specific requirements are met, shareholders who, jointly or individually, hold shares representing at least the proportional representation ratio (i.e. the number of shares with voting rights divided by the total number of seats on the board of directors) may directly appoint a director to fill a vacancy. In this situation there is no need for a resolution from the general shareholders' meeting.

9.

What is the threshold to amend the constitution of the company?

According to Spanish law, on a general basis, the general shareholders' meeting shall be quorate on first call if the shareholders present, in person or by proxy, hold at least 25% of the subscribed share capital carrying voting rights. On second call, the meeting will be quorate regardless of the capital in attendance.

If the agenda of the meeting includes resolutions regarding the amendment of the by-laws (including an increase or reduction of share capital), the transformation, merger, split-off, en bloc assignment of assets and liabilities, the migration of the registered office abroad, the issuance of debentures, or the exclusion or limitation of pre-emptive rights, the required quorum on first call is shareholders representing at least 50% of the subscribed share capital carrying voting rights (each a **"Special Resolution"**). On second call, the quorum is at least 25% of the subscribed share capital carrying voting rights.

As explained above, in general resolutions at the general shareholders' meeting must be passed by a simple majority vote.

If the share capital present or represented at the general shareholders' meeting exceeds 50% of the issued share capital carrying voting rights, a Special Resolution may be approved by the favourable vote of shareholders representing an absolute majority of the issued share capital present or represented (that is, if the votes in favour exceed 50% of the share capital present or represented at the general shareholders' meeting). If, on second call, at least 25% of shareholders holding voting rights are present or represented, but there are less than 50%, approval of a Special Resolution will require the favourable vote of at least two-thirds of the share capital present or represented at the meeting.

Please note that articles of association may require higher thresholds than those set out above.

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

Only the general shareholders' meeting is entitled to instruct the board of directors; this must be done through a resolution. Such resolution shall be passed by a simple majority vote unless the articles of association require a higher threshold.

Please note that the articles of association may remove the ability of the general shareholders' meeting to instruct the board of directors.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

Shareholders of a listed company who hold, either jointly or individually, at least 3% of its share capital are entitled to obtain all data corresponding to the other shareholders. This includes contact details if available. This data is collected from IBERCLEAR (the Spanish public company which keep accounting records of securities traded in the Spanish Securities Markets) with the sole purposes of enabling communication between shareholders so as to exercise their shareholder rights and defend their common interests.

In addition, an association of shareholders duly incorporated and holding shares representing 1% of the share capital will have equal information rights[2].

Any shareholder or association making abusive or harmful use of this information shall be responsible for damages caused.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

Under Spanish law there are two ways for an activist shareholder to use litigation as part of its strategy:

12.1 Action can be brought against a company if it adopts corporate resolutions in a manner that contravenes the law or the articles of association. Additionally, action can be brought if the company adopts corporate resolutions which damage the company's interest for the benefit of certain shareholders or third parties.

Only shareholders with a shareholding of at least 0.1% of the voting rights are entitled to bring action against the company grounded on the above.

Traditionally, action has been brought against Spanish listed companies on the grounds of an infringement of the shareholders' legal information right. A recent amendment of Spanish law has significantly reduced the scope for such actions because the incorrect information provided by the company must have been essential for the shareholder to have reasonably exercised its corresponding voting rights.

In addition, the infringement of certain regulations set out in Spanish law, or in the articles of association of Spanish companies, have been excluded as valid grounds for bringing actions.

[2] Pursuant to Spanish law, shareholders of a listed company may set up specific and voluntary associations in order to represent their members at the general shareholders' meeting and to exercise any other rights granted to shareholders by virtue of the Spanish Companies Act. Such associations must meet certain requirements.

12.2 A liability action **("acción de responsabilidad")** against directors may be brought by the company, at the behest of any shareholder, through a resolution passed by a simple majority at the general shareholders' meeting (this threshold cannot be raised by way of the articles of association).

If shareholders legally entitled to do so ask the board of directors to call a general shareholders' meeting that includes a resolution to approve bringing a liability action against directors, and:

12.2.1 the general shareholders' meeting is not called; or

12.2.2 the action is not brought within the month following the date when the general shareholders' meeting resolved to do so; or

12.2.3 the general shareholders' meeting resolved not to bring such action, the shareholders may bring a liability action.

In addition, the shareholders may directly bring a liability action against an infringement of the directors' duty of loyalty to the company. Such action does not require a resolution from the general shareholders' meeting.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

In general, any "poison pill" shall be provided for in the articles of association or, at a minimum, in the documents associated with the corporate governance system of the listed company (i.e. regulation of the general shareholders' meeting).

"Poison pill" provisions designed to deter takeover bids are often found in the articles of association. Provisions limiting the number of votes that a shareholder may cast regardless of the number of voting shares they hold are also common.

Spanish law states that this kind of provision in the articles of association becomes void when, as a consequence of a takeover bid, the offeror obtains at least 70% of the voting rights of the offeree company. This is as long as the offeror is subject to, or has adopted, equivalent neutralisation measures.

14.

What other factors may affect shareholder activism?

Shareholder activism with respect to Spanish listed companies may be affected by the following:

14.1 Shareholders will be subject to insider dealing and market abuse rules (see European Overview section above). In certain circumstances shareholders may be in possession of inside information and therefore unable to trade in the company's shares. Shareholders must ensure that they do not disclose inside information to other shareholders or third parties.

14.2 Individuals and legal entities directly and indirectly holding more than 3% of the total share capital or voting rights of two or more principal operator companies in certain markets (generation and supply of electricity, production and distribution of fuels, production and supply of liquefied petroleum gases, production and supply of natural gas, and fixed-line and mobile-line telephony) must not exercise voting rights above 3% of the total in more than one company. The principal operators are the five operators that hold the five largest market shares in their market (the **"Principal Operators"**). No individual or legal entity is allowed to appoint, directly or indirectly, members of the management body of more than one Principal Operator in a single market. Additionally, persons or legal entities considered Principal Operators are not allowed to exercise more than 3% of the voting rights of another Principal Operator or appoint members of the management body. Only permission granted by the Spanish National Markets and Competition Commission (**"Comisión Nacional de los Mercados o la Competencia"** (the **"CNMC"**)) can overrule these regulations.

14.3 Recent amendments to Spanish law require Spanish listed companies to have a directors' remuneration policy approved at the general shareholders' meeting at least once every three years. Such policy shall only be amended or substituted by way of a resolution passed at the general shareholders' meeting. It must include the maximum aggregate annual amount to be received by the directors collectively in their capacity as such, and the parameters for determining the remuneration of executive directors (for the performance of executive functions).

14.4 Spanish listed companies are required to include in the agenda for their ordinary general shareholders' meeting an item for voting on the annual report on directors' remuneration. The report shall include information about the remuneration policy applied in the preceding year, the remuneration policy for the current year, and the detailed remuneration received by each director for the preceding year. The report shall be submitted to a consultative (i.e. non-binding) vote. Should the report not be approved, the directors' remuneration policy for the following year must be submitted to a vote at the general shareholders' meeting (unless expressly approved at that same meeting).

The annual report brings transparency with regard to directors' remuneration and provides shareholders (activist or not) with useful information.

14.5 A recent amendment in Spanish law requires certain matters to be reserved for the general shareholders' meeting, including the transfer of essential activities carried out by the company to a subsidiary. In this circumstance an activity is considered to be "essential" if it impacts over 25% of the assets on the balance sheet.

Switzerland

Note: This section addresses the position for Swiss companies whose shares are listed (at least partially) on a stock exchange in Switzerland. Different rules may apply to non-Swiss companies listed on a stock exchange in Switzerland.

Further, in view of Switzerland not being a Member State of the European Union, the Directives described above are not applicable. However, Switzerland has enacted statutory provisions similar to those set forth in the Directives.

1. Is shareholder activism common in Switzerland?

Switzerland has seen a growth in shareholder activism in recent years and, given the recent changes in law for listed companies, a further increase in shareholder activism is expected to take place.

Examples of shareholder activism are the campaigns run by Knight Vinke with respect to the opposition to the merger offer submitted by Glencore to the shareholders of Xstrata (2012) and the plan to split UBS AG into two entities, an asset manager and an investment bank (2013), or by Carl Icahn to increase the profitability and efficiency of Transocean (2013). Only recently (2015), Cevian Capital announced that they had acquired a 5% stake in ABB and it is expected, as they have done with respect to other companies in their portfolio in the past (Panalpina, Volvo, ThyssenKrupp, Danske Bank), that Cevian Capital will submit a number of suggestions to increase profitability and otherwise will try to exert influence on the management of ABB.

Despite the growth in shareholder activism, it should be noted that the current tools typically used by shareholder activists were first developed and deployed by corporate raiders to gain control over companies decades ago. As a result, among other things, Swiss companies have traditionally implemented a number of defence measures (poison pills) and so have been well protected. Consequently, it has been rather difficult for any shareholder activist to establish a powerful position in the company in order to support the implementation of their views and ideas. It is expected that this will change as a consequence of the recently enacted Ordinance against Excessive Compensation in Listed Companies which provides shareholders with a number of rights to actively influence certain areas of the company. Furthermore, as shown by the ongoing litigation proceedings around the attempted acquisition of Sika AG by Compagnie de Saint-Gobain, defence measures and their entitlement are being questioned, and the right of the board of directors to deploy defence measures (at its own discretion and against the will of the selling majority shareholder) has therefore come under pressure.

2. What is the threshold for disclosure of a shareholding?

Under the Swiss Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (the **"Swiss Financial Market Infrastructure Act"),** any shareholder must notify both the company and the stock exchange on which its shares are listed if they directly, indirectly or acting in concert with third parties acquire or dispose of rights to purchase or sell shares of a company incorporated in Switzerland or abroad whose shares are listed (at least partially) on a stock exchange in Switzerland and thereby reaches, exceeds or falls below the threshold of 3%, 5%, 10%, 15%, 20%, 25%, 33.3%, 50% or 66.6% of the voting rights in such company (irrespective of whether or not such voting rights may be exercised). Such information is then made publicly available.

3. What is the trigger for a mandatory bid for the company?

Pursuant to the Swiss Financial Market Infrastructure Act, unless an exemption applies (cf. immediately below), any person who directly, indirectly or acting in concert with third parties acquires shares conferring 33.3% or more of the voting rights in the company is required to make a mandatory offer to acquire the remaining shares in the company.

There are two exemptions to this rule:

3.1 the articles of association of the company may include a provision that the relevant threshold required to make a mandatory offer be increased to 49% of the voting rights in the company (so-called opting-up); and

3.2 alternatively, a company may even abolish the obligation to submit a mandatory offer when exceeding certain thresholds (so-called opting-out). In order to do so, the articles of association must include a corresponding clause.

"Acting in concert with third parties" in this context means the coordination amongst different persons of their conduct by way of (written or verbal) contract or by other means of organisation with a view to the acquisition of shares or the exercise of voting rights in a company whose shares are listed (at least partially) at a stock exchange in Switzerland. Such coordination is in particular presumed where the persons in question are parties to a pooling or shareholders' agreement or form part of the same group of companies (i.e. are under common control). In accordance with the practice of the Swiss Takeover Board, the requirements of acting in concert shall be met only where the coordination is of a certain duration and stability (i.e. one-off coordination usually does not trigger the consequences of acting in concert described above).

4.
Can a shareholder require the company to answer its questions?

Pursuant to Article 697 of the Swiss Code of Obligations, a shareholder may request at a shareholder meeting:

4.1 information from the board of directors on all company-related matters and

4.2 information from the auditors on the conduct and result of their examination of the financial statements. Such information must be provided to the shareholder to the extent it is required to exercise shareholders' rights, unless the relevant information relates to business secrets of the company or other information requiring protection.

If a shareholder has requested such information and inspection of business matters but the shareholder is not satisfied with the outcome and a more detailed examination of specific business affairs seems appropriate, a shareholder may request a shareholder meeting to authorise the conduct of a special examination of matters relating to the company's business. An investigator must be appointed for this purpose, provided that such special examination is required for the exercise of shareholders' rights. In the event that the shareholder meeting does not authorise the conduct of a special examination, a shareholder or a group of shareholders representing at least 10% of the share capital or shares with a nominal value of at least CHF 2m may request the competent court to appoint an investigator to conduct the special examination.

Outside the context of a shareholder meeting, the business records and business correspondence may only be inspected if either the shareholders' meeting or the board of directors has approved a corresponding request. In any case, business secrets of the company must be preserved.

5.
What is the threshold to include a resolution on the agenda of the annual general meeting?

Unless the articles of association of the company provide for a lower threshold, a shareholder or a group of shareholders representing shares with a nominal value of CHF 1m or more may request the inclusion of a matter or resolution on the agenda of any shareholder meeting.

In the past it was disputed whether such CHF 1m threshold is appropriate (given that many Swiss companies do not even have a share capital amounting to CHF 1m) and instead whether it would be more appropriate to entitle any shareholder or group of shareholders representing 10% of the share capital of the relevant company the right to request the inclusion of a matter or resolution on the agenda (similar to the right to requisition a shareholder meeting, cf. below, question 6). The Swiss Federal Supreme Court has recently held that in deviation to the statutory provisions also single shareholders or a group of shareholders representing 10% of the share capital of the relevant company may request the inclusion of an agenda item.

6.

What is the threshold to requisition a shareholder meeting?

Unless the articles of association of the company provide for a lower threshold, any shareholder or group of shareholders representing at least 10% of the share capital may request that the board of directors convene a shareholder meeting.

The shareholder meeting must be convened at least 20 days prior to the day of the meeting in such form as prescribed by the articles of association.

If the company does not convene the shareholder meeting, the relevant shareholder or group of shareholders must file a corresponding petition with the competent court requesting that the board of directors take the necessary action.

7.

How often must directors offer themselves for re-election?

Members of the board of directors of a Swiss company listed in Switzerland or abroad must be re-elected on an annual basis, i.e. their term of office runs until the next ordinary shareholder meeting (to be held within six months from the end of the business year). Shareholders also elect the chairman of the board as well as the members of the compensation committee.

It should also be noted that the shareholders, by simple majority of the votes cast, may remove a member of the board of directors at any time without reason.

8.

What is the threshold to appoint or remove a director?

Unless the articles of association of the company provide for a higher threshold, resolutions to appoint or remove a director can be passed at any time without reason by a simple majority of the votes cast.

9.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of the company requires the approval of a simple majority of the votes cast, unless the articles of association of the company provide for a higher threshold.

There are, however, a number of exemptions to this rule where, by operation of statutory law, a qualified majority of three quarters of the votes cast and a simple majority of the nominal value of the shares represented is required to amend the articles of association. The most important exemptions are

9.1 the creation of preferred (voting right) shares,

9.2 restricting the transferability of shares,

9.3 the creation of authorised or conditional share capital,

9.4 the limitation or withdrawal of subscription rights, and

9.5 the approval of mergers, spin-offs, conversions and transfers of assets and liabilities.

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

Pursuant to principles of Swiss law, the shareholders must not give instructions to the board of directors in respect of matters falling within the competence of the board. Any resolutions of the shareholders to that effect would not be binding on the board of directors (but instead be considered a mere recommendation). In practice (often in small companies), the board of directors will sometimes submit certain transactions to the shareholders for approval. However, again, if such item relates to matters allocated by statutory law to the board of directors, such vote would not constitute binding instructions.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

Provided certain requirements are met, shareholders are entitled to examine business records and correspondence (cf. above, question 4). However, they are not allowed to inspect, or obtain a copy of, the share register, as the share register is not considered a business record. However, shareholders can exercise their right to information vis-à-vis the company in order to verify whether they are registered in the share register of a company (certain legal scholars even opine that this right also comprehends the right to request information about the registration of other shareholders in the share register to the extent the enquiry is related to the exercise of shareholder rights). Shareholders also have no right to distribute their messages to other shareholders via the company or to make use of the company's communication channels.

A shareholder may collect information on other shareholders from the website of the stock exchange with respect to other shareholders exceeding the disclosure thresholds. As noted above (see question 6), any shareholder exceeding the disclosure thresholds must notify the stock exchange which then publishes such information on its website.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

There are different ways for an activist shareholder' to make use of litigation.

Any shareholder is entitled to challenge resolutions of the shareholders' meeting if such shareholder considers that the resolution violates the law or the articles of association, in particular where the resolution limits or removes shareholders' rights in an unjustified manner, violates the principle of equal treatment of shareholders or otherwise disadvantages shareholders.

Where a shareholders' resolution must be registered with the commercial register (e.g. capital increase, other amendments to the articles of association, etc.), any shareholder may request the blocking of the commercial register in order to prevent the resolution from being entered in the register (and, hence, entering into force). The shareholder must file a claim against the company to challenge the relevant resolution of the shareholders within a certain time period in order to uphold the commercial register bar. If no action is filed with the court within the period stipulated, the commercial register bar ceases to exist, and the resolution may be registered.

Furthermore, shareholders may file a claim against the members of the board of directors or the executive management for breach of their duties. Typically, any damages awarded will be payable to the company rather than to the shareholder initiating the claim (unless the damage directly affected the shareholder and not the company).

Finally, shareholders holding more than 3% of the voting rights in the company are granted the right to intervene in a public takeover and are accorded the capacity to act as party in proceedings before the Swiss Takeover Board.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

The company may adopt "poison pills" to deter activist shareholders, unless the activist shareholder has published a pre-announcement of a public tender offer.

The articles of association of Swiss companies often give the board of directors the right to limit the voting rights of shareholders or a group of shareholders if their voting rights exceed a certain threshold. Such limitations are often used by the board of directors to prevent an activist shareholder from exerting an influence on the company.

14.

What other factors may affect shareholder activism?

There are a number of other factors to be noted:

14.1 Shareholders will be subject to relevant insider dealing and market abuse rules of Swiss law. In certain circumstances, due to their connection to the company, they may be in possession of inside information and unable to trade in the company's shares. In this case they must also be careful not to disclose inside information to other shareholders or third parties.

14.2 When a shareholder acquires a stake in a company which is regulated by a governmental authority (e.g. banks or securities dealers which are under the supervision of the Swiss Financial Market Supervisory Authority FINMA), prior regulatory approval will be necessary if the shareholder (together with persons acting in concert with it) exceeds certain thresholds. For example, for banks or securities dealers, a threshold of 5% or more of the shares in the company requires regulatory approval.

14.3 Companies are required to hold an annual vote on remuneration. These votes may offer another way for shareholders to express disapproval over directors' actions, short of voting against re-election of those directors. Shareholders also have the right to appoint the members of the compensation committee.

14.4 The new Ordinance against Excessive Compensation in Listed Companies requires that pension funds must vote in shareholders' meetings in the interests of their insured persons. As a consequence, it is expected that pension funds will turn to proxy advisors such as Ethos, Swipra, zCapital, ISS or Glass Lewis for advice on how to vote. It is quite likely that shareholder activists will also make use of this trend and try to cooperate with or influence proxy advisors.

14.5 Finally, in recent years it has become increasingly common for activist shareholders to communicate their strategy and ideas for development of the company by making use of public media. Public relations advisors are typically involved on both sides in order to influence other shareholders and the public in general.

United Kingdom

Note: This section addresses the position for UK companies with a premium listing on the London Stock Exchange. There will be differences in rules for non-UK companies listed on the London Stock Exchange, and for UK companies which do not have a premium listing (for example, because they are listed on the standard segment or on AIM).

1.

Is shareholder activism common in the UK?

There have been numerous examples of activism in the UK in recent years. Although this has often been led by hedge funds, in practice other institutional shareholders have shown themselves willing to lend support and become engaged in individual cases. Recent high-profile examples include shareholder-led campaigns affecting Bowleven (led by Crown Ocean Capital), Fenner (led by Teleios Capital Partners) and Alliance Trust (led by Elliott Advisors). However, although the volume of activism is increasing, it is not a new concept for the UK. Shareholders have used the "tools" of the activist in battles for control of companies for decades. Specialist activist investing is often traced back to Knight Vinke's public campaigns to force a change of strategy at Shell and HSBC in the mid-2000s.

Shareholder activism has been boosted by recent developments designed to encourage institutional shareholders to become more actively engaged in the governance of UK companies. These have included the introduction of the Stewardship Codes in July 2010 and in October 2012, the Investor Forum in October 2014 and the requirement in the UK Corporate Governance Code for annual re-election for FTSE 350 directors. These initiatives may, however, result in closer relationships between companies and their major shareholders, and consequently reduce the scope for smaller activists to find support for their more radical campaigns among the larger institutions. As a general rule, there is a fairly healthy culture of engagement between listed companies and their significant shareholders, which allows many issues to be discussed in private.

For reasons explained below, litigation between listed companies and their shareholders is unusual in the UK, but shareholders have been able to take advantage of the relatively low threshold for tabling resolutions at a shareholder meeting in order to ensure that they can take their proposals direct to shareholders. This can in turn force companies to engage constructively with them. Some of these proposals have been designed mainly to bring attention to particular issues – e.g. environmental damage, badly treated suppliers or low paid workers – rather than to force a change of business strategy or to improve financial returns.

2.

What is the threshold for disclosure of a shareholding?

Under the UK Disclosure and Transparency Rules, a shareholder must publicly disclose its shareholding if it holds a 3% or greater interest in the shares of the company, either directly or through financial instruments or long derivatives. This disclosure must be updated each time the shareholding goes up or down through a whole percentage point (for example, from 3.9% to 4.1%, or from 5.6% to 4.8%).

In addition, a company can itself take action to establish the ownership of shares in the company. Under section 793 Companies Act 2006, a company may give a notice to anyone who it believes has or may have an interest in shares (however small or large), requiring them to disclose whether or not that interest exists, and to disclose any other persons who have or have recently had an interest in the shares. By this means, a company can look behind nominees who are registered as the holder of shares to establish the true beneficial owner. Where a shareholder fails to comply, the company may impose certain restrictions (typically a restriction on voting for the shares in question).

3.

What is the trigger for a mandatory bid for the company?

Under the UK Takeover Code, any person who acquires shares conferring 30% or more of the voting rights in the company is required to make a mandatory offer to acquire the remaining shares in the company. For this purpose, a person must aggregate his shareholding with the shares held by any "concert parties", which is defined as "persons who pursuant to an agreement or understanding … cooperate to obtain or consolidate control" of the company. In addition, various categories of persons are presumed by the Takeover Code to be acting in concert unless the contrary is proved.

Note 2 to Rule 9.1 of the Takeover Code contains some guidance from the Takeover Panel regarding the actions of activist shareholders. Broadly, where a group of shareholders put forward resolutions seeking to obtain control over the board, this may cause them to be treated as acting in concert with each other, so that if their aggregate holding then increases either through 30% or, where they already held 30% or more, if it increases at all, a mandatory offer would be triggered. However, in Practice Statement 26, the Takeover Panel notes that resolutions of this type are unusual, and normal collaboration between shareholders in considering how to vote on individual resolutions should not result in those shareholders being treated as concert parties.

4.

Can a shareholder require the company to answer its questions?

In general, there is no requirement on companies to answer shareholder questions. However, a shareholder is entitled to speak at a shareholder meeting, and under section 319A Companies Act 2006, a member of a listed company may require an answer to a question relating to the company's business. In practice, this is unlikely to be a significant benefit for the activist, unless the meeting is particularly high-profile. The company may refuse to answer a question in certain prescribed circumstances, including where providing an answer would not be in the interests of the company.

5.

What is the threshold to include a resolution on the agenda of the annual general meeting?

A member or members holding at least 5% of the total voting rights in the company (excluding rights attaching to treasury shares) can require a resolution or resolutions to be included in the agenda of an annual general meeting. Alternatively, where an activist cannot gather a 5% shareholding, it may be able to satisfy the alternative test, which is at least 100 members with the right to vote, each of whom holds, on average, at least GBP 100 of paid-up share capital. It can be easier to satisfy this latter test as a shareholder can potentially split its holding into the names of multiple nominees, each of whom would count towards the requirement for 100 separate shareholders.

A member or members satisfying one of these tests may also require the company to circulate to the shareholders a statement of not more than 1,000 words with respect to any matter to be dealt with at the annual general meeting. If received in time, the company must send that statement at the same time, and in the same manner, as it gives notice of the meeting. The relevant members must pay the expenses of the company in circulating the statement, unless their request is delivered before the end of the financial year preceding the meeting.

6.

What is the threshold to requisition a shareholder meeting?

Shareholders holding at least 5% of the paid-up voting share capital of the company can require the company to convene a shareholder meeting to consider one or more resolutions put forward by those shareholders. When requisitioning a meeting, the shareholders must set out business to be dealt with at the meeting, which may include the precise text of any proposed resolutions. Under section 304 Companies Act 2006, the company must convene a shareholder meeting within 21 days of receiving the requisition, and the shareholder meeting must be convened to be held on a date that is not more than 28 days after the date of the notice of the meeting. In practice, therefore, a shareholder meeting must be held within approximately seven weeks of the date of the requisition.

If the company does not convene the shareholder meeting, there are provisions allowing the requisitionists to convene the meeting themselves, in which case the company must reimburse them for their reasonable expenses. These expenses may in turn be deducted from the fees or other remuneration due to the defaulting directors.

As noted above, shareholders holding at least 5% of the paid-up voting share capital of the company (or comprising at least 100 members with the right to vote, holding on average at least GBP 100 of paid-up share capital) can require the company to circulate to the shareholders a statement of not more than 1,000 words with respect to any matter to be dealt with at the general meeting. If received in time, the company must send that statement at the same time, and in the same manner, as it gives notice of the meeting. The relevant members must pay the expenses of the company in circulating the statement.

7.

How often must directors offer themselves for re-election?

Under the UK Corporate Governance Code, all directors of FTSE350 companies are expected to offer themselves for re-election annually. As a result, there is an opportunity every year for shareholders to vote against one or more directors of whom they do not approve, and potentially to force a change of board control at a single meeting.

8.

What is the threshold to appoint or remove a director?

Resolutions to appoint or remove a director can be passed by a simple majority of those voting on the resolution. Whenever a resolution appears likely to be contested, voting is conducted on a "poll" – i.e. by counting the total number of **votes** cast for and against each resolution (rather than the total number of **persons** present at the meeting who vote in favour or against) – and in fact many of the largest UK companies require all resolutions to be decided on a poll, as this reflects best practice.

9.

What is the threshold to amend the constitution of the company?

A resolution to amend the articles of association of the company requires the approval of 75% of the votes cast.

10.

What is the threshold to force the board of the company to take (or not to take) any particular action?

This will depend on a company's articles of association, but articles will often provide that instructions may be given by the shareholders to the board by a resolution passed by a 75% majority of the votes cast.

11.

Can a shareholder obtain a copy of the share register to identify other shareholders and write to them?

Yes, any shareholder may obtain a copy of the share register, unless the company can show that request has not been made for a proper purpose. Seeking access in order to garner support for a resolution or proposed change of company strategy is likely to be a proper purpose. Under section 116 Companies Act 2006, the register and index of members' names must be open to the inspection of any shareholder of the company without charge. The fee prescribed for copy of registers is GBP 1 for each of the first 5 entries, GBP 30 for the next 95 entries or part thereof, GBP 30 for the next 900 entries or part thereof, GBP 30 for the next 99,000 entries or part thereof and GBP 30 for the remainder of the entries in the register or part thereof. In addition, the company may also charge the shareholder the reasonable costs incurred by the company in delivering the copy of the entries.

When making its request, the shareholder must disclose its identity, the purpose of its request, and details of anyone to whom the information will be passed. In practice, the register will only show those names entered in the register of members, which will in many cases be nominee companies. As a result, the requesting shareholder may need to take additional steps in order to identify the true owners of the relevant shares.

12.

What scope is there for an activist shareholder to use litigation as part of its strategy?

There are two main possible grounds for litigation, neither of which is particularly attractive.

First, a minority shareholder may bring a claim for "unfair prejudice" under section 994 Companies Act 2006, where it considers that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of the shareholders generally, or some part of the shareholders. Such a claim is typically difficult to sustain in relation to a listed company, and in any event the typical remedy for a successful claim is an order that the company should purchase the shares of the claimant at their market value, which is unlikely to satisfy the activist.

Second, a shareholder can in some circumstances obtain permission from the court to bring a claim on behalf of the company against one or more of the directors, based on negligence, default, breach of duty or breach of trust by those directors. There are a number of hurdles to a successful derivative claim, and in practice such claims are rare, although in appropriate circumstances it will be worth contemplating. Any damages awarded will be payable to the company rather than the shareholder initiating the claim.

13.

Can a company adopt a "poison pill" to deter activist shareholders?

As a general rule, no. Certainly UK companies are not able to adopt US-style "poison pills".

14.

What other factors may affect shareholder activism?

There are a number of other factors to be noted:

14.1 Shareholders will be subject to insider dealing and market abuse rules – see Overview of the European Regulatory Framework above. In certain circumstances, by virtue of their engagement with the company and/or their own plans, they may be in possession of inside information and unable to trade in the company's shares. They must also be careful not to disclose inside information improperly to other shareholders or third parties.

14.2 Where a shareholder acquires a stake in a company which (either itself or through a subsidiary company) is regulated by the PRA or the FCA, prior regulatory approval will be necessary if the shareholder (together with persons acting in concert with it) acquires 10% or more of the shares or voting power in the company – see Overview of the European Regulatory Framework above.

14.3 Companies are required to hold an annual vote on remuneration, including a binding vote on forward-looking remuneration policy (at least once every three years), in addition to an advisory vote on the backward-looking remuneration report in the annual accounts. These votes offer another powerful way for shareholders to express disapproval over directors' actions, short of voting against re-election of those directors. (Similar rules are expected to be introduced across the EU through amendments to the Shareholder Rights Directive – see Overview of the European Regulatory Framework above.)

14.4 Any shareholder is entitled to inspect (and on payment of the prescribed fee, to obtain a copy of) the service contract for each of the directors of the company, which can provide useful information for the activist.

14.5 The UK benefits from a free and vigorous business media that allows both companies and shareholders to obtain publicity for their views and strategies.

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