SOCIETY

Activist Action

Shareholder activism places company secretaries at the centre of change

Bernadette Barber

2019 has been a year of public action – climate change demonstrations, anti-Brexit rallies, unrest in Hong Kong, the gilet jaunes protests in Paris and pro-independence marches in Barcelona to name but a few of the higher profile examples.

The corporate world has not been immune to this spirit of activism either, as shareholders have flexed their muscles to vote in ever larger numbers against companies, directors and practices to which they take exception.

Lazard's 2018 Review of Shareholder Activism observed record levels of campaigns against companies with market capitalisations of US$500m or more and, whilst its 2019 H1 update noted a fall from those peak levels, nevertheless it appears that any reticence investors might once have felt towards entering into public activism, limiting themselves instead to the less disruptive approach of signalling their disagreement through an abstention, may no longer be relied upon.

Shareholders are using their voting powers in particular to drive changes in board composition, curb executive remuneration excesses and influence merger and acquisition outcomes. But they are also using other tactics, including publicly voicing their views on a range of matters such as strategy and environmental practices.

And it is not just the private sector where organisations may be vulnerable to high profile activism campaigns. Two National Trust members were so concerned about its multi-year Easter egg hunt arrangement with Cadbury, which they perceived to have an unacceptable record on use of palm oil and the resultant destruction of rain forest and poor protection of workers' rights, that they requisitioned a resolution at the Trust's AGM. The resolution calling for the contract with Cadbury to be terminated immediately, whilst ultimately not receiving sufficient support to be passed, did gain a significant proportion of the votes and national press coverage, bringing unwelcome attention to both organisations.

Company secretaries are generally at the coal face of dealing with such scenarios when they occur. Firstly they possess a thorough understanding of the legal powers that members have at their disposal. Members' rights are not limited to voting but include the right (with sufficient support) to requisition meetings or resolutions and to require the circulation of statements. More importantly, governance professionals have great experience of dealing with members, investors and others in the ownership and voting chain, such as custodians and proxy voting advisers.

In the midst of a shareholder activism campaign, company secretaries need to be a key player in helping the board to understand and address the relevant concerns. There is much that can be done, even right up to the voting deadline (and in extremis up to the meeting itself) to win over shareholder support in order to defuse a campaign – through better explanations, discussions to enhance understanding on both sides and, where appropriate, compromises that will be sufficient to secure support for the company. The latter can be very effective. After all, the aim of member activism is to achieve some form of change and change can always be negotiated.

But best of all, organisations should not find themselves in the situation to start with. As governance professionals who keep themselves abreast of developments across the market, chartered secretaries are often aware of emerging activism trends, tactics and hot topics well in advance of their colleagues. By being aware of current issues and analysing how the company's own performance, practices and policies measure up against those which are attracting attention elsewhere, the company secretary can act as an early warning system to flag potentially contentious areas so that the company's approach, engagement and reporting can be proactively considered and amended.

This contribution is so important because the reputational, strategic and funding risks of 'getting it wrong' can be considerable. Whether a private sector company or a not-for-profit body, an organisation's members provide invaluable support. Negative press or social media coverage can undermine that support as well as having a detrimental impact on customer views.

Environmental, social and governance (ESG) factors are becoming ever more mainstream business issues and society's expectations continue to grow that businesses will behave in a responsible manner towards all their stakeholders, both direct and indirect. ESG factors are increasingly considered by investors. Employees place importance on working for an organisation which has 'purpose'. Consumers want to understand the ethical values underlying the businesses they transact with. And the power of individuals to make their voice heard widely and loudly has never been greater.

Boards with a laissez-faire approach to such considerations, or who simply think they'll be able to keep under the radar, may at any time find themselves swiftly disabused of such hopes.

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