

Shareholder activism in Poland – an overview

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Shareholder activism strategies Comment

Shareholder activism has grown in popularity in recent decades (particularly in the United States) due to leading law firms specialising in the implementation of available shareholder activism strategies, and the role of hedge funds and related services constitutes a significant niche in the legal services market. This update will examine whether shareholder activism can be applied under Polish legislation.

Shareholder activism strategies

Shareholder activism is an activity engaged in by minority shareholders with the view of effecting changes in the company in which they hold shares. Even where a shareholder or a group of shareholders do not have a majority of votes in a given company, the law or the company's memorandum of association provide shareholders with rights that can be used to introduce changes.

There are five basic forms of shareholder activism. The first concerns attempts to take control of a company by garnering the majority of votes at a general meeting and changing the management board (ie, a proxy battle). This type of shareholder activism is admissible under Polish law, although – in the case of a joint-stock company – the majority of seats on a supervisory board is required, which can then be used to affect changes to the management board. Proxy battle disputes have taken place in Poland since the beginning of the systemic transformations in 1989, when economic activity began to be introduced on a wider scale.

The second type of shareholder activism involves public campaigns which advocate specific changes to the company in question. In such cases, an activist organises advertising campaigns to promote specific changes and put pressure on the company's management, who cannot ignore the campaign. Company management that is subject to such a campaign must respond for public relations reasons both internally (to other shareholders) and externally (to counterparties, customers and the public). This form of shareholder activism may also be applied under Polish law. Such public campaigns are frequently conducted to effect changes in company management.

Another form of shareholder activism involve the proposal of resolutions at company general meetings with the aim of introducing changes, most often not accepted by the company's management. Under Polish law, draft resolutions proposed by shareholders can be introduced to the agenda of general meetings. Under Article 401(1) of the Civil Code, a shareholder or shareholders representing at least one-twentieth of a company's share capital can demand specific matters to be included in the next general meeting's agenda. This demand is presented to the company's management in writing and may include a draft resolution. Regardless of the number of shares held, each shareholder has the right to propose a draft resolution concerning a matter introduced to the general meeting's agenda (Article 401(5) of the Civil Code).

Another form of activism involves engaging in litigation, particularly although not exclusively, on the grounds of the valuation of shares during company mergers and acquisitions. In this respect, the shareholder activist does not have to block a given transaction, but most often aims to persuade management to engage in negotiations that result in redeeming their shares at a price that is significantly higher than that arising from market or company valuations.

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Under Polish law, a shareholder enjoys the right to challenge general meeting resolutions. If a given resolution contradicts the company's memorandum of association or good practice and is therefore detrimental to the company's interests or will harm shareholders, shareholders can demand that it be revoked (Article 422(1) of the Civil Code). However, if a general meeting resolution contradicts the law, a shareholder can bring an action to ascertain the resolution's invalidity (Article 425(1) of the Civil Code).

Conducting negotiations with the company's management board to introduce specific management changes is another form of shareholder activism. In Poland, such negotiations may be conducted as shareholders can submit proposals for change directly or through the supervisory board members that represent them. The effectiveness of the abovementioned negotiations depends to a large extent on:

- whether the shareholding structure is fragmented; and
- the power of the shareholder initiating talks with management.

The possibility of changes sought by shareholder activists being introduced is higher if the management board is receptive to the shareholder's disposition towards the board – for example, achieving a sufficient majority for certain decisions at a general meeting.

Comment

Polish law provides for the application of various forms of shareholder activism. In principle, the various US shareholder activist strategies can be implemented in Poland. Polish law does not duplicate US solutions. Instead, Polish solutions provide various possibilities to undertake different shareholder activism strategies. It can be assumed that US models will be adopted in Europe, including Poland. The dynamic development of shareholder activism in recent decades is a result of operations conducted by hedge funds, which are also becoming increasingly active in Poland.

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