

# Shareholder activism

Guide to shareholders' rights



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## Introduction

Whether economies are “strong” or “weak” there is a growing trend for shareholders in publicly listed companies to make their views known. These views can be asserted in some cases by direct actions. This wave of shareholder action has been encouraged by changes in UK corporate laws, the effect of which has been to assist shareholders and move the balance between management and shareholders firmly in favour of owners.

An important weapon in an activist’s arsenal is a readiness to use the public domain as a forum for initiating change.

The role of professional advisers and a well-organised public relations strategy can, therefore, prove to be extremely valuable when considering these issues, not only to the activist shareholder, but also to a company’s board. Going public involves the activist needing to understand the regulatory framework in which they are then operating. Shareholders adopting such an approach also need to take great care to ensure that they comply with the regulatory regimes, in particular, the market abuse and insider dealing regimes.

The purpose of this guide is to:

- provide an overview of shareholder activism and how it may influence a company’s behaviour,
- identify what options are available for shareholders wishing to pursue an activist agenda, and
- consider the legal framework in which UK public companies must operate when faced with shareholder activism. This guide does not cover the considerations applicable to non-UK companies.

“Shareholder activism, a broad concept with many forms. There are a wide variety of actions and behaviour that could justifiably fall within the ambit of shareholder activism. However, no matter which form is chosen the end-game is to effect change; whether in management, the capital and asset structure or strategic direction.”

## Purpose of shareholder activism

Management know that if the performance of the business they manage is not good enough for them, such performance is not good enough for shareholders. In the same way, if the performance of a business is in management's view exceptional, it is likely that shareholders agree. Shareholders show support by leaving management to do what they do best. Below par performance over time is the starting gun for activism.

The activist has many weapons in its arsenal and management has many counter-measures. But whatever the battleground and the tactics employed, success lies with the party which is most persuasive. History has often shown that a large scale defeat could have been avoided by offering small concessions at the outset. In this way, management should not react to the first sign of activism with a "it's our way or the highway" strategy. Dialogue should be the first action not only to enable management to ensure it has fully understood the issues being raised but also to see if there is a simple solution.

The following are some key reasons that investors may wish to pursue shareholder activism:

- to procure a return of capital,
- to ensure a different corporate strategy is pursued so as to realise improved performance and profitability, e.g. seeking to recognise value by de-merging businesses,
- to ensure changes to a company's board,
- in pursuit of a special interest, i.e. groups aligned with environmental, social or ethical agendas,
- to increase company efficiency by procuring the disposal of under-performing assets, or
- to influence the outcome of a takeover or other M&A activity.

## Historical development of shareholder activism

"Voting with their feet" is the traditional way in which shareholders have expressed their views when they disapprove. Often this wish to sell provided the opening for a takeover approach. Activism is in effect management's second chance before the steps of seeking a takeover offer.

Traditionally, criticism of management took place behind closed doors. Large institutional investors, in particular, have traditionally tried to restrain themselves from criticising a company's board in the public domain. Increasingly, shareholders are now prepared to come out into the open when criticism falls on deaf ears.

The concept of shareholder activism is not new, but in recent years there has been an increase in the level of such activity. Investors appear to be feeling increasingly empowered to intervene in the management of public companies, both in the UK and abroad. Recent high-profile examples of shareholder activism have included HSBC (by Knight Vinke Asset Management lobbying for changes to HSBC's strategy and structure), Vodafone (by Efficient Capital Structures lobbying for a change in strategy), Tesco (lobbying for an improvement in the working conditions of Tesco's clothes manufacturers in Asia), Cadbury Schweppes, ABN Amro and F&C Asset Management plc.

Activism does not respect market size. Further, in an environment where private equity groups may not be so ready to finance takeover offers, for the larger companies, activism represents the only way of escalating external pressure to create change.

Activism in public is facilitated by the changed composition of the typical share register of listed companies. Share registers are more diverse. For example, classic institutional investors such as large insurance companies, university endowments and pension funds, will generally hold their investments on a long-term basis; in contrast, hedge funds adopt a shorter term view.

## Tools available for the activist shareholder

Tools available to the activist are summarised in this section.

### Statutory powers

The Companies Act 2006 (the “2006 Act”) sets out the legal framework within which shareholders can exercise their legal rights in pursuit of an activist agenda. Shareholders in public companies have various rights which they can exercise to achieve their objectives. As set out below – some are applicable to all public companies, others just to listed companies. In addition, some of these powers can be exercised by the beneficial owners of the shares in certain circumstances (see [page 6](#) for more details).

References to sections are to sections of the 2006 Act.

#### Requisitioning a general meeting (sections 303-305)

This provides members with the means to generate the platform needed to propose their desired resolution.

Following the implementation of the Shareholder Rights Directive in August 2009, members with fully paid up shareholdings representing at least 5% of a public company’s total voting rights are entitled to require the directors to call a general meeting of the company. The request must detail the nature of the business to be dealt with at the meeting and may specify wording for a proposed resolution to be tabled at the meeting. Under the 2006 Act, all UK public companies can convene general meetings (other than AGMs) on 14 clear days’ notice (subject to longer provisions in their articles). The Shareholder Rights Directive, however, increased this to 21 clear days for companies listed on the Official List, but the UK adopted an option for these companies to continue to take advantage of the original 14 clear days requirement, provided that:

- (a) shareholders pass a special resolution every year at the AGM, approving the shortening of the general meeting notice period to 14 clear days, and
- (b) the company offers “the facility for shareholders to vote by electronic means accessible to all shareholders”.

A proposed resolution (whether at a requisitioned meeting or proposed for an AGM) will not be permitted if it:

- would be ineffective as a result of it being inconsistent with the company’s articles of association,
- is defamatory, or
- is vexatious or frivolous.

An example timeline for requisitioning a general meeting is set out on [page 12](#) of this guide.

#### Requisitioning the circulation of a statement (sections 314 – 317)

Members with shareholdings representing at least 5% of the total voting rights, or shareholders who are at least 100 in number and whose shares are paid up by an amount averaging at least £100 per member, are entitled to require the company to circulate to shareholders a statement (of up to 1,000 words) regarding a proposed resolution, or other business, to be dealt with at that meeting. The company must receive the statement at least one week before the meeting. If the relevant meeting is an AGM and the request is received prior to the end of the financial year preceding the AGM, the company is required to bear the costs of circulating the statement - if not, the members requiring the statement to be circulated will have to bear the costs, unless the company resolves otherwise.



Beneficial owners of shares can now also count towards the shareholder threshold required to trigger this request – see [page 6](#).

#### **Proposing a resolution for an AGM (section 338)**

Shareholders representing at least 5% of the total voting rights, or shareholders who are at least 100 in number and whose shares are paid up by an amount averaging at least £100 per member, may require a resolution to be proposed at the AGM.

Shareholders with small holdings need not be deterred by these thresholds, as the 2006 Act does not prevent a shareholder from dividing its holding into 100 nominee holdings each with an average paid capital of £100. Efficient Capital Structures demonstrated this as a strategy when requiring a resolution be put forward at the 2007 AGM of Vodafone plc under the Companies Act 1985.

Beneficial owners of shares can now also count towards the shareholder threshold required to trigger this request – see [page 6](#).

#### **Removing a director from office (section 168)**

One of the ultimate shareholder sanctions, from a director's perspective, is removal from office. A company may remove a director from office, notwithstanding anything in any agreement between the company and the director, by passing an ordinary resolution (i.e. a simple majority of those voting in person or by proxy at the general meeting). Special notice of 28 days must be given to the company of the intention to propose a resolution for the removal or replacement of a director. The company's articles of association need to be considered as they may include an alternative removal process.

#### **Viewing the company's shareholder register (section 116)**

Any person may view or request a copy of a company's register of members. This right is particularly useful for activist shareholders who may benefit from identifying the company's shareholders. However, a request to view a company's register of members may only be made for a "proper purpose" which would preclude an intention to intimidate or cause harm to any shareholders of the company. Canvassing support for a proposed resolution should constitute a proper purpose.

#### **Additional rights for shareholders in quoted companies**

If the company is listed on the Main Market of the London Stock Exchange, officially listed in an EEA state or admitted to the NYSE or NASDAQ, then further rights are available to those shareholders representing at least 5% of the total voting rights, or shareholders who are at least 100 in number with shares paid up by an amount averaging at least £100 per member:

- Right to require the directors to obtain an independent report on any poll taken or to be taken at a general meeting (section 342). The request must be received by the company no later than a week after the date of the poll but would be most effective if received before the meeting.
- Right to require the company to publish on a website a statement setting out any matter relating to the audit of the company's accounts that are to be laid at the next meeting or any circumstances connected with the auditors ceasing to hold office (section 527).
- Additional to the right to requisition a resolution at an AGM (as described above), shareholders of traded companies have further rights to require the company to include in the business to be dealt with at the AGM "any matter" that may properly be included in such business (section 338A) and to have such matters circulated at the expense of the company (sections 340A and 340B).

Beneficial owners of shares can now also count towards the shareholder threshold required for these rights.

Public company thresholds for shareholder rights	
5% or 100 members holding on average at least £100 paid-up capital*	<ul style="list-style-type: none"> <li>■ Power to require circulation of a statement</li> <li>■ Power to propose a resolution for the AGM</li> <li>■ Power to require an independent report on poll (quoted companies only)</li> <li>■ Power to require website publication of audit concerns (quoted companies only)</li> <li>■ Power to require inclusion of a matter to be considered in the business of an AGM (traded companies only)</li> </ul>
5%	<ul style="list-style-type: none"> <li>■ Power to require a general meeting be held</li> </ul>
+50% (of those present at meeting and entitled to vote)	<ul style="list-style-type: none"> <li>■ Requisite majority to pass an ordinary resolution</li> </ul>
75% (of those present at meeting and entitled to vote)	<ul style="list-style-type: none"> <li>■ Requisite majority to pass a special resolution</li> </ul>

\* Beneficial owners of shares can now count towards the shareholder threshold required for these rights.

## Use of proxies and corporate representatives

### Proxies

Proxies can often play an essential part in an activist’s campaign. The 2006 Act made various changes to the way proxies operate, increasing the proxy’s powers and thereby making them even more effective.

- Members have an absolute right to appoint a proxy to attend, speak and vote at meetings on their behalf.
- Proxies can vote on a poll and now also on a show of hands.
- Proxies have similar voting powers as members - on a vote by a show of hands, one vote, and on a vote on a poll, one vote for each share held. Companies cannot arrange for proxies to have fewer votes on a show of hands than the member would have if present in person.
- A member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attaching to different shares held by the member.

Companies are permitted to grant more extensive rights regarding proxies than the statutory minimum and so the articles of association of the company should be carefully considered.

The Shareholder Rights Directive clarified that a proxy has one vote on a show of hands except where he is appointed by multiple members who instruct the proxy to vote in different ways.

Listed companies must also now comply with certain additional formalities regarding the appointment of proxies, and the termination of such appointments.

### Corporate representatives

Activist shareholders holding shares through nominee companies may prefer to cast votes by way of a corporate representative rather than by proxy. This offers the shareholder greater flexibility, for example, where the proxy deadline is missed or where the shareholder wants to attend the meeting at short notice without formally changing the proxy’s instructions.

Corporate shareholders can appoint one or more corporate representatives by board resolution, but their votes will be invalid unless they all vote in the same way in respect of the same class of shares. However, multiple corporate representatives may vote in different ways from one



another in respect of different blocks of shares. A single corporate representative has full powers to exercise all of the rights of the shareholder at general meetings, as does any one of a shareholder's multiple representatives.

It is essential that a corporate representative's paperwork is in order as a registrar/issuer will need to satisfy itself that the representative has been validly appointed. An original or certified copy of the appropriate board resolution appointing the representative is required, although the Institute of Chartered Secretaries and Administrators (ICSA) has issued guidance that companies may also accept an original letter on the registered shareholder letterhead and signed by an authorised signatory confirming the appointment, accompanied by evidence of the signatory's authority.

## Exercise of shareholder rights by indirect investors

### Information rights

The 2006 Act introduced new provisions enabling registered members of companies listed on the Official List to nominate the beneficial holder of the shares to enjoy "information rights", that is, receive company documents and information (for example, shareholder notices, circulars and the annual report and accounts) that are sent to members by the company.

Website publication is the default method of communication, but the nominated recipient may (before the nomination is made) request hard copies, through the person making the nomination and providing a postal address to which the documents may be sent.

Nominated persons cannot enforce the rights conferred by nomination against the company, although the member may enforce these rights against the company.

### Members' requests

Under section 153, beneficial owners of shares can now also count towards the shareholder threshold required to trigger members' requests for:

- the proposal of a resolution for the AGM,
- the circulation of a statement,
- the inclusion of matters in business dealt with at the AGM (traded companies)
- an independent report on a poll, and
- website publication of audit concerns.

This is subject to certain conditions intended to ensure that only genuine indirect investors are allowed to count towards the threshold, that the same shares cannot be used twice and that the indirect investor's contractual arrangements with the member allow the indirect investor to give voting instructions to the member.

## Shareholder transparency

The UK regulatory regime aims to promote transparency of company ownership by requiring disclosure of substantial shareholdings and interests in shares in listed, AIM and PLUS market companies. This will assist an activist shareholder in identifying other shareholders and their holdings or positions.

### Disclosure and Transparency Rules

The disclosure requirements are set out in chapter 5 of the Disclosure and Transparency Rules made by the FSA (the "DTRs").

Under DTR 5, where a person holds shares in a UK issuer as a shareholder (including indirect interests with access to voting rights) or through its direct or indirect holdings of financial

instruments which entitle the holder to acquire shares with voting rights attached (such as swaps, forward rate agreements, options, futures and other derivative products where voting rights are acquired) or which are referenced to the shares of a UK issuer and have similar economic effects to such financial instruments (including gross long contracts for difference positions), that person must notify the company of the percentage of voting rights it holds if the percentage held reaches, exceeds or falls below 3% or any whole percentage figure above 3%.

There are separate rules in the FSA Handbook which require disclosure of significant short positions in certain UK financial sector companies (with disclosure bands every 0.1% above a 0.25% threshold once an initial disclosure has been made) and also in companies undertaking rights issues (a one off disclosure of short positions amounting to 0.25% or more). These provisions are expected to be superseded once an EU-wide short selling disclosure regime has been finalised.

The types of interest or financial product covered by the disclosure requirement are varied and it is important that detailed advice is obtained on an investor's disclosure obligations.

For UK companies the notification must be made by shareholders as soon as possible but within two trading days (and, if the company is on the Official List, must be made using the prescribed FSA form TR1). The company must then make an announcement as soon as possible on receipt of a notification and by no later than the end of the following trading day (for UK issuers on the Official List) and by no later than the end of the third trading day for companies on AIM.

Issuers must update the market, at the end of each calendar month during which an increase or decrease has occurred, on the total number of voting rights and capital for each class of share which it issues and the total number of voting rights attaching to shares held in treasury.

## Takeover Code

The Takeover Code provides an additional layer of disclosure requirements. Investors must, therefore, be mindful of whether or not a company is in an offer period. Anyone who is interested in more than 1% of such shares must announce details of their interests in those shares (known as an "opening position disclosure") on the start of an offer period (or, if later, once the bidder is identified) and must also disclose any dealings during an offer period. Dealings in interests in target company shares by parties and those acting in concert with them must be disclosed by 12 noon on the following business day. Similar disclosure requirements apply to shares in the bidder if any of the consideration will be or is likely to be other than cash. For these purposes, an interest in shares includes:

- owning shares;
- having the right to exercise voting rights attaching to shares;
- options or derivatives with a right to call for delivery of shares; and
- long-position contracts for difference.

Investors must also pay attention to the concert party rules in this context (see [page 9](#) for more details). Where two or more people are acting in concert in acquiring shares in these circumstances, their interests will be aggregated and they will both be required to comply with the disclosure requirement.

The range of financial instruments to which these disclosure requirements apply is wider than that currently applicable under the DTRs.

## Companies Act 2006

Section 793 of the 2006 Act enables a public company to require disclosure from any party it believes has or has had an interest in its shares at any time during the previous three years. Section 811 of the 2006 Act also enables any person to request a copy of the company's register of interests disclosed, subject to the request being for a "proper purpose".



## Derivative actions

The 2006 Act introduced a new statutory derivative action, giving shareholders the ability to bring a civil action on behalf of the company against a director (or against a third party) in respect of the director's conduct. The ability to bring a derivative action is dependent on the company itself having a claim. These types of action should usually be considered as an action of last resort.

There is a two-stage procedure for the shareholder seeking to bring the derivative action. Firstly, the applicant will be required to make a prima facie case for permission to continue a derivative action. Secondly, but before the substantive action begins, the court may require evidence to be provided by the company.

### What type of claim may be brought as a derivative action?

The position is now a lot wider than under the previous common law position. A claim may be brought in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director. This could include an alleged breach of any of the general statutory duties of directors, including the duty to exercise reasonable care, skill and diligence or the duty to promote the success of the company. "Director" for this purpose can include a former or shadow director.

### Factors for consideration by the court

These factors include whether the member bringing the claim is acting in good faith, the importance that a director fulfilling the directors' statutory duty to promote the success of the company would attach to bringing this particular claim, the likelihood of authorisation or ratification and whether the company itself has decided to bring the claim. The court is also likely to consider whether the case could be brought by the member personally (in which case the shareholder would usually be expected to bring his own action rather than bring a derivative action) and (the most important consideration) the views of independent members of the company, i.e. members with no personal interest, direct or indirect, in the matter.

Advantages of derivative actions	Disadvantages of derivative actions
<ul style="list-style-type: none"> <li>■ The scope is relatively wide – claims can be brought for negligence, default, breach of duty or breach of trust. If the claim is successful, the shareholder will have managed to achieve an outcome that the directors had refused.</li> <li>■ It is immaterial whether that person bringing the action became a shareholder after the cause of action arose.</li> <li>■ There is no requirement for any particular number of shares that have to be held nor must the shareholder have to have any percentage of shareholding in the company.</li> <li>■ There is no time period for which the shareholder must have held their shares before they can bring an action.</li> <li>■ The claim can be brought, not only in respect of past acts or omissions, but also in respect of proposed acts or omissions.</li> </ul>	<ul style="list-style-type: none"> <li>■ Courts have strong powers and discretion to refuse permission for frivolous claims.</li> <li>■ A derivative claim involves a lengthy process. Even if permission to proceed is granted by the courts, it is likely that the entire process will take many months to reach a conclusion.</li> <li>■ Any remedies awarded for a director's breach of duty will be for the company's benefit, rather than the shareholder itself.</li> </ul>

## Unfair prejudice

Shareholders also have a statutory right to apply to court for relief where the company's affairs have been carried out in a way which has been unfairly prejudicial to the interests of its shareholders.

In general, these actions also involve a lengthy time process and are likely to take as long, if not longer, than a derivative action. These actions are also rare in the context of listed companies, as the most natural remedy is for the investor to sell its holding in the market. In general, as long as a company has acted within the confines of its constitution, it is often considered difficult to succeed with unfair prejudice petitions.

## Acting in concert

An activist shareholder is likely to seek support from fellow shareholders in pursuit of their agenda. Unless the shareholder in question has a sufficiently substantial shareholding to achieve their goals, there are obvious benefits to acting in concert with their fellow shareholders (although this will not always be the case).

There are many ways in which shareholders can support each other in furthering their objectives. The shareholder driving the agenda may simply request that other shareholders agree to sign a request for a general meeting or agree to sign a more exhaustive letter outlining the proposals. Other options for support include entering into a legal undertaking as to how the shareholders will vote or simply asking for permission to use the shareholders' names in discussions with management. Although there may be obvious synergies between a number of shareholders in respect of the goals which they seek to achieve, the implications of acting in concert must also be considered.

### Disclosure & Transparency Rules

A person is viewed by the DTRs as an indirect holder of shares if it has concluded an agreement with a holder of shares "which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards ... management". Shareholders acting together, therefore, need to consider whether they have indirect interests in each other's shares, or whether contractual arrangements constitute a financial instrument, and if so, whether disclosure is required if any of the disclosure thresholds have been reached (see [page 7](#)).

### Takeover Code

The Takeover Panel should be consulted in advance as inherent risks exist within the Takeover Code for shareholders pursuing an activist agenda.

The provisions relating to mandatory bids are particularly relevant for shareholders acting in concert. The higher the percentage of the aggregate shareholding of the shareholders acting in concert, the greater degree of strategic care will be required, especially if the aggregate shareholding is close to 30% of the company's voting rights (being the threshold at which a mandatory bid for the company will be required under Rule 9 of the Takeover Code).

The Takeover Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that they are acting in concert. However, if shareholders threaten to requisition the consideration of a "board control-seeking" proposal at a company's meeting, the Takeover Panel generally presumes them to be acting in concert, along with the proposed directors and any other shareholders who have supported them to this end. Those parties will be presumed to have come into concert once an agreement or understanding is reached between them in respect of a board control-seeking proposal, with the result that subsequent acquisitions of interests in shares by any member of the group could trigger a



mandatory offer obligation. It is important that the size of the parties' aggregate shareholdings is clearly identified and that any necessary standstill arrangements are implemented. A concerted shareholder arrangement will not necessarily cease once a general meeting has been requisitioned, especially if such a requisition is merely one part of a larger activist strategy.

#### Companies Act 2006

A party is treated as "interested in shares" where, amongst other things, it has the right to call for delivery of the shares or if there is an agreement to acquire interests in a particular company. Such interests will need to be disclosed if a public company serves notice requiring disclosure in respect of any interest in its shares during the previous three years.

## Market abuse and insider dealing considerations

Regarding any proposed action to be taken, activist shareholders should be aware of the possible implications their action may have under the market abuse and insider dealing regimes. In circumstances in which the activist shareholder has engaged in communication with the company's board, it will be possible that inside information has been divulged, which would restrict the shareholder from being able to deal.

Moreover, in some instances it is possible that the actual strategy being pursued by the activist shareholder is itself inside information, thus requiring disclosure to the market as a whole. The FSA has stated that their general approach would be not to view this conduct as abusive of the market if the participant will merely carry out acquisitions on the basis of its own knowledge and strategy, simply taking advantage of its own analysis of otherwise publicly available information – but clearly, great care must be taken in these situations.

The FSA has warned that other activist activities could constitute market abuse, for example, where a shareholder acquires shares on the basis of another participant's strategy or if dealings were undertaken on the basis of their knowledge of another participant's intentions and strategy, regardless of how such information was obtained. Furthermore, shareholders are expected to take reasonable care to ensure that any comments made do not give rise to false rumours or deceptive indications as to their future strategic intentions.

An activist shareholder must also consider whether their actions may constitute the criminal offence of insider dealing, in breach of the Criminal Justice Act 1993. A breach will be committed, not only if an insider discloses inside information or deals in price-affected securities when in possession of such information, but also if the insider encourages others to deal in such a way.

## Defamation risks

In many cases, shareholder activists will want to make or will make defamatory allegations about the company and possibly individuals (e.g. directors). The activist should therefore be aware of the law of defamation in order that it can pursue its campaign without risking legal action. Companies, as well as individuals, can sue. In England, the burden of proof is on the publisher of a defamatory statement to prove the allegations are true. There are other defences such as honest opinion and qualified privilege (a public interest defence). The law of defamation is complex. Therefore, where appropriate, the activist should seek advice on proposed wording in relation to criticisms. If the activist ends up on the wrong end of a libel suit, the activist's campaign against the company can be thwarted and libel actions are sometimes very costly.

“Co-operation amongst shareholders can take many forms, ranging from simple and informal discussions to the adoption of a more thorough and formal agreement as to how to pursue an activist agenda together.”

## 10 practical tips for an activist shareholder

1	Prior to engaging in any activist behaviour, clearly identify specific aims and what is being sought to achieve by engaging in such an agenda. Have a clear understanding of the strategy to be adopted from the outset.
2	Identify who your fellow shareholders are and carry out a detailed analysis of the shareholder register and support you may have.
3	Consider both the positive and negative implications of any subsequent shareholder activism being made public for both the company's board and the shareholders.
4	Remain in regular communication with fellow shareholders in order to monitor the level of support for the activist proposals. Utilise the services of a broker if necessary to coordinate communications with investors.
5	Avoid requisitioning resolutions that may be considered to be either vexatious or frivolous. Equally, ensure that any resolutions to be requisitioned are able to be effective and ultimately bind the company in accordance with its constitution in the event that they are passed.
6	If a proxy battle is anticipated, ensure proxy forms are submitted on time in accordance with the company's constitution and that any paperwork appointing corporate representatives is in order.
7	Take professional advice as to the implications of requirements of the Takeover Code with regards to concert parties and discuss any issues with the Panel early in the process.
8	If you are an activist looking to build a greater stake in a company, consider and take advice on the implications of insider dealing and market abuse, in particular, where discussions with the board may have taken place.
9	Consider litigious actions, in particular, derivative actions and unfair prejudice petitions as a last resort as they are unlikely to have an immediate effect as compared to requisitioning a meeting or a resolution at an upcoming AGM and can be costly.
10	Ensure that you engage experienced professional advisers and have a well-organised public relations strategy in place early in the process. Be aware of the law of defamation when making criticisms and seek expert advice on minimising the risk of being put on the back foot by a libel claim.



## Example timeline for requisitioning a general meeting

The exact timing requirements will vary from company to company and will also depend on what action is proposed by shareholders, but the basic requirements and parameters are usually as follows.

Date	Action
6-8 weeks prior to Date A	<p>Request to view the company's shareholder register (company must comply within five working days of a valid request, unless it applies to court for an order that the request is for an "improper purpose").</p> <p>Prepare resolutions intended to be moved at the general meeting. Coordinate support amongst other shareholders.</p> <p>Check the company's articles for any particular requirements that must be complied with – for example, provision of information on new directors proposed by shareholders.</p>
Date A	<p>Company receives request for general meeting from shareholders holding voting rights representing at least 5% of the company.</p> <p>Note that if it is proposed to remove a director, 28 days' special notice needs to be given to the company.</p>
A +21 (Date B)	Date by which directors must call general meeting (within 21 days from date of receipt by the company of the request).
B + 18	Earliest likely date on which general meeting can be held (assuming that (i) the directors wait the full 21 days before calling the meeting, (ii) the notices are posted and the articles of association provide for deemed delivery two days after posting, (iii) the articles provide for 14 "clear" days notice for general meetings and not 21 days (which was the previous statutory requirement) and (iv) the company is not subject to the 21 day notice period under the Shareholder Rights Directive).
B + 28	Date by which general meeting must be held (not more than 28 days after date of notice).

Date	Action
<b>Once a date is set for the general meeting:</b>	
M-16	Last date on which notice of the meeting may be given to shareholders (14 clear days). Note that the company will have to despatch notices earlier than this date to comply with deemed notice provisions in the articles.
Any time up to M	Prepare and execute documents appointing corporate representatives (if any).
M-48 hours	Date and time by which proxies must be lodged with the registrars (need to check the articles as to whether '48 hours' excludes or includes working days, but note that, where the company has shares held in CREST, when calculating the 48 hour period no account shall be taken of any part of a day that is not a working day).
M	Date on which the general meeting is to be held.
Prior to M and up to M+7 days	Right for shareholders (representing at least 5% of total voting rights, or who are at least 100 in number with shares paid up by an amount averaging at least £100 paid per member), to require the directors to obtain an independent report on any poll taken or to be taken at the general meeting.



