

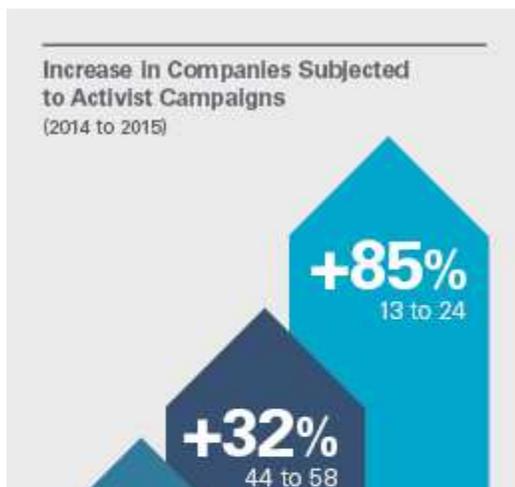
Shareholder Activism In Asia Signals Changing Attitudes

Law360, New York (January 28, 2016, 4:21 PM ET) -- Levels of shareholder activism are reaching record highs in the United States, and such activity has become increasingly prevalent in Europe. But with the exception of Japan, Asia often is seen as a relative backwater in this regard. In 2015, the number of companies subjected to public activist demands was 350 in the United States and 58 in Europe, compared to 24 in Asia (not including Japan), according to Activist Insight. By comparison, in 2014, 320 companies in the United States, 44 in Europe and 13 in Asia (excluding Japan) were publicly subjected to activist campaigns, according to the same source.



John Adebisi

Reasons often cited for the significantly lower prevalence of shareholder activism in this part of the world include: the greater propensity for listed companies to have controlling shareholders (often founders and their family interests), the prevalence of cross-shareholdings among groups of affiliated listed companies, greater relative passivity among institutional and retail investors, cultural resistance to U.S.-style activism, and local environments that are generally less litigious and confrontational. However, a handful of situations that played out in Asia in 2015 may indicate increased shareholder activism in the future. This may be particularly the case with increasing foreign investment in the region: Of the 59 investors who made a public demand of an Asian company since 2010, 46 percent were headquartered in the United States, 15 percent were headquartered in the United Kingdom and 34 percent were headquartered in Asia, according to Activist Insight.



South Korea

One of the most notable activist campaigns in Asia in 2015 was Elliott Associates' attempts to scuttle the merger between Samsung C&T Corp. and Cheil Industries, two companies in the Samsung group. Elliott, a U.S. hedge fund and Samsung C&T shareholder, opposed the merger, alleging that its terms significantly undervalued Samsung C&T and did not comply with applicable corporate governance standards.

Ultimately, Elliott's attempts to take legal action to prevent the merger and to persuade a sufficient number of other shareholders to vote



against it were unsuccessful (despite Institutional Shareholder Services also advising Samsung C&T shareholders to vote against it and opining that the merger would significantly disadvantage them), and the deal was approved at the company's shareholder meeting in July 2015.

The decision of the National Pension Service (NPS), the largest owner of equities in South Korea, to vote in favor of the merger disappointed onlookers who had hoped that an NPS vote against the merger would constitute a positive statement for activist investors in South Korea. Meanwhile, the local criticism that arose from Elliott's campaign against the merger prompted certain Korea-based investors in Elliott's funds to ask Elliott to stop investing in South Korean companies, as well as calls from South Korean legislators for tighter restrictions on overseas investment in domestic companies.

A somewhat more successful campaign in South Korea involved Netherlands-based APG Asset Management. APG took issue with the opacity of Hyundai Motor Co.'s decision-making process over a bid for land in Seoul's affluent Gangnam District. APG and other investors expressed dissatisfaction at Hyundai's shareholder meeting in March 2015 and called on management to revamp its corporate governance structure and procedures. In response to this pressure, Hyundai took steps to address investors' concerns, including announcing a share buyback and dividend increase, and establishing a board-level corporate governance and communication committee to protect shareholders' interests.

Hong Kong

In March 2015, the Bank of East Asia Ltd. (BEA), a large local bank in Hong Kong, announced that it had agreed to raise capital by issuing further shares to a substantial shareholder in BEA, thereby allowing that shareholder to increase its stake in BEA significantly. Elliott, whose related funds held a small position in BEA, criticized this transaction as unnecessary and contrary to minority shareholders' interests and took the somewhat unusual step (in Hong Kong) of commencing legal proceedings against BEA. In a decision handed down in June 2015, which may be encouraging to activist investors in Hong Kong-incorporated companies, Hong Kong's Court of First Instance granted Elliott's request to obtain disclosure from BEA of certain documents relating to the placing.

In fact, in some situations, Hong Kong's regulatory regime allows minority shareholders in Hong Kong-listed companies to enforce corporate governance standards. This is exemplified by the saga of the proposed acquisition by Gome Electrical Appliances Holding Ltd. of certain assets from Gome Electrical's controlling shareholder and founder (who happened to be serving a prison sentence for corruption in mainland China). Given that the deal involved an acquisition from a substantial shareholder, the transaction required independent shareholder approval under the Hong Kong Stock Exchange's listing rules (i.e., the controlling shareholder and parties associated with him could not vote on the deal). In October 2015, Gome Electrical announced that the terms of the transaction had been revised to reduce the aggregate consideration payable by it for the proposed acquisition by nearly 20 percent of the originally proposed amount.

According to Gome Electrical's rationale for the revised terms, the company and the vendor had "received valuable feedback from a number of independent shareholders regarding the acquisition" since the original announcement. This feedback may well have included a clear indication that the transaction stood little chance of being approved by the independent shareholders on the terms originally proposed. As of December 2015, the transaction was still pending.

While shareholder activism is far less prevalent in Asia than in the United States or Europe,

there are indications that under the right circumstances, shareholders in listed Asian businesses who take an active interest in the affairs of their investee companies can have a notable degree of influence over them. Such circumstances may include investee companies with widely dispersed shareholder bases and sophisticated and motivated institutional investors — particularly from those jurisdictions where shareholder activism is more commonplace — and where a supportive legal and regulatory regime exists. As such, it may behoove listed companies in the region to consider the implications of increasing levels of shareholder activism with a heightened degree of urgency and seriousness.

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