

ACTIVISM



CRISIS MANAGEMENT
Part of the Horizon Scanning series



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WHAT WERE THE KEY TRENDS AND HOT TOPICS IN 2023?

Over the last few years, we've seen overall activism levels rebound to pre-pandemic highs and a period of sustained intensity globally, despite continued market volatility and uncertain macroeconomic conditions. Activity in Europe, and the UK especially, continues to increase exponentially – with 2023 set to be another record-breaking year. Campaigns against European companies accounted for over a third of all global activity in 2023, with UK companies representing over half of the European targets; meanwhile in the US, there was a dampening of activity levels, with US campaigns accounting for just around 40% of global campaigns for the first time.¹ A recent trend has been increased targeting of the “mega caps” – and this has been a notable feature in the UK, with campaigns against GSK and Prudential, for example.

While activism is becoming a more permanent feature of UK listed company life, the activism landscape and the tactics deployed by activists continue to evolve.

The household name activists remained very active in 2023 – with Elliott again topping the chart with 11 major campaigns launched globally – but the universe of activist players is expanding and the boundary between “activism” and “active stewardship” is blurring, in particular with traditional institutions becoming more active themselves or prepared to side with activists as an impetus for broader change. Non-core activists accounted for around 83% of campaigns in the UK – and we continue to see first time activists and spin offs from existing players enter the fray.

Despite the challenging market conditions, M&A remained the dominant activist demand - especially in Europe where almost 60% of campaigns had an M&A angle. However, this has been driven by increased calls for break-ups and divestures as a means to unlock depressed valuations, rather than calls for full company sales or “bumpitragage” given public takeover activity remains at historically low levels.

Activists are also continuing to push for Board representation and pursuing a wide range of governance objectives, either standalone or as a means of reinforcing a narrative of management underperformance to support an overarching strategic thesis. The activist-friendly UK legal framework, including relatively low thresholds for shareholder rights and requirements for annual director re-election and “say on pay” votes – coupled with increased Board accountability, as institutional investors, the FRC and ever-influential proxy advisors look to monitor compliance with the Corporate Governance Code and the quality of market disclosures – has contributed to an increased public agitation and requisitions for shareholder meetings/resolutions.

¹ Source: All data is sourced from Bloomberg market data to end Q3 2023

WHAT CAN COMPANIES EXPECT FOR 2024?

Looking ahead, we expect activity in Europe to continue to intensify, and for UK companies to remain the key targets, given the challenging market conditions, lower share price valuations and activist-friendly legal and corporate governance environment.

We expect that the spectrum of activist investors will continue to broaden and that their playbooks will keep evolving. Over the last few years, along with leveraging their legal rights, activist investors have deployed tactics such as privately engaging with other shareholders, hiring external consultants to make recommendations, publishing open letters and using social media and microsites to bolster their campaigns. We have seen more mainstream institutional investors becoming activists in their own right – mostly through private engagement with companies so far – but we expect that to continue in 2024. We may also see more campaigns launched by first-time activists or spin offs from established players, whose playbook can be more difficult to predict.

While specific campaign objectives will again be driven by market developments, the fundamental themes of M&A, governance change and ESG will remain high on the activist agenda. For example, if M&A activity re-gains pace, we may see a return of activists taking stakes to try and sweeten announced deals or more active calls for major spin-offs. And it remains to be seen whether increasingly mandatory ESG reporting requirements will reduce the number of ESG-driven requisitions or provide more levers for shareholders to use to hold companies to account.

We are also starting to see signs that US-style settlement agreements and activists requisitioning their own board representation may become more of a feature of the UK landscape than it has been to date, so that may be a growing trend in 2024.

WHAT SHOULD COMPANIES DO TO PREPARE?

The key point to remember is that most activists are ultimately seeking a return over the short to medium term – and so will be looking for an actionable corporate event that can deliver that. So it is important for companies to think like an activist and ask themselves what that actionable step or attack theme might be and, importantly, what the company would say to rebut that challenge. Having done that exercise, companies should be proactively engaging with shareholders to ensure they understand and are bought-in to the strategy. That will help to minimise the risk of institutional shareholders, who are becoming increasingly active, siding with an activist or using a live public situation as a catalyst to voice broader discontentment with management on strategy. Companies should also seek to maintain Board and management consensus on strategy – and be live to the risk of activists seeking to exploit potential divisions.

On a more practical level, companies should be well-briefed on the legal tools available to activists and regularly monitor the shareholder register to spot signs of potential stakebuilding.

As the activism landscape continues to evolve and new players and tactics emerge, advice on how different types of activist operate and how best to plan for and respond to the full spectrum of activist situations will be invaluable.

We act for more FTSE listed clients than any other law firm and regularly advise company boards and management teams on situations ranging from private engagement to public campaigns and requisitions, as well as M&A arbitrage and takeover bid defence. You can read more [here](#).

CONTACT US TO FIND OUT MORE

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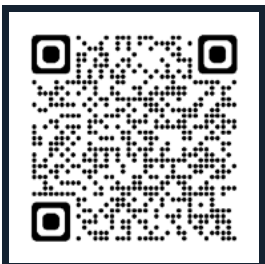
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