US-style activism casts a long shadow

While slow to follow the US lead, international markets are taking notice

SHAREHOLDER ACTIVISM remains largely a US phenomenon, where it is associated with big hedge funds and larger-than-life personalities calling for stock buybacks or increased dividends. While these high-profile campaigns can lift share value, they are often criticized as focusing heavily on short-term financial gains to the detriment of long-term interests and the broader needs of all stakeholders, including employees, customers and the surrounding community.

Elsewhere in the world, however, "shareholder activism" can mean something very different and workers and the community are put first as pressures are brought to bear on companies to change corporate or social behavior. Concerns for the environment, human rights and politics have been effectively aired through such activist shareholder campaigns.

Investor campaigns for social change in the US are common but are overshadowed by the big money at play in the hedge-fund variety. Meanwhile, the US experience of shareholder activism, while it has so far failed to take root in most other countries, remains a growing influence, and is helping reshape corporate structure and financial markets across the globe.

Time to brace for activist surge

By **ANDREW GARFIELD** and **KATIE IOANILLI**

A WAVE OF SUCCESSFUL shareholder activism has long been anticipated in Europe, modeled on the US experience. But differences in rules and culture keep activism muted, even as campaigns in the US have soared. High-profile US-based activists such as Thomas Sandell, Dan Loeb and Carl Icahn have all had tilts at well-known European companies over the past two years, but so far these have largely fallen flat. Ego-driven contests just don't have the same sex appeal as they do in the US.

The result is that some management teams have a false sense of confidence, to the point of complacency, when they should really be bracing for an activist challenge.

Europe, of course, is not one homogenous place, but a patchwork of differing jurisdictions, corporate cultures and legal frameworks. From the US perspective, the UK is often seen as an entry point to Europe: it shares the same language, a familiar legal system and a large number of quoted companies, many already well known to US investors. But those similarities can be deceptive. UK corporate governance is generally good, and in many respects even more evolved than the US. Companies enjoy healthy dialogue with shareholders and, with UK governance rules mandating independent chairmen and a senior independent director as points of contact for disgruntled shareholders, noisy US-style activism is seen as a last resort.

In countries such as France or Italy, minority shareholders are more often expected to know their place. While companies may appear to be susceptible, they can generally rely on pliant domestic shareholders and strong support from local sympathizers in the media, politics and labor unions.

Homegrown activists, such as Stockholm-based Cevian, advocate a more genteel style, relying on private talks with corporate management, which they say work better in Europe than confrontational media campaigns. In fact, European companies may have more to fear from growing agitation within their traditional shareholder base, than from big US activist investors. Blue-chip corporations such as Shell, UBS and Deutsche Bank have had to deal with a rising tide of protest votes over governance issues such as boardroom pay.

However, the opportunities for activism are just as present in the UK and continental Europe as in the US. Activists are drawn to companies with, among other things, significant underperformance compared with peers, underutilized cash on the balance sheet, insufficient focus on returns and unwieldy portfolios – all factors that are just as common among European companies.

In 2015, Scotland-based investment company Alliance Trust bowed to pressure to accept activist Elliott Advisors' board nominations after a loud public campaign highlighted serial underperformance by the management team led by the seemingly unimpeachable CEO Katherine Garrett-Cox, a Veuve Clicquot Business Woman Award winner. Also in 2015, the France-based global media and telecoms giant Vivendi averted a hostile shareholder meeting only by agreeing with US activist investor Peter Schoenfeld to review strategy.

Challenges from US or international hedge funds are only likely to increase, however slowly. In such a landscape, complacency among European companies appears misplaced. Instead they would be wise to gather intelligence about their shareholders and assess their vulnerability.

ANDREW GARFIELD is a Brunswick Partner and **KATIE IOANILLI** a Director. Both are based in the London office.

ILLUSTRATIONS: MICHAEL BRANDON MYERS