

## **“Be your own activist”:**

How boards can develop an activist mindset to drive secure value

# Formulating your company's strategic response to the activist environment

Activist investors aren't a new phenomenon—but recently, the combination of a favorable regulatory environment and an abundance of funds to invest means they've become a force to be reckoned with, and now they're here to stay.

## Shareholder activism in South Africa

In 2018, global shareholder activist campaigns hit record highs. The tightening of regulations, along with shifting investor sentiment has provided a platform for shareholders to exercise their power, calling for greater accountability in boardrooms.

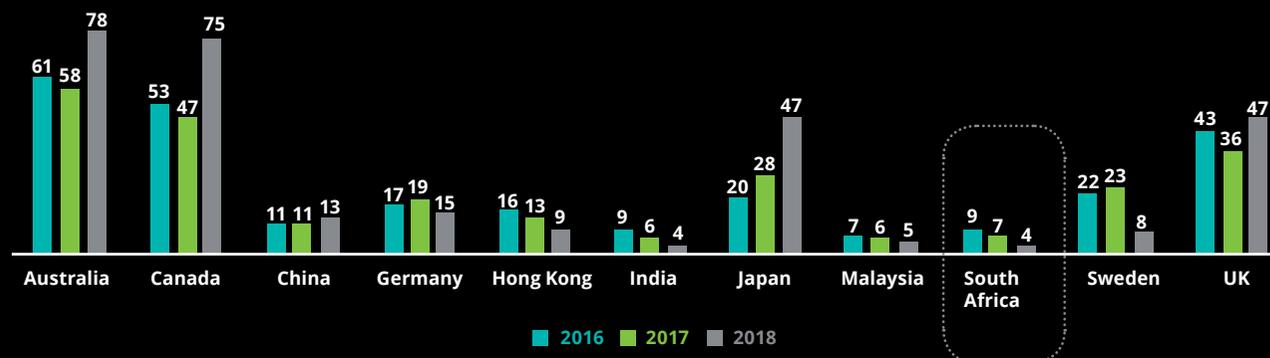
Nearly US\$300bn of activist investor funds were deployed to shareholder activist campaigns<sup>i</sup>, on the back of rising global campaigns which saw a 47% increase in this growing trend of corporate activism.<sup>ii</sup>

Although these campaigns tend to have a deepened focus in the United States (US) and the United Kingdom (UK), shareholder activism has started to find fertile ground in South Africa.

In the past year, the JSE All Share Index lost significant value as corporate scandals and other macro-economic events saw the destruction of shareholder value. Companies such as industrial trading group, Howden Africa Holdings, saw rising tensions between minority shareholders and the board, after the company said it will proceed with the decision to delist, despite shareholders outwardly challenging the companies scheme of arrangement.<sup>iii</sup>

According to the Activist Investing Annual Review 2018 report, developing countries such as China, India and Malaysia have all been targets of activist campaigns. In Africa, ten companies were publicly subjected to activist demands, with most campaigns taking place in South Africa in 2018 (see Figure 1).<sup>iv</sup>

**Figure 1: Number of activist targets, by company headquarters**



Source: The Activist Investing Annual Review 2018/19

In this document, we'll show you how boards can learn from the "activist mindset" to pinpoint opportunities for action—and how Deloitte can help boards with their self-assessments to support their value-creation activities.

# An African lens on shareholder activism.

Despite still being in its infancy in South Africa, rising shareholder activism requires companies to pre-empt the environmental, social and governance (ESG) issues that may arise, and to develop a co-ordinated response to these.

Some of the current trends we expect to shape South Africa's shareholder activist landscape in 2019 include:



## Regulation<sup>v</sup>

The bedrock of shareholder activism regulation is articulated in the South African Companies Act 71 of 2008. It contains provisions related to shareholder rights, activism and engagement. In addition, the recent release and development of the King IV Report on Corporate Governance also provides policy guidelines and advocacy tools for shareholder activists. However, implementing these regulations at a company-level remains the primary challenge for most corporates. Concerns around governance, transparency and accountability will need to be supported by legislative frameworks to equip executives with activist approach tactics.<sup>vi</sup>



## Proxy advisors

Employing tactical support strategies from advisors in activist situations will be fundamental to securing a support base for the board to buffer against shareholder activism. Institutional investors such as bankers, proxy solicitors and experienced advisors are fundamental support structures to employ when dealing with activists. Companies should thus engage directly with institutional investors to leverage this support base. Receiving buy-in from institutional investors will have a significant influence in the decisions corporates take, as institutional investors have the financial capacity to influence decisions at board level.<sup>vii</sup>



## Trade unions

South Africa has strong trade unions and in the past these unions have had profound impact on how deals have been structured. Opposition from labour unions is likely to effect the outcomes of M&A activity, as they contend with employment related risks. Still, there is a need for further consultations with trade unions to implement and understand the risks dissenting shareholders and labour force could pose on strategies and corporate governance.<sup>viii</sup>



## M&A-related activism

Shareholder activism in the M&A environment in South Africa has been subdued, but global trends suggest that shareholder activists are showing increased interest in sourcing and advocating for M&A deals. South Africa is likely to deepen its activism in this space, placing more pressure on companies to deliver on organic growth strategies.<sup>ix</sup>



## Executive pay, performance and shareholder alignment

Executive pay can be the “match” that lights the fire when it comes to activism and is more frequently being scrutinised and questioned by shareholders. This is especially the case when there appears to be poor correlation between value creation, shareholder return and executive pay. Deloitte analysis suggest that shareholders do have a valid basis on which to challenge the current construct of pay versus performance.

# Understanding the activist mindset

While activists may pursue a range of strategies and tactics, their approaches are often based on a common set of beliefs. As part of the journey to “becoming your own activist,” boards must first understand the views that motivate activists.

In our work to define the activist mindset, we’ve distilled some of the prevalent views that may tie together activist approaches. These include:

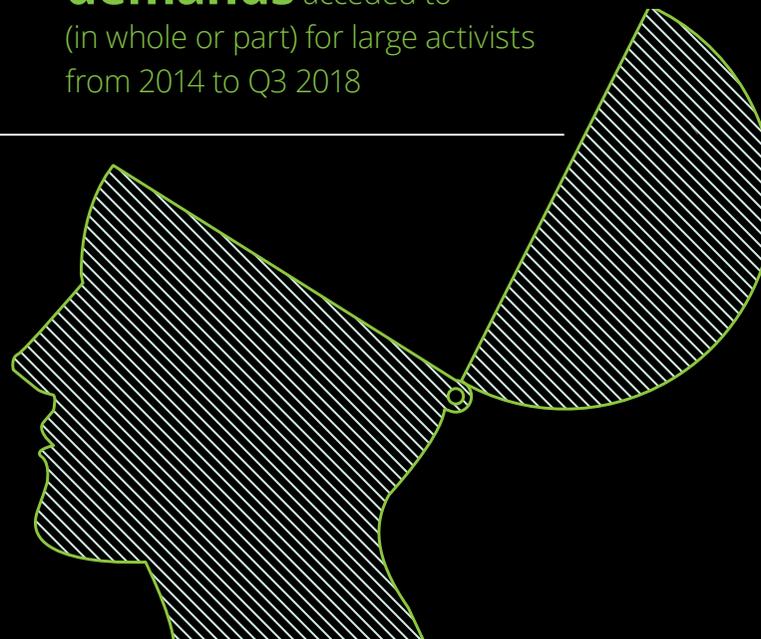
- **Sooner is better than later:** Making proactive change now rather than delaying tough decisions or waiting for the future to unfold
- **Rewards of real challenge outweigh the risks:** Driving dramatic change in strategy is comparatively high risk and low return for board members; the risk is not the same for activists
- **Margin over revenues:** Management can suffer from a ‘bigger is better’ bias—sometimes at the expense of profitability and margin
- **Be open to outside perspectives:** Energy is best spent on transformation, not battling to prevent outside influence
- **Facts don’t lie:** Activists are much less likely to be swayed by interpretations and narrative, instead focusing on “the cold hard facts” that show the true economics of a business and ensure the financial transparency to see them
- **Straightforward can be best:** The highest rewards can sometimes be obtained by basic and tactical interventions, instead of complex, higher-order strategies
- **Target efforts effectively:** While boards may focus at business-unit level, the most effective solutions may reside at the sub-division level—and efforts at the ‘wrong’ level can erode significant shareholder value



Almost **3x growth** in activist investor funds deployed from 2012 to Q3 2018



Over **70% of activist demands** acceded to (in whole or part) for large activists from 2014 to Q3 2018



# Understanding the facts that drive the activist mindset

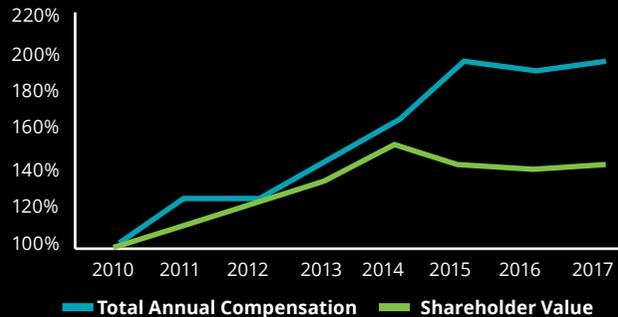
## Shareholder return and executive pay example

**Figure 2: Total annual cash compensation (top two executive positions) versus shareholder returns in South Africa**

### Top 250 Companies JSE



### Top 250 Companies JSE\*\*



Source: Deloitte Executive Compensation Report, 2018

\* These positions are the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO).

\*\* This excludes the top ten largest multinational companies on the JSE. This is as their very large size, international footprints, influences and fortunes, have dominated the overall shareholder value and company performance (turnover, headline earnings) indices (e.g. Naspers).

It appears that executive pay has been resilient in the face of varying company performances. Although, it could be argued that the trends in shareholder value and company performance have been largely dictated by economic and market conditions, this is not the case in executive pay which has been resilient over time and has essentially doubled over the period under review.<sup>xx</sup>

Increased shareholder dialogue to further challenge executive pay stakeholders where there is misalignment is expected, with King IV™ recommending that the board oversees ongoing dialogue with shareholders based on a mutual understanding of what performance and value creation in the company should be and how this relates to executive pay. Boards will increasingly need to be able to answer difficult questions and take pre-emptive actions to ensure that the link between pay and performance is effectively articulated and demonstrated to avoid unwanted or unwarranted activism.

<sup>x</sup>Deloitte US. (2019). "Be your own activist: How boards can develop an activist mind-set to drive and secure value." Retrieved from <https://www2.deloitte.com/global/en/pages/finance/articles/activist-shareholder.html>

<sup>y</sup>Weingarten, M., Klein, E., Crawford, A., Gold, B. (2019). The Activist Investing Annual Review. Retrieved from <https://www.srz.com/images/content/1/5/v2/155375/The-Activist-Investing-Annual-Review-2018-HiRes.pdf>

<sup>z</sup>Gunnion, S. (2019). "Howden to proceed with delisting despite opposition." Retrieved from <http://www.inceconnect.co.za/article/howden-to-proceed-with-delisting-despite-opposition>

<sup>aa</sup>Weingarten et al. (2019).

<sup>ab</sup>Crotty, A. (2018). "How 'new' Companies Act is no aid to shareholder activists" Retrieved from <https://www.businesslive.co.za/bd/business-and-economy/2018-08-02-how-new-companies-act-is-no-aid-to-shareholder-activists/>

<sup>ac</sup>Katz, D., McIntosh, L., Rosen, W. (2017). Corporate Governance Update: Preparing for and Responding to Shareholder Activism in 2017. Retrieved from <https://corpgov.law.harvard.edu/2017/03/24/corporate-governance-update-preparing-for-and-responding-to-shareholder-activism-in-2017/>

<sup>ad</sup>Ibid

<sup>ae</sup>Davids, E., & Ntamane, X. (2018) The Law Review: The shareholder rights and activism review. Retrieved from <https://thelawreviews.co.uk/edition/the-shareholder-rights-and-activism-review-edition-3/1173731/south-africa>

<sup>af</sup>Ibid

<sup>ag</sup>Deloitte South Africa. (2018). "Deloitte Executive Compensation Report". Retrieved from <https://www2.deloitte.com/za/en/pages/human-capital/articles/executive-compensation-report.html>

# How to be your own activist—and how Deloitte can help

One of the most significant strengths activists have is that, coming from outside a company, they are unencumbered by inertia, vested interests, and emotional attachments.

Companies might want to consider looking at themselves in a similarly detached way, to spot weaknesses and unexploited opportunities, and root out inefficiencies that can detract from shareholder value.

Deloitte can help companies carry out **self-assessments** to support their value creation opportunities, divestments, and “disruptive” M&A, which targets small, fast-growing businesses and technologies to capture innovation-led growth. We’ve identified **nine key areas** a board should consider.



## Shareholder returns and executive pay

Relative weakness compared to peers and benchmarks for the sector makes it essential for the management team to understand what’s driving underperformance. Additionally executive pay vs performance should correlate and be effectively articulated and demonstrated.



## 2. Capital structure

Management should ensure that capital structures, and the nature and levels of debt, don’t provide openings for undue activist influence.



## 3. Commercial positioning

Challenging the company’s commercial direction and performance, meaning validation of the underlying assumptions powering a strategy is crucial.



## 4. “Less than the sum of its parts?”

When the synergies between business units and divisions are not apparent, the company should challenge the value-add of expensive central corporate management structures and functions.



## 5. Business unit performance

Management should routinely examine underperforming business units and look to either improve performance or divest those business units.



## 6. End-to-end operational potential

When big changes—such as transformational IT projects—are stymied, and a company’s assets or people are ineffectually utilized, shareholders may look for other perspectives about how to make the most of their invested capital.



## 7. Cash focus

The choices management makes in addressing any surplus cash can influence how and whether an activist campaign gains a foothold.



## 8. Value creation plan, communication, and delivery

A coherent and comprehensive value creation plan can provide a logical, fact-based perspective on where to look and what to do, as well as the financial benefits and practical steps required.



## 9. Board composition and governance

A regular, integrated board assessment is a helpful way to identify challenges in oversight, capabilities, and structure related to the governance regime in which the company operates.



To download the full Shareholder Activism report, [click here](#)

For more information on Disruptive M&A, [click here](#)

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