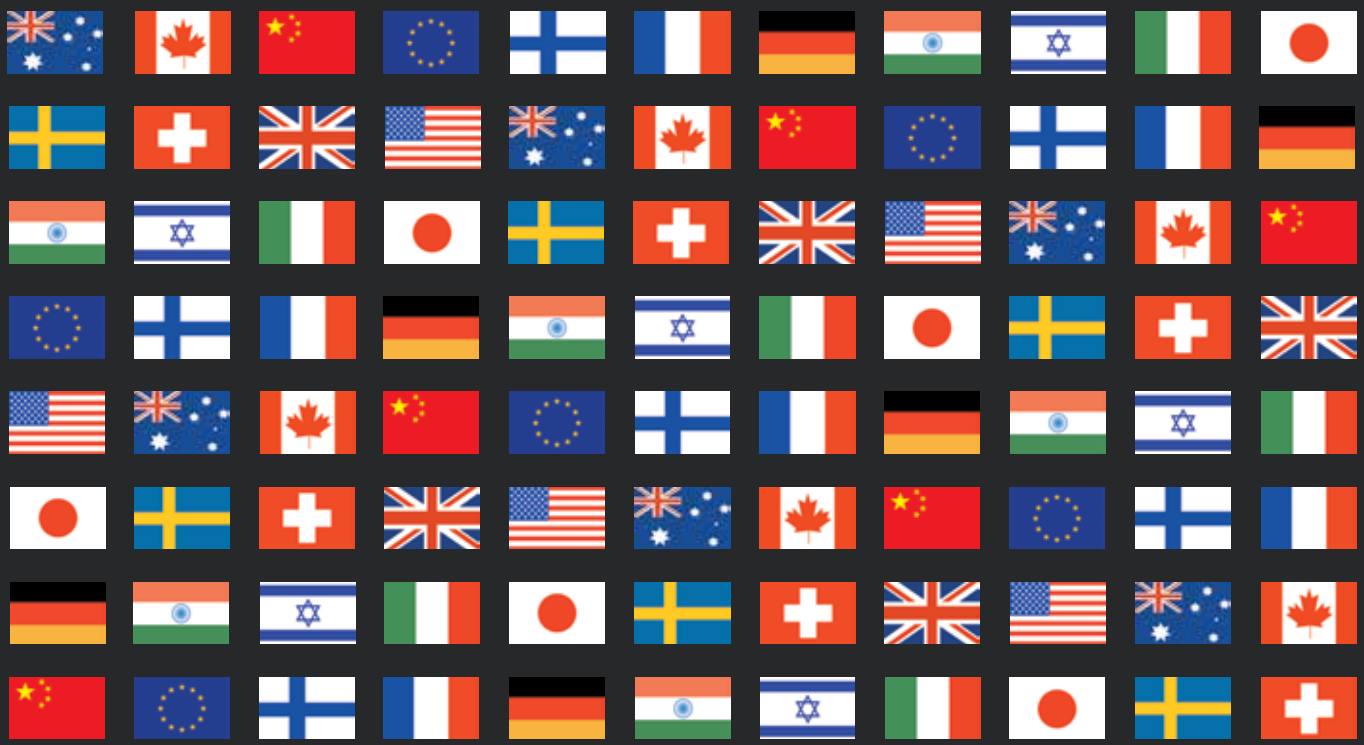
Shareholder Activism & Engagement

Contributing editors
Arthur F Golden, Thomas J Reid and Laura C Turano



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GETTING THE DEAL THROUGH

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Shareholder Activism & Engagement 2016

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Israel

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General

1 What are the primary sources of laws and regulations relating to shareholder activism and engagement? Who makes and enforces them?

The main source of law relating to shareholder activism and engagement is the Israeli Companies Law, 5759-1999 (the Companies Law), which governs Israeli corporate law generally and provides certain basic rights to shareholders with regard to the companies in which they hold shares. The Companies Law provides that a single shareholder who holds at least 1 per cent of the voting rights in a company has the authority to request that the company's board of directors include a subject on the agenda of a general shareholder meeting. In addition, a single shareholder who holds at least 5 per cent of the voting rights in a company has the authority to convene an extraordinary general shareholder meeting at his or her request.

Various regulations promulgated by the Israeli Ministry of Justice under the Companies Law supplement the legal rules related to shareholder activism, and explicate when and how the provisions of the Companies Law apply to shareholders of public companies.

Additional sources of regulations, relating to shareholder activism for Israeli financial institutional shareholders (the most active players in the Israeli capital market) in particular, are:

- the Joint Investments in Trust Law 1994;
- the Ordinance Supervision of Financial Services (Provident Fund) (Participation of Managing Company at a General Meeting) 2009; and
- the Circular for Financial Institutions of the Capital Market, Insurance and Savings promulgated by the Israeli Ministry of Finance.

These sources stipulate, among other things, that institutional shareholders have a duty to participate in general shareholder meetings, and to invest adequate resources to supervise the companies in which they invest. The legal duty set forth in these sources derives from the ability of financial institutions (which receive the capital of the broad public for investment and which therefore hold a relatively large stake in public companies) to influence decisions taken at shareholder meetings, and from their commitment to ensure the highest possible yield on their members' funds.

Further sources are the guidelines that the Israeli Securities Authority (ISA) publishes from time to time, especially with regard to the involvement of institutional entities in the Israeli capital market.

2 What are the other primary sources of practices relating to shareholder activism and engagement?

Institutional entities often rely upon advisory firms, such as Entropy and Emda, for detailed analysis and guidance concerning voting at shareholder meetings. These firms examine the proposals on the agenda of a shareholder meeting and recommend how to vote. The advisory firms analyse the specific resolutions that are to be discussed at a general meeting, formulate a methodology for determining recommendations and formulate informed positions for their clients, the institutional shareholders.

The guidelines published by the advisory firms have significant influence in that institutional shareholders' votes may, in many cases, be a deciding vote that determines whether a particular proposal is approved. Moreover, the recommendations of the advisory firms may have an impact on the corporate governance standards prevailing among public companies.

3 Are some industries more or less prone to shareholder activism? Why?

There are no particular industries that have been subject to shareholder activism in a more intense manner than others.

4 What are the typical characteristics of shareholder activists in your jurisdiction?

The shareholder activists are mainly the institutional entities, which, as described above, are obligated to participate in shareholder meetings. They invest funds received from the broad public and are generally long-term investors. They are generally among the largest independent shareholders that are not affiliated with the companies in which they invest.

In addition, in recent years, there has been a constant increase in the number of derivative actions brought by individual shareholders (not necessarily large shareholders) against directors and officers of public companies.

5 What are the main operational, governance and sociopolitical areas that shareholder activism focuses on?

In Israel, because there are heavy protections for shareholders that are already built into the Companies Law with respect to various matters, shareholder activism tends to be limited to those areas for which those protections do not exist or are first being developed. In certain other areas, the corporate and legal norms accept certain practices, and shareholder activists have not yet challenged such practices.

In the realm of governance, for example, board term limits are imposed by the law for statutory external (independent) directors, who may only generally serve up to three terms of three years each (subject to leniencies for certain companies only listed outside of Israel). No such term limit exists for non-external (ordinary) directors, and there has been no activist shareholder movement to seek such term limits. Instead, activist shareholders look at the particular credentials and record of individual directors before determining whether to vote for or against their re-election. Executive compensation has grown as a hotter topic for Israeli shareholder activists in recent years, based in part on the enhanced disclosure requirements in the United States (where many Israeli public companies are traded, and which therefore exerts a significant influence as to governance practices in Israel). This has led to heightened disclosure requirements in Israel as well, even (most recently) among Israeli public companies that are traded only outside of Israel (and which are generally otherwise exempt from Israeli-based disclosure requirements).

The law itself also builds in certain anti-takeover protections that protect incumbent boards of directors and limits activist shareholders' means of mounting a hostile takeover. Under the Companies Law, in order to consummate a complete tender offer and squeeze out the minority, an acquirer must receive enough tenders of shares such that:

- the remaining, non-tendering shareholders hold less than 5 per cent of the outstanding shares; and
- a majority of the disinterested shareholders tender in response to the offer.

The foregoing second condition need not be achieved if, upon consummation of the tender offer, the acquirer holds greater than 98 per cent of the outstanding shares. If the relevant foregoing conditions are met, all outstanding shares of the target company will automatically be transferred

to the acquirer and the public company will be transformed into a private one, regardless of whether there are minority shareholders who declined to tender. However, the minority shareholders who refuse to tender and whose shares are automatically transferred to the acquirer are still entitled to petition the court for assessment and payment (by the acquirer) of the true value of their shares on the grounds that the complete tender offer was consummated at a price that does not constitute a fair price for their holdings. If the foregoing conditions are not met, the acquirer cannot acquire more than 90 per cent of the target company's outstanding shares or voting rights, in order to maintain a minimum public float for liquidity purposes.

Because a complete tender offer is complex and difficult to achieve, in recent years, reverse triangular mergers have become popular in the Israeli capital market. They require approval by a majority of the votes of shares represented at the meeting of shareholders that are held by parties other than the other party to the merger, or by any person (or group of persons acting in concert) who holds (or hold, as the case may be) 25 per cent or more of the voting rights or the right to appoint 25 per cent or more of the directors of the other party. If, however, the merger involves a merger with a company's own controlling shareholder or if the controlling shareholder has a personal interest in the merger, then the merger is instead subject to a special majority approval among the disinterested shareholders. Despite the foregoing approval requirements, mergers pose the distinct advantage for the acquirer that the Companies Law does not require him, her or it to obtain approval from a vast majority of shareholders, as is the case with a tender offer. Furthermore, objecting shareholders do not have the right to obtain an assessment of the fair value of their shares in a merger.

Recently, during a reverse triangular merger, a single public shareholder appealed to the court for prevention of discrimination against public shareholders. The plaintiff claimed that the controlling shareholder received a benefit that the other, public shareholders did not receive. The plaintiff's main argument was that the distribution of merger consideration was not equitable and that the court must intervene and order the distribution of the surplus deemed to have been paid to the controlling shareholder. The court decided to intervene in the transaction, and ruled that the value of the benefit should be divided among all shareholders.

In addition to reverse triangular mergers, in recent years, several individual shareholders of large public companies that were acquired via leverage buyouts have argued that the massive dividends distributed following the buyouts were designed to serve the interests of the controlling shareholders in the short term rather than to serve the best interests of the company. In most cases, these individual plaintiffs have not obtained the support of traditional large shareholders for their claims.

Company-specific anti-takeover defences also exist, in varied popularity among public companies, such as supermajority voting requirements in companies' articles of association for changes to the means or method for election of directors. Poison pills are generally absent, as their legal validity has not been confirmed in Israel (and companies listed on the Tel Aviv Stock Exchange are only allowed to have one class of voting shares). Staggered boards of directors (where directors are elected on an alternating basis, generally for three-year terms each) are commonplace among small and medium-sized public companies (at least at the initial stages of their lives as public companies) and have not generally been challenged by activist shareholders at that stage.

In the realm of operations, the use of corporate funds for the declaration of dividends (and share buy-backs, which are treated similarly to dividends under the Companies Law) is limited under the Companies Law. Dividends and share buy-backs may generally be paid only from a company's profits and other surplus funds, as defined in the Companies Law, as of the end of the most recent year or as accrued over a period of two years, whichever is greater, and there must be no reasonable concern that payment of a dividend (or share buy-back) will prevent a company from satisfying its existing and foreseeable obligations as they become due. Those limitations prevent activist shareholders from demanding dividends or share buybacks when it is not possible legally. Acquisitions and divestitures generally do not require shareholder approval under the Companies Law, and there is therefore no activist shareholder movement that pressures boards of directors to enter into such transactions (other than the threat of not being re-elected or a hostile takeover for a complacent, inactive, incumbent board).

Shareholder activism in Israel generally does not focus on sociopolitical topics such as environmental concerns or political spending or lobbying.

Shareholder activist strategies

6 Describe the general processes and guidelines for shareholders' proposals.

Under the Companies Law, a single shareholder that holds at least 1 per cent of the voting rights in a company has the authority to request that the board of directors include a subject (including the election of the shareholder's proposed director nominee or nominees)) on the agenda of a shareholder meeting. Recently adopted regulations further explain this right and provide for a three-day or seven-day period (depending on the scheduled agenda items for the meeting) following publication by the company of the meeting notice for shareholders to submit their proposals or director nominations. The board can also provide preliminary notice that it intends to publish notice of a shareholder meeting at least 21 days prior to actually publishing the meeting notice, in which case shareholders have 14 days to respond and submit to the company proposals for the agenda or their own director nominees. If a shareholder proposal includes the election of the shareholder's nominee or nominees, the requesting shareholder must comply with particular procedural and documentary requirements. The board may, at its discretion, reject shareholder proposals that it deems are not appropriate to be decided upon at a shareholder meeting. Any shareholder proposal or director nominees submitted to the company and not rejected by the board must be included by the company in the shareholder meeting materials (notice or revised notice, as applicable, proxy statement and proxy card) being sent to shareholders. Shareholders cannot raise a proposal at a shareholder meeting if the proposal was not added to the agenda prior to the meeting pursuant to the foregoing procedure. However, there is nothing to prevent shareholders from expressing their opinions during a meeting with regard to topics that are already on the agenda. In addition, shareholders have the right to submit a position paper to the company in respect of certain types of proposals, which the company must publish prior to the meeting.

Shareholder decisions are generally binding in Israel, unless a proposal provides the board with discretion as to whether (and to what extent) to implement the decision. Under the Companies Law, decisions regarding the following matters must be taken by shareholders:

- amendments to articles of association;
- appointment or termination of the company's auditors;
- election of external directors;
- approval of certain related party transactions;
- increases or reductions of authorised share capital;
- a merger by the company; and
- the exercise of the board of directors' powers by a shareholder meeting, if the board of directors is unable to exercise its powers and the exercise of any of its powers is required for the proper management of the company.

7 What common strategies do activist shareholders use to pursue their objectives?

Under Israeli law, shareholders have the right to access corporate records, including: minutes of general meetings of shareholders; the company's shareholders register and principal shareholders register; the articles of association; annual audited financial statements; and any document that a company is required by law to file publicly with the Israeli Companies Registrar or the Israel Securities Authority. In addition, shareholders may request to be provided with any document related to an action or transaction requiring shareholder approval under the related party transaction provisions of the Companies Law. A company may deny this request if it believes it has not been made in good faith or if such denial is necessary to protect the company's interest or protect a trade secret or patent. Access to the foregoing documentation assists activist shareholders in pursuing an effective campaign for a change in corporate policies, governance or control of the company. Activist shareholders may also act by petitioning regulators, such as the ISA or the supervisor of Israeli banks, in order to pursue their objectives. In recent years, many shareholders have taken advantage of their right to submit derivative lawsuits on the company's behalf, mostly against office holders (directors and officers) of the company.

8 May shareholders call a special shareholders' meeting? What are the requirements? May shareholders act by written consent in lieu of a meeting?

An individual shareholder of a public company who holds at least 5 per cent of the issued capital and at least 1 per cent of the voting rights; or at least

5 per cent of the voting rights, has the right to demand that the board of directors convene an extraordinary general meeting of shareholders.

Shareholders are allowed to vote at a meeting via a proxy submitted in one of a number of manners, including the internet, telephone or fax, without having to physically attend a meeting or send an authorised representative. However, action via written consent in lieu of a meeting is not allowed for shareholders of a public company.

9 May directors accept direct compensation from shareholders who nominate them?

In February 2015, the ISA published a position paper under which it expressed its view that payment of compensation to an office holder (including a director) of a company by a controlling shareholder of the company does not contradict the technical aspects or spirit of Israeli law and is therefore legitimate. A company is not harmed by such an arrangement, since the Companies Law imposes duties of trust and care for such office holders towards the company anyway. Notwithstanding the foregoing, with regard to banks and institutional entities, the Companies Law stipulates certain restrictions on a compensation payment for an office holder who receives it directly from a shareholder who nominated him or her. In any such case, such a direct compensation payment must be reported immediately to the bank's or institution's regulator.

10 May shareholders nominate directors for election to the board and use the company's proxy or shareholder circular infrastructure, at the company's expense, to do so?

See question 6. Under the Companies Law, a single shareholder who holds at least 1 per cent of the voting rights in a company has the authority to request that the board of directors include the election of the shareholder's proposed director nominee or nominees on the agenda of a shareholder meeting. In Israel, the company would need to include the election of the shareholder's nominee in the company's proxy materials (proxy statement and proxy card) for the meeting. The company need not provide the shareholder with access to the company's proxy or shareholder circular infrastructure (even if the shareholder is willing to pay for it). However, because of a shareholder's right to access corporate records (see question 7), which includes shareholder lists, a shareholder can independently reach out to the company's shareholders and hire its own proxy solicitor to assist in doing so.

11 May shareholders bring derivative actions on behalf of the corporation or class actions on behalf of all shareholders? What defences against, or policies regarding, strike suits are applicable?

Any shareholder has the right to initiate a derivative action on behalf of the company. The company may reject the plaintiff's request. However, the shareholder can then file the derivative action anyway based on the approval of the court. A court may approve the bringing of such a suit to the extent that it is convinced that such a suit is indeed in favour of the company, and that the plaintiff has acted in good faith. In addition, class action legislation passed by the Israeli Knesset in 2006 provides arrangements for filing and managing class action lawsuits on behalf of all shareholders of a company. As a prerequisite to a court's willingness to hear a class action, a shareholder must first submit a request to file a class action. Such a request is examined in light of the suitability of the lawsuit to be a class action; the suitability of the plaintiff and his, her or its lawyers as adequately representative of the represented group; and the extent or amount of damages that the class action may bring to the public.

Recently, the Israeli Supreme Court ruled that damage caused by an act of a corporate body (such as the board of directors) to a company's securities, which leads to a decline in the value of the company's securities, does not grant a holder of the company's securities the right to a personal claim, but rather only the right to bring a derivative action on behalf of the company.

Company response strategies

12 What advice do you give companies to prepare for shareholder activism? Is shareholder activism and engagement a matter of heightened concern in the boardroom?

We generally advise companies to maintain open lines of communication with their larger shareholders, to anticipate problems before they arise. In particular, before seeking approval of a related party transaction, companies should initiate contacts with their larger shareholders, to try to convince them of the fairness of the transaction at the earliest opportunity.

13 What structural defences are available to companies to avoid being the target of shareholder activism or respond to shareholder activism?

Various company-specific structural antitakeover defences are permitted under Israeli law, and they tend to have different degrees of popularity among public companies. Staggered boards of directors (which typically provide for a three-year term for each director) are commonplace among small and medium-sized Israeli public companies, especially those that have only recently gone public. Supermajority voting requirements for any change to the means or method for election of directors under a company's articles of association are also common as an additional support to a staggered board. Dual-class stock may be employed by an Israeli public company so long as the company is not listed on the Tel Aviv Stock Exchange (although it has been uncommon). Poison pills are generally absent as a structural defence, as their legal validity has not been confirmed in Israel.

In addition, as described in question 5, various anti-takeover defences are already built into the Companies Law itself, such as:

- the prohibition on acquiring more than 90 per cent of a company's outstanding shares unless the acquirer meets the requirements related to consummation of a complete tender offer and the 'squeezing out' of minority shareholders;
- the approval requirements for consummation of a merger (which exclude the acquiring party and its affiliates from being counted towards the requisite special majority);
- the special tender offer requirements, which provide that an acquisition of shares must generally be made by means of a special tender offer if it results in an acquirer becoming a holder of 25 per cent or more, or in excess of 45 per cent, of the outstanding voting rights in a company (assuming that there is no other current shareholder of the company who holds 25 per cent or more, or in excess of 45 per cent, of the voting rights in the company); and
- the required election of external directors who serve for a three year term and who cannot be replaced absent extraordinary circumstances that are specifically described under the law (although the vote of a controlling shareholder is not counted in determining whether an external director has been elected, which tends to work against the re-election of entrenched external directors who are sympathetic to a controlling shareholder and instead assists an insurgent activist shareholder to have its external director nominees elected).

A company that lacks several of the antitakeover defence mechanisms described above and also lacks a current controlling shareholder tends to be the most vulnerable to shareholder activism or a takeover attempt.

14 May shareholders have designees appointed to boards?

Shareholders can have designees elected to a public company's board of directors, so long as such appointment is consistent with the company's articles of association. An agreement by a company to nominate and elect an activist shareholder's nominee is typically memorialised in a shareholders' agreement by and among the company and its significant shareholders, if there are any substantial existing shareholders, and if they support such an arrangement. If there are no significant shareholders, or if they are unwilling to be party to such an agreement, such an undertaking by the company to nominate an activist shareholder's nominee would take the form of an agreement with the company, approved by its board of directors, but with no assurance that the nominee would be approved by the company's shareholders.

Typically, an undertaking by the company to nominate an activist shareholder's nominee would include a condition that requires the shareholder to maintain at least a certain minimal level of percentage ownership in the company in order to retain its board nomination right. Such an agreement may impose standstill protections on the activist shareholder that would prevent it from increasing its holdings in the company's shares for so long as it is party to such an agreement that provides it with board nomination rights. The company would be required to disclose such an agreement with an activist shareholder pursuant to its public reporting requirements under Israeli or foreign securities laws that are applicable to the company.

Update and trends

Recent years have seen a significant increase in the number of shareholder derivative actions filed on behalf of public companies against the company's office holders on issues relating to dividend payments and related party transactions. Executive compensation disclosure has similarly been the subject of shareholder activism and engagement, which has led to the adoption of enhanced executive compensation disclosure requirements, even for companies that are only traded outside of Israel.

Disclosure and transparency

15 Are the corporate charter and by-laws of the company publicly available? Where?

Yes. A public company's articles of association (and, if applicable, its memorandum of association) are required to be filed by the company, and are publicly available, on the websites of the Tel Aviv Stock Exchange (TASE) (Maya, at www.tase.co.il/Eng/Pages/Homepage.aspx) and the ISA (Magna, at www.magna.isa.gov.il/Default.aspx?l=en).

16 Must companies, generally or at a shareholder's request, provide a list of registered shareholders or a list of beneficial ownership? How may this request be resisted?

Yes. Under the Companies Law, a company must make a list of its record shareholders available (including a list of shareholders who hold 5 per cent or more of the company's issued and outstanding shares or voting rights) to any shareholder who requests it. Nevertheless, it is not clear under the law that a company must provide a list of the underlying beneficial owners of its shares (ie, including names of shareholders who hold shares on the open market in 'street name').

17 Must companies disclose shareholder engagement efforts or how shareholders may communicate directly with the board? Must companies avoid selective or unequal disclosure?

There is no right for individual shareholders to communicate with the board under the Companies Law or the Israeli Securities Law 1968 (the Securities Law), and there is therefore no obligation for a company to publish how shareholders may get in touch with the board. If a shareholder meets the requirements of the Companies Law for, and exercises its rights related to, the proposal of an agenda item or the nomination of a director candidate (see question 6), the shareholder can send its position paper concerning the proposal or nominee to the company, and the company is required to publish it (via the company's public reports to the relevant securities authorities). In any such scenario or in any other scenario involving communication between a company or board and the company's shareholders, the company must disclose any material information that it has received from or provided to any of the shareholders to all shareholders. That stems from a company's obligation to maintain equal information for all participants in the marketplace, despite the absence of any Regulation FD-type obligation for a public company in Israel.

18 Do companies receive daily or periodic reports of proxy votes during the voting period?

Israeli public companies that are traded on the TASE typically receive completed proxy cards directly from their shareholders a couple of days before a shareholder meeting. A report conveying the results of voting on the electronic voting system operated by the ISA is delivered to the company only after the electronic voting system closes, immediately prior to the meeting. Israeli public companies that are traded outside of Israel typically receive daily reports as to proxy votes during a voting period, to the extent that their foreign counterparts traded in the foreign jurisdiction receive them as well. This enables companies to engage in communication with shareholders and to try to convince them to change their vote at any time prior to the close of the voting period (which is typically 48 hours prior to the shareholder meeting under a company's articles of association, subject to extension at the discretion of a company's chairman of the board). There is no current movement towards making proxy voting confidential in Israel or to providing shareholders of Israeli companies with the same information concerning voting results that the company receives.

19 Must shareholders disclose significant shareholdings?

Only 'stakeholders' (shareholders who hold 5 per cent or more of a public company's issued and outstanding share capital) must disclose their significant shareholdings. They do so by sending a beneficial ownership report to the company that the company is required to publish on the websites of the TASE and the ISA. This report must be sent by the stakeholder to the company within one trading day after acquiring 5 per cent ownership, and immediately after any subsequent change in the stakeholder's ownership. If the stakeholder fails to comply with these requirements, the Israeli courts are authorised to order the stakeholder to fulfil its reporting obligations, and, under certain conditions, to order a trading halt in the securities of the company if the stakeholder does not comply. The stakeholder can also be subject to criminal sanctions, including monetary fines or imprisonment of up to two years, for failure to report shareholdings or changes in ownership. The company itself can also be subject to monetary fines if it does not publish the ownership of the stakeholders in the company.

An additional shareholder ownership reporting requirement arises under article 36b of the Israeli Banking Law (Licensing), which requires that shareholders who hold more than 1 per cent of the means of control of a banking corporation that lacks a controlling shareholder must disclose their shareholdings to the bank.

20 Are shareholders acting in concert subject to any mandatory bid requirements in your jurisdiction?

Shareholders that act in concert are subject to the same mandatory bid requirements that govern acquisitions of shares by individual shareholders under the Companies Law. Therefore, an acquisition of shares must generally be made by means of a special tender offer if it results in a group of shareholders acting in concert becoming the collective holders of 25 per cent or more, or in excess of 45 per cent, of the outstanding voting rights in a company (assuming that there is no other current shareholder of the company who holds 25 per cent or more, or in excess of 45 per cent, of the voting rights in the company).

21 What are the primary rules relating to communications to obtain support from other shareholders?

Companies and activist shareholders most commonly utilise telephone communication, rather than social media platforms, as the primary means to obtain support for proposals or director nominees in advance of a shareholder meeting. There are no special rules related to such communications and solicitations (nothing that is similar to the US proxy rules, for example).

22 Is it common to have organised shareholder engagement efforts as a matter of course? What do outreach efforts typically entail?

It is not common among individual shareholders, but is more typical among institutional shareholders, to have organised shareholder engagement efforts relating to particular proposals or other issues. Such engagement efforts are typically conducted by advisory firms (Entropy and Emda), and institutional shareholders generally act in accordance with the recommendations of those firms.

23 Are directors commonly involved in shareholder engagement efforts?

Directors do not generally approach shareholders in Israel. Communication typically runs in the opposite direction, as shareholders who are interested in communicating with the board of directors do so via submission of a position paper to the company concerning a particular proposal or agenda item. There is more customarily communication between directors and shareholders holding a controlling interest in the company, but under the Companies Law, directors are obligated by their fiduciary duties to maintain independent business judgement.

Fiduciary duties

24 Must directors consider an activist proposal under any different standard of care compared with other board decisions? Do shareholder activists, if they are a majority or significant shareholder or otherwise, owe fiduciary duties to the company?

Directors need not consider an activist proposal under any different standard of care compared to other board decisions. The same fiduciary duties apply to directors in either case.

Pursuant to the Companies Law, a shareholder (including an activist shareholder) has a duty to act in good faith and in a customary manner toward the company and other shareholders and to refrain from abusing his or her power in the company, including, among other things, in voting at a general meeting and at shareholder class meetings with respect to the following matters:

- an amendment to the company's articles of association;
- an increase of the company's authorised share capital;
- a merger; or
- the approval of related party transactions and acts of office holders that require shareholder approval.

A shareholder also has a general duty to refrain from discriminating against other shareholders.

In addition, certain shareholders have a duty of fairness toward the company. These shareholders include any controlling shareholder, any shareholder who knows that he or she has the power to determine the outcome of a shareholder vote and any shareholder who has the power to appoint or to prevent the appointment of an office holder of the company or other power towards the company. The Companies Law does not define the substance of the duty of fairness, except to state that the remedies generally available upon a breach of contract will also apply in the event of a breach of the duty of fairness.

The Israeli Supreme Court has determined that an individual shareholder who is part of the controlling group in the company (eg, if a shareholder pledged to vote as indicated by the controlling shareholder) owes a fiduciary duty to the company, even if he or she holds only few shares.

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