

# Shareholder Activism in China: Overview

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## USE OF SHAREHOLDER ACTIVISM

### 1. Provide an outline of the use of shareholder activism in your jurisdiction.

Under Chinese laws and regulations, shareholder activism is not explicitly mentioned or defined. However, shareholder activism is generally understood under Chinese practice in line with international practice. Therefore, shareholder activism refers to institutional shareholders who actively participate in the corporate governance of a publicly-traded company relying on shareholders' rights to exert positive pressure on the development and management of the company.

In practice, the use of shareholder activism is quite uncommon under Chinese corporate practice (even though the current regulatory framework has created a regime that allows use of shareholder activism). The main pieces of legislation that regulate shareholder activism are the PRC Company Law and the PRC Securities Law, and they both apply to the corporate governance systems of Chinese listed companies. The Chinese Securities Regulatory Commission (CSRC) (the central regulatory institution for corporate governance of Chinese listed companies) has also issued relevant rules and regulations, such as the:

- Rules on Shareholders' General Meetings of Listed Companies.
- Code of Corporate Governance for Listed Companies.
- Guidelines for the Articles of Association of Listed Companies.

The Code of Corporate Governance for Listed Companies (published in 2002) was amended in 2018, and it has been brought more in line with global standards. Any related guidelines, rules and explanatory notes issued by the PRC stock exchanges (that is, the Shanghai Stock Exchange and Shenzhen Stock Exchange) are also included.

For companies in certain sectors, additional special rules and regulations on corporate governance issued by their respective supervisory authorities apply. For example:

- Commercial banks are subject to the Guidelines on Corporate Governance of Commercial Banks, issued by the China Banking Regulatory Commission.
- Insurance companies are subject to the Guidance on Articles of Association for Insurance Companies, issued by the China Insurance Regulatory Commission.
- Securities companies are subject to the Guidelines on Corporate Governance of Securities Companies and Rules on Supervision over Securities Companies, issued by the CSRC.

In practice, listed companies based in China that faced public activist demands were on the rise from 2013 to 2017 (according to the statistics collected from *Activist Insight* for that period). Notably, most activist campaigns have been launched against technology companies, with a success rate of 50%. However, to the authors' understanding, most activist campaigns are launched by overseas institutional shareholders against Chinese companies listed abroad,

so arguably overseas institutional shareholders are the main force promoting shareholder activism in China.

## REGULATION OF SHAREHOLDER ACTIVISM

### 2. What are the main regulatory or legislative provisions relevant to shareholder activism in your jurisdiction?

#### Regulatory/Legislative Provisions

**PRC Company Law.** General meetings must be held annually (*Article 100, Company Law*). An interim general meeting must be held within two months if:

- This is requested by a shareholder who holds (or shareholders who together hold) 10% or more of the company's shares.
- The board of directors is unable to, or fails to, fulfil its obligations to convene a general meeting, in which case the board of supervisors must convene and preside over the meeting (*Article 101, paragraph 2, Company Law*). If the board of supervisors does not convene or preside over the meeting, a shareholder who holds (or shareholders who together hold) 10% or more of the company's shares for at least 90 consecutive days can convene and preside over the meeting on their own initiative.

Any shareholder who holds (or shareholders who together hold) 3% or more of the shares of the company can put forward an interim proposal and submit it in writing to the board of directors ten days before a general meeting (*Article 102, paragraph 2, Company Law*). The board of directors must notify the other shareholders of the interim proposal within two days from receipt and must submit the proposal to the general meeting for consideration. Any interim proposal put forward must be within the scope of the general meeting and it must include discussion points and matters to be decided.

Each share has one vote at a general meeting (this does not apply to shares registered in the name of the company, which have no voting rights attached).

The general meeting can adopt a cumulative voting system for the election of directors and supervisors under the articles of association or by way of a resolution passed in a general meeting (*Article 105, Company Law*). For the purpose of the Company Law, "cumulative voting system" refers to a voting system where shareholders can multiply their voting rights by the number of candidates and cast their votes for one candidate for director or supervisor positions.

If a director or senior officer causes losses to the company by violating any laws, administrative regulations or the articles of association, that director will be liable to the company (*Article 149, Company Law*). In this case, any shareholder (or group of shareholders) who has held 1% or more of the shares in the company for at least 180 consecutive days can make a written request to the board of supervisors (or to the supervisor(s) of a limited liability company with no board of supervisors) to bring a legal action in the people's court against the relevant director or senior officer (*Article 151, Company Law*). Similarly, if any supervisor causes a loss to the

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company under Article 149 of the Company Law (as set out above), the shareholder(s) that meet the criteria above can make a written request to the board of directors (or to the acting director of a limited liability company with no board of directors) to bring a legal action in the people's court.

If any board of supervisors, supervisor of a limited liability company with no board of supervisors, or board of directors or acting director refuses to bring a legal action after receiving a written request described in the preceding paragraph, within 30 days of receiving the request, or if there is an urgent situation where failing to initiate a legal action will cause irreparable damage to the interests of the company, the shareholders that meet the criteria above can bring a legal action in the people's court in their own name.

If the legitimate rights and interests of a company are damaged and the company suffers a loss as a result, the shareholder(s) meeting the test in Article 151 can bring a legal action in the people's court under Articles 149 and 151.

If any director or senior officer damages the shareholders' interests by violating any law, administrative regulation or the articles of association, the shareholders can bring legal action in the people's court (*Article 152, Company Law*).

Conversely, some legal provisions may act to curb shareholder activism. For example, a shareholder who requests to check the accounts of the company must make a written request and state the purpose for so doing. If the company has reasonable grounds to believe that the shareholder who makes this request has an "improper purpose" and may cause damage to the legal interests of the company, it can reject the request and must give a written reply to the shareholder, stating the reason for its refusal, within 15 days from the date of receiving the shareholder's written request. Where the company rejects the request, the shareholder may then apply to the people's court for access to the company's accounts (*Article 33(2), Company Law*). The court will hold that a requesting shareholder has an "improper purpose" in any of the following circumstances:

- Where the shareholder engages in any business that is substantially competitive with the company's main business, either for themselves or for others (unless there are provisions in the company's articles of association allowing for such activity, or such activity has been consented to by all the other shareholders).
- Where the shareholder wishes to inspect the company's accounting books for the purpose of informing others of the information contained in those accounts, which may damage the company's lawful rights and interests.
- Where the shareholder has previously informed others of the information contained in the company's accounts within the previous three years, causing damage to the company's lawful rights and interests, and makes another request to inspect the accounting books.
- Where the court is satisfied that the shareholder has been shown to have any other improper purpose for viewing the company's accounts.

(*Article 8, Provisions of Supreme People's Court on Several Issues Relating to Application of the Company Law of the People's Republic of China (IV) (as amended in 2020)*.)

**PRC Securities Law.** If any director, supervisor or senior manager of a listed company, or any shareholder holding more than 5% of the shares in a listed company sells shares in the same company less than six months after buying them (or buys them less than six months after selling them), any resulting profit will be owned by the relevant company. The board of directors of the company must claim back the profits. However, if a securities company holds more than 5% of the shares in a listed company after purchasing any leftover unsubscribed shares on a sale which had been underwritten on a

best efforts basis, any subsequent sale of these shares is not subject to the six-month trading restriction.

The PRC Securities Law was further reviewed in 2019, and the revised PRC Securities Law has added several provisions on investor protection to facilitate shareholder activism. The board of directors, independent directors or shareholders holding more than 1% of the voting rights shares of a listed company or an investor protection organisation established pursuant to the laws, administrative regulations or the provisions of the securities regulatory authority of the State Council may act as a solicitor (either by itself or by entrusting a securities company or a securities service organisation) to openly request the shareholders of the listed company to entrust it to attend a shareholders' general meeting on their behalf, and to exercise shareholders' rights, such as the right to propose a motion and to vote on their behalf (*Article 90, Securities Law*).

Where an issuer commits a fraudulent offering, a misrepresentation or any other major legal violation which causes investors to suffer losses, the issuer's controlling shareholder(s), actual controlling party and the relevant securities company may entrust the investor protection organisation to reach an agreement concerning compensation with the investors who have suffered losses, and to provide that compensation. After compensation has been provided, they may seek recourse from the issuer and other parties who are jointly and severally liable (*Article 93, Securities Law*).

If there is a dispute between an investor and the issuer or the securities company, both parties may apply to the investor protection organisation for mediation. The investor protection organisation can support the investors under the law to file a lawsuit with the relevant court against an act which harms the interests of investors. Where the investor protection organisation holds the shares of a company, it can file a lawsuit with the relevant court in its own name on behalf of the company's interests (and the shareholding ratio and shareholding period shall not be subject to the usual restrictions stipulated in the PRC Company Law (*Article 94, Securities Law*)) where either:

- The issuer's directors, supervisors, and/or senior management personnel violate the law, administrative regulations or the provisions of the company's articles of association in the performance of their corporate duties and cause the company to suffer losses.
- The issuer's controlling shareholder(s) or actual controlling party infringes upon the company's legitimate rights and interests and causes the company to suffer losses.

**PRC Code of Corporate Governance for Listed Companies.** Shareholders will, in accordance with the laws, regulations and the articles of association, have legal rights and obligations. The articles of association, resolutions of shareholders' meetings and resolutions of the board of directors must be legitimate and compliant, and must not restrict the legal rights of shareholders (*Article 7, Code of Corporate Governance for Listed Companies (revised 2018)*).

The corporate governance structure of a company must ensure fair treatment of all shareholders, especially minority shareholders. All shareholders must have equal rights and bear the corresponding duties based on the shares they hold (*Article 8, Code of Corporate Governance for Listed Companies (revised 2018)*).

Shareholders must have the right to know about, and the right to participate in, major matters of the company set forth in the laws, administrative regulations and articles of association. A listed company must establish efficient channels of communication with its shareholders (*Article 9, Code of Corporate Governance for Listed Companies (revised 2018)*).

Shareholders have the right to protect their interests and rights through civil litigation or other legal means under the applicable laws and administrative regulations (*Article 11, Code of Corporate Governance for Listed Companies (revised 2018)*). If the resolutions

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of shareholders' meetings or the resolutions of the board of directors breach any laws and administrative regulations or infringe shareholders' legal rights and interests, the shareholders can initiate litigation to stop such a breach or infringement. The directors, supervisors and managers of the company are liable to compensate the company if they violate laws, administrative regulations or articles of association and cause damages to the company during the performance of their duties. Shareholders can request the company to sue for such compensation under the law.

In a listed company, the statutory powers of the shareholders' meeting must not be delegated to the board of directors (*Article 14, Code of Corporate Governance for Listed Companies (revised 2018)*).

Small and medium sized investor protection agencies play an active role in the governance of listed companies and protect the legitimate rights and interests of small and medium investors through multiple channels, such as in the exercise of share rights (*Article 82, Code of Corporate Governance for Listed Companies (revised 2018)*).

### Case Studies

Relevant cases of shareholder activism in China are very limited, since shareholder activism is generally uncommon in Chinese corporate practice (see *Question 8*). For some examples, see *Question 4*.

## GOALS OF SHAREHOLDER ACTIVISM

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### 3. What are the principal goals of activist shareholders where shareholder activism is used?

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#### Financial Reasons

According to the very limited examples of shareholder activism that the authors have found, the principal goals of shareholder activism under China practice tend to be purely commercial. The direct goals of institutional shareholders include the following:

- Changing the corporate governance structure.
- Replacing board members.
- Changing business strategy.
- Protecting minority shareholder rights or investors' rights.

#### Non-Financial Reasons

Normally, the ultimate objective of shareholder activism is to increase shareholder value. Social value concerns are rarely the reasons for shareholder activism in China. However, the China Securities Investor Services Center (ISC) (founded on 5 December 2014 and administrated by the China Securities Regulatory Commission) is generally more concerned with non-financial reasons as a non-profit financial institution.

The ISC has purchased first-hand 100 shares in each listed company on the Shanghai and Shenzhen stock markets and has become one of the smallest shareholders of these companies. The major responsibilities of the ISC include:

- Not-for-profit publicity and education for individual investors.
- Not-for-profit holding of securities.
- Exercising shareholders' legitimate rights.
- Providing mediation and settlement services as entrusted by individual investors.
- Investigating and monitoring investors' needs and demands.
- Carrying out strategic research and planning.
- Speaking to the government and the regulatory authorities on behalf of investors.

## STRATEGIES USED BY ACTIVIST SHAREHOLDERS

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### 4. What are the key strategies used by activist shareholders?

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The main strategies that are commonly used in practice are outlined below.

#### Increasing the Shareholding Percentage to Have More Influence in Decision-Making at General Meetings

Increasing the shareholding percentage of the company can be a most effective strategy for an activist shareholder to exert pressure on the company's board. By doing so, an activist shareholder can have more influence in decision-making at the general meeting. In the case *Vanke v Baoneng*, Baoneng set a good example of using this strategy. Vanke is the largest real estate developer in China. Baoneng (a privately owned property and insurance conglomerate, and a minority shareholder of Vanke) thought Wang Shi (the CEO of Vanke) was not paying enough attention to Vanke and was upset with Wang Shi's USD7.5 million in annual pay at that time. Through several share purchases on the Shenzhen Stock Exchange, Baoneng raised its shareholding in Vanke to 25%. This allowed Baoneng to become the largest shareholder of Vanke and to threaten Vanke's management (including Wang Shi) at an emergency general meeting (called by Baoneng).

#### Using Social Media and Investor Communication to Apply Pressure on the Management

Media, including social media, has become an important channel for activist shareholders to engage with the management and other fellow shareholders. Through media, activist shareholders can exert public pressure on the company management or gain support from other fellow shareholders on its proposal by expressing their opinion publicly. An example of this strategy is also found in *Vanke v Baoneng*. In response to Baoneng's threats, Wang Shi planned to introduce Shenzhen Metro as a white knight investor in a bid to dilute the shares of lead shareholder Baoneng. Such restructuring proposal was approved by the board of directors in June 2016. However, following the board approval, Baoneng and another shareholder explicitly opposed the transaction by a statement published in a newspaper. Subsequently, China Resources Co Ltd, the second largest shareholder of the company, also objected to the proposal on its official WeChat account. This resulted in holding back the deal for a long time (until the government's intervention).

Investor communication is also a useful method for ISC to engage with management. In March 2019, the ISC joined the second and third largest shareholders to convene an extraordinary general meeting of listed companies for the first time. As one of the conveners, it participated in the first extraordinary shareholders' meeting of Shanghai Zhongyida Co, Ltd (ST Yida) in 2019. Promoting the formation of a new board of directors and board of supervisors laid the foundation for the normalisation of the corporate governance procedures of ST Yida, and resolved the failure of the 2018 annual report which was caused by the "loss of connection" of the former directors and supervisors.

In another example, on 14 July 2021, the board of directors of BOCO Inter-Telecom released an announcement on the cancellation of the general meeting of shareholders, which was originally scheduled to go ahead on 16 July 2021, only two days after the announcement. Upon hearing about the news, ISC posted an article objecting to the cancellation on *Securities Daily* (the designated website for information disclosure by listed companies, founded in 2000), which indicated that it believed that the excuses listed in the company's cancellation announcement were inappropriate. On 3 July 2021, some of the shareholders had also submitted proposals to remove the chairman, the general manager and some of the senior managers from office.



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## Launching a Proxy Contest for Election of New Directors

This involves gathering enough shareholders' proxy votes to replace members of the current board of directors so that they can achieve their objectives. Shareholders individually or jointly holding 3% of the company's stock can submit a proposal for voting in the general meeting (*PRC Company Law*). By using this shareholder proposal regime, activist shareholders of Chinese corporations can submit a nomination for the election of new directors if the current board members appear unsatisfactory. To achieve the goal of replacing the current board members, activist shareholders should also seek alliance with other shareholder to solicit voting proxies in the general meeting.

A notable example in this respect is the case of Green Electric Appliances (GEA) back in 2012. In this case, two institutional investors, Penghua Fund and Yale Endowment Fund, co-operated together to nominate Feng Jiyong as a new member of GEA's next board. At that time, Penghua Fund held 1.6% of GEA shares and Yale Endowment Fund held 1.76% of GEA shares, which together met the threshold for submitting a nomination in the general meeting. As Feng Jiyong was recommended as a senior partner of a Chinese top law firm with rich experience in venture capital, private equity and M&A, and there was no director with legal background in the board yet, Penghua Fund and Yale Endowment Fund soon won support from other institutional investors of GEA during the general meeting. As a result, Feng Jiyong was successfully elected as a new member of the board of directors with 113.66% of the voting rights of the shareholders present in the meeting by accumulative voting (which is the second highest percentage of votes among nine nominators). This is the first case where a Chinese investment fund has nominated the director candidate of a listed company and succeeded.

## Filing a Lawsuit

In China, litigation by the shareholders of listed companies is rare, because of a number of factors which make the risks of unsuccessful litigation far higher than the potential benefits that can be gained from successful litigation, which include:

- The strict shareholding ratio and time limits that apply.
- The unlikely chances that the claimant shareholders will win the case.
- The high litigation costs involved.

However, the ISC has once attempted to exercise litigation rights as a shareholder. On 28 April 2018, the Fengxian District People's Court of Shanghai rendered a judgment in the case of *SISC v Shanghai Hile Bio-Technology Co Ltd* (Hile Bio), and supported the request of the ISC to confirm that the contents of the articles of association in the resolution of the first extraordinary general meeting of Hile Bio in 2015 were invalid. This was the first time that the ISC filed a lawsuit as a shareholder.

In 2021, *ISC v Kangmei Pharmaceutical Co Ltd* was a milestone case in a Chinese securities class action, as well as the nation's first litigation involving a "Special Representative". ISC, acting as the Special Representative, undertook the role of claimant as an investor protection organisation entrusted by more than 50 investors. Kangmei Pharmaceutical were held liable for compensating 52,370 investors with around RMB2.5 billion, and related senior managers were also held jointly liable. The CSRC stated that this case declares the end of the disproportionately low price that has historically been paid by companies found liable for misrepresentation, and signals a new era in which rule-breakers will instead be held accountable for acts such as misrepresentation.

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## SHAREHOLDER DISCLOSURES

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### 5. Are shareholders required to disclose their share ownership? What are the penalties for non-compliance?

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#### Disclosure Requirements

The PRC Securities Law regulates the disclosure obligations of shareholders. Where shares are held by an investor through securities transactions on a stock exchange, or jointly with others through an agreement or other arrangements, and the investor attains 5% of the issued voting rights shares of a listed company, the investor must:

- Submit a written report to the securities regulatory authority of the State Council and the stock exchange within three days of that threshold being reached.
- Notify the listed company and make an announcement.

After an investor holds 5% of the issued voting rights shares of a listed company or, jointly with others through an agreement or other arrangements, whenever the investor's voting rights shares in a listed company are increased or reduced by 5%, the investor must submit the same report outlined above, and make the same company notification and announcement outlined above.

In addition, after an investor holds 5% of the issued voting rights shares of a listed company or, jointly with others through an agreement or other arrangements, whenever the investor's voting rights shares in a listed company are increased or reduced by 1%, the investor must notify the listed company on the day following that event and make an announcement.

The announcement made under the above provisions must include the following contents:

- Name and address of the shareholder.
- Description and quantity of the shares held.
- The date on which the shareholding, or change in shareholding, attains the statutory ratio, and the source of funds for an increase in shareholding.
- The timing and method of change in its holding of voting rights shares in the listed company.

In addition, the Shanghai Stock Exchange and the Shenzhen Stock Exchange have more specific regulations on disclosure requirements. For example, a shareholder must promptly notify the listed company and disclose an announcement of the relevant change in all of following situations:

- When the shares in which investors have interests in a listed company do not reach 5% of the issued shares, but the shareholders become the largest shareholder or actual controller of a listed company.
- Where the shares reach or exceed 20% of the issued shares of a listed company, and although the shares do not reduce by 1%, the shareholding ratio is reduced to less than 20%.
- Where the shares in which investors have interests have reached or exceeded 5% of the issued shares, and the members of the investors have changed.
- If the shares owned by a single investor in a group account for 5% or more of the issued shares.

#### Penalties for Non-Compliance

The penalties for non-compliance are regulated by the Business Guidelines on Information Disclosure of Acquisition of Listed Companies and Changes in Shareholding issued by the Shanghai Stock Exchange and the Shenzhen Stock Exchange.

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Article 28 of the Shanghai Stock Exchange Guidelines provides that, where shareholders fail to comply with the disclosure obligations, the exchange may take such regulatory measures or impose such disciplinary sanctions on the shareholder as are provided for in the relevant regulations.

Article 37 of the Shenzhen Stock Exchange Guidelines provides that, where the parties involved in the acquisition of listed companies and a change of shareholding violate the disclosure obligations contained in the Guidelines, the exchange can take such regulatory measures or disciplinary actions as appropriate. In addition, any suspected violation of the laws, administrative regulations, departmental rules and/or normative actions can be reported to the CSRC for further investigation and punishment.

## TOOLS AVAILABLE TO ACTIVIST SHAREHOLDERS

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### 6. Outline the range of legal and regulatory tools available to activist shareholders.

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The legal or regulatory tactics available to Chinese shareholder activists are similar to those available in other jurisdictions, and include the following.

#### Attending the General Meeting and Voting on Proposed Resolutions

Every shareholder is entitled to attend and exercise its voting right at the general meeting. By law, each share represents one vote and has the same voting right as any other share. In principle, a resolution can be adopted by an affirmative vote of the shareholders, if the affirmative vote represents a majority of the voting rights of the shareholders present. However, resolutions relating to any amendment of the articles of association, merger, division, dissolution of the company, and so on can only be adopted by a vote in favour by the shareholders representing two thirds or more of the voting rights of shareholders present. Instead of being present at the meeting itself, the law allows a shareholder to appoint a proxy to attend a general meeting and vote on its behalf within the scope of authorisation.

#### Right to Place an Item on the Agenda

Any shareholder who holds (or shareholders who together hold) 3% or more of the shares of the company have a right to put forward an interim proposal on the agenda of the general meeting. Such proposal must be submitted to the board of directors in writing ten days in advance of the general meeting. The board of directors must notify other shareholders of the interim proposal within two days from receipt and submit the proposal to the general meeting for consideration.

#### Right to Motion to Remove a Director

The shareholders' meetings are allowed to remove a director during his/her tenure, and this right has been emphasised in recent legislation (*Article 3, Provisions of the Supreme People's Court on Several Issues Relating to the Application of the Company Law of the People's Republic of China (V)*; *Article 96, Guidelines for Articles of Association of Listed Companies (revised 2019)*). Notably, a motion to remove a director is a general motion, which is subject to simple majority voting. With regard to compensation for the removed director, it will be determined in the shareholders' meeting whether the company will provide any compensation, and the reasonable amount of any such compensation, by taking into account factors such as the reasons to remove, the remainder of the director's tenure and their remuneration.

#### Right to Request the Convening of an Interim Meeting

In principle, general meetings must be held annually. However, an interim general meeting must be convened and presided over by the board of directors or board of supervisors within two months on the request of a shareholder who holds (or shareholders who together hold) 10% or more of the company's shares.

#### Right to Convene and Preside Over a General Meeting

The board of directors or the board of supervisors (if the board of directors is unable or fails to fulfil) is responsible for convening and presiding over general meetings. If both the board of directors and the board of supervisors are unable or fail to perform their duties, a shareholder who holds (or shareholders who together hold) 10% or more of the company's shares for at least 90 consecutive days can convene and preside over the meeting on their own initiative.

#### Right to Initiate Litigation

There are normally three ways to carry out litigation activism, that is by:

**Derivative suit.** If any directors or other senior officers violate any laws, regulations or the company's bye-laws (such as the articles of association) in the course of their duties and cause loss to the company, any shareholder(s) who individually or jointly hold 1% of the total shares for consecutive 180 days can file a derivative suit against such directors or other senior officers in their own name on behalf of the company.

In judicial practice, the victims of misrepresentation cases are often compensated by listed companies (if they are actually compensated at all), instead of by the senior managers who intentionally organised and committed such a violation of the laws. In *Ecobeauty v Minghui Jia*, the defendant, Jia, was the chairman and actual controller of the plaintiff, Ecobeauty. Jia falsely represented the company's financial status, resulting in considerable economic losses to the investors. In January 2021, the investors sued both Ecobeauty and Jia, and received full compensation from Ecobeauty, while the initiator of the damaging act, Jia, escaped unpunished. Over the next six months, ISC addressed several inquiries to Ecobeauty, advising it to initiate a recovery suit against Jia. Receiving no substantial reply from Ecobeauty, ISC decided to commence a shareholder derivative suit by itself. In July, ISC received notice that the court had placed the dispute between Ecobeauty and Jia on file. This is the country's first case where the ISC has actively sought recovery from former senior managers in a shareholder derivative suit.

**Direct suit.** If the violations committed by the directors or other senior officers have directly prejudiced the shareholders' interest, any shareholder (without any shareholding restrictions) can bring a direct suit against such directors or other senior officers.

**Dissolution suit.** If the operation and management of the company suffer serious difficulties which will lead to significant losses to the shareholders' interests and there is no other way to avoid it, any shareholder holding (or shareholders who together hold) more than 10% of the voting rights of all shareholders can file a dissolution suit to ask a court to dissolve the company.

## PREVENTION OF SHAREHOLDER ACTIVISM

### Red Flags

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### 7. Are there any red flags that a company should look out for to provide an early indication that it may have become the target of shareholder activism?

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Shareholder activism is generally not a major concern for Chinese listed companies because there are very few examples of it in Chinese corporate practice (see *Question 8*).

However, companies that are underperforming, badly run, or failing to take full advantage of market opportunities are prone to be targeted. This is evidenced by their low competitiveness and weak performance, compared to other market peers, and by the high costs and low levels of total shareholding return, which are red flags of which a company should be aware.

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## Minimising the Risk of Being Targeted

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### 8. What practical steps can a company take to minimise the risk of being targeted by activist shareholders?

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In general, shareholder activism is not a matter of concern for most listed companies in China, as it is very uncommon in Chinese corporate practice. To a large extent, the state of shareholder activism can be attributed to the following factors.

Chinese stock markets are predominated by the presence of retail investors. This has impeded the increase of institutional investors' shareholding portion and their power in activism.

There is normally a shareholder (either the government or the founders and their families) who holds a controlling block of stakes in listed companies, which enable it to determine the corporate affairs without the participation of other investors. Institutional shareholders' abilities to discipline companies are therefore significantly weakened and they become less motivated to engage in shareholder activism.

From a cost-benefit perspective, institutional shareholders have fewer incentives to take the risks of engaging in activist actions, since there is no compensation mechanism in place for any costs incurred, and the benefits are shared by all minority shareholders.

However, for those companies which are prone to be targeted by shareholder activism, a dialogue with the activist shareholders to ensure their understandings of the company's strategies or to agree on compromises is always recommended as an amicable and practical step. It can be a strong tool for the executive board to build a relationship of trust and ensuring consensus with the activist shareholder, which will result in a long-term benefit.

Additionally, a staggered board provision is commonly included in the articles of association of the company in defence of hostile takeovers to help minimise shareholder activism.

## Steps to Take when Faced with Shareholder Activism

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### 9. What steps can a company take when it is faced with shareholder activism?

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#### Responding Before a General Meeting

Shareholder activism is generally uncommon in Chinese corporate practice (see *Question 8*). Therefore, there are no established systematic steps in defence of shareholder activism in China.

#### Responding at a General Meeting

See above, *Responding Before a General Meeting*.

#### Responding After a General Meeting

See above, *Responding Before a General Meeting*.

#### Risks and Benefits of Company Responses

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### 10. What are the risks and benefits of different company responses to shareholder activism?

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Shareholder activism is rare in China. Even in these limited cases, most companies respond without established mechanisms/systematic steps in place and their response is dependent on activist shareholders' intention. It is therefore not possible to analyse the relevant risks and benefits of different company responses or current company practice.

## CURRENT TRENDS AND DEVELOPMENTS

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### 11. Are there any current trends, developments or reform proposals that have or will affect the area of shareholder activism in your jurisdiction?

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The currently effective Code of Corporate Governance for Listed Companies (promulgated in 2002) was amended in 2018 and has been brought more in line with global standards (see *Question 7*). The authors believe the amendments made in the 2018 revision incorporate more comprehensive mechanisms for shareholder activism. Therefore, the development of Chinese shareholder activism is generally making slight and gradual progress.

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### Professional Qualifications

- Dutch Qualified Lawyer registered at the Amsterdam Bar.
- Non-Practicing Solicitor registered with the London Law Society of England and Wales.
- Registered as arbitrator at the China International Economic Trade Arbitration Commission (CIETAC).
- Registered as arbitrator at the Shanghai International Economic and Trade Arbitration Commission (SHIAC).

**Areas of Practice.** Chinese and Dutch agriculture investment law; biotechnology; Chinese and Dutch foreign direct investment; M&A; trade secret protection; technology transfer.

### Professional Associations

- Dutch Bar Association (NOVA).
- International Bar Association (IBA).
- Chair of the Agricultural Law Section of the IBA.
- European Union Chamber of Commerce in China.
- American Chamber of Commerce in China (AmCham).
- Benelux Chamber of Commerce in China (BenCham).
- Member of the Beijing Capital Club.
- Member of the Economist Corporate Network.

### Publications

- *Agricultural Law in China and The Netherlands, Global Guide, General Editor, Thomson Reuters, London, 2020.*
- *Shareholders' Rights in Private and Public Companies in China and Shareholder Activism in China, Global Guide, Thomson Reuters, London, 2022.*
- *Plant Variety Rights Versus Plant Patents: Legal Developments and Frictions in a Regional Perspective, General Editor, (IBA) Business Law International, Mar 2019, Vol 20 No. 2, pp 95-136.*
- *China chapter on Commercial Contracts, Lexology/Getting The Deal Through, 2021.*
- *China chapter on Digital Business, Lexology/Getting The Deal Through, 2021.*
- *China chapter on Dispute Resolution, Lexology/Getting the Deal Through, July 2021.*

**Languages.** Dutch, English, French, Chinese (basic).

**Profile on Firm Website:** <https://www.burenlegal.com/en/people/li-jiao>

### Professional Qualifications

- Chinese Qualified Lawyer admitted to the Chinese Bar.
- LLM Degree in International Business Law from VU University, Amsterdam.
- Bachelors' Degree, Shandong University, China.

**Areas of Practice.** Chinese agriculture investment law; commercial contracting; dispute resolution; IP and IT; trade secret protection; technology transfer; FDI China.

### Professional Associations

- Chinese Bar Association.
- Guest Lecturer at Wageningen University on Chinese Agricultural Law.

### Publications

- *Agricultural Law in China, Global Practice Guide, General Editor, Thomson Reuters, London, 2021.*
- *Shareholders' Rights in Public and Private Companies in China and Shareholder Activism in China, Global Guide, Thomson Reuters, London, 2022.*
- *China chapter on Digital Business, Lexology/Getting The Deal Through, 2021.*
- *China chapter on Commercial Contracts, Lexology/Getting The Deal Through, 2021.*
- *China chapter Product Liability, Lexology/Getting the Deal Through, 2021.*
- *China chapter on Dispute Resolution, Lexology/Getting the Deal Through, July 2021.*
- **Languages.** Chinese, English, Dutch.

