

# SHAREHOLDER

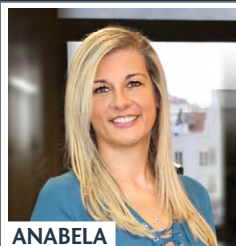
# ONSLAUGHT

Investors want more input on the way companies are governed, which has led to a rise in demand for corporate governance lawyers as clients deal with the challenges of 'shareholder activism'

Investors are taking a much keener interest in the way companies are governed. As a result, demand for lawyers with expertise in corporate governance is on the rise as investors seek to undertake an analysis of the corporate governance of companies they are proposing to invest in. As a result, listed companies are having to grapple with the serious challenges posed by “shareholder activism”, with such shareholders adopting strong views on M&A strategies, for example.

Herbert Smith Freehills partner **Alberto Frasquet** says greater interest from investors in companies’ governance is a global trend. He adds that “investors, both activist and institutional, are taking a more active stance in relation to the governance and management of listed companies, generally, and, in particular, in relation to their M&A activity”. Frasquet continues: “The role that law firms can take in relation to the new approach of activists and, therefore, the opportunities open for law firms in relation thereto, is quite broad, and includes the review and analysis of the existing corporate governance policies and practices or the implementation of the required changes to have precautionary measures in place which may help the company to react towards potential activists’ influence.” He adds that, company boards also need legal advice in relation to “specific activist actions taken by investors in relation to a M&A transaction”.

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With regard to non-listed companies, Frasquet says that discussions held in the UK and other Anglo-Saxon countries regarding corporate governance rules for large non-listed companies – for example, the Wates Corporate Governance Principles – may present a big opportunity for law firms in the near future. “The limited development of these discussions and, particularly,

the fact that they have not been completely accepted in Iberia, certainly limit or reduce the impact that this development may have on the practice of Iberian law firms.”

Frasquet acknowledges that one of the biggest challenges that listed companies face is “so-called shareholder activism”. He adds that the presence of activist shareholders on the register



Alberto Frassetto

of listed companies has grown significantly and their stance has become more active in recent years. “The increased active role that these shareholders are taking in the governance and management of the companies has become a big challenge, particularly, in relation to M&A activity and other key strategies of listed companies,” Frassetto says. “Activist shareholders are forming their own views around these strategies, which should be taken into account by the board and the executive teams and also considered when defining and designing the corporate governance policies and general principles of the company.”

Cuatrecasas partner **João Mattamouros Resende** says the fact that foreign private equity funds and family offices are increasingly interested in acquiring stakes in Portuguese companies, while simultaneously asking sellers to remain active participants in the company as shareholders and board members is creating opportunities for corporate governance lawyers. He

adds: “This requires sophisticated advice in order to make sure the interests of both parties are properly aligned.” Mattamouros Resende adds that some of the key corporate governance-related challenges clients face include the fact that “often, there is a significant disparity between clients and their counterparties in what they perceive as an adequate corporate governance model, not to mention the significance and importance each attaches to the matter”.

Morais Leitão partner **Magda Viçoso** says among the priority for high profile companies is ensuring their internal procedures and policies comply with the “national and international best rules and practices”. She adds that this is particularly the case for listed companies, companies operating in the financial sector and “investment vehicles”. This scenario represents an opportunity for law firm to help clients achieve an “adequate level of compliance and quality of disclosure in these fields – for example, in designing evaluation and remuneration policies, implementing ‘fit and proper’ and diversity assessments, as well as preparing governance reports,” Viçoso says.

The fast pace of change to the corporate governance framework has been a major challenge for clients, according to Viçoso. “In particular, the multiplicity of sources of regulation and recommendations as well as the need to conciliate national and European provisions pose significant difficulties,” Viçoso adds. She continues: “The next most significant corporate governance-related

challenges will most certainly be: (i) the implementation of SRD [shareholder rights directive] II, potentially entailing developments in what concerns the exercise of shareholders’ rights, as well as remuneration of directors and related party transactions; and (ii) governance requirements applicable to auditing firms.”

Vieira de Almeida partner **Paulo Olavo Cunha** says the “ongoing proliferation of non-statutory rules and regulations with which Portuguese companies have to comply under the powers of regulatory entities is still one of the drivers of corporate and governance matters in Portugal”. He adds that lawyers are in demand for advice on the structuring of complex investment vehicles, “which have been driven mainly by the proliferation of real estate projects in Portugal in recent years”. In addition, devising vehicles for the management of family offices and the “pooling of smaller scale foreign investors, with specifically tailored corporate and governance structures, has been a recent trend for law firms in Portugal.”

Keeping up-to-date with, and implementing, non-statutory rules and regulations are the biggest corporate governance challenges faced by clients in Portugal, according to Olavo Cunha. He adds: “This can lead to a profound structural review of corporate governance models adopted by companies.” Olavo Cunha adds that demand for “transparency on ultimate beneficial owners and senior management of complex international corporate structures has been challenging for clients with a local presence across multiple jurisdictions.” (b.c.) 