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SPECIAL REPORT

Q&A: Pre-empting and managing shareholder disputes

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Q&A:

Pre-empting and managing shareholder disputes

FW moderates a discussion on pre-empting and managing shareholder disputes between Ben Walton at Forsters LLP, Noelle M. Reed at Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates, Deborah Finkler at Slaughter and May, Toby Robinson at Travers Smith LLP, and Jamie Maples at Weil, Gotshal & Manges (London) LLP.

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FW: To what extent are you seeing an increase in the number of shareholder disputes in your jurisdiction? What are the main drivers of such disputes?

Maples: For as long as companies exist and allow those who own and conduct business through them the advantage of limited liability, there will be shareholder disputes. Such is human nature. Typically, disputes between shareholders arise when there is disagreement as to the company's strategy, or when an investor wishes to sell his shares or considers that his interests are being unfairly prejudiced. And sometimes, perhaps more frequently than we care to admit, shareholders simply fall out with each other. In England, disputes of this kind between shareholders in private companies have long been the subject of litigation. This continues to be the case. In recent years, as procedural developments combine with the consequences of financial crises and scandals, there has also been a growth in shareholder disputes in the public company context.

Finkler: There has been a growing appetite for shareholder action in the UK in recent years. This is driven, in part, by developments in both the legal market – with third-party funding now being much more readily available – but also a greater awareness of shareholder rights, with high-profile celebrity campaigns given a taste of the impact they might have. That said, I am not sure the number of 'traditional' shareholder disputes has actually increased, and growing investor activism might actually have resulted in more deals behind the scenes rather than full-blown proceedings. However, the one area where there has been a dramatic increase in the number of shareholder disputes is in the group or class action space, which was more or less non-existent 10 years ago. This is driven by the 'virtuous circle' of perceived huge claim values, new funding options available to claimants and the growth of boutique 'claimant' firms.

Reed: The nature of shareholder disputes is continually evolving. Historically, the big drivers for shareholder class action lawsuits in the US have been a poor business climate, the company's release of unexpected bad news, industry-wide scandals, and the announcement of a fundamental transaction such as a merger. The considerations that drive these traditional shareholder lawsuits have not changed fundamentally in recent years. What has changed is the level of shareholder activism. While disputes with activists often take place in the corporate arena, we have seen many of them spill over into litigation. That trend seems likely to accelerate in the coming years. In private companies, shareholder disputes tend to be related to the health of the business climate. Shareholders are more likely to look for or pursue potential issues in distressed companies. Not surprisingly, we have seen a significant uptick in shareholder disputes involving Texas energy companies in the last several years. Many disputes in private companies arise from miscommunications or misunderstandings about the shareholders' respective roles in the organisation. But in my experience, shareholder disputes arise most often when a shareholder believes that someone is receiving improper or disproportionate benefits from the company or when a minority shareholder is looking to sell his or her interest.

Walton: The last few years have definitely seen more of shareholders holding their boards and majority shareholders to account. As a general rule, times of recession or economic uncertainty give rise to an increase in litigation, simply because parties are no longer able or willing to meet their contractual or financial obligations; shareholder disputes are no different. It should therefore not be surprising if the economic uncertainty surrounding Brexit leads to a further increase. Shareholder frustration at lack of growth or poor performance obviously increases the prospect of direct action against majority shareholders, the company and even of derivative actions. Similarly, when a joint venture encounters difficulties or performs poorly, its shareholders frequently clash about the direction or management of the company, or the failure or inability of one or more of them to comply with their joint venture obligations.

Robinson: Corporate restructurings and refinancings have been more widespread in recent years and we have seen a corresponding increase in minority shareholder unfair prejudice claims, or at least the threat thereof. In the private equity market, refinancings and restructurings have largely been driven by, firstly, unstable economic conditions causing financial difficulties for investee companies and, secondly, the increasing disparity in pricing expectations between sellers and buyers, making exits more difficult to achieve. Where buyout firms must delay realising their investment, they may have to implement interim liquidity processes – for example, dividend recapitalisations and other forms of equity restructuring. It is not uncommon for disgruntled minority shareholders – often ex-employees of the business – whose consent and approval may not be required for such steps, to challenge them on unfairness grounds. Exit-related disputes among shareholders are also common, including over-valuations and the exercise of drag provisions by majority investors. Disputes are often driven by a belief that other shareholders or management have acted improperly.

FW: Could you highlight any recent, high-profile shareholder disputes that have gained your attention? What unique challenges and legal considerations did these cases demonstrate?

Finkler: Two claims immediately spring to mind. First, the RBS rights issue litigation, which arose out of statements about the bank's financial health contained in a prospectus in 2008. Second, the Mastercard class actions arising out of the European Commission's findings relating to certain interchange fees. Although there were procedural differences, both of these cases represent the new breed of shareholder collective action. Both cases involved huge claims – around £4bn and £14bn respectively – but what actually makes them more interesting is the dynamic caused by having so many individual claimants, with several thousand in RBS and an alleged class of millions for Mastercard. Once RBS settled with the larger investor groups, it made it more or less impossible for the smaller retail investors to continue as they struggled with both resourcing and funding issues. Now there is only a very small rump claim proceeding, and it is unclear if that will ever make it to trial. In Mastercard, it was the fact that there were so many claimants that really led to its downfall, as the Competition Appeal Tribunal refused to accept that all of the potential claimants shared a similar interest and the case seems to have collapsed, or at least will have to be significantly modified if it is going to succeed.

Reed: Two United States Supreme Court cases could significantly reshape American securities class action litigation. In the June 2017 *Calpers* case, the Supreme Court decided that the filing of a putative class action did not toll the statute of repose for an individual plaintiff's claims under Section 11 of the Securities Act. While the courts will be grappling with the implications of this decision for some time, it could induce some large shareholders to opt out of class actions at an early stage and pursue their own claims. In the upcoming *Cyan* case, the Supreme Court will decide whether defendants can remove Securities Act class actions from state to federal court. This decision will have far-reaching implications, as state courts are generally viewed as more hospitable to securities class actions than federal courts, and plaintiffs who can keep such cases in state court may try to evade the procedural protections of federal securities laws.

Walton: For me, the most interesting high profile development in this area in recent years has been the increase in third-party funded group shareholder actions, such as the RBS and Mastercard litigation. Historically, cases involving large numbers of relatively minor investors were administratively and financially extremely difficult to bring. Many such investors could not afford to bring litigation privately and the work involved in establishing and building a group often carried prohibitive costs risks for lawyers. The availability of third-party funding has changed this. If the merits of the case are sufficiently good and the quantum sufficiently high, cases can be funded on a non-recourse basis by third-party litigation funders in exchange for a share of the sums recovered. In addition, when funding is deployed in combination with ATE insurance, as it usually is, the litigation can be effectively 'de-risked'. In our experience, this is hugely attractive to shareholder action groups which would previously have been concerned about their potential exposure to defendants' costs.

> "IN A PRIVATE COMPANY CONTEXT, THE FIRST AND MOST IMPORTANT TASK IS TO ESTABLISH THE REAL OBJECTIVES OF THE CLAIMANT SHAREHOLDER AND WHETHER LITIGATION CAN BE AVOIDED."
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> JAMIE MAPLES
> Weil, Gotshal & Manges (London) LLP

Robinson: On the private side, the dispute between representatives of Charterhouse Capital Partners (CCP) and former partner at CCP, Geoffrey Arbuthnott, stands out. Mr Arbuthnott brought an unsuccessful claim for unfair prejudice against the majority shareholders in Charterhouse Capital Limited, alleging that he had been unfairly forced to sell his shares in that company for less than their true value. The case highlighted the open nature of shareholder disputes which proceed to trial, as CCP faced great public scrutiny, particularly of internal friction regarding levels of financial reward. On the public side, the high profile dispute arising from allegations that RBS's prospectus for its 2008 rights issue contained misleading information about its financial position was the first time that section 90 of the Financial Services and Markets Act has been invoked. The case demonstrated – among other things – the difficulty for listed companies and claimants alike of cases involving thousands of shareholders organised into separate groups with differing resources, intentions and motivations.

Maples: The latest trend is exemplified by the claims recently faced by the Royal Bank of Scotland. The bank's multi-billion pound dispute with its shareholders has been one of the most high-profile English shareholder disputes in recent years and is indicative of the increased willingness of shareholders to litigate if the value of their investment has fallen dramatically. The dispute dated back to RBS's fundraising in 2008, when investors claimed they were duped into paying an inflated price for shares because RBS had misstated its financial health. Because of the number of claimants, the dispute raised unique challenges regarding group representation and settlement. Indeed, alongside a handful of major financial institutions, the claim was brought by over 9000 private investors, which led to a more protracted settlement procedure as certain investors held out for a better offer.

FW: Should a shareholder dispute arise, what steps should parties take at an early stage? What, in your opinion, should a quick and decisive resolution strategy look like?

Reed: In today's world, it is essential for companies to proactively deal with potential shareholder disputes. If a company knows that it is about to release information that may cause a negative reaction or surprise shareholders, it should consider bringing in litigators and potentially other crisis management experts early on to help navigate any backlash. Companies should also be attuned to the issues that shareholder activists are focusing on and proactively analyse those issues. For privately-held companies, the risks in shareholder disputes are even greater. These companies usually benefit from early, decisive steps to resolve the dispute. If a breakup is necessary, a company is typically best served by dealing with it as quickly and proactively as possible. We have also seen situations where relatively minor disputes quickly escalated into major lawsuits, and ultimately the breakup of the ownership team. Often this entire process could have been averted with a well-timed, diplomatic phone call. Finally, ending up in the right forum can often be decisive. If a company believes that litigation is likely, it should consider what steps it can take to ensure that the dispute is heard in its preferred court.

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>
> TOBY ROBINSON
> Travers Smith LLP

Walton: The appropriate strategy will obviously depend upon the nature of the dispute in question. In a dispute between joint venture partners, the first question should always be whether the business relationship is salvageable or whether it is commercially desirable to salvage it. If so, resolution is usually achieved through discussion, negotiation and compromise. If not, the parties will generally need to look for a means of exit for one, or both, of them. Often, a mechanism – for example a buy back, pre-emption or even Russian roulette deadlock resolution – is provided for by the articles or the shareholders' agreement. In cases where it is not, more creativity and inevitably more negotiation is required. For larger corporates, it is obviously hugely important for management to be attuned and responsive to the needs and mood of the shareholders and many difficulties can be avoided by transparent engagement with them. In cases of minority or shareholder group action, a quick reaction is crucial. The early stages of a class or minority shareholder action may present the best possibility of achieving settlement before the inevitable escalation of costs and publicity. In many cases, the avoidance of publicity may be worth paying a premium for.

Maples: In a private company context, the first and most important task is to establish the real objectives of the claimant shareholder and whether litigation can be

avoided. Although there should always be a detailed assessment of each party's legal rights and responsibilities, the parties should focus primarily on practical solutions. Where disputes are driven by deep-seated personal discord, a negotiated exit may be the most appropriate solution, even if its terms leave neither side entirely satisfied. In England, mediation is now considered an essential waypoint in the progress of any litigation and is particularly well suited to resolving disputes between warring shareholders. Here again, a candid and realistic analysis of the parties' respective motivations and goals will be key to reaching settlement.

Robinson: Generally, seeking legal advice should be the number one priority. Before deciding on a strategy, a company should work with its lawyers to assess the strength of its position. Has the company complied with all relevant contractual and statutory obligations and procedural requirements? In relation to the matter in dispute, did the directors act in good faith, giving due consideration to the best interests of the company, or its creditors in cases of insolvency? What was the commercial rationale for the action under dispute and can that be evidenced? Having assessed its position, a company may well decide that a commercial compromise – if it can be achieved with the aggrieved shareholders – is the best solution, not only saving on time and avoiding reputational risks, but also allowing the company to retain control over its own fate by not ceding control to the courts or independent experts and valuers. In the context of a dispute between a shareholder of a listed company and its management, it is important that clear lines of communication are established early.

Finkler: Speed and understanding are key. First, you need to understand what exactly the shareholders want. In particular, whether the shareholders simply want to ensure their voice is heard, whether they think there is genuine wrongdoing, and whether they are prepared to pursue a dispute all of the way to trial. You also need to understand whether there is any real basis for a claim. If something really has gone awry, it should be as important to the corporate to resolve the issue as it is for the shareholders. Second, when it comes to strategy, speed and a streamlined decision process is invaluable. It is important to have the right structure in place that will allow you to achieve this, both within a corporate and at their external advisers. The last thing anyone wants are conflicting and delayed messages.

FW: What are the potential consequences – be it financial, reputational or otherwise – if a shareholder dispute is not settled speedily and amicably?

Walton: Parties may legitimately take the view that unmeritorious or opportunistic disputes should be defended robustly, both as a matter of principle and to deter future unmeritorious or opportunistic claims. However, the greater the duration of any dispute, the more expensive and disruptive it is likely to be and these will always be important factors in deciding whether or not a dispute should be settled early, sometimes irrespective of the merits. Aside from the cost of litigation and the potential exposure to the counterparties' costs, the most important driver for settlements is often the publicity inherent in claims of this nature. Minority or group shareholder actions can have a detrimental impact on share price, deter investment and make M&A activity difficult. They can also make a company or its management or directors look incompetent, oppressive or worse. Smaller scale disputes between shareholders or partners in private companies can also make the participants look petty or difficult to do business with. All of this needs to be taken into account when deciding whether, when and how to settle.

Robinson: In a private equity context, the reputation of not only the investee company and business, but also the private equity house and the investors will be at stake. The company, along with its private equity investors, will also be restricted in terms of the steps it can take while a dispute is ongoing – for example, an ongoing dispute with shareholders may stall an exit process. Further, the relationship with the shareholders will likely be soured by a difficult and protracted dispute process and this could come at a cost if the relationship is important for the ongoing success of the business. Such a dispute may also extract a heavy cost in terms of general disruption to the company's activities, with a resulting impact on profitability, and through the diversion of valuable management time. Parties should also remember that the disclosure process will often result in sensitive information being shared which

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> Slaughter and May

itself may have a wider commercial implication.

Finkler: The potentially huge costs of what will probably turn out to be complex and time-consuming litigation may well be the least problematic consequence. Reputational impact is key: no corporate wants to be associated with a long, drawn out shareholder dispute which will not only impact the current business but may well put off long-term investors and future customers. A reputation that has been built up over many decades can be tarnished through one badly handled dispute. However, something that clients often underestimate is the time factor. Managing all of the day-to-day aspects of a complex dispute can take away key individuals from their day jobs and result in a loss of focus or direction for a corporate, which can have more negative consequences than the legal costs or reputational damage. That is why it is really important to have a 'key-point' strategy in place.

Maples: It is trite to say, but when shareholders litigate with one another, inevitably they distract themselves from overseeing the management and business of the company in question. Similarly, directors and employees can find such disputes stressful and destabilising. And where a company faces claims made by its own shareholders, the attention of its customers, suppliers and the public at large turns from current performance to past failings. Moreover, combating such claims may require the diversion of substantial financial resources away from future investment and into the pockets of lawyers.

Reed: The consequences depend on the nature of the dispute. For public companies, the biggest cost of shareholder activism is often reputational. In this setting, the company needs to have a principled decision and a process to get its message out to the marketplace. If the dispute is just a standard damages claim, the company's primary focus should be on an early resolution – whether by a dismissal on the merits or by settlement – before the company's reputation with customers, lenders and other third parties is threatened. Unfortunately, there is no simple way to mitigate the costs for a true corporate crisis. Instead, the company must determine its essential goals and then coordinate a multi-front defence to meet those goals. It is essential to think the issue through to resolution to avoid a battle that either cannot be won or is not worth the cost of winning. On the other hand, it sometimes is important for a company to mount a vigorous defence.

> BY SELECTING A COURT THAT IS WELL-VERSED IN SHAREHOLDER DISPUTES, A COMPANY CAN SOMEWHAT MITIGATE THE RISK OF MERITLESS STRIKE SUITS.
>
> NOELLE M. REED
> Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

FW: In your opinion, why it is so important for companies, in the event of a shareholder dispute, to have recourse to articles of association and/or a shareholders' agreement? What advice can you offer to parties on drafting such documents, from a dispute resolution point of view?

Finkler: The key documents can determine not only the scope of the dispute – setting out any procedures for shareholder disputes, outside of court, for example – but whether a corporate can successfully defend against it – for example, is the corporate justified in conducting its business in a certain way, or what are the aims of the company? Given their importance, the key message is to be clear and think ahead. There is a temptation to draft on the basis that all parties will want the corporate to succeed. That is obviously not unreasonable when establishing a business, but things can be very different a few years down the line. Aside from the perennial disputes lawyer requests for appropriate dispute resolution clauses, jurisdiction and choice of law, the day-to-day running of the business has to continue in circumstances where shareholders may be at loggerheads. For example, how will the board of a JV continue with day-to-day issues such as work-plans and budgets, in circumstances where the shareholders are in open dispute?

Maples: In England, the court's analysis of a shareholder's rights and obligations will start – and sometimes finish – with its interpretation of the relevant provisions of the company's articles and of any shareholders' agreement. That is because in commercial matters, English law gives parties considerable freedom to govern their affairs as they see fit. This is as true of shareholder relations as it is of commercial contracts. So the importance of setting down in clear terms your understanding of your rights as a shareholder, and the obligations owed to you by your fellow shareholders, is hard to overstate.

Reed: On the procedural front, many companies' bylaws now require shareholder disputes to be heard in specific courts – for instance, the Delaware Court of Chancery. By selecting a court that is well-versed in shareholder disputes, a company can somewhat mitigate the risk of meritless

strike suits. The current judicial trend is to enforce these forum selection provisions. On the substantive front, companies and their shareholders should try to anticipate the issues that are most likely to give rise to disputes and address those specifically in the corporate documents. This exercise will typically be very specific to a company. For instance, the parties might be able to disclaim or narrow the scope of the governing fiduciary duties, particularly in LLCs and partnerships. The parties can add even more contractual protections in a privately-held company. For instance, they can include specific provisions that address the specific role the various stakeholders will have in managing the company, the process that will be used in buyouts, and the dispute resolution procedures that will govern any shareholder disputes.

Robinson: A member cannot usually claim for unfair prejudice if the conduct complained of is consistent with the company's articles of association, assuming they have not been unfairly amended, or the conduct is consistent with the shareholders' agreement. Clearly drafted documents help minimise the risk of disputes – although they cannot prevent spurious claims by disgruntled shareholders wishing to exert maximum pressure on the company. At the negotiating and drafting stages, professional legal and accounting advice is essential to ensure that, so far as possible, the documents cater for all scenarios, good and bad, both to limit the scope for disagreement, and in order to clearly define the rules on resolving disputes. In a private equity investment, consider what powers the private equity investor will need in a distressed situation to improve cash flows and relationships with third-party debt providers and be careful not to allow other negotiated positions to cut across them. Play devil's advocate and test your provisions at the drafting stage – do not wait until it is too late. If provisions of shareholders' agreements provide for expert resolution of certain matters, it is vital that enough information is provided to enable the expert to form a view and the scope of the appointment has to be acceptable to a potential expert.

Walton: There is no 'one size fits all' solution and what can be achieved through careful drafting of the articles and shareholders' agreement will vary depending upon the nature of the company or venture. It is probably fair to say that it is easier to provide protection through drafting when dealing with smaller joint ventures, in relation to which the parties often have a better idea of the areas in which difficulties are likely to arise. In this context, a lot can be achieved by careful consideration of the corporate decision-making machinery, the choice of dispute or deadlock resolution mechanisms, sale, exit or termination provisions and restrictive covenants provided for in the documentation.

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>
> BEN WALTON
> Forsters LLP

FW: What considerations should parties make when deciding on a dispute resolution mechanism, such as mediation, arbitration or litigation?

Robinson: Parties should decide what their priority is likely to be should a dispute arise. Is it a quick and cost effective resolution? If so, expert determination, or an expedited arbitration procedure, may be appropriate. However, there is a misconception that arbitration is a fast and cheap option – this is not always the case. Alternatively, is the priority to ensure privacy, or to have a public vindication of rights in court? In the case of the former, arbitration is appropriate, while in the latter case, jurisdiction should be granted to the appropriate court. Parties should also consider the use of a tiered dispute resolution clause. These require that certain steps, such as CEO to CEO negotiations and mediation, are followed before, for example, proceedings can be issued. They can result in parties resolving a dispute before incurring the expense of arbitration or litigation. However, they can have unintended consequences, are difficult to enforce, and can be used tactically to frustrate the process.

Reed: In shareholder disputes involving public companies, there typically is no formal ADR mechanism that the parties must follow. Instead, the parties should decide what form of ADR, if any, makes sense in the context of a particular dispute. In a claim for damages, mediation is still the preferred form of ADR. In a dispute with shareholder activists, the most effective form of ADR may be a face-to-face meeting between the principals. Privately-held companies, in contrast, have more flexibility to address ADR issues up front. Many privately-held companies now include ADR provisions in their key agreements that range from mandatory arbitration to requiring an aggrieved party

to meet and confer with the other side before filing suit. I have seen several cases recently where the parties used this pre-dispute process to settle their differences. The process succeeded because the parties treated it seriously rather than as a mere condition precedent that had to be completed before a lawsuit could be filed.

Maples: If a dispute does arise, the English courts are well placed to hear the case and deliver judgment in a fair and efficient manner. The long history of corporate and shareholder litigation before the English courts has bred a body of law and an experienced judiciary which can usually be relied upon to fashion an outcome which reflects the merits of the claim, or lack thereof. Arbitration, while sometimes a better alternative to court litigation, is less frequently so in the case of shareholder disputes. Before resorting either to litigation or arbitration, the shareholders should be required by the terms of their agreement to participate in mediation. Even if that process does not result immediately in settlement, it may well lay the ground for later resolution.

Walton: There is no right answer here and much will depend upon the nature of the business and the motivation of the parties. It is very common for shareholder documentation for private companies to contain provisions requiring a period of dialogue between parties before formal steps are taken. The procedure can often be fairly rigorous and this can be effective both to discourage frivolous disputes and to promote the resolution of those which do arise. Some shareholder agreements provide for an initial fast track ADR process, such as mediation, which, while often not finally determinative, can be a very effective means of narrowing the issues in dispute. In terms of choosing between arbitration and litigation as an ultimate dispute resolution forum, I do not think that it is accurate to say that either is significantly cheaper or quicker. Arbitration is probably more flexible and can be tailored to a degree to the needs of the parties. Crucially for many clients, it is also confidential. However, many practitioners consider litigation the more rigorous forum.

Finkler: There is no 'one size fits all' approach to dispute resolution mechanisms. However, it is important that you ask certain key questions beforehand. Do you want a 'rough-and ready' commercial outcome, or something that will be more thoughtful but inevitably take longer if you go through the courts or an arbitration? Does the process need to be in private or can it be dealt with in open court? Where are the parties to any dispute likely to be based? The final point is probably something that is on everyone's mind at the moment given the ongoing Brexit negotiations. There has been a lot of talk about arbitration clauses being a panacea to any uncertainty here but I do not think that is necessarily the case. It is true that such a clause might be helpful in some situations, but the advantages of litigating a dispute in the English courts are still going to be very significant and it is important we continue to emphasise these to our corporate clients.

FW: What factors are likely to fuel shareholder disputes in the years to come? What do you expect to be the main issues and challenges in this area?

Reed: The level of shareholder activism is likely to increase over the next few years. Other than that, the shareholders' ability to control the forum will remain a key factor. For example, Delaware courts have grown increasingly hostile to awarding attorneys' fees for shareholder suits that are settled for public disclosures rather than tangible benefits to shareholders. If shareholders are not able to shop their claims to favourable forums, they may be less likely to assert them. In the context of shareholder disputes between private persons, the biggest challenge is drafting enforceable language that establishes the parties' legal rights. Unfortunately, we continue to see conflicting decisions from the courts, some of which appear to clarify the duties that parties owe and the contractual language necessary to affect the parties' intent, others of which cast doubt on the enforceability of the parties' written agreements. We hope to see some more clarity from the courts on this issue.

Maples: In the main, disputes between shareholders will continue to be driven by differing views on how the company should be run, by disgruntled shareholders feeling marginalised or prejudiced, and by simple human emotion. Where these factors are already at play, they can be aggravated as much by booming financial performance as by poor returns. Claims by shareholders against companies are more squarely driven by scandal and financial crisis. These claims will continue to increase in number and ambition as the litigation funding market continues to grow, and procedures for group litigation develop. The challenge for litigants and their lawyers will always remain the same: to avoid costly and distracting disputes where possible, and robustly to protect a party's legitimate rights and interests where it is not.

Walton: I expect shareholder activism to continue to increase over the next few years. In addition to the current climate of management accountability, the increasing volume and profile of third-party litigation funding means that it is simply easier to get shareholder group actions off the ground nowadays. In addition, the uncertainty surrounding Brexit and possibly also the reality of life after Brexit may well lead to an economic slowdown. When growth is slow or poor, levels of shareholder scepticism and scrutiny of management decisions are generally high. Common sense dictates that this will lead to more shareholder activism and more disputes between joint venture parties.

Finkler: The success, or failure, of large scale 'US-style' class actions in the UK is likely to be very important in this area. The current indications appear to show that those types of cases will find it difficult to get all the way to trial, for both procedural and practical reasons. However, if there are three or four successful, large claims, then this type of litigation is likely to become much more prevalent and we could see a real shift in dynamic between investors and corporates.

Robinson: High valuations in the M&A market seem set to continue into the foreseeable future, and we expect more exit processes will falter or abort as a result, with bidders reluctant to pay what they regard as excessive prices. Where private equity firms are forced to hold on to their investments for longer than planned, they may turn to alternative strategies, with changes to management teams and interim liquidity events becoming more commonplace. Such changes often fuel tension and disagreement among shareholders. Elsewhere, remuneration of public company directors is an increasing area of conflict. Activist shareholders of public companies are likely to seek to utilise votes on pay to put pressure on boards. Of course, it also remains to be seen what impact any Brexit deal will have on the economy generally and how companies will react to that. It seems a bit too soon to speculate one way or another, given the uncertain nature and form of a post-Brexit landscape. ■