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### **Shareholder Activism in Japan, the EU, the UK and the US**

Goethe University Frankfurt, 13 March 2025

On 13 March 2025, University College London (UCL) and Goethe University Frankfurt, in cooperation with the German-Japanese Association of Jurists (DJJV) and the Max-Planck Institute for Comparative and International Private Law in Hamburg (MPI), hosted a symposium entitled “Shareholder Activism in Japan, the EU, the UK and the US” in Frankfurt. The event, initiated by Hiroshi ODA, was held at Goethe University’s House of Finance and received additional support from the Association of Friends and Supporters of Goethe University. The organizers brought together an impressive group of experts, including both academics and legal practitioners, for some timely reflection on this topic.

Local host Moritz BÄLZ, of Goethe University, and Hiroshi ODA, of UCL, who spearheaded the event, began by welcoming the multinational audience of about 50 participants. The first panel, moderated by Ruth EFFINOWICZ, of the MPI in Hamburg, then dealt with the ownership structure of joint-stock companies in Japan. First, Hiroshi ODA analyzed the changing ownership structures of Japanese companies and their influence on corporate governance. The presentation primarily dealt with the rise of institutional shareholders in Japan, whose increased activity ODA attributed mainly to a 2013 government initiative to ensure the more efficient use of capital. Whether these reforms have achieved their goals remains to be seen, but institutional investors and their activist agendas are now a fact of Japan’s economy. In the second lecture, Sadakazu OSAKI, of the Nomura Research Institute and the University of Tōkyō, delved deeper into the emergence of institutional shareholders and activist funds in Japan. OSAKI identified three main stages in their history: Until the 1990s, there were hardly any; owing mainly to the Japanese practice of cross-shareholding, most Japanese pension funds as well as banks who were investors in other companies rarely got involved in corporate decision-making. Then, around the turn of the millennium, it was foreign investors in particular who, in a first wave of activism, began to invest more in Japanese companies, launch takeover attempts, and make their voices heard. Then, around 2012–2013, a second wave kicked in as institutional investors began to make extensive use of their proxy voting rights. Finally, OSAKI has identified a new wave

and current classification consisting in the government's ongoing efforts to enhance the profitability of Japanese companies by further encouraging investor activism. The subsequent discussion showed the symposium participants particularly concerned with the cultural peculiarities of Japanese commercial practices and the extent to which achieving a more efficient use of market capital might entail an Americanization of the Japanese economy. But the main question concerned the goals that activist investors are pursuing as well as the extent of their actual interest in the well-being of the companies they own, a topic that would be problematized again later in the day.

The second panel, moderated by Moritz BÄLZ, dealt with practical questions of shareholder activism in Japan and compared these aspects to models observed in other jurisdictions. The first lecture in this block was by Hidefusa IIDA of the University of Tōkyō, who looked into Japan's unique approach to M&A questions. The presentation dealt primarily with the conflict between the interests of shareholders and the interests of the company's board in a takeover scenario. While investors primarily want to achieve a high price for their shares, the board members naturally are interested in keeping their jobs and may argue that selling to the highest bidder is not actually in the best interest of the company. IIDA himself spoke in favor of considering the future valuation of the company, pointing out that as used in Japan, the combination of the standard of corporate value and the principle of shareholder intent, though it differs from EU and US practices, is a sensible approach. The second presentation in this block, by attorney Ryo OKUBO, of Nagashima Ohno & Tsunematsu in New York, looked at three practical examples of how activist investors influence Japanese companies. One way is that they persuade companies to go private in order to better realize the company's value. Investors in such cases pressure the company to withdraw from the stock market in order to facilitate a reorganization without the influence of other investors. OKUBO's second example was the classic takeover, in which the activists have concluded that the actual economic value of the company is not adequately reflected in the share price. In the third case, a company voluntarily withdraws from the stock market to avoid the influence of activist investors. These two presentations provided a good basis for the subsequent discussion of the advantages and disadvantages of the Japanese approach. Particularly interesting was the role of the courts in such deals, in which experts trained in law necessarily exert far-reaching influence over complex economic processes. Also discussed in this context were the professionalization of commercial law proceedings and the courts' limited resources to hold M&A proceedings.

The third part of the symposium was moderated by Harald BAUM, of the MPI in Hamburg. This block of lectures analyzed the US model of activist

investors and compared it to the European model. Nobuhisa ISHIZUKA, of Columbia Law School, kicked off with a presentation on the development of activist funds in the US. He described a cycle of economic shocks that triggered regulatory changes that in turn encouraged activist investors. One example was the 2008 financial crisis, after which a mistrust of managers prevailed, leading to changes in corporate governance rules that brought activist investors a greater role in governance. The reforms were based on the idea that activist investors could function as a catalyst for structural improvements. This basic idea, of activist investors and in particular hedge funds providing positive impetus for companies, was also taken up in the next lecture by Georg RINGE of the University of Hamburg, whose presentation dealt mainly with the public perception of activist investors. While there is empirical evidence that the participation of hedge funds has a positive influence on companies, hedge funds have often drawn criticism, sometimes even being called “locusts” in Germany. Nevertheless, RINGE emphasized that hedge funds adapt very quickly to the prevailing zeitgeist, as can be seen, for example, in hedge-fund initiatives on sustainability. Both of these lectures were then critically examined by Tobias TRÖGER, of Goethe University, who as a discussant pointed out that despite those features, hedge funds are ultimately concerned primarily with making money, and in view of current political developments, their adaptability could just as easily lead them to promote reactionary political movements, and so the ability of hedge funds to facilitate social change should not be overstated. This comment provided plenty of material for a subsequent discussion comparing the objectives of activist investors in Japan, Germany and the US, thereby relating back to the first block of presentations. Political implications were a significant part of the discussion, for example with regard to the political activities of the US entrepreneur Elon MUSK and the Trump presidency. This turn in the discussion highlighted one of the day’s main topics: the conflict between statistically proven and politically desirable structural improvement through activist investors versus their interventions in existing corporate cultures and political processes.

The fourth and final session was moderated by Hiroshi ODA and dealt with shareholder activism in the UK and France. Mai ISHIKAWA, of Tōhoku University, Sendai, kicked off the session with a presentation on the legal status of shareholder activism in France. The presentation showed that a lot has happened in French law in this regard in recent years, with 2022 being the year with the highest participation of activist investors in the country to date and Brexit having sparked a debate on how to make Paris a more attractive commercial center as an alternative to London. Much of the debate in France revolves around whether the actions of activist investors should be addressed through “hard law” or whether soft law rules might suffice. Ac-

cording to ISHIKAWA, there is a healthy culture of activist investing that the existing rules allow despite not granting activist investors too much power. Comments on this lecture were made by Edmond SCHLUMBERGER, of Université Paris I, who pointed out that from a cultural perspective, activist investors tend to be viewed negatively in France because many family-owned French companies feel threatened by them, which observation fed into a subsequent discussion on French corporate culture and its significance for activist investors in France. The next and final presentation highlighted the situation in the UK and dealt primarily with the effects and characteristics of activist investors there from a statistical perspective. The presenter, Dionysia KETELOUZOU, of Kings College London, emphasized that although the UK is one of the most activist countries, the goals of the activists often differ from those in other countries. While it is traditionally assumed that activist investors are primarily seeking buybacks or dividends, activists in the UK tend to focus on the company's strategic direction and to a large extent are also constituted by investors who often hold less than a 5% stake in the respective company. Discussant Philip GAVIN, of the Technological University Dublin, emphasized the issues of anti-ESG (Environment, Social and Corporate Governance) activists and the success rate of activism, especially regarding litigation by small shareholders in the UK. This led to a subsequent discussion about the strategic incentives for activist behavior, especially with the commercial and ideological goals of activist investors who themselves hold only a small portion of the company.

In his closing comments, Harald BAUM pointed out that activist investing is a dynamic environment, highly dependent on the legal and political framework but ultimately playing an extremely important role in the economy. In summary, the symposium brought a highly stimulating exchange of perspectives on the phenomenon of activist investing, combining practical, theoretical and critical perspectives and providing many insights into the origins of activist investing and its integration into different economic, cultural, and political contexts. The symposium highlighted the realization that while activist investors have a high profile among policy makers from Paris to Tōkyō who think they can be instrumental in orchestrating the more efficient use of capital, at the same time the companies themselves as well as society as a whole often see them as “locusts” because they are perceived as being either unwilling or unable to contribute any value to the company themselves.

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