

# EOA Annual Conference

EMPLOYEE OWNERSHIP  
BEST IN CLASS

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# Corporate and Legal Responsibilities of Trustees and Elected Representatives

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# Bring EO to Life

- What type of representative am I?
  - Trustee Director/Trustee
  - Employee Director
  - Employee Council Member
- One-goal – a successful employee owned company

# Where can I found out what my role is?

- “The Constitution” – Do we have one?
- Governing documents of the E.O. company
- Governing documents of the E.O. Trust (EBT)
- Rules of the Employee Council
- And will they be understandable?

# What responsibilities do I have?

- Like all employees:
  - To work to make the company successful
- If you have the title “Director” – responsibilities in law and contract
- If Employee Council Member – responsibilities in contract
- Distinguish corporate responsibilities of the E.O. company and the Trustee company

# Corporate Responsibility of the E.O. Company and Trustee Company

- Enter into contracts to buy/sell goods and services
- Health and safety of products/services and employees
- To sue and be sued
- To pay taxes
- To do business in accordance with its objects

## The E.O. Company's Objects

- To carry on business as an employee owned company undertaking the commercial activity of...

## The Trustee Company's Objects

- To act as the sole corporate trustee of the employee benefit trust known as...
- To encourage direct/indirect employee ownership of the named E.O. company through the E.O. company employee benefit trust

# Companies Act 2006 Obligations of Directors and Trustee Directors

- S.172-177 Duty to act in good faith to promote the success of the company for its members as a whole having regard to:
  - Likely consequences of decision in long term
  - The interests of the company's employees
  - The need to foster business relationships with suppliers, customers or others
  - The impact of the company on the community and the environment
  - Desirability of maintaining a reputation for high standards of business conduct
  - The need to act fairly between members of the company



- S.172-177 Companies Act 2006 Obligations of Directors and Trustee Directors
- Duty to:
  - s.173 – exercise independent judgment
  - s.174 – exercise reasonable care, skill and diligence
  - s.175 – avoid conflicts of interest
  - s.176 – not to accept benefits from the third parties
  - s.177 – to declare interest in proposed transaction or arrangement

# Applying the duties to a Trustee Director

- What rights does the Trust have as an owner of shares?
- See Articles of Association of E.O. company – A contract
- Vote at general meetings on resolutions
- Appoint and remove directors of E.O. company
- Receive annual accounts
- Other matters set out in Articles of Association – very important

## What rights and obligations under Trust Deed?

- Hold shares to benefit employees directly and indirectly
- Often no obligation to “interfere” in management of E.O. company
- If shares in employee’s hands act as market maker in shares
- Rights and obligations limited by Trust Deed
- To file tax returns

## What rights and obligation under other contracts

- Pay purchase price to seller on succession
- To ask E.O. company to support it financially
- To obtain information from the E.O. company

# Responsibilities of Members of Employee Council

- Set out in Rules of Employee Council
- To attend meetings
- To question managers about decisions
- To relay issues and interests of employees to management
- To relay issues and interests of management to employees
- To consider how best employee ownership can be improved

# What should be covered in a meeting of Trustee Directors and Employee Council

## Trustee Directors

- Review financial performance against forecasts
- Review how E.O. is working
- Record payments received/made
- Approve annual accounts of Trust and Trustee Company
- Review how Trustee Director meetings are working

## Employee Council

- Review update on trading performance
- Receive management view of significant forthcoming issues
- Questions from Employee Council members
- Review how Employee Council meetings are working

# Risks of Trustee Directors

## Personal risks:

- Penalties for failing to file dormant accounts
- Penalties for failing to file confirmation statements

## Corporate risks:

- Fail to properly act as trustee – beneficiaries can enforce
- Risk of non-payment to seller is risk of the Trust's assets

# Summary

- All employees have duty to promote the success of the E.O. company
- Directors of E.O. company and Trustee company have duties in law and contract too
- Learn what duties are and how to apply those duties



# Questions and Discussions

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**Thank you.**

Please make your way to the Kings Suite  
for refreshments and to view the Exhibition  
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