COVID-19: A HEADS UP FOR TRUSTEES

Employee-owned companies are affected by the government's Covid-19 measures in the same way as any other business. What particular actions should the trustees of an employee trust, as owners of their company on behalf of its employees, be taking?

The trustees' duties

The precise duties of the trustees of any kind of employee trust (either an employee ownership trust or a more general employee benefit trust) will be spelt out in the trust deed but the big picture is that they will have an overriding duty to act in the best interests of the beneficiaries.

In any employee-owned company facing challenges because of the current situation, the trustees should generally first be looking for assurance from the directors that appropriate steps are being considered to ensure continued viability. So if this information, with any recommendations, has not already been volunteered, it is recommended that trustees ask for it – and for a quick response.

Will the trustees' consent be required to any recommended measures?

There may be a list of particular steps which the company's directors may only take with prior consent from the trustees. If such a list exists, both the directors and the trustees should ensure they are familiar with it so that if any action on it is contemplated, trustee agreement is sought.

What if a particular proposed step is not on the list, or there is no list?

In this situation, trustees may still want the directors to keep them informed about any significant action they propose to take. Whilst they may not wish to hamper the directors' ability to make quick decisions, there should be open lines of communication so that they have the opportunity to give their input on any major matter. In this fast moving situation, it may be hard to define what is a major matter and in that situation the directors and trustees should wherever possible apply a common sense and practical approach.

For any proposals affecting employees directly, it is generally good practice for trustees to be involved.

Steps impacting on employees directly

Steps being considered by the directors may include reducing the costs of employment. This could include redundancies, inviting employees to join the job retention scheme, a shift to part time working, salary reductions, or other measures.

Aside from the statutory requirement to consult with employees in certain cases (for example, where it is proposed to make 20 + employees redundant in a 90 day period), it is likely that trustees will wish to be consulted on any proposed measures. Questions to consider may include:

- *If redundancies are proposed, are there any alternatives (including the job retention scheme)?*

- *If the job retention scheme is to be used, how to choose which employees are to be invited to be "furloughed" under it? Is there clearly no work for certain employees?*

There may be circumstances where the trustees decide to go one stage further and then consult with the trust's beneficiaries. They should check the trust deed (and any other connected documents) for any requirement or expectation that they do this. Subject to that, whether they do so may depend on their judgement as to how helpful it will be in reaching the best quality decision, how practical and how much time is available.

Authored by Robert Postlethwaite

Postlethwaite
EMPLOYEE OWNERSHIP LAWYERS