

SPECIFIC LEGAL ISSUES RELATED TO AN ESOP

Right to Representation on the Board of Directors

This element is likely to be a more significant factor in situations where the ESOP is intended to effect an overhaul of the company's corporate culture, and clearly in situations like the Algoma Model there is no clear answer to whether or not employees that are part of an ESOP should have a right to representation on the board of directors. It is an issue that has split the ESOP community. In many cases the decision results from the corporate culture and the trust between the various stakeholders in the company. In a unionized company the unions usually require that representation, if they are to look at an ESOP as a means of supplementing wage concessions. However, where ESOPs are put into place not as a methodology to restrict the employees but as a means to allow them to participate in the growth of the company, there is a tendency to develop over time the right of the employees to representation on the board of directors. Studies in the United States have shown that a majority of companies do not put an employee on the board of directors in the first few years of the ESOP. However, after five or six years of operating the ESOP, corporations tend to appoint employees to the board of directors, as all stakeholders begin to understand and respect the issues that are involved in running the corporation, and trust each other to do what is best for the growth of the company.

Veto Rights

The plan should spell out whether the participating employees will have the power to veto corporate transactions and what transactions would be affected. Veto rights would be considered only when the employees have a substantial voting block of shares in the company and, therefore, a substantial say in the operation of the company. The following list is illustrative of key veto elements for consideration:

- new issues of treasury shares by the corporation,
- amalgamations and mergers with other corporations,
- sales of significant assets,
- material acquisitions,