Browne Jacobson

COVID-19 and declaring dividends

COVID-19 is currently having an unprecedented impact on the global economy. The legal framework in place for lawfully declaring dividends has not been relaxed in light of the COVID-19 pandemic, so companies must take care to follow all of the usual rules when seeking to declare a dividend.

28 April 2020

Please note: the information contained in our legal updates are correct as of the original date of publication

COVID-19 is currently having an unprecedented impact on the global economy. Usually at this time of year many UK companies are preparing to approve dividend payments to their shareholders – distributing their profits to their investors. The legal framework in place for lawfully declaring dividends has not been relaxed in light of the COVID-19 pandemic, so companies must take care to follow all of the usual rules when seeking to declare a dividend – and also consider the potential future trading position of the company before recommending any dividend payments.

When declaring a lawful dividend, companies must have sufficient "distributable profits" available in order to pay the dividend and the directors, in coming to that decision, must do so by reference to the company's "relevant accounts". This would usually be the latest statutory accounts or, if the company's financial position has changed since that date, some interim accounts should be drawn up (and in some circumstances filed at Companies House). Any interim accounts should enable the directors to make a reasonable judgement of the following items:

1. profits, losses, assets and liabilities;
2. appropriate provisions; and
3. share capital and reserves.

However, directors will also need to consider whether there are any events that have arisen since the statutory accounts (or interim accounts if relevant) that may affect the company's ability to pay the dividend out of distributable profits. This will particularly be the case with an interim dividend, which becomes a debt payable to shareholders when it is paid, rather than when the board resolves to pay it. When an interim dividend is declared and not paid until a later stage, the board will also need consider the financial position of the company at the point of payment. As ever, the directors should also bear in mind their duties owed to the company and the shareholders.

As a result of the pandemic, the cash flows of many businesses will have reduced dramatically (and costs may well have increased too depending on the sector) and therefore the company's statutory accounts may no longer accurately reflect the company's financial position. Whilst interim accounts may be helpful to assist the directors in deciding whether or not to recommend a dividend payment, they should also consider the company's likely future position and whether, even if there are still technically distributable reserves currently, they would be able to justify a dividend if the economic uncertainty continues and trading worsened in the longer term.

The Financial Reporting Council (FRC) has already published guidance for companies preparing financial statements in the current climate. One of the key messages highlighted by the guidance was to encourage boards to pay attention to capital maintenance, ensuring that sufficient reserves are available when the dividend is made, not just proposed. The FRC also says that, "the assessment of whether a dividend is appropriate should include consideration of current and likely operational and capital needs, contingency planning and the directors' legal duties, both in statute and common law".

Typically, the annual general meetings (AGMs) of public companies propose the approval of a dividend as a standing resolution each year – but we are already aware of several publicly listed companies removing resolutions to approve dividends where notices of AGMs were circulated before social distancing measures were put in place and the potential economic impact of the COVID-19 pandemic in the UK was less apparent.

Contact

Rachael McDonald

Principal Associate

rachael.mcdonald@brownejacobson.com

+44 (0)115 934 2020

Related expertise

Services

Banking and finance

Commercial law

Corporate