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it's our business

newspad of the Employee Share Ownership Centre

PM asks chancellor to review Roadchef scandal

Prime minister Boris Johnson has asked chancellor of the Exchequer, Sajid Javid, to take an interest in the scandal of the still unpaid compensation owed to hundreds of former Roadchef employees who participated in one of the UK's earliest all-employee share ownership schemes.

BoJo's suggestion came in the House of Commons in response to a Prime Minister's Question from Roadchef campaigning SNP MP Mr Neil Gray. He asked the PM why HMRC was apparently planning to tax the compensation payments awarded in the High Court to the former lowly paid employees of the Roadchef motorway services stations.

The Roadchef EBT1 Trustee, Reed Smith, is so frustrated by the long-drawn out row with HMRC over the tax issue that it is threatening to take the UK's tax authority to the tax tribunal in order to get a final binding decision over whether the tax should be imposed, or not.

Although Treasury financial secretary and long-term esop enthusiast Jesse Norman has oversight of the Roadchef dossier, he does not have *operational* control over HMRC and nor does any other minister.

The Roadchef trustee has recovered an estimated £9m more for the compensation pot from HMRC after a bruising battle over the amount former Roadchef ceo and chairman Tim Ingram Hill paid in 'tax' after he made a £26m profit from the sale of Roadchef shares, including those in the Esop EBT, owned by the employees. This share sale was set aside by Mrs Justice Proudman, who ruled in **January 2014** that the employees' Esop shares should not have been transferred from the Esop EBT into a second performance shares trust, which Mr Ingram Hill controlled.

About 4,000 past and present Roadchef employees, most of whom did not participate in the Esop, will receive compensation payments under a curious formula agreed by the parties after the High Court ruling six years ago. The 350-450 surviving Roadchef ex Esop participants are to get the lion's share – 61 percent – of a compensation pot rumoured to exceed £20m gross, before funding and legal charges of at least £4m are deducted.

The trustee is refusing to answer *newspad's* questions about when the compensation finally will be paid out. However, one of the Roadchef Esop beneficiaries, Margaret, told *newspad: "Our last update from the trustees in December stated that they were having positive discussions and would be meeting again at the end of January. But if they didn't get an agreement then, they would take it to a tax tribunal to decide. So we were hoping to hear something positive by now, but then again, how many times have we been let down?"*

SNP MP, **Neil Gray**, asked the PM on January 8 how much longer Roadchef workers would have to wait before receiving compensation for shares they were promised. Mr Gray told the PM: "*For more than two years, I have been campaigning on behalf of my constituents in Harthill and 4,000 other low-income Roadchef workers across the UK who have*

From the chairman

Hats off to Neil Gray MP! The most persistent Roadchef campaigner used Prime Minister's Questions to give BoJo the opportunity of asking Chancellor Javid, a serious fan of employee share ownership, to sort it out. In addition we have Jesse Norman, a long-term supporter, as Treasury minister indirectly responsible for HMRC.

That matters too because HMRC would not have been dragging its feet without excellent reason. My guess is because a Roadchef concession risks opening floodgates to a host of undesirables.

But a Gordian knot is a Gordian knot and the (happy) end may just be nigh. Some Roadchef beneficiaries would now like us to represent them but that bids fair not to be necessary.

Malcolm Hurlston CBE

waited more than 20 years to receive share ownership money that is rightfully theirs. In 2018 there was a breakthrough, when HMRC agreed to repay millions of pounds in wrongfully paid tax. However, I understand that it is trying now to recoup tax on every penny possible from those low-income workers. Given that the trust was set up as a non-tax employee ownership scheme, does the prime minister think it is fair that HMRC would seek to run roughshod over that, and will he now meet me to discuss this projected saga?"

The PM replied: "*Yes, of course. I make a general point that we have done a huge amount to lift the burden of taxation on the low-paid, and we are lifting the living wage by the biggest ever increase, but I know that my right hon. friend the Chancellor will welcome the opportunity to discuss the particular matter that the hon. Gentleman raises in person."*

The new tax assurance commissioner, Melissa Tatton, was reluctant to investigate the Roadchef saga, despite an urgent plea from the Centre's chairman. Her spokeswoman told *newspad:* "Melissa Tatton has oversight for our assurance and dispute governance arrangements. *However, she does not have responsibility for the operational teams who manage customers' tax compliance*. As a statutory body, we must apply the law and collect taxes as set out in legislation by parliament. In doing so, we are legally bound to be even-handed and impartial. This matter has the close oversight of the director of large business. We recognise the beneficiaries are keen to see a resolution and are actively working to that end."

Centre says scrap outdated Esop rules

Outdated and sometimes irrelevant employee share scheme rules should be scrapped and replaced in a wholesale shake-up of Eso in the UK, Centre chairman and founder **Malcolm Hurlston CBE** told the Chancellor in the run-up to the first Budget of the new administration. In a detailed letter, Mr Hurlston set out the distilled employee share scheme reform programme drawn up by senior Centre members after weeks of consultation.

He told Mr Javid: "With your imminent Budget on March 11 in mind, I as founder and chairman of the Esop Centre would like to suggest the following changes in the rules governing the four tax-approved UK employee share ownership plans, namely the two **all**-employee tax approved schemes - SAYE-Sharesave and the Share Incentive Plan (SIP) – and the two **discretionary** tax approved schemes – Company Share Option Plan and the Enterprise Management Incentive. These proposed changes, set out below, have been put forward by our members, who comprise many of the employee share scheme UK community's leading technical experts.

SAYE-Sharesave & Share Incentive Plan (SIP): Widen eligibility in both

*Entitlement to participate in tax advantaged share plans depends largely on employment status – companies may not be able to offer share schemes to certain growing sections of their workforce, because individuals in these subsets do not fit into the definition of 'employee' as set out in legislation. Therefore, review legislation e.g. ITEPA 2003, to enable more of the workforce to be eligible. Hence allow all IR35 deemed employees to participate in **all** qualifying tax-advantaged schemes.

*Auto enrolment could be introduced for payrolls in companies operating broad based employee share schemes, with the proviso that any or all employees could, on demand, opt out from such participation.

SAYE – Sharesave

*Option price 'look-back' clause**:** The option price and the number of shares under option is set at launch. A 'look-back' feature would enable the option price to be reset to 80 percent of the market price ***one month prior to the maturity date***, if the starting option price were underwater at that time. The 'maximum' number of shares under option would remain as at launch (unless there has been a corporate event), meaning a larger 'residue' repayment at maturity.

*Change the tax rules so that monthly employee SAYE scheme contracted contributions come out of **gross salary**, rather than net, to encourage greater employee ownership.

Share Incentive Plan (SIP):

*The proposal is to reduce the five year tax-free period to three years, with withdrawals in the zero to three year period changed to the 'lower of' approach that is currently applied to shares withdrawn during the three to five year period.

*Changing the SIP rules so as to allow companies the ability (if they so choose) to allow shares to remain in the SIP, and therefore retain the 'tax shelter,' after a participant has ceased employment, other than for a 'bad reason' or death.

Company Share Option Plan (CSOP):

*The proposal is to increase the current £30,000 individual employee investment award limit to reflect RPI indexation increases since 1995, with the new individual limit to be at least **£60,000.**

Enterprise Management Incentive (EMI):
*Double the existing limits on EMI share options to **£500,000** (individual) and **£6million** (overall).
Increase the current **£30m** Gross Assets Test company participant limit with a view to allowing EMI *(not subject to State Aid*) to supplement CSOP in larger quoted companies as well as continuing to operate in SME quoted and private sectors.
*Remove the existing requirement for the employee to make a *working time declaration* (as it is unnecessary and proving to be a "trap for the unwary").
Changing the **Employee Ownership Trust (EOT)** legislation:
*The current EOT is open to abuse, capable of securing a substantial CGT exemption for the seller without the introduction of any form of Eso whatsoever, so the sale of shares into an EOT should be conditional upon the introduction of an Eso scheme.
*A graduated scale of CGT relief should be introduced depending upon the percentage of shares released to the EOT.
*The incentive for companies to introduce the reformed EOT could be some form of corporation tax relief although this approach requires further exploration and refinement.
*That the claw-back charge on the trustees, if the "controlling interest" test ceases to be met, be subject to a 'tailing-off' after seven years.
*To allow shares awarded under a SIP and held in the SIP to count towards the 51 percent shareholding needed to satisfy the "controlling interest" test.

General proposal
*The UK requires a retirement planning model based on the US **401K** Plan model which structures equity investments based on the shares of the sponsoring company, possibly combined with shares in other companies (*diversification)*, as in the US model. Pension planning is a pressing economic challenge and for employee share schemes to contribute to pension provision would significantly strengthen the overall credibility of such schemes as a mechanism that can make a formidable commercial contribution to the economic life of the UK.
*Offer *companies* – not just employees - tax incentives for operating an employee share plan or profit-sharing plan.
*Make it easier for mobile employees to transfer the ***value*** of their employee shareholdings - into another Eso plan (that of their new employer) - when they resign in order to start new jobs.

A ravioli post Brexit deal?
EU post Brexit negotiator **Michel Barnier**'s chief aide **Stefaan De Rynck** told the magazine *Politico* that Brussels is not really in favour of carving up the future EU-UK relationship talks, insisting it would be much better to wrap all the strands — trade, fisheries, security etc — together into a single package: "***In terms of the singular agreement or 'salami' kind of agreement, I prefer … this kind of pasta where everything is integrated as a main course***," De Rynck said after speaking at a University College London (UCL) event. As every cook knows, you can place all kinds of fillings - meat and/or vegetables, into ravioli.
"I think we have an agreement with the UK that will go for an overarching institutional framework, where chapters and agreements are linked," said De Rynck. However, he warned: "*There should be no misunderstanding of the fact that the next phase will be more complicated to negotiate than the Withdrawal Agreement (WA).* ***The limitation of time must lead to some dose of realism on what can be achieved."***
De Rynck continued: "It's a choice made by the UK government to limit the time we have available … *We are looking at seven or eight months of actual negotiation."* He said the UK should be thrilled at the so-called zero/zero trade deal potentially on offer from Brussels. "*We are looking at a possibility of a relationship in the trade side where we will have zero tariffs and zero quotas between the EU and UK,*" he said. "*That is a pretty generous offer from the EU — I would say to consider that. Because this is a market of 450 million people at the doorstep of the UK ... We need to stress this is not something that any other third country has*."
Then came his punchline: "**That access can only come about insofar as there are sufficient guarantees for open and fair competition between the EU and the UK in the future relationship agreement.**"
De Rynck was unimpressed by Boris Johnson's repeated claims that there would be no checks on goods travelling from GB into Northern Ireland under the new arrangements: *"We will have to be extremely disciplined to get [this system] up and running in 11 months, to have the UK apply the checks that it has agreed to apply. The EU's customs code, the EU's single market standards, continue to apply in Northern Ireland as of 2021 — and the UK authorities will apply that in a framework ... Certainly on our side we will not tolerate any backsliding or half measures."*
Odds on either a *Cliff Edge* departure, or a *Bare*

Bones post Brexit deal, after the 11 month transition period hardened as EU member states demanded that the UK agree to a form of ongoing, or "dynamic", alignment on both state aid rules and environmental and climate policy in exchange for a "zero tariff, zero quota" trade deal. *The impending confrontation when serious negotiations begin, probably in early March, prolongs the uncertainty facing the UK employee share ownership community, especially those companies who have installed UK style share plans in subsidiaries on the European mainland.*

Key unresolved issues include whether, in the event of a cliff edge Brexit, key data transmission from European sites back to the UK would be hindered, or even prohibited after December 31. A recent study by University College London warned that potential problems with data transfers post-Brexit had received minimal attention: "*UK economic activity is dependent on these flows. But disruption would place immense compliance burdens on organisations that would have to invest in legal and administrative fees to ensure EU-UK data transfers remained lawful,"* it said.

There are lingering doubts too about whether the recently widened **Prospectus Directive (PD)** employee share schemes exemption would be removed when UK based companies wanted to introduce or extend their Eso plans into European subsidiaries. The exemption now applies regardless of the location of the issuer, who is no longer required to have its head office or registered office in an EU member state or its securities listed on an EU regulated market. This is *provided that the issuer discloses publicly and describes in a document the number and nature of the securities and the reasons for the offer*. However, were there to be bad blood between London and Brussels, after failed negotiations, it would be easy for Brussels to weigh down UK based Eso companies with more bureaucratic requirements regarding new share plan proposals for sites in mainland Europe.

Fears were reinforced by a European Commission website slide set entitled: *Internal EU27 preparatory discussions on the future relationship: Personal data protection (adequacy decisions); Cooperation and equivalence in financial services*. This emphasises that "**equivalence"** decisions **(*basically, whether your organisation is deemed fit or not to do business with the EU*)** will be made by the EU on the basis of *"an assessment and in protection of its own interest*s" and that the EU's autonomy on equivalence is not to be restricted by Free Trade Agreement.

Equally menacing, the **European Commission** drew up a list of UK financial sectors to target if the City of London strays too far from EU regulation after Brexit. Commission officials told EU27 diplomats, meeting in Brussels, that they had identified ***40 different types of financial services that could be frozen out of the EU's market***. Future trading relationship on financial services will be based on Brussels' concept of equivalence, which can be withdrawn unilaterally at just 30 days' notice. By pinpointing specific sectors and sparing others, the EU could ensure its continued access to vital clearing services and global capital markets, while heaping pressure on the UK to exert leverage in future UK-EU negotiations.

The UK could be fined or lose preferential access to the European market if it violates the terms of a future relationship deal with the EU, under plans presented by the European Commission, reported Centre member **Baker McKenzie.** Brussels wants trade and other future cooperation with Britain to be governed by one strong set of enforcement rules, according to an EU presentation, shared with diplomats and seen by the *Financial Times*. The measures would ensure each side can act decisively to protect itself in the event that the other fails to honour its obligations.

EU officials said too that the goalposts had shifted as a result of the EU's ambitious new trillion-euro *Green Deal* package to achieve carbon-neutrality by 2050, which the UK will not be bound to by the time the transition period expires on December 31. '*The moment a country is outside the regime, there is always a temptation to seek advantage, that is why the EU is based on law, not trust*," a senior source told Peter Foster, Europe editor at *The Telegraph*. "If the UK is not signed up to the Green Deal, then how does the EU benchmark the UK?" asked the informant. "The question is how do you make sure the UK isn't going to renege, and how do you keep them accountable if the UK is not part of an action plan?"

The gap in expectations reflects differing interpretations of the **Political Declaration** that the UK and the EU jointly signed up to before Christmas in which both sides committed to "*robust commitments to ensure a level playing field*" as part of any future trade relationship. Although not legally binding, EU sources said they regarded the document as *politically* binding. One diplomat described the importance of the Political Declaration pledges as "vastly underrated," as they will be "a guiding principle" for the EU. "After all, it was agreed by the Government too."

Chancellor Sajid Javid warned UK manufacturers that there would not be alignment with the EU after Brexit and insisted firms must adjust to new regulations. He admitted not all businesses would benefit from Brexit. In an interview with the *Financial Times*, he said: "*There will not be alignment, we will not be a rule taker, we will not be in the single market and we will not be in the customs union – and we will do this by the end of the year.* Days later, under severe pressure from key UK industries, he toned down these remarks. One source warned that the UK's stance raised questions in Brussels about whether it had the level playing field commitments in the Political Declaration "in good faith". The declaration said that both sides would "*uphold the common high standards*" that applied at the end of the transition period on areas including "state aid, competition, social and employment standards, environment, climate change and tax matters."

European Commission president Ursula von der Leyen said the price of a clean-break Brexit, which PM Boris Johnson was pursuing, was a "distant" partnership with the EU. Unless the UK accepted a level playing field in the UK and EU's trade positions after Brexit, there would inevitably be barriers for British manufacturing, she said in a speech at the London School of Economics. "It is basically impossible to negotiate all," said Ms von der Leyen. She said the EU would prioritise the elements of a deal to prevent the UK crashing out of the EU on **World Trade Organization** rules. The closer the UK could remain to the EU, the better the chance of a deal that would avert a cliff edge: "*The more divergence there is, the more distant the partnership has to be*," she said. "*Without an extension of the transition period beyond 2020, you cannot expect to agree on every single aspect of our new partnership. Without the freedom of movement of people, you cannot have the free movement of capital, goods and services. Without a level playing field on environment, labour, taxation and state aid, you cannot have highest-quality access to the world's largest single market."* Nevertheless, the EU was ready to negotiate a frictionless trade deal: "We are ready to design a new partnership with zero tariffs, zero quotas, zero dumping" and "a partnership that goes well beyond trade and is unprecedented in scope." The list of elements beyond trade, which was not exhaustive, included "climate action, data protection, fisheries to energy, transport to space [and] financial services to security".

Mr Barnier warned that leaving the EU was not a simple process and involved renegotiation of ***600 international agreements as well as the new free trade agreement.*** This would leave only seven months in which to hammer out a deal. The EU's trade commissioner suggested there could be a last -minute trade-off with Brussels offering the City of London access to European markets in return for European fleets retaining their fishing rights in UK waters. The UK's financial services sector will lose '*passporting*' - its automatic right to serve EU-based clients at the end of the transition period and the EU would need to negotiate access to UK waters for its fishing boats. Phil Hogan, the former Irish minister who is now **trade commissioner** in Brussels overseeing the next stage of the Brexit negotiations, told the Irish Independent: "*There certainly will be trade-offs, particularly at the end of the negotiations. The EU will be seeking concessions on fishery access and the UK will very probably be seeking concessions on financial services*." Hogan, a long-standing critic of prominent Brexiteers including BoJo, described claims that the EU would be put under pressure to seal a deal by parallel UK-US negotiations as "*fairytale economics*." Negotiations on the future relationship between the EU and the UK are expected to start once both sides have settled positions on the main issues. To meet this timetable, the EU's 27 member states would have to agree on the Commission's mandate to negotiate on their behalf by the end of February. EU countries are likely to be presented with the Commission's draft mandate for the trade negotiations early this month. In a best-case scenario, that leaves March to September – about seven negotiating cycles – in which to strike an agreement. Critics said it was an understatement to suggest this might not be long enough. ***The risk of a no-deal cliff edge at the end of this year remains a key concern for financial markets and businesses.***

Linklaters

EVENTS

Sheriff rides in for share plans symposium

Professor Michael Mainelli, executive chairman, Z/Yen Group and High Sheriff of the City of London, will deliver the keynote speech during the Centre's fourth **British Isles share plans**

symposium, at **Linklaters** in **London** on Thursday, **March 26.** His main theme will be: "*Inequality – some thoughts from the front line of Long Finance* and he will talk about the role of stock options. Prof Mainelli is a qualified accountant, securities professional, computer specialist, and management consultant, educated at Harvard University and Trinity College Dublin.

Share plan sponsor companies are staking their claim to the ***free seats*** offered to them at the symposium by the Centre. These include **Burberry, Reckitt Benckiser, SGI Industries** and **Thales UK**. So member advisers should get their skates on and register asap, since they need to know their way through the employee equity corporate governance thickets as well as the various post Brexit scenarios for share plans.

The symposium is being hosted by senior legal member **Linklaters** at its **Silk Street**, **London EC2** HQ, whose speaker will be **Harry Meek.** His theme will be: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. The event will be chaired and introduced by Centre founder, **Malcolm Hurlston CBE**. He will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?* Other speakers include:

Stuart Bailey: a major employee share plan case study promoted by Centre member plan administrator **Computershare**.

Colin Kendon, partner (employee incentives) at **Bird & Bird**: the government's review into the future of the Entrepreneurs Relief scheme which helps SME owners reduce their Capital Gains Tax bills when selling their businesses. Colin will deliver a frank assessment too of the popular Executive Management Incentive (EMI) share options based approved scheme, which is being operated by more than 10,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about 'Exit Only' EMIs.

David Craddock, who heads his eponymously named worldwide share schemes consultancy: How SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking Worked Examples Group which the Centre co-founded and has administered pro bono from its inception.

Martin MacLeod of **Deloitte**: Do recent changes in the UK corporate governance code go far enough on executive reward.

Willis Towers Watson director **Damian Carnell**, executive compensation expert and adviser to the International Accounting Standards Board, will speak on top pay, incentives and the pressing environmental, social and corporate governance (ESG) agenda.

Jennifer Rudman of **Equiniti**: How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's itinerant workforce?

Garry Karch, the leading Esop banker in the UK: How Employee Ownership Trusts are structured and financed.

Jane Jevon of **Pett Franklin**: the Company Share Option Plan, the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.

Claire Prentice of **Travers Smith**'s incentives & remuneration team: Which elements contribute most to effective global equity plans?

Robin Hartley, a senior associate at **RM2**: How best to structure and install growth shares in companies.

Practitioner Centre member delegates will pay **£395** and trustee members will pay **£330** for their seats. Non-member practitioner delegates will pay **£595** (all ticket prices are VAT-able). Plan issuer (non adviser) delegates: ***free of charge***. The programme brochure can be downloaded from: www.esopcentre.com/event/british-isles-symposium-2020. More than 30 registrations have been received with nearly two months to go.

Jersey share schemes and trustees seminar

Hold the day for the next share schemes and trustees seminar in **Jersey** on **Friday, June 12 2020**. The joint **Esop Centre/Society of Trust & Estate Practitioners (STEP)** event will be at the Pomme d'Or hotel in St Helier. Don't miss this great opportunity to update your knowledge on the key issues. The presentations will run from 9:00 am to 1:00 pm (approx.) followed by lunch for delegates and speakers. **Ticket prices**: Esop Centre/STEP members: **£375**; Non-members: **£480.** Reserve your place by emailing juliet_wigzell@zyen.com or call the Centre on +44 (0)20 7562 0586.

MOVERS AND SHAKERS

On the move

*Centre member **SANNE,** a global provider of alternative asset and corporate business services,

has appointed **Jessie Meng** to the role of *country head* in China, based in **Shanghai.** Jessie will strengthen and enhance its Shanghai based services, while working closely with business leaders in SANNE's other Asia-Pacific offices. She joins from Fusi Capital, an onshore fund asset management company, where she held the role of coo, leading operational aspects for the middle and back office.

UK CORNER

Company listings decline

There were 760 companies listed on the **Alternative Investment Market (AIM)** last December, down 15 percent from a decade ago, as small businesses are taken over or forced into private ownership. Just **ten** businesses floated on the junior market last year, including **Loungers**, the café bar chain, and **Argentex**, the foreign exchange group, down from 42 in 2018 and 50 in 2017. Between 2004 and 2007 more than 1,000 companies listed, at an average of 260 a year. Economic uncertainty and investor concerns about Brexit hit trading volumes. Analysts and brokers said the trend was part of the fallout from the collapse of Neil Woodford's investment empire, due to lack of liquidity. Underperforming stocks include the mattress maker Eve Sleep and Eddie Stobart. Woodford was a significant shareholder in both firms. Aim companies raised only £574m in floats last year – less than the £1.4bn raised in 2018. "If you're a public company below a market cap of £150m, you really want to question whether you should even be publicly quoted," said former City analyst Alex DeGroote. The number of publicly listed companies opting to leave the stock exchange and become private firms soared 40 percent last year. Centre member law firm **Pinsent Masons (PM)** revealed that 28 businesses listed in London were snapped up by private equity firms in *public to private* deals (P2Ps) in the UK last year, up from 20 in 2018. The value of deals more than doubled, to £21.1bn in 2019, up 113 percent from £9.9bn in 2018. The £4bn buyout of defence group **Cobham** by US private equity group **Advent International** was the most high profile deal in a trend that goes back more than a decade for businesses to reject the stock market in favour of private ownership. Private firms have baulked at joining the stock market, which is considered a route to broader investments from pension funds, investors and individual savers. Data firm **Dealogic** said that just **34** companies applied to be listed in the UK during 2019, the lowest in a decade. The amount of money raised from new UK listings nearly halved compared with the year before to £3.7bn. All this reduces the territory for the implantation of employee share schemes which are generally inapplicable to companies controlled by private equity.

Pinsents blamed Brexit uncertainties for depressing the value of UK-listed firms compared to their European counterparts and making them more attractive to foreign buyers. The rise in deals may reflect management teams being more receptive to partnering with PE funds to take a company private too. Julian Stanier, a partner at PM, said: "The speed at which companies are going private principally boils down to depressed share prices, low interest rates and the massive firepower of Private Equity. Attractive valuations have enabled PE funds to acquire companies with strong fundamentals at prices below recent norms. We expect to see this activity continue into 2020. A new government with a strong majority has further added to the attractiveness of UK companies."

TRAVERS SMITH

Difficult to peg back executive reward

Despite decades of promises, successive UK governments have failed to shackle undeserved executive greed or secure a more equitable distribution of income, according to the left-leaning **High Pay Centre (HPC) and CIPD**. UK top executives collected more in remuneration in the first three working days of the year than the amount received by average employees during the whole year. In 2018, the average FTSE 100 ceo collected **£3.46m**, equivalent to £901.30 an hour. The average annual pay for a full-time employee was £29,559, equivalent to £14.37 an hour and 117 times the annual pay of the average employee. The headline minimum wage rate for those aged 25 or over is £8.21 an hour and is due to rise to £8.74 an hour in April this year. **Secretary of State for Business, Energy and Industrial Strategy,** Andrea Leadsom, said that from now on UK listed companies with more than 250 employees would need to disclose annually the ratio of their ceo's reward to the median, lower

quartile and upper quartile pay of their UK employees. The **Chartered Institute of Personnel & Development (CIPD)** and HPC called on businesses not to treat the new reporting requirements as a "tick-box" exercise and to use it as an opportunity to fully explain chief executive pay levels. Peter Cheese, ceo at CIPD, said: *"Pay ratio reporting will rightly increase scrutiny on pay and reward practices, but reporting the numbers is just the start. We need businesses to step up and justify very high levels of pay for top executives, particularly in relation to how the rest of the workforce is being rewarded. Greater fairness and openness in pay is essential in building trust among employees as well as external stakeholders and investors.*" During 2018, to compare more directly with the statistics for ceos, average weekly earnings rose by 3.7 percent, with price inflation of 2.5 percent, said the Office for National Statistics.

A group which represents hundreds of UK company *pension* trustees with £750bn worth of shares in their care is frustrated at hardly being able to engineer any change on 'excessive' executive reward. The **Association of Member Nominated Trustees**, a few years ago set out red lines when it came to voting. They simply ask, for example, that fund managers vote against pay levels that are more than 100 times the UK's average wage and, if they don't, to report back to shareholders why not. Given the UK's average wage is around £29,000, that limits ceo pay to just shy of £3m.

Remuneration committees are populated by non-executive directors, often friends of executive directors who are loath to bite the hand that feeds them. Some are executive directors of other companies. They have little/no interest in checking escalating executive pay as higher pay establishes new benchmarks for their own pay. This mutual back-scratching feeds the executive pay frenzy. Collapsed companies **Thomas Cook** and **Carillion** had remuneration committees. Despite poor corporate performance, executive pay escalated year after year. Carillion crashed with massive debts. Its board presided over low levels of investment, declining cash flow, rising debt and a growing pension deficit. Yet the reward of directors had rocketed. Its three non-executive directors collected more than £60,000 each for working around one day a month and did not oppose any of the pay rises for directors.

MPs criticised the government for failing to follow through on plans to rein in corporate excess, in a report examining the failure of 178-year-old tour operator Thomas Cook, reported *The Guardian*. Following an inquiry cut short by the general election, the Business, Energy and Industrial Strategy select committee called on ministers to move faster to reform the audit profession, strengthen corporate governance and curb executive reward. It said measures that could have achieved these aims had been suggested in the wake of other high-profile collapses, but that the government had failed to take them forward. The committee made recommendations to toughen up corporate governance, including stronger provisions to claw back bonuses from directors when companies fail. The MPs were disappointed that the government had not pressed ahead at pace with plans to replace accounting regulator the **Financial Reporting Council** with the new stronger body to be called the **Audit, Reporting and Governance Authority**.

Some company accountants have acknowledged that the rising levels of executive pay have virtually no relationship with corporate performance. Shareholder approval for forward-looking executive remuneration policy is needed at least once only every three years. There is no annual binding vote on the amount of executive pay. In any case, shareholders in large companies have only a short-term interest and are more focused on returns on their investment. Unlike the UK, many European countries have employee elected directors on company boards and that encourages focus on the long-term wellbeing of the company. Many executives receive subsidised housing, chauffeur driven cars, the use of private jets, private healthcare, help with house buying and school fees. Executives have been known to fiddle share options by backdating them to maximise their own personal gain. Executive pay is often inflated by *golden hellos* and *goodbyes*, which have no relationship to actual performance and should be prohibited, as is the case in Switzerland, claimed **Prem Sikka, Corbyn adviser and professor of accounting at the University of Sheffield.** Bonuses should only be awarded for extraordinary performance solely attributable to an executive, he said. Such claims should require support from at least 90 percent of all voting stakeholders. Company law should be changed to give stakeholders the right to fix an upper limit to 'cap' executive remuneration packages.

*The **US**, according to World Bank estimates, has some of the worst income inequality in the developed world and the problem appears to be getting worse. In addition to a range of macroeconomic causes, including globalisation, deregulation, and the decline of workers' unions,

exorbitant executive compensation packages are also partially to blame for the growing inequality. A recent report released by the **Economic Policy Institute,** a non-partisan think tank, found that average ceo pay at the 350 largest US companies had climbed by more than **1,000 percent** in the last 40 years. Meanwhile, wages for the average employee rose by less than 12 percent. The news outlet *24/7 Wall St.* reviewed ceo compensation for the 2018 fiscal year, as compiled by **Equilar,** a corporate data firm, to identify the 25 highest paid ceos of the year. Ceo compensation includes salary and any bonuses, stock and options grants, and benefits. The annual compensation of the ceos on this list ranged from $28.4m to **$2.3bn**, in the case of Elon Musk, founder and owner of **Tesla,** who received this amount in pay and dividends last year, when Tesla's revenue soared to **$21.5bn.** His ceo total annual reward versus median employee salary ratio was **40,668** times. **David M Zaslav,** of the US mass media company **Discovery,** raked in total annual compensation of **$129.5m** last year, while company revenue reached $10.6bn. So Mr Zaslav clocked up **1,511x** the median pay of Discovery employees. Being top dog in a public company means making major corporate decisions, managing resources and operations while being a public figurehead too -- all of which can have profound implications, particularly at some of the world's most valuable companies. The enormous compensation packages beg the question, however, *How much is too much?*

Shareholder resolutions about executive reward that received significant shareholder dissent at the agms of FTSE 350 companies remained high last year, a review by **Pensions and Lifetime Savings Association** found. The PLSA review, which analyses investors voting behaviour, said that there were 148 resolutions that attracted a 20 percent plus dissent from investors at 81 companies in 2019, almost the same level as in the year before. The report noted that average ceo total reward in FTSE 100 companies had increased to **117 times** the average employee's pay today, from about 40 in the mid-1990s, sparking an increase in resolutions made by concerned shareholders. Some companies have pre-emptively reduced bonuses, executive pension entitlements or overall salary ahead of the 2020 agm season, PLSA revealed. Its policy chief Caroline Escott called on pension funds to hold directors individually accountable on issues of continued concern in 2020. "*For instance, in cases where investors feel that the agreed*

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executive pay packages are not aligned to long-term performance, we recommend that pension fund investors vote against the re-election of remuneration committee chairs responsible for pay practices alongside voting against the remuneration policy or report," she said. Pension funds should consider how to best make use of engagement, Ms Escott said, including seeking additional meetings with company management or collective engagement with other investors. **The FTSE 350 index is a combination of the FTSE 100 index of the largest 100 companies, plus the FTSE 250 index of the next largest 250.*

Pensions tax relief will cost the UK government almost £40bn this year, up by more than £2bn on the previous year, illustrating the growing cost of subsidising retirement saving and raising fears that the exploding relief could be targeted in the March budget. According to **HMRC**, tax relief on employee pension saving is set to rise to **£21.2bn** while the tax giveaway on employer contributions to occupational pension schemes hit more than **£18bn**. The increasing cost of providing pensions tax relief follows a surge in the number of employees paying into company retirement schemes. In the financial year 2017-18, 10.4m individuals contributed to a registered pension scheme, up from 9.4m in 2016-17, but the average level of contributions *fell*, leaving the bulk of tax relief to be claimed by higher-rate taxpayers, who pay 60p from every £1 of pension contribution compared with standard-rate taxpayers who must pay 80p for every £1 of pensions saving.

The **Prudential Regulation Authority (PRA)** fined **Citigroup** £44m in its first action against a systemically important institution for regulatory reporting issues. This action by the banking regulator followed the PRA's October *"Dear CEO"* letter foreshadowing more intensive supervision of larger firms' regulatory returns arrangements - including more Skilled Persons appointments.

Crown Dependencies: updated substance guidance

The governments of Guernsey, Jersey and the Isle of Man jointly released updated guidance on the scope and application of their respective economic substance legislation. This is an updated version of the guidance released in April 2019. Some of the changes are:

- Collective investment vehicles are out of scope if they are subject to regulation in the relevant island.
- Further details are given on sanctions in respect of exchange of information with competent authorities, financial penalties and strike off from the company register.
- As part of the income tax filing process, companies in relevant activities will be required to provide information, including the net book value of tangible assets.
- Sector specific guidance is now included on insurance (life and non-life), shipping, intellectual property (IP) companies and high risk IP. See https://deloi.tt/2XW6F1R

WHITE & CASE

Proxy guidance 2020: US agency to probe share buy-back programmes

ISS generally supports open-market share repurchase programmes in which all shareholders take part on the same terms. However, for this year ISS has clarified it will review these programmes for potential exploitation or misuse by management. For example, ISS will monitor repurchase programmes on a case-by-case basis to determine whether they are being used as "greenmail" or as a mechanism to allow insiders to buy back shares at a premium, to inappropriately manipulate incentive compensation metrics, or where the share buy-backs pose threats to the company's long-term viability. In addition, ISS will vote on a case-by-case basis on proposals to repurchase shares directly from specified shareholders, balancing rationale against the possibility of misuse.

Evergreen provisions in equity compensation plans: ISS recommends a case-by-case approach to votes on share-based compensation plans depending on plan features, plan cost, and grant practices in accordance with its "Equity Plan Scorecard." Since recent tax reform eliminated the need for companies to obtain regular shareholder approval of plans, ISS will now consider an evergreen provision an egregious factor requiring that it recommend a vote against the equity compensation proposal.

Additional scrutiny of Say-on-Pay votes: Glass Lewis will now scrutinise say-on-pay votes in light of the say-on-pay proposal put forward at the

previous agm. If a say-on-pay vote passes with low shareholder support, which Glass Lewis defines as opposition of 20 percent or more, Glass Lewis will now analyse the company's response to this vote going forward to determine whether it was sufficient. Unless the company discloses how it has addressed the low support or whether it has made specific changes in response to shareholder concerns regarding pay, Glass Lewis will consider a recommendation against the next say-on-proposal or against compensation committee members. Glass Lewis will consider companies' responses relative to the level of shareholder opposition they receive in a particular year and whether such opposition continues for multiple years.

Executive compensation: Glass Lewis will look more closely at the structure of executive compensation, specifically focusing on terms it deems not to be in the company's interests. For example, Glass Lewis identified the following as potentially weighing in favour of a negative recommendation on new executive entitlements: (i) change-in-control triggers that are excessively broad, including new or recently renewed "single-trigger" change-in-control provisions; (ii) severance entitlements deemed inappropriate or excessive; (iii) sign-on arrangements not fully explained or those that are excessive; (iv) guaranteed bonuses spanning multiple years; and (v) failure to address these practices when employment agreements are amended. Glass Lewis has said it considers "double trigger" change-in-control arrangements to be best practice for executive compensation agreements.

COMPANIES

***Airbnb** is trying to signpost the way companies should govern themselves, claimed an article in *The Wall Street Journal*. The San Francisco based home rentals app giant wants to run itself for the "*benefit all our stakeholders over the long term*." Its new commitment includes tying bonuses to performance on the firm's social goals and creating a *stakeholder committee* on its board of directors. It said it had identified five relevant stakeholders: *guests, hosts, communities, shareholders and employees*. It acknowledged: "shareholders help power this work and grow this community" and said it would use financial metrics—including revenue; earnings before interest, taxes and amortisation; and cash flow—as guideposts. Compensation, however, will be tied to certain social goals, including safety and sustainability. To police this commitment, a stakeholder committee is being established within the board of directors. Executives will monitor these commitments and Airbnb promises to be transparent.

Although corporations have a duty to put their shareholders first, many corporations now say they are keen to make a positive impact on society, the environment, customers and employees. For Airbnb's anticipated IPO this year, with an expected valuation north of $30bn, this ethic will test whether Wall Street will reward behaviour that doesn't pad the bottom line. Airbnb considers itself "among the first of the 21st-century companies." Last year, 181 ceos signed a Business Roundtable letter declaring they are "truly committed to meeting the needs of all stakeholders." Asset manager **BlackRock** is leading this crusade, with ceo Laurence Fink saying social issues, notably climate change, are paramount. Some investors are thinking similarly. Jeffrey Ubben, a long-time activist investor, concedes that "*the pendulum has swung too far toward the shareholder*." Certain companies have bent to pressure from shareholders that are adopting a socially responsible investing model. Oil giant **Royal Dutch Shell** has set ambitious carbon-emissions targets and linked them to executive pay. Rival **Chevron** has tied compensation for everyone from executives to rank-and-file workers to greenhouse-gas targets. Silicon Valley tech companies argue that they don't bear responsibility for problems on their platforms, raising questions about their social responsibility. **Facebook** is routinely criticised for an alleged lack of regard for user privacy. **Amazon** was caught selling thousands of items on its site declared unsafe by US federal agencies. Airbnb itself has safety issues, plus occasional criminal activity taking place in home rentals. Background checks and other methods to safeguard hosts and guests were insufficient, prompting the company to beef up policies and invest in safety.

***A.J.Bell**, which manages **£52bn** of investors' cash, will deliver £10m worth of shares to good causes if it doubles its earnings. Bell got the idea from **Ryanair** boss Michael O'Leary, whose package included £85m of share options if he doubled the airline's share price.

*The ceos of Britain's biggest rail operators received inflation-busting pay increases last year despite mounting passenger anger over rising fares and delays on the network. Analysis by *The Times* showed that the heads of *all* main rail company ownership groups enjoyed huge rises over the past 12 months, with the majority on seven-figure packages. The head of the bus

and rail giant **Arriva** got the biggest pay increase of the serving rail chiefs, despite severe criticism of the company's handling of the Northern Rail franchise. The disclosure that Manfred Rudhart, 54, had received an 18 percent pay increase, from £1.1m to £1.34m, was made as **Transport Secretary** Grant Shapps said that the company would be stripped of its Northern Rail contract.

*__Boeing__ told its 2,500 UK staff that it would not pay them any bonuses this spring as the aerospace giant is still reeling from 737 Max groundings. Normally, bonuses for UK staff range from £1,000 for the most junior staff to tens of thousands for executives.

*Soft drinks maker **Britvic** is overhauling its executive reward policy after being criticised for excessive bonuses ahead of its agm. Ceo Simon Litherland was paid £3.45m over the year to September 29, while new finance chief Joanne Wilson earned £732,000 after working at the company for just three weeks. Wilson's payout was largely a **£706,300** *golden hello* to compensate for the loss of incentives she would have received from **Tesco,** where she was cfo at its customer data arm Dunnhumby.

*Senior managers and executives at the **Financial Conduct Authority** risk having their bonuses cut, after the City regulator said it was unlikely to meet key gender diversity targets under its outgoing ceo Andrew Bailey. The FCA was one of the 71 original signatories of the *Women in Finance Charter*. The voluntary charter requires organisations to set targets to raise the number of women in senior roles. The FCA is committed to increase the proportion of women across its senior ranks to 45 percent by 2020 and 50 percent by 2025, but figures show that, as of last September, only 41 percent were held by women. With time running out, the FCA said it was unlikely to reach its commitment by 31 March – 15 days after Bailey takes up his role as the new governor of the **Bank of England** with a view to the negotiations formally starting at the beginning of March.

*Publishing firm **Future** faces a shareholder revolt at its agm next month after a proxy adviser urged investors to vote down the firm's executive pay policy. Future's remuneration report outlines a base salary increase of more than **27 percent** for fd Penny Ladkin-Brand, who is set to take home ***£3.9m*** in total this year. **Glass Lewis** cited concerns about the *significant increase* to base salary and said Future had offered an *inadequate response* to last year's backlash, when almost a third of shareholders voted against the pay report.

Ceo Zillah Byng-Thorne was granted a 19 percent salary increase in 2019, but her payout has been frozen this year. She is set to take home ***£5.7m*** in 2020. Glass Lewis said it was sceptical about high fixed pay raises, "*as such remuneration is not directly linked to performance and may serve as a crutch when performance has fallen below expectations*". The adviser urged shareholders to vote down the firm's remuneration policy, which – as it stands - would increase the potential bonus payout for both the ceo and the cfo. It comes months after the two executives cashed in bumper bonuses as they reaped the rewards of a period of rapid growth at the publisher, which owns titles such as *Four Four Two* and *Tech Radar*. Boss Byng-Thorne cashed in £14.6m in November after selling a million shares, while Ladkin-Brand sold £7.7m worth of Future shares. The executives have overseen a **twenty-fold increase** in Future's share price over the last five years, as the firm has defied falling sales in the wider publishing sector. In its annual report last year, Future acknowledged the opposition to its pay policy and committed to consulting with shareholders ahead of the agm on February 5.

*__John Lewis Partnership (JLP)__, which describes itself as employee-owned, may not pay its staff – known as partners – any cash bonus this year, for the first time in more than 60 years. JLP suffered a fall in Christmas sales after a loss in the first half of 2019, as it warned of difficult trading conditions and "subdued consumer confidence". It said that it would reverse those losses, but warned that profits would still be substantially down on the previous year. The decision on whether or not to pay the bonus will be made at a board meeting later this month "influenced by our level of profitability, planned investment and maintaining the strength of our balance sheet." Last year, it cut the bonus to its lowest level since the 1950s after a plunge in profits.

*__Lloyds Banking Group__ warned its 60,000 staff, including ceo António Horta-Osório, to expect their first bonus cut in four years after several problems at the bank, including a last-ditch surge

in payment protection insurance (PPI) claims. *The Guardian* said staff received a memo from the bank telling them to expect a smaller bonus pool shortly after it revealed a £1.8bn charge linked to a spike in PPI claims in October, which is expected to dent full-year profits. The charge reduced Q3 pre-tax profits by 97 percent. The remuneration committee, which determines the final size of the bonus pot, allocated £464.5m to be shared between staff and top executives last year. However, the figure for the 2020 payout is likely to shrink for the first time since 2016, owing to numerous factors. Lloyds staff trade unions, including *Accord*, notified members of the cut. The bonus is paid out in a mixture of shares and cash. As long as group profit meets a minimum threshold, Lloyds' bonus pool will be valued at 5.1 percent of full-year underlying profit. However, the pot can be whittled down by the remuneration committee if the bank is deemed to have underperformed in certain categories: financial performance, customer service and staff conduct. Lloyds signalled that a number of issues would see the value of the payout reduced.

*__Morgan Stanley__ ceo James Gorman received $27m in total compensation in 2019, nearly ***seven percent*** less than he got the year before, the company said, following a reduction of bonuses staff-wide. The board, which decides the top executives' pay, called the 61-year-old's performance in the year "outstanding" and acknowledged "the firm's strong financial performance." The bank's reported profit jumped 46 percent to $2.09bn in 2019 compared to 2018. That kind of outperformance would normally result in the board giving the ceo a big raise. However, board members took into account the bank's disclosure that it would cut staff and discretionary compensation as it aimed to reduce expenses. It said it was lowering 2019 bonuses staff-wide in an effort to offset a seven percent increase in other compensation expenses. Morgan Stanley disclosed it had paid $172m in severance packages to redundant employees, many of whom worked at the investment bank and trading business. The bank said that it would cut about 1,500 employees, or roughly two percent of its global workforce. Gorman's compensation comprised: a base salary of $1.5m; a cash bonus of $6.37m; a deferred equity award of $6.375m and a performance-vested equity award of $12.75m. The board again required that 75 percent of Gorman's incentive compensation be deferred over three years subject to a claw-back and for all of that compensation to be paid in equity in the company.

*Richard Scudamore earned more than £10m in his final year as executive chairman of the **Premier League**, its accounts revealed. Scudamore, who left the Premier League a year ago, earned £4.8m in bonuses for securing the 2019-22 TV deals as well as his controversial £5m exit pay-off, on top of his £500,000 salary for August to December 2018. The accounts for the year ended July 31 show that during the financial year Scudamore received £2m of the £5m, plus £1.6m of the TV bonus and his basic salary. The remaining £6.2m will be paid to him within the next two years. Scudamore's bonus for the 2019-22 broadcasting deals rose by £300,000 from the 2016-19 number.

*The highest paid executive in the **Scottish Rugby Union**, ceo Mark Dodson, was paid £933k (before pension contributions) for the year up to the May 31 2019 - more than double the £455k he earned in the previous year. Meanwhile, the other three directors – coo Dominic McKay, general counsel Robert Howat and cfo Andrew Healey – shared £1.18m, up from £535k the previous year. The total spent on the executive directors jumped from £1.13m to £2.246m, meaning that more than **3.5 percent** of the SRU's total £61m turnover went towards paying just four individuals – an astonishing figure for a governing body charged with investing in and developing the sport at all levels in Scotland. The payments came to light when the SRU finally lodged its annual accounts. A note explained that these numbers include the crystallisation and release of bonuses accrued during the past three years as part of the organisation's Long Term Incentive Plan (LTIP), which appeared unrelated to success on the pitch.

*The two senior non-executive directors of healthcare technology company **Sensyne Health** resigned suddenly after a corporate governance fiasco. Annalisa Jenkins, who was appointed as acting chairwoman of in October and Andrew Gilbert, the senior independent director, have left the board. Sensyne has appointed Sir Bruce Keogh, 65, an existing non-executive, as interim chairman and has appointed Spencer Stuart, the head-hunter, to find a permanent chairman and non-executive directors. Sensyne has had *four* chairmen since it floated on the London Stock Exchange's AIM market in August. Its shares have fallen substantially since its listing.

*A pay row erupted at challenger bank **Virgin Money** over bonuses paid to executive directors, despite the lender reporting a loss and dropping its dividend. Proxy group **Institutional Shareholder Services (ISS)** urged investors to vote against the remuneration report at Virgin Money's agm. Ceo

David Duffy could pocket as much as £5.1m this year — exceeding the pay taken by John Flint, the former boss of the much bigger HSBC, who took home £4.6m in 2018. Duffy's package includes £1.2m for salary, cash benefits and pension. He could earn £3.9m in bonuses if he hits targets including boosting the Virgin Money share price by 50 percent during this year.

WORLD NEWSPAD

France steals a march in global stock options war
France is introducing new rules on employee stock options to lure talent and compete with the US top tech hub. President Emmanuel Macron announced the government's plans, which aim at expanding its stock options scheme to include foreign companies with staff in France, among other rule changes. The package of reforms comes after 500 European start-up founders called on EU member states to update and align their rules on employee stock options, which give employees the chance to acquire a slice of the company they work for. The entrepreneurs, who include **Stripe** ceo Patrick Collison and **TransferWise** boss Taavet Hinrikus, warned of a *brain drain* of the best and brightest in Europe if policymakers didn't reform employee share ownership rules to help the EU's tech sector rival Silicon Valley. A letter signed by the tech executives and co-ordinated by venture capital firm **Index Ventures** was sent to legislators throughout Europe. US tech workers own twice as much equity in the companies they work for than their European counterparts. The changes in France will ensure the stock options are *priced at a fair-market value*, as well as removing restrictions on start-up visas that require eligible employers to be based in France. According to a league table set up by Index Ventures, France is now ahead of the UK and even the US when it comes to countries supporting start-ups the most, coming fourth behind Estonia, Israel and Canada. The French government doesn't want its reforms to be limited just to France. Digital Minister Cedric O says that though France wants to be a "world-leading country in technology," it wants its initiative on stock options to become a "*pan-European one*." The new rules were unveiled ahead of the annual World Economic Forum in Davos. Stock options policies were singled out as a major barrier to European tech growth at last year's event.

EU:** The **European Company** (*Societas Europaea)* is a public limited liability company known as an **SE**. In order to avoid any employee participation in the SE, an increasing number of German companies are founding employee-less 'Management SEs***', which enter into limited partnerships, e.g. transport companies such as **Hellmann Worldwide Logistics** from Osnabrück or the **Nagel Group** from Versmold, **Kärcher,** the maker of cleaning equipment from Winnenden (each with around 12,000 employees), the waste management company **Remondis** from Lünen (32,000 employees), the machine manufacturer **Voith** from Heidenheim as well as a joint venture between the **Rewe Cooperative** from Dortmund and **Rewe Group** from Cologne. Lawyers pretend that employee participation cited in the SE Directive would not be applicable in these cases. *However, by means of the SE Directive, the European legislator was explicitly aiming to ensure a high level of employee participation and to safeguard against the loss of co-determination rights.* As a precedent for the whole of Europe, Olympus is the first case in which a court must decide whether the entire workforce in the EU is to be assigned to an employee-less SE Holding since it exercises a controlling influence on its 30 subsidiaries.

*Ontario, **Canada**, based **Spark Power Group** announced the implementation of its Esop, as approved by the shareholders at its last agm. "*The Plan*" is being administered on behalf of Spark Power by **Computershare Trust Co** of Canada**.** It includes a one-off gift of shares and a company match of up to ten percent of employee contributions, subject to (i) a cap for each employee depending on seniority and (ii) a two-year vesting period. Employees may elect to participate in the Esop through payroll deductions and/or by way of lump sum contributions. "We are very pleased to be rolling out the next version of our Esop programme," said Eric Waxman, Spark Power's co-founder and chief investment officer. "The plan was designed to allow employees to benefit from the Company's long-term growth, to attract and retain the best talent in the industry, and to support a culture of ownership, performance, and engagement. Through the gift share component of the plan, every employee becomes a shareholder —*We Are All Owners*!" added Waxman. "Under the Esop, company success translates to employee success," said Jason Sparaga, ceo. "We see subscription as a demonstration of employees' commitment to the company and as an opportunity to facilitate alignment throughout the organisation with a

focus on creating long-term value for our employees and our shareholders." Contributions to the plan by employees and the company matching contribution will be used to acquire Spark shares, either by issue from treasury, by purchases by the plan administrator in the market, or a combination of both. Spark Power is the leading independent provider of end-to-end electrical contracting and energy sustainability in North America.

*__Hong Kong's__ bankers and stockbrokers will receive their smallest bonuses and pay rises (if any) for a decade after social unrest and the US-China trade war hit market turnover and led the city into recession. The coronavirus crisis has made things even worse as HK is progressively sealed off from the Chinese mainland. Local firms usually pay bonuses and announce salary increases around the time of the Lunar New Year when the *Year of the Rat* got under way. Expectations are not high for the financial sector's 237,405 employees in Hong Kong. Around 600 stockbrokers, many of them small local firms, are expected to take a particularly hard hit. "Pay rises and bonuses in early 2020 are going to be the worst in a decade," said Gordon Tsui Luen-on, chairman of the **Hong Kong Securities Association**. Many brokerage firms froze salaries and reduced bonuses in early 2009 after the global financial crisis hit the local economy, and the Hang Seng Index plunged. Tsui believes the same will happen in 2020 with some brokerage firms even cutting salaries or job cuts. The trade war and the protests have dampened market sentiment, while stock market turnover fell 20 percent in the first 11 months of the year, slashing the commission income of brokers. **HSBC**, the biggest bank in the city, and its subsidiary Hang Seng Bank, will give *no pay rises to their top three grades of senior staff - chief executives and department heads* - while the rest of the staff could get an increase of just one and two percent, according to several employees at the two banks contacted by the *Post*.

*__Republic of Ireland__ employees are in line for the highest salary increases in the EU next year, according to a report from Centre member advisory firm **Willis Towers Watson**. It shows Irish employees will get, on average, a 2.6 percent increase in salary this year. This number, which works out at 1.9 percent after inflation, is well ahead of the EU average of 1.1 percent. Economist Jim Power said in order to attract staff, employers will have to start looking at what other benefits they can offer. Mr Power said: "*Stuff like employee share ownership schemes, pensions and other non-pay benefits I think will have to become a feature of the Irish labour market over the next couple of years and those employers who are not able or willing to go in that direction, I think, will suffer."* He added that it was no surprise given how well the economy was doing. "We are looking at an economy in 2019 and 2020 which is approaching full employment. The unemployment rate fell to 4.8 percent of the labour force in November, we have a record number of people at work in the economy.''

*__US__: **Apple** ceo Tim Cook received $125m in the company's 2019 fiscal year, less than the year before owing in part to a lower bonus. Mr Cook got a $3m salary, a $7.7m bonus and $884,466 in perks and other compensation in the latest period, the California-based technology giant said. In addition, he had $113.5m worth of Apple stock which vested. His $125m in total compensation was down from the $136m Cook made a year earlier. His bonus shrank in the latest period because Apple didn't beat its sales and operating income targets by as much as the year before. Cook holds unvested Apple shares worth almost $400m, according to Apple's filing.

*Court filings provide details on **Aramark**'s $21m settlement of lawsuits brought by managers who were denied their 2018 bonuses after the Philadelphia food-service and uniform giant changed the rules on how the incentive payments would be calculated *without telling them beforehand*. The aggregate amount to be paid to 4,500 lower-level managers is $15.5m net. The settlement calls for the law firms to collect $5.25m (about 25 percent of the total) plus $50,000 for expenses. In some class-action settlements, the lawyers' fees are 33 percent of the total payout. The two lawsuits alleged that Aramark violated numerous state and common laws when it did not pay the bonuses. In agreeing to the settlement, Aramark did not admit that it violated any laws. Roughly speaking, the individual payments will amount to the difference between the manager's expected fiscal 2018 bonus and the amount of the "special recognition award" the manager received. Those special one-off payments ranged from $5,500 to $27,500 for different management tiers. The payments were funded from money Aramark saved as a result of the corporate tax cuts under 2017 Tax Cuts and Jobs Act.

*Dennis Muilenburg, **Boeing**'s recently fired ceo, will get $62m when he leaves Boeing, made up of long-term incentives, stock awards, and pension benefits. This is what he was contractually entitled to and he's not receiving any severance package

or bonus pay for 2019. The news came on the same day that it was revealed that **Spirit AeroSystems** would be laying off 2,800 people. This Boeing 737 MAX supplier, having witnessed production for the plane suspended, laid off more than 20 percent of its workforce. David Calhoun, Boeing's new ceo, will receive a $7m bonus if the company completes certain goals under his leadership, *including bringing the 737 MAX back into service.* Some outraged US senators called on Boeing's board of directors to immediately cancel the ceo's conditional MAX $7m bonus payment. Boeing responded: *"Dave Calhoun's compensation is based on the fact that the safe return to service of the MAX is our top priority. This includes following the lead of our regulators and working with them to ensure they're satisfied with the airplane and our work. The FAA and global regulatory authorities will determine the timeline for certification and return to service of the 737 MAX. The incentive award for Boeing's new ceo will vest only after he has served in his role for multiple years and if he achieves a series of challenging strategic objectives across all three principal business units, including the full, safe return to service of the 737 MAX."*

***Delta Air Lines** announced plans to pay out more than £1.2bn in *profit sharing* to its employees. The average employee will gain about an extra two months' pay, which will land in employees' bank accounts on Valentine's Day, when the company will hold profit-sharing celebrations for employees across the US. The airline has produced six consecutive years of solid profits. During this period, the company paid out $1bn or more in profit-sharing bonuses to its employees each year. This year's bonus equates to a 17 percent increase in compensation. The profit-sharing bonus is in addition to a 401(k) matching plan and other benefits. Delta's ceo Ed Bastian said: "*For years, I would get beaten up by Wall Street. They thought the profits were theirs, and 'Why are you giving the profits away to the employees?'"* He added: "*Wall Street has actually come full circle, and they realise that Delta is the most awarded airline in the world because of its employees."* For the third year in a row, Delta has been judged the No.1-ranked US airline by the *Wall Street Journal*.

*According to a 2018 survey by the National Opinion Research Center, 38 percent of adult US employees said they had gained from a profit sharing scheme, but the average reported amount was only $2,000 or five percent of average pay.

*US Senator **Bernie Sanders** released an "income inequality tax plan" that would increase taxes on big companies where ceo pay is more than 50 times higher than that of the median worker. Sanders, a fierce critic of income inequality who is seeking the Democratic presidential nomination, identifies the explosion in compensation for top corporate executives as a key factor depressing ordinary workers' wages. "At a time of massive income and wealth inequality, the American people are demanding that large, profitable corporations pay their fair share of taxes," Sanders said: "*It is time to send a message to corporate US: If you do not end your greed and corruption, we will end it for you*." His proposal, which applies to publicly and privately held companies with annual revenue of $100m or more, would increase companies' corporate tax rate by 0.5 percentage points if their ceo received compensation worth between 50 and 100 times what the company's median employee earned. The higher a company's ceo-to-median worker pay ratio would go, the higher the surtax it would endure under Sanders' plan.

*Commercial real estate company **WeWork** will have to pay almost **$17m** in *golden parachutes* to replace its co-chief executives under exit packages negotiated in the run-up to the company's rescue, reported the *FT*. Co-ceos Artie Minson and Sebastian Gunningham, who took over from ousted founder Adam Neumann last September, are in line for ***$8.3m*** each if they are removed from their roles. The exit deals were agreed in the run-up to Japanese investment firm **SoftBank**'s $9.5bn bailout of WeWork after its attempt to float on the stock market backfired disastrously. WeWork was weeks from running out of cash when it was thrown the lifeline by SoftBank in exchange for an 80 percent stake in the company. The pay packages for WeWork's top executives were revealed as the New York headquartered company cut more than 2,000 staff, sparking concern among smaller shareholders and employees that senior managers could be rewarded for failure. Mr Neumann left with a **$1.7bn** exit deal, and he could make hundreds of millions more under a revised package.

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.