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it's our business

newspad of the Employee Share Ownership Centre

Brussels asks the Centre to stage UK Eso workshop in May

The Centre will play a key role this year in a major European Economic & Social Committee project, backed by the European Commission, to promote all-employee share ownership throughout the 27 EU member states.

EcoSoc, which advises the EU institutions on economic and social policy matters, has chosen the Centre to be its national partner within the UK. The Centre is tasked with organising employee share ownership activities, which will focus on a major Eso conference and workshop to be held in London in late **May.**

Companies, both large and small, employer organisations, EU officials, ministers, sympathetic trade unionists, academics and service providers/practitioners will be invited to participate in the London conference and workshop.

In the same month, eight other EU national conferences and workshops will take place in Germany, France, Italy, Spain, Austria, Poland, Hungary and Slovenia. The workshops will generate reports, recommendations and interest in the build-up to the **Employee Financial Participation Week** of meetings and celebrations from **17-19 October**, including a major conference to be held in Brussels.

EcoSoc is keen to have a diverse audience at all the workshops because part of its job is to promote a better dialogue between organised civil society and the EU institutions, such as the Commission, the Parliament and the all-powerful Council of Ministers.

Members will be invited to participate in the UK Workshop and associated events and any offers to co-sponsor, speak and/or provide venues, particularly from practitioners/service providers who deal with the SME sector, will be processed speedily.

The project focuses on Eso schemes that match competitiveness together with social inclusion and quality jobs. It will monitor and report on member state progress in promoting Eso. Social partners and institutions should benefit from ideas to develop common strategies on the basis of the real needs of companies, employees and governments.

Specific objectives include:

- Enhance the dissemination of studies and research about employee share ownership to social partners, employees and companies
- Widen the diffusion of Eso in the context of EU20:20 strategy and enhance corporate governance
- Facilitate the growth of Eso among smaller companies, so that it can be used more often as an instrument of business succession
- Deepen research efforts on comparing national tax rates on Eso; the macro-economic effects of Eso and the role of Eso in the public sector and public services
- Promote a common platform for Eso within the EU, based on the findings of the comparative analysis

The EcoSoc project directors will devise generic modules, which will be discussed at all the national workshops. These will cover: the advantages of Eso for businesses and employees; corporate governance; Eso in SMEs and its use as a business succession tool; to what extent Eso improves employee motivation; whether Eso tends to improve productivity in the longer term; the fiscal treatment and tax incentives for employee share ownership in various member states. Two further centrally devised working papers will deal with: the macroeconomic effects of employee share ownership - eg regional purchasing power, mobility in the labour market, quality of work, risk management etc and how to build up the role of Eso in the public sector, as this has been under-explored so far.

From the Chairman

A great friend and colleague Peter Welch, the economic adviser to the Centre who was with us when we entertained Prof de Meza last year, has died unexpectedly from swine flu. He was 45.

He was a key trustee of the Big Issue Foundation and will be sorely missed by very many people in many countries for his quiet charm and massive contribution to financial understanding.

His funeral will be on the opening day of Davos in Marlow, Bucks, where his family lived. I shall join those of you who are in Davos as soon as I may.

Malcolm Hurlston

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International director Fred Hackworth represented the Centre at the first planning meeting for this Europe-wide project at EcoSoc headquarters in Brussels last month.
The Centre will disseminate information and discussion documents UK-wide to tie in with the national planned Eso activities and some members might want to co-sponsor these communication initiatives.
All enquiries about involvement in and the programme for the London conference and workshop must be emailed to both David Poole at: dpoole@hurlstons.com and Fred Hackworth at: fhackworth@hurlstons.com

Postmasters to buy the Post Office?
Sub-postmasters are considering the idea of owning the Post Office Limited as a sub-postmaster owned mutual. The government's announcement that the Royal Mail is to be privatised, with at least ten percent of the equity to be offered to postmen, has prompted serious reflection among postmasters about their future under the impending new postal services reorganization.
Graeme Nuttall, of Centre member Field Fisher Waterhouse, recently met George Thomson, general secretary of the National Federation of Sub-Postmasters, to discuss the possible options for mutualisation for sub-postmasters. Graeme is legal adviser to the Employee Ownership Association.
The sub-postmasters' ruminations on whether they should pitch for a controlling stake in the nation's network of post offices followed a tripartite meeting attended by ministers, Post Office management and Mr Thomson about the "journey" towards mutualisation.
Meanwhile, the chairman of the Centre has written to his many friends in the Lords, enclosing our research paper *Employee shareholding in the future Royal Mail* which emerged from two thinktank sessions last year and offering Centre support if they require briefing on the employee ownership aspects of the Postal Services Bill which passed into the Lords for its first reading on Jan 13.

On the move
Centre member **Abbiss Cadres** appointed Stephen Wright, formerly of Field Fisher Waterhouse's employment, pensions and incentives practice, as an assistant solicitor. Stephen was admitted after eight year's tax experience in law and accounting practices, including KPMG, which he joined as a post-graduate in law. **Guy Abbiss** commented: "We are delighted to welcome Stephen to the practice. We were formed to embrace the possibilities that deregulation of legal services offers in order to deliver what we believe is a unique blend of skills and services to enable our clients to optimise the resources they have in their people. Stephen brings experience as well as the quality and responsiveness of service expected by our clients. Importantly, he shares our commitment to the new practice model which is proving a great success both among clients and potential recruits alike." For further information please contact Guy Abbiss (guy. abbiss@abbisscadres.com) on 0203 051 5711.

Global Shares plc, a leading provider of global share plan administration and consulting services, has celebrated its fifth anniversary. Global Shares, which has clients in 16 countries, is committed to providing the highest quality stock plan administration and consulting services to 200+ companies. Co-founder and director, **Maoiliosa O'Culachain** said; "Our team has shown consistency, stability and commitment to our clients. All our team leads and our client staff gained their CEP designations and our senior management continues to be leaders in the share plan community. Results from our client satisfaction surveys remain at extremely high levels. I am proud of what we have achieved in five years." Global Shares will introduce shortly a new client resource centre for its admin clients and will launch its 30th customised client portal. GS has developed a data conversion tool that allows clients to convert easily from any commercially available platform (including EXCEL) to others.
Centre chairman **Malcolm Hurlston** met newly ennobled **Lord Flight**, the ex Tory front-bencher, to brief him on current developments in the Esop world, including disguised remuneration. Lord Flight is a great believer in employee share schemes and was keynote speaker at the Centre conference in Jersey 2010. In addition, the chairman and Centre assistant director **David Poole** met Chris Leslie, Labour MP & shadow Treasury Minister, to brief him on the Centre & its lobbying and research work. Mr Leslie said he found the session extremely useful and that he was receptive to our ideas.
Nigel Mason, policy director at the Employee Ownership Association, is involved in a new venture Co-operative Energy, an electricity and gas retail supplier, owned by the Mid Counties Co-operative, which will launch to the public in spring. Its embryonic website is at: http://test.cooperativeenergy.coop Nigel was previously a director at Lloyds TSB Registrars (now Equiniti) and before that was co-founder of Capital Strategies, which provided financial and legal advice to employee buy-outs. He advised the ex-Labour Government on the introduction of the Share Incentive Plan (formerly the AESOP) and the Enterprise Management Incentive in the year 2000.
Centre member **Postlethwaite,** the niche share scheme and employee ownership legal firm, has strengthened its share plans capability with the appointment of **Stephen Chater** as share plans director. Stephen, a leading employee share scheme lawyer, was a partner at Allen & Overy between 1989 and 2003 and then at Addleshaw Goddard. Stephen is described in the most recent edition of Chambers & Partners Guide to the UK Legal Profession as "*one of the most knowledgeable share scheme lawyers around…clients call him a fantastic practitioner*." Robert Postlethwaite said: "We are absolutely delighted that Stephen is joining us. He has a fantastic amount of experience, is a very able lawyer and a great person to work with. As a specialist firm, we believe we are particularly well-suited to meeting the needs of anyone – company, individual, law firm or

other adviser - needing employee share scheme advice. We have one of the largest pure share scheme practices in the UK, all in a single niche firm, and see significant further growth prospects. Stephen's presence will help us extend our reach as a centre of excellence." For further info please contact Robert Postlethwaite on 020 7470 8805 or rmp@postlethwaiteco.com

COMPANIES

UMEX Securities, a Sharia compliant, share-dealing service, operated by **The Share Centre**, is now operating. UMEX Securities share accounts are being administered by The Share Centre for clients who wish to trade in Sharia compliant stocks using accounts which are compliant with Sharia guidelines. UMEX employs a Board of Islamic Scholars whose responsibility is to determine the characteristics of Sharia compliance. Neither The Share Centre nor Sharemark will play any part in the monitoring of Sharia compliance. Guy Knight, marketing director at The Share Centre, said: "Sharia compliant share accounts are a comparatively untouched area of the market." UMEX UK is a new Sharia compliant, share-trading facility, which will operate in the same way as Sharemark and will be open to single- and dual-traded companies. This will be part of the Sharia UMMAH Information Exchange – a dedicated information and trading platform for the shares and other securities of companies that are Sharia compliant.

Current and former **Aer Lingus** employees have been told that the airline will wipe out the Employee Share Ownership Trust's (Esot) €25m debt. This relates to the purchase of shares by Esot at the time of the airline's initial public offering (IPO) in 2006. Originally, the purchase of these shares was to have been funded by a new profit-sharing arrangement that could have run until 2023. So, the more profit Aer Lingus made, the earlier borrowings would be repaid and the sooner Esot members would get their share certificates to cash in if they so wished. But the Esot had a fall-back position: if there was no profit to share, Aer Lingus would still pick up the tab. According to Aer Lingus, some Esot members received shares worth up to €20,000. The bulk of the €952m in gross cash on its balance sheet dates back to funds raised at the time of the IPO. All of this is important in the context of the proposed sale of state assets. **Bord Gáis** could soon be privatised. Will employees want a slice of the action in return for going quietly into the private sector? Probably. They already hold a more than three percent stake in the energy company.

CONFERENCES

DAVOS: - Hurry, hurry, hurry!

There's still time (just) for you to register for Centre's 12th annual Global Employee Equity Forum at the Steigenberger Belvedere Hotel in Davos Platz on Thursday February 3 and Friday February 4. Banking remuneration regulator Ivo Jarofke will be a star speaker in an all-star 20 strong speaker line-up. Well over 40 people have registered for Davos to date. Ivo, who heads the remuneration and liquidity risk desk at the European Banking Authority, (formerly the Committee of European Banking Supervisors - CEBS), had a front seat at the recent tense discussions over the future shape of banking bonuses. Centre practitioners will listen to and debate with Ivo as he explains the ins and outs of the new Europe-wide guidelines on banking remuneration, which is being enforced in the UK by the Financial Services Authority (*see bonus corner in this edition)*. Agreed by the CEBS on December 10, the new rules, which will apply to almost 2500 financial companies, including hedge funds, amount to the world's toughest restrictions so far on reward in the financial services industry.

A new entry on the speaker list is **Henri Malosse**, president of the employers' group on the European Economic & Social Committee, which advises and reports to the European Commission and Council. Henri, international director of the French Chambers of Commerce and which is influential in French government circles, will speak on the ethical and economic objectives of employee financial participation (Eso) from the employers' perspective.

Shell International, the winner of the 2010 Esop Award for The Best International Employee Share Plan together with its plan adviser, Computershare, will deliver a presentation on the nature, evolution and reach of the winning plan, focussing on design, communication and admin process simplification. The speakers are **Pam Roffe**, manager of Eso plans at Shell and **Iain Wilson** from Computershare. **Alasdair Friend**, senior associate in the employee benefits division of global law firm Baker & McKenzie, will deliver a key presentation on the recent evolution of executive reward packages. The Centre's first ever speaker from Norway will be **Arne Peder Blix**, ceo and founder of Norse Solutions. **Malcolm Hurlston,** chairman, Esop Centre**,** will deliver his formal address on Friday morning, after marking the untimely death of the Centre's economic adviser Peter Welch. Peter died of swine flu early this month in Cornwall at the age of 45.

Please review the full speaker list, topic slot titles and logistical info about Davos 2011, including the hotel and sponsorship opportunities, in the 'events' section of the Centre website at: **www.hurlstons.com/esop** The brochure, co-sponsored by **Appleby Global and by RBC Corporate Employee & Executive Services,** contains the full programme and it can be downloaded from the adjacent box. Delegates can book their seats by clicking onto the 'book now' box. The practitioner (service provider) Centre member delegate price for the two nights (Feb 2 & 3) in the five-star Belvedere Hotel (on a half-board basis) + conference package deal is an unbeatable **£899** and no VAT charged. Non-member practitioners pay £1250 for the same package deal. Delegates from plan issuer companies will pay either **£475** if Centre members, or £615 if not. All other Davos enquiries to Fred Hackworth, please, **at: fhackworth@hurlstons.com.**

SMEs in Birmingham March 10

A joint Centre – Birmingham Chamber of Commerce employee equity conference is being held on **March 10** (2011) for small and medium-sized enterprises (SMEs) who are planning to install an employee equity plan, or who have recently implemented one. The major sponsor for this event will be **Pett, Franklin & Co. LLP**, the Birmingham-based employee shares schemes specialist.

At the conference, entitled: *Improving your business through employee share plans*, expert speakers will explain the choices, implementation process and results of having an employee share scheme in an SME. David Pett, partner at Pett, Franklin & Co. LLP, will describe how companies can get the best out of their Eso plans. Other key issues, such as the Enterprise Management Incentive scheme; Valuing shares in SMEs; How to build a share market for employee transactions in an SME; Business succession planning and recent relevant changes in legislation will be covered in depth. The programme will serve as a refresher course, or as a comprehensive Eso introduction, for new members of staff.

Admission prices are **£250 & VAT** for Esop Centre/ Birmingham Chamber Members and £350 for non-members. Email esop@hurlstons.com to reserve your place.

Confirmed speakers include: Malcolm Hurlston, Esop Centre Chairman; David Pett of Pett, Franklin & Co. LLP; William Franklin of Pett, Franklin & Co. LLP; Ian Murphie of MM&K; Colin Kendon of Bird & Bird; Guy Abbiss of Abbiss Cadres; Catherine Gannon of Gannons Solicitors; Amanda Flint of BDO and Mahesh Varia of Travers Smith. For further info about this event **- contact David Poole at the Centre on 0207 239 4971**.

FRC wants better shareholder dialogue

The Financial Reporting Council (FRC) published recommendations aimed at improving the dialogue between company boards and their shareholders. The FRC's report, *'Effective Company Stewardship: Enhancing Corporate Reporting and Audit,'* revealed that of 50 companies studied, between 25 and 33 fell short of fulfilling their Companies Act requirements in some areas, including in their reporting of principal risks. The report responds to lessons of the financial crisis and builds on changes already made, such as the new UK Corporate Governance Code and the introduction of the Stewardship Code for institutional investors. The FRC, inter alia, proposes that:

- the whole of the annual report and accounts should be balanced and fair, including the chairman and ceo reports, rather than just specific parts of it as at present.
- a more substantial communication role for audit committees so that they provide fuller reports to shareholders, particularly on the risks faced by the business.
- the auditors' report should include a new section on the comprehensiveness and fairness of the audit committee report, particularly regarding the dialogue between them and the committee.
- a new market participants group to spot market developments and identify best practice should be created.
- the setting up of a financial reporting laboratory, which would test reporting opportunities and enable trials to encourage greater innovation in the market.

Stephen Haddrill, ceo of the FRC, said: "Corporate reports have improved in many respects in recent years. At the same time they have become more cluttered and this has reduced their value in the eyes of investors. The aim of these recommendations is to provide more balanced and comprehensive information to investors and thereby support the effective operation of the capital markets. Annual reports are more than marketing documents: they are a vital source of narrative and financial data, which are used by shareholders to make investment decisions. We want to encourage all companies to follow the example of the best. We believe it is particularly important that directors explain clearly how they identify and manage risk and what keeps them awake at night".

New executive reward rules now in place

The Financial Services Authority's revised Remuneration Code came into force on January 1 this year for an expanded catchment zone comprising 2,473 firms. Last year, the Code applied to only 26 of the largest banks, building societies and broker dealers in the UK, but the revised Code requires those FSA firms, which are BIPRU members, to comply with some if not all of its provisions, said Centre members **Pinsent Masons**.

Those now subject to the Code include all banks, building societies, asset managers, hedge fund managers, UCITS investment firms and some firms that engage in corporate finance, venture capital, the provision of financial advice and stockbrokers.

All those captured by the expanded scope of the Code have until July 1 this year to comply with it. As a parallel process, the FSA has been consulting on new remuneration disclosure requirements, again incorporating relevant provisions of CRD 3 and taking into account the CEBS guidance. The new rules on disclosure were set out in a second policy statement, also published on December 17. At the time of the consultation, some further guidance was still awaited in certain areas, in particular to reflect the requirements of the CEBS (now European Banking Authority) guidance.

Bonus Corner

Almost half the investment bankers working in the UK have received a bigger bonus this year than last, according to a survey by eFinancialCareers. On average, the 654 bankers surveyed said they had received a bonus worth £84,000 for 2010. Bonuses across the board are said to be up five percent, compared to 2009, but a quarter of those polled said their bonus for 2010 was smaller than for the previous year. Middle office staff received an average bonus of £31,705, while back office employees received a bonus on average of almost £19,000, added the survey. Bankers in the partially state-owned banks claimed that their bonuses were significantly less than those paid to their peers in banks that did not need bailing out by the UK taxpayer.

The Coalition Government's efforts to get a UK-wide bankers' agreement on annual bonus pools were held up by the banks' refusal to pledge £200bn worth of new business lending this year. A compromise deal under **Project Merlin** was later being discussed, in which the banks would offer 'transparency' on executive reward, restraint on bonuses and new business lending of up to £180bn, though it was unclear whether they would agree to publish the individual salaries and bonuses of directors, plus those of their five highest earners.

Bonus victim of the year could be **Colin Matthews**, ceo of Heathrow Airport, who refused his 2010 **BAA** bonus entitlement after hundreds of planes were grounded for days on end because neither they nor a runway were properly de-iced and cleared of snow in time during the UK winter freeze up.

Part taxpayer-owned **Lloyds Banking Group** has pledged millions of pounds in shares and pension payments as a golden hello for its new boss, António Horta-Osório. The payouts, which come on top of an annual pay and pensions deal worth a maximum of £8.3m, will in large part be made without regard to his performance, or the returns he generates for Lloyds shareholders. Rather they represent the price the Portuguese-born banker has extracted from Lloyds in exchange for abandoning his former employer Santander, for whom he ran operations in the UK. Horta-Osório will not officially sit on the board until March. His golden hello could rival the £5m in shares awarded to Stephen Hester, ceo of **Royal Bank of Scotland,** which is 84 percent owned by UK taxpayers. This was to make up for the future bonuses Hester *may* have got in his previous job, had he stayed on, as British Land's ceo.

Golden hellos are disliked by the **Association of British Insurers**, which says that shareholders risk being cheated by such unearned 'signing-on' fees. Horta-Osório's contract of employment, seen by *The Guardian*, contains long passages setting out the compensation package he secured for surrendering possible future bonuses and other rewards he may – or may not – have been in line to receive had he stayed at Santander. Signed in early November, the contract states that Horta-Osório will "suffer significant loss in relation to future payments on retirement" because of his defection from Santander. In order to offset that loss in part, Lloyds agreed to establish an unfunded pension arrangement, which is to be set up in addition to regular pension contributions, equivalent to 50 percent of the new Lloyds boss's salary. In addition, Horta-Osório will receive Lloyds shares worth £516,000 for missing out on a round of share-based executive payouts expected shortly at Santander. As compensation for missing out on similar share-based bonuses at the end of this year and 2012 he will receive 91 percent of their notional value in November. In addition, the full value of shares tied up in a Santander matched deferred bonus scheme will be paid out to Horta-Osório in Lloyds stock. Precise amounts are expected to be disclosed when Lloyds publishes its annual report. *The *outgoing* ceo of Lloyds, Eric Daniels, is in line for a bonus of about £2m this year. Daniels turned down a bonus for two years running, but may not do so again. The government bailed out Lloyds after it took over HBOS in 2008, and still holds a 41 percent stake in the bank. Mr Daniels was criticised for his bank's failure to subject the HBOS loan book to proper due diligence. However, he has been credited with returning Lloyds to profit earlier than many analysts thought likely. He oversaw a rights issue that raised £13.5bn for the bank. The government is expected to make a profit when it sells its stake in the bank.

Stephen Hester (see above) could receive a £2.5m bonus this year, say commentators. Downing Street denied giving up attempts to curb banker bonuses and says a permanent bank levy will bring in £2.5bn a year by the end of this parliament.

Google granted Eric Schmidt a $100m (£62.5m) golden parachute for stepping down from the post of ceo of the hugely successful internet company. The bumper shares bonus award came days after news that Schmidt is to be replaced by Larry Page, one of Google's co-founders. Schmidt's bumper golden parachute, which includes share options, will vest over the next four years. Google explained that Schmidt had not been granted any Google stock since he became ceo and chairman ten years ago. He and the other co-founders limited their salaries to just $1 per year, but the three control 21 percent of the company's ords.

HSBC banking employees have been told to wait until the end of March before they receive their 2010 bonuses, after publication of the bank's annual results on February 27. This fits in with new regulatory demands that bonuses should only be paid after the bank's capital and risk profiles have been fully assessed and signed off.

Morgan Stanley cut the investment bank's total compensation pool by two percent to $7.08 bn. Companywide, Morgan Stanley paid its 62,542 employees an average $256,596 last year, up from $238,602 for each of the 60,494 employees at the end of 2009. The 2010 pay statistic accounts for a full-year ownership of the Smith Barney brokerage, compared with seven months in 2009. The firm told some employees last December to expect 2010 investment banking bonuses to decline between 10 percent to 30 percent, though, in the event, the actual bonus payments were mostly only slightly down.

Credit Suisse has announced that it intends to defer bonuses for more of its banking employees this year, with a large slice of each bonus being paid in shares, rather than cash.

Goldman Sachs bosses are to pick up $111m in bonuses in an allegedly 'outrageous' pay deal during the worst recession for 80 years. The investment banks' ceo Lloyd Blankfein and president Gary Cohn will get $24m each under the agreement that will see thousands of others get huge rewards. The bonuses were agreed in 2008 months before Goldman took $10bn of US bailout money and, due to legal technicalities, the bank must now pay out. Blankfein, 56, and Cohn, 50, were given $27m and $27m respectively in 2007 but, like other managers, have either been given restricted stock options or no bonus since then. No such arrangements have been made for 2010. In addition to Blankfein, the company's cfo David Viniar will get $21m whilst Edward Forst, co-head of investment management, who left in 2008 and returned a year later, will get $14m. Goldman set out $15.4bn to cover compensation and benefits this year alone, equivalent to paying its 35,400 employees $430,000 each – five percent lower than in 2009.

Some US banks have come under fire for paying bonuses of under $500,000 entirely, or almost entirely in cash, while as little as 20 percent of larger bonuses are being paid in deferred shares. Headhunters say there is a growing compensation divide between Europe and the US, which will soon attract defections among some of the key players in UK and European banking circles.

Barclays ceo Bob Diamond, wants to reform bonuses, in a move which will radically change the way it pays its senior bankers, according to the *Financial Times*. The report suggests Diamond is considering paying a large amount of bonuses in special contingent convertible bonds, known as 'cocos,' that are effectively worthless if the bank runs into trouble. While the banking giant said no decision had been made with regard to the bonus overhaul, it will reveal more details when it publishes its annual results shortly. Mr Diamond faced questions from MPs over his 2010 bonus entitlement, due after he refused his bonuses for 2008 and 2009. He responded: "I haven't been offered a bonus, that's a decision that will be taken by the remuneration committee in the next few weeks." However, a year ago, he received tens of millions of pounds – on top of his basic £250,000 salary. He gained around £16m of incentive awards dating back to 2005 and he was given £6m in further incentives, which could grow in value to as much as £20m over three years, if Barclays does well. Diamond's earnings have been in the spotlight since 2005 when he joined the bank's main board, at which point his pay details had to be published. Since then his pay, bonuses, share options and sundry extras are reckoned to have brought in a total of £75m. Even before Diamond was elevated to the bank's top table, he was making tens of millions from a share scheme run by one of Barclays' offshoots, said *The Daily Mail*. That Eso was run by Barclays Global Investors, a fund management business which grew out of an operation bought by Barclays in 1995 from Wells Fargo for £280m. BGI was merged with Barclays' long-established BZW Asset Management operation, and with Diamond's enthusiastic backing it grew to become an investment colossus. In 2000 BGI introduced its share scheme for executives and investment stars. The executives were given options over shares in BGI – the right to buy at an agreed price. If the business did well, then the value of the shares rose. The employees with options could then buy shares at the previously agreed, lower, price and sell them back to Barclays at the new, higher price. The result was an instant profit for employees, with Barclays shareholders footing the bill. The scheme's purpose, according to BGI documents, was 'to encourage key management and professional talent at Barclays Global Investors to maximise the creation of shareholder value' and it certainly succeeded. There was nothing illegal about the share option scheme. Furthermore, Barclays correctly pointed out that BGI employees profited from the scheme only when BGI did well for the bank as a whole.

France

The French government recently adopted the 2011 French Tax Act and Social Security Financing Act. The key changes applicable to equity based incentive plans are outlined by Bill Cohen of **Deloitte.** Social taxes payable on income from qualified share plans have been increased to 14 percent (previously ten percent) for the employer and eight percent (previously 2.5 percent) for employees. It is understood that the new rates apply for awards granted from January 1 2011. There is a limited exemption for free share awards valued under €17,616 per recipient, for which there will be no change in the social tax rates (i.e. the rates of 2.5 and ten percent will remain applicable). The highest marginal tax rate payable on qualified share option income has been increased from 40 to 41 percent. The increased rate will apply to shares sold on or after January 1 this year. The Capital Gains Tax exemption previously available when total proceeds from the sale of all securities (in a household) were under €25,830 for the tax year was abolished on January 1. In addition, from the same date, the CGT rate increased to 31.3 percent, including surtaxes (previously 30.1 percent).

Expensing baloney

A case involving an **RM2 Partnership** client emphasised the absurdity of the expensing rules introduced by accounting regulators for Eso schemes. The client made an award of nil cost EMI share options with immediate vesting. The result was an immediate charge to the P & L account, equal to the whole value of the shares over which the options had been awarded. Although Centre member RM2 had made expensing calculations for previous awards, the scale of this latest charge took the client by surprise. The problem arose because the Accounting Standards Board (ASB), together with its international counterpart, requires the cost of share options to be shown as a cost to P & L. The cost is calculated using an option pricing or simulation model which takes account of the probability of a rise or fall in the price of the underlying share. In the case of nil cost options, the cost of the option is the value of the underlying share. All UK companies have to comply with this rule, except for tiny companies entitled to use the Financial Reporting Standard for Smaller Entities. Share options do not cost companies a penny.* They are a cost to shareholders. So why show this fictitious cost to profits? In their booklet, '*IFRS 2 share based payment, basis of conclusions,'* the UK ASB attempts to explain. It claims that when an employee receives a share option or other share award, their services are an asset which is partly purchased by the shares. Therefore, the asset has to be expensed over the period that the asset is used (and this is taken to be the vesting period of the share award) in effect, depreciated and a cost shown to the accounts. RM2 said: "*This is fundamentally wrong. If a company purchases a wasting asset, such as a machine, the calculation of profits must take account of the eventual cost of replacing the asset hence the depreciation charge against profits. But if a company makes a gift of shares (such as the nil cost option) there is no wasting asset. There is nothing to replace, and nothing to depreciate. All that has happened is the ownership of the company has changed. True, the company could have offered cash, thus reducing profits. Instead, the shareholders chose to dilute their ownership, thus reducing the profits available to them, but not to the company. It makes no sense for the shareholders then to take a second charge for cash they have not spent..*

"Or to look at it another way what difference does it make to a company's value if it has many or few shareholders? Almost universally, the charge against profits is calculated using a mathematical model known as Black-Scholes-Merton, after its inventors. However, it is inappropriate for several reasons, including the fact that it was designed for traded options rather than employee options, which generally cannot be traded. We have a charge which is wrong in principle and is calculated (at significant cost to companies) by a method that very few people fully understand and is probably inappropriate anyway. Fortunately, there is evidence that for most purposes banks and investors disregard the charge, although one real world effect of it can be to reduce distributable reserves. ***The accounting standard IFRS2 should be withdrawn.*** *If you are obliged by the accounting standard to expense your share awards, your own auditors cannot assist since they cannot both perform the calculation and audit it. RM2 offers an inexpensive options expensing service which is designed to reduce the charge as far as permissible under IFRS2*,"added The RM2 Partnership.

William Franklin of Pett, Franklin & Co. Ltd added: "Black Scholes may be appropriate for valuing short term options over commodities but its use as a basis for valuing employee share options with lives extending over several years should have received much more critical scrutiny when IFRS2 was being proposed. Black Scholes assumes, whether in its algebraic, binomial or Monte Carlo forms, that share price movements are the result of random chance and that the market has no memory and no expectations This is utter nonsense, which makes Black Scholes misleading, except possibly as an approximation over a short period of time

*The Centre, which campaigned long and hard against options expensing, believes that there is no cost to the corporate entity (only to the shareholders) when it issues new paper to satisfy maturing employee share option schemes and share/deferred share awards. However, this is not the case if the company decides instead to *buy* its own shares in the market in order to satisfy maturing employee option and share schemes, especially since options are usually offered at a discount of up to 20 percent of prevailing market value.

Financial reform in the EU

The framework for the supervision of the EU financial system has been reformed with the aim of eliminating the deficiencies exposed during the recent financial crisis, writes US law firm Squire Sanders & Dempsey LLP. The Council of Ministers adopted regulations establishing a European Systemic Risk Board (ESRB) to provide macro-prudential oversight of the financial system, together with three new supervisory authorities at the micro-financial level:

- European Banking Authority (EBA);
- European Insurance and Occupational Pensions Authority (EIOPA); and
- European and Securities and Markets Authority (ESMA).

The role of the ESRB is to monitor and assess potential threats to the stability of the financial system and, where necessary, to issue risk warnings and recommendations for remedial action and to monitor their implementation. The three new EU supervisory authorities (which replace the three existing committees of supervisors at EU level1) will work in tandem with the supervisory authorities of the member states to raise standards of national supervision throughout the EU (by means, for example, of developing a single EU rule-book and investigating national supervisory authorities where there are concerns that they are not complying with EU law). National authorities will remain responsible for the day-to-day supervision of individual firms. The ESRB and the EIOPA will be located in Frankfurt, the EBA in London and the ESMA in Paris.

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