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newspad of the Employee Share Ownership Centre

Brexit costs threat to UK global share plans

UK companies with global share plans are likely to find them more costly and complicated to operate in future after Brexit.

Hitherto, it has been relatively easy for UK companies to extend their employee share schemes to those employees based in any of the other 27 EU member states. As the UK is leaving the EU, then operating international schemes may prove to be more complex and costly. Furthermore, Brexit may well have impacts on UK equity remuneration too, lawyers forecast.

UK businesses which in future want to offer share scheme benefits to group employees in the EU will not be able to rely on relevant exemptions in the Prospectus Directive. This could make it more costly for UK companies to operate EU-wide employee share schemes because it would be more complex to ensure compliance with the Prospectus Directive, said Norton Rose Fulbright.

The UK Eso industry should not panic because the fact that other EU legislation would no longer apply to UK share schemes was unlikely to upset the apple cart, they forecast. For instance, the UK government will probably not repeal age discrimination legislation, they added. The UK will be expected to retain rules limiting the amount and form of variable remuneration paid to senior employees in listed companies and financial institutions though some of the detail might change.

Brexit should not fundamentally affect the ability of UK companies to offer shares to their employees in EU member states, said Nicholas Greenacre, partner at Centre member **White & Case.** "The proposed new Prospectus Regulation, which contains a broader exemption for employee share plans, will allow both listed and unlisted issuers, whether from inside or outside the EU, to make offers of shares to employees in the EU with publication of a summary information document rather than a full prospectus.

"Even if that extended exemption is not included in the final Regulation, the current prospectus filing requirement only generally applies to larger stock purchase plans operated by non-EU issuers, rather than option plans or free share plans, so this should not present a significant problem.

"Employees are likely to be far more concerned about keeping their jobs in the economic turmoil that will follow the Brexit vote, not to mention the value of their homes and pension funds," added Mr Greenacre.

However, Stephen Diosi, formerly of Centre member **Linklaters** and who now works for Mischcon de Reya, did not entirely agree. He warned that Brexit could be a nightmare for UK based international share schemes because the relevant Brussels-generated UK law and rules will fall away – necessitating transitional legislation to maintain the status quo whilst new UK specific laws are introduced to replace thousands of EU -derived rules - a process that many commentators consider will take at least a decade.

From the Chairman

Advisers who think that UK and EU negotiators can sit round the table and discuss comfortably - over the next two years or so - the precise terms – including share scheme rules - to cover UK's exit from the EU may be in for a rude shock.

French President Francois Hollande lost no time in talking to German Chancellor Angela Merkel after the vote, consulting their lawyers as to if and how quickly the UK can be kicked out of the EU, rather than waiting for a UK formal leave application. They know that resurgent populist and nationalistic movements could destroy the EU unless they accelerate the reform process dramatically. Marine le Pen is more surefooted than the triumphant Farage and AfD moves forward, a threat to the CDU/ CSU coalition. The last thing they want is the UK hanging around in the wings, arm-wrestling with Brussels bureaucrats over exit terms for months on end. This could mean that Whitehall and the share scheme industry is given little or no time in which to put in place transitional rules to keep the show on the road.

The sad truth is that populace and politicians in the major EU states have never been so mutually uncomprehending. Given the major political uncertainty over-hanging equity and currency markets worldwide, it would take a very brave HR share scheme manager indeed to push the launch button for a new international all-employee equity plan any time in the near future.

Malcolm Hurlston CBE

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He too singled out the future impact of EU Prospectus rules on UK companies post Brexit: "The most basic of share plan concepts, the grant of options and awards is subject to EU prospectus rules. This applies a single regime throughout the EU and provides a set of exclusions and exemptions to enable plans to be operated across the EU without the tortuous and expensive requirement to produce a prospectus. However, companies based outside the EU cannot necessarily take advantage of these exemptions. UK companies with employees across the EU may find themselves subject to more onerous requirements than their EU competitors. This could make it far more difficult for them to extend their share plan arrangements more widely," added Mr Diosi.

Brexit would impact the UK equity based remuneration industry, especially at executive level, he forecast. "The design and operation of employee share plans and other remuneration arrangements are subject to a multitude of laws. Of particular focus since the financial crash of 2008, EU regulators have gone to great lengths to address the perceived unfairness and inequity of executive pay in the financial services arena ensuring that there should be no reward for failure. This has led to malus and claw-back provisions being introduced, capping bonuses and deferring compensation to link pay to longer-term performance."

The UK has felt the force of these laws disproportionately compared to its European counterparts. Indeed the FCA (unsuccessfully) challenged the bonus cap through the European Court of Justice and it would not be unreasonable to suggest that were the UK to leave the EU, the cap would be scrapped.

On the executive equity remuneration issues, **Linklaters** said: "Material changes to the various 'remuneration codes' affecting financial services firms are fairly unlikely in the short term. The precursor to the PRA (the FSA) was an early adopter of remuneration rules for financial services firms, and introduced a voluntary version of the remuneration code in 2011, before the EU required member states to adopt these rules. Since then, the PRA has introduced requirements that go beyond those contained in the relevant EU directives (for example the seven year claw-back requirement; enhanced deferral for certain senior managers). Whilst the PRA/ FCA did lobby against the imposition of the bonus cap, and have maintained the stance that they should be permitted to dis-apply the bonus cap to certain types of FS firms, it is unlikely to make substantive changes to the other remuneration provisions. Even in if it was minded to abandon the bonus cap, their ability to make changes will be tied up in whether the UK negotiates ongoing participation in the existing EU passporting regime (which, in general terms, allows financial institutions approved by a regulator in one member state to carry out business in another member state, on the basis that they are all subject to equivalent regulatory standards). The bonus cap cannot therefore be looked at in isolation by the UK regulator."

Given that age discrimination legislation has become part of the fabric of UK employment law, it is unlikely that the UK will move significantly away, if at all, from the current position. Nevertheless, there will obviously be an opportunity to review the legislation as it stands, with the possibility that some changes will follow.

Attention will focus on the UK's implementation of the Market Abuse Regulation rules from July 3 this year. Companies listed on the London Stock Exchange are subject to strict rules and standards - principally through the Model Code - that determine when directors and other senior managers are permitted to deal in shares and the clearance process that must be followed. Regarding share plans, this includes the grant and exercise of options and any subsequent sale of shares. The EU driven changes potentially bring more uncertainty into how the requirements can be satisfied, abolishing the Model Code and introducing a more general systems and controls in its place. Whilst there is every likelihood that UK companies will continue to adopt their current practices in many respects, there will be areas of change that companies will need to adopt now. Post Brexit, it will be no surprise if those changes are short-lived with the UK reverting back to current rules and practice, said Mr Diosi. The operation of share plans naturally involves a flow of employee data between employing entities and any third party plan administrator. Currently, such data can be freely exchanged within the EU.

Were the UK to withdraw completely from the EU, the European Commission would have to rule that a post-Brexit UK provides an adequate level of protection for the rights and freedoms of data subjects. Without this ruling, employee data could not be exported from the EU to the UK without finding another lawful way of doing so, such as obtaining express consent or through model clauses, which would involve additional administrative burden, warned Mr Diosi.

Centre member **Abbiss Cadres,** said: "With no precedent, and after 40 years of integration, there is much left to debate and unravel. The UK government has up to two years from triggering the exit mechanism to negotiate a new rule book to govern its future relationship with the EU. Despite the prolonged period of transition, it will be important that employers consider the implications for their business and employees of expected changes that may impact employment law, immigration, freedom of movement within the EU, international assignments and employee taxation as well as remuneration arrangements (including share plans)."

Companies planning new employee share options and awards over the coming months must be mindful of the impact of post-referendum market volatility on the value of those awards. Volatile stock markets and currency exchange rates could affect company share prices, with particular consequences for executive pay packages based on performance targets, according to share plans and incentives expert Suzannah Crookes of Centre member **Pinsent Masons.** "Setting performance targets at grant, and measurement at vesting, may be affected by any movements in stock markets and currency exchange rates," she said. "Where executives are subject to shareholding guidelines, as these are generally measured on share value the timing of measurement in a volatile market may be a factor in monitoring the extent to which the guidelines are met."

Share price volatility could impact UK tax-advantaged share schemes for employees, particularly Sharesave-SAYE and Share Incentive Plan (SIP), Crookes said. "Any volatility in share price may dictate whether or not Sharesave options are 'in the money' at any given time. In an international plan, currency exchange rates will have a role to play. Under UK SIPs, a lower share price may lead to a larger number of shares being acquired by participants with their agreed partnership share deduction, and so potentially a larger number of matching shares where offered. Companies will need to be prepared, should this occur, to keep careful track of dilution limits where using new issue shares and of the relative significance of the SIP trust as a shareholder and its rate of growth," she said.

Economic factors would have the biggest impact on equity incentives and share plans in the short term, with the latter dependent on whatever form the future relationship between the UK and EU would take. Financial services regulation, employment laws, market abuse rules, data protection, prospectus and shareholder rights requirements are all governed to a greater or lesser extent by EU law, she added.

"Clearly it is too early to speculate on how the UK's position will change, if at all, in these areas," she said. "However, where the EU position reflects UK domestic legislation in any event, we are unlikely to see significant difference initially - although there is now the potential, subject to the shape of the on-going relationship with the EU, for a separate UK regime to develop differently over time."

The referendum result is expected to affect workplace benefits such as pensions and share schemes, and raises questions around employment law. Peter Cheese, ceo at the **Chartered Institute of Personnel and Development (CIPD)**, said: "The impact of a 'leave' vote is much bigger than simply changing the political landscape of the UK. It stands to have a significant impact on the world of work and future planning within organisations. We need a broad and thorough consultation between government, organisations and employees across all sectors and representative bodies. The CIPD will play its part in these necessary consultations drawing on our strong base of evidence and experience of the world of work. It's important that the government takes the time to really understand the impact of any proposed changes and works with businesses to minimise risk to individuals, organisations and the economy."

Will Brexit require a material change in how companies approach the design of their share plans and remuneration arrangements? No-one as yet has a definitive answer to that question. Post Brexit, there will be opportunities for government to take a more protectionist approach to UK businesses, with remuneration arrangements playing a key part in ensuring they are able to compete to attract and retain the best talent.

VIENNA 2016

Doomed pensions tax relief to help Eso

The complete removal of UK tax relief from all pension contributions in the near future was forecast during the Centre's 28th annual employee equity conference at the Herrenhof Hotel in Vienna.

"We are on the cusp of major change in how retirement provision will be available in the UK," **Alan Judes**, founder and md of **Strategic Remuneration** told delegates.

The impending scrapping of tax relief on contributions would present a golden opportunity to focus on how long-term employee share ownership could be used to create attractive alternative pension pots through transfers into Lifetime ISA (LISA) accounts, he said.

"The complete removal of pension contributions from tax relief is coming – the move probably was only deferred in the last Budget, because of the imminence of the Brexit referendum," warned Mr Judes.

Could the advent of the LISA signal the beginning of the end for pension savings, he asked? "We are going to see new a pensions structure in which contributions will be taxed going in but allowed to appreciate and eventually to release tax-free gains."

Alan cited Michael Johnson, of the Centre for Policy Studies, who had called for a unified tax regime for ISAs and all pension products. In his view, the 2014 Budget, which gave freedom to participants to withdraw pension savings as cash, had effectively spelled the end of tax relief on pension contributions. Furthermore, the cost of new annuities on the market was "outrageously expensive." Instead of fixing the economy, the government's unprecedented new private pension funds freedom regime was effectively saying: 'You can eat your capital.'

So current pension rules – contributions tax exempt; income and capital gains untaxed and capital withdrawals taxed – could be reversed. Contributions would be taxed on the way in, but not on the way out. Both Share Incentive Plans and SAYE contracts already presented opportunities to transfer employee shareholdings into SIPPs (Self-Invested Personal Pensions).

Alan's presentation was given added piquancy by the collapse of high street retailer BHS, with almost 11,000 jobs lost and a pension fund deficit of £571m, much of which taxpayers will have to shoulder, alongside employees, who face a minimum ten percent cut in their pensions, as probable forced recruits into the state Pension Protection Fund (PPF) – a lifeboat for collapsed company pension schemes. Almost 1,000 employees of Austin Reed were in the same boat after the clothing retailer closed down.

The generous LISA gave you a £1,000 a year bonus if you saved a maximum £4,000 each year, so how could traditional pension savings plans survive such competition? Instead, employee shares acquired through SIPs CSOPs and/or SAYE schemes could be transferred into SIPPs or a NISA (New ISA)/LISA if of correct age, Alan explained. “For the average employee, this is a significant opportunity to accumulate.” The Strategic Remuneration approach was to help every employee get a pension fund (if they still exist in future) of £1m and a similar sized NISA/LISA, he added.

For the first time in at least 15 years, Centre chairman **Malcolm Hurlston CBE**, was unable to attend and chair the conference, after under-going recent eye surgery. Although he was recovering well from his operation, the treatment had had knock-on effects. Mr Hurlston sent delegates his best wishes and said he looked forward to seeing them all later this year. He quoted Tim Hauser, US Department of Labour, who said: ‘*At events like this, I think it’s important to celebrate what is unique about Esops: the transformational potential they have for empowering people and for improving the level of engagement and the level of satisfaction that people have at the workplace.’*

Centre international director Fred Hackworth chaired the event in the absence of Mr Hurlston. The night before the conference began, more than 20 attendees dined in the historic Café Central, where Karl Marx and Sigmund Freud were among the many who met there to discuss the issues of the day more than 100 years ago.

In the conference handbook, Mr Hurlston introduced two leading Austrian experts, **Dr Barbara Kolm**, of the **Austrian Economics Center**, and **Max Stelzer** of specialist steels company **voestalpine,** who later told delegates how employee financial participation (employee share ownership) and related issues of corporate social responsibility were evolving in Austria today. More than 22,000 voestalpine employees hold 14.5 percent of the equity, the largest example in Europe of bundled employee shareholder voting rights. The Austrian postal service and Vienna’s main airport have large all-employee share plans too, as does Oberbank.

The chairman wrote that a potentially unifying theme emerging from these strands was that broad-based employee equity (share/stock) ownership could be an important means of improving the economic and social standing of working people. Employee equity plans provided a lifeboat for those millions of employees who could not look forward to receiving inflation-linked pensions when they retired; who had little or no chance of receiving a nice fat bonus at the end of the working year and who would only get a few weeks’ pay if they lost their jobs. *“We are all in this together,” the politicians are fond of saying, but are we?”* asked Mr Hurlston.

The Centre had taken a greater interest in executive remuneration, not least because the bulk of senior executive reward these days came in the form of equity payments from various forms of incentive plans. Huge amounts of equity had been paid out recently, partly because pay-out targets may have been set when world markets were hardly recovered from the great financial crisis of 2007-8 and perhaps partly because the capacity of long-term incentive plans to pay out many times basic salary had become almost a virility symbol in some corporate boardrooms. Delegates would hear from **Damian Carnell** on how executive reward schemes could be simplified and from **Nicholas Greenacre** about the similarities and differences between UK and US compensation schemes.

The tens of thousands of SME privately-held companies without a clear succession map remained a serious problem within the EU. If a trade sale is not possible, many shut down, with the loss of jobs and damage to local communities which liquidation frequently involves. Employee share ownership could save some of these companies from failure, but one must be wary of ‘throwing good money after bad,’ said Mr Hurlston. Eso was not a universal panacea and some companies could not survive without the vision and savoir faire of the founding owners. Mechanisms for funding long-term company purchases by their employees were hard to find, in Europe at least. One of the Centre’s US members, **ButcherJoseph**, did a large amount of business by providing finance to help American employees buy their businesses, often on an instalment basis, the chairman wrote. Delegates were fortunate to have **Keith Butcher** as one of the key presenters during the Vienna conference. He had brought with him senior executives from **DAI Global**, an important company with a huge international reach, which has taken the Esop route. They had an interesting story to tell.

Looking beyond Vienna, the Centre was preparing several London-based events this autumn. The first was the **2016 Centre Awards** black-tie reception and dinner which again would be held in the **Reform Club** in Pall Mall, on **Tuesday November 22**. A second major event to look out for would be the Centre’s **British Isles Employee Equity Symposium** for quoted companies and trustees, to be held at the City offices of top legal member, **White & Case LLP,** on **Wednesday** and **Thursday November 23 & 24.** Members interested in sponsoring this event, should contact Centre staff asap.

Introducing the US executive reward environment, **Nicholas Greenacre** of **White & Case** said that it had taken the US authorities seven years to come up with a set of rules requiring disclosure of executive reward packages and claw-back policies, but it would take several more years (until 2019) to implement them.

While President Obama was trying to get Dodd Frank passed before he left office, Hillary Clinton was unlikely to do anything if she won the US election in the autumn, he said. The danger was that executives would game the new system – for example, if a company took on a lot of Asian employees – its median pay figure would go down and make its ceo: rank-and-file pay ratio look terrible, said Nicholas.

The Dodd-Frank proposed pay for performance rule focuses on total shareholder return (TSR) compared to peer group performance and measured against paid executive compensation and was likely to apply from 2017 at the earliest.

Proxy advisor recommendations remained very influential on Say On Pay votes and many company boards had changed their executive pay programmes to gain approval. Nevertheless, there were still excessive grants of non-performance based awards in the US without a clear rationale he added.

In the US, the emphasis was on compliance and disclosure with penalties for deviation, whereas in Europe, the philosophy was 'comply or explain,' coupled with considerable restrictions on executive compensation, including the bonus cap.

Damian Carnell of **Willis Towers Watson** tackled the controversial issue of what, if anything, should be done to change the current structure of executive compensation. Essentially, the debate could be couched in terms of simplicity versus complexity, said Damian. City institutions were asking: 'Have we gone too far?' but he suggested that investors themselves had invented complexity in executive reward schemes. There was still room to improve the narratives of pay and performance; much more space in annual reports was taken up with discussions on remuneration, but there were too many rules and regulation and too many competing shareholder views on what was the 'right programme,' Damian suggested. The Investment Association (IA) had stepped back and said '*we want simplification*' too. Complexity could hide high total reward levels, damage the perceived value of pay and make the linkage between pay and performance less clear, he said. The IA's working group was consulting on its draft guidance, which concentrated on long-term incentives and suggested starting the new reward process with a clean sheet of paper. However, its key proposals were nothing new and the questions it had raised were "depressing," he said.

So why had executive reward risen so high? – For one thing, people were driven psychologically to become the top dog and take the associated rewards. Then there was 'selective perception' by which the relatively few companies in which things went badly wrong were pilloried, whereas the thousands of companies in which remuneration committees worked well were largely ignored. Most companies did not believe that the current remuneration system was broken, but new models of potential pay structure were welcomed. Some wanted the re-introduction of restricted stock awards and of vanilla stock options, but the IA wasn't keen on restricted stock for top executives, said Damian. Role based 'allowances' had appeared in the banking sector, together with some big rises in basic salary to get round the bonus restrictions.

The **Weir Group**'s proposed performance share plan (PSP) awards were to be reduced by 250 percent, new restricted stock tied to 90 percent of base pay, vesting 33 percent in years three, four and five and short term incentives (STI) still valued at 150 percent maximum but 30 percent deferred into years one, two and three. Yet shareholders had ripped this to shreds – 74 percent voting the remuneration *policy* down at the agm, but backing the remuneration report (previous year's pay) by 95 percent.

Damian reported that the IA had back-pedalled from the compensation furore – it now said it had only *facilitated* the working group and that such matters ***were not an IA activity.*** Instead**,** the IA would only update the executive remuneration guidance post final report publication. Who would be the next to be shot down?

The conference plan issuers' panel was moderated by **Mark Higgins,** head of share plans at **Xerox HR** and formerly share plan manager at **Vodafone.** Mark was assisted by **Claudia Yanez,** director of executive and equity compensation at California based **SunPower Corporation** and by **Robert Head,** reward consultant and former director of executive reward and global share plans at **Pearson.**

Robert said that employee share plans were an important employer 'value' proposition, which encouraged potential recruits to the company to sign up. Nowadays, more than 70 percent of executive reward was variable pay and most of that in the form of equity. A recent Siemens study had shown that Eso plans increased employee motivation and contributed to the success of the organisation. Eso supported 'well -being' and met a "wider social purpose," he added.

Claudia said that SunPower's use of equity reward was "very heavy and runs very deep" in her company. "We face strong competition for skilled staff because we are about engineering technology – so we have to have an attractive offer to get the right employees and to retain them," she explained. "Last year we had a lot of performance stock units because we are driving costs down and must work efficiently. In SunPower there is a willingness to give things a try – maybe that's because we're in Silicon Valley." She spoke of site visits by her stock administration team and the role of financial education among the workforce.

Mark said that Vodafone had looked below the 'C' suite in order to motivate 200 senior managers by using equity incentives, but there were guidelines on what the managers would miss if they didn't meet their performance obligations. There were far more performance metrics now and an emphasis on *local* performance.

Robert stressed the role of local co-ordinators in share plans; the importance of using social media to gain more employee engagement and the need for compliance.

A US Eso case study, centred on the global development company **DAI** was a major highlight, brought to the conference by Keith Butcher, managing partner of middle market investment bank ButcherJoseph, together with his clients, **Jim Boomgard,** president and ceo of DAI and **Helle Weeke,** senior vp and general counsel of DAI.

Jim explained how DAI had over the years become a leading provided of technical assistance to the US government's foreign development programme.
Although DAI had been a 100 percent employee-owned Esop company, its ownership and capital structure were not aligned to DAI's growth plan, said Keith. From 2014, DAI, which employs 2,700 – of whom 500 are full-time - began to look for a new employee ownership model which would maintain its brand and values without selling itself to outside investors. DAI had grown rapidly and there was real concern about its UK employees who were not part of the US Esop, said Keith. They complained that they were second class citizens. Furthermore, DAI's Esop had become hard to manage, with many shares unallocated or owned by former employees. It was their Esop trustee who had suggested: '*Why not sell the company to yourselves?*' The consequent restructuring raised more than $4m from its employees globally and enabled DAI to launch a new ownership structure. Jim said that the Esop was like an unfunded pension scheme – "We have had to buy back between $10m-$20m of our stock each year as employees retire. DAI is now owned by the US Esop retirement trust and a new structure which allowed all global employees the chance to invest their own capital into the company and 430 have done so to date. This had allowed the new *Global Employee Ownership* structure to borrow in order to redeem Esop shares from ex-employees; raise equity capital; make an annual share offering and convert its LTIP and phantom shares plans. The company had offered small cash grants to employees to help buy the new shares and payroll advances. The three year holding period promotes long-term share ownership and a secondary market had been created so that employees could get their money out. The company offers to buy back the shares at 80 percent of their market value and employees were prohibited from dealing in the shares among themselves.
In communicating the new model to employees, DAI had been "clear, factual and open about the restructuring. "Our communications were segmented but not segregated: there was nothing we would say to one group of employees that we would not be willing to share with all," said Jim.
DAI's target by 2021 was to have 30 percent of its shares purchased and 70 percent owned by the Esop. If anyone thought that the transition process was easy, lawyer Helle had had to plough her way through 5,000 legal documents from other jurisdictions worldwide. There had been heavy legal and regulatory costs, partly because existing securities laws did not lend themselves to the new company structure, she said. Employee engagement was key: very few had asked '*Are you taking away my Esop?*' because many were pre-disposed to further invest in the company when the opportunity had presented itself, she added.
Claudia Yanez, of **SunPower,** which employs 8,000 people worldwide, explained that two-thirds of her company was owned by the French oil giant **Total**, which had been sympathetic to the 'sharing' concept implied by operating employee equity programmes. SunPower had a mix of annual stock grants for broad employee participation and performance based awards for senior executives, with vesting over three to four years. On top of that were one-year performance stock units reserved for the 'C' suite – 11 executives in all – though they could only get 50 percent of the awards in their hands after year one, if they had met the targets, said Claudia. SunPower continued to ask itself how far down the chain of command performance awards should go, she added. The problem with *deep dive* performance metrics was that they got complicated very quickly, as the main driver was to make and keep solar energy able to compete cost-wise with other energy sources.
Overall, cycle times were crucial in creating new incentive programmes; companies using them had to communicate frequently about the performance status of such awards and had to assess and re-assess whether the incentive design was achieving its intended purpose.
The trustee panel was led by **Claire Drummond** of **Bedell Trust** and by **Brendan Dowling** of **Estera** (formerly *Appleby Fiduciaries)* who stood in ably for group director **Patrick Jones,** who was detained in Jersey. Exceptionally, the panel concentrated on the changed ownership landscape for trustees in the Channel Islands. They said that initially several trust companies had been slowly off-loaded into the hands of the big banks like **RBC,** but over the past two years there had been a huge shake-up in the trustee industry, as many went for private equity participation and/or MBOs coupled with mini flotations. What was happening was the dismantlement of the old partnership structures and their replacement by more commercially focused companies. Brendan cited Centre members, such as **Sanne, Ogier/Elian, Appleby/Estera, Bedell** and others such as **JTC, Intertrust** and **Vistra.** Private equity (PE) was attracted by the potential for growth, both organic and acquisition led and the prospect of consolidating a highly fragmented market to realise substantial cost savings. Later on, the PE investors could exit via a trade sale, market listings or secondary investment. For the sellers – the partners – they could realise capital gains and unlock equity, separate the development of fiduciary and legal/accounting practices and get off the treadmill of new systems investment and ever tougher compliance demands. PE teams were looking for new trust entry opportunities, particularly in south-east Asia, as he spoke. Further consolidation within the industry was inevitable, he added.
Claire said that though EBTs were exempt from the requirements of the Foreign Account Tax Compliance Act (FATCA), nominee arrangements were not exempt. Hence if shares were allocated to individuals, then reporting would be required in most cases. Trustees had their in-house FATCA teams geared up, as the first reporting deadline was June 30.
Jersey had been one of the early adopters of the

Common Reporting Standard, but not Guernsey, nor the US, though some jurisdictions were following the OECD handbook. The first reporting deadline was in June next year.

She mentioned HMRC's closure of the EBT settlement opportunity regarding the UK Budget changes to disguised remuneration schemes, notably those which exploited Part 7A of ITEPA 2013. The March Budget this year had legitimised retrospective action back to November last year if new schemes had been created which fell foul of the disguised remuneration rules.

Stephen Woodhouse, partner at employee share ownership lawyers **Pett Franklin,** jetted in and out of Vienna to give delegates five key ideas on how broad-based UK employee share ownership might be reinvigorated. Part of the context was criticism that share plans were being used to deliver short-term benefits and they sometimes distorted executive behaviour, said Stephen.

So why not create 'senior' share plans with long-term vesting and holding requirements? They could issue nil cost options over shares with a value on award equal to what would otherwise have gone into a pension plan. The number of shares would be increased yearly to reflect dividend value and exercise would be on normal retirement date. A variant involved growth interest. Award levels would be based on projected future value. Tax would be paid today on existing value, discounted for risk and time, and projected future value. CGT would be paid now on 25 year options.

Stephen called for the introduction of a statutory agreement process whereby the valuation of privately-held SME companies could be established, paid for by employers. "Share valuation is a critical element in structuring share plans for private companies," he said. This would be highly relevant in the wake of HMRC's recent withdrawal of its discretionary post transaction valuation check service.

The wider promotion of JSOPS (joint ownership share plans) would help because employees would be encouraged to buy shares jointly with a third party – e.g. an Employee Share Ownership Trust (ESOT). Tax and NICs would be payable on the market value at acquisition. HMRC had accepted JSOPS, which only shared in the growth in value after deducting the carry cost, he said. Changing tax rules favoured JSOPS because there were lower Corporation Tax and CGT rates, though relatively high Income Tax rates.

Another proposal was to treat the sale of employee shares back to the sponsoring company as liable to CGT, which was lower, in order to simplify share plans for private companies. The issue was that private companies had to provide a market for employee share sales. In 90 percent of cases, an Employee Share Ownership Trust (ESOT) could be used, but there was tax complexity and trustee costs to meet.

Finally, Stephen suggested more use of Safe Harbour ESOTs in conjunction with Esos, in the wake of aggressive anti-tax avoidance practices by HMRC to counteract the use of EBTs for tax avoidance in the remuneration sector.

Bob Grayson of **Tapestry Compliance** discussed the impact of regulation and compliance on European employee equity plans. Bob explained that companies now had to deliver results to the wider world of 'stakeholders' – who included government, employees, customers, suppliers, creditors, the community, trade unions, owners and investors. One the one hand there was ex BHS owner Sir Philip Green on his yacht in Monaco, while on the other were thousands of now unemployed shop assistants with no pension certainty. The widespread use of malus and claw-back in executive reward contracts showed how in some circumstances the employee had become the 'bad guy' – employee protection had been rebalanced to protect other stakeholders.

In the field of data protection, there were conflicting stakeholders as monumental harvesting of data took place - Google, the state, cyber-criminals, spies, the taxman, to name but a few – so processes were key. Getting good documentation wording was all, but often written consent was required of Eso plan members for data retrieval. The concept was to stop bad things happening, said Bob. Hence the so far unsuccessful drive towards standardisation in the EU. Despite the EU's Prospectus Directive, it was still complicated for Chinese or US companies to know how to issue new securities. On the tax front, the UK had the most tax-favoured employee share ownership plans in Europe and we were far from having an EU qualified share plan.

On corporate governance, Bob said he had been at the Rolls Royce agm and had witnessed the first time a US shareholder put a director on the board of a UK company. Were we over-regulated? – Probably not, but we were badly regulated: there were national differences over tax rates and securities rules and inconsistencies in both cases. He forecast that serious abuses in the UK government's controversial *Shares for Rights* scheme would soon come to light and they would look bad for employee share ownership and the industry generally.

Friday's session opened with a major case study – that of major Austrian steel based technology and industrial good company **voestalpine,** in which half the total workforce are employee shareholders and which has an annual turnover of €11bn. The employees' 14.5 percent share of the total equity was - "A big poison pill"- joked **Max Stelzer,** a management board executive and key player of the employee foundation (*Mitarbeiterbeteligung Privatstiftung).* The employee financial participation plan was unique in Austria and probably within the EU as whole, because employee shareholder voting 'rights' were bundled within a foundation, he explained. The employees collectively comprised the company's second largest core shareholder, just behind the Raiffeisen Landesbank. The main aims of the employee strategic equity ownership were to secure the company's development

and to defend it against unrequested ownership restructuring. The participating employees received annual dividends, gained tax advantages now doubled to a maximum €6,000 per year. They assigned the voting rights of their shares through a trust agreement to the foundation during their employment with the company, but had to sell their shares when they left the group. Part of their wage rises had been used nine times to build up the level of employee participation since the year 2000.
Max admitted that it was difficult, though not impossible, to get trade union support for Eso structures, but as this was strategic share ownership, the buy-in with the unions was easier. The influence of this set-up on company policy had to be viewed in the context of the "deep-rooted social dialogue" at both national and company level in Austria. Employees had a lot more rights to company information and consultation than their UK counterparts, he said. The foundation had the right to nominate one person to sit on the company supervisory board and the works council could nominate representatives to the voestalpine board too.
Dr Barbara Kolm, director of the **Austrian Economics Center** and president of the **Friedrich Hayek Institute,** said that almost 99 percent of Austrian companies were SMEs and that two-thirds of them employed fewer than ten people. Only eight percent of Austrian employers gave their employees shares in the business, however, looking at larger companies alone, that percentage of employee share issuers rose to 16, she said. Corporate best practice of employee share ownership in **Austria** included **voestalpine, OMV** the international oil & gas company**, Erste Bank** and associated banking group **Austria Sparkasse.** There was a lack of entrepreneurial spirit in Austrian companies and a lot of bureaucracy, but younger people were more flexible, so they were willing to try out concepts like employee share ownership, said Dr Kolm. She and Max Stelzer fielded delegates' questions about Eso in Austria. Max said that one of the biggest obstacles to the advance of Eso in Austria was the difficulty in getting professional valuation of private company share and a working group had been set up to create a continental version of the UK valuation process. The other big problem in the SME sector was that owners didn't like sharing ownership.
Unlike the great success of employee share ownership at the **Royal Mail,** the indirect employee share offer, via an IPO, to postal workers at **Oberpost** had not received a high take-up rate, but the government had retained a 51 percent stake in the business.
In neighbouring **Germany**, the Eso situation was even worse - ten percent of all companies practised profit-sharing and only two percent offered Eso schemes, she said. **Allianz** was an example of best Eso plan practice in Germany, as were **BASF, Bayer, Siemens** and **Lufthansa.**
However in **Switzerland** by contrast, most listed companies offered one or more share plans to their employees, though some restricted participation to executives only. **Lonza** and **UBS** were examples of best Eso practice in Switzerland. However, Swiss employment law could limit the freedom of multinational companies to install whatever form of employee equity plan they wanted, cautioned Dr Kolm.
Finally, **Ann Tyler** of lawyers **Lewis Silkin** told delegates how to set up the new UK **Employee Ownership Trust (EOT**) and what it could do for companies which took that path and their employees. Ann, who fought 17 years to help around 600 present and former employees of motorway services company **Roadchef** to get compensation for their employee shares after the company was sold, said that the EOT was a kind of employee benefit trust introduced by the previous coalition government. The 2014 Finance Act had introduced special tax reliefs, including CGT relief, for owners who sold a controlling stake in their company to an EOT and allowed that company to pay income tax free bonuses of up to £3,600 a year to its employees. In just two years at least 80 EOTs had been set up and the model was particularly attractive to get-ahead people in technology, media, creative and professional service companies, including law firms and architectural practices, she said. Succession planning was main driver of EOT, which was a good way of avoiding trade sales or liquidation of the company when the founder retired and his family did not want to take over the reins. In addition, EOTs encouraged improved performance, shared rewards, improved employee engagement and safeguarded the longer-term future of the company, said Ann. Specialist lenders like **Capital** for **Colleagues,** which could finance companies setting up EOTs, were beginning to appear, though more were needed. A potential drawback to the EOT was that the trustees might not want the responsibility of control over the company, she added.
Early nominations for the **Esop Centre Awards 2016**: The list of early entrants was announced at the annual cocktail party during the Centre's Vienna conference.
Award category:
Best all-employee plan in a large company – **Computershare** and **Just Eat**
Best global employee share plan - **Nokia, DAI, Just Eat** and **Rio Tinto**
Best share plan communications – **Intertrust, Barratt Developments** and **Aviva**
Thanks to those who have submitted nominations already, but there is still time in which to submit further nominations. Companies can either nominate themselves or member advisers can nominate their clients.
All entries should be submitted using the secure online entry form. Read the rules carefully before making your submission. They are listed on the awards page of the Centre's website www.esopcentre.com/awards-2016. Please contact the Centre at esop@esopcentre.com or call +44 (0)20 7239 4971 should you have any questions.

Categories in full:
Best all-employee share plan (more than or fewer than 1,500 employees)
Best international all-employee share plan
Best all-employee share plan communications
Best use of video in share plan communications †
Best use of social media in share plan communications * †
Best financial education of employees †
Best promotion of share plans as long-term investment * †
Best innovation in share plan administration †
Best use of share plan voting rights to boost employee engagement * †
** Category new to this year † No entrants so far*
We look forward to receiving your submissions soon.

Awards Dinner
The winners will be announced at the Esop Centre's fifteenth annual black-tie reception & dinner, which will be held at the Reform Club in Pall Mall, central London on **Tuesday November 22.**

BRITISH ISLES

Another CI trustee sale
Leading Channel Islands based fiduciary services company **Elian** is being sold to Dutch based global wealth trust and corporate services provider, **Intertrust,** for £435m.
Electra Private Equity has signed an agreement to sell its majority stake in Elian, subject to regulatory approvals.
This is the latest move in the recent transformation of the Channel Islands based trustee industry with MBOs and share listings aplenty as the old partnership structures are gradually dismantled. Consolidation is being unleashed on a global scale as profit-driven new super trust companies seek expansion through acquisition and/or mergers.
It is expected that the name 'Elian' (formerly Ogier Fiduciaries) will disappear within a year or so, once the business is absorbed into the Intertrust Group. **Jenna Jacobs, Elian**'s business development and marketing manager**,** confirmed: "After regulatory approvals, and once the deal completes, Elian will become a division of the Intertrust group. We are likely to rebrand to Intertrust relatively quickly after that. We will keep clients, intermediaries and third parties informed at every stage of that process."
Centre member Elian provides specialist services in capital market transactions; private equity, real estate and fund administration; corporate services; private client and employee benefit solutions from 15 offices worldwide. Many members will know Elian's chief commercial officer, **Philip Norman**; group director, performance and reward management, **Tania Bearryman** and associate director **Shane Hugill**, who heads Elian's share awards team. Based in Jersey, it employs more than 600 professionals.
Intertrust has 37 offices in 26 jurisdictions across Europe, Asia and the Middle East. It is a leading global services provider of trust and corporate services and is listed on **Euronext Amsterdam**. The group's M&A strategy is to increase scale, add complementary services and expand its footprint – so the acquisition of Elian is in line with these objectives. Intertrust wants to bolster its capabilities in capital markets, fund administration and diversify its geographic reach in key jurisdictions like Jersey. Post acquisition, Elian will comprise 25 percent of the combined listed group.
Elian ceo **Paul Willing** said: "Elian has built an exceptional reputation based on delivering first-rate fiduciary services. Joining the Intertrust group gives us long-term stability as well as increased scale and geographic reach, which will be hugely beneficial to our clients."
Intertrust ceo **David de Buck** added: "I am particularly pleased that Elian is becoming part of the Intertrust family. The addition of Elian's capabilities and geographic presence diversifies and reinforces Intertrust's services in several important jurisdictions and it brings us the leadership position in Jersey. Our similar cultures and approach to client service and compliance, coupled with increased scale and broader capabilities, means that together with Elian we can offer more to our clients and investors worldwide."
The integration of Elian into Intertrust is expected to be confirmed later this year, conditional upon regulatory and egm approvals.

REGULATION

Challenge to APNs fails in High Court
HMRC's mailed fist is about to strike down dozens of disguised remuneration schemes following a key ruling by the High Court. Judge Sir Kenneth Parker rejected challenges to the legality of HMRC's Accelerated Payment Notices (APNs) and Partner Payment Notices (PPNs), issued to individuals who had participated in film partnership schemes, said Centre member **Deloitte**.
The notices were issued under the Finance Act 2014 and claimed payment of the tax that HMRC said those issued with the notices had avoided by their use of what amounted to tax avoidance schemes. By the time the case came to be heard, the claimants had acknowledged that, in the light of previous case law, the only ground on which the notices could validly be challenged was that the partnerships were not notifiable under the disclosure of tax avoidance scheme rules. If the schemes did not require disclosure, no APN could be issued. The key question was whether the schemes had been marketed before the operative date for disclosure, since there was an overall information memorandum relating to them. The judge concluded that it was the individual marketing of the individual partnerships that counted, and dismissed the claimants' applications.
See http://deloi.tt/1UtWqcU

Share schemes filing deadline: reminder
The deadline for filing 2015-16 share scheme annual returns is **July 6** this year. This applies to any new share schemes established, or any 'reportable events' which have occurred under existing share schemes in

the 2015-16 tax year, ended April 5. If you have already registered a share scheme, even if no reportable events have taken place, you will still need to file a 'nil return' for the year, said employee share ownership lawyers **Pett Franklin**. Penalties will apply for late filing, so you should submit your return as soon as possible – HMRC will not be sending out reminders. You will need to register your scheme (if you have not done so already) through HMRC's PAYE Online Services Portal. HMRC's reporting templates and guidance for the 2015-16 tax year are available from http://tinyurl.com/z7ypy6p. Only one annual return needs to be filed for each scheme, so for group companies, only one company within the group needs to submit a return, even if employees from multiple companies are participating in a scheme.

Reportable events include:

- Acquisition of shares, or interests in shares, by an employee
- Grant of options to an employee
- Exercise of share options by an employee
- Receipt of a cash or equivalent benefit from an employee share option
- Assignment or release for consideration of an employee share option
- The falling away of restrictions attaching to shares held by an employee
- The disposal for cash of restricted securities by an employee
- Other events which lead to a tax charge for employment-related equity.

This is not an all-inclusive list and companies should take advice if they are not certain whether an event is reportable, said Pett Franklin.

Events which take place within a qualifying EMI, SIP, CSOP or SAYE scheme should be reported online to HMRC. However, each of these schemes has its own form of online annual return which should be filed separately. New tax-advantaged schemes will need to be registered with HMRC before an annual return can be filed – this may take up to a week to process, so you should make sure to register well before the deadline. In light of HMRC's digitisation of services, it is more important than ever to ensure that your returns are correctly and accurately filed. "If you require additional guidance on filing your return, please do not hesitate to contact us for detailed advice," added Pett Franklin.

CONFERENCES

Employee share schemes for SMEs: Friday September 16

This year's employee share schemes for SMEs conference, jointly organised by the Esop Centre and the Institute of Directors, will be held at the IoD's Pall Mall headquarters on Friday, September 16**.** The one-day event is designed for owners, company directors, finance managers and HR managers who are considering implementing an employee scheme in their business, or who want to develop existing plans. Speakers will include Stephen Woodhouse of **Pett Franklin**, Mark Gearing of **Fieldfisher**, Robert Postlethwaite of **Postlethwaite Solicitors**, David Craddock of **David Craddock Consultancy Services**, Colin Kendon of **Bird & Bird**, William Franklin of **Pett Franklin**, Garry Karch of the **RM2 Partnership**, and Graham Muir of **Nabarro**. Tickets for Centre and IoD members are £385 + VAT each; non- members £485 + VAT. Centre members should contact Daniel Helen at dhelen@esopcentre.com or 020 7239 4971. IoD and non-members can book online at:
http://tinyurl.com/jfbwb6l

Guernsey share schemes and trustees: Friday, October 7

The annual Guernsey share schemes and trustees conference, organised by the Esop Centre and STEP Guernsey, will be held at the St Pierre Park Hotel in St Peter Port on Friday morning, October 7 2016. Save the date. The final programme is under review.

Awards Dinner 2016: Tuesday November 22

The Esop Centre's fifteenth Reception & Awards Dinner will be held this year at the Reform Club, Pall Mall, on Tuesday November 22. This event brings together members and their guests – representing UK and international plan issuer companies and expert advisers – to recognise the best in employee share ownership. This enjoyable and stylish black-tie occasion is the perfect way to celebrate the year with clients, colleagues and peers. This year the host is former BBC sports editor Mihir Bose, a former chairman of the Reform. Practitioners who are Centre members can book tables of ten, to secure a discount on the individual seat prices. **Please contact** the Centre esop@esopcentre.com or call +44 (0)20 7239 4971 to book your tickets in good time, as demand for places will be heavy.

British Isles Eso Symposium: Wednesday-Thursday November 23–24

The Esop Centre will hold its inaugural British Isles symposium on employee share schemes and trusteeship in London later this year on Wednesday November 23 and Thursday November 24. This major event will include presentations discussing the implications of Brexit for UK based employee share plans and for the design of executive remuneration schemes. It will be hosted by **White & Case** at its UK office in the heart of the City of London. The one-and-a-half-day conference will follow this year's Awards Dinner on the previous evening, November 22. The programme will examine the whole industry in the UK, Jersey, Guernsey and beyond.

prices:

Speakers: practitioners (Centre members) £250, plan issuers £95.

Delegates: practitioner members £395, practitioner non-members £595, plan issuers £175.

If you want a speaking slot or a sponsorship opportunity apply now, as demand for places will be high. Prospective delegates should register early to secure a seat. Contact esop@esopcentre.com or call 020 7239 4971.

COMPANIES

* A deal to outsource mortgage processing at the taxpayer-owned **Northern Rock** and **Bradford & Bingley** will trigger bonuses for almost 2,000 employees, including more than £200,000 for the outgoing ceo, Richard Banks, whose pay rose by a third to almost £1m last year. He has been leading the move to wind down the mortgage books of Northern Rock and B&B, which were bailed out in 2008. At the time the two businesses had 800,000 mortgage customers, now reduced to 238,000 as people have repaid loans or their mortgages have been sold off. He is leaving **UK Asset Resolution (UKAR)**, the body that controls both businesses, to run **Computershare**, which is taking over the processing of outstanding home loans. UKAR's annual report disclosed that Banks will receive a bonus of £211,750 through a scheme known as the 'Phoenix' incentive plan, designed to reward staff for the sell-off of the mortgage processing operation. This means that 1,900 staff are in line for as much as £1,500 each in the new financial year. About 1,700 staff will be transferring to the new Computershare venture, while 200 staff will remain at UKAR to continue winding down the operation and oversee the government's 'Help to Buy' mortgage incentive programme. Mr Banks insisted no jobs would be lost. He will not receive a payoff for moving across to the new operation. Last year, UKAR caused controversy by selling £13bn of mortgages to the private equity firm **Cerberus**, in a deal that allowed a bonus scheme for executives to vest a year earlier than planned. It will pay out next year.

*Analysts at investment bank **Macquarie** estimated that **BT**'s pension fund black hole had shot up to £10.6bn, from £7bn at its last official review in 2014. BT would need to increase its deficit payments to £1bn a year until 2030 to plug the new deficit, Macquarie's research claimed. This could result in BT having to reduce its current dividend growth rate of 10 percent, it added. BT is considered a safe haven for investors who have enjoyed years of growing dividend payments. BT's pension trustees are due to provide their own updated figure on the deficit later this year. The company is hardly alone in this respect: **AstraZeneca, BAE, GlaxoSmithKline, IAG (**BA + Iberia) and **Royal Dutch Shell** are among a growing list of FTSE100 giants with large pension fund deficits, some stretching back more than seven years. BT manages the UK's biggest company pension fund – which has more than 300,000 members - and has a £40bn war chest to pay employees past and present their retirement income. The company said in its annual report: "Higher deficit payments could mean less money available to invest, pay out as dividends or repay debt as it matures." The black hole estimate casts further doubt over the ability of big businesses to plug huge gaps in their retirement schemes unless price inflation rises significantly. If they can't, one option could be to cut pension benefits for retired workers, a plan mooted by Tata's crisis-hit steel business in the UK. A BT spokesman said: "Any interim estimates of the liabilities need to be treated with caution, as they make a number of assumptions based on today's inflation and discount rates, which will not apply at the time of the next valuation."

*Britain's biggest wine retailer is to increase total pay for its store managers in an attempt to prevent one in four of them leaving the business each year. **Majestic Wine** is introducing new share incentive plans and overhauling cash bonuses for its 213 store managers, who typically earn a £30,000 salary – up from £28,000 last November – plus an annual bonus. Majestic is introducing a new long-term incentive plan (LTIP) for the top 25 percent of staff, from store managers upwards. Shares will vest over three years, when employees acquire ownership subject to company performance. The plan will pay out if the firm performs well compared to 25 listed specialty retailers. There will be a separate share incentive plan for other staff. Majestic employs about 1,500 people. The retailer said it had consulted its biggest shareholders, representing 58 percent of the group, on both share schemes. Majestic has overhauled its cash bonus scheme for all employees, standardising bonus potential and measurement across the group. Staff will be measured by the same criteria, from the ceo to store managers and graduates. Half of executive directors' bonuses will be deferred in line with best practice.

***European law firm **Fieldfisher** advised **PriestmanGoode**, the leading design consultancy, on its move to employee ownership, with the business now majority owned by an Employee Trust. PriestmanGoode is a leading design studio for the aviation and transport sectors, acting as brand and innovation partner to a number of leading companies around the world. **Graeme Nuttall OBE**, former government adviser on the subject of employee ownership and author of its independent review, led the Fieldfisher team. He said: "The Employee Ownership Trust has the potential to become the standard UK ownership model for established professional consultancies. Employee ownership means the contribution of all employees in maintaining and growing a business is recognised, as well as the roles of key individuals. I was very impressed by how quickly and decisively PriestmanGoode has made the transition to employee ownership, and the UK government has shown similar speed in offering decisive support, approving the company's move in record time." Paul Priestman, designer and chairman of PriestmanGoode, said: "Whilst the other directors and myself are remaining at the helm of the studio, we wanted to put things in place to ensure the legacy of the company we have built."

ON THE MOVE

Emma Penn is now head of reward at **Equiniti.** She was formerly group share schemes manager at **Serco**.

Estera, formerly Appleby Fiduciaries, bolstered its risk and compliance department by the appointment of risk and compliance director, **Tui Iti** who will be responsible for ensuring the company consistently adopts the highest global compliance standards across each of its international offices. The newly created role consolidates Estera's strategic approach to the management of internal and external risk, said Estera ceo, **Farah Ballands**. Prior to joining Estera, Itu was group risk and compliance director for multi-jurisdictional fiduciary services company, **Elian**. He has held regulated compliance and AML roles within the banking, investment management and insurance sectors, and for regulated funds including debt, mezzanine, private equity and real estate funds in the UK, British Virgin Islands and Singapore.

Global Shares announced the appointment of **Seán Quill** as its new md for Ireland.

Prior to his new position in Global Shares, Seán served as a Principal within the Talent business in **Mercer Ireland.** With more than 17 years of experience, He is one of Ireland's top experts in the design and implementation of Irish employee share schemes.

Mike Baker, formerly of **Solium,** has been appointed head of business, EMEA (*Europe, the Middle East and Africa)* at fellow Centre member Global Shares**,** where he starts his new job this month.

Oz share schemes lawyer **MinterEllison**'s London office has moved to 3rd Floor, 6 Dowgate Hill, London EC4R 2SU. Tel: +44 (0)20 7429 2740. All other details including personal contact numbers and PO Box address remain unchanged.

EXECUTIVE REWARD

***Burberry Group** ceo Christopher Bailey took a 75 percent pay cut for fiscal year 2015-6. The payment he received was £1.89m, which was made up of £1.1m in salary, £330,000 pension contributions and £464,000 in benefits, down from £7.51m a year earlier. Bailey's base salary remained flat but his bonuses were cut to zero because profits were disappointing this year. Bailey, who is not only Burberry's ceo, but also the chief creative officer in the company, has been one of the best-paid bosses in the FTSE 100 since his promotion in 2014. Burberry's fd, Carol Fairweather and coo John Smith, received no bonus or share awards either. Fairweather's pay fell by £1m to £683,000 and Smith's from £1.52m to £813,000. Sir John Peace, Burberry's non-executive chairman, said: "Our overall approach to incentive structures for all staff, including senior management, is based on performance. When the business does not perform as well, this has an impact on what we pay our staff."

***Legal & General**, the insurance company, has been forced to admit that it under-stated the pay of its ceo Nigel Wilson by almost £800,000 when it published its annual report almost three months ago. In a statement to the stock exchange, L&G said it regretted that the error had been made, as it admitted Wilson was paid nearly £5.5m in 2015, rather than the £4.7m previously disclosed in the annual report last March. As a result of changes introduced by Vince Cable when he was business secretary, companies are required to publish a 'single figure' for pay which covers salary, benefits, annual bonuses and payouts from long-term incentive schemes. L&G failed to include in Wilson's single figure 291,765 share options, worth £781,000, which were released to him last August. However, he did not cash them in until January 2016. Under the rules they should have been included from the moment they vested, not when they were exercised. The error was uncovered by **Deloitte**, which L&G uses as an adviser on pay. The disclosure was hugely embarrassing for Mr Wilson, who is part of an **Investment Association** executive reward working group - tasked with making recommendations for the reform of executive reward structures.

***Marks & Spencer** has again paid its executives bonuses based on targets which ignore millions of pounds of goods returned, despite warnings from an adviser that this was 'inappropriate'. The disclosure came to light a year ago, when *The Mail on Sunday* revealed the chain had been reporting online sales to the City that included clothing, shoes and other goods that were paid for but later returned because they did not fit or were faulty. M&S admitted the practice in that year's annual report, when it said it sold £800m of goods online but £151m of that was brought back. Despite a ticking-off by its corporate stockbroker **Citigroup**, M&S has again used the higher figure to pay executive bonuses. It is especially relevant this year as the only target met was for online sales growth. The company has altered part of its target but does not intend to overhaul the executive share plan until November, when it will review targets for 2018. A spokeswoman insisted that this year's bonus paid to new ceo Steve Rowe would have been unaffected, adding: "Shareholder bodies don't like retrospective changes of targets." The latest annual report revealed the company sold £971m in the year to April 2016 but returns rose just as fast – to £180m. Online shoppers return far more goods than those in stores as they often buy several sizes before deciding which to keep.

*A leading City investor called on house-builder **Persimmon** to cut back an executive reward plan that could see its management share £600m over the next five years. The scheme is one of the largest ever at a FTSE 100 company outside banking. The biggest beneficiary will be ceo Jeff Fairburn, who could earn more than £100m. Mike Fox, from **Royal London Asset Management**, said the payments were too high "in all circumstances". He called on the board to show restraint in the light of the housing crisis and government support for the house-building industry. When the scheme was put in place, the housing market had begun to recover from the 2008 recession. About 150 managers were incentivised to earn shares worth up to ten percent of the company's total value, provided they hit tough performance targets. The company said it was running well ahead of those targets and analysts say it is likely the scheme will pay out in full. Persimmon shares have more than tripled in value since the incentive plan was put in place, rising from £6.20 to about £20. Disclosure of the huge projected payments stoked the debate over executive compensation. There has been a string of investor rebellions against pay deals this year, and in April a majority of shareholders voted against a £14m package for BP boss Bob Dudley. Shareholders cannot veto amounts paid, but do have the final say on companies' pay policies.

* One third of **WPP** investors failed to back **Sir Martin Sorrell**'s £70m compensation deal at the advertising firm's agm. Excluding abstentions, 33.5 percent of investors failed to back it, but the vote was non-binding. The ceo's 2015 pay package is one of the biggest in UK corporate history. Sir Martin said his reward was based on the performance of WPP, the world's largest advertising group. Last March, WPP reported a 2.8 percent increase in yearly profit to £1.5bn compared to 2014. The company's remuneration policy will face a binding vote by shareholders at next year's agm and under the firm's new scheme Sir Martin's reward is set to fall next year. Asset manager **Hermes**, a WPP shareholder, said before the vote that it would not support the remuneration package, in part because of "historic concerns about board composition and the remuneration committee's apparent lack of vigour and stress-testing". Campaign group **ShareAction** said it objected to Sorrell's compensation and advisory firm PIRC asked WPP shareholders to oppose it. In March, WPP defended Sir Martin's package by noting that the company's share price had risen by 98 percent between 2011 and 2015, compared to a 5.8 percent rise in the FTSE 100 over the same period. WPP said sales, profits and revenues were all well above budget in the so far this year.

*Sir Martin headed a tranche of 40 top executives whose remuneration topped more than £1m last year. Sorrell's package was more than six times that of his fd. Paul Richardson, whose reward package was worth £11.5m in 2015. Nicandro Durante, ceo of **British American Tobacco (BAT),** took third spot with £4.5m last year. Year-on-year comparisons can be made for 33 of the 40 executives and 19 saw their remuneration package grow last year, said a **Labour Research Department** report. A lucky 13 executives received increases of more than ten percent in their packages at a time when average earnings in the UK economy were rising by just 1.6 percent.

WORLD NEWSPAD

EUROPEAN UNION

Exchange of information on multinationals

The **Council of the European Union** adopted rules on the reporting by multinational companies of tax-related information and its exchange between member states. The Directive is the first element of a January 2016 package of Commission proposals to strengthen rules against corporate tax avoidance. The Directive will implement OECD anti-BEPS action 13, on country-by country reporting by multinationals, into a legally binding EU instrument. It covers groups of companies with consolidated group revenue of at least €750m. The Directive requires multinationals to report information -- detailed country-by-country -- on revenues, profits, taxes paid, capital, earnings, tangible assets and the number of employees. This information must be reported, already for the 2016 fiscal year, to the tax authorities of the member state where the group's parent company is tax resident. ***If the parent company is not EU tax resident and does not file a report, it must do so through its EU subsidiaries.*** Such 'secondary reporting' will be optional for the 2016 fiscal year, but mandatory as from the 2017 fiscal year. The Directive requires tax authorities to exchange these reports automatically, so that tax avoidance risks related to transfer pricing can be assessed. For this, it builds on the EU's existing framework for automatic exchange between tax authorities, established by directive 2011/16/EU. The Directive sets deadlines of 12 months after the end of the fiscal year for companies to file the information and a further three months for tax administrations to automatically exchange the information. **See http://deloi.tt/25h8gfM.** The Council of Finance Ministers (ECOFIN) was unable to reach agreement on the proposed anti-tax avoidance directive, and a voter on this was postponed until the next meeting on June 17. It must be passed unanimously by ECOFIN to take effect.

Public access to online trusts register

On June 30, **France** planned to put on-line a 'public register of trusts.' This unprecedented initiative makes public personal information held by tax authorities, with the announced goal of fighting tax evasion, money-laundering and financing of illicit activities, reported lawyers *Kramer Levin.* The trusts included on this register are those for which a report (in the form of an information return) has been communicated to French tax authorities, as required by article 1649 AB of the French tax code for trusts, of which at least one of the trustees, settlors or beneficiaries is domiciled for tax purposes in France or which contain assets located in France (except for financial investments, if none of the trustees, settlors or beneficiaries is domiciled in France). The reports are filed annually and upon reportable events affecting the trust: its creation; its modification including change of its terms or its mode of operation, change in trustee, change or death of a "beneficiary deemed settlor" or distribution, transmittal, attribution or placement into the trust of assets; or its termination. Information available to the public will include "the name of the trust and its address" as well as its date of creation (and termination, if applicable) and the identity of the trustees, settlors and beneficiaries (full name, date and place of birth for an individual or name and identifying number for a legal entity). Apparently the information in the register will be derived from reports filed with French tax authorities, but will not include information about the terms of the trust or its assets or the addresses of settlors or beneficiaries. Members of the public (after identifying themselves) will be able to access the register and consult data on the trusts included. Data can be accessed using search criteria including among other things the name of the trust; the identity of the trustee, settlor or beneficiaries, the place the trust is established; or the date it was created. When this measure was announced, French officials noted that the tax administration has information on 16,000 trusts and that transparency and exchange of information regarding beneficiaries would result in the "ending of use of shell companies for tax evasion, money-laundering and financing illicit activities." They stated that "the difficult point will be to distinguish between the legal use of these measures and concealing something".

UNITED STATES
"*You work hard for your pay, but do you really care if your employer's business is successful? Would you care a little bit more if you owned a piece of the company?"* asked a report in the newspaper of **Rutgers**, the New Jersey based US Esop university. That's what **Sanghee Park**, an assistant professor in the Rutgers School of Management and Labor Relations (SMLR), aims to discover as she begins a research fellowship exploring the psychological impact of Esops. "As a compensation researcher, I realised that it is crucial to investigate the impacts of Esops on those employee attitudes and behaviour that is closely linked to organisational effectiveness," Park said. "That will lead to a better understanding of the mechanisms that facilitate employee ownership." She is among 30 new research fellows appointed by SMLR through national competition to study how broad-based employee ownership and profit sharing are shaping the success of companies and the future of US business.
J. Robert Beyster and **Mary Ann Beyster** established the fellowship programme and an endowed professorship in 2008 with a $2m gift. It has grown to become one of the largest fellowship programmes at Rutgers University, with annual revenues of $400,000. Major contributors include the Beyster family's Foundation for Enterprise Development, the Employee Ownership Foundation (creator of Park's Louis O. Kelso Fellowship), and other non-profits and individuals. The fellowship's goal is to inform scholarship and public policy on an issue that affects millions of US workers.
"In a time when wages have been flat for decades and most of the income is flowing to those who own capital or have a share of capital, broad-based employee ownership, profit sharing, and gain sharing provide one approach to increasing the wages and wealth of the middle class," said sociologist **Joseph Blasi,** the J. Robert Beyster professor at SMLR and director of the fellowship programme.
About 20 percent of US employees own a share in their employer's business, about seven percent hold employee stock options, one-third have some form of profit-sharing, and one-fourth have some form of gain-sharing, according to a recent Rutgers analysis of the national 2014 General Social Survey of employed adults.
Google, Intel, Southwest Airlines, and **Starbucks** are among the high-profile employers that share the wealth with their workers. **Chobani** joined the ranks last April, when ceo Hamdi Ulukaya announced he would grant ten percent of the company's equity to its 2,000 full-time employees.
"There is growing interest in employee ownership and other methods for workers to directly share in economic rewards, both in the U.S. and internationally," said economist **Douglas Kruse**, professor at SMLR and associate director of the fellowship programme: "We're excited to match this interest with a growing number of top-notch scholars and policy experts from around the country through the Rutgers fellowship programme." The fellows have produced groundbreaking research over the last eight years. **Paige Ouimet**, a finance professor at the University of North Carolina, conducted empirical research that showed modest Esops in stock market companies tend to increase productivity and benefit shareholders and employees. The research of **Louis Kelso** Fellow Erik Olsen, an economist from the University of Missouri, demonstrated that part of the productivity increase that comes with employee ownership can be explained by lower levels of supervision.
Sanghee Park will soon add her research to the growing list. She studied psychology in her native South Korea before earning a master's degree and PhD in human resources management from Cornell University. Park will conduct detailed surveys at Esop companies across the country to gain a deeper understanding of what the employees and firms are experiencing. What she uncovers could ultimately pave the way for even more companies to offer capital shares to their workers: "This is a very attractive and ideal compensation plan that can lead to the success of both a company and its employees, if it's implemented in the right way," Park said. "My research will offer guidance on how to do it successfully."

Call for tax free stock options in US
Should corporate shareholders be individuals who can see beyond next quarter's profits? asked the *Washington Times.* The best way to do that is to find a way for employers to get more stock into the hands of employees and ensure they hold their shares, said **Dana Rohrabacher**, a Republican member of the **US House of Representatives** who served as a speechwriter for President Ronald Reagan and co-authored by **Greg Autry**, entrepreneur and an assistant clinical professor at the Marshall School of Business, **University of Southern California.**

"President Reagan understood this when he spoke of 'an increasing trend toward the next logical step, employee ownership,' and he called it 'a path that befits a free people.' To that end, we advocate HR 4577, a bill co-sponsored by this piece's co-author and Rep. Collin Peterson, a Minnesota Democrat," they said. The Bill would allow American corporations to grant tax-free stock to employees, provided they hold their shares for five years. Additionally, those who hold their stock for a full decade are exempted from capital gains tax when they do eventually sell. "This is a simpler approach than Esops, which have faced many criticisms," they claimed "While many US firms do reward employees with shares, the usual stock option approach is undesirably complex from a legal, regulatory and tax perspective. Options cost firms a lot to manage and they remain a mystery science to most employees. The tax treatment of options often forces employees either to decline the offer in the first place or to sell their stock immediately upon exercising their options.

"Granting shares outright to employees currently counts as taxable income. In a time when real wages are chronically depressed, this process compels employees to sell those shares simply to pay the taxes on what they've received. HR 4577 will fix that and, by making employee stock contributions deductible, it will encourage firms not granting shares to employees to consider doing so. By requiring that tax-free stock grants must be of voting class, this bill will establish a base of voting shareholders who care about the long-term prospects of their firm and who will push to reinvest corporate capital and US technology into creating American jobs. It is a simple idea that will work for companies big and small."

T-Mobile US is to offer about 10m customers free shares as it attempts to take on its larger rivals. Pay-monthly customers can get one share - now worth $43.07 - with the chance of more for referring new customers. "This has never been done before," by a public company, claimed ceo John Legere. T-Mobile, the third biggest US network after Verizon and AT&T, styles itself as the 'uncarrier', offering customers free video-streaming options, gifts, tie-ups with ticket agency StubHub, and customer-friendly data plans that have been copied by rivals. T-Mobile customers qualifying for a free share will be able to earn up to 100 more if they refer new subscribers to T-Mobile, with some long-term customers qualifying for two extra shares per referral. Mr Legere said: "Get ready for a gratitude adjustment, America. This Un-carrier move is all about giving you a good thanking! No strings. No gotchas. Just 'thank you for being a customer'". T-Mobile US marketing officer Andrew Sherrard told *Reuters*: "Some [free offers] will cost us some money, but over time we think it will be a good investment." The company, owned by Deutsche Telekom, said it added 2.2 m customers on a net basis in the first Q ended March 31.

Ceo reward

Ceos at the biggest US companies got a **4.5** percent pay rise last year - almost double the typical American worker's pay increase and a lot more than investors earned from owning their stocks — a fat zero. The typical ceo in the Standard & Poor's 500 index made $10.8m, including bonuses, stock awards and other compensation, according to a study by executive data firm **Equilar** for *The Associated Press*. That's up from the median of $10.3m the same group of ceos made a year earlier. The increase alone for median ceo pay last year, $468,449, was more than ten times what the typical US employee makes in a year. The median full-time employee earned $809 weekly in 2015 (£558), up from $791 (£545) in 2014. "*With inflation running at less than two percent - why*?" Charles Elson, director of the Corporate Governance centre in the University of Delaware asked *the Washington Post*. - The answer is complicated, said Equilar. In some cases, ceos got big stock or option packages after signing new employment contracts. In others, boards bumped up salaries to get closer to what their rivals pay. Some ceos got larger bonuses for hitting profit goals or improving worker safety. Their annual packages now hinge on multiple layers of sometimes esoteric measurements of performance. That's a result of corporate boards attempting to respond to years of criticism about excess from Main Street America, regulators and even candidates on the presidential trail this year.

One bright spot, experts say, is the rise in the number of companies that tie ceo pay to how well their stocks perform. More than half the median ceo compensation is coming from stock and options, rather than cash and companies are increasingly awarding stock and option awards based on performance results. About a quarter of ceo incentive awards in the S&P 500 use total shareholder return as one of their measurements of performance, more than double the percentage from three years earlier. Companies use familiar measurements like revenue and others like return on invested capital. The link to shareholder return is one reason the rise in median ceo pay last year was the second-slowest in the past five years. Of the 341 executives in this year's pay survey, the median stock returned zero in the latest fiscal year. Even though ceo reward was up last year when stock returns were flat, big investors don't see it as a necessarily bad thing. Many say they take a longer view, as they hope to hold onto their stock investments for many years.

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