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it's our business

newspad of the Employee Share Ownership Centre

Regulator probes Lord Foster's EBT

Circumstances surrounding the winding up of an employee benefit trust, set up by the architect Lord Foster for hundreds of his staff, are now being probed by the Jersey trusts regulator, after the Esop Centre questioned the process.
Foster's employees helped him make a £295m fortune changing the skylines of London, New York and Hong Kong, but now some of them are seeking a clear explanation of how the trust's assets were divided. When it was closed a few months ago, it paid out an estimated £3.6m to staff although it had owned nearly 50 percent of Foster's £300m firm, reported *The Sunday Times* newspaper.
Chris Cooke, of the Jersey Financial Services Commission, revealed news of the probe to Centre chairman Malcolm Hurlston who had written to the regulator on behalf of disgruntled Foster & Partners employees, who complained they had been given little or no information about the winding up of their EBT. Mr Cooke said that the Commission is "making inquiries" about the transaction with the trustee, the Close Trust Company Jersey Ltd, which is registered in St Helier. He said in a letter to Mr Hurlston: "I wish to formally acknowledge the concerns expressed by the Esop Centre in relation to the recent winding up of Foster & Partners' EBT. In this regard, you have very kindly suggested a number of questions that you thought the Commission might want to put to the trustees. This has been very helpful." Mr Cooke, deputy director of trust company business, said that although the matter had excited considerable media and therefore public interest, the Commission was bound by the restricted information provisions contained in the Financial Services Jersey Law of 1998. But he confirmed that all trustees are subject to a "full regulatory oversight regime in respect of integrity, competence, organization, structure and financial standing."
He continued: "The Commission always considers complaints or negative press coverage seriously, as do our licence holders. Usually the Commission seeks an explanation and copies of the underlying documentation from the regulated person as to how or why the matter has arisen and from that can make an assessment as to whether systems and controls at a firm need strengthening, or indeed whether the trustee was at fault. This is a normal regulatory approach and, in this sense, I would advise that the Commission is showing an interest in this matter."
Mr Hurlston said: "This is a transaction which is not clear and it would be helpful if some questions were asked and answered. Jersey has world-leading regulation of trusts, whereas in the UK trusts are not yet regulated.
"Our Centre seeks to encourage employee share ownership and from our point of view it is a stroke of luck that in this case the regulation of the trust company lies in Jersey, which is far more likely to get some answers. Had this case been in the UK, there would be no satisfactory method of asking these questions.
"As the lobby organisation which brought the leveraged Esop to the UK and gained government support, we feel it would be good to demonstrate to an incoming Chancellor that Eso tax breaks, which amount to more than £1bn a year, are properly used," added Mr Hurlston.
The inquiry was sparked by several financial transactions intended by Foster, 71, to change the ownership structure of his practice in preparation for his retirement. The architect recently increased the number of shareholders from four to 14, although he retains control. The regulator's move follows a string of complaints from employees and ex-employees. *Continued overleaf*

From the Chairman

The Norman Foster saga is a lesson in the need for openness in ebt arrangements. Everything may well be in order. But there has been a clear failure in employee communications.
The Centre promotes the idea that good employee communications are one of the two essential elements for a successful scheme - the other being quantum.
I hope to speak to Norman Foster and gain clarity pending the results of the Jersey FSC enquiry.
In the meantime I would urge members to examine ebts with which they are concerned. If there is no employee communication are they justifiable? Do we deserve the £1.1bn we are getting from the taxpayer? Can we expect a new Chancellor to listen?
I am looking forward to a no-holds barred private session in Cannes.

Malcolm Hurlston

The JFSC will examine the closure of the offshore trust in preparation for the sale last month of a minority stake in Foster & Partners to 3i, the private equity investors, which earned Foster a reported £100m. Employees complained to the Esop Centre. They allege they were told little by the trust about how the sum they received was calculated or their rights to the trust as Foster workers. "There are a lot of disgruntled people," said one senior employee who recently left the company. "Nobody knows what is going on. The lack of transparency is breeding mistrust and discontent."

Staff earn an average £40,000 each while Foster earns more than £2m a year, said the *Sunday Times*. The trust is private and produces no publicly accessible accounts. Future accounts published by Foster & Partners could explain the basis of the share-out.

The decision to wind up the employee benefit trust emerged earlier this year when employees at Foster's offices received a letter stating that money held by the trust would be distributed among eligible staff. Cheques of up to ten percent of annual salary were attached. Before tax and NICs, the average payout was £4,000. The reason for the apparently low figure may lie in the trust's structure and internal rules, which are not publicly available. Foster & Partners declined to comment beyond saying that it was the trust not the firm that was being scrutinised. The trustee declined to speak to the newspaper.

The Sunday Telegraph too mentioned the Esop Centre's role in the drama. Richard Northedge said in his profile of the architectural superstar: "Lord Foster heads a partnership employing 1,000 staff. Until recently, he owned 85 percent of his firm, having eventually given five percent stakes to three key lieutenants. He is unable to say what holding he now has, however, 'I do not know,' he admits. 'To me, that's not what it's about. I'm driven by working.' It seems that 3i now has more than 40 percent of Foster's company, however, with shares given to another eight senior employees whose service with the firm averages 20 years.

"Before the recent deal, Foster bought out an employee share trust which held a 49.6 per cent stake. Employees have been offered a payout equivalent to a proportion of their annual salary but the unwinding of the trust ahead of the sale has come under scrutiny by an investor protection group. The *Employee Share Ownership Centre*, which lobbies for wider staff participation in company ownership, is still seeking clarification about the extent to which employees were consulted and how the valuation of their stake was reached," added Northedge.

Advent for Lloyds TSB Registrars

Advent International, the mid-market private equity firm, has clinched the bid battle for Lloyds TSB Registrars. The deal, confirmed in principle, values the share registration arm of Britain's fifth-largest bank at around £550m. Lloyds TSB Offshore Trustees Ltd is not part of the sale. However, Lloyds TSB Esop Trustees Ltd, who are UK based and act as trustee for all Lloyds TSB Registrars' SIPs, is included. Details of any new incentives or replacement for existing equity benefits have yet to be announced and the regulatory approvals necessary before the transfer of business is complete are likely to take three months to finalise. Employees are concerned that their current Eso schemes may not be replaced as is usual in private equity takeovers. The Centre is submitting a paper, prepared by Clifford Chance, about the topic to the Treasury.

The sale comes after Lloyds put up the business for sale as part of plans to divest non-core assets. Lloyds TSB Registrars acts as registrar for more than 800 companies and contributed £32m to group profits last year after tax and had gross assets of £85m on December 31. Clients include Centre member Pearson, owner of the Financial Times, and Reed Elsevier. The group's activities include registering the sale and purchase of shares, issuing share certificates, dividend and interest payments, dealing with shareholder inquiries, and managing takeovers, demergers and rights issues. Lloyds also provides 24m shareholder accounts for private investors. It manages employee share schemes, such as SAYE, share incentive plans, and share registration services. Talks with Advent became exclusive last month, after Link Market Services, the Australian company that had been the favourite, pulled out of the auction. Computershare and Capita Registrars and HBOS's Employee Equity Solutions, are Lloyds TSB Registrars' main competitors. Since it was founded in 1984, Advent has raised more than £5bn in private equity capital and completed more than 200 buyout and private equity transactions worth £13bn in 35 countries. Advent director James Brocklebank said: "Lloyds TSB Registrars is a unique asset, whose established market-leadership positions, broad product offering and advanced technology provide an impressive platform for growth within financial services business process outsourcing."

Unions raised concerns over the sale, although no compulsory redundancies are expected. John Bancroft, national officer at Unite union said: "Staff working at Lloyds' Registrars face upheaval and an uncertain future. We will ask the bank to explain and justify the business rationale for this decision."

Eaga employees net windfall

Former British Coal manager John Clough is floating Eaga, the energy efficiency company he founded, now worth £453m. The proceeds will be shared among its 3,400 staff, creating several millionaires overnight, as the company is wholly owned by an employee benefit trust. The employees will collect £190m cash in from the sale of 42 percent of Eaga to City investors, an average of £56,000 each, but longer serving employees will get more. Clough, 48, who has a £16m stake, pledged to put jobs back in the north-east after having to close a BC chemical plant, laying off 300 people. He said: "It left a mark on me. My notion was to put the jobs back within ten years. I missed the target by six months. Eaga, originally the Energy Action Grants Agency, works for utilities and government, cutting carbon emissions and helping households deal with 'fuel poverty' by insulation and more efficient heating. It made £19.5m profit on £354m sales last year. Eaga will begin trading on the LSE after pricing its IPO at 181p per share. The company placed 121.5m shares at 181p, raising £190m for existing shareholders and £30m for the company.

Thin gruel for top dogs in SMEs

A new survey released by MM&K, the independent remuneration consultancy and Manifest, the proxy voting agency, revealed that fewer than ten percent of Britain's smallest public companies reward their top executives with significant performance-related pay, often the single largest part of total remuneration for executives at the UK's biggest companies. The survey reviewed the pay packages of chief executives of 430 small-cap and Aim-listed companies and concluded that only 40 of those executives received more than £100,000 in long-term incentive pay last year. The bosses of three-quarters of companies surveyed received nothing. Cliff Weight, a director of MM&K, believes the low level of awards generates "a very real risk that under-incentivised managers will be lured by the rewards available from private equity deals." The survey shows the sharp contrast between the small companies and those in the FTSE 100, where the top ten company heads can expect three times their salary from long-term incentives if they hit targets over the next three years. The survey contains tables of results and graphs for each director position from CEO to 5th highest paid. The survey has detailed analysis of bonus plans, Long Term Incentives (expected value of awards, percentage as options and as LTIPs, maximum face value of awards and EPS and TSR performance criteria vesting targets, threshold and maxima), pensions, total remuneration mix, internal differentials, sectors differences and long term trends in salaries and total remuneration. The survey costs £300. For more information contact Cliff Weight MM & K (incorporating Independent Remuneration Solutions) No 1 Bengal Court, Birchin Lane, London EC3V 9DD Tel: 020 7283 7200, website: www.mm-k.com

Saga Holdings Ltd., the UK based financial services and holiday firm for the over 50s, has appointed UBS and Merrill Lynch to advise it on a possible stock market listing later this year. Management and employees would benefit from a float to the tune of £500m. Senior executives own 14 percent of the company, with six percent more in the hands of Saga's 2,400 employees. Since the company was bought by Charterhouse, staff numbers have increased by 28 percent. The money would come on top of large bonuses paid out when Mr De Haan sold out in 2004. Ceo Andrew Goodsell, 48, was unavailable for comment. He owns eight percent, which would net him a personal fortune of £200m if the float goes ahead. He plans to cash in some of his stake but he is committed to staying on at the company. If the flotation goes ahead, the banks will act as joint book-runners, while UBS will act as sole global coordinator and sponsor of the listing, Saga said.

Admiral, the car insurer that made a £60m fortune for its staff when it listed three years ago, is calling for new tax incentives to allow it to hand over even more of the company to its employees. Henry Engelhardt, the Admiral chief executive, has installed a generous share incentive scheme that every member of staff is eligible to join. He wants to make the scheme even more generous, to reap the benefits of staff retention. But he claims he can't justify such a move under the current tax regime, dismissing the current limits as "appallingly low". Admiral staff, excluding the directors, already own about four percent of the company - a stake worth about £100m. Engelhardt said: "We have a history of spreading our share ownership in the organisation. When we floated 1,400 members of staff split almost £60m. We're trying to share the wealth again. The approved limit for tax benefits in these schemes is £3,000 a year.* I think that's appallingly low. The Government should raise that. Obviously they keep it low so companies don't bring in some whizzy executive and give him lots of tax advantage. That's fair enough. But we would love to be able to give more shares, tax-efficiently, to our staff - if we could. But we're limited." Admiral has been one of the most successful listings of recent years, with its shares having trebled in almost three years. Engelhardt believes the share scheme has helped to ensure a very low rate of staff turnover. **The Centre has asked the Treasury to raise the £250 monthly staff investment limit in approved Eso schemes. Beyond this limit, which has been left unadjusted for inflation for 16 years, employee share purchases and sales are not tax protected.*

€585m windfall to eircom staff since flotation

The employee trust which owns 35 percent of eircom is set to distribute €80m to the 14,600 current and former employees of the former state phone company. Although the average windfall comes to €5,500, full members of the trust will receive up to €8,000 each. The Esot will distribute the cheques shortly. Allowing for the latest payment, the Esot members will have received €585m since eircom was first sold to the Sir Anthony O'Reilly-led Valentia consortium. The payments, which relate to last year's €2.4bn takeover by Australian private equity house Babcock & Brown Capital, will not affect the members' 35 percent shareholding. The Esot is distributing preference shares it received at the time of the takeover. The shares are instantly redeemable and so are equivalent to cash. Apart from its ords in eircom, the Esot has assets worth €450m, of which €430m is in preference shares, while the remainder is in Vodafone shares. Any decision to distribute the entire €450m immediately would lead to a significant tax liability for the Esot members, who received their first tranche of preference shares, worth €80m, last November. Members will receive another €70m in June 2008 and June 2009. By then, each member will have received €30,000 from the distribution of the preference shares alone. The Esot is not the only shareholder doing well out of eircom. B&BC owns 57 percent of eircom, while associated companies own 7.9pc.

On the move: Caroline Peace, previously assistant company secretary at Telewest, and Edwin Alexanian, who worked for The Share Option Centre have joined Global Shares UK Ltd as client relationship managers. In addition, Global Shares has appointed Ciara Reardon as vp, finance. Ciara, based in the Global Shares headquarters in West Cork, will be responsible for all financial aspects of the business. Prior to joining Global Shares in April, Ciara worked as group financial controller with DPS, a professional services engineering business in Cork, operating in the pharmaceutical sector in Ireland and across Europe. Maoiliosa O' Culachain, COO and general counsel of Global Shares said, "I am very pleased to have a person of Ciara's expertise in the role of VP, Finance." She can be phoned at + 353 23 33062 or emailed at: creardon@globalshares.com

Disclosures about directors' shareholdings
The requirement to maintain a register of directors' interests in shares and to report all changes in their interests was repealed from 6 April this year (although the requirement for disclosures of transactions in shares for directors and senior managers under the Disclosure Rules remains). Centre member **Linklaters** said in its latest client bulletin: "Unfortunately, the UKLA have not updated the Listing Rules to reflect this: they still require companies to disclose directors' interests in the directors' report under the repealed Companies Act provisions, both at year-end and one month before the AGM notice goes out. The UKLA have confirmed that, since there is no need to have a register after 6 April 2007, it is only necessary to provide details up to that date."

Disclosures about the terms of share plans: New rules brought in as part of the UK's implementation of the Takeovers Directive require more detail to be included in annual reports for years beginning after 19 May 2006. These rules are in the Companies Act 2006 (UK). The rules are unclear, but this is what Linklaters thinks should be included in the report: *A description of any restrictions on transfer of shares: This will require a disclosure for bonus deferral plans, which offer forfeitable shares, co-investment plans and share incentive plans; *A description of change of control provisions: This is required for any plan which is 'significant,' which is likely to be relevant for any arrangement where significant numbers of shares are under award (e.g a large Sharesave or executive plan) or plans in which directors participate (even if, as a percentage of share capital, the awards are not significant); *A description of voting rights that are not directly held by employees: This applies to employee trusts but only to the extent that the trustee can vote and the beneficiaries cannot instruct the trustee on how to vote. These requirements will apply to all relevant share plans, whether or not they have been approved by shareholders. 'Detailed information' (undefined) is required. Once companies have made a disclosure for the first year, it should only be necessary to change it for future years if they adopt or amend a plan. These new disclosures do not go into the remuneration report but into the directors' report. Nevertheless, Linklaters has added these requirements to its guide on remuneration reports to ensure that they do not get missed. This guide brings together all relevant information, eg: the Listing Rules, the Companies Act, Combined Code and the Institutional Shareholder Guidelines with helpful commentary and examples.

CONFERENCES

Cannes July 5 & 6: The regulator's probe into Lord Foster's EBT has been added to the agenda of the European Centre's 19th annual conference in Cannes on Thursday July 5 and Friday July 6. The Centre has had to book extra rooms at the Majestic Hotel, the conference venue, as the number of registrants nears 60. Anyone planning to register for this event should do so now as it may not be possible for the Centre to get more delegate accommodation at the Majestic after June 20. Please go to the Centre website at: www.hurlstons.com/esop and click onto 'events' to examine the programme and logistics in more detail.

Centre–IoD October 9: Sara Cohen of Centre member Lewis Silkin has been allocated the Enterprise Management Incentives slot at this event. Nevertheless, a few speaking opportunities remain at this ever popular joint annual share schemes conference for SMEs. Popular topics are snapped up early so please contact jlewis@hurlstons.com asap if you have a preferred subject. The conference regularly attracts more than 100 delegates, mainly from unlisted companies interested in setting up new plans. Any presentations that incorporate a company case study will be particularly welcome. Feedback from last year's audience particularly valued plan case studies, detailed share plans and exits. Speakers gain free entry, usually costing £360 + VAT for Centre and IoD members and £460 + VAT for non-members.

Centre – STEP Guernsey November 9: William Franklin of Pinsent Masons will be among the speakers at the joint Society of Trusts & Estates Practitioners / Eso Centre share schemes conference to be held at Old Government House Hotel in St Peter Port, November 9. The focus will be on trustee issues, which have attracted mainstream media attention recently as the winding up of Foster and Partners' former EBT has come under scrutiny. Admission prices will be £295 +VAT for STEP or Centre members (discount for 2nd and subsequent delegates) and £425 + VAT for non-members. If you would like to speak at this event please contact jlewis@hurlstons.com with your preferred topic. Mainland speakers' economy airfares are refundable and they can be accommodated overnight in the OGH Hotel if needs must.

Two entries have been promised to date for the Centre's **European Awards: Best Employee Share Ownership Plan 2007** competition. The winners will be announced during the Cannes conference and the closing date for entries has been put back to late June. Application forms can be downloaded from the Centre's website.

US - The Internal Revenue Service recently released final IRC Section 409A regulations and, as a result, almost all nonqualified deferred compensation arrangements, including employment agreements and employer plans, will need to be amended before the year end, reported Centre member **Deloitte.** Its book on the issue – 'Nonqualified Deferred Compensation,' can be used to apply these regulations.

The Employee Share Ownership Centre is a members' organisation which lobbies, informs and researches on behalf of employee share ownership. It is operated by staff of Hurlstons Corporate Consultancy Ltd.