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it's our business

newspad of the Employee Share Ownership Centre

Centre seeks major EU Eso education campaign to help save jobs

Centre speakers in Brussels urged the EU to finance a major information and education campaign for employers and employees in every member state about how employee share ownership – and financial education more widely - can help them at work.

A dedicated budget line should be established, with the help of the European Commission, to counter the still significant levels of ignorance and misunderstanding among employees and their employers alike, especially among small & medium sized enterprises (SMEs), said Centre chairman Malcolm Hurlston.

He and Centre international director Fred Hackworth addressed 100 delegates on different days during the '*Week of Employee Financial Participation* (EFP) *in the EU'* conference staged by the European Economic & Social Committee (EESC).

Other speakers took up the Centre's theme, reporting low levels of information and understanding among SMEs in member states about the use of Esop type arrangements as a business succession solution. This ignorance of what Eso can do to help save struggling small businesses from liquidation – when a trade sale cannot be achieved - costs the EU tens of thousands of jobs every year, said Mr Hurlston.

He was supported by Hackworth who, in a separate intervention, said that an Eso/EFP promotional campaign should be launched in all member states at ground level in the workplace. Eso-supporting organisations should receive funding from Brussels to disseminate the relevant info to SMEs and others within their own national jurisdictions. The Centre's London Workshop, held last May at the behest of the EESC, had revealed that many SMEs based outside London had little or no access to basic information about Eso, he added.

To reduce the EU's jobs haemorrhage, conference organiser Prof Jens Lowitzsch urged that: *up to 30 percent of the shares in bankruptcy court hearings should be set -aside for employees in business restructuring plans; *one third of state funding for business revival should be funded through Eso/EFP plans and *companies EU-wide must be encouraged more actively by member states through the EU to set up Eso/EFP plans more widely

An EU-wide Eso/EFP template should be devised, despite the problems, so that companies and employees wherever they were within the EU could more easily see what is involved by studying the template, said the professor from Viadrina University, which is close to the German-Polish border. He revealed that a German Esop is likely to be introduced next year, based on the Louis Kelso version, despite apparent ignorance or indifference in parts of the German banking sector.

The world economic crisis was partly about the lack of participation in finance, said Prof Lowitzsch. "So far, people have only been partners in losses. Almost all the principles of insolvency practice have been violated in order to bail out the banks," he added.

Any EU based banking groups that want taxpayers' cash by way of future bail outs, must prove that they either already have, or are about to implement, company-wide Eso/EFP Plans, San Francisco based consultant John Menke told delegates. This would be a quid pro quo for receiving public money, he said. Although most UK and French banks have substantial Eso/EFP programmes, the same is not yet true of banks based in Italy, Portugal and Greece. There was at least one SME buy-out using an Esop almost every week in the US and his consultancy had helped set up ten percent of them, he said, urging the extension of powers to employee plan participants within companies: the Employee Benefit Trust could be given voting rights at the agm; there could be Eso plan

From the Chairman

The Centre has devoted much time and effort this year to EU matters after a long fallow period. You can read about the latest developments on this page. Behind all the new confusion of hopes and ideas is a clear success in moving the locus of esops and employee financial participation away from Social Europe. This is where it landed inappropriately in the first instance but now Enterprise and Industry is to the fore and the value of esops is far more likely to be recognised by the European Commission, following our work with the Economic and Social Committee. It is a long haul but what with that and the success of our simplification initiative in the UK we look forward to our annual awards dinner in positive mood.

Malcolm Hurlston

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participant reps on company boards and annual dividends should be paid out to plan participants, which was not always the case.

Eso is an important vehicle for raising capital, particularly in the business start-up sector, where high salaries cannot be paid to able performers and where business loans are costly and hard to obtain, the conference heard.

During the three days of presentations and debates at EESC headquarters, speakers called upon the EU to facilitate the creation of systems to monitor and benchmark Eso/EFP plans; common taxation rules for Eso plans EU-wide and for pan-european development through bilateral recognition of Eso/EFP fiscal incentives. The conference, entitled, *'A piece of the cake,'* followed a report by Alexander, Graf von Schwerin, a German trade unions representative, and Madi Sharma, UK employer representative on the Council.

Opening the conference, Graf von Schwerin shocked delegates by informing them that the EU Commission had done "nothing" useful for ten years about developing employee financial participation within the EU, but interest in EFP was rising fast in Germany and taking off in countries like Italy. On the third morning of the conference, Italian trade unionists discussed how the operation of EFP among car factory workers could improve the quality of corporate governance. In Verona, many municipal functions have had EFP introduced and company statutes are being changed to facilitate it. There, EFP is seen as a means of helping to generate economic recovery.

Delegates heard that Eso helps keep jobs locally based. Trade sales and liquidations disperse them. The more shares employees own, the greater their power to resist delocalisation of factories, offices and jobs. However, within the next decade, more than 30 percent of European SMEs will have to change owners in order to survive, delegates were told. Elizabeth Fuchs, from IBU Nachfolge management consultancy, said that more than 50 percent of German family owned companies had no natural successor to take over the business when the time came. This meant that 350,000 German companies would be affected by a succession problem within the next decade.

Mr Hurlston told delegates that some UK union representatives, as well as many rank and file employees, needed financial education in general and a clear understanding of the potential and actual role of employee financial participation. Shares had lost value recently and some employees refused to participate because they feared losing out.

"Historically, trades unions have approached employee share plans with reserve, incomprehension and often hostility with some notable exceptions in the US and in Ireland," he said. "It is good to see Italian trade unions play such a large role in the new initiative Pro-EFP 27, supported by the European Economic and Social Council, which aims to put employee financial participation back on the EU agenda. Among UK unions – only the pilots have been continuously alive to the value of shares, following a pilots' tradition in the US.

"It was an initiative of the pilots of a US airline, which first brought Esops to my attention. Led by the pilots, four unions were using their Esops to buy an airline in trouble and for me, having recently helped to found a trades union bank, this was a clear model of opportunity.

"However, the picture was confused by Thatcherism. Employee ownership became an aspect of privatisation and vehemently opposed by trade unions. Their appetite for the political battle sometimes overcame their common sense – workers at BT were advised to turn down the offer of free shares. Unsurprisingly, more than 90 percent said "yes" to the shares and the union had made itself look silly.

"Despite the passage of time the association between shares for employees and privatisation remained strong in UK unions' thinking. Meanwhile, within in the EU organisation, employee financial participation became lost within social Europe, separated from industry and enterprise. But the world has moved on and unions now have the opportunity of being helpful to their members in a new way.

"The reality of employee shareholding in Europe today is scarcely mentioned in our agenda. The work of the Commission and the Foundation as well as EESC had tended to be based on questionnaires sent to member states with differing attitudes and understanding, but the reality today lies with the millions of EU workers who are employed by multinational companies, which compete with each for talent and behave more like each other than national or regional stereotypes. In that world, shares for employees are now the norm.

"Despite the credit crunch, companies have continued to offer shares and for one very good reason. However diverse and geographically widespread a company may be, its share price is one unifying factor for every workforce in every corner of the globe, a common financial language.

"Millions of multinational employees, many of them union members, have a significant new aspect of working life with no independent force to turn to for advice. New financial regulations make it harder for companies to give advice to their own employees about how to run their finances – even their company shares. As a result, many are now directing employees to third parties. It would be nice to think they would automatically turn to their unions, but it is not yet the case. Now is the time for unions to get involved – to help their members and to give themselves an enhanced role.

"I offer them a five point plan: The first is education. Unions need to understand employee ownership as it exists today in large and multinational companies. The Esop Centre is already working with one union in the UK and preparing a blue print for more. Once unions

can bring understanding and knowledge to the table they can play a part. In these times of crisis unions have largely missed a trick, but it is not too late.
"Point two: Negotiate. Whenever there is recession or contraction and unions are asked for understanding or support they can ask for options for their members. Options cost little, but they give employees a share in any upside their sacrifice helps to produce. Already this year in the UK we have seen a retailer give €40000 to each of its staff for their help in turning the company round. But this was the move of a maverick owner not of a union negotiator. Unions should understand, get in there and enjoy their members' gratitude. So, that is the second point: make use of the knowledge at key corporate points in a way that leads to a win for all.
"Thirdly, empower. Most shareholders whether employees or not feel un-empowered compared to the giant pension funds and other investors. Why should the unions not encourage their members to pool not the dividends but the voting rights attached to the shares, directly with the union or through a trust? This has already been put into practice in several member states by Voerstalpine, the Austrian multinational.
Fourthly, trusts and their equivalents should be the subject of study. The share scheme operations of most multinational companies are based to an extent outside the EU. This is because with people in many countries involved a neutral jurisdiction with strong laws is the safest home.
"Finally, engage: armed with knowledge and a new role in helping members unions can play a stronger role in the national and EU wide development of employee ownership too. Union officials should be natural spotters of when small companies are facing a succession crisis and among the first to suggest an employee ownership solution. Local officials should be on the look out; head office officials can provide a pool of expertise and access to finance to help save the businesses in time. Similarly unions will be able to bring practical knowledge as well as theoretical contribution to the development of new EU laws and understandings."
Mr Hurlston spoke about the UK government's mutualisation programme for public services: "A new theme is how employee financial participation can be used for services of general interest which are typically state run or owned utilities. In such sectors unions are more strongly represented and their accord will be essential.
"In the UK, the coalition government is making determined strides towards the mutualisation of public services. The Post Office is to be mutualised, Royal Mail employees – the 'posties' - are to receive a minimum ten percent stake in the business and civil service pensions are to be administered by a joint venture mutual in which 500 current civil servants with be co-owners together with the state and a private sector partner. The government is looking to groups of civil servants to come forward with ideas for turning their work into mutual or employee owned activity. These innovative plans run into some EU barriers. First there are state aid provisions which hinder restructure and second there are EU tendering requirements which tip the balance in favour of the private sector. One of the government's flagship mutuals – Central Surrey Health – has recently lost out and a non-profit I chair faces a similar challenge." It will not be plain sailing - many public service employees fear that Eso is a form of privatisation, he added.
"I hold out great hope for the work the Treasury has asked the Office of Tax Simplification, to undertake. Government-supported share schemes came in at different times for different prime purposes. The elimination of anomalies will make them easier to understand and more effective to use. Finally it will make them, and with them the whole concept of employee financial participation easier for you and for us, for governments and the EU to promote."
However, there were dissenting voices. Anze Hirsi of the Slovenian consultancy ZDS, said that Slovenian employers used Eso/EFP as a means of buying "social peace" and for the most part expected nothing from it. "Many workers there just like the extra cash and don't want to be involved with 'ownership' issues," he said. Some of the French trade unionists present expressed themselves to be either hostile or at best neutral to the plan to further develop EFP throughout the EU.

Box For Awards Dinner Nov 1
Shadow Treasury Minister and Labour and Co-op MP, Christopher Leslie, will address guests and present the awards at the Centre's annual awards black tie reception and dinner on **Tuesday November 1** at the Oriental Club in London W1. Jersey based **Sanne Group** is sponsoring this key event. The Sanne Group newsletter said: "The Centre's awards dinner is a major event in the share plan calendar." Sanne Group's executive incentives business delivers specialist services to employee and executive incentive plans and works with the Centre in pursuit of promoting excellence in the share plan administration sector. For more information please contact director Peter Mossop E-address: Peter.Mossop@sannegroup.com Post: 13 Castle Street, St Helier, Jersey JE4 5UT. Tel. +44 (0) 1534 750550 Mob +44 (0)7700 750 550 Fax. +44(0) 1534 769770 As in previous years, a champagne reception from 6:30pm will be followed by a three-course dinner from 7:30pm with carriages at 11:00pm. More than 80 Centre members have already registered and very few tickets are left at £150 + VAT each or £1,400 + VAT for a table for ten. Reservation by email to: esop@hurlstons.com. All enquiries to national director David Poole.

Simplification for share schemes
Could one of the four tax-approved share schemes be amalgamated into one of the other three – or would it be better for the government to start again with a clean sheet and bring in entirely new share schemes legislation? Those questions, among many others, were posed when the Employee Share Schemes Consultative

Committee met for the first time on September 28. This new committee, created following an initiative from the Centre, forms part of the review by the Office of Tax Simplification of the four UK tax-approved share schemes and the anomalies and complexity surrounding non tax-advantaged or unapproved share schemes. The Committee discussed specific problem areas with approved schemes. It was suggested that the following issues should be considered:

*Amend parts of the current legislation to ensure it was simpler to understand as the current legislation was quite complicated and long and some of it appeared less significant. For example, the material interest rules which applied in very limited circumstances but took up a disproportionate amount of the legislation.

*Examine the policy rationale for the schemes, did they work or should they be amended to be more effective?

*Ensure schemes take into account the employee's perspective.

*Possible changes to the formula used for settling interest rates for SAYE schemes – although some disagreed, as this had been established after extensive consultation by HMRC.

*Remove inconsistency in legislation e.g. different retirement ages, the strict time limits for exercise of EMI options on leaving the company.

*Takeover issues, such as directors' shares: directors could not tender their shares held under approved plans since this could result in the plan losing its tax advantage for all employees (the solution therefore was that restrictions should be made to the undertakings by directors). This was unnecessarily complex. SAYE options could only be partially exercised where a takeover occurs within three years of grant as the exercise could only be funded from the proceeds from the savings contract. This restriction resulted in complex calculations having to be done. This did not apply to other (non savings related) share plans.

*Look into the possibility of rationalising the number of different share schemes – did we need four separate schemes, or could some of them be combined, reducing the number of different sets of rules that needed to be remembered?

*Consider harmonising the differences between the schemes e.g. the required holding periods for shares or different retirement ages.

*Consider reviewing the maximum level of dividends that could be re-invested in a SIP (currently £1,500). Dividends were now exceeding this limit, which was causing complexity.

*Start again from a clean sheet rather than amending current schemes.

There were other discussions about: *The merits of SAYE as a share scheme or a savings plan especially when compared to the SIP. *The reasons companies used schemes. For example, small companies may use schemes to ensure that staff had more of a commitment to the running of the company, while large companies could use schemes to motivate staff, while other companies used the schemes to reduce the cost of wages. *There was general acceptance that the simpler the scheme, the more successful it was.

The members of the OTS tax simplification committee, chaired by Michael Jack, include: Mike Landon, who represents both the Esop Centre and MM & K, Jill Evans of YBS Share Plans, David Cohen of the share schemes lawyers group, David Fleming of the union Unite, Diane Hay of PwC, Ann Govier of Marks & Spencer, Clare Ashton of HM Treasury, Peter Vassallo of BP, Iain Wilson of Computershare and Stuart Evans of Novacem. OTS consultations with business supported the Centre's contention that Esos are perceived to be a highly complex area of the tax code. This complexity is seen as a frequent cause of error in tax returns and as a source of administrative burdens on employers, their advisers and employees. Reflecting this, the Government asked the OTS to carry out a two-stage project: first, looking at the four UK tax-approved, share schemes; and second, looking at complexity around non tax-advantaged or unapproved share schemes.

The initial work on approved share schemes will evaluate the four schemes and identify where they create complexities and disproportionate administrative burdens for scheme users,

examine how the schemes could be simplified and cover all four schemes: SAYE-Sharesave, Company Share Option Plans (CSOP), Share Incentive Plans (SIP), and Enterprise Management Incentives (EMI). The review will examine *the impact on companies and their employees and on HMRC; including the impact on employers with international workforces; *the Government's corporate tax reform agenda including the need for fairness and simplicity; *the wider economic and policy implications of any proposals – including the original purpose of the schemes and overall tax receipts; *the take–up of the schemes by companies and employees; *the availability of non tax advantaged share schemes; the accounting treatment of share schemes; *the risk of non-compliance and avoidance opportunities and *Spending Review resource constraints on HMRC.

The OTS has been asked to produce a report on the approved share schemes – by Budget 2012 - and will then go on to look at unapproved share schemes.

New principles of executive reward

Shareholders should be actively involved in deciding how much board directors are paid and should strongly resist bonus payments when a company does not perform well, said the new guidelines *'Principles of Executive Remuneration'*, published by the Association of British Insurers (ABI). For the first time, the guidelines covered investor concerns about the amount directors are paid. The guidelines warned against “crude benchmarking” with competitors being used as a reason to justify pay increases. “The constant chasing of perceived median has been a major contributor to the spiralling levels of pay,” said the ABI, which represents 300 insurance companies who hold collectively one fifth of shares quoted in the FTSE 100 top companies index. Members believe that non-executive directors should have a substantial role in determining executive pay and that shareholders should be actively involved, while avoiding micro-managing companies.

The guidance was published a week after the Government announced a discussion paper on executive pay, which put forward options such as ‘clawing back’ bonuses and whether worker representation on pay committees would help to curb high pay where this does not correspond with company performance. The consultation will look at the possibility of forcing companies to publish information on the link between company performance and executives’ earnings, as well as the ratio between chief executive pay and the average pay for an employee of the firm.

The Government is looking to clarify “unwieldy, complex and hard to understand” annual reports in a further consultation, which it said could lead to more transparency on executive pay deals. It is seeking responses on both documents until November 25.

“The key principles in the ABI’s guidance match what we have found in our conversations with shareholders, investors and business leaders so far – that excellent performance should be rewarded, but that there is a strong need to end reward for failure. So we welcome the ABI’s revised guidance,” the Department of Business, Innovation and Skills said.

In addition, the ABI published its first report on Board Effectiveness. The report focuses on diversity, including the number of women on boards, succession planning and how best to tackle risk. This report highlighted existing best practice among FTSE 350 companies and makes clear that an effective board and successful company depends on greater progress and transparency on these issues, the ABI said. Otto Thoresen, its Director General, said: “Effective boardrooms should be the powerhouse of the UK economy... we continue to favour evolution, building on what we have learnt from recent years to make sure companies act in shareholders’ interests and deliver long-term economic growth that will benefit society as a whole.”

Executive salary & bonuses above target

Research on executive remuneration in FTSE-350 companies highlights a number of positive changes in pay structures, such as increased deferral, clawback and share ownership guidelines. But it reveals that salary increases have been higher than average increases for other employees, said **Stephen Cahill**, partner in the remuneration team at **Deloitte,** writing in the *Financial Director.* Bonuses continue to be paid out at levels significantly above target on a regular basis. The government recently released a consultation paper on disclosure requirements, which proposes replacing the current business review and directors’ report with a strategic report and an annual directors’ statement. The strategic report will provide shareholders with high-quality disclosure of the link between company performance and the remuneration of company directors and senior executives. Another paper invites discussion on a wide range of measures aimed at curbing escalating pay where this is not correlated to performance. Business Secretary Vince Cable said: “There is a widening gulf between company performance and pay which is simply not sustainable. Concern over this is not just coming from government. Investors, business groups and captains of industry have all told us that this is a real problem and needs to be addressed.”

Mr Cahill said: “In 2009 and 2010, the financial crisis and the recession led a significant number of companies to implement pay freezes for directors. At this time last year, we anticipated salaries would increase, but that increases would be at the two to three percent level. However, the median increase for main board directors has been four percent in FTSE-100 companies and three percent in FTSE-250 companies in 2011. Almost one third (31 percent) of directors in FTSE-100 companies and 19 percent in FTSE-250 companies have received increases above five percent, which is above the increase in average employee earnings. This is particularly surprising, as remuneration committees should be careful to avoid falling back into the cycle of increasing directors’ salaries at an executive rate.

“Investors have reacted quite strongly, raising salary increases as an issue in proxy voting reports for almost 30 percent of companies holding an AGM so far in 2011. This is likely to continue to be an important issue over the coming year. Remuneration committees should determine remuneration for executive directors in the context of the wider employee population and treat executives in the same way as other employees. Salary increases should be considered only where there is a real and compelling reason for them and should be limited to the general level of increase for other employees, unless exceptional circumstances exist.

“Our findings on bonus payouts make it difficult to refute the accusations that the link to performance is not strong enough. Over the past decade, the bonus potential has more than doubled (the median bonus potential is currently 150 percent of salary in FTSE-100 companies and 200 percent in the top 30 companies). Yet, the median payout has consistently been at 70 to 80 percent of the maximum over this period. Although bonus payouts were lower over the 2008/2009 period, reflecting the impact of the recession, the median payout was still higher than might have been expected. Apart from this period, our data suggests more than four out of five FTSE-100 companies, and more than two-thirds of FTSE-250 companies, have paid out more than target bonus every year for the past five years."

These numbers mask significant variability in the payouts of individual companies, but this suggests that executive directors have an expectation of receiving at least target bonus each year. Perhaps targets, and expectations, need to be recalibrated. "Some of the measures we believe remuneration committees should be considering include:

* Tying annual bonuses to the key performance indicators to ensure executives are incentivised to drive the business strategy. But include hurdles to be achieved before any payout is triggered to avoid the possibility of paying out the bonus on one measure that is not merited by the overall performance of the individual or the company;
* Setting annual bonus targets in the expectation that there will be no payout unless overall company performance warrants it. Ensure pay-outs above target require significantly better than good performance and the maximum should only be expected perhaps once every five years;
* Deferring a substantial proportion of bonus for three to five years;
* Being more prepared to use judgement to ensure pay-outs are fair and reasonable in light of all relevant factors.

"Long-term awards have increased considerably in size over the past ten years, but appear to be more strongly linked to performance than annual bonus. In FTSE-350 companies, most directors no longer receive grants of options, but often receive an award of performance shares with a face value of between 150 percent and 300 percent of salary in FTSE-100 companies and between 125 and 150 percent of salary in FTSE-250 companies. Given the size of these awards, it is important to ensure they really incentivise long-term performance. Long-term awards should be tailored to support delivery of the company's long-term strategy, but with safeguards that awards will only vest where a threshold level of financial and/or market performance has been achieved. Remuneration committees may want to consider longer performance periods, or further retention periods to better support long-term stewardship. Remuneration committees should be more prepared to use judgement to ensure the vesting is fair and reasonable," said Cahill of Deloitte.

"Some of the positive changes in remuneration structures are encouraging, but our findings on salary and, in particular, bonus arrangements suggest there is work to be done. There are many challenges in having substantial elements of reward based on performance but this is still the right answer for most companies. We should not abandon the principle of performance-based pay simply because it is difficult to get right. It is time to take a hard look at how remuneration is structured and paid, and whether this is fair, reasonable and effectively linked to the long-term strategy and success of the company."

Banks should link the pay of senior executives to returns on assets and not the current measure of returns on shareholder equity, said Andrew Haldane, executive director of the Bank of England. The return on equity targets used by most banks had warped the banking industry's compensation structure and led to a situation where the average pay of top banking executives had risen to **500 times** the median US household income, he said. The near tenfold rise in banking ceo's pay – from an average $2.4m in 1989 to $26m by 2007 – would have been cut back to $3.4m if their pay had been linked to the return on assets, added Haldane. "It is the ultimate irony that an asset calling itself 'equity' could have contributed to such inequality. Righting that wrong needs investors, bankers and regulators to act on wonky risk-taking incentives at source. While the rewards for bankers have been kept privately, the risks have been widely spread socially."

Wall Street bonuses for 2011 are expected to be down by at least 20 percent for traders and investment bankers, said Paul Webster of Martin Page Executive Search. Big banks are now not afraid of reducing bonuses as most key traders and investment wizards can't go anywhere else, as no-one is hiring for the time being. Some banks faced third quarter losses and can't afford to award bonuses on the 2009/10 scale. **Goldman Sachs** slumped to only its second loss since floating in 1999, leaving its staff facing the prospect of much smaller bonuses this year. The investment bank reported a $393m (£249m) loss for the third quarter of the year, compared to a profit of $1.9bn in the same period last year. Goldman, which is already cutting 1,000 jobs, has allocated $10bn - 44pc of net revenue of $22.8bn - in the first nine months of the year to compensate staff, including bonuses that are paid at the end of the year, compared to $13.1bn in the first nine months of last year. Of this, only $1.58bn was set aside in the third quarter, a decline of almost 60 percent. Goldman and others have been hit by more regulation – eg the banning of proprietary trading. In addition, a lot of deferred compensation deals launched just after the 2008 crisis to keep key players on board are coming up for pay out now, so some bank compensation pools will be smaller. But the regulatory tide, eg Basel Three and Dodd-Frank financial oversight law, is creating a lot more jobs in compliance and audit in big banks.

On the move

Janet Cooper who moved on from **Linklaters** after heading its employee incentives practice for almost 20 years, is now a partner in new professional services firm, **Tapestry**, which offers full support on global HR legal issues including employment and incentives to global companies. She had a team, of 80 lawyers in 25 offices, advising global companies on the structure, drafting and legal and compliance requirements for operating share and bonus plans internationally. Janet developed the online database *Blue Flag*, which covered 100+ countries to help companies with their legal and tax compliance requirements. Her email address is Janet@tapestrycompliance.com

Pett Franklin & Co LLP's team has been strengthened recently by the secondment of trainee solicitor Richard Tindall who will be working closely with David Pett and William Franklin.

Franck Matthews is now director of fiduciary services at Capita Fiduciary Group following Capita's takeover of AIB Jersey Trust, where Franck was head of employee benefits and corporate.

Global Shares, the independent share plan administration company, announced the appointment of **David Limb** to support its business development activities in the UK and Europe. Most recently, David was director of executive compensation at GlaxoSmithKline where he had responsibility for the design, delivery, and compliance of reward programmes for GSK's top 25,000 staff located in over 100 countries. He was responsible for leading the activities of professional advisers and external service providers to the reward function. **Maoiliosa O'Culachain**, head of business development, said: "We're delighted to have David Limb join Global Shares. David, who was previously a client of Global Shares, brings significant experience and in-depth knowledge of equity compensation strategies and practices among the biggest multi-national companies." **Laura Verri** has joined Global Shares in Milan to support its business development activities in Italy and **Jessica Dolan**, director client solutions, has relocated to Stuttgart, from where she will continue her work in supporting the business development team.

Tiffany Brill has left BP, where she was head of share plan administration. For general share plan queries contact Sue Leach. For all reporting queries contact Peter Vassallo. Tiffany's private email - tiffanybrill@hotmail.com

JJB Sports, the struggling retailer, which saw its market value fall to just £60m, unveiled a bonus scheme for its top managers that could see them handed shares worth £73.4m over the next five years. The company unveiled the share incentive scheme for four directors and a small group of senior managers as part of a plan to turn around its fortunes. JJB shares have fallen more than 90 percent since 2007, as difficult trading conditions have seen the group forced into a company voluntary arrangement (CVA) and most recently a £96.5m fundraising operation to stave off administration. Managers including chairman Mike McTighe and ceo Keith Jones could end up with 15 percent of the company's equity if they hit targets under the aggressive five-year turnaround plan. McTighe and Jones will each receive 25 percent of any shares awarded, with the remaining 50 percent handed to senior managers including Dave Williams, cfo, and David Adams, senior independent non-executive director. The group said the scheme would allow staff to "share in the value" of JJB's recovery. The plan has received the backing of JJB's two independent board directors – Richard Bernstein, who owns a seven percent holding in the group via his Crystal Amber investment vehicle, and Sir Matthew Pinsent, the former Olympic rower and gold medallist. Under the scheme's terms, senior managers would receive 20 percent of any growth in the company's value once the market capitalisation passes £101.3m – a figure equal to the value of this year's £96.5m fundraising, plus a five percent premium. The premium is set to rise a further five percent annually as part of the plan. Should JJB's market value hit a target of £193m – double the value of the fundraising – managers would be handed shares representing more than seven percent of the company. Should the value climb even higher, JJB has capped awards so that managers cannot end up with more than 15 percent of the company. At that level, the group would be worth £490m. The incentive scheme replaces all previous long-term compensation plans.

CENTRE EVENTS

Jersey: December 9: HMRC has promised that the final version guidance on disguised remuneration will be more user friendly. Until its release, companies continue to deal with the draft version which is 200 pages long and hard to follow. So, the ESOP Centre and STEP Jersey are hosting the second of the Centre's annual Channel Island conferences on Friday December 9, where disguised remuneration will be made clear. Speakers will answer what steps trustees should take to ensure they stay onside of the fiendishly complicated new rules. The Centre and its members are in regular contact with officials to ensure that legitimate reward schemes are not affected. Additionally, David Craddock will speak on share price volatility and what to do about underwater options – useful information indeed in the current climate. Alan Judes of Strategic Remuneration will introduce Ron Forrest's case study of the share scheme at Perkins Slade Ltd.

More than 30 people have already confirmed attendance. The programme has been specifically developed for anyone who deals with employee benefit trusts and would like to keep up to date with the latest regulators, legislative and practical developments affecting employee share schemes. The conference programme will run from 8.45 – 14.00 at the Pomme d'Or Hotel, St Helier. Tickets are on sale at £295 for Esop/STEP members and £425 for non-members. Email esop@hurlstons.com now to reserve your seat. Centre chairman, Malcolm Hurlston, will give an update on the Centre and its activities in both the UK and the EU generally. Juliet Halfhead of Deloitte will give background context to the legislation and speak on non-approved share schemes, the tax exemptions available and how they have been affected by recent tax law. William Franklin of Pett, Franklin & Co. LLP will talk about Joint Share Ownership Plans and clarify their position under the new legislation and Jane

Wycherley of Ogier will talk on trust issues affecting ESOPs.

Breakfast and registration are from 08.45 – 09.15 and lunch will follow from 13.00 – 14.00. To reserve your space, email: esop@hurlstons.com - Fees: £295 for STEP/Esop Centre members £425 for non-members. The conference is CPD accredited for 3.5 hours of professional development with the SRA.

Davos: Feb 2 & 3

The worldwide stock purchase plan of telecoms giant Ericsson is a major highlight at the Centre's annual Global Employee Equity Forum, in the Steigenberger Belvedere Hotel in Davos Platz on Thursday February 2 and Friday February 3, in the slipstream of the World Economic Forum. The Ericsson presentation will be delivered by Iain Wilson of Computershare, which administers the plan in 100 countries in which Ericsson operates. Another highlight will be a case study led by Richard Nelson of Howells Associates, who is bringing client Imagination Technologies to talk about the way the company has engaged with its employees using share plans as the key remuneration tool. .

Speaker slots include: Baker & McKenzie, BDO Human Capital, Capita Registrars, Computershare, Credit Suisse, Henderson Global Investors, Howells Associates; Macfarlanes LLP, Minter Ellison, MM & K, Norse Solutions, Pett, Franklin & Co. LLP, RBC Corporate Employee & Executive Solutions and Strategic Remuneration. The programme can be reviewed in detail on the Centre website at: www. hurlstons.com/esop and click onto 'events.' You can download our e-brochure, co-sponsored by Appleby Global and by RBC CEES and you can reserve your delegate place online too.

Those Centre members intending to present, but not yet on our list, should reserve their slots asap. The Davos programme covers latest developments in employee equity – including regulatory pressures on executive equity reward packages; employee equity case studies; plan administration techniques; corporate governance issues in the EU and USA; disguised remuneration, accounting standards; cross-border taxation, trustee updates and national spotlights. Delegates can put forward their own views during a 40-minute open debate about the key issues.

Package Deal Fees*: *No sales tax is payable on these fees. The package price includes two nights half-board accommodation in the five-star Steigenberger Belvedere Hotel, Davos Platz, admission to all conference sessions, light refreshments throughout and cocktail party.*

Speakers:	Service providers	£ 785
	Equity plan issuers	£ 490
Delegates: Centre members		
	Practitioners (service providers)	£ 925
	Equity plan issuers	£535
Delegates: Non members		
	Practitioners (service providers)	£ 1395
	Equity plan issuers	£ 685

There will be a pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. The programme includes extended afternoon breaks on Thursday and Friday, so that keen skiers can hit the slopes after the morning sessions. Packed lunches are supplied on demand. If you would like to either speak at Davos, or attend as a delegate, please email Fred Hackworth, Centre international director, asap at: fhackworth@hurlstons.com

INTERNATIONAL

Indian tax summer

The Delhi Bench of the Income Tax Appellate Tribunal delivered a ruling governing the taxation of stock options in test case. The ITAT stated that 'right to exercise an option to sell stock' will qualify as a capital asset – and not be subject to income tax rates. Such a capital asset is said to be regarded as acquired on the date when the employee accepts the grant offer. Therefore, the ITAT held that gain on transfer of such capital asset where the underlying asset was held through a company created trust is a Long Term Capital Gain. Taxand India summarised the facts of the case and the ruling of the ITAT. The taxpayer, an employee of Pepsico India Holdings Ltd, was granted valuable rights in shares of the parent company, Pepsico Inc. US between FY 1995-1996 to FY 1999-2000 under the Employee Stock Option Plan scheme of the parent US company. The shares were encashable over a period of ten years after lapse of the initial period of three years from the date of acceptance of the ESOP stock offer. As a part of the scheme the employees were given the option on the date of their eligibility, to sign and own it on such date and keep the same till they reach their optimum time in the eyes of the employee to sell. The trust acted as a custodian of shares on behalf of the taxpayer and sold them upon receiving instructions from the taxpayer. On sale of such shares in FY 2003-04, taxpayer claimed the gains as LTCG and further invested such gains in accordance with Section 54F of the Income Tax Act, 1961, thereby claiming an exemption from taxeable income.

Esop strike

National Union of Mineworkers members marched to the Xstrata offices in Johannesburg to petition the company over its withdrawal of the Esop during a strike. "The mineworkers also demand that Xstrata should reinstate the share scheme with an equalisation on dividends," said NUM spokesperson Lesiba Seshoko. The company said it had suspended Esop negotiations while the strike continued, before the union finally recommended a return to work. Employees downed tools in Xstrata's SA coal, ferrochrome, vanadium and platinum operations over the terms of the group's Esop plan, under which employees would receive a number of shares proportionate to their employment grade. The union wants all members to receive an equal number of shares, regardless of their position in the company. “The NUM demands that Xstrat"s Esop should ensure that all employees are entitled to equal benefits whilst the company sought to create exclusive additional benefits for its managers,” the trade union said. The move was rejected by the NUM and the issue was referred to the Commission for Conciliation, Mediation and Arbitration, which issued a certificate of non-resolution. The NUM now wants the department of mineral resources to withdraw Xstrata’s mining licence as the share ownership plan is a sine qua non of the mining charter.

Offshore breezes

The UK and Switzerland have signed the agreement on withholding tax which was agreed in principle last October, said Deloitte. Subject to the approval of both Parliaments, it will enter into force at the start of 2013. Funds of UK taxpayers in Switzerland will be subject to a one-off deduction of between 19 percent and 34 percent to settle past tax liabilities. From 2013, a new withholding tax of 48 percent on investment income and 27 percent on gains will apply to those who have not previously told HMRC about these assets. The new charges will not apply if the taxpayer authorises a full disclosure of their affairs to HMRC. Other features include:

* an anti-abuse clause to prevent the promotion of avoidance by Swiss banks;
* a programme of audits, to be overseen by a new UK-Swiss joint commission;
* Switzerland will collect and share data on the destination of funds withdrawn from the country;
* there will be no clearance of past liabilities for those involved in criminal behaviour or where Swiss assets are the proceeds of non-tax crime;
* no-one who has failed to disclose Swiss assets when challenged can benefit from clearance of past tax liabilities, and HMRC’s ability to carry out investigations will be preserved.

Eso in the UK health sector

Most spin-outs have been stand alone entities, often set up using government grants and loans to get them going. Now that state funding is no longer there to the same extent, it will become increasingly necessary to look elsewhere for cash and expertise. This is where partnerships could come in, said Craig Dearden-Phillips, founder and md of *Stepping Out.*

One vision of the future in healthcare is represented by Circle Health a social enterprise which is part-owned by its staff and part by its managers and financial backers. Each new NHS spin-out becomes part of Circle with the employee share of the company kept at the same level – around 50 percent. *Stepping Out* helps UK public sector services become social businesses. Two of the councils it is working with are seriously considering seeking partners for the spin-out of part of their in-house services – a joint venture as opposed to creating one that’s standalone. The idea is to ask charities and private sector organisations to compete – with investment and skills – to be the joint-venture partner for the new companies in exchange for a long-term contract and a stake in the company.

“There are many attractions in the partnership model. If a well-known name is seen to be willing to risk its reputation on a spin-out, it encourages others to get involved. Staff and managers know that there will be support to fall back on,” said Dearden-Phillips.

“There could be problems, including a potential clash as the public service ethos vies to find a common agenda with the commercial side. Given public discomfort about private profit in health and care services, this could become a big opportunity for the third sector, particularly with the so-called Big Society Bank on the horizon. After all, the public service ethos is, in many respects, very similar to that found in not-for-profits. If the better players in the third sector rival private companies in attracting investment for new spin-out ventures, it is easy to see charities being selected as preferred partners over social enterprises and mutual ventures. But why go to all this trouble? Why not just give charities and companies contracts to run the services themselves? Supporters of spin-outs would argue that new spin-out ventures which are employee-owned, locally focused and not just a branch or a project of a national organisation would be a better partner to a local authority. They are more invested in the local area and better at involving communities and individuals in the co-creation of services.

“While Cameron and his team remain enthusiastic about spin-outs, there is huge pressure, from the Treasury in particular, to create more efficient versions of what we’ve got, preferably delivered by the private sector. For the spin-out agenda to get more traction, it seems necessary that existing players from charities and private companies get involved – and quickly – because the biggest danger for those already out there is that this movement remains small and peripheral. The next year or two is crucial. Partnerships appear to be a sensible way to press on beyond the first wave of early adapter,” added Dearden-Phillips.

Hedgies

In the first half of 2011 investors allocated $62bn to hedge funds and total assets under management reached a new record of $2.04trn. During the same period, funds of hedge funds saw a net withdrawal of $6.9bn and the total assets under management are almost 20 percent below the peak of $800bn reached in 2007.

Severance reward for failure continues

Léo Apotheker was shown the door after a tumultuous 11-months running Hewlett-Packard. His reward? - $13m in cash and stock severance, in addition to a sign-on package worth about $10m, according to a corporate filing. Robert P. Kelly was handed severance worth $17m in cash and stock when he was ousted as ceo of Bank of New York Mellon after clashing with board members and senior managers. A few days later, Carol A. Bartz took home nearly $10m from Yahoo after being fired from the troubled search giant. Huge severance packages continue to thrive in spite of the measures put in place in the wake of the financial crisis to crack down on excessive pay. Critics have long complained about outsize compensation packages that dwarf ordinary employees' pay, but they voice particular ire over pay-for-failure. Much of Wall Street and corporate US has shifted a bigger portion of pay into longer-term stock awards and established policies to claw back bonuses. While fuller disclosure of exit packages several years ago has helped ratchet down the size of the biggest severance deals, efforts by shareholders and regulators to further restrict payouts have had less success. "We repeatedly see companies' assets go out the door to reward failure," said Scott Zdrazil, the director of corporate governance for Amalgamated Bank's $11bn Longview Fund, a labour-affiliated investment fund that sought to tighten the restrictions on severance plans at three oil companies last year. "Investors are frustrated that boards haven't prevented such windfalls." The ceo of Gannett, Craig Dubow, received a $37m severance package despite presiding over the loss of 20,000 US newspaper industry jobs. That came on top of a combined $16m in salary and bonuses in the last two years. Gannett's stock price declined to about $10 a share from a high of $75 the day after he took over. Severance policies typically call for a lump-sum cash payment, the ability to cash out stock awards and options immediately instead of having to potentially wait for years, and sometimes even bonuses. On top of that, retirement benefits and additional company stock that executives accumulate can increase the total value of their exit package by millions of dollars. Several years ago, the Securities and Exchange Commission turned a brighter spotlight on severance deals by requiring companies to disclose the values of the contracts in regulatory filings. More recently, the Dodd-Frank financial reforms required that public companies include 'say on pay' votes for shareholders to express opinions about compensation — including a separate vote for golden parachutes initiated by a merger or sale. Yet so far, few investors have gone to battle. Only 38 of the largest 3,000 companies had their executive pay plans voted down, according to Institutional Shareholder Services. Even then, the votes are non-binding.

UK no to FTT

The European Commission has adopted a legislative proposal for a financial transaction tax (FTT) to be levied in the EU. The tax would be levied on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU. The exchange of shares and bonds would be taxed at a rate of 0.1 percent and derivative contracts at a rate of 0.01 percent. The Commission estimates that this could raise €57bn every year in EU revenues and it would propose an unspecified reduction in national contributions, said Deloitte. The Commission has proposed that the tax comes into effect from January 1 2014. The proposal will be discussed by all member states in the EU's Council of Ministers and the Commission will present it to the G20 Summit in November. It needs to be agreed unanimously. Meantime, the Commission will explore ways to introduce a financial transaction tax at a global level. The UK will oppose an FTT.

Deferred shares all the rage

Despite executive bonuses rising, more companies are using deferred shares and claw-back schemes as part of them, a new report suggests. Centre member **Hewitt New Bridge Street's** *Report on FTSE 100 Directors' Remuneration 2011* implies that bonuses have risen to 150 percent of salary for the highest paid directors during in 2010/2011 - an increase from 120 percent the year previous. However with the increase in bonus comes an increase in companies rewarding executives with deferred shares and introducing claw-back schemes.

More than 70 percent of FTSE 100 companies require part of their executives' bonuses to comprise deferred (for typically three years) shares, while the number of companies with a claw-back facility in their annual bonus plan has more than doubled. In 2010, just 15 percent of companies had claw-back schemes in their executive bonuses but this year, more than 35 percent disclose a claw-back facility in their annual bonus plan. Rob Burdett, a principal consultant at Hewitt New Bridge Street, says: "While bonus payouts have increased, we are seeing a greater use of tools such as bonus deferral where typically 50 percent of the bonus payable is deferred for three years in shares. Claw-back is becoming increasingly popular, giving investors reassurance that in the highly unlikely event that a bonus is paid out on the back of misstated results, there are mechanisms in place to require the repayment of that bonus. However, shareholders will still tend to require specific justification of how the size of the bonus reflected underlying performance. This is now a key issue. "

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