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it's our business

newspad of the Employee Share Ownership Centre

EU finally sees the light on Prospectus Directive exemption

The European Commission has finally bowed to corporate and institutional pressure by proposing to exempt all employee share ownership offerings within EU member states from the Prospectus Directive.

The Commission's proposed amendments, once enacted, would heal a running sore suffered by non EU-based foreign companies, who are required to issue expensive full prospectuses every time they want to make equity awards to employees in European subsidiaries, unless their shares are quoted on EU stock exchanges.

Less well known is that the same hurdle applies to all unlisted companies, even those based in the EU, who want to make equity awards to employees in subsidiaries in other member states. They stand to gain exemption too.

However, these companies and their advisers could face a long wait before they can tear up the PD (see below).

Foreign companies, especially those based in the US, argue that the directive, as it stands, is discriminatory, since only companies whose shares are quoted on the stock exchanges of EU member states are exempt from the requirement to publish a lengthy prospectus, translated into all the relevant languages, in advance of awarding equity rights in employee share schemes.

All EU-based quoted companies have to do instead is to publish a minimalist document giving bare details on the value of the awards, type of equity offered, numbers of employees and motive etc.

Many US public companies, some of them very large, are not listed on stock exchanges in Europe and so are punished in this way.

On September 24 the Commission published its proposal to exempt all employee equity award issuing companies, whether listed or privately held from the Prospectus Directive, provided they publish a basic fact sheet about what they are doing and why.

Another pettifogging PD irritation, which will be amended into oblivion, is the rule requiring Eso issuing companies, in certain circumstances, to choose as their 'Home' member state, the country in which they had their original registered offices.

The (full) exemption of employee share schemes from the obligation to publish a prospectus will save more than €18m, said the Commission.

From the Chairman

I felt a small flutter of excitement at the news that an employee benefit trust was to be a substantial shareholder in the revived Jessops. Hopes soon dashed however as the Guardian revealed that it was not employees as we understand them but topmost management that would be doing the benefiting. Is it not time we had a different term from EBT for trusts which are not benefiting employees widely? Why do managers benefit disproportionately and widen the gap with average pay? Because they can.

Malcolm Hurlston

"The requirement to produce a full prospectus for this type of offers is not an effective means of informing employees about the risks and benefits of this very particular kind of offer, and imposes excessive costs on employers that are not justified in terms of investor protection. Therefore, the exemption in Article 4(1)(e) relating to employee shares schemes should be widened in order to cover the employee shares schemes of companies that are not listed on a regulated market," said the official amendment.

Centre members will have a hollow laugh over the Commission's admission that: "Despite its general success, the Directive has been identified as one area that contains a number of legal uncertainties and unjustified burdensome requirements that increase costs and create inefficiencies hampering the process of raising funds from the securities markets for companies and financial intermediaries in the EU. In addition, in order to further enhance investor protection and thus respond effectively to the current financial crisis, the summary of the Prospectus should be improved in terms of simplicity and readability."

Sadly, these long-sought amendments could take months, or even years, before they take effect. Centre member Guy Abbiss, of Abbiss Cadres, pointed out that all hangs on precisely when the detail of the final amendments is published in the Official Journal of the European Union, because the rule is that such changes can only be implemented at least 20 days after final publication. "This may take some months, or even years," said Mr Abbiss.

The Centre took up this issue with the Committee of European Securities Regulators and the European Commission after receiving complaints from members.

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Bonus corner

Public anger over allegedly ‘excessive’ executive reward in the financial sector may explode this winter as details emerge of massive new bonus awards for UK bankers. The green light for very substantial bankers’ incentive pay-outs came after the G20 meeting in Pittsburgh refused to impose caps on bonus levels.

G20 committed merely to aligning executive compensation with long-term risks - without imposing bonus caps. The outcome was a victory for the US and the UK, keen to protect large financial services operations in New York and London, and a relative defeat for the French and the Germans, who wanted to impose specific pay caps.

The final communiqué at the G20 summit in Pittsburgh made a firm pledge to bring bankers' pay in line with institutional performance and to ensure that loss-making and government-backed banks do not continue to dole out large bonuses.

"There is no return to the bad old days," said PM Gordon Brown: "There is no going back to systems of bonuses that were based simply on short-term speculation." But sceptics said this was so much ‘hot air.’ The summit committed the leading developed nations to:

· A ban on multi-year guaranteed pay deals

· Clawing back bonuses in the event of losses

· Basing executive reward packages on risks taken

· Bank bonus pay-outs should be spread out over at least three years

· More disclosure on who is being paid how much and annual review of same

· National regulators to urge finance houses to limit total compensation as a percentage of total net revenues.
Existing golden parachute clauses should be ‘reviewed’.

Implementation will be up to each country's regulator, with a strengthened Financial Stability Board (FSB) developing policies and monitoring practices around the world. The details were contained in the FSB's final report to the summit. Isabel Pooley, a compensation expert from CMS Cameron McKenna, questioned whether the accord was detailed enough, saying: "At what level will that limit be decided: the individual, the trading team or the entire organisation?" Britain's five biggest banks then signed up to measures to curb bankers' bonuses agreed at the G20 summit. Barclays, HSBC, Lloyds, RBS, and Standard Chartered said they welcomed "the G20 remuneration reforms, and their global nature, as it is essential that banking reward is consistent with effective risk management and that there is parity both nationally and internationally on these issues."

Ironically, the toughest action on executive bonuses was announced by a non-G20 member, the Netherlands, as Dutch banks imposed their own limits on executive bonuses and salaries. According to a banking code published by the Netherlands Bankers' Association (NVB), banking executives will from January 1 have bonuses limited so as to not exceed their annual salaries. Salaries will have to be below a median figure for comparable jobs, bonuses may have to be returned if the bank runs into trouble and severance pay cannot be higher than a year's salary, the code said. Executive board members will also be prevented from exercising stock options within three years of receiving them.

Top UK directors saw their basic salaries leap ten percent on average last year, despite the onset of the global recession, in which their companies lost almost a third of their value amid a record decline in the FTSE. The Guardian's annual survey of boardroom pay reveals that the full and part-time directors of the FTSE 100 shared between them more than £1bn. Bonus payouts were lower, but basic salary hikes were more than three times the three percent average pay rise for average employees in the private sector.

LTIP EBT to own 20 percent of new look Jessops

Camera retailer Jessops plc said its bankers HSBC, plus its pension fund and employee trust will take control of the company as part of a restructuring to keep it in being. Its trading company will be sold to a special purpose vehicle, Newco. HSBC Holdings will own 47 percent of the shares in Newco in return for forgoing £34m of debt. Trustees of The Jessop Group Ltd Pension and Life Assurance Scheme will own 33 percent, while the remaining 20 percent will be owned by an employee benefit trust that eventually will be allocated to the retailer's management as a long-term incentive. Two key beneficiaries are likely to be Jessops' new ceo, Trevor Moore, who joined the business recently, and David Adams, who is staying on as chairman. The allocation of shares in the EBT has not yet taken place and is subject to independent trustee approval, but HSBC said the trust was essential. Under the deal, Jessops will continue to trade as a stable business with the support of HSBC. The board intends to put Jessops PLC into a solvent liquidation in due course, after which just £100,000 would be made available to shareholders.

Share options to plug ceo’s salary gap

Shareholders in DSG, the owner of Curry's and PC World, have voted in favour of a plan to cut its ceo's pay by 25 percent, replacing the lost income with share options. The innovative salary sacrifice scheme for John Browett, chief executive of DGS, has caused controversy with some investor groups, who have accused the electricals retailer of proposing to hand over options that are not linked to the company's performance. The scheme is part of DSG's drive to divest loss-making businesses and to rebuild its finances, which have been hit hard by the recession. DSG also unveiled better-than-expected results for the 16 weeks to August 22, and said that it had disposed of its Polish business for €uro 1.

HMRC looks at trustees

Although the new residence rules for trustees were introduced in Finance Act 2006, HMRC only recently issued the related guidance. This makes it clear that offshore trustees will be UK resident if they act as trustee during business work they carry out in the UK, through a

branch, agency or permanent establishment. For corporate trustees, only the permanent establishment test applies. The tax implications of offshore trustees being treated as UK tax resident can be far-reaching and disadvantageous. More commonly associated with individuals, offshore trusts are often used by corporate groups, in particular, employee benefit trusts, and the residence position of the trustees needs careful consideration and monitoring to avoid UK tax issues arising. For more information, please contact Stephen Woodhouse at **Deloitte**.

HMRC's Anti-avoidance Group has recently updated its list of those avoidance arrangements which it will challenge as being 'flawed', reported Deloitte. The list now includes providing benefits to employees and their families through trusts and switching funds between unapproved employer-funded pension arrangements in order to accelerate the tax deduction for the employer's contribution. HMRC argues that funds contributed to employee or family benefit trusts are PAYE/NIC earnings at the time they are allocated (which may be when they are contributed, or shortly after). If the employer is a close company the contributions may also attract an inheritance tax charge. HMRC failed to persuade the Special Commissioners of the merits of their PAYE/NIC argument, in either the Dextra or Sempra Metals cases and is now considering legislative action that might affect much more than these arrangements. HMRC's argument regarding unapproved pension arrangements is that from the legislative context employers cannot claim a deduction for contributions to such arrangements until or unless the resulting pension payout is taxed on the individual. As per its position on employee trusts, this is open to challenge, although there can be other problems.

Exposure Draft: Debt for Equity swaps

Although it was not drafted with share plans in mind, **William Franklin** director, tax and share plans & chartered accountant with Pinsent Masons LLP, suggests that share plan practitioners should keep an eye on a new Exposure Draft issued by the Interpretations Committee of the IASB--D25 "Extinguishing Financial Liabilities with Equity Instruments". The Exposure Draft proposes that equity instruments that are part of the consideration paid to extinguish a debt should be measured at fair value. The ED is intended primarily to provide rules for the accounting and valuation of shares issued in return for the cancellation of debt, which is common these days. However with the pressure to pay bonuses in the form of shares, the principles of D25 may have wider application. Furthermore, the fair valuation of shares under D25 may become a benchmark for determining future management incentives and be of interest to EBT-holding trustees.

The Autumn term of the online diploma in employee share ownership studies modular course operated by the **Esop Institute** begins on Monday October 19. The diploma course provides an ideal 'in-you-own-time' detailed on the job training placement, both for newcomers and junior colleagues at work. Contact www.esopinstitute.com for details about the modules, admission prices and registration.

On the move

Graeme Wheatley is leaving BT after eight years to pursue a musical career. Graeme, who admits to being a bit Dylanesque, writes songs, sings "in a gruff voice" and plays base in a blues/rock band called ***Little Devils***, who can be found in The Blues Room, Montague Arms, in SE London's Telegraph Hill. Their first album entitled 'This is how it starts' is published by WDM. Graeme once intrigued Centre conference delegates by announcing a competition to see who among his audience could spot the number of references he had written into his speech about Bob Dylan. His public note of impending departure captures the essence of the man: "Please excuse the en-masse email - time isn't anybody's friend. But it's time for a change. I have decided it's time to leave BT. I will be leaving here on 30 October. (that's my "best before" date as far as BT is concerned) - you'll get nothing out of me after that. For the immediate future, I am going to pursue musical goals and ambitions - which will not include busking down in St Paul's tube station - but may include lots of other things in time. Hope to see you around - but not really sure if time will allow. If not, best wishes for your futures. If I owe you money - cheque's in the post. If you want to be added to emails for gigs - pls let me know. Time, gentlemen, please." Graeme leaves with the Centre's best wishes for the future. For more on Graeme's gigs, please go to: www.myspace.com/littledevilsmusic

Centre member **MM & K**, the leading independent remuneration consultancy, has announced two senior share schemes appointments in recent days: **Mike Landon**, formerly at Mercer and **Ian Murphie** from RM2 Partnership. Mike, one of the UK's top executive compensation and share incentive consultants, has more than 20 years of experience of advising companies on remuneration issues, specialising in executive compensation and share plans. His work has included the design and implementation of a variety of executive and all-employee share incentive arrangements, including tax-favoured approved plans, international plans, LTIPs and other cash incentives. He has previously worked at Mercer, PricewaterhouseCoopers and Watson Wyatt. Mike said: "I am really looking forward to working with MM & K. The firm has built up a strong reputation over the years through its independence and its focus on pay and reward issues." Paul Norris, ceo of MM & K, said: "We are delighted to welcome Mike Landon to MM & K. Mike's appointment is a further step towards consolidating MM & K's position as the leading provider of top quality independent advice on pay and reward." Founded in 1973, MM & K provides advice on strategic pay, performance linkage, share plan design, implementation and administration. www.mm-k.com

CONFERENCES & EVENTS

More than 70 people have signed up for the **Esop Awards** dinner in London on **Tuesday October 20**. Three finalists are vying for the accolade of 'Best International Employee Share Ownership Plan 2009 Award' winner in the main category - for companies with more than 1500 employees. The companies short-listed are Diageo; RSA

(formerly Royal SunAlliance) advised by Equiniti and finally SERCO, advised by Linklaters. SERCO's all-employee plan is administered by Equiniti. The winners and runners up will be announced during the Centre sponsored black-tie reception and dinner at the Oriental Club, London W1, at which the Guest of Honour will be Shadow Treasury minister Mark Hoban MP. Telecity, whose lead adviser is Capita Share Plan Services, will receive its award certificate for winning the Esop Award SME section for the second successive year. The 2009 entries were examined by a panel of judges led by Centre chairman Malcolm Hurlston. To book your place - or a full table for your organisation - at the dinner, please contact Anna Burgess, Centre Deputy Director, at 020 7436 9936 or email her at: aburgess@hurlstons.com.

Share schemes for SMEs conference – November 24: Bookings are building up for the Esop Centre's next London conference, to be held on Tuesday November 24, in association with the Genesis Initiative*. This one-day event will help small & medium size businesses (SMEs) set up and operate employee share schemes. Centre member law firm Travers Smith is hosting this conference in its HQ at: 10 Snow Hill, London, EC1A 2AL The programme will commence at 0845 hrs and will run until 1715. The speakers are: **Mahesh Varia**, Travers Smith; **Guy Abbiss**, Abbiss Cadres; **Colin Kendon**, Bird & Bird; **David Craddock**, D. Craddock Consultancy Services; **Catherine Gannon**, Gannons; **Maoiliosa O'Culachain**, Global Shares; **David Pett** of David Pett & Co.; **Robert Postlethwaithe**, Postlethwaite & Co; **Sara Cohen**, Lewis Silkin; **Alan Judes** Strategic Remuneration; MM & K and **Malcolm Hurlston**, chairman, Esop Centre. The Centre members' delegate fee to attend this event is £350 (+VAT), which covers lunch, tea and coffee during networking breaks, admission to conference sessions, and a bound delegate handbook. ***As a special incentive for Centre members, any second delegate you send to this event will only pay £250 – instead of £350***. Please contact Anna Burgess if you wish to co-sponsor or book this event. Anna's phone number is as above, or email her at: aburgess@hurlstons.com. *The Genesis Initiative speaks for 800,000 small enterprises.

Registered speakers for the **World Centre's Eleventh Global Employee Equity Forum in Davos** next February already include: **Jean-Nicolas Caprasse** of RiskMetrics Group; **Alan Judes** of Strategic Remuneration; **Sue Mellors**, Head of Financial Services at Diageo plc; **David Pett** of David Pett & Co.; **Paul Stoddart** of HBOS Employee Equity Solutions; **Malcolm Martin** of Martin Remuneration Consulting (Australia); **Kevin Lim** and **Julian Gardner** of RBC Corporate Employee & Executive Services. This event takes place on **Thursday February 4 and Friday February 5 at the Steigenberger Belvedere Hotel in Davos Platz**. Please visit the Centre website to review our Davos programme agenda details: www.hurlstons.com/esop and click onto 'events' and 'news.' Contact Fred Hackworth now by email: fhackworth@hurlstons.com if you wish to speak in Davos and/or you wish to co-sponsor part of the conference.

The World Centre's 22nd annual conference will take place in Cannes on Thursday **July 8 & Friday July 9** (2010).

INTERNATIONAL

Secrecy rules attacked in more offshore jurisdictions

Monaco launched a charm offensive in an attempt to persuade the world that it is not a haven for money laundering or tax evasion. The principality says that in its current bilateral financial transparency negotiations, it will go as far as, but no further than, what has been agreed in the two accords signed by Belgium and Luxembourg since the previous G20 summit last April. While it now seems prepared to hand over details of bank accounts held in Monaco by foreign nationals on a case-by-case basis - on request, it will not handover to foreign tax authorities wholesale lists of its foreign bank depositors, nor volunteer the size of their deposits. Will French president Nicolas Sarkozy – who wants to get tough with 'fiscal havens' - do a General de Gaulle over Monaco – ie surround the principality with tanks and start a blockade? The question is whether the French government regards Monegasque sovereignty as genuine, or simply a ruse, because if it's the latter, residency in Monaco would mean nothing and its property prices would collapse. In the front line are French citizens with bank accounts in Monaco, as the French Fisc wants to know why they have accounts there. Next in line are several thousand UK and US citizens who live there. Meanwhile, Austria got itself off the Organisation for Economic Co-operation & Development's grey list of countries which are not regarded as truly financially transparent. Governments from Liechtenstein and the Isle of Man to the Cayman Islands and Singapore have pledged to cooperate with foreign tax authorities. Luxembourg alone has signed more than 12 bilateral agreements on the same lines and Switzerland has initialled 13 agreements that will allow for 'full and effective' information exchange, including bank information. Other countries and territories have concluded or are negotiating new agreements. Almost 100 governments met in Mexico for the OECD's global forum on transparency and exchange of information. They focussed on how best to guarantee effective implementation of new international standards on transparency and the exchange of information for tax purposes, drawn up by the OECD and now endorsed by the UN and the G20. They discussed a plan to monitor each country's performance through a system of peer review. In theory, this would enable all signatory countries to ensure that each one was implementing the new international standards.

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