Vol 28 No 5 October 2014

it's our business

newspad of the Employee Share Ownership Centre

Royal Mail invites postal workers to join SAYE scheme

Part-privatised **Royal Mail (RM)**, which already boasts the UK's largest employee share ownership scheme, is launching a three-year SAYE-Sharesave scheme to complement its successful Share Incentive Plan (SIP).

Less than a year after the government awarded free SIP shares to almost 150,000 postal employees, RM sent formal invitation letters to all eligible employees – the overwhelming majority- inviting them to join its SAYE scheme.

To encourage the maximum level of participation among the *posties*, they were offered the maximum 20 percent option discount from the 450p market price on the last trading day before the launch – August 29. Hence in three years' time, participants will be able to buy RM shares, if they so choose, at the discounted option price of 360p per share.

The letter they all received said: "Royal Mail's SAYE is a voluntary tax-efficient cash savings scheme. It gives you the option in the future to buy shares in Royal Mail at a discounted price. We have set this option price. It is based on our share price before SAYE was launched on September 1 2014. It has been discounted by the maximum amount of 20 percent and is shown above = 360p"

The closing date for participation in the SAYE savings contract was September 18, but RM has so far refused to tell *newspad* what level of participation it has achieved among the workforce for the SAYE scheme. "I'm afraid we haven't yet disclosed the number of employees participating in SAYE," said RM spokeswoman Beth Longcroft.

The great plus about SAYE is that if the discounted option price is above the then prevailing market price at maturity in September 2017, participants can simply get their savings back, with a little bit more in interest on top.

However, accepting free shares is one thing, but agreeing to save in order to buy them is quite different. Nevertheless, one in ten postal employees– 15,000 – *bought* extra shares (on top of their free shares) when the IPO was launched last autumn.

During the SAYE offer, eligible employees were told: "If you are paid weekly, you can save between £1.25 and £25 every time you are paid, in multiples of 25 pence. If you are paid monthly, you can save between £5 and £100 every time you are paid, in multiples of £1. If you are paid weekly, you will save for 144 weeks. If you are paid monthly, you will save for 36 months. As shown below, these minimum and maximum saving amounts are the same for weekly and monthly paid employees. **Same minimum savings amount** 144 (weeks) x £1.25 = £180 36 (months) x £5 = £180 **Same maximum savings amount** 144 (weeks) x £25 = £3,600 36 (months) x £100 = £3,600"

*The man who guided his union to a landmark deal with Royal Mail (RM) management, in return for accepting part-privatisation – and the introduction of the UK's largest employee share ownership scheme – wants to change the employee benefit trust (EBT) rules so that 150,000 postal workers can enjoy a collective voice in the affairs of the company.

Dave Ward, deputy general secretary of the Communication Workers Union (CWU) told a European Commission backed Centre seminar in Florence that his union was working to change the RM SIP EBT in order to help give employee members a stronger say in RM affairs, including agm votes on executive remuneration and director appointments. It is

From the Chairman

Important strides were made in Florence when Dave Ward of CWU told the Centre's EU allies about successes for Royal Mail employees. Subsequently I have suggested to the pilots and Unite that they should ask for options as they support Monarch airline's bid to survive. This is where I came in, when the unions at Frontier airlines bid to rescue it using their esops in the 1990s. It would be good to believe trades unions are ready to play their part in employee ownership, in the UK as well as in the USA and Italy. We shall be pressing the new European Commission too to take an interest in options.....a measure within its competence.

Malcolm Hurlston CBE

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@esopcentre.com
www.esopcentre.com

understood that the CWU is in talks with its lawyers about if and how this could be achieved after encouragement from Centre chairman Malcolm Hurlston CBE who has long encouraged unions to see share schemes as an opportunity rather than a threat.

The CWU deliberately refrained from advising 150,000 postal workers to reject the 729 free shares each was offered as part of the IPO sale of 60 percent of the equity in RM. As the *posties* must keep their free shares within the SIP for at least three years – and five years in total in order to get the maximum tax advantages - the CWU has spotted a chance to increase its leverage within the company.

Mr Ward said: "We are seeking to amend the trust because we want the union to help run the trust ourselves, so that we can establish a collective voice for our members in the company's biz policies. We are talking to the company and the government about how this might take shape in future, though there would be more chance of achieving this were Labour to return to power. We should look in the long term to improve the links between employee benefits and, for example, people pensions."

He plans to use RM agms to flex CWU muscles as the biggest single shareholder in the company except the state's remaining 30 percent equity stake.

The CWU plans to pose questions to RM on the correlation between ceo/board members reward levels/rises and workers pay and about what new products the company planned to introduce.

As the Centre's guest, Mr Ward addressed the issue of '*Employee involvement in the privatisation of the Royal Mail – Good Practice'* segment of the programme at the study centre of Italy's second largest union, Confederazione Italiana Sindacato Lavatori (CISL).

He told more than forty delegates from six countries at the seminar that the legally binding agreement with RM management, which his union had achieved, had put industrial relations in a new footing because there could be no major changes in postal workers' working conditions unless the CWU agreed. In addition, the union had secured a nine percent pay deal for member '*posties*,' staged over three years and no loss of worker pension rights.

He explained that his union had made a deal, safeguarding postal workers' jobs and working conditions as the price for accepting the part-privatisation of RM.

The installation of the UK' largest employee share scheme at the Royal Mail last autumn did not involve riding roughshod over the lead trade union's concerns, Although pre-privatisation the CWU had received 85 percent support for industrial action on a 90 percent member turn-out, the union's intention always had been to get a deal, said Mr Ward.

He added: "We are looking to change the business structures of Royal Mail – we want union representatives on the key committees to help run the business. However, we cannot have union officials on the main board as that would generate conflicts of interest. We are negotiating on an RM commitment to a company charter – which would become part of the Articles of Association." It would include commitments to employment conditions at the high end of what's around in other deals and it would emphasise the social dimension of the six days a week letters and parcels service.

Asked about the destiny of the remaining 30 percent taxpayers' stake in RM, Mr Ward replied: "We oppose any further sell-off but if it is to happen, we want our employees to be offered more shares"

With Mr Ward at the seminar was Centre international director Fred Hackworth, who apologised for the absence of Centre chairman Malcolm Hurlston, CBE, who was speech-bound at his biennial symposium on credit and counselling (attended by the Federal Reserve and the World Bank) at Magdalene College Cambridge.

Mr Ward said he had no problem with high reward for significant business achievement, but had no sympathy for so-called success achieved largely through downsizing.

"This agreement has been achieved though industrial strength in the face of privatisation. Now our concern is to help push the biz forward – to ensure its survival – while upholding the social values and our members' living standards"

As part of the same European Commission backed project – *Helping Employee Participation to Boost Economic Growth* - the Esop Centre is organising the third and final act; an all-day event in London on **Friday November 28.** We are building a programme for this event – which is free of charge to the Centre's guests – and we hope to include ideas from Centre members on some of the following subjects:

The different types of employee financial participation currently available in UK based companies

UK examples of economic democracy – Are they local in focus? What are the welfare agreements and the role of the trade unions?

Case studies - ex-state sector mutuals – '*Spin-Offs'* - which may include: *MyCSP Ltd - a former state sector department which deals with civil service employee pensions and which has mixed public/ private and employee ownership; *Central Surrey Health - an employee owned social enterprise, spun out of the National Health Service (NHS) which provides therapy and community nursing services to 300,000 people and *City Health Care Partnership CHC - a co-owned *social business*, which was previously part of the NHS in Hull.

The effectiveness of public health mutuals in terms of efficiencies, absenteeism, employee sense of well-being, lower staff turnover etc.

Retaining social values in mixed ownership companies formed out of former state owned enterprises: Examples – Royal Mail and BT

Company succession using employee financial participation and its contribution to economic democracy - case history

Employee-owned companies (more than 50 percent employee owned) in the SME sector - how decision-making functions; role of the unions; example of direct industrial/commercial democracy?

New UK approaches to lending to Small & Medium sized Enterprises (SMEs), social investment funds, crowd-funding etc.

- Pooling more private capital for productive investments, e.g. through venture capital markets.
- Exploring and developing innovative ways of securing additional private financing for social investment, for instance through public-private partnerships.

If you would like to be involved with this event, please contact Fred Hackworth asap at: fhackworth@hurlstons.com to discuss your presentation. **Centre members** will be given preference, both for the speaker presentations and for seats in the audience. However only 40 places are available including no more than 20 from the UK.

Monarch unions urged to demand share options

Centre chairman Malcolm Hurlston CBE is urging Monarch Airlines' embattled trade unions to demand share options for all eligible employees.

Mr Hurlston wrote last week to Jim McAuslan, general secretary of the pilots' union BALPA and acting national officer Oliver Richardson at Unite, telling them that the arrival of a potential new buyer for the airline was an opportune moment for them to demand the issue of share options for the 3,000 strong workforce.

The union memberships at Luton-based Monarch have agreed to accept pay cuts and changes to conditions to help secure its future. About one third of the jobs were under threat at recently as last August. The company is in talks with investment firm Greybull Capital, with plans to transform it into a low -cost airline. It announced that staff including pilots had voted to accept major concessions on pay and terms and conditions. The changes affect all areas of the business and involve concessions of up to 30 percent in salaries, as well as changes to working patterns and other conditions.

The board of Monarch Holdings announced that Greybull Capital was the preferred bidder to acquire Monarch from the group's current shareholders.

Mr Hurlston wrote: In the context of your agreement with Monarch, you have an opportunity to benefit your members by asking for options. They would be free to members, inexpensive to the company and give participants a chance to share in the upside when it comes (no downside)."

Mr McAuslan, said: "Pilots and their colleagues have made major sacrifices to secure the future of this important British company, accepting lower pay and reduced terms and conditions within a restructured airline. We welcome the announcement that Greybull are moving towards securing their position as majority shareholders in Monarch. It is now time for the government to engage with all of the parties concerned and do everything it can to make this deal happen and help Monarch survive and thrive."

Oliver Richardson, national officer at Unite, said: "Our priority is the welfare and longer term job security of our members. Although the discussions over the past few weeks have been difficult and our members are sacrificing a lot, what is clear is that they remain committed to the future of Monarch and have voted accordingly. We will be seeking assurances and commitments from the new investors and company regarding future business plans and any impact they might have on our members."

2014 Awards reception & dinner: last orders

Few places remain for the **Esop Centre's** 2014 awards reception & dinner, sponsored by **Elian** (formerly **Ogier Fiduciary Services),** at the **RAF Club** in Piccadilly W1 - on **Thursday October 30.** This champagne reception and black-tie dinner will bring together more than one hundred guests – representing UK and international plan issuer companies and their employee equity advisers – to recognise the best in employee share ownership. It is the perfect way to celebrate the achievements of the year with clients, colleagues and peers.

The names of all the finalists for the various Award categories were announced in the July issue of *newspad*. A full list and further information can be found here *(website ref).*

The judges Robert Head of Pearson and Damian Carnell of Towers Watson met the chairman in London last week and chose the winners. The list will contain some surprises. The student of the year award was made by the Registrar on the basis of results.

Single seats: members £170, non-member issuer £185, non-member practitioner £225,

Tables of ten: members £1600, non-member issuer £1700, non-member practitioner £2000.

P*rices do not include VAT*.

The booking form can be downloaded from the awards dinner event page at www.esopcentre.com More than 90 tickets for this year's event have already been sold and as last year was a sell-out, don't wait: book your place(s) now.

For more info, and to reserve your seat contact the Centre: 65 Kings Cross Road, London, WC1X 9LW Email: esop@esopcentre.com Phone: +44 (0)20 7239 4971

Government accused of letting CSOP decline

Leading share scheme expert **Mike Landon** of remuneration consultants **MM & K** has accused the Coalition government of letting the once popular Company Share Option Plan (CSOP) wither on the vine.

“Unfortunately, the Government seems to be deliberately letting the CSOP decline. This is a shame because it is still the simplest and most flexible way of delivering employee share participation for companies which are too big to offer EMI,” said Mr Landon.

“The CSOP has fallen out of favour mainly because of a trend away from companies offering market value priced share options. Also the CSOP is no longer useful in remunerating senior executives because the £30,000 limit has been frozen since 1995.”

He explained in MM & K’s *Share Plans Update* how the government could help to reverse the downward trend in employee share ownership by bringing the CSOP into line with modern remuneration practice. “The government should allow CSOP options to be granted at a discount or with a zero exercise price and remove the requirement for CSOP options to be held for three years before they can be exercised with tax relief,” he wrote.

“Even without increasing the £30,000 limit, this would greatly enhance the usefulness of the CSOP and could increase the number of employee shareholders much more effectively than the widely discredited ‘employee shareholder status’ approach, which was introduced last year,” added Mr Landon.

He is among a group of Centre share scheme experts, led by chairman **Malcolm Hurlston CBE,** who helped save the CSOP from the Treasury axe two years ago. The group argues that CSOP is the best form of approved all-employee UK scheme for low-paid and part time employees – e.g. supermarket staff. They are inexpensive to run and employees do not have to pay anything in order to qualify for CSOP share option awards.

Mr Landon spoke out after reviewing official statistics showing that the number of UK companies who issued HMRC Tax Approved CSOP options fell from 440 in 2007-8 to just 290 in 2012-3. Over the same period, the number of employees who were granted CSOP options slumped from 65,000 to just 25,000 in the financial year ending April last year.

European Court hears UK challenge to EU bankers’ bonus cap

The UK Government’s legal challenge, seeking annulment of the Capital Requirements Directive IV (CRD4) provisions on bankers’ bonus caps, was heard for the first time by the European Court of Justice (ECJ) on September 8, reported lawyers *Freshfields Bruckhaus Deringer*. The cap applies to variable remuneration awarded to identified staff for “services provided or performance from the year 2014 onwards”.

The Advocate General’s opinion will be presented on ***November 20*** and could indicate the views of the ECJ ahead of its decision being released in early 2015. The case was heard by the Grand Chamber of 15 judges.

The government seeks to annul both (i) the bonus cap provisions and (ii) the delegated powers granted to the European Banking Authority (EBA) to determine and specify the criteria by which material risk takers are identified and to develop guidelines for the discount rate to be applied to long-term variable remuneration.

The UK government’s case is based on the following arguments:

The bonus cap has no proper legal basis in the Treaty on the Functioning of the European Union; the bonus cap is disproportionate and/or it would be more appropriate for any such action to be decided at a national level; the bonus cap has been introduced in a manner which breaches the principle of legal certainty; the assignment of certain tasks to the EBA and conferral of certain powers on the Commission is outside the remit of these institutions; the disclosure requirements in the Capital Requirement Regulation breach principles of data protection and privacy under EU law and - to the extent that the bonus cap must be applied to employees of institutions outside the EEA - it infringes the Treaty and the sovereignty of countries outside the EEA.

The ECJ asked the parties to focus their presentations on the first of the UK’s arguments (ie that the bonus cap has no legal basis in the Treaty). The Judge-Rapporteur and the Advocate General both asked questions on this issue and the Advocate General asked further questions on the extra-territorial effect of the bonus cap.

Counsel for the UK maintained that CRD4 should have been enacted under the Treaty provisions concerning social policy and Article 153 in particular (rather than Article 53 of the Treaty) and would then have been subject to the exception in these provisions for matters relating to pay (Article 153(5)).

Representatives of the EU institutions (Commission, Parliament and Council) maintained that Article 53 was the correct basis for CRD4, as it related to “improved risk management and financial stability”. They argued that the bonus cap had been introduced with these issues in mind and addressed banks in their capacity as ‘market stakeholders’ rather than employers. Counsel for the EU further argued that even if Article 153 had been the correct basis for the bonus cap, the exception would not have applied. They argued that the exception regarding pay had been interpreted narrowly by the ECJ in previous cases and that the exception applied only to fixing the level of pay (eg the minimum wage rules) and not to the bonus cap which set the ratio between fixed and variable pay. Counsel for the European Council further noted that member states retained discretion to apply a more stringent threshold for variable remuneration, and therefore that the bonus cap only affected the structure of pay, rather than fixing it at a particular level.

The Judge-Rapporteur and the Advocate General questioned counsel for the UK on why their case only sought to annul the bonus cap provisions. They

appeared to suggest that the UK government had been inconsistent in focusing its case on the cap and not on other rules which also related to pay structures (eg deferral and the clawback rules). No other judges raised any questions. However, the final ECJ decision will need to reflect the views of the majority of the Court.
The Advocate General announced that his Opinion would be presented on November 20. The Opinion is not binding on the Court, but will act as the springboard for its deliberations. The ECJ's judgment is expected around ***February next year***.
The UK Government's recent track record at the ECJ on challenges to EU-inspired financial regulation stands at zero - it has lost challenges on the financial transaction (Tobin) tax and short selling ban in the last 12 months.
Certain banks have already responded to the introduction of the bonus cap on variable remuneration by granting annual share allowances to key employees. The EBA is investigating this practice and whether treating such allowances as fixed pay is compatible with the bonus cap. Commissioner Barnier urged the EBA to share the results of this investigation by the end of September at the latest. He emphasised that "it is important to show a collective proactive stance on this important matter and address the claims made that the spirit – if not the letter – of Union law is being disregarded."

EMI options enjoy fresh surge
The value of share options granted through tax-approved enterprise management incentive (EMI) schemes has risen by a quarter in the past year from £200m to £250m, according to Centre member law firm **Pinsent Masons**. Shares acquired since April 6 2012 have qualified for entrepreneurs' relief on capital gains tax, even if the employee does not meet the usual requirement of holding a minimum five percent stake in the company. Employees with EMI share options will only pay capital gains tax of ten percent when they sell their shares, instead of the standard rates of 18 percent or 28 percent, provided the shares are sold at least a year after the option is granted.
The average value of share options granted per employee via EMIs has hit the highest point since the start of the scheme, increasing by 25 percent from £11,100 to £13,900 last year. Matthew Findley, partner and head of share plans and incentives at Pinsent Masons, said: "EMI is an extremely tax-efficient way for employees to buy shares in the company they work for. This can be a valuable incentive when recruiting new staff and can be used as a means of motivating existing employees by encouraging them to stay with the company and giving them more of a stake in its performance. The government is very keen to promote higher levels of employee share ownership because of the positive impact it can have on company performance and how it can help strengthen small businesses in particular."
In order to qualify for the EMI scheme, a company must have gross assets below £30m, be independent and have fewer than 250 full-time employees.

On the Move
A US-based Centre member has changed its business name. "We recently revised the name of our firm from Butcher Joseph Hayes to **Butcher Joseph & Co**," said Rose Newport, director of marketing. "We're a middle market investment bank helping clients complete strategic transactions focused on maximizing long-term value. Our partners were born from big firms. We're known for our deep experience surrounding eso transactions, a proven process and an extensive network of professionals with whom we work. Collectively our team has closed more than $10bn in transactions and raised the financing for more than 160 deals. We have advised on more than $5bn in eso structured transactions—we raised more than $300m to finance eso structured transactions in 2013 alone. Contact Rose for further detail at: *Rose Newport* Director of Marketing, Butcher Joseph & Co. 101 S. Hanley Rd., Suite 1450 St. Louis, MO 63105. Tel 314.549.4045 (o) 314.497.1267 (c)

Centre awards dinner sponsor, **Ogier Fiduciary Services** has re-branded as **Elian** following a management buyout from Ogier Group in June. Led by ceo Paul Willing and the management team, Elian hope to raise client satisfaction using the additional investment now available following the MBO, having developed a comprehensive growth strategy and a well-funded acquisition strategy. Elian employs 500 people across 10 offices following 15 years of back-to-back growth since the launch of Ogier Fiduciary Services in 1999. For more details contact Paul at paul.willing@elian.com +44 (0)1534 504234 www.elian.com

Mark Vanderpump, ex JPMorgan Cazenove, and now head of corporate dealing at Centre member **Equiniti** has informed *newspad* of his team's new contact co-ordinates at Equiniti Corporate Dealing, Suite 1/1, 3 Minster Court, Mincing Lane, London EC3R 7DD. The group email address is: corporatedealingservices@equiniti.com. Mark can reached on 020 7469 1958 and Mark.Vanderpump@Equiniti.com. The e-address for Ian Cox is in the same style, his phone number being one digit different, ending in 1957.

Chancellor George Osborne announced that his **Autumn Statement** would be made on December 3. Business, charities and the public can submit their views by email on what it should contain to: autumnstatementrepresentations@hmtreasury.gsi.gov.uk
The Treasury published guidance on the correct procedure for submitting a representation. To allow for full consideration in advance of the Autumn

Statement, any submission should be sent by October 17. See http://deloi.tt/1nRM1FQ

Bonus corner

Nine of the UK's 100 biggest listed companies were forced to issue clarifications to their boardroom pay plans before their annual meetings, as they attempted to avoid revolts by large City investors, revealed *The Guardian*. The companies – **Aberdeen Asset Management, Compass, GlaxoSmithKline, HSBC, IMI, Imperial Tobacco, Pearson, Tui Travel** and **Unilever** – all published updates on their remuneration policies to clarify how they intended to pay their top executives.

The list of statements, published on the website of the **Investment Management Association**, includes public clarifications issued by a total of 32 companies since a new vote on remuneration policies was introduced on October1 last year. The IMA merged with the investment arm of the Association of British Insurers in June and this included the transfer of the ABI's institutional voting information service (IVIS), which publishes alerts on corporate governance issues at companies.

This agm season was the first in which investors received a vote on remuneration policies. These set the process by which a company intends to hand out bonuses over the next three years. The clarifications issued by the FTSE 100 companies came because they were keen to avoid having their remuneration policy thrown out, since the vote is binding, unlike the existing separate vote on remuneration reports, which is merely advisory.

Andrew Ninian, the IMA director, said the clarification statements were a "good thing", adding: "It shows the process is working and shareholders and companies are working together." Many of the clarifications involved the use of discretion of boards in setting bonuses, a feature of pay deals that makes shareholders uneasy and were not all confrontational situations.

Outside the FTSE 100, the engineering company **Kentz** was the first company to have its policy voted down when 51 percent said *No* to the proposals at the agm in May. According to the IMA's website, it did not issue a clarifying statement. One which did, the insurer Hiscox, still had a 42 percent vote against its remuneration policy but this was not enough to block it.

Some of the FTSE 100 companies which did issue statements still faced protests: about 20 percent of investors voted against the remuneration report of HSBC, as did 14 percent at Aberdeen Asset Management. Companies do not need to put their remuneration policy to the vote next year – unless it was voted down during this season – and experts are still assessing the impact that it has had this year.

Sarah Wilson, the chief executive of advisory body **Manifest**, questioned whether the binding vote had been used by investors. She said that the shareholder spring in 2012 – before the policy vote was introduced and when a record number of remuneration reports were voted down – had been more important. Wilson pointed to data showing that pay awards for company bosses had fallen by seven percent since 2012, following a five percent fall the previous year.

The FTSE 100 company to suffer one of the most bruising shareholder revolts this season was the up-market fashion business **Burberry**, where almost 53 percent of investors voted against its remuneration report in protest against pay awards to its new boss, Christopher Bailey. About 16 percent of investors voted against the remuneration policy, which is binding on the board.

Despite investor group **Pensions & Investment Research Consultants'** concerns about **Diageo'**s remuneration plans ahead of the agm, a revolt failed to materialise, with early proxy results showing 97 percent of voters backed the report of last year's pay and the policy for future years. Under its latest remuneration report, drinks group ceo Ivan Menezes is set to be paid £7.7m for the year to the end of June, including long-term share awards from his current role and for his previous job as chief operating officer. His predecessor, Paul Walsh, will be awarded £6.4m for his final three months at the firm.

Almost a third of shareholders in online betting exchange **Betfair** voted against pay and bonus arrangements for the company's directors. Corporate governance group ISS had recommended investors vote against Betfair's boardroom pay deals, arguing the performance requirement for one long-term, share -based bonus had been made easier "contrary to standard market practice". Around 24m shares, 32 percent of votes cast, were against Betfair's remuneration report, with a further 2.2m vote abstentions underlining the unpopularity of the group's executive pay deals. Last year, only 4.6 percent of shareholders voted against the pay report.

A spokesman for Betfair said: "The board understands that it is the policy of certain shareholders to oppose any amendments to targets and discussions with those shareholders voting against this resolution highlighted the change to the 2011 [long-term award] as the cause of opposition. The current management does not participate in this scheme and the remuneration of current management was not raised in any of these shareholder discussions."

Before the meeting, however, there had been separate criticism from another corporate governance group Pirc, which had taken issue with pay arrangements for ceo Breon Corcoran, suggesting he could be entitled to a bonus of up to 380 percent of his salary. It described performance benchmarks as inadequate and suggested share rewards were released too quickly. Corcoran's pay package was worth £1.28m for 2014, according to the annual report, down from £3.7m the previous year, when he joined the business. His 2013 remuneration was boosted by a *golden hello* of restricted share awards and payments to cover his relocation from Ireland. A Pirc report told investors: "Awarded [Betfair] ceo pay is not considered in line with the company's financial performance over the last five years." Pirc had recommended a binding vote against Betfair's boardroom pay policy, but investors instead chose to target the resolution on the company's remuneration report – a milder protest as the result is not binding on the board.

Network Rail senior executives are being asked to donate their *retention* bonuses to charity because of the company's alleged poor safety record at level-crossings. John Mann MP is asking NR executives to hand over their bonuses after it emerged that they were leaving the company. His demand came after the death of four-year-old Emma Lifsey when the car she was travelling in collided with a train on a level crossing near Doncaster. An investigation into her death found that the warning lights on the crossing were not bright enough. Mr Mann said of the decision of Network Rail (NR) chiefs to leave the company: "It was unacceptable in the first place that taxpayers paid NR executives £300,000 to stay in their jobs. Now they have pocketed the money and are leaving anyway. One such is Robin Gisby, head of operations and safety. Considering that NR was severely criticised by a Parliamentary Select Committee this year for its poor safety record at level crossings it is particularly inappropriate for him to retain his bonus." Mr Mann added: "I am calling on these executives to donate their bonuses to a charity which provides support to those who have lost loved ones to accidents on level crossings." Improvement works have since been carried out on the level crossing. NR said: "The retention bonuses referred to were agreed in 2012 to ensure continuity of leadership at Network Rail during the final years of the 2009-14 funding period. Having stayed in role for the remainder of that period - which ended on March 31 2014 - the three eligible executive directors qualified for the payment."

Mining giant **BHP Billiton** has introduced a pay freeze for its ceo and senior management due to adverse trading conditions.

The saga of **Sports Direct's** remuneration policy, as played out at the agm, is worth looking at, said former Centre member Lawrence Green, now at lawyers *Squire Patton Boggs*. The important votes were the new binding vote on the forward-looking directors' remuneration policy and the vote on the re-election, as director, of the chair of the remuneration committee, he said. **Mike Ashley** apparently had taken the view that he wouldn't be taking any form of reward from Sports Direct for the duration of the policy, meaning that he was entitled to use his majority voting power to back it. The result was that the binding remuneration policy vote was carried with a handsome majority (87.5 percent in favour). However, excluding Mike Ashley's votes from the calculation, the result was closer, with only 62.5 percent in favour. This followed Mike Ashley's decision in July to rule himself out of participation in the controversial Sports Direct 2015 bonus share scheme. The scheme was originally designed with Mike Ashley in mind (with high rewards but with **very** demanding performance targets) but will now be available for the other executive directors and employees. It was approved by a majority of shareholders in July (when Mike Ashley did not vote). Sports Direct will have to consider whether a 'significant' percentage of votes were cast against its Remuneration Policy. There is no set percentage for this. The GC100/Investor Group guidance suggests 20 percent as a rule of thumb but makes it clear that a lower percentage may be appropriate for some companies. Unless Sports Direct courts controversy by deciding that the dissenting votes were not significant, next year's Remuneration Report will need to set out the reasons given by shareholders for the negative votes and explain what the company has done about those issues.

Jiang Jianqing, chairman of **Industrial & Commercial Bank of China (ICBC)** earned less than two percent of **Jamie Dimon**'s total reward last year while reporting twice the profit of **JPMorgan Chase**. Instead of a bonus however, Jiang is poised for a pay cut, said *Bloomberg News*. China's government said it will reduce salaries for executives at state-owned companies because 'unreasonably high' incomes had become a source of public discontent. The biggest banks have pledged to implement the plans, part of President Xi Jinping's campaign to bolster support by tackling government waste and corruption. The risk is that lenders will bleed talent just when China needs skilled managers to grapple with interest-rate deregulation, an explosion in shadow banking and rising levels of soured credit. While banks plan to test stock incentives for employees, the roll-out of such measures may be slow and their scope limited, according to Guotai Junan Securities and Changjiang Securities. The nation's five largest state-controlled banks -- ICBC, **China Construction Bank Corp, Agricultural Bank of China. Bank of China** and **Bank of Communications Co.** paid their combined 1.7m employees an average 230,300 yuan ($37,500) in salaries, bonuses and benefits in 2013, according to data compiled from their annual reports. That's one-third less than at Beijing-based **China Minsheng Banking Corp.** the country's only privately owned listed lender and one of 12 mid-size national banks with mixed ownership, known as joint-stock banks.

The gap was even larger when compared to foreign financial institutions: **JP Morgan** spent an average of $122,700 in employee salaries and benefits globally, while at **HSBC Holdings**, the largest European bank, the amount was $71,400, according to data compiled by *Bloomberg*. **Citigroup's** locally incorporated China unit spent an average of about 363,000 yuan, or $59,000, on employee reward last year, including salaries, bonuses, stock incentives and benefits, according to its annual report. ICBC's Jiang, 61, earned 2m yuan (€326,000) last year in salary, bonus and benefits as head of the world's biggest bank by assets and profit. That's 1.6 percent of the $20m in total compensation for Dimon, 58, who is chairman and ceo of JPMorgan, the largest U.S. lender by assets. ICBC, based in Beijing, declined to comment on its outlook for pay and staff retention.

The salaries of the heads of banks and so-called central state-owned enterprises may be reduced by as much as 70 percent and capped at 600,000 yuan, or less than $100,000, *Caijing* magazine reported, citing people it didn't identify in the ministries of finance and human resources. The cutbacks at state-owned enterprises involve bans or restrictions on perks such as cars, club memberships, golf and 'physical therapy', the government said.

Agricultural Bank's President Zhang Yun said that the Beijing-based lender will "unswervingly support and strictly implement" any pay cuts, a position echoed by the leaders of other state-run banks. Zhang was paid 1.79m **yuan** in 2012. His 2013 compensation is yet to be disclosed. Bank of China Chairman Tian Guoli got 1.36 m yuan for his first nine months at the Beijing-based lender after joining in April 2013. The pay-cut plans come as the government pledged to improve incentives at state-owned enterprises, reduce state ownership and hire top executives from outside government. Bank of Communications, the Shanghai-based lender partly owned by HSBC, said it wanted to be the first to introduce stock incentives when China lifted a ban imposed in 2008 on such compensation. Caijing reported that Bank of Communications and Bank of China may be selected for a trial.

Wang Yichuan, a Wuhan-based bank analyst at Changjiang Securities, said staff may find that stock incentives do no more than offset salary cuts. "It's unrealistic to expect employee stock incentives to offer any meaningful lift to bankers' pay levels," said Richard Cao, a Shenzhen-based analyst at Guotai Junan Securities

CONFERENCES

GUERNSEY: October 3

This is your last chance to register for the annual ESOP Centre/ Society of Trust & Estate Practitioners (STEP), Guernsey seminar, which boasts an exceptionally strong speaker line-up. The event takes place at the **St. Pierre Park Hotel** (St. Peter Port) on **Friday October 3** from 9am-1pm followed by discussions over lunch. It presents an excellent learning and networking opportunity for all those with an interest in share schemes and employee benefit trusteeship. The speakers will share their knowledge and insight across a range of topics as part of this CPD accredited course. The programme includes:

* Employee share schemes: the flexible solution to commercial challenges (**David Craddock, David Craddock Consultancy Services)**

* Consultation update - employee share holding vehicle, marketable security and internationally mobile employees (**Stephen Woodhouse, Pett Franklin & Co. LLP)**

* Funding share and share option awards: should companies change their policies? (**Mike Landon, MM&K & Andrew Cooper, RBC)**

* The new Employee Ownership Trust (**Graham Muir, Nabarro**)

* Legal update for trustees (**Alison MacKrill, Carey Olsen & STEP Guernsey**)

Visit the event webpage **http://tinyurl.com/qxlsu8p** for further programme details and to view speaker biographies. Registration opens at 8:30am and the presentations will take place between 9am and 1pm. Morning/mid-morning refreshments will be provided and the presentations will be followed by a networking lunch.

Attendance prices: *3 for 2 offer (buy three tickets, get the cheapest free)*

Centre/STEP Members: £295 Non-Members: £425

To make a reservation, act now by emailing: esop@esopcentre.com with delegate names and contact details or call 0207 239 4971.

DAVOS: Feb 5 & 6 2015

Only two speaker slots remain for Centre's **16th Global Employee Equity Forum,** which takes place at the **Hotel Seehof,** in **Davos Dorf,** on **Thursday February 5** and **Friday February 6** next year. A dozen speakers to date have confirmed their presentation topics. Among the highlights will be a share plan case study to be given by **Tony Llewellyn** and **Charlotte Caulfied** from FTSE 250 company, **Imagination Technologies**. The key issue here is how a high technology company, dedicated to employee share ownership, copes with a very volatile share price. Another slot to watch will be **Fred Whittlesey** of **Compensation Venture Group (US)** who will reveal latest US executive reward trends and to what extent performance pay rules the roost in corporate US today. The increased regulation being faced by EBT trustees will come under the spotlight in a joint presentation delivered by **Katherine Neal** of **Ogier Legal** and **Donna Laverty** of **Elian (Ogier Fiduciary Services).** They will discuss: **Employee benefit trusts - are current structures being undermined?** (*New challenges for offshore trusts – with case studies*) Other speakers include: **Alan Judes** of **Strategic Remuneration; Jeremy Mindell** of **Primondell; Justin Cooper** of **Capita Asset Services; Mike Baker & Kevin Lim** of **Solium; David Pett** of **Pett, Franklin & Co.** and **Alasdair Friend** of **Baker & McKenzie. Paul Anderson of Bedell Group** will chair the trustee panel session.

Other prospective speakers and conference sponsors should contact Centre international director Fred Hackworth asap (*see co-ords below)* to discuss the

slots still available for this two-day event. Our new host, the four star Hotel Seehof is less than 100 metres from the Parsenn funicular and ski lifts. The Seehof boasts a Michelin starred restaurant.
The new deal obtained from the Seehof has enabled the Centre to *reduce substantially* attendance prices next year for **early bird bookers before October 31.** Member speaker package prices at **GBP 855** will be **GBP 100 cheaper** than last February's, while the high standard of facilities and hospitality that members have come to expect from Davos are being maintained The smallest bedrooms we will offer in the Seehof will be $25m^2$. The Davos accommodation and conference package fees, on which *no sales tax is payable,* are:

Speakers
Service providers GBP **855** Plan issuers GBP **575**

Centre member delegates
Service providers GBP **975** Plan issuers GBP **645**

Non-member delegates
Service providers GBP **1,475** Plan issuers GBP **695**

The Davos 2015 package includes two nights' accommodation (February 4 & 5), with breakfasts and lunches provided, in the Hotel Seehof (www.seehofdavos.ch) plus admission to all conference sessions, the annual cocktail party and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. The Centre's international committee will meet on Thursday after the late afternoon conference session. Contact Fred to register your interest in attending: fhackworth@hurlstons.com.

Revised Corporate Governance Code

The **Financial Reporting Council (FRC)** published a revised Corporate Governance Code, which will apply to accounting periods starting from October 1 2014 reported Centre member **Linklaters.** Click here for a copy of the Code and related documents and here for Linklaters' News Alert of April 30 on the changes which the FRC had proposed. The revisions to the Code cover a number of areas, including:

Performance adjustment and claw-back

The most important change is the requirement to include provisions that would enable performance adjustment or post-vesting claw-back for executive directors' variable pay (bonuses and long term incentives) and specify the circumstances in which remuneration committees would consider it appropriate to act. The FRC has not set out any circumstances and removed the previous "in exceptional circumstances of mis-statement or misconduct" suggested trigger, so companies can decide what would be appropriate for them.
Most companies already have in place provisions for withholding pay in certain circumstances, but far fewer have anything on clawing back payments already made. They will now need to make some difficult decisions relating to issues such as trigger events for claw-back, how long the claw-back risk should last, how to structure variable deferred pay to ensure ability to withhold or recover sums in practice, and managing shareholder expectations. They will need to evaluate the likely impact on motivation where remuneration may be recovered long after payment.

Remuneration policy

The Code has been amended to make it clear that remuneration committees are responsible for ensuring that remuneration policies must be designed to deliver long-term benefit to the company. The much maligned Code wording on the need to "attract, retain and motivate" directors, which was seen as introducing a different objective for pay policy, has been removed. Performance-related elements of pay should be 'transparent': the FRC expects companies to set and report on targets which do not encourage excessive risk taking and over which the committees have effective control.

Shareholder engagement

This proposal has been clarified to exclude withheld votes. The requirement is now that, if the board consider that a significant proportion of votes have been cast against any resolution, *when announcing the agm results*, the company should explain its proposed action to understand the reasons for the vote. The FRC state that this is about changing behaviour so companies explain how they intend to engage with shareholders to assess their concerns. This is not about setting out how companies intend to respond to the concerns; no doubt the FRC recognise that timing would not allow for this.
The Code applies to all listed companies, including overseas companies (which are not bound by the new remuneration report regime). Companies should review their bonus and incentive plans and consider whether any performance adjustment or claw-back provisions should apply. It may be possible to combine claw-back with post-vesting holding periods, but this will require careful consideration. The changes to the Code will put greater pressure on remuneration committees to design appropriate variable pay for directors, with reference to evolving best practice and investors' expectations, added Linklaters. Since this requirement will be within the 'comply or explain' regime of the Code, to the extent that committees decide not to introduce claw-back, they should be able to demonstrate clearly to shareholders how they achieve alignment of long-term success of the company with pay design in other ways. For queries, please call Graham Rowlands-Hempel, Alex Beidas, Mirit Ehrenstein.
The Centre's high table dinner for Stephen Haddrill, ceo of the FRC, was postponed because it clashed with the announcement. It will now take place on Thursday **November 27** at the RAF Club. Two seats are still available. Contact jwigzell@esopcentre.com
On July 30 this year the **Prudential Regulation Authority (PRA)** published a policy statement

announcing the revised claw-back obligations which will apply to PRA-regulated firms in remuneration levels one and two following the earlier claw-back consultation paper published in March 2014. The changes come as regulators in both the UK and Europe focus on the rights of banks to require repayment of bonuses in the light of a number high-profile controversies, said lawyers *Norton Rose Fulbright.*

Following the amendments to the PRA Remuneration Code which is set out in Chapter 19A of the FCA's Systems and Controls Handbook, all variable remuneration (both short and long-term, cash and non-cash) awarded to material risk takers on or after January 1 2015 must be subject to ex-post risk adjustment through combined malus and claw-back provisions:

*At least 40 percent must be deferred and at risk of downward adjustment through malus provisions for at least three and up to five years, with amounts vesting within the applicable deferral period no faster than on a pro-rata basis.

*Both deferred and undeferred elements of all variable remuneration must be subject to claw-back provisions for a period of seven years during which, if relevant circumstances arise, an amount corresponding to the variable remuneration awarded must be paid back to the company by the individual.

*The beginning of the claw-back period is measured from payment for any undeferred element and for any deferred element from award (i.e. the beginning of the deferral period).

The particular circumstances in which firms are required to provide for claw-back are where:

*there is reasonable evidence of employee misbehaviour or material error; and/or

*the firm or relevant business unit suffers a material failure of risk management, taking into account when it arose, the proximity of the particular employee and level of responsibility.

Following consultation the PRA recognised the need to limit requirements to pay back remuneration to serious individual misconduct and risk failure, whereas the wider malus provisions are triggered where the firm or relevant business unit suffers a material downturn in its financial performance (without individual culpability), as well as for individual misconduct and risk failure as set out above. The revised rule requires firms to "make all reasonable efforts" to recover an appropriate amount, with the policy statement acknowledging that firms are able to take a proportionate approach based on the assessment of individual cases.

The policy statement does not require that behaviour leading to claw-back should be the subject of regulatory investigation or sanction and so the focus is on a firm's internal investigations and conclusions. In addition, whilst the policy statement clarifies that the PRA believes claw-back is most appropriate in circumstances involving individual culpability, it may be difficult in practice to distinguish between an individual's misbehaviour and an organisational cultural failure.

Where incentives have been awarded, should it be the value of the incentives at the time of award, or at a later date such as vesting or when the claw-back provisions are triggered? Should amounts be recouped on a gross or net of tax basis? Firms will need to ensure that the relevant documentation specifies how the requisite amount is to be determined.

Given that firms may need to claw back amounts which were paid several years previously and are likely to have been converted into cash and spent, it is vital to ensure that claw-back provisions are both enforceable and operable in practice. Firms should ensure that: claw-back terms are explicit and agreed with the executive before the entitlement to payment or award arises; the agreed terms include mechanics for automatic recoupment from as wide a variety of sources as possible, including reducing or cancelling other outstanding, unvested awards and the right to deduct the requisite amount from any salary, bonus or other cash amounts due.

It may be particularly difficult to enforce recoupment from an individual who has left and so firms may consider whether it would be desirable to require departing executives to place any money or share awards in escrow until the claw-back rights fall away.

As well as the new claw-back provisions, the PRA and FCA announced a number of proposals designed to further strengthen the alignment of risk and reward, including: extending minimum deferral periods to seven years for senior managers and five years for other material risk takers; the possibility of extending the claw-back period by up to three years for senior managers if, at the end of the normal seven year period, internal or external investigations are underway which could potentially lead to the application of claw-back; and potential approaches to ensuring that buy-out arrangements do not undermine the impact of the claw-back obligations.

KPMG LLP's unit in the Netherlands is limiting board members' bonuses and claw-back pay for partners, acting on a plan drawn up by former **ING Group** ceo Jan Hommen. His compensation model, approved by the accounting and consulting firm, means board members will receive a bonus of a maximum of ten percent of fixed salary and are no longer eligible for profit shares, the company said in a statement on its website. A third of variable profit payments for the firm's audit partners will be retained each year to be released after six years. The firm, a subsidiary of KPMG Europe LLP, is reviewing its governance and compensation models after regulatory probes revealed flaws. Partners in both the audit and advisory units of KPMG in the Netherlands will be subject to claw-back measures.

Stonking tax reliefs for EOT companies

The Treasury has introduced generous new tax reliefs for companies majority owned by the new Employee

Ownership Trust EOT), reported **Pett Franklin & Co.** Schedule 37 (which inserts new chapters of the TCGA 1992 and ITEPA 2003 and makes changes to other legislation), provides for two new exemptions from tax relating to a company of which a controlling interest is acquired within a single tax year by an EOT which satisfies certain restrictive requirements. These are: (a) a complete exemption from capital gains tax (CGT) on a sale of shares to the trustee in that tax year; and (b) exemption from income tax on bonuses of up to £3,600 per tax year paid by a company owned by such an EOT to all qualifying employees on a 'same terms' basis

The exemption from CGT on a sale of shares to an EOT took effect in regarding qualifying disposals by persons other than a company made to an EOT on or after April 6 2014. The income tax relief takes effect in relation to bonus payments made on or after October 1 2014.

Notwithstanding that if the trust has a corporate trustee the company would fail the independence requirement for granting EMI options, making share awards under a SIP, or granting CSOP or SAYE share options, that test will, from October 1 (or possibly sooner in the case of EMI options), be deemed to be satisfied if the company is more than 50 percent owned and controlled by such an EOT. It follows that a company owned by an EOT may grant EMI, CSOP or SAYE share options, or award shares under a SIP, albeit (to avoid any claw-back charges) only over shares not comprised in the trustees' controlling interest.

An EOT must be drafted so as to provide that the dispositive powers of the trustees can never be exercised so as to apply the trust property: (a) otherwise than for the benefit of all eligible employees on the same terms; or (b) by creating a trust, transferring property to another settlement; or (c) making loans.

*Pett Franklin & Co. has settled a form of Employee Ownership Trust deed and ancillary documentation which is offered for sale to other professional firms with, or without, supporting advice and expertise. If advisers or clients would like specialist help and assistance in considering whether and, if so, how to convert to a company and controlled by an EOT, or if the desire is to secure the new CGT relief, Pett Franklin & Co. would be pleased to assist on a disclosed or undisclosed basis.

OECD publishes BEPS action plan

The OECD released (Sept 16) its first recommendations for a co-ordinated international approach to combat tax avoidance by multinational enterprises, under the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) designed to create a single set of international tax rules to end the erosion of tax bases and the artificial shifting of profits to jurisdictions to avoid paying tax.

Companies including **Google, Amazon** and **Starbucks** are in the firing line for their use of offshore jurisdictions to drive down their UK tax liabilities. Such companies have been using transfer pricing which, some claim, has the effect of mitigating their liabilities. This method involves multinational corporations to value and purchase goods and services moving across international borders from *within* the group's corporate entities – one to another. An 'arm's length' principle is usually applied to ensure the transaction is made at market value, but there have been questions raised over whether all companies do so in practice.

Unusually for tax policy matters, the OECD's raft of recommendations to curb tax avoidance by multinational companies appears to have the teeth required to do so, claimed *Accountancy Age.* "Chief among the suggestions to deal with the digital economy is to deny treaty benefits to businesses taking advantage of double taxation arrangements, which can result in the precise opposite - what the OECD is calling double non-taxation. Similarly, it proposes to prevent 'hybrid mismatch arrangements' - whereby the difference in the tax treatment of an entity under the laws of two or more jurisdictions is exploited to drive down tax bills - by adopting a linking rule between the payer jurisdiction and payee's, aligning their tax outcomes and eliminating any mismatch."

The first seven elements of the Action Plan focus on helping countries to:

- ensure the coherence of corporate income taxation at the international level, through new model tax and treaty provisions to neutralise hybrid mismatch arrangements
- realign taxation and relevant substance to restore the intended benefits of international standards and to prevent the abuse of tax treaties
- assure that transfer pricing outcomes are in line with value creation, through actions to address transfer pricing issues in the key area of intangibles
- improve transparency for tax administrations and increase certainty and predictability for taxpayers through improved transfer pricing documentation and a template for country-by-country reporting
- address the challenges of the digital economy
- facilitate swift implementation of the BEPS actions through a report on the feasibility of developing a multilateral instrument to amend bilateral tax treaties *and* counter harmful tax practices.

The OECD recommendations will be a key item on the agenda when G20 finance ministers next convene at a meeting hosted by Australia's Finance Minister Joe Hockey on *September 20-21 in Cairns, Australia.*

Chairman of international tax practice network *Taxand* Frederic Donnedieu said multinationals should be concerned the OECD action plan "legitimises the aggressiveness we have already seen from tax authorities towards taxpayers, particularly in areas such as transfer pricing." However, he warned "Obtaining broad international agreement will not happen easily, as many countries fight to maintain their competitive advantage which attracts both employment and investment". Despite the slow progress, practitioners have noted there has been little watering-down of the proposals.

"The first part of the OECD's ambitious package has been delivered on time and intact. The scale and scope of change surpasses what many people had anticipated at the outset," said **PwC** tax partner Richard Collier. "The impact on businesses will depend partly on how the rules are implemented by tax authorities across the world. If tax authorities take an iron fist, standard trading structures could be affected, regardless of any tax avoidance motive."

The proposed measures were agreed after a transparent and intensive consultation process between OECD, G20 and developing countries and stakeholders from business, labour, academia and civil society organisations. These recommendations may be impacted by decisions taken over the remaining elements of the BEPS Action Plan, which are scheduled to be presented to G20 Governments for final approval in 2015. At that point Governments will also address implementation measures for the Action Plan as a whole. For further information on the OECD/G20 Base Erosion and Profit Shifting Project, including an Explanatory Statement, a background document, FAQs and the first deliverables to the G20, go to: www.oecd.org/tax/beps-2014-deliverables.htm.

Ireland

The Companies Bill 2012 is expected finally to be enacted this year, at which stage it will consolidate and reform – in some cases quite radically – Irish company law. For the most part the Companies Bill simply restates the existing law without changes. However the Companies Bill contains reforms in some areas, including those which affect the operation of employee share schemes, said lawyers *A & L Goodbody*.

The good news is that there is now a *de minimis* threshold which has to be reached before a notification of an interest in shares is required. This exception applies where the interest in respect of the shares is less than one percent of the share capital of the company, or where the shares or debentures do not carry a right to vote at general meetings except in special circumstances.

Thanks in part to the submissions of the IPSA and the business committee of the Law Society, the *de minimis* threshold now applies to all aspects of notification of an interest in shares in a company including the grant and exercise of an award. Where the director or secretary acquires shares or debentures, the time period for notification has been extended from five to 30 days and the form of notification has been simplified. These reforms should lighten the administrative burden on companies and their officers regarding such disclosures.

Under existing legislation there is an exemption from the requirement for shareholders to authorise the allotment of shares, where an employee share scheme is involved. Unfortunately, this exemption has not been carried through in the Bill. In practice this means that sufficient authority will need to be obtained (either via the constitution of a company or specific shareholder's resolution) to allow the directors to allot shares or grant options over them. The status quo remains in relation to pre-emption rights i.e. they shall not apply in relation to an allotment of shares pursuant to an employee share scheme.

Under existing legislation it is an offence for a director of an Irish company to buy a right to call for delivery at a specified price, at a specified time, of shares of a company in which he/she holds office, where the shares in question are listed. This had meant that a director's awards had to be fulfilled by newly issued shares in order to fit within an exemption in the legislation. This provision has not been carried through in the Companies Bill. This is a positive reform and means that awards to directors in listed companies can now be made in respect of existing shares, and not just newly issued ones.

Sometimes private companies use a share buy-back to provide liquidity to employees who have acquired shares under an employee incentive scheme so that employees may realise value for their shares. The Bill does not go as far as the reforms introduced in the UK in 2013 which apply to buy-backs under employee incentive schemes; however it does contain some positive reforms. For example a contract for the purchase of a company's shares will no longer need to always be authorised by special resolution: it will be possible for the authorisation of the purchase to be provided for in the company's constitution, or in the rights attaching to the shares in question. In practical terms this means the company can forward plan to provide for buy-backs and this will negate the requirement to obtain approval from shareholders at a general meeting.

The requirement for 21 days' display of the contract to buy back the shares at the registered office has been removed. These reforms should add flexibility to the buy-back regime, and provided that a company has sufficient distributable reserves to carry out the buy-back, may mean it being utilised more frequently.

Under existing company law there is a carve-out for financial assistance for the acquisition of shares under an employee share scheme, and this continues to apply under the Bill. However financial assistance issues can still arise in relation to share schemes if they don't fall within the strict company law definition of an employee share scheme e.g. in cases where shares are awarded to non-employees such as consultants or non executive directors. Financial assistance could arise if loans were being made by the company in connection with the issue of shares. If this is the case, and the financial assistance needs to be *whitewashed*, a new procedure needs to be followed which has been introduced by the Bill, known as the new Summary Approval Procedure, which is similar to the existing financial assistance whitewash procedure. There are however some differences, for example the declaration which directors need to make requires greater detail than the current format and, more importantly, under the Bill a court can declare the director personally responsible, without any limitation of liability, for all or any of the debts of the company if the declaration was made without reasonable grounds for the opinion and the company becomes insolvent. In many respects, it will be business as usual once the Bill is enacted, but there are some changes which will have a generally positive impact on share schemes.

French employees win bid rights in company majority share sales

A new law provides an additional obligation for companies that had less than 250 employees at the end of their last financial year, said lawyers *Dechert LLP*.

From now on employers must inform employees of their plans in the two following situations: *in case of sale of the business for which the employees are working (whether the employer is or is not the owner of the business); *in case of sale of more than 50 percent of the share capital of an SARL, or the shares or share instruments giving access to the majority of the share capital of a joint-stock company.

Employers will be required to notify employees for all sales concluded after November 1 2014. Parliament's aim is to enable the employees to present their offer to purchase either the business or the share capital.

Employees must be informed prior to or at the same time as the works council. In companies with fewer than 50 employees or having between 50 and 249 employees but without employee representatives, this information must be given at least two months before the intended sale.

The information must be given to the employees by a means that indicates the date on which the information is being delivered. A decree will provide additional information in this respect.

In case of failure to comply with this prior notification of employees, the sale may be cancelled at the request of any employee. Such action is possible within two months of: *the official publication of the sale of the business or *the publication of the sale of part or all of the share capital or *the date on which all employees have been informed.

In French companies with more than 50 employees, there is already an obligation to inform and consult the works council in case of sale of the share capital of the company or its business. The Centre will consult members on implications for other countries.

Golden parachutes galore

Compensation consultant **Towers Watson** said that shareholders seem to be more willing this year than last to approve golden parachutes in the context of acquisition transactions, said lawyers **Cooley.** Dodd-Frank and related rules require that, in connection with solicitation of shareholder approval of an acquisition, the company (typically the target) must also seek a say-on-golden-parachutes vote (unless previously approved), that is, a separate advisory shareholder vote on any agreements or understandings with insiders concerning compensation arising out of the merger transaction. Surprisingly, the WSJ reports that, even though "the volume of corporate takeovers announced this year has almost doubled, only one company has failed to get shareholder support for lucrative severance packages that follow senior executives out the door." That compares to nine failed votes in 2013 and eight in 2012 among the Russell 3000 companies studied by Centre member Towers Watson. This year to date companies on average have received 81 percent support for golden parachutes, the WSJ reported. A Towers Watson spokesman observed that there is "a heightened sensitivity to certain features…..companies may be making fewer last-minute alterations to these agreements."

Lashings of cream, despite Say On Pay

Meet the renegades of executive pay: two dozen companies, including **Oracle, RadioShack** and **Nabors Industries**, who keep giving top officers sky -high pay packages and luxury perks despite shareholder ire, said the *Wall Street Journal.*

Investors have repeatedly voted against the salary and bonuses of these companies at agms. Yet the companies appear to have dug in their heels—often because they have founders who still run the business. Take Larry Ellison, the founder and now departing ceo of Oracle, and last year's highest-paid ceo, according to The *Wall Street Journal/*Hay Group ceo compensation study. He received a pay package valued at almost $77m in the software maker's latest fiscal year. Oracle has failed its say-on-pay vote for the past two years, despite Mr. Ellison's token $1 salary and probably will face frustrated shareholders again in the autumn. "Larry Ellison's level of compensation should be tied to challenging performance metrics and they ought to be disclosed. It's a pretty basic concept," said Scott Stringer, the New York City Comptroller who oversees $160.5 bn in pension funds. The funds, which own 7.7m shares of Oracle, have voted against the pay packages and submitted proposals asking the board to better explain its pay rationale. The company significantly cut its yearly stock grants to Mr. Ellison and other executives this year.

Say-on-pay votes are required under the 2010 Dodd-Frank financial legislation. The votes are non-binding, but most corporate boards consider a negative vote a black eye and work hard to respond to shareholder concerns. Scores of companies have overhauled pay packages following failed votes. In fact, 98 percent of companies pass their say-on-pay votes in any given year.

Clothing retailer **Abercrombie & Fitch** for example received 96 percent support on a redesigned compensation programme this year, after failing say-on-pay votes the previous two years. The company split its chairman and ceo jobs and restructured its short-term and long-term incentives for executives ahead of its agm. The changes "reflect extensive input from the company's stockholders," said Michael Scheiner, an Abercrombie spokesman. Nevertheless, among those that have failed votes, two have the rare distinction of failing to get majority votes for four years in a row: general contractor **Tutor Perini, TPC Corp** and oil driller Nabors.

At Tutor Perini, for instance, only 44 percent of shareholders supported the executive pay packages this year. That isn't many considering ceo and Chairman Ronald Tutor, who has built up the company over the last 17 years, owns 17 percent of the stock. The vote was a slight improvement from 38 percent the past two years because the company restructured its long-term incentives and added performance metrics. Outside shareholders, however, question the company's pay practices, such as 4.5m shares pledged by Mr. Tutor as collateral for a line of credit and almost $800,000 for personal use of the company's jet. Last year, Mr. Tutor had appointed his father-in-law, Sidney Feltenstein, a veteran restaurant industry investor and executive, to the board. "The companies that fail year after year are true outliers," said Mike McCauley, a senior investment officer at the State Board of Administration of Florida's retirement funds, which own nearly 34,000 shares in Tutor. "It's almost never a single factor that drives the vote—usually it's multiple things." Tutor Perini declined to comment.

Bermuda-based oil driller Nabors failed its first say-on-pay vote in 2011 amid concerns over a $100m payout to retiring ceo Eugene Isenberg. In its latest failed vote this year, shareholders fretted that a $45m one-time payment to restructure the compensation package of new ceo Anthony Petrello was excessive. The company is a component of the S&P 500 index, so it is a common long-term holding of many institutional investors. After shareholders withheld a majority of votes from the company's compensation committee directors this year, it moved two of the directors off the committee, but allowed them to stay on the board. Nabors "continues to engage in dialogue with our shareholders to address remaining concerns," said spokesman Denny Smith.

At firms that have failed more than one *Say-On-Pay* vote, the average director tenure is 10.3 years, compared with 8.7 years at S&P 500 companies, according to board recruiting firm James Drury Partners Ltd. One in three of the companies with repeated failures has a founder who serves as ceo, according to a review of votes in the Russell 3000 index by compensations adviser Towers Watson. More than 70 percent have ceos who also hold the chairman's title. Each company with multiple failures has had trouble linking executive pay to overall performance, said Blair Jones, managing director at executive compensation consultant Semler Brossy Consulting Group.

RadioShack has failed to get majority support for executive pay the last two years, amid store closings, restructuring and several ceo changes. It changed performance measures, but not enough to placate concerns about nearly quadrupling the pay of its new ceo Joseph Magnacca, including a signing bonus, while the stock's total shareholder return declined by nearly half over the last three years. Just 43 percent of voting shareholders supported its executive pay packages this year. Companies restructuring like RadioShack can find themselves stuck in a 'performance trap,' Ms. Jones said, explaining, "Some companies can't get their pay low enough practically to make the numbers work."

However, high executive pay in a turnaround situation isn't always a concern, if boards properly explain their reasoning. While proxy advisory firm Glass, Lewis & Co. recommended voting against RadioShack's pay packages this year, it recommended shareholders vote in favour of executive pay at retailer Staples Inc which is going through a similar restructuring, because the firm understood the link between pay and performance.

Companies that have repeatedly failed say-on-pay votes accounted for a third of all the failed votes this year, according to Towers Watson. Shareholders of repeat offenders now plan to go after individual board members, particularly those on compensation committees, and push for further corporate governance reforms, such as direct shareholder access to the proxy.

"Voting directors off the island is the next level of attack," said Robin Ferracone, ceo of compensation consultant Farient Advisors. "With these companies that are kind of intractable, investors find they have no other choice but to start waging a more virulent battle."

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