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newspad of the Employee Share Ownership Centre

## Wall of silence over Roadchef Eso compensation scandal

HMRC is still refusing to say when it will sign off the tax bills of many hundreds of present and former **Roadchef** employees hit by the sale of shares, without their knowledge, from the company's EBT almost 20 years ago.

Tax inspectors have ignored the Centre's repeated requests for transparency regarding the way in which it is dealing with the tax issues of this complex multi-million compensation case, which stretches back to when this leading motorway service station chain was sold to the then management team.

Despite the Centre's best efforts, there is a wall of silence surrounding the precise details of the compensation package eventually agreed between the trustee and the former ceo and chairman of Roadchef, Tim Ingram Hill.

*Newspad* has learned that the trustee has wanted to 'set the record straight' over its long fight for compensation on behalf of the Roadchef employee shareholders, but cannot do so, as it is hedged in by confidentiality obligations and court orders.

However, *newspad* can reveal that the trustee, Roadchef EBT1, is finalising a lengthy update for all the beneficiaries – who are increasingly angry over the lack of detail they have been given to date concerning their long-awaited individual compensation payments. Former pheasant plucker, Mr Ingram Hill, who had run Travellers Fare cafes at London's mainline railway stations, and who became Roadchef's ceo, later masterminded its sale to Japanese investors, gaining an estimated £85m+ from his personal Roadchef shareholding, which by then had grown to more than 62 percent.

Although the employee shareholders' stake in Roadchef had dwindled from more than 30 percent in 1991 to only 4.4 percent seven years later, there is no suggestion that Mr Ingram Hill broke any law by transferring employee shares from one trust to another set up by him.

The case, brought by the Esop trustee, ended in a High Court ruling three years ago by Mrs Justice Proudman. She said: "A transfer of shares from one EBT to another was void because the trustees of the transferring EBT did not properly consider the criteria for the exercise of their power and the transfer was made for an improper purpose. *Roadchef (Employee Benefits Trustees) Ltd v Hill & Anor [2014] EWHC 109 (Ch)* (29 January 2014).

### From the Chairman

*Hard on the heels of Pony Ma, charismatic boss of top Chinese firm Tencent which is quoted in Hong Kong, a second leader from the Middle Kingdom has personally announced a hand out to employees. Wang Wei, temporarily at least, China's third richest man after listing the country's biggest courier service, personally paid bonuses to employees via a propriety payment app that also lets them buy securities, potentially making workers both beneficiaries and boosters of the company's surging shares.*

*Wang distributed the bonuses via the in-house developed app on Friday, as S.F. Holding Co listed in its home city of Shenzhen. The few shares available to the public have since been in demand, restrained only by the small exchange's daily limit.*

*If only company bosses in Europe showed pzazz and led from the front, the world of share plans would benefit enormously...even if it might be a step too far to suggest they did it with their own money rather than the company's! But it is a thought....why shouldn't they? Messrs Ma and Wang are owners and are behaving like owners. We spend enough time asking rank and file employees to behave like owners. Perhaps what is sauce for the goose....*

**Malcolm Hurlston CBE**

"The judge found that the transfer was part of a preconceived plan to acquire the shares, and that Mr Ingram Hill had exerted improper pressure on the other directors, who simply did what they were told, believing they had no other choice," the trustees' lawyers, **Capital Law**, said in a statement at that time. However, it took another year before Ingram Hill agreed an out of court settlement, which could amount to around £25m, although none of the parties involved will comment on the amount even now, claiming that they are forbidden to do so by court orders.

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The Centre had asked HMRC to comment on criticism from the long-suffering Roadchef EBT beneficiaries that it allegedly had been slow to settle the tax issues, with the result that court-ordered compensation payments – sums of up to £20,000+ each are rumoured – had still not been made. Legal and funding costs incurred while fighting the case are substantial.

However, HMRC spokesperson Adrian Hallchurch told *newspad*: “We do not comment on individual cases.”

Exasperated Centre chairman Malcolm Hurlston told *newspad*: **“Come back, Dickens, all is forgiven. Jarndyce v Jarndyce had nothing on this. Even today people die awaiting justice.**

“It is a depressingly familiar reality in the UK today that important facts behind many financial scandals are hidden from public view by ‘gagging’ court orders.

“It is heartening, however, to learn that the trustee is expected shortly to give all the Roadchef employee shareholders a detailed update on what the situation is and when they will be paid their well earned compensation.

“Around 550 original Roadchef employee shareholders were bystanders when their share stake in the company was transferred – without their knowledge – from EBT1 to another EBT, set up by Ingram Hill.

“It is now more than three years since a High Court judge ruled that the original employees (and apparently other employees) must be properly compensated over the removal of their shares from the Esop.

“HMRC would be acting in the public interest rather than infringing any personal data disclosure rules were it to indicate whether or not, after all this time it has finished examining the tax issues raised by the planned compensation payments.”

A complication arose in the minds of the trustees that – according to speculation among some of the beneficiaries – Mrs Justice Proudman had effectively ruled that not only the original road services station staff who were members of the Esop had to be compensated, but also a few hundred other employees who were not, notably those who had only joined Roadchef in the previous months and certain categories of part-time employees.

There is further speculation that several thousand *current* Roadchef employees could profit from the settlement, even those who were not even members of the Esop.

According to one informant, the original employee Esop participants will share 61 percent of the net proceeds; the second category – ‘non-qualifying’ employees – get will 30 percent and current (non originals) employees will share the remaining nine percent.

Speaking after the sale of the company, one ex-Roadchef employee said: “The whole thing stinks. Wealth that should have been for all ended up as the fortune of one man.”

All qualifying staff at Roadchef, which has 21 UK

service stations, were set to benefit after their former md Patrick Gee, who had led the 1983 MBO of the firm, decided to give them about 20 percent of its shares in the mid-1980s. However, he died while the scheme was being set up and his successor, Ingram Hill, unveiled one of the UK’s first Esops a year later. Roadchef staff received an initial 12.25 per cent of the equity – reserved for them on an equal basis. Gee’s estate later gifted more shares to staff.

According to previous reports, by 1991 the Gee family had 23.2 percent of the equity, Ingram Hill had 21.5 percent, top managers had 15 percent and Roadchef staff, either directly or through the ESOP, had 34.8 percent. Seven years on, when Ingram Hill sold Roadchef to Japanese investors, the ownership had changed. He then controlled 62.2 percent, but the staff’s equity share was allegedly down to 4.4 percent.

The trustee’s claim queried the 1998 transfer of shares in Roadchef between two trusts, EBT1 and EBT2. The original EBT – called EBT1 – operated an employee share ownership plan for the benefit of all qualifying Roadchef employees, while EBT2 was used to provide share incentives to senior management. The case concerned the circumstances in which the senior management trustees granted options over the shares to Ingram Hill personally, who served in senior posts at the company over the years, including as md, chairman and ceo.

It was not until a change in the law that the Roadchef EBT trustee was allowed to bring in **Harbour**, a litigation funding company, which agreed to fund the case in court.

Years later Nikko off-loaded Roadchef to an Israeli conglomerate **Delek Group**, which in turn sold on Roadchef to European fund **Antin Infrastructure Partners**, the current owners.

**Centre comment:** *There is a potential warning here to those in the industry who draw up employee benefit trust documents – the wording covering who will be the beneficiaries and who will not qualify – and precisely what the beneficiaries will be entitled to in the event of the Esop being wound up – must be pikestaff plain and legally watertight.*



## EVENTS

### Paris summit attracts expert speakers

The Centre’s inaugural *newspad* employee equity summit in **Paris on Thursday June 15 and Friday June 16 2017** is attracting a shoal of expert speakers with more to come. Companies who have already confirmed

a speaker presentation include: **Clifford Chance**, the **Esop Centre**, the **International Association for Financial Participation**, **Macfarlanes**, **Pett Franklin**, **RM2 Partnership**, **Solium**, **Tapestry Compliance** and **Willis Towers Watson**.

This event will permit you to keep *au fait* with the latest legal, regulatory, taxation, communication and market trends in international employee share schemes in both Europe and the US, as well as providing opportunities to discuss share plan strategies and networking informally among other industry experts.

Topics already included in the conference preliminary e-brochure include:

- a national focus on broad-based French employee equity plans – *how they work, employee shareholder powers and are they exportable?*
- Singapore of the North Sea? – impacts of Brexit on UK based employee equity plans
- Esops for the millennial generation
- global share plan design
- gender pay reporting and other employment legal minefields
- latest trends in employee ownership and management executive incentives in the US/UK
- Reporting executive remuneration schemes in France and in the EU generally
- Institutional shareholders – the new elephants in the C-suite? Panel session
- trustee work in employee equity – latest on EBTs – Panel session

Papers submitted for the summit will be published by *newspad* and will be open for discussion on the Centre website.

The Centre thanks global legal group **Clifford Chance** for hosting this event in its splendid offices at 1, rue D'Astorg, Paris 8, off Boulevard Haussmann.

**If you would like to deliver a speaker presentation at this event, you should register by email now – giving a brief outline of your intended topic.** Speakers benefit from a significant fee reduction, subject to agreed content, and will be charged only **£260**.

Delegate prices:

Centre member practitioners: £395

Non-member practitioners: £695

Plan issuers: FREE (subject to £50 admin fee)

*NB: No VAT is charged, as the event takes place outside the UK.*

Registration and fee payment entitles all attending to:

- Participate in all conference sessions
- Buffet lunch and refreshments during coffee breaks
- Programme with access to speech summaries
- Cocktail party early evening, June 15, courtesy of Clifford Chance.

To register as a delegate, please email the Centre at [global@esopcentre.com](mailto:global@esopcentre.com)

The Centre thanks **Ocorian**, co-sponsor of the Summit e-brochure, which can be downloaded from

the event page of the Centre's website [www.esopcentre.com](http://www.esopcentre.com). Other e-brochure logo co-sponsorships are available at £500 each. Contact Juliet Wigzell to reserve your Paris logo sponsorship at: [jwigzell@esopcentre.com](mailto:jwigzell@esopcentre.com).

The organisers are planning a 10:15am start on the first day, **Thursday**, to allow day trippers to take the 7:00 am Eurostar from St Pancras, arriving in Paris at 10:15am. Your Newspad Summit contact is Centre international director Fred Hackworth.

Email: [fhackworth@esopcentre.com](mailto:fhackworth@esopcentre.com) with copy to [esop@esopcentre.com](mailto:esop@esopcentre.com)

### **Jersey share schemes and trustees conference:**

#### **May 12**

The 2017 Jersey share schemes and trustees conference will take place at the Pomme d'Or Hotel in St Helier on Friday May 12. Organised in conjunction with STEP Jersey, the annual half-day conference is an industry-leading networking and learning opportunity for all those interested in share schemes and EBT trusteeship.

The programme will consist of presentations on the latest taxation, legal and regulatory issues in Jersey and the UK.

Speakers include Malcolm Hurlston CBE of the **Esop Centre**, Helen Hatton of **BDO Sator Regulatory Consulting**, Graham Muir of **CMS Cameron McKenna Nabarro Olswang**, David Craddock of **David Craddock Consultancy Services**, Paul Haines of **Haines Watts**, Chris Lowe of **KPMG** and Stephen Woodhouse of **Pett Franklin**.

Topics include the current challenges (and opportunities) facing Jersey trustees, the tax treatment of EBTs in light of the Rangers case, approaching HMRC with problems, share schemes under the Common Reporting Standard and an update on offshore EOTs and the new disguised remuneration rules.

The event will conclude with a panel session followed by a networking lunch.

*Tickets costs £350 for Centre / STEP members and £450 for non-members.*

Book and pay by **Friday March 10** to take advantage of one of our **early bird discounts**: 50 percent off a third delegate from the same organisation *or* ten percent off the total. To register your attendance, please email:

[events@esopcentre.com](mailto:events@esopcentre.com) or call 020 7239 4971.

### **Centre-IoD share schemes for SMEs conference: September 12**

The next **Centre-Institute of Directors** joint employee share schemes for SMEs conference will be held in London on **Tuesday September 12 2017**. This full day conference will help smaller companies decide whether to introduce an employee share scheme or deepen existing employee share ownership in their businesses.

With increased choice of government approved models available, employee share ownership is the flexible and powerful business structure where employees buy or are gifted shares in their company. Employees'

ownership of shares in the company for which they work can be the tangible core of a culture of ownership and engagement. Binding dynamic, growing companies, are employees with a stake and strong sense of that stake. The full programme is as follows:

**Introduction to employee share schemes** – Robert Postlethwaite, managing director, Postlethwaite

**Enterprise Management Incentives (EMI)** – Liam Liddy, senior manager, Mazars

**EMI case studies** – David Craddock, founder and director, David Craddock Consultancy Services

**EMI alternatives** – Catherine Gannon, managing partner, Gannons

**Beginner panel**

**Employee Ownership Trusts** – Nigel Mason, managing partner, RM2 Partnership

**SME share scheme case studies** – Colin Kendon, partner, Bird & Bird

**Share schemes and succession planning** – Stephen Woodhouse, partner, Pett Franklin

**Financing employee ownership** – Garry Karch, managing partner, RM2

**Advanced panel**

Members should email Daniel Helen at [events@esopcentre.com](mailto:events@esopcentre.com) to register their interest in attending.

**Quote of the month** *“There is more to equity comp than recognizing gains. What matters for your financial wellness (and overall happiness) is what you do with that income and how you fit it into your funding of personal financial goals. Studies have shown that charitable people tend to be relatively content in life. Donations of appreciated company stock you have held long-term can support organizations and causes that you believe in. Consider the benefits of employee ownership and a more mindful awareness of how your daily diligent efforts at work help to improve your company, lift its stock price, and contribute to your own financial security.”*



## MOVERS & SHAKERS

**Alasdair Friend** has left **Baker & McKenzie**, where he was senior associate, to join Centre member **Abbiss Cadres** as a partner in the latter's employee benefits & equity incentives division.

**Monidee** announced that **Paul Arens**, head of operations and marketing, had left the company on March 1. “Paul has made significant contributions to Monidee the past 17 years,” said **Hans van Tol**. “He

was one of the contributors in the development of our software solutions and completed large implementation and service projects for our customers.”

**Amy Sellers** has joined **Tapestry Compliance**. Amy qualified in 2010 with Allen and Overy and more recently was in the share plans team at **Pinsent Mason**. She has significant experience of advising on the establishment and operation of UK employee share plans, including tax advantaged plans, as well as on the legal and tax compliance aspects of operating share plans internationally.

## UK CORNER

### National Minimum Wage rise

Centre member **Bird & Bird** reported that the draft National Minimum Wage (Amendment) Regulations 2017, were published on February 1, this year and so the following hourly rates of national minimum wage apply from April 1 2017:

- National living wage (employees aged 25 and over): **£7.50**
- Standard adult (employees aged between 21 and 24): **£7.05**
- Development (employees aged between 18 and 20): **£5.60**
- Young employees (those at work aged under 18, but above the compulsory school age, who are not apprentices): **£4.05** and apprentices: **£3.50**

### HMRC gets even tougher

Some investors in film schemes have been hit with *Accelerated Payment Notices*, which give taxpayers 90 days to pay the disputed amount of tax. Their use has been controversial because some tax advisers claim they scare taxpayers into paying up rather than contest claims in the courts.

HMRC investigators have been sniffing out and tracking down tax owed with a diligence and persistence unknown in Britain since the days of Empson and Dudley, King Henry VII's notorious tax ‘collectors.’

Around 60,000 APN notices have been issued – to date – since their introduction in 2014 and these have raised £3bn in additional tax revenue.

Some APNs have been issued over what the Treasury terms *disguised remuneration*, including loans made through employee benefit trusts (EBTs) to sports stars. The most prominent example is the **Rangers** (Scottish soccer club) EBT tax case, which will be heard by the UK Supreme Court in mid March. The liquidators of ‘oldco’ Rangers are set to take on HMRC over £24m recovered by accountants BDO for the oldco's creditors since its collapse in 2012. They fear HMRC will take every penny unless the Supreme Court overturns a previous ruling that the oldco owed around £49m in tax from controversial EBT payments to players and staff. Five Supreme Court justices will decide whether the EBT cash should be classed as players' earnings – as HMRC claims – or loans to them, which is how Rangers describes it.

Although some consider APNs to be draconian, as they can require taxpayers to stump up sums described as ‘life-changing,’ HMRC has defeated various attempts to challenge their legality. It has cracked down on a number of schemes that created artificial losses which allowed investors to lower their overall tax bills.

Draft legislation in **Finance Bill 2017** provides for a new tax charge on all disguised remuneration loans still outstanding at April 5 2019. The final version of the Finance Bill will be published on March 20, **Financial Secretary to the Treasury, Jane Ellison**, confirmed, reported Centre member **Deloitte**.

**Andrew Tyrie MP**, chairman of the Treasury Select Committee, said in a letter to **Chancellor Philip Hammond** that his office had been contacted by an increasing number of people concerned that HMRC investigations into such schemes were “not always fair nor what anyone could have expected”. That had resulted in “financial calamity” for some individuals, as well as considerable difficulties for HMRC in closing down some schemes. “Many said that, when these schemes were being sold, they were not considered to be aggressive avoidance but just a deferral of tax, and they were often marketed as routine tax management,” Mr Tyrie told the Chancellor. “Whether or not these claims are valid, it does appear that many individuals are facing very severe financial distress as a consequence.”

### **Sleeping giants awake**

City institutional investors have awoken and are running amok in company boardrooms, threatening to vote down dozens of new equity based executive reward packages. This is the year when most FTSE100 companies are putting their new remuneration policies to a shareholders’ binding vote, against increasingly hostile criticism of the size and complexity of directors’ reward packages.

**Thomas Cook** sought approval of its new remuneration policy at its agm and suffered a 21.7 percent vote against. Shareholders also voted 22.5 percent against the remuneration *implementation* report and 32.7 percent against the introduction of a new 2017 Strategic Share Incentive Plan.

According to the *guidance on directors’ remuneration reporting issued by the GC100 and Investor Group*, any vote over 20 percent should be viewed as “substantial” and in such a case the company should report the measures it has taken to address shareholder concerns, said Sarah Nicholson of *Squire Patton Boggs*: “Good as gold, Thomas Cook added to its announcement of the agm results an explanation of what it considered was the issue (‘there remain concerns about the level of information around the possible strategic objectives and the size of the maximum potential award under the new plan’) and the action it would take – not to use the new plan in the coming year and to consult fully with major shareholders about its rationale and strategic objectives.” In addition, Thomas Cook was hit by a 15 percent vote (reportedly from **Standard Life**) against the re-election of each of the directors on the

remuneration committee, an action forewarned in publications by **Hermes, Institutional Investor Services** and **the Pensions and Lifetime Savings Association**.

David Cummings from Standard Life said on BBC’s *Today* programme that chairs of remuneration committees are “too obsequious” about ceo pay and that shareholders must signal more clearly that they are not happy. Investors must work together to try to limit pay rises because if not, the Government is likely to introduce more draconian measures, which will be far less flexible, he said. The chairman of the **Financial Reporting Council (FRC)**, Win Bischoff, said that if Theresa May is talking about tackling excessive pay, to prevent legislation, shareholders will have to be much more prescriptive on remuneration and take their stewardship role more seriously.

Meanwhile, the **Investment Association (IA)** said it was sinking under the weight of submissions from companies of new remuneration policies and plans, expecting it to rubber stamp them before they are put to shareholders. Investors have made noises for some time about wanting consultations with companies to be about wider strategy, rather than exclusively remuneration. The IA, whose members own one-third of the FTSE 100, wants to see a ‘sin bin’ for companies that overstep the mark on senior executives’ pay, as part of a government clampdown on corporate governance failures. Under proposals submitted to ministers, a company would automatically face a binding vote on its pay policy at its next agm if more than 25 percent of shareholders protest against the directors’ remuneration report. The rule would represent a significant tightening of the current system, under which public company shareholders get a binding vote on pay policies every three years, reported the *Telegraph*. The proposals were being finalised by major institutions for submission to Theresa May’s corporate governance review. They were backed by most big City investors, who share the Government’s concern over the effect of excessive pay on trust in big business.

Effectively, the City institutions want to introduce a way to trigger a binding vote rather than impose a blanket annual binding vote, which was an option put forward by the Government in a Green Paper last year. The ‘sin bin’ approach would allow companies that engage properly with shareholders on executive pay and do not make excessive awards to benefit from greater stability, City fund managers said. A blanket annual binding vote, meanwhile, risked straining the corporate governance system and could encourage a box-ticking culture, the Government was warned. These City institutions allegedly include **Aberdeen, Fidelity, Schroders, BMO, Columbia Threadneedle, HSBC Global Asset Management, Investec AM, OMAM, M&G, SLI, Royal London AM, State Street Global Advisors** and **Vanguard**. Collectively, they manage £9 trillion worth of funds between them.

\*Large investors including **Fidelity International, Aberdeen Asset Management, Calpers, Standard Life and Henderson Global Investors** have told the

*Financial Times* that they are planning to crank up pressure on boards to reduce excessive pay and introduce greater transparency in 2017. Other big investors that have vowed to clamp down on payouts include **Hermes Investment**, the UK asset manager; **USS Investment Management**, the £50bn pension scheme; and the **Church of England's** investment arm. The new wave of investor protests will add to the friction between company management and big shareholders, which came to a head last year as increased awareness of rising wealth inequality in the US and Europe put executive pay in the spotlight. According to figures compiled for the FT by Manifest, the voting agency research group, between ten and 20 percent of shareholders refused to support pay proposals at 62 S&P 500 companies and at 18 FTSE 100 companies last year – the highest level of shareholder dissent on executive pay in at least five years. **BP, WPP, Reckitt Benckiser, Anglo American and Oracle** were among the big companies to incur shareholders' wrath, and investors warn that there will be further disputes to come. **WPP, Sports Direct, Liberty Media** and **BP** are among the companies highlighted by corporate governance experts as most likely to face a shareholder backlash over their remuneration plans this year.

Under investor pressure, tobacco giant **Imperial Brands** abandoned a plan to increase ceo Alison Cooper's potential total annual reward from £5.5m to £8.5m by means of increased equity bonuses.

**TP ICAP** – a financial, energy and commodities broker has had a move to revise its executive bonus plan blocked by investors. While the scheme would have made substantial payouts to senior staff members, the firm argued it would serve to help retain executives. The broking giant was created when **Tullett Prebon** bought rival **ICAP** for £1.3bn last year. According to *Sky News*, the proposals which would see bonuses awarded to executives after the firm created £400m in shareholder value had been reached after the merge. The shares would have been worth up to £85m. Of the proposed £85m payout, ceo John Phizackerly could have received as much as £25m. Meanwhile, chief financial officer Andrew Baddeley could have been rewarded to the tune of £15m. However, the rejection of the three-year *Value Creation Plan* by shareholders reflects sensitivity about city bonuses. The **Church of England**, a major institutional investor, wrote to the stock market's 350 biggest companies warning that it would block boardroom payouts it deemed to be excessive.

Tour operator **TUI's** executive compensation came under attack by a shareholder advisory group as UK investors target excessive pay packages. TUI's corporate governance arrangements "fall short of UK investor expectations," **ISS** said in a report to shareholders ahead of the company's agm. Although based in Hanover, Germany, TUI is a member of the premium segment of the main market of the London Stock Exchange and about 30 percent of the company's shareholders are from the UK. "We've seen some of the commentary, and it's been noted by our

chairman," said Hazel Newell, TUI's investor relations manager. "Our intention is to adhere" to the regulations in Germany and the UK, but under German disclosure rules the company is not required to have shareholders vote on remuneration, she said.

"In general, we find that while TUI's overall corporate governance arrangements are consistent with German practice, there are a number of areas where the company falls short of UK investor expectations," said ISS, whose members represent 20 percent of the FTSE 100 by market value. "The lack of any vote (even advisory, rather than binding) on remuneration-related matters represents a significant area of departure from U.K. market standards." ISS criticized TUI for not providing shareholders with a vote on its remuneration report, and for allowing six management-board members to receive transaction bonuses without disclosing the company's "stringent performance criteria." Transaction-related bonuses are "not in line with best UK market practice," and investors typically expect bonuses to be linked to business targets, it said.

**Reckitt Benckiser** came under pressure to scale back the reward package of ceo Rakesh Kapoor, who was awarded more than £23m in 2015. There was scepticism among investors about the \$16.6bn takeover deal Reckitt struck for Mead Johnson, which will boost Kapoor's pay. Oil giant **BP** is expected to rein in total reward for ceo Bob Dudley after a backlash last year over his £14m package.

**BlackRock** – the world's biggest fund manager, which oversees assets worth almost \$5 trillion – sent a letter to the chairmen of the UK's top companies, threatening to block their remunerations plans unless more self-restraint is shown on bonuses and pension 'top-ups'.

**Barclays** plans to freeze its ceo's salary and bonuses in an attempt to head off the kind of shareholder rebellion over executive reward that is threatening a raft of top-flight firms. The banking giant's remuneration committee met leading investors to propose freezing Jes Staley's pay for the next three years. Such a move would see Mr Staley's £1.2m base salary, bonuses and benefits remain the same between 2017 and 2019.

**HSBC** boosted Stuart Gulliver's total potential pay to £9.7m as the ceo was rewarded for cutting costs, while the bank's bonus pool dropped. Gulliver, 57, saw his annual incentive pay for 2016 raised to £1.7m from £1.1m a year earlier as he hit targets for paring expenses and assets, even as he fell short of a profit goal, the bank said in its annual report. He received 64 percent of his potential bonus, while he will get a new long-term incentive that could be worth £4m for 2016 if all targets are met by 2019. However, HSBC cut its total annual bonus pool by 12 percent to \$3.04 bn, as revenue fell for a fifth consecutive year. The number of senior staff in HSBC earning more than €1m euros in 2016 decreased to 363 from 453 a year ago, the annual report revealed. The bank's remuneration committee said it had reduced Gulliver's annual bonus by 2.5 percent, as well as the

pay of other executives, because of issues tied to standards, risk and compliance.

As well as the IA's proposed *sin bin*, some institutions are expected to push for radical reform of Britain's stock exchange listing rules amid anger over the running battle on corporate governance failings between **Sports Direct** and its minority shareholders. A so-called 'Mike Ashley law' would increase the proportion of equity that must be floated to achieve a coveted premium listing, from 25 percent to 50 percent. Such a change would mean Ashley would be under heavy pressure to sell down his 55 percent stake and allow minority shareholders to vote out his controversial director choices. If the founder refused, Sports Direct would face an exodus of capital as the retailer would lose its premium listing. However, City opinion is split on the idea, as some relatively well run companies could be caught. One governance specialist called it a "sledgehammer to crack a nut".

Meanwhile, Scottish investment company **Standard Life** drew up "harsher" voting guidelines on executive compensation, according to Euan Stirling, the company's head of stewardship. "You would have to have your head buried in the sand not to get a sense of the environment on executive remuneration," he said. Sacha Sadan, head of corporate governance at **Legal & General Investment Management**, said: "More scrutiny will arise both for companies and investors in the 2017 agm season. This is due to a combination of social, political and financial pressure on companies."

\*The UK may be in line for the biggest changes in executive reward as the worm finally turns. Only the US and Switzerland pay their ceos more than the UK, said the *FT*. Total annual reward pocketed by the FTSE 100 ceos rose from an average of £1m in 1998 to £4.3m in 2015, far outstripping the growth in average earnings.

In the UK, Long Term Incentive Plans (LTIPs) are in the crosshairs: "LTIPs are not fit for purpose any more," says the head of stewardship at one UK asset manager. "They're like any opiate. They have become an addiction." Paul Lee, head of corporate governance at **Aberdeen Asset Management**, agrees:

"Some of us are willing companies to think again about the structure of pay. We don't want them to be trapped in the structure of an annual bonus and a three-year LTIP. That structure probably does work for some but it can't be a one-size-fits-all approach. They need to break out of this box. It really isn't working."

Moving away from LTIPs should allow 'quantum' – investor jargon for the amount people are paid – to come down sharply. A study last year by the IA said that replacing LTIPs with *restricted shares* that must be held for five to seven years or more, with few or no performance conditions attached, could reduce the headline value of bonuses by 50 percent. LTIPs often pay out on a sliding scale with very high maximum entitlements if triggers are met. Restricted shares would be more certain, justifying the argument for a smaller number. "Restricted shares would be a good way to bring down quantum," says Angeli Benham, a governance expert at **Legal & General**, "and in the

process address public concern about high pay." The views of the public never used to matter much to hard-nosed investors. The priority was for a company to have the best possible leadership. But the rise of populist politics since the global financial crisis has altered attitudes.

The growing gap between the pay of ordinary people and the packages enjoyed by blue-chip ceos is blamed for helping to fuel a backlash against the "metropolitan elite" – evident in everything from the Brexit vote to Mr Trump's election victory.

PM Mrs May was criticised by some over her November green paper on governance. It watered down some of her initial ideas, dropping, for example, the plan to bring worker representatives on to boards. But measures to oblige the disclosure of chief executive-to-worker pay ratios and more frequent investor votes on pay would still represent one of the most powerful initiatives by a G7 government to tackle the issue of the gap between the elite and the mainstream.

\*Nearly two-thirds of the jump in UK ceo pay over the past couple of decades has been driven by LTIPs, which continued to increase even when overall remuneration dipped for a couple of years from 2012, said proxy agency **Manifest**. One irony is that many of those bonuses, ostensibly granted for long-term performance, have worked against genuinely sustainable management. "There is a massive amount of evidence now that they're counterproductive," says PwC's Tom Gosling. Recent analysis by the **Purposeful Company Taskforce**, which Mr Gosling co-ordinates, found that "so-called 'long term' incentives with performance-based vesting actually encourage short-term behaviour as vesting dates and triggers approach. Research and development spending, capital investment and other long-term decisions can be shelved to allow LTIP targets to be hit, the research found. Economists such as Andrew Smithers say this dynamic is a cause of Britain's weak productivity, when compared with much of continental Europe, where executive pay is lower and productivity is higher.

Recent new statistics revealed that executives and other employees across **Network Rail** shared a total bonus pot of £27m last year.

**Lancaster University Management School** says that the poor alignment of bonuses and performance is evident if pay inflation is compared with more sophisticated, long-term measures of success than total shareholder return. Median economic returns on capital for the UK's 350 biggest listed companies were less than one percent annually over the 11 years to 2014, compared to an aggregate 82 percent real-terms rise in ceo remuneration, it claimed. Even using TSR (Total Shareholder Return), which reflects share price growth and dividends, there are gross anomalies in the pay and performance of the best-paid ceos.

\*The UK government has been backing away from plans to force companies to report ratios of ceo pay to average staff wages. Averagely-rewarded bosses in the low-waged retail and hospitality sectors would look overpaid. There is a case for setting pay using another ratio: ceo pay relative to enterprise value (quoted equity

plus net debt), said the *Financial Times*. The latter rises when a business is prospering and falls when it is struggling. By setting pay as a fixed ratio of EV, boards would acknowledge managerial skill, if it exists, is scalable. Pay would be a function of company size. That should seem fair to many. Enterprise value is harder for ceos to massage than adjusted earnings per share, a common benchmark for bonuses. The proportionate reward for growth would be lower than when increases in total shareholder returns were used, discouraging recklessness. Unearned cyclical rewards could be reduced by paying partly in shares vesting in 7–10 years. Big increases in net debt to raise enterprise value should hurt the share price.

\*Conduct, compliance and risk management are increasingly being used in the calculation of bonuses by financial services companies, a global survey from *Mercer* revealed. One-third of organisations now allow for non-financial measures to override financial measures in their annual incentive plan (38 percent) and multi-year incentive plan (32 percent). This is more common in banks (55 percent) than insurance firms (15 percent). One-third of both insurers and banks reported that regulatory impact decreased the link between pay and business performance. This could start to protect consumers from the worst of the sales behaviour seen in the past. Some banks incentivised staff to sell products (*which customers often did not fully understand*) on which they would be paid bonuses. The survey showed that salary increases in European financial services companies will be in the range of 1.7 percent to two percent for 2017. The financial services companies who took part in the survey cited the impact of slow economic growth, low inflation as well as continued low interest rates for the modest increases. *Mercer's* global survey of executive showed that the highest increases were in Indian financial services (six percent), followed by 3.8 percent in Asia and 1.6-2.6 percent in North America. Two-thirds of organisations surveyed predicted that the 2017 actual corporate incentive pools will be within the five percent range or unchanged to 2016 levels.

### Keep reward schemes simple and long-term

The growing public hue and cry over executive pay may have a point. But it is often misplaced according to the claims of one **London Business School** academic, who argues that the biggest issue is not that executives pay themselves too much, but that they all too often coast, failing to create wider societal value. Alex Edmans, a Professor of Finance at London Business School, who has recently published his response to the Government's Green Paper on Corporate Governance Reform, made the remarks writing recently in the *Financial Times*. Professor Edmans said: "The level of pay attracts most public anger. It is easy to understand why – the average FTSE 100 chief executive is paid £5m, 178 times more than the average UK worker. If ceos didn't take so much for themselves, the argument goes; their slice could be reallocated to others." But this fixed-pie mentality is wrong, Edmans believes and it misses a more fundamental point:

"The biggest way in which executives can take from society is not by paying themselves too much. It is by coasting and failing to create value for wider society," Edmans explains. Ceo pay should ensure that businesses serve society, not just executives, Edmans says. "The best way to do this is to incentivise the ceo to grow the pie for all," he adds.

The median FTSE 100 company size is £7bn. If a ceo creates one percent extra value, that's £70m, which swamps any savings from reducing his or her pay. But the real question is does any of this increased value go to society? "It does," Edmans says. "Successful companies survive and grow, paying taxes, creating jobs, paying suppliers, and providing goods and services to customers – often for free. While the tech boom has created elites, it has also transformed everyone's lives, giving us free access to search engines, mapping, online banking and shopping." Edmans doesn't deny that executives must be held to account for errors of commission, such as unnecessary job cuts. But he argues that they should be held to greater account over the often overlooked errors of omission. "These are much less visible, but far more destructive," Edmans wrote in the *Financial Times*. "If executives coast, and fail to create jobs or launch products, the losses can be substantial. But the way that we vilify business encourages coasting." The answer Edmans claims, lies in pay reform that is focused on the structure rather than the amount of pay. "Complex, opaque bonuses encourage myopic behaviour, such as investment cuts to meet short-term financial targets. Instead, pay should obey three principles: it should be simple, transparent, and long term."

Long-horizon equity then could be the answer. It does just that – shares are easy to value and they depend on the long-term stock price. In the long run, the stock price captures value not just for shareholders but stakeholders as well. Evidence shows that granting ceos long-term equity, means not only higher future profitability, but also innovation and stewardship of the environment, as well as customers, society and, in particular, employees, added Edmans.

### Brexit impacts

The government's white paper stated that both the UK and EU member states benefit from a close trading relationship, the EU being the UK's largest export market and the UK being the largest goods export market for the EU member states taken as a whole. The UK currently has a trade deficit with the rest of the EU (£230bn exports of goods and services to the EU versus imports of £291bn), although if trade in *services* is considered in isolation, the UK has a £28bn surplus with the rest of the EU, said Centre member **Bird & Bird**. The white paper said that the government did not seek membership of the single market, but aimed rather to secure a new free trade agreement and a new customs agreement with the EU. The UK would not seek to adopt an existing model already enjoyed by the other countries but hoped to build on the fact that it currently had the same set of rules as a member of the EU. The white paper reiterated that the UK was seeking the "freest and most frictionless trade possible

in goods and services,” but it did not provide more detail on the specifics of a new free trade agreement. Not much leverage for the UK share scheme industry there.

The UK could adopt the so-called Israeli option whereby all EU law would remain in force even after Brexit until at a later date it was decided which EU legislation or regulation the UK didn't want. **Jeremy Mindell** told delegates at last November's symposium that the UK's chances of remaining within the EEA were “vanishing by the day” and so the WTO route for the UK looked “almost a certainty.” No wonder travel agents and others were very worried. He forecast that hundreds of lobbyists would soon be scurrying back to the UK as Brexit neared. Finally, he predicted that pension tax relief would be cut back in the April 2017 Budget.

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

Brexit would impact the UK equity based remuneration industry, especially at executive level. “The design and operation of employee share plans and other remuneration arrangements are subject to a multitude of laws. Of particular focus since the financial crash of 2008, EU regulators had gone to great lengths to address the perceived unfairness and inequity of executive pay in the financial services arena ensuring that there should be no reward for failure. This had led to malus and claw-back provisions being introduced, capping bonuses and deferring compensation to link pay to longer-term performance.” The UK had felt the force of these laws disproportionately compared to its European counterparts. Indeed the FCA (unsuccessfully) challenged the bonus cap through the European Court of Justice and it would not be unreasonable to suggest that were the UK to leave the EU, the cap would be scrapped.

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

\*Thousands of City banking jobs are set to leave London once Mrs May has served the EU with the intention to leave notice under Article 50, despite hysterical efforts by traditional conservative UK news media to convince readers that there will be very few job losses, if any. *Newspad* brings you the latest on this far from academic issue – as almost all are enthusiastic participants in various broad-based and/or restricted UK employee share ownership plans. Share scheme practitioners face searching questions about the impact of London based jobs being moved abroad on these employees' current and future Eso shareholdings – for example – the taxation of their cross-border share option scheme entitlements.

\***HSBC:** ceo Stuart Gulliver told Bloomberg that the bank was preparing to move 1,000 staff from London to Paris.

\***JP Morgan:** ceo Jamie Dimon said there could be more job movement out of the UK than the US bank had hoped for. 4,000 of its UK jobs are said to be at risk.

\***Citigroup** up to 2,000 London jobs will go and at **Bank of America** 1250 (of their London jobs are likely to move)

\***UBS:** chairman Axel Weber told the BBC “about 1,000” of its 5,000 London jobs may well be shifted to Frankfurt or Madrid, though no final decision on numbers has yet been taken.

\***Goldman Sachs:** is ‘slowing down’ its earlier plan to move parts of its global operations team to London, ceo Lloyd Blankfein told Bloomberg TV. Up to 2,000 UK jobs in Goldman could be moved aboard, according to speculation.

\***Lloyds:** Sources told Reuters that Lloyds Banking Group was considering setting up a subsidiary in Frankfurt, although again no final decision had been taken.

\***Barclays:** ceo Jes Staley told the BBC that while

the bank may have to move some activities to Dublin or Germany he believed that most of its European banking business could continue to be done from the UK.



## COMPANIES

\*After many months of wrangling, Sir Philip Green finally agreed a £363m cash settlement with the Pensions Regulator to plug the gap in the **BHS** pension scheme. BHS collapsed into administration last April, leading to the loss of 11,000 jobs and leaving a £571m pension deficit. The collapse of the retailer led to a high-profile parliamentary investigation and calls for Green to be stripped of his knighthood. He said: "I would like to apologise to BHS pensioners for this last year of uncertainty, which was clearly never the intention when the business was sold in March 2015. I am also happy to confirm that any of the pensioners that have faced cuts over the last year will now be brought back to their original BHS starting level pension and will all be made whole. I hope that this solution puts their minds at rest."

\*The **Co-op Bank** hung up the *For Sale* sign on its business while warning that another 'significant' annual loss was round the corner. It invited offers to buy all of its shares, saying its ethical approach and four million customers made it a "strong franchise with significant potential." The loss-making bank almost collapsed in 2013 after discovering a black hole in its accounts of more than £1bn. It was rescued by US hedge funds and said it had made "considerable progress" on its turnaround since then, with its cost base reduced by more than 20 percent since 2014. The Co-op Bank's continuing ethical approach to business is one of the reasons that it is able to use the name Co-op. It wrote this into its articles of association when it was undergoing its restructuring and any future owner would have to decide whether to continue this approach. The business secretary, Greg Clark, and the **Financial Conduct Authority** can review the name if it misleads the public.

\*\*Pensions consultancy **Xafinity** announced its intention to float on the London Stock Exchange. The company said it expected to raise around £180m by placing more than 129m shares at an offer price of 139p in what will be the largest float of the year so far – giving it a market cap of £190m.

### Who are the real company owners?

The UK and other EU member states face a new European Parliament push to open up trusts to better public scrutiny, amid warnings that the UK may be unable to flee the principles even after Brexit.

MEPs are poised – in a vote on draft EU laws on cash laundering – to again harden transparency requirements for trusts, which have been resisted by the UK. The adjustments to the draft directive, which MEPs claim are likely to win majority support, would oblige EU member states to operate totally public registers disclosing the 'beneficial ownership' of trusts. Trust beneficiaries would be only capable of escaping these principles if they could prove that their private security could be at risk if the data about them were revealed.

Such a change would undo concessions won by the UK in an earlier session of EU decision-making, when then-prime minister David Cameron personally intervened to safeguard exemptions for trusts from vital transparency requirements.

The proposed opening up of company ownership to public inspection may constrain the UK even after it leaves the EU. MEPs told the *Financial Times* that the national registers on the continent would include funds arranged within the UK, but based mostly on owners and beneficiaries domiciled on the EU mainland.

The bloc may take the UK's compliance with the proposed new guidelines into consideration when evaluating what level of market entry the UK financial companies trade should be granted after Brexit.

However, the proposed Directive adjustment, even if passed by the EU Parliament, would have to be approved too by the Council of Ministers, which would not be so easy. Nevertheless, trustees will not be unaware of the potentially serious threat this initiative poses to some of their business models.

The new Directive adjustment "takes away the possibility for UK trusts to continue as legal constructions that we cannot control", said Judith Sargentini, one of the key committee members who has worked on the new draft guidelines. "It will imply that those that hide something would be traceable." Ms Sargentini, a Dutch Green MEP, added that the general public registers would make available details of all the principal members in each trust: the settlor, trustees, the beneficiary and some other individuals exercising management.

Before news of the EU parliament's move emerged, Guernsey's Policy and Resources Committee submitted its proposals for the establishment of a register of beneficial ownership which could put the island's trustees at loggerheads with the EU. Following a consultation, the States has approved the Committee's proposals in principle and issued draft legislation for the establishment of a central register with the stated aim of maintaining Guernsey's commitment to meeting international standards aimed at tackling financial crime.

### Key features:

- Register to be applicable to all forms of establishment and employees in Guernsey
- Not publicly accessible – information on it will be secured and treated as confidential
- Direct access for the Bailiwick's law enforcement bodies and the Guernsey Financial Services Commission (GFSC)
- Legal gateways to be established to permit

information sharing with domestic and foreign authorities

- Office of Registrar to be established with oversight and enforcement powers including the ability to impose administrative financial penalties
- Criminal and financial penalties to be imposed for breach of obligations regarding beneficial ownership information
- Resident agents' powers to obtain, provide and retain beneficial ownership information to be extended and a statutory process for their resignation to be put in place
- Express statutory prohibition on the use of all bearer instruments, including bearer warrants

The register will not be publicly available, as it is not considered that this would enable Guernsey to demonstrate that the information held is secure. Accordingly all information provided to the register would be confidential and electronic data held encrypted. However, it is proposed that such information can be shared with Guernsey's revenue and law enforcement bodies as well as with foreign authorities for certain specified purposes subject to adequate legal gateways being put in place.

Guernsey is recognised as having extremely high standards of transparency (as demonstrated by the recent Money Val evaluation report published in 2016 and its inclusion on the OECD 'white list' of cooperative jurisdictions).

Given the comprehensive work already done by Guernsey in this area (where there already exist obligations on resident agents to obtain beneficial ownership information for certain legal entities and provide it to the authorities on demand), the proposed regime will not, in actual fact, involve a major departure from the current, well established position. What it will do, however, is ensure that such information will soon be held centrally, thereby streamlining the authorities' ability to access it, reported **Bedell Cristin**. Additionally, as well as extending the requirements to all legal entities registered in Guernsey, it will create a mechanism for oversight of the process by enhancing existing beneficial ownership obligations on resident agents alongside their powers to obtain such information from the companies they are responsible for.

Guernsey companies and limited liability partnerships are already required to appoint either a licensed corporate services provider or locally resident official to act as resident agent under the Companies (Guernsey) Law, 2008 and the Limited Liability Partnerships (Guernsey) Law, 2013. The resident agent is required to take reasonable steps to ascertain the identity of the beneficial owners of the entity in question and has the power, by notice, to require the provision of such information from members.

It is intended that exemptions currently in place for entities which are already subject to beneficial ownership disclosure requirements (eg listed companies and open/close-ended companies and investment schemes) will continue under the new regime.

To provide clarity it is intended that a statutory definition of 'beneficial ownership' will be introduced by the Committee by regulation. Although it appears that the Committee intends to engage in a further period of consultation in respect of this definition it is likely that this will follow the FATF recommendations as regards ownership and control in order to comply with international standards.

It is proposed that the Registrar will only be able to take copies of documents at an entity's registered office, where this is necessary for the purposes of an enforcement action.

## WORLD NEWSPAD

### Secret cash out for US tech employee shareholders

Many long-term employees of **Uber Technologies** are multi-millionaires, at least on paper, but with no initial public offering (IPO) in sight and a strict policy blocking most private share sales, they're stuck in limbo. However, there's a little-known option available to Uber loyalists looking to cash out. Those who work at the San Francisco based company for at least four years can sell up to ten percent of their shares internally, reported *Bloomberg*.

The unpublicised Uber employee shareholder scheme has a built-in incentive to entice staff to stick around, as the seller gets paid out over many months and must remain at Uber during that time. The formal plan caps buybacks at well below \$10m per employee. Fewer than 200 of the 10,000 people employed by Uber currently qualify for the scheme.

Although well paid, start-up employees often take pay cuts compared to what they could receive at giants like **Facebook** or **Google**. They join privately-held companies knowing a chunk of their pay is tied to the fortunes of their employer and could become worthless. What many high tech company employees hadn't bargained for was how long they'd have to wait to find out what would happen. This of course is not a problem for employee shareholders wanting to cash out from quoted companies.

With the exception of **Snap Inc.** and a few others, technology companies are waiting much longer to go public than in the past and the ample funding available from private investors at generous terms have made mergers a less attractive option. As a result, exits have been cut almost in half from their high in late 2015, according to the *Bloomberg U.S. Start-ups Barometer*, an index that tracks private markets.

Uber, the world's most valuable tech start-up valued at \$67bn, has raised more than \$17bn in cash and debt since its founding in 2009. It had more than \$11bn on its balance sheet as of last June, but it has spent aggressively since then. Other high tekkies, **Airbnb** and **Pinterest**, who were founded around the same time as Uber, achieved valuations of more than \$10bn and yet remain private too. These two companies have at times openly allowed their employees to sell shares to interested buyers and even facilitated some of those transactions.

Uber has been more restrictive about who can buy its shares. While its employee share buyback approach can help it retain talent, it may benefit the company's bottom line too. Using its own money, Uber purchases common stock for 25 percent to 35 percent less than the price of preferred shares from its most recent funding round. It can then sell these shares at a premium in a subsequent round. Even so, an employee who received stock four years ago stands to make more than a ten-fold increase on the sale.

However, option holders face colossal tax bills on their stock, regardless of whether they can sell it. In late 2014, Uber began offering employees restricted stock units instead of options, which don't require holders to pay taxes on them upfront. Employee demand to sell stock would be one factor that could motivate Uber to go public, but internal buybacks of employee stock reduce some of the pressure.

\*The ceo of state owned *Australia Post*, Ahmed Fahour, quit after a dispute with the government about his \$5.6m remuneration package. Prime Minister Malcolm Turnbull called on Mr Fahour to take a pay cut, labelling it part of a "cult of excessive executive ceo remuneration." Fahour was told that if he refused to take a pay cut, action would be taken against the *Australia Post* board.

\***Wang Wei** became China's third-richest man through the listing of the nation's biggest courier service. He personally paid bonuses to employees via a payment app that also lets them buy securities, potentially making employees both beneficiaries and boosters of the company's surging shares. Wang distributed the bonuses via the in-house developed app on the same day **S.F. Holding Co.** celebrated the completion of its public share listing in its home city of Shenzhen. Shares have since jumped by the exchange's daily ten percent limit four days in a row. About 20,000 stock trading accounts have been opened by S.F.Holding employees and used to buy the company's shares – by one in six of the companies' 120,000 employees. While it's possible staff may have bought S.F. Holding stock with the bonus, they weren't told to do so, a company spokesperson said. The app was introduced in 2014, but this was the first time the company used it to distribute a bonus. It'd be "only natural" for some to invest in their employer, the spokesperson added. Shares of S.F. Holding have surged about 60 percent in the past week, pushing Wang's wealth to \$26.5bn and ranking him ahead of **Tencent Holdings** founder **Pony Ma**, according to the *Bloomberg Billionaires Index*. The company, which operates courier service *S.F. Express*, listed via a so-called backdoor listing in which assets were injected into publicly traded **Maanshan Dingtai Rare Earth & New Material Co.** in exchange for stock. Its market valuation reached \$44.7bn.

\*Participants in **Nordic Nanovector** ASA's employee share option programme have exercised 56,525 options, of which 600 options had a strike price of 25 Norwegian Kroner; 49,675 other options had a strike price of 28 Kr and 6,250 options had a strike price of 35 Kr. Nordic Nanovector is a biotech company focusing on the development and commercialisation of

novel targeted therapeutics in haematology and oncology. In order to meet the company's obligations under the option agreements, the directors decided to increase the company's share capital by Kr 11,305 through the issue of 56,525 new shares, each with a nominal value of Kr 0.20, against payment of a total subscription price of Kr 1,624,650. *One kroner = c. 10p*. For further info, contact: Tone Kvåle, cfo E mail: [tkvale@nordicnanovector.com](mailto:tkvale@nordicnanovector.com)

\***PFSbrands**, a Missouri-based company that supplies hot food to convenience and grocery stores nationally became 100 percent employee owned on January 1, reported the California based **National Center for Employee Ownership (NCEO)**. Shawn and Julie Burcham, the company's majority shareholders, took advantage of a new state capital gains tax incentive as soon as the Missouri House Bill 2030 became effective. The PFSbrands owners then sold their share stakes to the 120 employees. In the words of Shawn Burcham: "We started our journey to an Esop by contemplating the sale of stock with small percentages year over year. Then, it was announced that Missouri House Bill 2030 would become law. The bill incentivised business owners in Missouri to sell 30 percent or more of outstanding stock to employees in any given year under an Esop. The incentive reduces the state capital gains tax in Missouri from six to three percent. While some states do not have capital gains taxes, Missouri did the right thing with this bill to stay competitive with some neighbouring states that have similar incentives for Esop transactions. This incentive directly impacted the financial outcomes of our modelling and was a major factor in making a 100 percent sale of stock mutually beneficial for both sellers and employees."

\*Executive bonuses are turning into a campaign issue in **Germany** as the Social Democrats propose curbing executive compensation, putting Chancellor Angela Merkel's bloc on the spot seven months before national elections. Legislation presented by the SPD, Merkel's junior coalition partner, would oblige shareholders to cap executive pay in relation to average employee pay and limit tax deductions for corporate officers to the first €500,000 in total compensation, party caucus head Thomas Oppermann said in Berlin. With Merkel's caucus divided, the Social Democrats are pushing a theme that appeals to core voters as they seek to extend a poll bounce ahead of the election on September 24. Martin Schulz, the SPD challenger who has narrowed the gap to Merkel's Christian Democrat-led bloc, took aim in his nomination speech at managers who "rake in millions in bonuses" while check-out cashiers, he said, were fired for minor lapses. Managers "are making 50 and sometimes even 100 times more" than average workers, compared to 15 to 20 times at the time of Germany's economic recovery after World War II, Oppermann told reporters. "I don't see that the performance of managers in comparison to employees has improved that much." Calls to rein in executive pay, an idea that has broad support in Germany, may help the SPD in its campaign to deny Merkel a fourth term. While the Social Democrats are broadly united and say they'll seek to push the measure through parliament before the election, members of Merkel's

business wing are voicing reservations. Peter Altmaier, Merkel's chief of staff, told *Bild am Sonntag* newspaper that he supports proposals to use tax rules to damp manager compensation as long as 'exorbitant' remuneration can't be capped by law. He said he expects cross-party consensus for a bill in parliament. While Merkel and her parliamentary chief, Volker Kauder, have signalled openness to the plan others reject it as a violation of Germany's economic order.

\*Under new rules approved by the supervisory board, **Volkswagen (VW)** will cap total annual reward for its ceo at €10m and other top managers at €5.5m. VW became the target of fierce criticism from the German public and shareholders after its managers only reluctantly accepted a cut to bonus payments of about 30 percent. Bonuses were based partly on VW's performance over the previous two years. The company did not give details on how remuneration under its revamped policy will compare with last year's pay beyond saying that theoretical maximum compensation would decline by as much as 40 percent. VW is due to publish last year's executive remuneration on March 14. The company now aims to shift the emphasis towards fixed salaries. Eligibility for bonuses will be tightened under the new forward-looking system, which will allow for up to a 30 percent increase in fixed salaries, VW said. Managers will lose their annual bonuses if the automotive group's operating profit stays below €9bn, compared to a current threshold of €10bn and if the return on sales remains at least four percent, the company said. Long-term bonuses, meanwhile, will track share price performance, VW added, citing recommendations from Germany's corporate governance code. Executives will have to invest a portion of their reward in company stock, which they will not be able to redeem for several years. Bonuses will be tied to dividends and VW's stock price, so that the consequences of a bad year would also be reflected in executive pay. To date, variable compensation has been about four times higher than fixed compensation. "The view will be oriented to the future and the system will be oriented more toward the capital market," said an unnamed source.

Executive compensation has been a source of controversy at VW, even more so since the **Dieselgate** scandal broke. Christine Hohmann-Dennhardt received a €13m package upon leaving the automaker after serving only a year as its legal chief. The federal state of Lower Saxony, which has a 20 percent stake in VW, is pushing hard for a reduction in executive compensation amid growing public criticism.

\***Gary Cohn's** jump from **Goldman Sachs** to Donald Trump's administration is helping him unlock more than \$284m in pent up bonuses, stock holdings and

other investments through the Wall Street bank. To help Cohn avoid conflicts of interest as Trump's top economic adviser, the bank is letting its former president immediately collect about \$65m in cash and stock tied to its future performance. That's on top of \$220m of Goldman equity he already held or was awaiting, as well as stakes in company-run investment funds, according to regulatory filings. He must liquidate the holdings to take his new post.

\***Wells Fargo & Co's** board is likely to eliminate 2016 bonuses for the bank's top executives following the bogus account scandal, the *Wall Street Journal* reported. The board has discussed withholding bonuses for senior executives, including ceo Timothy Sloan and cfo John Shrewsbury. The bank later fired four mid-level executives and stripped them of bonuses and stock awards as a result of an investigation into improper sales practices in its retail bank. The board of directors voted unanimously to fire them for cause as part of its investigation into employees opening as many as two million deposit and credit card accounts without customers' permission. Last September, the bank agreed to pay a \$185m settlement fine. The misconduct, carried out by low-level branch staff to meet internal sales targets, shattered the bank's folksy image, triggered a raft of federal and state investigations and cost former ceo and chairman, John Stumpf, his job.

### **The origins of US profit-sharing**

After the US won its independence from Britain, one key task was rebuilding the nation's cod fishing fleet, which had been decimated during the war. President Washington charged his secretary of state, Thomas Jefferson with coming up with a plan to help jump-start the industry's recovery. The answer Jefferson arrived at was essentially a federal tax credit where ship-owners and sailors would receive a payment to reduce the tariffs they had been paying to conduct cod fishing. That would help boost their profitability and create incentives for more ships to be built. But there was a catch: only those ship-owners who embraced a *profit-sharing plan* that included the entire crew of the ship would be eligible for this new business tax incentive, said an article in **Forbes** magazine.

As the authors of the book, *The Citizen's Share*, explain: "The Founders understood that the performance of the crews depended on shared rewards and that the well-being of the country depended on all citizens having a stake in the economy's performance. The government was willing to spend public money to help a depressed sector recover, as long as the profit sharing was the general standard of the industry."

# WHITE & CASE

# it's our business

The Founding Fathers believed deeply in the power of broad-based capital, property ownership, and the notion of 'reaping one's harvest,' the authors write, as a way to empower individuals and combat the inequality of wealth across the US.

Given the rising inequality of wealth, the time appears ripe for the US government to return to adopting policies that will encourage more broad-based employee ownership, say the authors of *The Citizen's Share*: Joseph R. Blasi and Douglas L. Kruse, both professors at **Rutgers University School of Management and Labor Relations**; and Richard B. Freeman the Herbert Ascherman Chair in Economics at **Harvard**. In a new report for Third Way, the three distinguished researchers and empirical experts offer their own policy suggestions for how the government can help encourage further adoption of employee ownership throughout the economy: "Our argument is straightforward: policies that encourage firms and workers to broaden capital ownership and access to capital income, consistent within the long American tradition of encouraging broad-based private property ownership, should be part of any effort to address today's economic inequality."

The authors believe that broader citizen capital ownership and capital income contribute to a stronger democracy; with the added benefit that evidence shows that employee-owned firms preserve jobs and survive recessions better than others. "The bottom line is that there is no other obvious way to improve capitalism," says Freeman, who has been studying the impact of employee ownership with Blasi and Kruse for decades. Yet, in just about every recent presidential administration in the years following the revolution – with the exception of the Reagan era where the concept of Esops was significantly strengthened through a bipartisan legislative initiative – there has been waning support from the federal government for broad-based employee ownership. "I am concerned that there is no one in the White House or Congress who can help coordinate any policies and help avoid unintended consequences," says Blasi.

To help Capitol Hill reverse this trend and renew its support for broad-based employee ownership, the trio of social scientists has come up with a series of policy recommendations that include:

\*Creating seed funds to help state governments create information centres that provide information and best practices for companies on adopting employee ownership and profit-sharing plans.

\*Making any beneficial tax treatment conditional on a recipient company having broad-based employee stock ownership and profit sharing plans.

\*Giving employee-owned companies and those with

profit-sharing plans an edge to when it comes to awarding federal contracts.

\*Award short-term tax breaks and benefits for companies who introduce broad-based employee ownership and profit-sharing plans.

\*Establishing a new federal office charged with coordinating a national policy regarding broad-based employee share ownership and profit-sharing.

Kruse admits that promoting employee ownership is not a magic bullet for all that ails the economy or society. "There is no single policy that can address all the diverse problems we face in a dynamic modern economy," he says. "But isn't it time for our political leaders to consider practical policies to help deal with inequality and our economic problems in a way that's consistent with what the Founders believed in?"

## Oz Eso companies worth more

Companies with a strong employee ownership culture command a significant share price premium over their publicly listed peers, according to the Employee Ownership Australian (EOA) Index. An initiative of Employee Ownership Australia, the EOA Index tracks the share price of listed companies with high levels of employee ownership (EO) and compares it to the ASX200. Key findings: employee-owned companies command a 17 percent share price premium; they are twice as likely to show clear evidence of equal opportunity systems; they outperform or match the ASX 200 in three out of five social sustainability factors. In the last five and a half years, the share price of the EOA Index companies increased by 40 percent, compared to just 23 percent for the ASX 200.

**Zimbabwe Platinum Mines (Zimplats)** issued a ten percent stake, valued at US \$95000, to its Employee Share Ownership Trust. The ESOT's beneficiaries are the permanent employees of the operating subsidiary. Executive directors and the company secretary are excluded. "The ESOT will be beneficial to Zimplats in that it will secure and retain key skills and experience among the operating subsidiary's employees to ensure continued long-term operational and production success," said ceo Alex Mhembere. The company said the \$95000 was vendor-financed through a loan advanced by the operating subsidiary to the ESOT. The ESOT will repay the loan from dividends declared by the operating subsidiary. A member of South Africa's Implats Group, Zimplats is among mining firms impacted by government regulations that foreign-owned firms cede a majority state to local employees.

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