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# it’s our business

newspad of the Employee Share Ownership Centre

## Airbus jets into Paris for *newspad* summit

A major all-employee share plans case study involving pan-European plane manufacturer **Airbus,** which employs 133,000 people, is to be a key highlight of the Centre’s international employee equity *newspad* summit in **Paris** on **Thursday & Friday, June 21-22.**
This not-to-be-missed extended speaker slot is being led by **Jennifer Rudman,** strategic development manager at **Equiniti**, together with Toulouse and Munich based **Angelina Lederle,** group compensation & benefits group specialist at Airbus.
The two share plans which they will examine in this slot are the Airbus Esop and its Share Incentive Plan (SIP). Together, Jennifer and Angelina will discuss why the plans were set up, what their features are and reveal how they provide benefits for Airbus’ global employees.
Additional all-employee equity case histories will be presented in Paris by the French global manufacturing giant **Saint Gobain** and by Centre member **Solium**, whose speakers will give us insights from a recent survey of 120 global companies.
Another new slot will be led by **Dominic Jacquesson** of Centre member **Index Ventures,** an international venture capital firm with dual headquarters in San Francisco and London, investing in technology-enabled companies with a focus on e-commerce, fintech, gaming, enterprise software, productivity, and security. This slot will look closely at employee ownership benchmarks in European and US start-up companies.
On regulation, **Ras Berglund** of **Linklaters** will take us through both GDPR and MiFID2 to see how they are bedding down in the employee equity world.
On **Brexit, Nicholas Greenacre** of **White & Case** will discuss the Great Repeal Bill, securities law exemptions, the Prospectus Directive and the post Brexit appetite for employee equity plans.
A potentially sulphurous debate on executive equity rewards will be preceded by a presentation by **Damian Carnell,** director and remuneration adviser at **Willis Towers Watson.** Damian will examine the role of equity in the executive package and the executive personal portfolio. He will discuss what investors want and why and where are we going next.
This employee equity summit is being hosted by senior Centre legal member **Linklaters** at its offices at **25 rue de Marignan**, just off the Champs Elysées.
Other confirmed speakers include: **David Craddock Consultancy Services; Esop Centre**; **FONDACT, International Association for Financial Participation** *(of employees in business),* **Linklaters (Paris), Pett Franklin** and **RM2.**
The programme will contain more than a dozen slots and open debates, spread over the two days. Subject areas will include:
*Share plan regulation – MIFiD2 and GDPR - How are they bedding in?
*Corporate case histories about latest developments in employee equity plans
*Executive equity remuneration: Has the tide turned? Are LTIPs doomed?
*Likely impacts of **Brexit** on international employee equity plans
*Employee communications in share plans - overcoming cultural differences
*Business succession in European privately owned companies
*Increasing Eso take-up in global companies
*Benchmarking international share plans - getting value for money
*Latest developments in **French** international employee equity plans
Centre chairman **Malcolm Hurlston, CBE,** will open the summit on **Thursday** at 1040 *(to allow travel time*

***From the chairman***

*The rethink about the role of employee share ownership in achieving black empowerment in southern Africa should prompt new thinking in the UK too. The ideas had merit at the time, but mining companies were probably never the right fit given the volatility of the sector. In the same way share schemes in the UK were developed in a different world before the Financial Conduct Authority brought fresh perspective to financial lives. Access to equity - the long-standing aim we inherited from Louis Kelso who called it the "wages of capital" - now needs new thinking to encompass workers in private equity and those whose financial lives are currently too marginal for saving to make sense.*

***Malcolm Hurlston CBE***

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*from Gare du Nord for delegates arriving in Paris by Eurostar on Thursday morning).* Linklaters offers a buffet lunch, with the afternoon session finishing at 1740, and a drinks reception to follow. Afterwards, informal dining groups will head off to restaurants of their choice.

The Friday morning session starts at 0915, terminating at 1310. Leading Linklaters' team will be **Rasmus Berglund** from the London office and **Lionel Vuidard** and **Géric Clomes**, from its Paris based employment and incentives division.

To register, email Fred Hackworth: fhackworth@esopcentre.com or Juliet Wigzell at jwigzell@hurlstons.com without delay. Hotel information can be provided on demand. **Delegate fees***: Centre member practitioners £395; Non-member practitioners £615; Plan issuer representatives *free,* subject to a £10 admin charge. The fees cover attendance on both days. An informal delegates' pre-conference dinner will be held in central Paris at *La Fermette Marbeuf* on **Wednesday** evening (June 20) at 2030. If you'd like to join, notify Fred Hackworth.

Our Paris summit e-brochures are being logo co-sponsored by Centre trustee member **ZEDRA,** an independent global specialist in trust, corporate and fund services. **Elaine Graham** is a director and head of employer solutions at ZEDRA Guernsey. She is a fellow of the Institute of Chartered Certified Accountants and has 17 years' experience in the financial services sector. Elaine has vast historical experience in audit, accounting and tax roles, but has spent the past decade focusing on corporate trusts, specifically in employee benefit and share ownership trusts and related incentives structures for a variety of companies. She has extensive tax and legal compliance knowledge and has worked with many corporate clients and their employees from incentive plan implementation to vesting and other value "lifecycle" events. Her clients include some of the largest companies on the LSE, including the FTSE 100, FTSE 250, as well as private companies with institutional shareholders. Elaine's direct line is: +44 1481 881409 and fax: +44 1481 881444. Her mobile number is: +44 7781 136710 and her email address is: elaine.graham@zedra.com. The office address is PO Box 341, Third Floor Cambridge House, Le Truchot, St. Peter Port, Guernsey, GY1 3UW.

## EVENTS

**Share schemes for trustees: Jersey, May 2**

The Centre's next joint employee share schemes conference for trustees will be held at the Pomme d'Or Hotel in Jersey on **Wednesday, May 2**.

Helpfully the Ministry of Justice chose March 29 (Maundy Thursday) to update its fact sheet on the relationship between the UK and the Crown Dependencies, which will provide more food for thought.

This event is held in association with the Jersey branch of **STEP,** the **Society for Trust & Estate Practitioners,** offering an industry leading networking and learning opportunity for all interested in share schemes and EBT trusteeship. It should be equally interesting to experts from all jurisdictions. The programme will cover the latest taxation, legal and regulatory issues in Jersey and the UK. Speakers include:

**Colin Powell CBE**, **States of Jersey; and, Rosemary Marr, STEP:** *Panel session on Jersey, the UK and the EU. What met the eye in the Ministry of Justice factsheet?*

**Paul Malin, Haines Watts**: *The new challenges for all - the April 2019 loan charge, the Digital Disclosure Service and more*

**David Pett, Temple Tax Chambers:** *Recent UK cases in the courts/tribunal*

**Graham Muir, CMS:** *GDPR*

**Stephen Woodhouse, Pett Franklin:** *Employee trusts: challenges and opportunities for trustees*

**David Craddock, David Craddock Consultancy Services:** *Vix and you – share schemes in an era of volatility*

Attendance costs **£375** for Centre/STEP members and **£480** for non-members.

To book your place, email: events@esopcentre.com.

## MOVERS AND SHAKERS

**Stuart Bailey** has joined **Computershare** as associate director, business development, based in London. Stuart remains a director of **White Oaks Consulting**, which specialises in the employee share plan market.

**Reading matters: The Company Citizen: Good for Business, Planet, Nation and Community** by **Tom Levitt** is available from *Routledge*. It contains several pages about employee share ownership. Centre members can obtain a **20 percent discount** - £5 off the paperback – by using the code **FLR40** when prompted. An ebook is available from the publisher. The issue is not '*How can business help us solve the issues of the day?'* but '***We can't solve the major global or local issues confronting us - social, environmental, economic - without engaging business (alongside the public and voluntary sectors) both locally and globally.'*** The book looks not just at how those problems might be addressed but how more and more businesses are *already* addressing them. And yet… some are still heading in the wrong direction. This is why we need to show that such solutions are made sustainable by establishing a business case that 'business doing good is doing good business'. **Tom Levitt Sector 4 Focus** - using the tools of business to create public good.

**Shaun Spiers, former MEP, eso supporter and now director of the Green Alliance,** held a launch at Daunts in Fulham last month for his new book: **How to build houses AND save the countryside.** Sir Andrew Motion called it "at once reasonable and visionary", while in the foreword Toby Lloyd of

Shelter hailed "a spirited defence of planning, in opposition to both knee-jerk NIMBYs and market fetishists….Read this book with an open mind and be ready to question your own assumptions." You can order a copy from www.policypress.co.uk/how-to-build-houses-and-save-the-counryside.

## UK CORNER

**Accounting concerns over SAYE contributions holiday**

The government's decision, first reported by *newspad* last month, to increase the SAYE contributions holiday to one year for participants on parental leave and to extend the scheme to those who experience severe illness or serious financial hardship, has raised accounting issues, according to Centre member **Pett Franklin**.

"While these developments are widely accepted as positive, were they to effectively extend the duration of the standard 3-year SAYE plan to variable lives of 3-4 years, this could pose a challenge from an accounting perspective," observed **William Franklin**, chartered accountant and partner.

"The valuation of SAYE options might become more complex and the accounting costs increase. This may, in a worst case scenario, deter companies from establishing SAYE in the first place. To prevent this, guidance may be needed from HMRC as to the standard for determining participants who will qualify for the holiday."

The government announced that the raising of the SAYE-Sharesave contributions holiday from six months to twelve months will be delayed until September 1 this year to allow technical issues to be worked through and for SAYE administrators to update their IT systems.

In its Autumn Budget, the government announced that it would be increasing the contributions holiday for SAYE maternity/paternity leave participants from six months to twelve months, but did not reveal – at that stage - its plan to extend the privilege to those who are seriously ill or in financial difficulty.

**Roadchef**

Participants in the motorway services Roadchef Esop **STILL** await their court-awarded compensation more than three years after former boss Tim Ingram-Hill reached an out of court financial settlement with Roadchef Employee Benefit Trustees Ltd (REBTL) over their shares, which were wrongly transferred into another Roadchef EBT.

Sounds of an Establishment shoe-shuffle grew louder as HMRC refused to discuss the case and parliamentary committees passed the buck from one to another.

Meanwhile, REBTL and HMRC remain deadlocked over the key question of whether about **£10m** of the total sum paid in tax by Mr Ingram-Hill (TIM) on his gains, when he sold the Roadchef shares to Nikko, should now be paid to the Esop participants *on top of their share of the compensation pot.* REBTL director Christopher Winston Smith alleged that HMRC agreed last autumn to a tax-free distribution of the compensation pot to the former Roadchef employee shareholders, **provided** that the trustee abandoned its claim for restitution of a large slice of the tax paid.

This the trustee has refused to do, arguing that it was "*legally and morally wrong for HMRC to benefit from money wrongly received from a third party and which was not tax. This is the Trust's money."* HMRC has dug in its heels and – to date - has refused to budge.

It was in January 2014 that Mrs Justice Proudman (now retired) ruled in the High Court that effectively what TIM made from the sale of employees' shares had to be paid back, **net of tax,** to the trust for distribution to its beneficiaries.

She said that the proceeds from the shares sold had been held on constructive trust by the chairman for the beneficiaries.

However, the implementation of the High Court's ruling and the subsequent distribution of the original shareholders had proved to be very complex, said Treasury Financial Secretary Mel Stride in the Roadchef adjournment debate last December. He told MPs: "Although HMRC has discretion as to how it goes about fulfilling its duties, as a statutory body it must of course apply the law fairly and collect the taxes set out in legislation. When the law is unclear, HMRC can exercise some discretion to ensure that it gives effect to parliament's intent. For example, HMRC can exercise discretion to give up some tax if there is an unintended or unforeseen effect that affects only a small group of taxpayers or will be apparent only for a short time."

The High Court's additional later ruling that the term '*beneficiary'* – poorly defined in the trust deed - in this case meant those who would receive compensation when it was eventually paid, which includes at least 3,000 other Roadchef employees who work or have worked for the company post its sale **and** *several hundred original Roadchef employees who did* ***not*** *participate in the Esop and who therefore lost nothing.*

After many months of negotiation, the court backed a final compensation scheme which will give 61 percent of the settlement amount to the Esop participants, nine percent to those 'original' employees who were not

WHITE & CASE

employee shareholders and the remaining 30 percent of the pot to more recent Roadchef employees. Several MPs and other supporters of the former Roadchef Esop participants are making efforts to obtain a parliamentary select committee hearing about HMRC's stance in the compensation tax row, but without success so far.

HMRC argues that as the case concerns the tax affairs of individuals, it cannot comment in public, but critics say that in reality the employee claimants, some of whom have died since their shares were taken from them, constitute an unofficial *class action* of public interest.

**Brexit**

Post Brexit the UK will lose passporting rights, which allow the City to offer its services to all member states without regulatory barriers. In her key Mansion House speech on Brexit the Prime Minister said: "*We are not looking for passporting because we understand this is intrinsic to the single market, of which we would no longer be a member. It would also require us to be subject to a single rule book, over which we would have no say."* Eventually, this decision may well have a major impact on the international reach of UK based share schemes where the sponsor wants to either set up new schemes for its employees who work in EU member states, or to extend existing ones. Most at risk is the Prospectus Directive exemption, which allows UK multinationals to extend plans into multi EU jurisdictions without having to translate documents into a dozen different languages, not to mention avoiding other associated bureaucratic hurdles. Unless a pre-Brexit financial services deal is reached with Brussels, international employee equity schemes sponsored by Dutch, French, German or Italian companies could face tit-for-tat reprisals by HMRC (*if the PD exemption is withdrawn from UK originated schemes extended within the EU*) should they wish to install new schemes, or extend existing ones, in the UK. However, Mrs May warned the EU that any deal that was not favourable to financial services would hurt both sides.

Earlier, Michel Barnier, the EU's chief Brexit negotiator, said in Brussels, that by using "a proportionate and risk-based approach." the EU would be able to consider ***some*** of the UK's financial rules as equivalent to those of the EU. **But he reiterated that once the UK exited the EU on March 29, 2019, the EU would not give UK financial firms a general "passport" to do business in the single market. Therefore, a system of generalised equivalence of standards would not be enjoyed by the UK's financial service providers**. Mr. Barnier warned that a "trading relationship with a country that does not belong to the EU will never be frictionless." He concluded that the EU27 will need to continue to work together in a united way to reform Europe and to overcome challenges, including building a real Capital Markets Union and a global Europe prepared to offer its businesses new opportunities to export to Australia and New Zealand.

On January 10, the **chancellor of the exchequer, Philip Hammond**, and **Brexit secretary, David Davis,** published a joint article that appeared in *Frankfurter Allgemeine Zeitung*. The article commented on future economic ties between the EU and the UK, covering a broad range of services industries, focusing in particular on financial services, reported lawyers *Katten, Muchin Rosenman.* Hammond and Davis wrote that the UK would be seeking to "*ensure that financial authorities across the world can co-operate in rule-setting and supervising systemically important global firms*." Therefore they would double their efforts to get "a deal that supports collaboration within the European banking sector, rather than forcing it to fragment." They proposed a time-limited implementation period after the UK leaves the EU – deadline now fixed at **December 31 2020 -** so that normal access to the EU from the UK and vice versa could continue until then using the EU's existing regulations and agencies.

***International businesses with operations in the UK are starting to trigger contingency plans which may see the transfer of functions to mainland Europe and large-scale reductions in UK staff numbers said **Alison Dixon** of Centre member **Bird & Bird.** 'Whilst financial services is one of the most talked-about sectors when it comes to contingency planning, all international businesses with UK operations will need to be considering how they can best preserve their ability to access the single market, hire and retain staff from the wider EU talent pool and navigate the legal and regulatory difficulties that will inevitably arise from the EU/UK divorce' said Ms Dixon. 'Undoubtedly, these deliberations will include whether or not their UK workforces need to be reduced in size, potentially with an equivalent increase in staffing numbers elsewhere in Europe. *HR professionals in this sector will need to dust off their UK redundancy know-how, as well as considering whether the transfer of roles to other EU jurisdictions is covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and/or equivalent European*

Linklaters

*legislation.*

'An employer who plans to transfer entire functions or parts of its business to another part of its empire outside the UK may be caught by TUPE, which provides that where one employer transfers a business or part of a business to another entity, any employees who are assigned to that business will automatically transfer on their existing terms and conditions of employment and with their continuity of service preserved.

'TUPE provides enhanced protection against unfair dismissal for qualifying employees, and requires employers of affected employees to inform and, potentially, consult with appropriate representatives of those employees in advance of the transfer. In businesses without recognised unions, elections generally need to be held to elect employee representatives. This is vital, because a failure to comply with the information and consultation requirements can result in an award of up to 13 weeks' pay for each affected employee. If the affected group is large, this liability could be very significant. To assess whether TUPE applies, an employer must make a careful assessment of what is being transferred – does it fall within the definition of a business transfer under TUPE? - and then analyse which employees are assigned to the transferring business and therefore "in scope" to move across. There are huge amounts of domestic and European case law on these issues and much of it is very fact-specific; businesses will need to be confident in applying the legal principles to their own particular circumstances.

'It is generally accepted that even where a business situated in the UK is transferred outside the UK, TUPE can still apply. Where the business is being transferred elsewhere in the EU, local legislation on the transfer of undertakings may apply. The information and consultation requirements, and consequences of failure to comply with these, can be more stringent than under TUPE in the UK, so careful advice needs to be taken in the recipient country. In a transfer from the UK to another jurisdiction, it is likely that the "in scope" employees will automatically transfer to the new employer on their existing terms, including terms as to workplace, with the result that immediately following the transfer, their roles will be redundant (because the transferee no longer requires employees to carry out work of the type they are employed to carry out at their existing workplace). However, this doesn't mean that pre-transfer dismissals are safe', added Ms Dixon. The outgoing employer cannot rely on the incoming employer's redundancy situation, so pre-transfer dismissals carried out by the outgoing employer in reliance on a redundancy situation that will arise immediately following the transfer are likely to be automatically unfair, and should therefore be approached with caution. Helpfully, following amendments to TUPE in 2014, it is now possible for the outgoing and incoming employers to agree that the incoming employer can carry out collective redundancy consultation with in-scope employees in advance of the transfer date, even though it is not yet the employer of those people. This is well worth considering in an intra-group transfer, where the outgoing and incoming employers are likely to have a common interest in ensuring the smoothest possible transfer at the lowest possible cost, added Bird & Bird.

Whereas some senior and highly skilled/ specialised workers may be asked to relocate along with the business they work in, others will not be so fortunate. Redundancies may well be necessary. If 20 or more redundancies are proposed by a single employer at one establishment within a 90-day period, collective consultation obligations will be triggered and dismissals will be prohibited for a prescribed period after the start of that consultation process (the length of the period depends on the numbers to be dismissed). As with TUPE consultation, the penalty for failure is significant – in this case up to 90 days' pay for each affected employee. When we should start consulting will depend on business objectives as well as how many employees are expected to be made redundant and over what period. There is no prescribed trigger point in law and timelines are typically dictated by commercial or accounting pressures. However, key legal points should be factored into planning: consultation must cover the business reasons for proposed redundancies and ways of avoiding them. In light of this, it is necessary to start consultations before the business decision, which will inevitably lead to redundancies, is made. Communications with affected staff need to be carefully timed and worded, to reflect this plus there is the obligation to notify the secretary of state (*on form HR1*) of collective redundancies prior to commencing consultation. This should be done at least 30 days before the first dismissal in the case of 20-99 redundancies and at least 45 days in the case of 100+ redundancies. Failure to do so is a criminal offence, which may result in liability for the employer and members of senior management. Any HR professional advising management on redundancy obligations omits this at their peril.

*If the government is to be believed*, Brexit will bring many exciting opportunities for UK businesses. ***However, it is clear that international companies are now looking at their options and those undoubtedly include reductions in UK headcount.*** HR professionals in those businesses will need to know their way around TUPE and redundancy law to ensure

that any such reductions are carried out smoothly, humanely and, of course, in accordance with the law, warned Bird & Bird.
*Swiss bank **UBS**, which has 5000 employees in the UK, announced in its fourth quarter earnings report that it would trigger Brexit contingency plans shortly, having previously suggested that it could move up to 1000 jobs from the UK.
***Anglo-Dutch** consumer goods giant **Unilever** announced that its HQ would no longer be shared by the UK and Holland, in the run-up to Brexit. Days later, its website said that its HQ was now based in Rotterdam and it is therefore likely that its shares will be de-listed from the London Stock Market.
*The UK can free its banking system from the burden of excessive EU red tape after Brexit – to focus instead on key rules which keep the financial system safe, said **Mark Carney**, governor of the **Bank of England (BoE)**. That could include scrapping the bonus cap which the BoE has long opposed, as well as rules which force small banks to face the same rules as global institutions. Speaking on *Fair and Effective Markets,* the governor said that regulation in general should be more proportionate. Mr Carney criticised Brussels' bonus cap, which limits bankers' variable pay to the same level as their salaries, or double the salary if shareholders agree. The BoE said this pushed up salaries, making banks' finances less flexible. "One consequence of the regulation of remuneration, particularly the introduction in the EU of the bonus cap, has been an increase in fixed remuneration as a proportion of total remuneration," the BoE said in December 2015. "As with excessive variable remuneration, without appropriate incentives, this can impact negatively on resilience within the financial system by limiting the proportion of total remuneration that can be used to absorb losses in a downturn and that which is aligned to long-term risks." Officials want to make bonuses an incentive for good long-term behaviour, by paying them out over several years and clawing them back if bankers misbehave. By pushing more money into salaries, the BoE fears the cap prevents this working effectively.
*The **Office for National Statistics** recorded a slump in inward investment last year by foreign companies buying UK interests. The overall value for this fell from £190bn to £35.3bn last year. Inward mergers and acquisitions had reached a record high in 2016, owing to a small number of high-value sales of UK businesses to foreign buyers, mostly prior to the EU referendum. By contrast, last year saw no sales of UK firms with transaction values of over £10bn.

## CORPORATE GOVERNANCE

**City investors control shareholder votes**
Asset managers control most shareholder votes in public companies, said recent Centre high table guest, **Dr Ewan McGaughey.** They have systemic conflicts of interest, because shareholder votes can influence companies to buy asset managers' financial products (e.g. defined contribution pensions). Now this is changing, wrote Dr McGaughey, lecturer in Private Law at King's College, London and research associate at the **Centre for Business Research** at Cambridge. In summary, he said: "Shareholders, who exercise votes, are mostly asset managers and banks. They make no firm-specific investments at all. They bear no risk from insolvency. They appropriate votes on 'other people's money'. The true, ultimate investors are beneficiaries of pension funds, life-insurance policies or mutual funds: usually employees saving for retirement. A majority of EU member states now have some form of co-determination law. *All modern behavioural evidence suggests that, unless people are fairly treated and paid, they lose motivation to work.* Qualitative evidence supports worker voice, not least because conflicts need to be resolved, not suppressed. Multiple interest groups on boards can and do work well. In 1978, worker representation at the UK Post Office board was lauded in its own annual report as having 'contributed much to the major decisions that have to be taken about the future.' Third, preliminary quantitative evidence suggests legal systems with votes at work are superior in productivity and economic development. The fact that there is not already a general co-determination law in the UK is surprising. The South Metropolitan Gas Act 1896 and the Port of London Act 1908 brought about worker representatives on boards. The Gas Act had depended on workers investing money through an employee share scheme. Yet the Port of London Act enabled worker votes solely by the investment of labour.
"So, how should companies and trade unions approach the **Financial Reporting Council's** corporate governance reform options? Given the social and economic benefits from embracing employee voice, the most advisable approach for corporate boardrooms would be to get ahead of the curve. They can look to successful competitors across Europe – in the Netherlands, Denmark, Sweden, Norway – for advice. *By far the simplest option would be that the workforce elects at least one director.* Trade unions may well bargain to choose the board representatives, but there are alternative models. Unions already nominate many pension trustees, but many have workforce ballots and unions put up candidates. One of the best reasons for voice on boards has always been the reduction of industrial conflict. The overwhelming experience is that worker representatives will genuinely seek to defend employees' interests, but they do so in a co-operative way," he added.

**TSR champion metric for long-term performance**
More and more European companies are using Total Shareholder Return (TSR) as their long-term performance metric in the global marketplace, concluded Centre member **Aon's Inaugural Global Relative TSR Plan Survey**. It showed that many EU based companies are moving away from US-style executive reward metrics towards the 'UK-style' TSR,

which is popular among investors because it aligns shareholder value with pay, said **Sian Halcrow**, European practice leader at Aon.
"The key trend is that Europe used to be more aligned to US-style compensation with grant targets which allowed possible double share awards, whereas they are turning more to UK-style metrics in which executives can receive a stated maximum number of shares, based on performance, but cannot exceed the limit," explained Sian.
"What we are seeing is a lot more pressure from shareholders to align executives' interests with those of shareholders, so the move in Europe is more and more towards performance conditions, which is not so often the case in the US.
"No matter the conversation that exists in the marketplace around equity types, it is Aon's belief that relative TSR will remain the most commonly used performance metric within share plans for years to come," added **Sian,** who co-authored the survey with **Terry Adamson**, Partner and Global Equity Leader, at AON.
Last year, TSR was present in 56 percent of companies' compensation plans within the FTSE 350, 46 percent in the Eurotop 100 and 58 percent in the S&P 500, their survey revealed.
These plans align directly with shareholders but are not impacted as much by the macro-economic events outside of a company's control as instruments like stock options, creating a fairer estimate of performance to employees. While the data in this analysis shows many companies using multiple metrics within their performance plans and we agree with such diversification being necessary, we believe relative TSR will remain in use because of the specific balance it provides between shareholders and management.'
The main advantages of relative TSR are that it:
• Is viewed favourably by many proxy advisory firms and shareholders;
• Creates strong shareholder alignment when properly designed;
• Offers complete transparency, with share price performance illustrated daily; and
•Allows for objective multi-year performance measurement often without the challenge of long-term goal setting.
"However, as with other performance measures, the design and implementation of a relative TSR plan can be highly nuanced, with a number of moving pieces and details required for a successful program. No two plans are alike, and the finer details of how TSR is measured are often tough to find due to a lack of consistency and requirements in disclosures," they warned.
"This disconnect between the popularity of relative TSR and the lack of readily-available information inspired us to conduct Aon's Inaugural Global Relative TSR Plan Survey, to provide companies with meaningful trend data, market prevalence information, and analysis."

As the largest provider of services surrounding relative TSR plans, Aon may be uniquely positioned to provide insight into the grant practices, plan design and communication strategies used across the world. Using a web-based survey, Aon collected the relative TSR plan details of more than 450 companies, including 340 in the US and 110 international companies, to create the largest, most detailed database to date of relative TSR plans. The report on European companies, will also illustrate where EU practice differs from elsewhere. In many companies these differences are driven by the fact that practice is still developing outside Europe (particularly in the US – where companies have relied more heavily on share options and time-vesting share awards until recently). Aon plans to conduct this analysis annually.

## COMPANIES

***BP** ceo Bob Dudley registered his first pay rise since a bruising shareholder revolt, receiving £9.5m for last year. His total pay climbed by £1m from the year before, when BP's remuneration committee slashed his total compensation by 40 percent to avoid a repeat of a shareholder rebellion BP suffered over its 2015 payout. The outcry prompted a remuneration review that recommended keeping a lid on booming salaries by making their links to performance more transparent. The committee said it had used its discretion to clip his 2017 pay, which could otherwise have climbed to £12.5m – just ten percent shy of the bumper payday that triggered the revolt. Shareholders voted against the 2015 pay award by 59 percent after Mr Dudley earned £13.7m in the same year that the company reported record losses amid a global slump in oil prices. The FTSE 100 oil and gas giant made profits of £4.4bn in 2017 compared to just £1.86bn in the previous year. However, the remuneration committee chairman, Dame Ann Dowling, said there was room for further improvement, noting that the company had continued to incur costs from payouts for the Gulf of Mexico oil spill. "Taking these factors into account, the committee chose to reduce the level of payment for long-term performance shares by 26 percent," she said. Mr Dudley adopted the new remuneration approach early by voluntarily reducing his maximum award from 550 percent of his salary to 500 percent.
***Carillion** executives were accused of demonstrating

"greed on stilts" by worrying more about "fat pay and bonuses" for bosses than looking out for signs of trouble before the company collapsed. MPs investigating the failure of the government contractor released fresh evidence, showing how Carillion sought to boost and protect the rewards for its top executives, despite the dire state of its finances.

Publishing minutes of the company's remuneration committee, MPs said Carillion's directors were "doing their utmost to ensure there was no impediment to their receipt of fat pay and bonuses." Carillion collapsed in January with £2bn worth of debts to its 30,000 suppliers. Richard Howson, ceo from 2012 until July 2017, pocketed £1.5m in 2016, including a £122,612 cash bonus and £231,000 in pension contributions. **Rachel Reeves MP,** who chairs the Commons business select committee, said: "These remuneration committee papers are further evidence that when the walls were falling down around them, Carillion bosses were focused on their own pay packets rather than their obligation to address the company's deteriorating balance sheets. When even the Carillion remco considered asking for directors to return their bonuses, the system and culture was so dysfunctional, and the terms and claw-back provisions so weak, that even this meek step was ruled out," she added. The company attempted to increase the maximum bonus level to 150 percent of pay in 2016, although it was forced to back down to 100 percent by shareholders, including the investment management giant **BlackRock,** which had expressed concerns. The taxpayer-backed Pension Protection Fund is likely (yet again) to pick up the £900m shortfall in Carillion's pension schemes. So far, around 1,400 former Carillion employees have lost their jobs, though thousands more have been saved by selling on its contracts.

*Share plans were a "growth engine" for **Computershare** last year according to ceo Stuart Irving.The Centre member delivered growth in earnings as well as strong cash flow from operations. "*Our growth engines of mortgage services and share plans are performing to plan and our cost management strategies are improving our profitability,'*' said Mr Irving. *"As we continue to simplify Computershare and recycle capital, the balance sheet continues to de-leverage, creating additional capacity to enhance shareholder returns,*" he said. Computershare's employee share plans have benefited from client gains, which have resulted in an increased transactional activity, while offsetting a lower margin income. Slight revenue declines in Hong Kong and Canada were offset by the improved returns from the US, the UK and Australia.

***Equiniti,** which helps most of the UK's biggest companies pay wages and pensions, set up and run employee share schemes, raise money on the stock market and distribute dividends, has come in for favourable market comment in recent months. Centre member Equiniti owns the share-dealing platform **Selftrade,** and helps firms deal with financial grievances from customers, such as mis-sold Payment Protection Insurance. *Midas* recommended the shares in July 2016, when they were 172p. By mid March this year, they had risen by 80 percent to 310p.

*Insurer **Hiscox** reported a median bonus payment gap of almost 50 percent, or on a mean basis **71 percent**, between its male and female staff. This was driven by the company having a higher representation of men at senior levels in the organisation, in roles which attract higher variable pay, which resulted in men's bonuses being on average larger than women's bonuses. These figures included share options excised, which can vary year to year. During 2017 there were large share transactions by male employees, which was reflected in the 71 percent bonus gap, the company said. Overall, Hiscox reported a median hourly pay gap in the UK of 26 percent, or on a mean basis 31 percent, in its 2017 UK gender pay report - a requirement for all UK companies with 250 or more employees. Companies must measure the difference in pay between men and women across a company's workforce, regardless of seniority or type of role. This gap is driven by having fewer women at senior levels at Hiscox. Bronek Masojada, group ceo, said: "At Hiscox, we benchmark salaries and provide performance-related bonuses, employee share schemes and competitive benefits to all our employees. We strive to be inclusive, so that everyone working here can fulfil their talent and ambition. Like many other businesses, Hiscox has a 50/50 gender split at entry level roles, but we see a decline in women filling senior, higher-paid roles. This is driving the gap between the average amount paid to men, compared to the average amount paid to women."

*Employees at the **John Lewis Partnership** will receive a bonus worth just five percent of their salary this year after the retailer cut the annual cash pay-out to its lowest level in 63 years. Pre-tax profits at the employee-owned company sank 77 percent to £104m in the year to January 27 due to £111m worth of restructuring costs and property impairments and narrower margins at its supermarket chain, Waitrose. Although JLP boasts the oldest UK's employee benefit trust, it does not operate Eso schemes.

***Rakesh Kapoor**, ceo of UK based consumer products multinational **Reckitt Benckiser**, has had his pay package slashed for the second year in a row after disappointing results, as the company tried to ward off a repeat of 2016's shareholder revolt. Mr Kapoor will be paid £12.5m for 2017, almost half the £23.7m he could have been paid for the year. Reckitt has posted flat annual sales for the first time ever and said it had missed previously set targets for profit margins. As a result, Mr Kapoor received no bonus and no increase to his salary for 2017. Although growth targets for Reckitt's LTIP had been exceeded, Mr Kapoor volunteered to receive fewer share awards for the year to reflect the poor results, and had these awards halved.

# EMPLOYEE OWNERSHIP

***AHMM (**Allford Hall Monaghan Morris) is the latest firm of architects to embrace the employee trust model of ownership. This international practice was founded by four partners 28 years ago. For its 380 employees, the move to employee ownership is the natural next step in the development of the practice. This change does not affect its existing leadership or management of the business and the directors will remain firmly at the helm for the foreseeable future as the firm meets the challenges ahead. Peter Morris, md of AHMM said: “The move to employee ownership enables us to plan for the long term, ensuring the practice's spirit and its ambition to deliver creative and intelligent architecture for its clients is sustained, while allowing future leadership to emerge alongside, over time.”

*The trustee of the **BB Partnership Employee Ownership Trust** (EOT) purchased every BBP share from the founders and directors, allowing staff to benefit from the company's success. Architect BB Partnership celebrated its 25th birthday by moving to 100 percent employee ownership, predicting that most UK practices will one day be owned this way. This model underpins the long-term stability of the practice and strengthens existing teamwork, generating promotion based on merit, rather than a willingness to invest. Founded in 1991, BBP specialises in mid to high-end residential projects, both as one-off schemes for private end users and for commercial clients. Centre member **Fieldfisher** advised BBP.

*Majority employee ownership is taking hold in the US. In **North Carolina,** “a growing number of companies in the area are considering…a shift to worker ownership,” wrote Adele Peters for *Fast Company.* Many SME owners are seeking to cash out as baby boomers retire, selling businesses to the employees who work there is emerging as an increasingly common strategy. Pursuing this path is Eric Henry, owner of **TS Designs**, a screen-printing business, employing 20 people. Henry said: “We’re not a publicly traded company, we’re a small business. Those businesses that are tough to sell, you shut the power button off.” For him, the sale is more than a transaction. He said that employee ownership provided a “better way to engage people…. Ultimately, when [workers are] more engaged, they’re more informed, they’ll make better decisions, which in turn makes the company more successful. I think it’s just a good foundation to move a business forward.” Another is **Opportunity Threads**. Molly Hemstreet founded the worker-owned cut-and-sew factory in 2008. Hemstreet said: “We’re not a collective [where] everybody’s making every decision. There’s still a clear hierarchy. It’s just to say that the profits of the business and the risks are shared among a group of people.” At Opportunity Threads, workers make up the board and management teams; the management teams run the business, rather than a traditional ceo. The company is saving some profits to invest in a new manufacturing facility, and has invested in full benefits for all employees, whether or not they are worker-owners. The rest of the profits, about 30 percent of the total, go to the workers and worker-owners.” More recently, Hemstreet helped start the Industrial Commons to promote employee ownership at more companies. So far, Hemstreet and 14 other businesses have formed the Carolina Textile District, which collectively employ 400. Many of these businesses expect to convert to employee ownership as their business owners retire.

**Schemes to award employees tax-free bonuses fail in Upper Tribunal**

The Upper Tribunal dismissed taxpayers' appeals in **Cyclops Electronics Ltd** and **Graceland Fixing Ltd**, reported Centre member **Deloitte**. They involved two similar arrangements whereby the appellant companies had provided restricted loan notes to certain employees/ directors/shareholders, rather than traditional bonus payments. The awards were subject to potential forfeiture conditions, which, the taxpayers argued, made the awards restricted securities at risk of forfeiture within the meaning of s 425 ITEPA 2003. The Upper Tribunal agreed with the First-tier Tribunal that the forfeiture provisions were commercially irrelevant and designed only to secure the benefit of the tax exemption. It followed that none of the loan notes were 'restricted securities' within the meaning of s423 ITEPA. The Upper Tribunal agreed with the First -tier Tribunal that, when the employees received their loan notes, they received a 'payment' of 'earnings' in the form of cash equal to the principal amount of those loan notes. *See http://deloi.tt/2Dmy1XN*

**Announcements under the MAR, Disclosure, Guidance & Transparency Rules**

***Billington Holdings Plc** confirmed that, as part of its incentive programme for its executive directors, it had granted options as follows: Mark Smith an option under the non tax advantaged plan to acquire 6,936 ords of a nominal value 10p each in the company at an exercise price of nil per share. He remains directly interested in 5,000 ords representing 0.039 percent of Billington and now holds options over 41,853 company ords. Billington granted to Trevor Michael Taylor an option under the same plan to acquire 5,465 ords at an exercise price of nil per share. He is directly interested in 6,000 ords representing 0.046 percent of the company and now holds options over 40,382 company ords. These options can be exercised at any time between the third anniversary and the tenth anniversary of the date of grant, subject to the relevant employee remaining in the company and otherwise at the discretion of the Board. The exercise of these options will be satisfied by the issue of shares from the Billington Employee Share Option Trust.

***Braemar Shipping Services** announced that **SG Kleinwort Hambros Trust Co**, as trustee of the Braemar Esop, had entered into a trading plan with the

company. The London-listed firm said that under the plan, which is running until May 14, the trustee would instruct broker Stockdale Securities to acquire ords for the Esop. Purchases would be limited to 250,000 ords, with a maximum 10,000 shares per transaction. The maximum price paid per ord would be five percent above the average of the middle market quotations for such shares for the five business days immediately preceding the purchase.

*AIM-listed **HML Holdings**, a provider of property management, insurance and ancillary services to residential property blocks, announced on March 2 the issue of 102,600 ords of a nominal 1.5p each in the capital of the company, which have been allotted post exercise of employee share options. The total number of ords in issue following this transaction was 45,488,635.

***MJ Gleeson plc** was notified that three directors had acquired 26 ords each in the company on March 5 at a purchase price of 7.84 per ord through an HMRC approved profit sharing Eso scheme.

*AIM listed **Mporium Group,** the technology firm delivering event-driven marketing, said that on February 23 that ceo Nelius De Groot was granted an option over 8,000,000 Mporium's ords of a nominal 0.5pence each, exercisable at a price of eight pence each, being the closing mid-market price on the trading day prior to the grant. The share options, granted under the company's employee share option scheme have a ten-year life and will vest in three equal tranches over the next three years on February 23, 2019 and on the same date in 2020 and 2021. Vestings will normally be conditional on continued employment. Following this grant, Nelius De Groot's interest in options over the company's ords totals 20,771,588. Nelius already holds 9,277,633 ords, representing 1.58 percent of the issued share capital.

*The UK ceo of AIM listed estate agent **Purplebricks**, Lee Wainwright, was granted an option to buy 100,000 ords in the firm on March 5. The purchase would be at the recent closing price of £4.15p per share. The options were granted under Purplebricks' Employee Share Option Plan.

**Deliver Eso to ten percent of private sector workforce by 2025, urges report**

A new report by **ResPublica** recommended delivering employee share ownership to at least ten percent of the UK's private sector workforce within the next eight years. ResPublica is headed by Phillip Blond, guest of honour at the Centre's last awards dinner.

The report, entitled: '*A New Bargain: People, Productivity and Prosperity*' said that employee ownership can drive productivity, but that levels of employee ownership in the UK remain small compared to competitor countries. As part of the economic solution, there should be a 'productivity partnership fund' created for unions and businesses to make joint bids to support productivity gains. Unions should be supported to become 'lifelong learning banks' as an impartial voice in supporting skills development, it said. Workforces should have new powers to be consulted on change, efficiency and fairness in a business. The government needs a long-term view on employee voice, just as it has on infrastructure. Through the industrial strategy the government should commit to 'employee voice deals', using the sector deals process to promote commitments by industries. This would engage employees and embed employee voice, the report added.

## WORLD NEWSPAD

**South Africa and Zimbabwe:**
**New look at Eso as black empowerment**

The new regimes in both **South Africa** and Zimbabwe wasted no time in reversing elements of the previous ownership rules for mining companies in order to stimulate much needed foreign investment.

Writing in *Business Day,* Jeff Magida, a former mining union organiser and an independent trustee of mining Esops, voiced black worker disillusion over Esops. He wrote: "*The benefits of Esops and community trusts have been scarce. Beneficiaries of the schemes have struggled with the reality that while they could own eight percent of a mine, payouts are often negligible at vesting. Thus, cash is often preferred to what is seen as hollow symbolism of share ownership. Perhaps, if configured differently, trusts could still fulfil their mission of spreading the benefits of ownership, but not as currently structured.*"

Tebello Chabana, SA Chamber of Mines senior executive for public affairs and transformation, who will lead the chamber's charter engagement MINING charter wrote in *fin24':* 'There is a case for a serious debate on whether community share ownership is the optimal basis for this, particularly given the volatility of share prices and dividend flows in this sector, its high capital demands and long lead times, and – of course – the vagaries of metal markets themselves.

"A new benefit sharing model should be considered, which allows communities to benefit directly from the financial flows of mining operations while being able to exercise some form of oversight. After all, we should at all times be asking ourselves if what we have in place is working and, if it's not, how we can change it.

"Similar questions arise in respect of employee share ownership, where the theoretical case for employee share ownership plans are clear, but where many have struggled due to the volatile nature of mining share prices and dividend flows, and the inevitably short-lived nature of these instruments.

"The industry's views on ownership empowerment structures is well known, certainly where recognition of the continuing consequences of previous empowerment deals are concerned. That is something that we will continue to advocate strongly. Our industry is proud of the large number of successful black-owned mining companies; to name but a few: African Rainbow Minerals, Exxaro, Royal Bafokeng

Platinum, Seriti and Kalagadi Minerals.
Similarly, we are proud of the scores of black industrialists that have been created. These are the product of the R200 bn in value transfer that empowerment transactions have constituted over the years and they have themselves added further economic value over time."
Meanwhile, over the border in **Zimbabwe**, under the leadership of **President Emmerson Mnangagwa,** the government amended the law to restrict compulsory indigenisation of business ownership to the diamond and platinum sectors. The amended Act is designed to ensure that, in the course of time, at least 51 percent of any designated extractive business is owned through an appropriate designated entity*, with or without the participation of a community share ownership scheme or employee share ownership scheme or trust.* Mining development minister Winston Chitando said at an investor seminar in Johannesburg "The Act says that investors can apply to waive the 51 percent ownership, on a case-by-case basis. In terms of policy issues, it is important to attract capital to improve capacity utilisation and to invest into our mining sectors." Addressing delegates at the Harare Indaba, on Monday, he said that the biggest questions investors have about Zimbabwe's mining sector revolved around the Indigenisation and Economic Empowerment Act, which former President Robert Mugabe enacted in 2007. Speaking at the same event was Zimbabwe's mines and energy portfolio committee chairperson, Temba Mliswa, who disagrees with the 51 percent ownership policy for the platinum and diamond industries. He said that it would make more sense to adopt a level of between 20 percent and 30 percent local ownership to make them more attractive to investors. With the opposition in disarray, the new government has everything to gain by starting down a new democratic route.

**USA:**
The School of Management and Labor Relations at 113th ranked Rutgers University announced the launch of a global research hub dedicated to addressing economic inequality through the award of capital shares. **The Rutgers Institute for the Study of Employee Ownership and Profit Sharing** will expand the School's research programmes, develop promising scholars worldwide, and explore new collaborations, with the goal of building a more inclusive economy for workers and their families. **Joseph Blasi** will serve as director of the Institute. **Douglas Kruse**, the associate director, served in the White House in the council of economic advisers under President Obama.

**China:**
On December 22, the **China Banking Regulatory Commission** (CBRC) published a new directive aimed at containing the risks arising from banks deploying their assets and assuming financial exposure through the use of trust structures, and indicated that it would be seeking to impose further regulatory requirements on these structures, said **Linklaters**. The new directive took effect from November 22 last year. Its main points are:
**Risk and capital requirements**:
*Whenever a bank uses its assets (whether on-balance sheet or off-balance sheet) to invest in or set up a trust of capital or property rights, the underlying exposure is to be subject to its credit approval policies and the limits under applicable risk concentration rules, in accordance with the principle of "substance over form".
*The bank must classify the associated credit risk of the trust investment on the same basis as its other risk assets, and make appropriate capital and risk provisioning in accordance with the risk profile of the underlying assets.
*All the above requirements apply irrespective of whether the management, operation and disposal of the capital or property rights is undertaken by the bank or by the trust company.
***Partner selection**: Banks are required to select, as cooperative partners, trust companies in accordance with a panel that is assembled based on their risk management and professional investment capabilities.
***Structuring**: Products must be structured in accordance with clients' risk preference and tolerance, as well as the bank's own liquidity needs.
***Prohibited investments**: Banks must not use trust structures to fund investments in real estate, local government financing vehicles, the equities markets, over-capacity industries or other restricted or prohibited sectors.
***Abuses**: Banks must not use trust structures to conceal risks, circumvent regulatory requirements or move assets off-balance sheet. They may not provide security or guarantees to the trust companies, or enter into collateral agreements with them outside of the trust arrangements.
In the directive, CBRC indicated that it is working on further regulatory requirements for "channel" structures where the trust company acts as a conduit and the capital or assets are managed by, and at the risk of, the entrusting bank.

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