Vol 36 No 4 January 2020

# it's our business

newspad of the Employee Share Ownership Centre

## Centre members urge BoJo to reform Eso schemes

Senior Centre members are calling for major reform in UK employee share ownership rules after the overwhelming Conservative Party victory in the recent general election.

They, like Centre chairman and founder **Malcolm Hurlston CBE**, hope that BoJo's overall parliamentary seats majority of 80 will allow the government, after consultation, to conduct root-and-branch reform of the employee share ownership sector.

There was relief all round that the proposed *Inclusive Ownership Fund* (IOF) requiring a forced ten percent equity transfer from all UK companies employing more than 250 people to special employee trusts over a decade, had bitten the dust as a result of Labour's heavy defeat. For the IOF, were it ever to be installed, would signal the end of broad-based employee share ownership in the UK, it is widely believed.

**Damian Carnell,** senior director, reward, at **Willis Towers Watson**, articulated the thoughts of many when he told the Centre: "Now is a good time to see how Boris's *Blue Collar Capitalism* is supported and made real by significant employee share ownership reform.

"There is an appetite for change. This is not to say that it's the Corbyn's *ten percent in ten years* plan reheated, but some more serious attempt to make the people's democracy work for the people and provide meaningful tax favoured participation and capital accumulation," added Damian.

Even in the tax-advantaged all employee share scheme sector, levels of employee participation are either mostly stagnant or even falling, except for the share options based Enterprise Management Incentive (EMI), aimed at key employees, where take-up has rocketed to more than 10,000 SME companies.

Another voice calling for major reform is **David Isaacs,** associate director, share plans, at Centre member **Link.** He said in a recent interview (see:https://bit.ly/2YZ3jLO): "Elements of our schemes are of their time and don't fit with some major changes in the world of work that we have seen recently. These elements may need to be addressed soon to maintain the relevance of employee share plans – and perhaps propel them into a modern engagement tool. Patterns of working have changed and people are much less likely to remain with one employer for many years as they used to. Having a Share Incentive Plan (SIP) holding period of five years or saving in a five or even three-year SAYE scheme may become less attractive if a period of employment is not expected to last.

"Entitlement to benefits from an employer usually depends on whether you are an employee and the law and regulation refer to employee status. We are in an era of zero-hours contracts, the gig economy and fixed term contracts. The workforce is changing and

***From the chairman***

*New year - new times: From the start of 2020 the management of the Employee Share Ownership Centre is transferring from my consultancy, MHCC to Z/Yen.*

*I shall continue to chair the Centre; Juliet Wigzell is working for Z/Yen. Fred Hackworth will continue to edit newspad and plan the annual symposium.*

*Z/Yen is, like MHCC, a long-term force for good. Its executive chairman is Professor Michael Mainelli, Alderman and Sheriff of the City of London. Prof Mainelli chairs Long Finance and the Financial Services Club.*

*The broader perspective of Z/Yen and greater resources will give the Centre an opportunity to flourish while still relying on its trusted team.*

*The prospects have never been brighter for all-employee share ownership than now. The government under BoJo has never had such a clear incentive to bridge the gap, hold its new voters and consign Labour to two decades of impotence.*

*I have been helping a friend apply to join Dom Cummings' team - so fingers crossed....*

***Malcolm Hurlston CBE***

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

if schemes can't be offered to significant parts of the new workforce because of their 'status', then we need to look at new models that meet the requirements of the modern employment landscape. Perhaps the answer is a new type of scheme that enhances participation of gig-economy workers and young people who typically embrace the idea that at least every two years they should change their employer. At present, those employees will not be sharing in the potential benefit of participating in a SIP and/or SAYE," added Mr Isaacs.

The Centre too is urging major changes to be made in the rules governing tax-approved employee share schemes. It wants to see: *The current £30,000 annual limit in individual tax-approved Company Share Option Plan (CSOP) option awards doubled to a new limit of **£60,000.** *Companies, as well as employees, should be offered tax incentives for operating all-employee Esops *Cut the SIP full tax relief qualification period from five to three years *Better incentivise the creation of employee ownership trusts (EOTs), which are growing in popularity in the SME sector *Consider creating a mechanism whereby the value of employee shares could be transferred from one job to another, if the employee so wishes. This works well in the company pensions sector for employees who want portable pensions *Expand the EMI scheme to take in larger companies and perhaps allow EMI to operate in some subsidiaries of multinational companies *Boost SAYE by exempting employee gains during plan participation from Capital Gains Tax *On the corporate governance front, compel listed companies to include in their annual reports a freestanding section explaining what their Eso policies are and listing the various employee share scheme they operate and how many participants there are in each.

Mr Hurlston said: The benefits of employee share ownership need to spread wide throughout the modern workforce. As with top pensions the focus must move from fattening the fat cats."

**Election: Our winners and losers**

*Eso's high-profile casualty of election night was Centre supporter **Jo Swinson,** employment minister under the Coalition who lost her parliamentary seat and had to step down as **Lib-Dem** leader.

*Chancellor **Sajid Javid**'s first **Budget** will be delayed until March 11, until Brexit is confirmed by legislation. The Centre hopes that Mr Javid might say something about his plans for all-employee share ownership, given that he is a strong personal supporter of Eso.

*"Is an unwelcome hit for entrepreneurs coming? In their election manifesto the Conservatives pledged to review **Entrepreneurs' Relief (ER)**,'' warned Centre member Catherine Gannon, who founded **Gannons** commercial law firm. Tapering or even abolition of the scheme's additional Capital Gains Tax relief might inhibit the willingness of SME owner-founders to sell their businesses. It could dampen enthusiasm for the EMI scheme, whose participants often use ER to reduce their CGT vesting bills. The Treasury is not unnaturally worried because the annual loss of CGT revenue engendered by the ER discount has reached **£2.4bn**.

**Cliff-edge Brexit risk back in the frame**

The prime minister made clear that he would pursue a hard Brexit by saying there would be "no alignment" between the two sides, defying the EU's claim that close alignment was "essential" for any future relationship. He set out his intent after the Brexit "divorce" Bill cruised through the Commons with a majority of 124, set to become law on January 9, thus enabling a UK January 31 exit from the EU and for trade negotiations to begin in earnest. The PM said the vote paved the path "***for a new agreement on our future relationship with our European neighbours based on an ambitious free-trade agreement, with no alignment … on EU rules, but instead control of our own laws and close and friendly relations***".

His Downing Street spokesman said businesses, including the employee share ownership sector, should prepare for the fact that the UK would be leaving the customs union and the single market as part of the Brexit process. He added: ***"****In all circumstances we are leaving the single market and customs union, which means we are leaving the EU regime which is associated with that. Businesses will need to prepare for life outside the EU's customs regime in all circumstances."*

BoJo firmly ruled out any extension to the Brexit transition period, which ends on December 31 this year. Nor would extra time be allowed to bed in any new UK-EU trading arrangements agreed in the future partnership deal.

After learning this, key figures in Brussels were unanimous in their view that there could only be a '***Bare Bones***' trade deal – at the most – in the 11 months remaining after the UK exits the EU on or before January 31. Some saw BoJo's hard-line approach as a deliberate slap in the face for new European Commission president, **Ursula von der Leyen**, who warned last November that 11 months would be insufficient for negotiating a comprehensive deal and who had offered the UK an extended transition period of up to two years.

One senior EU source said that instead of the 'Canada-plus' style trade deal the PM wanted, he would end up with no more than a 'WTO-plus' deal, meaning that the UK would trade with the EU on little better than World Trade Organisation terms, which involve tariffs on UK imports and exports. An EU diplomat said: "The more Britain diverges from common standards and regulations, the more time we will need to negotiate a comprehensive trade deal. Due to the 11-month time limit imposed by London, the risk of a cliff edge by the end of 2020 has risen considerably."

Ms von der Leyen wants sequencing – priority concentration on future EU-UK fishing rights, agriculture, air traffic movements, security etc, with arrangements for the services sector, including financial services, except data sharing, being left open until after 2020. First and foremost, Brussels will demand, as the price of an orderly withdrawal, a binding commitment from the UK that the **£33bn** which it claims is "owed" by the UK ***will*** be paid to the EU, almost certainly by instalments. It's lower than the previously quoted figure of £39bn because *the divorce bill includes the UK's regular membership payments until the end of 2020.* The UK's annual **net** contribution to the EU was calculated recently as £8.9bn, but this ignores direct EU payments to UK private sector firms, worth a further £2.3bn annually.

Although the UK is pushing hard for an EU data equivalence ruling, it is at the back of a queue for a deal with Brussels that would -allow for the free flow of data across borders, warned Wojciech Wiewiórowski, the **EU's data protection supervisor**. He told the *Financial Times* that the UK was "13th in the row" of countries attempting to broker data deals with the EU. Allowing the UK to fast-track the process simply because of Brexit "*would be a little bit unfair towards those who have already prepared themselves for this process*." Data can flow freely across the EU if companies abide by **General Data Protection Regulation (GDPR),** which is being incorporated in UK law. The UK says it will continue to allow all data to flow to Europe, but Brussels is yet to match that promise because it must first rule whether, post Brexit, the UK will meet its compatibility rules on ***adequacy*** and ***equivalence***. According to industry group TechUK, more than three quarters of UK data transfers are with EU states. Cross-border data flows -account for 3.8 percent of GDP and allow every industry to transfer information about customers and services.

Even this limited short-term agenda is fraught with major obstacles : **Charles Grant**, director of the **Centre for European Reform**, said: *"If Boris Johnson doesn't want to follow EU rules then the EU is going to say: you can't have a simple off-the-shelf Canada-type trade agreement and it will take much longer, and we will put tariffs on you. So he is in a bit of a fix"*

***Share plan advisers and administrators will worry whether, in that scenario, the current exemption from the Prospectus Directive for UK based plans in EU subsidiaries will continue after December 31 this year. Ditto the current friction-free transfer of key data from EU jurisdictions into the UK. Were the negotiations to break down without a deal, there could be further reprisals, such as additional local taxes and/or regulation imposed on share plan participants in UK subsidiaries based in EU member states.***

Centre member share plan administrators are reluctant to discuss their preparations for the post Brexit transition period. Compromise might lie in some future partial regulatory alignment based on a third party relationship with independent adjudication and dispute processes. The Northern Ireland/Irish Republic border regime, vis-à-vis customs checks, will remain a key factor in these talks.

Until December 31 2020, the UK will remain in the customs union and the single market and so for share schemes sponsor companies and their advisers it will be '*As you were'* for existing employee share plans in UK subsidiaries within the EU. However, share plan sponsors will think long and hard whether to set up any ***new*** share plans for employees who work within the EU in view of the uncertainty.

Meanwhile, the UK will be outside the political institutions – it will no longer be represented in the EU Council of Ministers, nor the European Parliament. During this period, the UK must continue to obey EU rules, but will have no say in making them. EU citizens will continue to be able to travel to and work in the UK and British citizens can do the same in another member state.

Philippe Lamberts, Belgian MEP, a member of the **European Parliament**'s Brexit steering group, when asked about the possibility of comprehensive trade deal by the end of this year, said: "*You can forget about it, it will be a bare bones deal and it will not satisfy the ambitions of Boris Johnson to have very significant and deep market access to the EU. A bare bones agreement means there will be border checks, it will indeed be a spanner in the works of these pan European supply chains and that has to be the consequence of his decision not to have any extension of the transition period."* He added: ***"It's going to be a cliff-edge, but a chosen one and I respect that, if that's what he wants for the UK, fine by me and of course that will have consequences for the British people."***

EU27 leaders invited the Commission "to submit to the Council a draft comprehensive mandate for a future relationship with the UK immediately after its withdrawal and confirmed that the negotiations will be led by EU Chief Brexit Negotiator **Michel Barnier.**

Nick Boles, a former Tory MP who left the party over Brexit, claimed that for months before the election, BoJo had been planning a no-deal Brexit at the end of 2020. In the old Parliament, Mr Boles had tabled an amendment to the Withdrawal Agreement Bill that would have guaranteed MPs a vote on extending the transition: *"One of the main reasons (Dominic) Cummings refused to allow the Brexit Bill to go through Parliament at that time was that the Commons would have passed my amendment to make an extension to the transition the default unless MPs decided otherwise. Johnson wants to force through a WTO Brexit next December 31,"* he said.

**François Villeroy de Galhau**, **governor of the Bank of France**, told the Paris Europlace Financial Forum in Tokyo, on November 28. *"On our side, we are ready to face any outcome: the financial industry has been prepared. Even with a welcome withdrawal agreement, all aspects of a possible trade agreement and its financial services component will still have to be negotiated in 2020. The uncertainty surrounding Brexit will therefore continue. Now, we have to look beyond Brexit. "**We expect Europe's financial services architecture to move from being monocentric, centred on the City of London, to a more polycentric model.***

"Paris has major assets which it can build on to enhance its central role in this post-Brexit European financial architecture. First, it benefits from a strong financial ecosystem: our capital city is a leader in key activities such as life and non-life insurance and in asset management; it is home to four of the euro area's eight global systemically important banks and two European supervisory Authorities – **European Securities & Markets Authority** (**ESMA)** and the **European Banking Authority (EBA).** Secondly, Paris is bolstering its position as a European leader in digital innovation,'' added M. de Galhau.

*So the plan is for Paris and Frankfurt to divide between them responsibility for creating replicas of many of London's financial trading platforms, in order to create or extend their own infrastructure, in order to shadow relevant City activity, before ultimately running most of the contracts themselves.*

This view was reinforced by the **City of London**'s Catherine McGuinness, who told *Bloomberg:* "The central expectation, post Brexit, must be that the EU *will migrate to a multi-polar financial model, with different centres, small and large, exploiting their respective comparative advantages. I expect fragmentation, which leads to reduced liquidity and reduced access to money."*

The **EU's financial services** chief, Valdis Dombrovskis, warned that Brussels is ready to cut off the City of London's post-Brexit market access in a sign of the pressure the UK will face to stay closely aligned with European rules after it leaves the bloc, reported Centre member **Baker McKenzie**. Mr Dombrovskis told the *Financial Times* that Brussels was willing to grant the UK access through a system of "**equivalence**" decisions that are already used by banks and brokers in other countries such as Singapore and the US. *However, the European Commission would be especially vigilant in checking that British rules for ensuring financial stability and protecting consumers remained aligned to the EU's own standards, and would act decisively in the event of any lapses.* Access will depend on Britain "***not starting to engage in some kind of deregulation,"*** said Dombrovskis. "The more systemically important the market is for the EU, the more we import potential risks, [and] the closer the regulatory alignment that is expected."

Share and derivatives trading obligations (STO) may cease to be met by trading on UK venues post-Brexit. This issue is compounded by the dual application of the requirements to UK branches of EU firms. So the problem of the overlap of the UK's and the ESMA's STOs remains unresolved and could damage market liquidity of EU shares traded in the UK. *The solution would be an equivalence agreement but to date, the EU and the UK have not yet agreed on one*.

The UK financial sector's single biggest customer is the EU and it currently enjoys ***"passporting"*** or unfettered access to the bloc. But this will end after the UK exits the bloc. Future trade would be based on "*equivalence*", the EU's system of access to foreign firms that Brussels deems to have home rules as strict as those in the bloc. Equivalence-based EU access amounts to between five and ten percent of cross-border business under passporting and the UK wants Brussels to enhance the system to make it more predictable and transparent. Brexit has prompted the EU to toughen up equivalence conditions for foreign clearing houses and for foreign investment firms, with EU supervision now becoming part and parcel of rulings. The potential for continued access to EU financial services markets have been a key focus throughout the Brexit process, but the 'equivalence' designation could be withdrawn from UK financial services at any time by Brussels.

On financial services, the **Political Declaration** said: "The Parties are committed to preserving financial stability, market integrity, investor and consumer protection and fair competition, while respecting their regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. The Parties agree to engage in close co-operation on regulatory and supervisory matters in international bodies. *Noting that both Parties will have equivalence frameworks in place that allow them to declare a third country's regulatory and supervisory regimes equivalent for relevant purposes,* ***they should start assessing equivalence with respect to each other under these frameworks as soon as possible after the UK's withdrawal from the EU, endeavouring to conclude these assessments before the end of June 2020.*** They agree that close and structured co-operation on regulatory and supervisory matters is in their mutual interest. This co-operation should be grounded in the economic partnership and based on the principles of regulatory autonomy, transparency and stability. It should include transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives and other issues of mutual interest, at both political and technical levels."

One payments firm said it had opened an office in Ireland and was preparing to tell EU customers that their business would now be handled from there. **Make UK**, the manufacturers' organisation, said that the situation was confusing for thousands of its members trading with the EU and called on the government to give clear guidance. The executive chairman of Centre member **ZEDRA**, Bart Deconinck, believes that "the impact of Brexit is likely to be felt far beyond the current narrow debate between the UK and the EU." Mr Deconinck mentioned discussions underway in Europe to introduce new forms of taxation for wealthy residents*: "In a week where the EU Commission unveiled its European Green Deal, which will certainly lead to more regulation, more spending, more taxes, more protectionism and more top-down control. What can possibly go wrong?"* he asks. ZEDRA, a global specialist in trust, corporate and fund services, is briefing clients that, as a culturally open and highly deregulated society, *the UK will be well positioned to create a global niche for business and thus become the **Singapore of Europe**, irrespective of its future relationship with the EU*. It will be the EU who will be the real losers after Brexit, thinks ZEDRA, which believes the UK might emerge as a net beneficiary, when it comes to where global financial wealth is held. ZEDRA said that after Brexit, the EU would have a huge budgetary hole to fill: "*We think Europe's high net worths may well be in the sights of the authorities in Brussels as a result,"* he said.

### Private equity kings lead on Esop

Centre member **KKR** is empowering staff in its industrial division by making them co-owners, instead of sacking them in its new acquisitions. KKR's employee engagement model aims at giving every production worker a stake and a voice in the business and it has been paying off. At Milwaukee-based **Gardner Denver** employees who have retained their employee stock have seen its value rise to 70 percent of their average annual earnings. At **CHI Overhead Doors**, KKR paid a dividend of between $1300 and almost $4000 per hourly paid employee just one year after the acquisition. "What we are going for is to get people to think differently about their company and their own role within it," said **Pete Stavros**, co-head of private equity in the Americas for KKR. To date, he has applied this model successfully to eight companies who employ more than 20,000 people within the group. "We've tended to get at least 500 basis points of EBITDA margin improvement," mostly in the first few years at engagement model companies, said Mr Stavros in an interview with *Wall Street Journal.* At **Capital Safety,** which makes safety harness, the margin on earnings before interest, taxes, depreciation, and depreciation climbed 12 points to 38 percent in less than four years of using the employee share ownership/engagement model. However, he doubts whether this model could be applied successfully to the retail industry, which has high staff turnover rates, because the benefits used to engage employees usually take years to pay off. Typically, operational gains come from factory floor employees, or in the distribution pipeline.

### Thousands saved from Loan Charge misery

Thousands of people facing the controversial loan charge over ***disguised remuneration*** schemes will not be made bankrupt or have to sell their homes after the government announced concessions to lessen the severity of the policy. The partial reprieve followed an independent review, commissioned by the chancellor, which concluded the policy had gone too far and had failed to consider the serious distress it would cause the 50,000 individual taxpayers affected. The 2016 charge, designed to tackle tax avoidance, will now no longer apply to anyone who entered into so-called *disguised remuneration* schemes before **December 9 2010,** saving them from having to stump up large sums of back tax to HMRC. The charge will not apply either to those who declared they had made use of the schemes in any tax year **before the loan charge policy** came into effect.

The Centre has kept readers informed about the Loan Charge furore because almost all the schemes being dismantled involved setting up one or two employee benefit trusts (EBTs) through which the loans to employees were channelled.

Those still facing the charge will be able to spread repayments over three years until 2021. Previously, due taxes dating as far back as 20 years were due to be paid in one go. The change will give certainty to many who were holding out for a reprieve before settling with HMRC, after the review was announced last September.

About 10,000 have already paid back some of what they owe in settlements with HMRC for fear of having to pay heavy additional penalties after this month, the settlement deadline. Those who have paid HMRC for earlier years in which the charge no longer applies will be **refunded.** *However, the charge will still be levied from anyone who entered into the schemes from or after 2011 without declaring them.*

The schemes, devised by leading accountancy firms and tax practices dating back to 1999, paid salaries in the form of loans that were never intended to be repaid and so staff paid little or no Income Tax or NICs. Employees were able to take home up to 100 percent of their salaries, although they paid fees to scheme promoters. Many of those affected were average-to-low-earners on freelance contracts as nurses or IT consultants who claim they were pressured into the arrangements, which in some cases they did not fully understand.

## EVENT

**Plan issuers line up for symposium, March 26**

Share plan sponsor companies are contacting the Centre in numbers to stake their claim to the ***free seats*** offered to them at the fourth British Isles share plans symposium, at **Linklaters** in **London** on **Thursday March 26.** These include **Burberry, Reckitt Benckiser, SGI Industries** and **Thales UK**. So Centre member advisers should get their skates on and register for this event asap, especially since they need to know their way through the various Brexit scenarios.

**Willis Towers Watson** director **Damian Carnell**, executive compensation expert and adviser to the **International Accounting Standards Board,** has joined the all-star speaker line-up for this whole day event. Damian will speak in the *executive reward* segment of the programme on: *Top pay, incentives and the pressing environmental, social and corporate governance (ESG) agenda.*

A major employee share plan case study promoted by Centre member plan administrator **Computershare** will be another highlight. This slot will be introduced by experienced Centre conference speaker **Stuart Bailey.** Another new speaker is **Claire Prentice** of **Travers Smith's** incentives & remuneration team. She will examine the question of *which elements contribute most to effective global equity plans*

The symposium is being hosted by member **Linklaters** at **One Silk Street London EC2.** Its speaker **Harry Meek** will take as his theme: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. Harry will focus on three key issues: Regulatory developments impacting reward in the financial services (FS) sector - challenges to the way banks and FS firms have been operating their incentive arrangements; Listed company investors and corporate governance expectations are catching up, as concepts the FS sector has been dealing with come to the fore, such as: #Operating malus and claw-back in practice, #Use of discretion in determining vesting outcomes and #Measuring non-financial risk and culture as part of incentive plans; Finally, what listed companies can learn from the challenges and developments faced by the FS sector in share plan design and operation.

The event will be chaired and introduced by Centre founder, **Malcolm Hurlston CBE**. He will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?* Other speakers at the symposium include:

**Colin Kendon**, partner (employee incentives) at **Bird & Bird,** will discuss the government's review into the future of the **Entrepreneurs Relief** scheme which helps SME owners reduce their Capital Gains Tax bills when selling their businesses. Colin will deliver a frank assessment too of the popular **Executive Management Incentive (EMI)** share options based approved scheme, which is being operated by more than 10,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about the use of 'Exit Only' EMIs.

**David Craddock,** who heads his eponymously named worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking *Worked Examples Group* which the Centre co-founded.

**Martin MacLeod** of **Deloitte** will ask *whether recent changes in the UK corporate governance code go far enough on the executive reward front.*

**Jennifer Rudman** of **Equiniti** will address the key question: *How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's itinerant workforce?*

**Garry Karch**, the leading Esop banker in the UK, will explain *How Employee Ownership Trusts are structured and financed.*

**Jane Jevon** of **Pett Franklin** takes the dust covers off the *Company Share Option Plan, the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.*

**Robin Hartley,** a senior associate at **RM2,** will discuss how best to structure and install *growth shares* in companies

Practitioner Centre member delegates will pay **£395,** but trustee members will pay only **£330** for their seats. Non-member practitioner delegates will pay **£595** (all ticket prices are VAT-able). Plan issuers (non adviser) attend ***free of charge***. The programme can be downloaded from www.esopcentre.com/events/british-isles-symposium-2020.

Please email Juliet Wigzell at jwigzell@esopcentre.com, with copy to Fred Hackworth, if you have any questions about attending the symposium. Registrations can be made using the last page of the programme.

## MOVERS AND SHAKERS

**On the Move**

*__Anna Watch__ has started her new job as senior manager, corporate governance at Centre member **BT.** She retains her other role as head of executive share plans. *__Garry Karch__ returns to the UK as head of the EOT practice group at employment lawyers *Doyle Clayton.*

*__Sark Norman,__ or Sarkese, is now only spoken routinely by four elderly residents on the sleepy Channel Island. However, that is set to change after Czech born **Martin Neudörfl** offered to teach it by Skype to the island's children. Until the age of 18 he divided his time between the UK, France, and Japan. He studied French Philology at Charles University's Faculty of Arts where he is a postgraduate student. His research has focused on the documentation and codification of ***Sark Norman*** and since the start, he has been a member of the Sark education society, La Société Serquaise. He is now joint manager of its language section. He said: "*I'd like to prepare the structure of the lessons this year and then begin teaching the children by Skype. It's likely to be a few hours a week. The goal is for (Sarkese) to become the second language after English and for it then to become the gateway to French.*"

*Centre trustee member **Sanne,** a leading global provider of alternative asset and corporate administration services, has appointed **Martin Scott** as head of client services for Guernsey. Based in the St Peter Port office, Martin joins the business with more than 20 years experience, bringing with him a focus on delivering industry leading fund and corporate administration services. In his role, he will develop international business. His expertise spans the technical aspects of investment fund administration, corporate governance and financial reporting as well as a deep understanding of investment funds in the private equity, real estate and infrastructure sectors. Before joining Sanne, Martin was a director at international administration group (Guernsey), and gained industry experience at State Street (Guernsey) and Northern Trust.



## UK CORNER

**Ashley plans £100m free shares for employees**

**Sports Direct** tycoon Mike Ashley is planning a £100m shares giveaway to staff after renaming his company and unveiling a jump in profits which sent its shares rocketing. His plan will be introduced by September 2020 if it wins shareholder support and will be seen as a balm after heavy criticism over his alleged treatment of staff. The firm has been rebranded as **Frasers**, with a focus on luxury products following a rescue of the House of Fraser department store chain last July. Sports Direct reported a 14 percent rise in revenues to £2bn for the six months to October after a string of takeovers of struggling rivals. Shares soared 112.2p to 472p, the sharpest rise since the company listed in 2007. Ashley, 55, owns 61 percent of Sports Direct, meaning his paper holding rose in value by £370m to £1.6bn. He referred to a new share bonus scheme at the end of a meeting with bankers, analysts and the media, surprising some of his directors. He said: "*I'm not going to hide away from the fact that I think it's the right thing to do. We'd like to see 50 millionaires. One simple [scheme], so it can't be cheated or manipulated or some senior manager coming in and fiddling with the money and keeping it all for themselves. Nobody on the board will be included. This remains to be discussed with shareholders.*" In 2017 about 2,000 directly employed staff shared a £43m bonus after a share price rise on the back of a 2011 award scheme - a small percentage of the workforce, as many are employed via agencies. Zero-hours contract staff would be excluded from the three-year scheme which is based on share performance.

**Employee shares for UK pub staff?**

Could the UK hospitality industry, notably pub owners, be impelled to introduce employee share schemes into their businesses post Brexit? - That's the question posed by **Catherine Gannon**, founder of Centre member **Gannons Solicitors**. Writing in the pub trade 'bible' *The Morning Advertiser*, Catherine warned that the general expectation is that, post Brexit, net migration into the UK will fall and that large numbers of EU nationals still in the UK will be working on short-term contracts. Hence, pub owners will have to think harder about other ways of rewarding their domestic workforce, including employee share schemes.

**BT plans to axe its LTIP**

BT is planning to axe its main performance-related bonus scheme and replace it with a smaller guaranteed payout, in a major overhaul of the incentives for top executives. The telecoms company wants to axe its ***long-term incentive plan (LTIP),*** the controversial equity bonus system. The move would affect top management including new brush ceo Philip Jansen.

Concerns about LTIPs have increased in the wake of large payouts at public companies. In the case of BT, a fall in its value led to former ceo Gavin Patterson failing to receive his full bonus for several years. Three BT shareholders claimed that the telecoms business has proposed introducing a ***restricted share plan,*** where executives are given a set number of shares that they have to hold for a certain period of time. Restricted share plans do not typically include prescriptive performance conditions. Instead, executives give up the possibility of a bigger payout for smaller, largely guaranteed sums. BT said its new pay policy would be presented to shareholders for approval at its 2020 agm to replace the existing policy that was approved in 2017. "*BT's remuneration committee is currently reviewing the remuneration policy and will consult with our largest shareholders and the proxy voting agencies ahead of making any changes at the agm*," a spokesman said. Institutional shareholders said they had yet to decide whether they would support the switch to restricted shares. "We are certainly not closed to it," said a top 30 shareholder. "I do think investors are expecting a big discount [on the total amount paid out] because restricted shares are easier to get." LTIPs account for the largest chunk of total reward at the UK's biggest companies and have triggered complaints over alleged excessive executive reward. Under LTIPs, top executives receive shares if they meet performance criteria, typically paying out after three to five years. Under BT's current LTIP structure, Mr Jansen could earn 400 percent of his £1.1m base salary if it was to pay out in full. He is eligible for an annual bonus based on different performance targets to the LTIP. Last year, engineering company **Weir** won shareholder support for its plans to introduce restricted shares, but few other British companies have similar pay awards. In October, a report by the **Purposeful Company**, a management think-tank, suggested that up to a quarter of UK companies should consider shifting their executive pay policies away from LTIPs and towards restricted share awards. The scheduled executive reward shake-up is part of a plan to overhaul BT under Mr Jansen, who replaced Mr Patterson at the start of the year. The former **Worldpay** boss said that the company would award £50m worth of shares a year to its staff to motivate them.

**Bonus woes for European banks**

Bonuses dominate the agenda for bank ceos as they battle to get the balance right between paying enough to keep their best staff from jumping ship and keeping costs down as they struggle against slowing economic growth, negative interest rates, a lack of big deals and global trade tensions. Thomas Drewry, co-founder of salary benchmarking website **Emolument**, said City bankers feared a "steep reduction in bonuses of between "ten and 30 percent" this year. That prediction is already starting to play out. However, in American corners of Canary Wharf, **JP Morgan** insiders say they expect bonuses to be "flat or slightly up", suggesting this bonus season will again expose the widening gap between US and European banks as Wall Street firms continue to land work on the world's most lucrative deals. Even Wall Street is not immune to the sector's troubles, however. New York officials estimate Wall Street bonuses will be down *nine percent* on last year, days after it emerged **Morgan Stanley** was cutting jobs. Banks cutting staff will be under pressure not to dish out large payouts. Luke Hildyard, director of the High Pay Centre, says the savings should go towards making banks more productive "rather than fattening the pay packages of a select number."

**Deutsche Bank** plans deep cuts to bonuses for this year as ceo Christian Sewing seeks to eliminate billions of euros of costs in a radical restructuring. Germany's largest lender may reduce discretionary compensation by as much as 20 percent, outpacing a five percent decline in the bank's workforce this year. Deutsche Bank declined to comment. Sewing is seeking to balance the need to retain top talent with his pledge to deliver about $6 bn in cost cuts over the next few years. Deutsche Bank has been cutting total bonuses for many years. Revenue from the investment division was down 11 percent in the first nine months of the year while pre-tax profit plummeted by 47 percent. However, Sewing said that momentum in the unit has been encouraging, a view echoed by other investment banks who have pointed to improving trading conditions in the fourth quarter. Sewing is trying to convince shareholders his strategy is on track, after announcing in July a plan to slash a fifth of the workforce and exit equities trading. He's sold assets, cut costs and won a reprieve from the bank's main regulator, which lowered a key capital requirement.

*Three million employees will receive a pay rise of up to £930 from April after the government announced the biggest ever increase to the **National Living Wage.** From April 1 over-25s will be paid a

**minimum of £8.72 per hour,** a 6.2 percent jump from the current level of £8.21. Younger employees, who receive the **National Minimum Wage,** will receive a rise of between 4.6 percent and 6.5 per cent, with 21 to 24-year-olds getting £8.20 an hour, up from £7.70.

**Shareholder battles loom over exec reward reforms**

Major shareholder battles lie on the horizon this year when FTSE100 companies seek agm binding approval for new executive reward policies. Boards and their advisers will have much in mind the **Investment Association (IA)**'s updated *Principles of Remuneration* which, for the first time, will force remuneration committees to consider the level of wider employee pay and the fairness of executive pay when setting remuneration levels and deciding on the nature and longevity of incentive equity based schemes. The IA reminded all companies that their remuneration policies should meet investor expectations. The updated principles came ahead of the upcoming 2020 agm season, when most listed companies will bring new remuneration *policies* to a binding shareholder vote for the first time since 2017.

The updated IA guidelines focus on fairness and restraint in setting new levels of executive pay. These include caps on the quantum, the boardroom approach to executive leavers, their pensions, remuneration structures, and performance conditions, reported Centre member Linklaters. The guidelines said that companies needed to justify adequately the level of executive remuneration and increases to salary and variable pay. Whilst many listed companies are responding to investors' concerns on pay levels and structures, the scale of shareholder agm revolts during this past year was about the same as during the previous year. There were some notable scalps, the most spectacular being troubled construction firm **Kier** where almost **54** percent of its agm votes cast were against its remuneration report, which outlined the £2.1m it paid to board members during the year ending in June. Ladbrokes' owner **GVC** came off almost as badly, as **42** percent of the votes cast at its agm were against its remuneration report. There were far more shareholder resolutions against individual directors during the year's round of agms, partly because voting agencies like ISS and Glass Lewis demanded a crackdown on the level of cash contributions for directors' pensions.

The IA said that investors were still concerned about incremental changes which can result in large increases in overall reward. The guidelines now require that grants should be scaled back, following a fall in the corporate's share price. Remuneration committees should use discretion in incentive plans to ***cap vesting to a specific monetary value***. It's up to remcos to decide on an appropriate level and how it would be implemented in individual cases, to avoid public scandals, such as at house-builder **Persimmon,** whose then ceo Jeff Fairburn stood to cash in a bonus of **£110m** (later reduced to **£75m)** from the company's uncapped Long-Term Incentive Plan (LTIP). Much of Persimmon's profit, it later emerged, derived from extra sales as a result of the government's *Help To Buy* scheme.

*The* ***Financial Reporting Council*** *guidance on board effectiveness suggested too that remcos consider* ***setting a monetary limit on what they consider a reasonable reward for individual executives.*** *Few companies have so far introduced such caps on levels of vesting.* The IA's new guidelines said: a) Undeserved and excessive remuneration sent a negative message to all stakeholders, including the company's workforce, and caused long term damage to the company. Shareholders expected the remuneration committee to ensure that the remuneration structure was appropriate. b) The remuneration committee should have appropriate discretion to ensure that outcomes are commensurate with company performance and are not excessive. c) The board should explain why the chosen maximum remuneration level is appropriate for the company. d) The board as a whole must be aware of the pay and conditions in the wider workforce and should consider the aggregate impact of employee remuneration (including executive director remuneration) on the finances of the company, its investment and capital needs and dividends to shareholders. The new guidelines state: "The level of remuneration is of concern to all stakeholders and shareholders in particular. Shareholders object to levels of pay that do not respect the core principles of paying no more than is necessary and expect a clear link to sustainable long-term value creation. *The remuneration committee and the board should seek specific points of reference against which the appropriateness of quantum can be outlined and judged.* Reference points to help avoid unnecessary disagreements with shareholders, cover: • Stated policy that links aggregate remuneration to overall corporate performance • The remuneration policy of the company as a whole • A relevant and fairly constructed peer universe. It is undesirable to use median pay as a benchmark since this, if used broadly, can lead to ratcheted increases in remuneration. • Remuneration paid to groups of employees in the company's workforce including the median, upper and lower quartile through the use of pay ratios.

Executive directors and senior executives should use their own money to build ***up significant holdings in their employer's shares,*** to provide evidence of their alignment with shareholders. The committee should explain the consequences of an executive not achieving the stated shareholding requirement. IA members want the post-employment shareholding requirement to apply for **at least two years.** *This may require the establishment of* ***employee ownership trusts*** *or nominee accounts for the shares to be held in. Shareholders expect these post-employment shareholding requirements to be established for all new executive directors and for existing executive directors asap and at a minimum by the company's next policy vote.*

Shareholders believe the circumstances in which performance adjustment and **claw-back** can be implemented need to be agreed and documented before awards are made. The current standard triggers for malus and claw-back are gross misconduct or misstatement of results, which are likely to be rare and when they do occur, it may be challenging to prove the individual culpability of directors. *In order to give claw-back the necessary power to make post-hoc adjustments when the performance that determined the award comes into question, remuneration committees should establish a* **more substantial list** *of circumstances in which the malus and claw-back provisions could be used.* The FRC's Board Effectiveness guidance states that these might include ***payments based on erroneous or misleading data, misconduct, mis-statement of accounts, serious reputational damage and corporate failure.*** The circumstances should be clearly disclosed to shareholders. Companies should require executives to *sign forms of acceptance* when granting awards in order to set the expectations for malus and claw-back applying to that award, and setting out how and when it may be applied.

The IA said that **long-term incentives** existed to reward the successful implementation of strategy and the creation of shareholder value over a period appropriate to the strategic objectives of the company: "***Equity based schemes*** are an effective way to align the interests of participants and shareholders. *Generally, members do not support the payment of long-term incentive schemes in cash or cash equivalents other than to settle tax.* Investors expect any dividends accruing on vested shares to be paid in shares. All new incentives or any substantive changes to existing schemes should be subject to prior approval by shareholders by means of a separate and binding resolution. Any change in quantum should be fully explained and justified. Share incentives should have clearly disclosed participation limits, both on an individual basis and in aggregate (scheme limits). The operation of share incentive schemes should not lead to dilution in excess of the limits acceptable to shareholders."

**Pension** related payments should **not** be used as a mechanism for increasing total remuneration, said the IA. The UK Corporate Governance Code states that pension contribution rates should be aligned with those available to the workforce. *IA members consider this to be the rate which is given to the majority of the company's workforce. Investors expect new executive directors or any director changing role to be appointed on this level of pension contribution. The contribution rates for incumbent executive directors should be reduced over time to the contribution rate available to the majority of the workforce, members expect this to be achieved as soon as possible.* Shareholders do not expect that compensation will be awarded for this change. Where the pension contributions for incumbent directors are above the average workforce rate, members expect remcos to set out a credible action plan to reduce the pension contributions of incumbent directors to the majority of the workforce rate by the end of 2022. Members expect that companies disclose in their remuneration report the pension contribution rate which they consider to be given to the majority of the workforce.

The **Investment Association**'s *Sin Bin* - the register of companies among whose shareholders at least 20 percent have voted at agms against particular board resolutions – has filled up rapidly this year. The remuneration *reports* resolutions of **51** companies attracted 20 percent or more anti votes at agms, while mandatory remuneration *policy* reports attracted a further **eight** *sinner* votes. Six more remuneration resolutions, over LTIPs and suchlike, merited shareholder ire. The IA, which has most large City investment institutions within its membership, warned companies that some remuneration committees were not taking consultations with their shareholders seriously enough: ***"There is concern that shareholder consultation is being treated as a validation exercise by some remcos rather than as a process for obtaining and understanding the views of the company's major shareholders***," it said. "Companies should listen and respond to feedback from their shareholders to enhance their proposals. Companies should anticipate that they may not always receive support for their proposals. Consultation does not mean that companies will gain acceptance of their proposals."

The guidelines already urged remcos to use discretion to ensure variable pay reflected overall company performance, and **not** pay out even if specific targets are met, if "the business has suffered an exceptional negative event". This has been expanded to refer to events impacting stakeholders, including the workforce. Examples given include a significant health and safety failure or a poor outcome for clients. These changes match the addition to guidelines on malus and clawback. These now refer expressly to the FRC Guidance list of malus/clawback circumstances, including serious reputational damage and corporate failure. Remcos are clearly under increasing pressure to ensure there's no payment for failure.

The guidelines state that only contractual payments in lieu of notice should be made for departing directors. They should only cover salary, pensions and benefits, and reflect the notice period. Only good leavers should get annual bonuses, and deferred bonuses should continue as normal (*i.e. paid in shares, and on the usual deferral timetable*). The IA's letter to remco chairs highlighted investors' concerns with traditional LTIPs, including increasing grant levels and volatile and significant vesting levels. Remcos are encouraged to evaluate their remuneration structures to ensure suitability for alignment with the company's strategy. (a link to the IA's public register is provided at www.esopcentre.com/news/newspad/).

*****UK-incorporated listed companies and some of their UK subsidiaries need to comply with the new stakeholder and governance requirements introduced by the Miscellaneous Reporting Regulations 2018. The most discussed is the new stand-alone Section 172 statement which listed companies and affected subsidiaries must include in the strategic report. It should describe how the directors have carried out their duty to promote the success of the company with regard to the stakeholder factors in Section 172 of the Companies Act 2006. The listed parent and relevant subsidiaries must describe in the directors' report how they have engaged with their employees and their other business relationships, for example, with suppliers, customers and others. For listed companies, these reporting obligations sit alongside new UK Corporate Governance Code requirements for stakeholder engagement disclosures. These overlapping new rules apply to reports on financial years starting from January 1 2019 so listed groups need to identify which entities are caught and, for each affected company, the stakeholder disclosures needed and how best to allocate the information to different parts of the annual report. Very large UK-incorporated subsidiaries must report this year on their corporate governance arrangements (unless they are already otherwise required to make a corporate governance statement).



**EMI & EIS**

Fast growing entrepreneurial businesses that implement Enterprise Management Incentive (EMI) share options are frequently the same businesses looking for external funding from venture capitalists (VC), or seeking investment from individuals under the tax-advantaged Enterprise Investment Scheme (EIS). If a company qualifies for EIS, it will almost certainly qualify for EMI, said Centre member **Rm2 Partnership.** However, there is a trip hazard regarding share capital. EIS must be offered in new ords which don't carry preferential rights. Consequently, if an EMI uses restricted shares – for example, without voting or dividend rights - then the EIS shares may by default be seen as 'preferential.' There is a risk of losing the EIS status, and the tax breaks that go with it. How much control does a VC want? EMI is only available for independent companies – i.e. companies not under the control of another company. If a corporate VC wants a controlling stake, or even the opportunity to take control if certain targets aren't met – then the company runs the risk of failing the independence test for EMI. Similarly, a company won't qualify for EMI if it's part of a joint venture. If EMI options are already in place and then investment from a VC investor is obtained, the directors may wish to put in place changes to the company's constitution – e.g. Articles of Association. Beware! If these changes result in an amendment of the EMI option holders' rights, this could be seen by HMRC as the grant of a new option – which will need to be notified to HMRC. Should the changes result in a change which causes an increase in the value of the shares under option, this could be a disqualifying event – meaning that the EMI tax benefits are lost altogether.

## COMPANIES

***Accor** announced a new share ownership plan reserved for group employees in 12 countries. The offer concerns eligible members of the company savings plan (Plan d'Epargne d'Entreprise or *PEE*) and other employees who participate in its Esop. Accor Group wants to involve its employees fully in its development and to share its profits by allowing them to subscribe for company ords. The new shares were trading on the Euronext Paris market and carry dividend rights. Employees were eligible too in subsidiary companies registered in France, as well as those working for branches in: Austria, Belgium, Germany, Holland, Hungary, Italy, Poland, Spain, Switzerland, Turkey and the UK. Subscribing employees will receive at maturity (expected on December 19 2024) or earlier in the event of early release for each share subscribed, an amount corresponding to his/her initial investment increased by a multiple of *the protected average increase* of the share price compared to the reference price, subject to a possible unwinding of the transaction, any applicable taxes and social security payments, and impact from application of the exchange rates. The subscription was carried out either through the sub-fund of the FCPE Accor Share Plans; or by a direct subscription to the shares carrying a Stock Appreciation Right (SAR) allocation by the employer The number of shares offered was capped at two percent of the share capital. The subscription price for the newly issued shares was at a 15 percent discount from market price.

***BA** pilots agreed a deal with the airline following a pay dispute that led to strikes. The **British Airline Pilots Association (BALPA**) said members voted nine to one in favour of the final agreement, which remains secret. BALPA initially teamed up with unions **Unite** and **GMB** to seek pay improvements, enhanced profit-sharing arrangements and the introduction of an employee share ownership scheme. Pilots previously rejected an 11.5 percent pay increase over three years, which BA said had been accepted by other unions, representing 90 percent of its employees. However, IAG, which owns BA, is not a great promoter of employee share ownership, as was the case when Gail Redwood was company secretary of BA.

***Bet365** co-owner Denise Coates received a **£320m** total reward package, confirming her position as the UK's best paid executive. Ms Coates, co-founder of the online gambling firm, was paid a £277m salary plus dividends in the year to end-March, compared to £220m in the previous year. The privately held company is owned jointly by Ms Coates and members of her family. She earned a first-class degree in econometrics - the application of statistical methods to economic data - from Sheffield

University before joining the high street betting firm, run by her father. She identified the potential of online gambling in 2000 and invested in the domain name Bet365.com so that she could drive the family business in that direction. Bet365 made a pre-profit of £791m in the year, compared to £661m the year before.

*Bovis* is the latest house-builder to have suffered a shareholder revolt at plans to hike senior executive bonuses. The agm rebellion by more than 30 percent of voting shareholders was over proposals which will let ceo Greg Fitzgerald earn up to £4.1m a year if he hits targets. Bovis plans to raise the maximum payable under its bonus scheme, claiming it is more complex due to a takeover of **Galliford Try**'s residential business. Around 31 percent of voters opposed the long-term incentive (LTIP) and ***34 percent*** voted against Bovis's overall pay policy. Under the plans, senior executives will be able to collect share-based bonuses worth up to 200 percent of salary and cash bonuses worth up to 150 percent, compared to 150 percent and 100 percent previously. Mr Fitzgerald will get up to £3.3m at the current stock price; if shares rise 50 percent, it could be £4.1m. Shareholders overwhelmingly approved Bovis's £1.1bn takeover of cash-strapped Galliford's Linden Homes and Partnerships and Regeneration units, putting it on course for 12,000 homes a year as the UK's fourth-largest house-builder. Voting agency **ISS** had recommended voting against the plans, while Glass Lewis backed the firm. Bovis said it would "continue to engage" with shareholders and update the market within six months.

*Soft drinks maker **Britvic** slashed retirement benefits for its new finance chief as investors challenge listed companies over lavish pension rewards. The FTSE 250 owner of brands including *Robinsons, J2O, Purdey's* and *Fruit Shoot*, has reduced pension contributions for Joanne Wilson, who joined from **Tesco** in September. Ms Wilson will receive contributions equivalent to 7.5 percent of her £395,000 salary, compared to 23 percent for her predecessor Matthew Dunn, in an effort to bring executive retirement benefits in line with the rest of the workforce. She will receive a cash contribution of £19,442 as compensation in lieu of payments she would have received in her role at Tesco. However, Britvic has ***not*** amended its pension contributions so far for ceo Simon Litherland, who will receive a cash allowance worth 24.6 percent of his £642,982 salary next year. Britvic said it is preparing to review its remuneration policy, which shareholders will vote on in 2021. A Britvic spokesman said: "In keeping with recent guidance, Joanne Wilson's pension contribution has been set at 7.5 percent of base salary." Luke Hildyard, director of the left-leaning **High Pay Centre**, said: "*This is something of an insult to colleagues. Companies with strong boards and chief executives that want to be fair to other employees are increasingly implementing the same pension terms for all staff.*"

*Listed companies are under mounting pressure to overhaul remuneration packages amid shareholder outcry over the growing gulf between senior executives and employees. Banks including **Lloyds, HSBC** and **Standard Chartered** have cut pension payments following investor pressure, while **Santander** and **Barclays** are reviewing their schemes. The **Investment Association** said companies would receive an automatic warning if their remuneration policies did not bring into line pension contributions for new executive directors with those for the majority of employees. Pressure mounted on leading companies still giving huge pension top-ups to their senior executives as **CRH**, a top offender, refused to budge. The FTSE 100 building materials giant last year paid ceo Albert Manifold a pension cash contribution worth 46 percent of his salary or £585,000, among the highest payout in the FT index. However, a source said CRH had no plans to review the amount: "*Shareholders have not been beating a path to their door to discuss the issue.*" The refusal comes despite a rebellion by 15 percent of investors at CRH's agm in April, as well as a wider backlash over lavish executive pension cash contributions, which has forced companies to act. A spokesman for Tarmac owner CRH said: "We continue to engage with our shareholders on all remuneration matters, including pensions." Banks have come under particular scrutiny, with Santander and Barclays reviewing their chief executives' pension pots after Lloyds, HSBC and Standard Chartered slashed pension payments to their ceos following investor outcry. Lloyds Banking Group is planning to cut its pension cash contributions to its ceo Antonio Horta-Osorio by more than £220,000, from 33 percent of his salary to 15 percent, while spending £20m on pay rises for the rest of its staff. Meanwhile, employees' pension contributions will increase from 13 percent to up to 15 percent of salary.

*Global French-Italian ophthalmic company **EssilorLuxottica** said that its international share ownership plan (*Boost 2019)* had recorded a **67 percent** subscription rate among eligible employees. As a result, more than 56,000 EssilorLuxottica (EL) employees now hold a financial stake in the company. Recently, EL introduced the first Eso initiative in the new combined group, extending it for the first time to 12,000 eligible Italian employees. The plan this year covered 73 countries (43 last year). This gave Luxottica employees in Italy the opportunity to join more than 48,000 Essilor colleagues worldwide who, since the origins of Essilor, have decided to co-invest in the company by purchasing shares on favourable terms. Embracing the *Boost* plan for the first time, Luxottica's Italian employees had already broken records, with a take-up rate of 68 percent, above the group's 2019 average. EL described employee shareholding as a 'pillar of its culture' reinforcing employees' sense of commitment to the company's mission and strategy, aligning their long-term interests with those of the group and of other shareholders. The success of Boost 2019 is another step forward in the integration process and development of EL, with the company confirming its long-term commitment to promoting employee shareholding. "*In Luxottica we strongly believe in the value of employee shareholding. Our people can play a more active role in the great industrial plan and be involved in EssilorLuxottica's development, supporting and sharing the success of a company that aims to grow and create opportunities for everyone*," said Luxottica ceo, Francesco Milleri.

***General Electric**'s incoming finance chief will have basic pay of $1.5m pa, but will have to stay with the conglomerate for four years before she can cash in a $8m stock bonus which is part of her compensation package, reported *The Wall Street Journal*. The potential payout is aimed at tying her to her new employer—an increasingly common practice in an era of stiff competition for high-profile finance chiefs. Boston-based GE announced Carolina Dybeck Happe as its next cfo and she will start next year. Her salary comes with an annual bonus opportunity of 125 percent of the base salary and a 2020 equity award worth $5m, according to a filing with US regulators. Her sign-on bonus—a one-off *golden hello* stock option award with $8m grant fair value - is to be paid in one lump sum if she stays for four years—is indicative of how companies use such payments and bonuses as retention tools, according to corporate recruiters.

*'Employee-owned' **John Lewis Partnership (JLP)** is to offshore hundreds of call-centre jobs to the Philippines as part of a cost-cutting move that has already led to 300 UK *colleagues* being laid off just before Christmas. Staff at JLP's outsourced call centre in Plymouth were told to expect large-scale redundancies at the year end. At least 20 percent of that work is being switched to contract workers in Manila, with the off-shoring of further roles in the pipeline, claimed *The Guardian*. More than 300 staff at the Plymouth call centre, which is owned and run on JLP's behalf by the US outsourcing giant Sitel, have either left or been made redundant. JLP has denied it is moving the Plymouth jobs to the Far East but admitted that it had expanded its Manila operation in March. It now has 180 staff handling non-verbal JLP customer service queries. Three months ago, the group announced a restructuring in an effort to save £100m a year. One in three senior head office management posts – 75 out of 225 – are going. The troubled store group had just reported its first ever loss, of £26m in six months.

*Equal partnership has been crucial to the success – until recently – of **M&C Saatchi,** according to director and partner Jeremy Sinclair. He said: "Now, our equal partnership rule was to play a great part in our story. We decided to start companies rather than buy them, *making the management – wherever it was and in whatever discipline it was – our partner. They would own at least as many shares in their company as we, the founding partners did.* So far the system has worked reasonably well. We have 2,587 colleagues in 25 countries, in 141 companies, in disciplines that vary from data to tech, from public relations to design."

***Primark** faced a shareholder revolt over a bonus scheme which could hand boss George Weston up to £7m. Its parent firm **Associated British Foods (ABF)** is under fire from shareholder advice group **Pirc** over a new long-term bonus scheme. Mr Weston would get a maximum of £7m in pay and perks if he hit all targets. Pirc warned that changes to long-term bonuses mean they could now exceed its recommended maximum and called on investors to oppose the tweaks in a binding vote at ABF's agm. It flagged up that ABF, which owns a stable of brands including *Ryvita* and *Twinings*, is not using so-called non-financial criteria to calculate bonuses long-term, "contrary to best practice," Pirc said. Typically indices such as emissions, waste reduction or employee satisfaction play some part in executive pay. An ABF spokesman said: "We set very demanding internal targets and review performance against those." Glass Lewis and ISS had both recommended shareholders vote in favour of all resolutions. Mr Weston could be paid up to £7m for 2019-2020, including bonuses based on hitting specific targets. His base salary is £1m. Cfo John Bason could take home just under £4m. His base salary is £720,000. Earlier, it emerged that ABF will slash executive pensions in future following a backlash from shareholders.

***Santander** is poised to cut UK ceo Nathan Bostock's £588,000 annual pension cash payments by £436,000 over the next two years, reported *The Guardian*. His cash payment in lieu of pension is worth 35 percent of his £1.7m base salary, far above the nine percent offered to the rest of staff. However, the Spanish lender will cut Bostock's lump sum to about 22 percent of salary next year before bringing it in line with the staff allowance in 2021. It will bring his contribution payment in lieu of pension down to £218,000, based on his 2018 salary levels. Santander UK is not expected to increase other parts of Bostock's reward package - he was paid £4.6m in 2018 - to offset the loss. Santander UK risked being the last major British bank with a huge pension contributions disparity. Luke Hildyard of the High Pay Centre said: "*Major companies, wanting to reward their staff fairly, should offer pension, share ownership and profit-sharing schemes to all workers on the same terms. There's no reason why chief executive pensions should be higher as a proportion of salary than their workers – there is no chance of wealthy executives facing penury in old age, but that is a real risk for lower-paid workers.*"

***SoftBank** is considering cutting its proposed extraordinary $1.7bn golden parachute for ***WeWork*** founder Adam Neumann.

***Starbucks** is rewarding its top two executives with retention bonuses which could pay them many millions, based on shareholder returns. The one-off bonuses would give ceo Kevin Johnson up to $50m based on its shareholder performance between Oct 1, this year and Sept 30 2022. Coo Roz Brewer could get a bonus of up to $10m based on the same stock price targets. The company said that the awards "are designed to retain Starbucks' key leaders in their roles for at least the next three years by providing compelling upside reward opportunity beyond the company's regular compensation programme." For Johnson, the award is technically $25m and he can get from nothing to 200 percent of that based on Starbucks' total shareholder return, which includes stock performance, dividends and other value provided to shareholders. He gets nothing if Starbucks performs at the 40th percentile of the S&P 500 stock index over the next three years, but cashes in if Starbucks gets to the 65th percentile, and 200 percent if the shareholder returns are at the 80th percentile. Brewer's award is $5m, based on the same targets. Johnson's basic compensation last year was $13.4m. Brewer's was $9.2m.

***Tullow Oil**'s former ceo Paul McDade is to receive a £1.2m pay-off, despite the £1bn collapse in the company's share price after it warned that output would decline next year. McDade, ceo since 2017, will get his 12 month salary of £769,000 plus pension contributions and other benefits in lieu of notice. Centre chairman Malcolm Hurlston CBE condemned the pay-off as "*the most egregious recent example of payment for abject failure.*"

## WORLD NEWSPAD

### French directors to have their pay stopped?

Payment of directors' monthly pay in French quoted companies could be suspended, or even stopped altogether this year in the event of adverse shareholder voting at agms, warned Centre legal member Linklaters. This could be the consequence of new rules, which will apply as from 2020 agms, introduced by the French government and governing the remuneration of corporate officers. *In certain cases, a negative ex-post shareholders' vote will result in the temporary suspension of the remuneration of the directors and, in the case of two negative votes in a row, the suspended remuneration will be definitively lost.* The key features of the '*say on pay'* regime remain unchanged as it continues to be based on *two* distinct binding votes by the shareholders (each requiring a simple majority) each year: the vote on the corporate officers' remuneration policy to be applied by the board of directors for the *present year* (ex-ante vote), the vote on the actual remuneration granted by the board of directors to each corporate officer for the *previous year* (ex-post vote). *Since the votes are binding, no remuneration inconsistent with the remuneration policy may be granted (otherwise it would be void) and the variable and exceptional portions of the reward cannot be paid in the event of negative ex-post vote, a new development.* If no remuneration policy has been approved, the remuneration shall be determined consistent with the remuneration granted during the previous year or with the practices of the company. Reporting requirements of French quoted companies have been significantly strengthened too.

**A record: 53 percent of French companies launched an employee share ownership plan in 2019.*

### GAFA tax plan revived

Blocked plans for a tax on US digital giants who shift their profits from country to country are to be resurrected by the new look **European Commission, s**etting Brussels on a collision course with Donald Trump. The incoming EU executive will propose a levy hitting American titans such as **Google, Amazon, Facebook** and **Apple** (the *GAFA Tax*) by the end of 2020, if global efforts to agree worldwide standards fail. Its plans were set out by Margrethe Vestager, the **EU's experienced competition commissioner,** who is about to be handed extra powers overseeing digital policy in the bloc for the next five years. Branded the EU's "*tax lady*" by President Trump, Ms Vestager is a high-profile face in the fight against global firms that take advantage of low tax rates in EU member states such as Ireland to minimise their bills elsewhere in the bloc. Ms Vestager ordered Apple to pay Ireland £12bn in back taxes in 2016, leading the US president to accuse her of "hating the US." The Paris -based **Organisation for Economic Co-operation and Development (OECD)** is the global standard-setter for taxes and released a communique on digital taxation. The US, which claims the EU discriminates against US firms, has said it will work with the OECD to agree new rules. "If we cannot find that global agreement, yes we do intend to act ourselves," Ms Vestager told MEPs. Even if the

OECD does meet the deadline, there is nothing to stop Brussels going further than the organisation's recommendations, as it has in the past. The Juncker Commission's efforts to introduce an EU-wide digital tax foundered in the face of opposition from Sweden, Ireland and Denmark last March. The resurrected digital tax may struggle again to receive unanimous support. Ireland, which hosts EU headquarters for many tech giants because of its low corporate tax rate, is likely to oppose. However, the political winds appear more favourable now. Countries including the UK, France, Italy and Spain are pressing on with their own national versions of the digital tax. Global efforts to stamp out digital tax avoidance took a major leap forward with proposals to scrap the century-old rulebook governing cross-border corporation tax and update it for the data age. A consultation document from the OECD proposed fundamental reform of taxation rights to ensure that the tech giants and other multinationals pay tax where they have significant consumer-facing activities and make their profits. The OECD has been working with its 36 members since 2011 to stop big business abusing the international rules but until now it has not dared to tackle the most complicated problem of all — the need to redesign the tax system for the digital economy. The OECD plan involves Silicon Valley firms being forced to pay tax in any country where they "have significant consumer -facing activities and generate profits." If enacted, this could force companies such as Google, Amazon, Facebook and Apple (GAFA) to pay billions of pounds in extra tax, but it would take years to implement and is fraught with political risk. Experts warned this may see individual countries scrap their own plans for tougher taxes in favour of an alternative that might never happen. The Treasury is planning its own digital services levy from next year. The **Confederation of British Industry** called for this to be frozen in light of the OECD plan. However, it is understood the Treasury is pressing ahead and will not change course until international laws are passed. The Centre is a member of the Business Advisory Group to OECD, which is also bringing virtual assets into its remit.

***Facebook**'s UK operations paid only £28m in tax last year despite attracting a record £1.6bn in British sales. The social media company's latest UK accounts show that gross income from advertisers rose almost 30 percent last year to £1.65bn, and pre-tax profits surged by more than 50 percent from £63m to £97m. **Facebook UK** said its net revenues from advertisers rose 50 percent last year to £797m, meaning 12 percent of its sales were converted to profits. This falls far short of the company's overall performance last year, in which Facebook made £19.7bn profit on total sales of $55.8bn, thus converting 44 percent of its sales into profits. "*Businesses across the country use our platforms to grow and revenue from customers supported by our UK teams is now recorded here so that any taxable profit is subject to UK corporation tax,"* said Steve Hatch, the Facebook vp for Northern Europe. Its UK operation expanded rapidly last year with staff numbers rising from 1,290 to 1,965 year on year, with a total staff wages and pension bill of £431m. The company's UK office provides marketing services and sales and engineering support to other parts of the company. Facebook, which owns *Instagram* and *What's App* social media services, said it spent £356m on R&D and engineering in the UK last year. "The UK is now one of Facebook's most important hubs for global innovation," said Hatch. "*We continue to grow and invest heavily in the UK and by the end of the year we'll employ 3,000 people here. These high-skilled jobs are not only working on products like WhatsApp and Workplace but help develop technology to proactively detect and remove malicious content from our platforms."* Recently, the online retail giant Amazon came under fire for paying just £14.7m in UK corporation tax last year, despite reporting sales of £2.3bn. **Netflix UK**'s accounts showed that the streaming giant received a €57,000 (£51,000) tax rebate from the UK government last year, despite making an estimated £700m from British subscribers. Last year, **Google** paid £66.8m in UK Corporation Tax, up from £49.7m, as pre-tax profits rose from £200m to £246m. Google UK reported £1.4bn in revenues last year, up from £1.2bn. **Apple** paid £3.8m in UK tax on £1.2bn in sales last year.

**Super-voting shares used to ignore investors**

A Silicon Valley executive warned tech companies against using "super-voting shares" as an excuse to ignore investors, saying the increasingly common structure only gives ceos superficial control. Aaron Levie, ceo of the cloud software company **Box,** said investors would *vote with their dollars* and abandon companies if they were unable to use voting rights to pressurise executives. Ceos/chairmen including **Facebook**'s Mark Zuckerberg and **Snapchat**'s Evan Spiegel use dual-class or multi-class share structures that give certain shareholders disproportionate voting rights allowing them to direct the company even with a minority economic stake. Corporate governance activists criticise the structures, which have become increasingly common among tech companies where a founder wishes to maintain control. Mr Levie relinquished Box's dual-class share structure last year and has since been subject to pressure from activist investor Starboard, which took a 7.5 percent stake in the company and has said it will discuss possible deals to boost its share price. "Dual-class is important if you're misaligned with your investors, but it should not be used an excuse for not listening to or caring about hearing from them. We don't want to use governance controls as a means of avoiding investor scrutiny," Mr Levie said. "I think the control is quite superficial … because investors eventually are just going to vote with their dollars. And if they don't invest, you don't have a company. There's only so much control." He said **WeWork**, where founder Adam Neumann was forced to dilute the voting rights of his shares and then step down as investors became less enthusiastic about its prospects, demonstrated the leverage investors have over companies. Recordings emerged of Mr Zuckerberg defending his control over the company. He said the structure allowed Facebook to avoid short-term decision-making such as Yahoo's attempt to buy the company in 2006. This year, 68 percent of outside investors voted to remove him as chairman, but his voting rights allowed him to maintain the role.

***Australia: Westpac Banking Corp** became the biggest Australian company to have shareholders vote down its executive pay for a second year, at a marathon agm dominated by investor outrage over a child exploitation payments scandal, reported *The New York Times.* The *second strike* delivers a symbolic blow to the nation's oldest bank and fifth-largest listed company as it seeks to reassure owners and customers it can find reasons and solutions for its deepest crisis in decades. It puts a cloud over the agms of rivals **Australia and New Zealand Banking Group (ANZ)** and **National Australia Bank (NAB),** with investors expecting details of NAB's engagement with regulators as it has flagged weakness in money-laundering controls. "*We are shattered by what has happened,*" Westpac chairman Lindsay Maxsted told about 600 investors at an emotional six-hour meeting in Sydney. "*It's a total anathema to what we stand for,*" added Maxsted, who brought forward his retirement in light of the scandal. Westpac was sued three weeks ago by Australian regulators who cited **23m** breaches of anti-money laundering laws, in the country's biggest ever financial scandal. Westpac has said it accepts most of the regulator's assertions - which included the facilitation of payments to child exploiters - and its ceo and compliance head have quit. The bombshell lawsuit, coming as the country was still digesting a damaging financial misconduct inquiry, sent Westpac's shares plunging in the three weeks since it was announced, wiping A$8.8 bn off its market value. The bank could pay a fine of more than A$1 bn **($678.60m**), analysts said. Treasurer (chancellor of the exchequer) Josh Frydenberg has declined to say whether the board of Westpac should be sacked following money-laundering accusations. Westpac will scrap or trim the bonuses of its executive team following allegations. He said the Australian Prudential Regulation Authority had the ability to disqualify boards and executives under the Banking Executive Accountability Regime introduced by his government. Westpac's board will withhold bonuses from all of its senior executives as an interim measure in response to the money-laundering compliance crisis engulfing the bank. Financial crime watchdog AUSTRAC is taking Westpac -- Oz's second-largest bank -- to court over the breaches, some of which are alleged to be linked to child exploitation.

***US business succession problems:** Baby boomer business owners are retiring in record numbers, fuelling a dramatic paradigm shift on Main Street, reported *CNBC.* Boomers in the US own 2.34m SMEs, employing more than 25m people. Many need to determine if they will be selling their business or passing it on to a successor. However, a recent survey by Wilmington Trust shows that more than 58 percent of SME owners have no transition or succession plan and many have not even contemplated a transition or succession plan at any time. "The impact on our economy as boomers age, run into health problems, burn out or hit significant marketplace hurdles is potentially catastrophic to our economy. The consequence of failed succession planning directly impacts the 25m families employed by these small business owners, and the indirect impact is even more staggering. Tens of millions of additional vendors, suppliers, partners, independent contractors, gig workers and others rely on these boomer-owned small businesses to stay in business and are interdependent on one another's existence and welfare. These statistics do not include the hundreds of thousands of SMEs owned and operated by Generation Xers, millennials or even some Gen Zers." To make matters worse, according to a report by **Refinitiv,** global M&A plunged 16 percent year-on-year to $729bn in the third quarter of 2019, the lowest quarterly volume since 2016, leaving many small business owners, who wish to retire via business sale, in a state of transactional limbo.

***New Belgium**'s employee owners have voted in favour of selling the brewery to Lion's global craft division, Kirin owned **Lion Little World Beverages**. Thus ends the *poster boy* role of New Belgium in the huge US employee–owned business world. Lion had announced its intention last autumn to purchase the Colorado-based brewery, the country's fourth largest craft brewery, for between $350m and $400m. The proposed sale depended upon a positive vote by New Belgium's employee owners, which was welcomed by Lion Little World Beverages' md Matt Tapper. "*We are grateful to have the trust of New Belgium employees as we move forward to deal close,*" Tapper said. "*New Belgium has great people, great brands and a great company. I can't wait to get started.*" New Belgium declined to release the number of employees who voted or a breakdown on how they voted. New Belgium's sale came as the brewery reportedly struggled under debt incurred to fund the Esop, as well as an ill-fated brewery expansion in

North Carolina. In a letter to its supporters on the announcement of the forthcoming sale, founder Kim Jordan said that more than 300 employees would receive more than **$100,000 each**, "with some receiving significantly greater amounts. Over the life of our Esop, including this transaction, the total amount paid to current and former employees will be nearly $190m," Jordan announced. New Belgium ceo Steve Fechheimer said: "Today, New Belgium Esop participants voted in favour of the proposed transaction with Little World Beverages. This result moves us one step closer towards New Belgium Brewing officially joining Lion Little World Beverages.'' Corey Rosen who founded the **National Center for Employee Ownership** in the US gave the move a balanced welcome; Malcolm Hurlston CBE Esop Centre founder agreed: "The business interests of an enterprise have to come first, before organisational dilettantism" he said. "It is good to see employees choosing the wages of capitalism while becoming part of a stronger enterprise."

*Executives at troubled utility **Pacific Gas & Electric**, whose bankruptcy plan was just rejected by California Gov. Gavin Newsom for failing to address long-term safety issues, received millions in bonuses in recent years based partly on meeting safety goals, an *NBC News* investigation found. State regulators have identified a pattern of poor maintenance at PG&E that violated state regulations and led to the deadliest fire in California history, 2018's 'Camp fire', which killed 85 people. However, from 2012 to 2017, PG&E paid its five top executives roughly **$17m** in bonuses, *including special payments for exceeding public and employee safety benchmarks*, **Securities and Exchange Commission** filings show. Every year during that period, except 2016, PG&E's executive pay was boosted by safety performance that the company said had exceeded its goals. During most of that period, the utility, which serves more than 5m households in central and northern California, was paying off more than $1bn in penalties and fines for the 2010 San Bruno pipeline explosion, which killed eight people. The executives received the bonuses even in 2015, when two people died in a wildfire tied to its equipment. A California congressman wants to hit **PG&E** with heavy financial penalties the next time it tries to award executive bonuses while subjecting Californians to blackouts. Rep. Josh Harder, (Dem), announced he'd submit a bill in response to the blackouts PG&E initiated across California as a precaution against wildfires. Harder's bill would revive a tax called the ***alternative minimum tax*** for utilities that offer executive bonuses but have failed to invest in climate-resilient infrastructure. The bill is written to specifically target PG&E, which has not paid federal income taxes in the past decade due to tax loopholes on depreciation, according to the **Institute on Taxation and Economic Policy**. PG&E has shut off electrical power in a vast stretch of its service territory eight times this year. The company recently had its largest ever blackout, throwing 1.5m residents into darkness. PG&E officials have said such shutoffs could continue for a decade while they update and repair existing infrastructure, which state and federal officials have deemed unacceptable. PG&E responded to Harder's proposal by listing climate change minded fixes that its spokeswoman called an "unprecedented inspection and repair process earlier this year. More than 700,000 electric system poles, towers and substations were inspected, and any items needing immediate repair were repaired", she said. "PG&E has installed 600 weather stations and 100 high-definition cameras in high fire-threat districts for increased situational awareness." The top eight PG&E executives were paid over $25m collectively last year. The company spent $10m on lobbying in 2018, according to *OpenSecrets.*

*A **US Bankruptcy Court** Judge will allow **Philadelphia Energy Solutions** to award bonuses to seven unidentified managers. The refinery told the US Bankruptcy Court that it wanted to create a bonus pool for the seven key employees whose payouts would be based upon how much the refinery fetches from a sale and insurance proceeds. The bonus pool would range from $2.5m to as much as ***$20m*** if the refinery generates $1bn in net proceeds from a sale and insurance policies. The refinery, whose bankruptcy is filed under the corporate name PES Holdings LLC, previously paid $4.6m in bonuses to executives following a devastating June fire that led to its closure and bankruptcy. It filed a request to award additional bonuses, which it asked to keep confidential, to reduce the "negative impact on employee morale" and the chance that competitors could use the information to recruit PES executives. The bonuses, which are sometimes awarded by companies undergoing bankruptcy reorganisation to retain key employees who might otherwise be tempted to depart, raised protests among redundant employees.

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