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Global Employment Law - What's New?

Spring 2017

Welcome to our international quarterly newsletter. This Spring 2017 edition focuses on employment, pensions and benefits legal developments which took place internationally and in the EU, Belgium, China, France, Germany, Japan, Russia, Spain, and the UK over the past 3 months.

European Union

European Parliament's vote on the Shareholders' Rights Directive

The revised Shareholders' Rights Directive has been adopted, introducing several measures to increase the oversight powers of shareholders' in listed companies in particular regarding executive pay. This includes the right of shareholders to vote on the remuneration policy of the directors of their company.

Shareholders will be able to express their views on the remuneration awarded to company directors twice: first they will vote ex ante on the remuneration policy, which lays down the framework within which remuneration can be awarded to directors; second they will vote ex post on the remuneration report describing the remuneration granted in the past financial year.

The vote on the remuneration policy is binding and companies will only able to pay remuneration on the basis of the policy approved by shareholders. Member States will however have the possibility to opt for an advisory vote, allowing companies to apply a remuneration policy rejected by shareholders, with the requirement to submit a revised policy at the next general meeting. Member States will have to ensure that companies submit the remuneration policy to a vote by the general meeting at every material change and in any case at least every four years.

The remuneration policy should not be linked to short-term objectives, but should contribute to the overall business strategy, long-term interests and sustainability of the company. Directors' performance will be assessed on the basis of both financial and non-financial performance criteria, including where appropriate environmental, social and governance factors. The remuneration policy will also have to be publicly disclosed without delay after the binding vote by the shareholders at the general meeting.

The vote on the remuneration report will be advisory. However, for small and medium-sized companies, Member States will have the possibility to replace this vote by a discussion at the annual general meeting.

The Directive will now be published in the EU Official Journal and will enter into force two years subsequently. The impact of the new measures will be very diverse from country to country. In the UK, for example, the changes will be minor as similar "say on pay" rules are already in place (namely an advisory vote on executive annual remuneration and a binding vote on remuneration policy).

European Court of Justice - workplace headscarf ban might be justified

The ECJ delivered its judgements in the cases *Achbita v G4S Secure Solutions NV* (C-157/15) and *Bougnaoui v Micropole Univers* (C-188/15), referred by Belgian and French courts respectively, on 14 March.

In the first case, the claimant worked as a receptionist at the Belgian division of G4S. After three years in employment, she began wearing a headscarf at work, which was the

reason for her dismissal. She claimed that this amounted to direct discrimination on grounds of religion.
The ECJ ruled that Council Directive 2000/78 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the prohibition on wearing an Islamic headscarf does not constitute direct discrimination based on religion or belief, as it arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace.
It will be for the referring court to determine whether such an internal rule constitutes indirect discrimination. This will be the case if the apparently neutral obligation it imposes disadvantages persons adhering to a particular religion, unless objectively justified by a legitimate aim - such as the pursuit by the employer, through appropriate and necessary means, of a neutrality policy. The national court will have to determine whether bans are a proportional way for employers to pursue such legitimate aims and decide whether it could have been possible to offer the claimant another post not involving visual contact with customers.

In the second case, the claimant was a design engineer who had been fired from an IT consultancy firm in France after a customer complained about her wearing a headscarf while she was on their premises to give advice.
Here the ECJ held that customers cannot demand workers to remove headscarves if the company has no policy barring religious symbols. In the absence of such an internal company policy, the willingness of an employer to take into account the expressed wish of a customer not to receive a service from an employee wearing a headscarf cannot be considered a "genuine and determining occupational requirement" that could derogate from the principle of non-discrimination provided for by the Equal Treatment Directive to justify a differential treatment or a dismissal. The referring French court will have to determine whether the company in this case had dismissed the employee solely to satisfy a customer or in accordance with a wider internal prohibition on religious symbols. The decision is expected in autumn.

These landmark decisions might have important consequences: in particular, an employer could be entitled to adopt rules prohibiting the wearing of religious symbols, without this constituting direct discrimination and without the need to justify the rule with a particular activity exercised by the employee within the company, as the prohibition may be justified by a legitimate aim pursued by the enterprise. To minimize risk however, employers should establish precise internal regulations defining the rights and obligations of each party and providing for the terms and scope of reclassification in case issues arise.

Whistleblower protection: European Commission launches public consultation

On 3 March, the European Commission has launched a public consultation on the benefits and drawbacks of whistleblower protection, in the perspective of strengthening it. The Commission fully supports the objective of protection against retaliation and is looking to collect information and views on problems arising both at national and EU level from regulatory gaps and differences, as well as on the need for minimum standards of protection.
The consultation is available here and will be open until 29 May 2017.

Jean-François Gerard
Ludovica Mascaretti

Belgium

Towards Flexible and Workable Work

Long announced as a milestone for the Belgian labour market, the law of 5 March 2017 on "Flexible and Workable Work" has, to a large extent, entered into force with retroactive effect from 1 February 2017.
This law is the result of a project that was launched by the Belgian Minister of Work in 2015, that involved the Social Partners and the High Council of Labour. The idea

behind the project was to sufficiently adapt Belgian labour law in order to meet the increasing need for a more flexible work environment on both the employers' and the employees' side.
Please read our full briefing to discover more about this new law's key provisions.

Inter-sectoral national agreement 2017-2018

Every two years, the social partners enter into a so-called inter-sectoral agreement (ISA). This is a framework agreement which sets out the programme of the social partners for the next two years. Most of the action points of the programme will have to be further implemented through collective bargaining agreements or legislative acts.
One of the features of the ISA is to set out the salary norm, a legal provision aiming at safeguarding Belgium's competitiveness by reducing the salary cost gap between Belgium and its neighbouring countries. This is achieved by capping the increase of salary costs, and having both the employers and the sectors comply with this cap.
The salary norm for 2017 – 2018 equals 1,1%. This is the available margin to increase salary costs in the coming two years. A number of salary increases, such as the statutory indexation, are not affected by the cap.
In addition, a draft law is being discussed to amend the current legislative framework and provide for more effective enforcement and sanctions for non-compliance with the salary norm.
Furthermore, the ISA addresses inter alia the intention to tackle a number of labour market challenges, including: burn-out, simplification of the employment regulations, future of work, digitalisation and gig economy, mobility, business restructurings and social dialogue.

New rules on long-term illness

New rules on long-term illness have entered into force in January 2017. Reintegration of sick employees is made easier through the possibility to sign an addendum to the existing employment contract, providing for (temporary) adjusted modalities of the existing job or for a different job. The existing employment relationships will be deemed to be maintained and the relevant employees will keep the benefits they were entitled to prior to the adjustment, unless parties agree otherwise.
Moreover, the termination of the employment contract by reason of force majeure (long-term disability) is now only possible once a so-called "reintegration process" has been completed.

Satya Staes Polet

China

Further decrease in employers' contribution rate to statutory unemployment insurance

In our summer edition of 2016, we mentioned that Chinese authorities were looking at reducing labour costs through decrease in social insurance contributions by stages. According to a notice jointly issued by the Ministry of Human Resources and Social Security (MOHRSS) and the Ministry of Finance of the PRC in 2016, the overall unemployment insurance payment rate was reduced to 1-1.5% by stages. A new notice was published on 16 February 2017, stating that from 1 January 2017, in the provinces where the employer's required contribution rate to the unemployment insurance is 1.5%, the rate should now be capped at 1%. Such new reduced rate would be applied until 30 April 2018.

Draft amendments to the Labour Arbitration Rules seeking public comment

Under the PRC labour laws, arbitration is a mandatory procedure for the resolution of labour disputes prior to submitting the case to the labour courts. Labour arbitration tribunals are mainly following the 2008 Law of the PRC on Labour Dispute Mediation and Arbitration (Labour Arbitration Law) and the 2009 Rules on Handling Cases of Arbitration for Labour and Personnel Disputes (Labour Arbitration Rules).

On 13 February 2017, the MOHRSS issued draft amendments to the Labour Arbitration

Rules to solicit comments from the public. The main proposed changes include:

• *Specifying the scope of the labour disputes that are subject to a final award rule*

Certain labour disputes are subject to a final award rule, meaning that once the arbitration award is made, there is no possibility to appeal (with limited exceptions). These disputes include those involving the recovery of labour remuneration, medical expenses for work-related injury, economic compensation or damages, where the amount does not exceed that of the standard local monthly minimum wage rates multiplied by 12 months.

The draft amendments further specify the scope of these labour disputes, providing that the "economic compensation" should cover the compensation for non-compete obligations and for termination of employment contracts; and "damages" include compensation for illegal termination, failure to conclude a written employment contract within one month after the start of employment, and probationary periods incompliant with legislation.

• *Introducing the summary procedure*

The draft amendments provide that a summary procedure may be applied to less complex cases, involving clear evidence of facts, rights, obligations or limited amounts (below the local annual average salary), or in case the parties request the arbitration commission to review the mediation agreement made by a labour dispute mediation institute, or the parties agree to apply the summary procedure to their case.

• *Detailing the procedures for collective arbitration*

The Labour Arbitration Law allows the party in a labour dispute consisting of 10 or more employees with a common claim to choose three to five representatives among them to represent them in mediation, arbitration or litigation. In addition, arbitrators should mediate such collective dispute case or guide the parties to reach a settlement before the arbitration session.

• *Reinforcing the role of mediation*

Mediation should be prioritised as labour dispute resolution method in the arbitration procedures. In the event both parties do not agree to the mediation agreement, they may submit the agreement to the labour arbitration tribunal for a review.
Apart from the mediation carried out by a mediation institute before arbitration, the draft amendments also require that after the case is filed with the labour arbitration commission, the labour arbitration tribunal should launch a mediation during the arbitration procedures.

In addition to the above, the MOHRSS also issued draft amendments to the Organizational Rules of Arbitration for Labour and Personnel Disputes, including stricter requirements for the arbitrators. The deadline for public comments on these two draft versions was 13 March, but it has not yet been announced when the final versions of the amendments will be promulgated.

Fan Li

France

New French Duty of Vigilance Law

On 23 March 2017, the French Constitutional Council rendered its much-awaited decision on the "Duty of Vigilance" bill which was recently passed by France's National Assembly. The bill sets forth an obligation for parent companies to adopt a vigilance plan aimed at identifying and preventing, inter alia, violations of fundamental human rights (including the health and safety of individuals) as well as environmental risks resulting from their business activities and those across the supply chain.

In particular, the plan must contain a list of potential risks, provide for a regular assessment of the situation, and set out an alert procedure.
This obligation applies to companies registered in France employing more than 5,000 people in France or more than 10,000 worldwide (including in direct and indirect subsidiaries).
If it is ascertained that the company breached its duties, it receives a formal notice to undertake its obligations. Where the necessary measures are not taken, the initial draft of the bill subjected companies in breach to substantial civil fines, however the French Constitutional court - in its decision of 23 March - rejected this idea arguing that:
(1) The new obligations of the parent companies are unclear;
(2) The sanctioned breaches are not precisely enough defined;
(3) The legislator did not specify whether the sanction would have been incurred for each breach of duty of vigilance or only once regardless the number of breaches.
Consequently, the bill was published on 27 March 2017 without any reference to the amount of those fines.
However, we note that the parent companies which do not adopt a surveillance plan despite having received a formal warning to do so within three months may be sued by any interested person and ordered to comply by the competent court (article L. 225-102-4 section II of Commercial Code).

The right to disconnect

In August 2016 the "El Khomri Law" introduced, among other things, an obligation for employers to negotiate employees' right to disconnect (or to "switch off"). This right is not defined by the law but can be understood as the right to turn off and ignore professional devices (smartphones, laptops etc.) during precise periods of time.
The relevant provision came into force in January 2017. It applies to employers with at least 50 employees, as part of their annual mandatory negotiation with trade unions on quality of life at work. The negotiation must also cover the implementation of arrangements to regulate the use of digital systems/devices.
If negotiations fail and no agreement is reached, the employer must instead adopt appropriate internal policies that regulate use of employer devices outside of working hours, on which it must invite the works council to give its opinion. In addition, trainings must be organized in order to educate on the reasonable use of connected devices.
Failure to negotiate constitutes an offence. However, the absence of an internal policy is not sanctioned, although this would be an element of breach of the no-fault liability of the employer to ensure the employee's safety at work.
Please find attached a comparative table setting out similar developments in other European countries on the right to disconnect.

Income tax withholding

At present, employers do not withhold income tax from employees' salary, but the French Minister of Finance has confirmed that a withholding tax will come into force with effect from 1 January 2018.
The French tax authorities will send the employee and the employer a tax rate in the course of 2017 (based on the employment income declared for 2016). This will enable the employer to calculate the amount of tax to be withheld. Employees will have the option to ask for a default rate to be applied instead (if they do not want their employer to know the overall rate at which the combined income of their household is taxed).

Laurence Harvey Wood
Sarah Rohmann

Germany

New draft German Remuneration Ordinance for Financial Institutions published

On 19 January, the Federal Financial Supervisory Authority (*BaFin*) published a new draft remuneration principles for employees working for financial institutions. The revised draft contains the following key changes:

- *Mandatory clawback provisions for risk takers*

For the first time, financial institutions shall have the right and obligation – within certain limits – to reclaim paid variable remuneration. The clawback obligation applies in case of serious negative performance contributions of the individual risk taker. The minimum clawback period shall be five to seven years, depending on the deferral system. In view of remaining uncertainties concerning the enforceability of clawback provisions under the law, it remains to be seen whether financial institutions will agree on the clawback provisions or on a full deferral of the variable remuneration for the agreed plan period (cliff vesting).

- *Severance payments*
  It is clarified that severance payments are part of the variable remuneration and therefore need to be taken into account for the calculation of the ratio between variable remuneration and fixed remuneration. However, certain types of severance payments including statutory payments, payments under a social plan or compensation based on a post-contractual non-compete agreement are excluded. Furthermore, institutions are obliged to explain their severance system (eg criteria for calculation, maximum amount) in the institution's remuneration principles.
- *Definition of fixed remuneration*
  The new draft contains a more detailed definition of the term fixed remuneration and the differentiation criterion between fixed and variable remuneration.
- *Extension of deferral periods*
  The new draft contains the obligation for significant institutions to apply, at least for members of the management body in its management function and senior management, deferral periods of at least five years.

Update: Draft legislation on equal pay

In our last edition we reported that a political agreement was reached on an adjusted draft legislation on equal pay. This draft legislation – which has been renamed as act on transparency of payments – has now entered the formal legislative process.
It is now confirmed that the information rights for individual employees, in particular the right of information concerning the average monthly remuneration of a group of at least five employees of the other sex working in the same or an equivalent position, shall only apply in companies regularly employing at least 200 employees. In companies bound by collective bargaining agreements, the information request shall not be made by the individual employee but the works council (exceptions apply for executives which are not represented by the works council and shall address their inquiry to the employer directly). If no works council is in place or collective bargaining agreements do not apply, the employee can assert the information right against the employer.
The obligation to implement an assessment procedure to review compliance with equal pay principles shall still only apply to companies with at least 500 employees.
According to the official timetable, the parliamentary process should be concluded by mid-May 2017 and the law will come into force shortly thereafter.

Increased representation rights of disabled employees

A new law aimed to improve the rights of the representatives of disabled employees came into force on 1 January 2017.
Part of the new regulation is the obligation to consult with the representation of the disabled employees in case of an forecasted dismissal of a handicapped employee. There is no need to obtain its approval in order to implement the dismissal, but failure to consult with the representative body will lead to the automatic ineffectiveness of the dismissal.
The new consultation obligation applies in addition to the obligation to consult with the works council before giving notice of termination to an employee and the required consent of the integration authority before a dismissal of a severely disabled employee or an employee with equivalent status can take place.

Co-determination on supervisory boards – *Erzberger v TUI* (C-566/15)

On 24 January 2017, the ECJ heard the "TUI case", dealing with the question whether or not employees who do not work in Germany but in another member state must be entitled to vote and to stand as a candidate in employee elections to the supervisory board.
Standing case law and the current predominant view among legal commentators suggest that only employees who are habitually employed within Germany are these

rights. The EU Commission stated that it considers the German rules as they stand as compatible with EU law, although there is no guarantee that the ECJ will uphold this view and the current state of the law.
The Advocate General will render his opinion by 6 May 2017, whereas a decision by the ECJ is expected for the summer.
This case does not directly affect the way the headcount thresholds of the German One-Third-Co-Determination Act (DrittelbG - 500) and / or of the German Co-Determination Act (MitbestG - 2000) have to be calculated. However, most of the legal commentators assume that the decision of the ECJ will have impact on this issue, as well. Furthermore, a negative decision of the ECJ is rather unlikely to be self-executing in relation to how these thresholds are to be calculated so the German legislator will need to take action in this regard.

Co-determination rights of the works council concerning the company's social media profile

On 13 December 2016 the Federal Labour Court ruled (1 ABR 7/15) that certain activities on the employer's social media profile are subject to co-determination rights of the works council.
The company's Facebook profile allowed users to comment on the performance and behaviour of the employer's staff, in particular doctors and medical assistants providing blood donor services. Some users mentioned in their comments the names of individual employees.
The works council claimed that the operation of the company's Facebook page is subject to co-determination rights since the evaluation options it provides give the employer the possibility to monitor the employees' behaviour and performance. The Federal Labour Court ruled that the company's decision to publish posts referring to the employees' performance or behaviour qualifies as a monitoring measure via a technical facility which requires the works council's consent.

Julia Förster
Jonathan Monz

Japan

Amendments to the Care leave Act and Equal Employment Opportunity Act

On 1 January, the revised Child and Family Care Leave Act came into force. The main purpose of these amendments was to enable workers to take leave more easily and in a flexible manner if they were caring for children or other family members. To comply with the revision, companies are required to amend the internal rules in relation to leave related to child and family care. The amendments to the Act feature the following:

i) Long-term family care leave of up to 93 days can be taken in three separate instalments.
ii) Short-term care leave for the care of children or family members can be taken on a half-day basis.
iii) Workers taking care of family members can request to shorten their working hours or other measures which the company provides to change their working schedule twice in the three-year period, regardless of the long-term family care leave taken.
iv) Exemption from overtime work for caregivers looking after family members (new provision).
The Equal Employment Opportunity Act has also been amended to oblige employers to implement measures to deter and prevent workplace harassment involving pregnant mothers and employees taking care of other family members.

Aiko Ota

Russia

Moscow City Court declares the blocking of LinkedIn in Russia lawful

On 10 November 2016, the Moscow City Court upheld a decision by the court of the first instance to include the LinkedIn website in the Register of Infringers of the Rights

of Personal Data Subjects. Under Russian legislation, access to internet resources listed in the Register must be blocked. Currently, most internet providers are blocking access to LinkedIn.
The grounds for entering LinkedIn into the Register are the following violations of Russian legislation on personal data, which, in the opinion of the Russian personal data regulatory authority and the court, LinkedIn committed through its site:
(i) LinkedIn processed the personal data of Russian citizens using servers located outside Russia; and
(ii) LinkedIn processed the personal data of Russian citizens who are not LinkedIn users without such personal data subjects' consent, since the LinkedIn user agreement and other policies only apply to site users.
The practice of adding the websites of companies located outside Russia providing services to Russian citizens and processing their personal data to the Register is a recent trend. At the moment, it is difficult to predict whether the Russian personal data regulatory authority and the courts will apply the requirements of Russian legislation on personal data processing to other foreign companies located outside Russia which provide services to Russian citizens.

New law designed to increase and differentiate administrative liability for violations of Russian personal data legislation

A law replacing the current fines of up to RUB 10,000 (ca. US$ 170) for companies and up to RUB 1,000 (ca. US$ 17) for their executives for breaches of personal data legislation with a number of new violations and fines was adopted on 7 February.
The law specifies a number of violations of personal data legislation (eg, (i) processing personal data for purposes different from those for which such data was collected, (ii) processing personal data without the written consent of the personal data subject where such consent is required under Russian law, (iii) failure to comply with statutory requirements on the safekeeping of physical storage media containing personal data where such failure leads to unlawful or accidental access to such personal data or certain other unlawful actions in relation thereto) and related fines for companies and/or their executives. The amounts of new fines vary from RUB 15,000 to 75,000 (ca. US$ 250 to 1,250) for companies and from RUB 3,000 to 20,000 (ca. US$ 50 to 330) for companies' executives.
The amendments introduced by the law will enter into force on 1 July 2017.

Employee consenting to termination has the right to return to work if unaware of pregnancy at the time of mutual dismissal

The Supreme Court recently considered a case that broadened the guarantees provided by employment law to pregnant employees in case of termination of their employment contracts. The Supreme Court held that if an employee is unaware of her pregnancy at the time of the termination agreement and upon her dismissal, she is entitled to withdraw her consent to the termination of employment.
Therefore, according to the Supreme Court, upon request of a pregnant employee, the employer must cancel the termination agreement and reinstate her in her job, even if the employee discovered she was pregnant and requested the cancellation of her employment termination after the employment had effectively ended.

Olga Chislova

Spain

Termination of an employee on sick leave and consequences for Spain - *Mohamed Daouidi v Bootes Plus SL* (C-395/15)

In October 2014, a kitchen assistant dislocated his elbow on the job and was dismissed shortly thereafter, while on temporary incapacity leave (caused by the work accident) for an undefined period of time. The employee brought an action before the Employment Court of Barcelona seeking, primarily, a declaration that his dismissal was null and void.
Spanish employment case law mostly considers that the termination of employees on sick leave is unfair rather than null and void (as it does not amount to a breach of fundamental rights), so that employers can choose between severance and

reinstatement. However, if an employee shows that the termination is "discriminatory", the dismissal would then be declared null and the affected employee would be entitled to reinstatement and the salaries accrued from the date of termination.
Neither the Spanish Constitution nor the Equal Treatment Directive (2000/78/EC) grant specific protection against discriminatory treatment of employees on temporary incapacity leave, but both grant such protection to persons suffering from disabilities.
In this context, the Spanish court referred the question to the ECJ whether the decision of an employer to dismiss an employee, merely because of his temporary incapacity of uncertain duration caused by a work accident, would fall within the concept of "direct discrimination on grounds of disability" as envisaged by the Directive.
The ECJ stated that it is common ground that the employee suffered from a limitation of his working capacity resulting from physical injury and that it was for the referring court to assess whether such a limitation was 'long-term'. The ECJ provided some guidelines to respect in the assessment, namely (i) the fact that the incapacity is likely to be significantly prolonged before that person recovers; and (ii) in the context of the verification of the 'long-term' nature, the referring court must base its decision on all of the objective evidence in its possession, and in particular on documents and certificates relating to that person's health condition, established on the basis of current medical and scientific knowledge and data.

Spanish judgement
In its judgment dated 23 December 2016, the referring court ultimately considered that the employee's limitation was indeed 'long-term' and subsequently declared his termination null and void on the grounds that it constitutes a discrimination by reason of disability.
This ruling entails a change to existing Spanish case law, and will likely result in an increasing number of disputes in Spain. Employers should take this into account and plan carefully any potential terminations of employment involving employees on sick leave.

Further developments on the case law set out by De Diego Porras

Further to the ECJ decision on De Diego Porras which we commented in a dedicated briefing, another Spanish High Court turned to the ECJ in November to clarify whether this case law should also apply to relationships between private parties (as opposed to a relation between and employee and a public authority as in De Diego Porras).
We will be following the developments of this case closely and report about it in due course.

Raquel Flórez

United Kingdom

Gender Pay Gap Reporting Regulations – Non-statutory guidance published

As reported in our last edition, the revised gender pay gap reporting regulations were published in December and have come into force on 6 April 2017.
In January, ACAS and the Government Equalities Office published joint guidance on gender pay gap reporting which was later updated in March to clarify the position as to LLP members. The Guidance is non-statutory and has no legal effect but it is expected that Equalities and Human Rights Commission will have regard to it when deciding whether to take enforcement action against an employer.
Please click here to read more about employers having embraced the new regime early and risks related to greater pay transparency. For our view as to how the Guidance deals with some of the trickier gender pay gap reporting questions, please read our briefing here.

Corporate Governance

Corporate Governance Green Paper
On 29 November 2016, the UK Government published a Green Paper setting out proposals to reform the UK corporate governance regime. The Prime Minister has made clear that she believes corporate governance reform is necessary in order to

increase public confidence in big businesses. The Paper considers three main categories which might be subject to reform:
• Executive pay.
• Strengthening the employee, customer and stakeholder voice.
• Corporate governance in large privately-owned businesses.
You can find details of the proposals in relation to each of these three areas in our briefing here.
The consultation closed on 17 February 2017. It is likely that a White Paper with formal legislative proposals will follow in due course.

Corporate Governance Report
The BEIS Parliamentary Select Committee published its Corporate Governance Report on 5 April 2017. The BEIS Report is entirely separate from the Government's Green Paper on corporate governance reform published in November and the two exercises should not be confused with each other. To find out more about the Select Committee's key recommendations, please read our briefing here.

Pay and Working Conditions Inquiry

As we wrote in the Fall 2016 edition of this newsletter, the Government has launched an inquiry into pay and working conditions in the UK, following the Prime Minister's commitment to ensure that employment regulation and practices keep pace with the changing world of work. The inquiry follows from the significant rise in casual employment and agency work and the recent court challenges to the employment status of workers in the gig economy.
The inquiry has posed a number of questions, including whether the current definition of the term 'worker' needs to be amended; how agency workers, casual workers, and the self-employed should be treated for the purposes of tax, benefits and employment law; and what the role of trade unions should be in the modern economy.
The deadline for submitting written responses has now passed. The inquiry is expected to complete in the Summer.

UK Financial Services update

Non- executive directors

In Autumn 2016, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) consulted on proposals to extend their conduct rules and standards to standard non-executive directors (NEDs) in banks, building societies, credit unions and dual-regulated investment firms and insurance firms. Standard NEDs here includes NEDS who are not subject to regulatory pre-approval under the senior insurance managers regime and the FCA-revised Approved Persons Regime for insurance firms.
The consultation closed on 9 January 2017. Final rules are expected in the second or third quarter of 2017.

Regulatory references for senior managers in insurers

In September 2016, the FCA and the PRA published separate policy statements relating to regulatory references under the new accountability regimes for deposit-takers, PRA investment firms, firms within scope of the Solvency II Directive and large non-directive insurers. The rules set out in the policy statements came into force on 7 March 2017. Please read our briefing to get an overview of the new regulatory reference regime.

Whistleblowing in UK branches of overseas banks

The FCA and the PRA published whistleblowing rules for UK banks and insurers in October 2015, with the rules coming into force in September 2016. These aim of these rules is to encourage people to voice concerns and challenge poor practice without fearing retaliation. The FCA and PRA have now issued consultation papers in which they propose that new whistleblowing rules be put in place in relation to UK branches of overseas banks and insurers. The proposed new rules are not as extensive as the rules which came into force in September 2016. They would require UK branches of overseas banks and insurers to tell their UK based employees that they can blow the whistle to the FCA and the PRA's whistleblowing services. They would also require a

UK branch that has a sister or parent company which is subject to the current whistleblowing rules to tell its staff that they can make use of that company's whistleblowing arrangements.
The consultation closed on 9 January 2017. The FCA will publish its final rules in a policy statement after considering the feedback received. It is expected that the final rules will come into force in September 2017.

Senior Managers and Certification Regime to be extended

On 22 February 2017, the FCA confirmed that it plans to consult, during the second quarter of 2017, on the extension of the Senior Managers and Certification Regime to all firms authorised under the Financial Services and Markets Act 2000. HM Treasury has indicated that it is their intention that the extension to the regime would come into force in 2018.

UK Pensions

Parliamentary inquiry on pensions regulator's powers and the pension protection fund

In February, the Government published its Green Paper: "Security and Sustainability in Defined Benefit Pension Schemes" setting out issues for consultation on the future regulation of defined benefit pension schemes. This follows a report on defined benefit schemes published in December 2016 by the House of Commons Work and Pensions Committee following its inquiry (see our alert on the Select Committee report) into defined benefit pension schemes.
Rather than simply accepting and implementing the (sometimes radical) Work and Pensions Committee's recommendations, the Government has taken a more measured approach by recognising the need for any regulatory changes to strike a "fair balance" between the interests of members and sponsoring employers and highlighting the importance of ensuring that any regulatory changes do nothing to damage the competitiveness of UK business.
The Green Paper concludes that there are no significant structural problems with the existing regulatory and legislative framework and recognises that the Pensions Regulator already has "extensive powers" and limited resources. The Green Paper seeks views on a number of targeted areas where the system could be improved, for example, allowing "stressed" employers to reduce benefits in certain circumstances, and applying a more restrictive scheme funding regime to employers with significant resources and large scheme deficits in order to "encourage" such employers to pay off those scheme deficits more quickly. The consultation period ends on 14 May 2017. For further details, see our alert on the Green Paper.

Transfers to Qualifying Recognised Overseas Pensions Schemes (QROPS)

A new 25% tax charge is being introduced through the Finance Bill, targeted at those seeking to reduce the tax payable by moving their pension wealth to another jurisdiction. The charge applies on any transfer to a qualifying recognised overseas pension schemes (QROPS) requested on or after 9 March 2017, unless (from the point of transfer):
• both the individual and the QROPS are in the same country or within the EEA;
• the QROPS is provided by the individual's employer;
• the QROPS is an overseas public service pension scheme and the individual is employed by one of the employers participating in the scheme; or
• the QROPS is established by an "international organisation" (as defined in UK pensions legislation) to provide benefits in respect of past service and the individual is employed by that international organisation.

The tax charge will also apply to an exempt transfer if, within five tax years, an individual becomes resident in another country. The tax will be refunded if the individual made a taxable transfer and within five tax years one of the exemptions above apply to the transfer.
In relation to any transfer to a QROPS on or after 6 April 2017, UK tax charges will also apply to payments from the QROPS out of those transferred funds in the five tax years following the transfer (irrespective of where the individual is resident).

Overseas pension schemes

The Finance Bill also includes a number of measures announced in the Autumn Statement that change the taxation of payments from overseas pension schemes from 6 April 2017. These measures include:
• alignment of the tax treatment of foreign pensions and lump sums paid to UK residents with that afforded to UK pensions and lump sums;
• closure of "section 615" schemes to new saving (these are pension schemes under section 615 of the Income and Corporation Taxes Act 1988 for those employed abroad);
• extension of the period from 5 to 10 years during which non-UK residents' lump-sum payments under foreign pension schemes that have benefited from UK tax relief are liable to UK tax; and
• alignment of the tax treatment of funds transferred between registered pension schemes.

In addition, new regulations have been made that will amend the requirements that a scheme must meet to be an "overseas pension scheme" for the purposes of UK legislation from 6 April 2017.

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