Ius Laboris UK Global HR Lawyers
LEWIS SILKIN

Managing an International Workforce: 2017 & Beyond

Friday 3 February 2017

The programme

8.15 - 9.00 Registration

9.00 - 9.10 Introduction

9.10 - 10.20 The world of employment law: A year in review

10.20 - 10.40 *Coffee break*

10.40 - 11.50 Brexit means Brexit - but what does Brexit mean for you?

12.00 - 1.00 Breakout sessions:

1. Brits abroad - what Brexit means for UK nationals in key EU countries
   Room - Impressive 1
2. Break for the border - how best to protect your business from departing senior employees with international responsibilities
   Room - Energetic
3. EWCs - Back to the future
   Room - Dynamic
4. State of flux - restructuring and redundancies across APAC
   Room - Innovative
5. Gigging for a living - the future for all of us
   Room - Impressive 2

1.00 - 2.00 *Lunch*

2.00 - 3.00 Breakout sessions:

1. Is a global performance management framework workable?
   Room - Impressive 2
2. Workplace data - coping with GDPR and Brexit
   Room - Dynamic
3. Global strategies for mental wellbeing
   Room - Impressive 1
4. TUPE then (perhaps) not TUPE - that is the question?
   Room - Innovative
5. Working across borders - getting the tax right
   Room - Energetic

3.00 - 3.20 *Tea break*

3.20 - 4.30 Women in leadership - creating a change

4.30 - 4.45 Round up and closing

4.45 Drinks reception

Speaker biographies

Karen Baxter – Lewis Silkin LLP, UK

Karen is a partner in Lewis Silkin's Employment, Immigration and Reward department.

She helps clients deal with any employment law challenges which come their way. She has particular expertise in resolving high value disputes, both before and after the commencement of litigation, including sensitive discrimination cases, whistleblowing claims, and those involving regulatory matters. She also routinely advises on workplace investigations and restructures, negotiating employment documentation, such as contracts and settlement agreements, and provides training on all of these issues.

Russell Brimelow - Lewis Silkin LLP, UK

Russell is a partner in Lewis Silkin's Employment, Immigration and Reward department. He joined Lewis Silkin in April 2004, bringing with him a team of lawyers and establishing its Oxford office which is now the largest employment team in the Thames Valley and top-rated in Chambers and Legal 500.

Russell's employment practice is broad and he has particular expertise in sensitive senior terminations, restructuring, TUPE transfers and employment litigation. Internationally, Russell has pioneered a number of global employment projects for many multinationals, and has run many cross border projects for a wide variety of clients, including the establishment and operation of an international media company's global employment helpdesk.

Russell is a regular speaker and commentator on employment issues for national media, newspapers and trade and legal journals.

Michael Burd - Lewis Silkin LLP, UK

Michael is chair and joint head of Lewis Silkin's Employment, Immigration and Reward department. He advises on all aspects of employment law, with particular interest in high level disputes, boardroom issues and dispute resolution generally. His practice is highly international, dealing with both UK clients' employment law needs globally and with UK issues for clients in numerous other jurisdictions.

Michael has been consistently listed as a leading individual in both Chambers (both in the Employer and Senior Executive fields) and Legal 500 since 1997 He is listed in 'Legal Experts' and in the 'Which Lawyer Yearbook' as a leading expert and is also listed in the 2016 edition of The Spear's 500 guide.

Michael contributes articles to various publications including Management Today and People Management and regularly speaks at client and industry conferences and seminars.

Anna Burgess – Senior Consultant, Aon Employee Benefits

Anna has a wide experience of employee benefits, working in the industry for over 15 years. At Aon Employee Benefits Anna advises on all aspects of life and disability insurance and strategy, along with flexible benefits implementation for these plans.

Jonathan Carr - Lewis Silkin LLP, UK

Jonathan is a partner in Lewis Silkin's Employment, Immigration and Reward department. His main areas of specialism include advising on restructuring and redundancy exercises, TUPE/outsourcing and senior executive dismissals. He also carries out investigations for clients. Jonathan currently acts for a broad range of different organisations and oversees a number of key client relationships as well as providing hands on support.

Jonathan has been ranked as a leading individual in both Chambers and Legal 500 for a number of years.

Peter Cheese – Chief Executive, CIPD

Peter is the CIPD's Chief Executive. Before joining the CIPD in July 2012, he was Chairman of the Institute of Leadership and Management and a member of the Council of City & Guilds. Up until 2009 he had a long career at Accenture holding various leadership positions and culminating in a seven-year spell as Global Managing Director leading the firm's human capital and organisation consulting practice. He writes and speaks widely on the development of HR, and the broader issues of leadership, culture, people and skills.

Peter is also a member of the Board of BPP University, and the Advisory Board for the Open University Business School. He holds an honorary doctorate from Kingston University, is a Fellow of the CIPD and a Fellow of AHRI, the Australian HR Institute, a Companion of the Institute of Leadership and Management, and a Companion of the Chartered Management Institute.

Alison Clements – Lewis Silkin LLP, UK

Alison is a Managing Associate in Lewis Silkin's Employment, Immigration and Reward department. She advises national and international employers on all type of employment issues, from drafting and negotiations, to avoiding litigation (and dealing with it when it arises) and the employment aspects of corporate transactions.

Alison regularly advises and also lectures on non-standard working arrangements, TUPE and major redundancies and restructurings.

Christoph Crisolli – Kliemt & Vollstädt, Germany

Christoph is a partner and heads the Frankfurt office of Kliemt & Vollstädt. He advises enterprises in all areas of individual and collective employment law. His particular interests are consultancy on company transactions and restructuring. He advises employers from the planning stage through to post-merger integration, in redundancy scheme negotiations and in drafting and negotiating agreements with works councils and collective agreements. He has particular expertise in implementing cross-border outsourcing projects. Christoph is an author and a frequent speaker at employment law seminars.

John Dabney – Senior Vice President, Employment Counsel, Viacom Inc.

In his role as in-house employment counsel, John advises all of Viacom's diverse brands and businesses (including MTV, Nickelodeon, Comedy Central and Paramount Pictures) on all manner of employment law and related issues, both domestically and internationally. John's responsibilities include providing daily guidance to Viacom's worldwide human resource organization regarding various legal and HR issues, negotiating employment, separation, and other services agreements, and acquiring and integrating new businesses around the world.

Prior to joining Viacom in 2005, John spent seven years in private practice, first in the Labor & Employment Group at the firm of Proskauer Rose, and then with the boutique labor & employment firm of Kauff McGuire & Margolis.

John earned his BA degree in Political Science from Colgate University in 1992, and his JD degree from Seton Hall University School of Law in 1998. In earning his BA, John also did substantive Political Science and Government coursework in the United Kingdom at the University of Manchester.

Olivier Debray – Claeys & Engels, Belgium

Olivier specialises in labour law, social security law and also tax law. He deals in daily practice with issues concerning compensation and benefits, social and tax status of expatriates and legal status of company directors and top managers.

He advises national and multinational companies, in particular in all aspects of international private law, international social security law and international tax.

Olivier is head of the firm's Compensation & Benefits practice, including the tax practice. In the framework

of this practice, he advises and works alongside companies concerning controls, ruling requests, steps towards the tax administration and tax procedure. He is also responsible for the tax compliance practice, which consists in applying for the tax status for foreign executives, doing tax returns, performing tax calculations, implementing salary splits, etc.

Sean Dempsey - Lewis Silkin LLP, UK

Sean is a partner in Lewis Silkin's Employment, Immigration and Reward department. He advises a wide range of multinational and UK companies on all aspects of employment law. He has a particular interest in the areas of employment litigation and collective employment law and is an accredited mediator. He regularly advises on the employment law aspects of international restructures and acquisitions and is increasingly asked to advise clients on their international HR/ER strategies.

Sean has been recognised for a number of years as a leader in the field of employment law by Legal 500 and Who's Who Legal. He is a commentator on employment law issues for BBC TV and radio and regularly speaks at HR and legal conferences and writes for a number of professional publications.

Tiffany Downs – FordHarrison, USA

Tiffany advises and assists employers with all aspects of health and welfare plans, qualified and non-qualified retirement plans and executive compensation. She assists with due diligence in mergers and acquisitions and post transaction transition and integration. She advises on compliance with ERISA, Affordable Care Act, HIPAA, privacy, COBRA, and Internal Revenue Code on all types of employee benefit plans and incentive compensation. She assists employers with audits by and corrections programs of the Internal Revenue Service and the Department of Labor. She also defends claims under ERISA, including welfare and pension benefits claims for benefits, breach of fiduciary duty claims, and claims for equitable relief and discrimination for ERISA plan sponsors, plan administrators, fiduciaries, and third party administrators.

Ana Garicano – Sagardoy Abogados, Spain

Ana Garicano Solé is partner at Sagardoy Abogados one of the leading law firms in Spain, specialising in employment law, employee benefits, pensions, social security and immigration.

Specialising in immigration law and a member of the Bar since 2001, she has been exclusively dedicated to immigration law for more than 15 years, providing full services to both corporate and private customers.

She has lectured on transnational labour issues at the Universidad Carlos III of Madrid, and is a frequent speaker at conferences including those held by the International Bar Association (IBA) and the American Lawyers Immigration Association (AILA).

She participates on behalf of the firm advising the most important forum of businesses whose workforce is significantly subject to international mobility (Foro Español de Expatriación (FEEX). She is author of several publications on immigration law, and most recently co-authored the immigration chapter of the technical book *1000 preguntas sobre Expatriación*, published by Francis Lefevbre in 2014.

Román Gil – Sagardoy Abogados, Spain

Román has a broad and intense litigation practice at every jurisdictional level of Spain´s Labour and Employment Courts. He has been a Board member of the Madrid Bar Association (ICAM), an institution where he has conducted training courses for lawyers, and is currently a Board member of the Asociación Nacional de Abogados Labouralistas (ASNALA), being also a founding member of the Foro Español de Abogados Labouralistas (FORELAB), and having served on its governing Board. Román is also a regular lecturer at the Faculty of Law of the Universidad de Navarra and at the Centro de Estudios Garrigues , in both cases as a professor of their Master Programs for lawyers, and at the Faculty of Law of the Universidad Carlos III, School of Social Work of the Universidad Complutense de Madrid, IE Business School and other institutions, and a speaker at events of various lawyers´ associations, including the International Bar Association (IBA), the American Bar Association (ABA) and the Europäisches und

Internationales Arbeits- und Sozialrecht (EIAS) and regularly publishes papers on employment and labour law. He has been acknowledged by Chambers and Best Lawyers as one of the leading lawyers in his field of expertise.

Victoria Goode – Lewis Silkin LLP, UK

Victoria is a partner at Lewis Silkin. She advises employers of various sizes and from various sectors on all aspects of employee remuneration. The type of issues she deals with include: employment tax and national insurance compliance; drafting and implementing annual and long term cash schemes; advising on and drafting equity incentive plans; the UK tax and social security implications of internationally mobile employees; and corporate governance issues such as how to structure remuneration so that it is compliant with regulatory requirements particularly for the financial services sector. She also advises employees and members of partnerships on the implications of their reward or termination packages

Victoria is a regular speaker and commentator on both employment tax and Remuneration Code issues for newspapers and legal journals and regularly presents at Lewis Silkin events. She wrote the Practical Law practice notes on the *Remuneration Code for banks, building societies and investment firms* and the *AIFM Remuneration Code for alternative investment fund managers* and also updates the chapter on Termination Payments in *Tolley's Tax Planning* annually.

Jenny Hellberg - Elmzell Advokatbyrå HB, Sweden

Jenny has been working with Elmzell since 2002, and she became partner in 2008. She works with all aspects of employment law matters for Swedish companies as well as global companies with a presence in Sweden.

Jenny assists in matters concerning hiring, consultations with trade unions, reorganisations, dismissals, drafting and implementation of policies and discrimination issues. She also has extensive experience representing companies in front of the Swedish courts.

Els van der Helm, Sleep Expert

Els is a sleep expert and founder of a sleep consulting firm that specializes in coaching businesses and leaders on how to improve effectiveness, health and engagement through better sleep management. Her firm provides online assessments, tailored workshops in combination with group and individual coaching to help organizations and leaders regain control of their sleep and performance during the day.

Els previously worked as a management consultant at McKinsey where she combined her passion for leadership development and sleep management for close to 3 years. She developed and facilitated training programs for both McKinsey consultants and clients. Based on research on leaders across the world Els published an article that was featured in Harvard Business Review and the McKinsey Quarterly.

Prior to joining McKinsey, Els extensively researched sleep: during her Masters Degree in Neurosciences she studied the effect of sleep on memory (Netherlands Institute for Neurosciences) and emotional processing (Harvard Medical School). As a Fulbright scholar Els studied the effects of sleep on the brain during her PhD in Psychology (University of California Berkeley) resulting in peer-reviewed articles in Current Biology, PLoS One, Psychological Bulletin, SLEEP, PNAS and several book chapters.

David Hopper - Lewis Silkin LLP, UK

David is an associate in Lewis Silkin's Employment, Immigration and Reward department. He advises on a wide range of industrial relations issues involving trade unions and works councils. His experience includes advising on union recognition, collective agreements, trade union officials' rights and industrial action. He has also advised large corporate clients in London and Hong Kong on all employment aspects of their international corporate transactions and their senior executives' contracts of employment.

David advises a wide range of multinational companies on their obligations to inform and consult with European Works Councils and large employers on the operation of their collective agreements and industrial action.

Cynthia Kapoor - General Counsel, WnDirect

Having worked in house in various industries throughout her career, and in the US, China and London, Cynthia has in recent years focused her career in the retail and ecommerce sector. She is now General Counsel of wnDirect Limited, a logistics company that specialises in international shipping solutions for ecommerce fashion retailers, and prior to this, she headed up the legal team at ASOS.com Limited as Head of Legal. She has also worked for dunnhumby Limited, part of the Tesco Group, as Assistant General Counsel for Emerging Markets where she played an instrumental part in setting up the data mining and analysis business to align with Tesco's rapid international expansion. In her spare time, Cynthia enjoys running after her overactive 1 year old son and reminiscing about the days when she enjoyed a full night's sleep.

Nikki Kirbell - Health & Wellbeing Programme Lead, Unilever

Nikki is Unilever's Health and Wellbeing Programme Lead, managing the holistic employee health and wellbeing programme for the UK and Ireland.

Nikki has been a key driver for Unilever's multi award winning Wellbeing programme and places the programme's success upon good internal network links and having a great understanding of employee needs, challenges and wishes.

Nikki is passionate about sharing the wellbeing message by using a collaborative, sustainable and tailored approach.

Colin Leckey - Lewis Silkin LLP, UK

Colin is a partner in Lewis Silkin's Employment, Immigration and Reward department. Colin has a particular focus on international work, and on advising clients in the financial services, professional services and technology industries.

Colin's practice is focused on high value Employment Tribunal litigation (discrimination and whistleblowing claims), and High Court matters such as business protection disputes relating to confidential information and restrictive covenants, and industrial action injunctions. He has worked on numerous cross-border employment matters, assisting clients with complex pan European and worldwide issues.

Colin has also contributed various articles to employment law publications such as PLC on topics including pan-European employment contracts, team moves, and the practicalities of restraining strike action. He also has a keen interest in the Future of Work, and was a speaker on this topic at 2016 Chatham House conference.

Who's Who Legal listed Colin as a leading employment lawyer in 2016, while Legal 500 2015 described him as a "class act".

Lucy Lewis - Lewis Silkin LLP, UK

Lucy is a partner in Lewis Silkin's Employment, Immigration and Reward department. She advises on the full range of employment issues with a focus on legal and strategic advice on redundancies/ restructuring; sensitive terminations and practical advice on the operation of TUPE.

Lucy has considerable experience of Employment Tribunal litigation having successful defended a number of complicated discrimination cases.

Sophie Maes – Claeys & Engels, Belgium

Sophie advises national and international clients on various aspects of international employment (including work permits and residence of foreign employees), labour law and social security law. She assists clients with seconding employees to Belgium, structuring simultaneous employment in various countries, starting up activities in Belgium, restructurings and acquisitions. Sophie often works closely with other members of Ius Laboris on transnational projects and queries.

Sophie has a particular interest in global mobility and corporate immigration issues, (prohibited) lease of personnel and flexible work arrangements and dismissal law.

Alexander Milner-Smith – Lewis Silkin LLP, UK

Alex is a senior associate in Lewis Silkin's Employment Reward and Immigration department. His practice spans all aspects of employment law.

Alex deals with all general day-to-day employment queries and has significant expertise in advising on the practical implications of TUPE and on large scale redundancy/dismissal procedures. He is regularly instructed to act for clients in relation to Employment Tribunal and High Court claims and is also regularly engaged on investigations (both open and legally privileged) for clients about a variety of different issues.

His main focus is on workplace data dealing with: data subject access requests; data protection/privacy audits; extra-EEA data transfers; advising generally on data privacy policies/notices and Bring/ ChooseYourOwnDevice policies; handling Information Commissioner's Office queries/investigations; and, helping clients update their data protection/privacy practices in light of potential Brexit and the changes required owing to the forthcoming General Data Protection Regulation.

Richard Miskella – Lewis Silkin LLP, UK

Richard is a partner in Lewis Silkin's Employment, Immigration and Reward department.

Richard advises a range of multinational and UK employers on all aspects of employment law and has a particular focus on high value litigation including in the County and High Court as well as the Employment Tribunals. He regularly litigates disputes arising out of team moves, enforcement of restrictive covenants, bonus disputes and discrimination cases. Richard also advises on restructurings, redundancies, whistleblowing and executive terminations.

Richard acts for a wide range of clients, including a number of media and financial services organisations and also acts for high net worth individuals, mostly within the financial services sector.

Richard is a CEDR accredited mediator and represents parties as well as mediating disputes. Richard regularly writes articles for the press and comments on employment law issues in addition to presenting at client training events.

Valeria Morosini - Toffoletto De Luca Tamajo e Soci, Italy

Valeria is a Partner at Toffoletto De Luca Tamajo e Soci. She graduated with honours from Università Statale di Milano in 1997 and was admitted to the Italian Bar in 2000. She is a member of the European Employment Lawyers Association (EELA) and the Italian Employment Lawyers Association (AGI). Valeria is also a member of the International Bar Association (IBA), as well as an officer of the IBA's Discrimination and Equality Law Committee. She is a regular speaker at international conferences.

Thanks to her truly international background (DEA in Paris X, as well as internships in the US and in France with Ius Laboris member firms), Valeria's daily practice largely involves international matters on a wide variety of employment law and industrial relations issues, ranging from collective redundancies and international assignments to restructuring processes and immigration issues. She regularly coordinates complex cross-border projects involving multiple jurisdictions.

Andrew Osborne – Lewis Silkin LLP, UK

Andrew is a partner and head of Lewis Silkin's specialist immigration team. He has extensive experience in advising multinational clients on the transfer of staff, both to the UK and internationally.

Andrew has practiced exclusively in the field of immigration law for over 20 years and advises across the full range of business and personal immigration categories. He has been heavily involved in lobbying Government on behalf of clients for changes to the immigration system over recent years and has significant senior level contacts at the Home Office.

Andrew is named by both the Legal 500 and Chambers as a noted practitioner in his field and was named as one of the most influential lawyers in the sports industry by Sports Business magazine.

Vijay Ravi - Kochhar & Co, India

Vijay is a senior partner in the corporate practice of Kochhar & Co. He is a member of the Firm's merger and acquisition, employment and taxation practice groups.

He has been closely involved in transactional matters including structuring transactions in a tax efficient manner, advising on entry strategies for foreign entities, corporate restructuring, advise on foreign equity participation and attendant regulatory issues, investment options and vehicles, compliances, regulatory approvals pertaining to foreign investment and assisting clients during negotiations in the course of acquisitions and other business transactions.

Vijay also co-chairs the employment law practice of the firm and regularly advises multinational corporations on critical issues including but not limited to employee retrenchment, disputes with trade unions and conciliation proceedings conducted by Indian labour commissioners. He is also actively involved in advising clients on human resource policies, stock option schemes, labour and employment law compliances in India both at the federal and state level. He has also advised clients on sensitive issues involving closure of undertakings and transfer of employees.

Emma Richardson - Lewis Silkin LLP, UK

Emma is the Director of Worksphere; a comprehensive HR service providing a holistic solution for clients.

With 20+ years of front-line experience, Emma understands the needs and demands of HR professionals. She has worked with senior stakeholders (global and domestic) to deliver best practice HR solutions, across a range of industries from professional services to TV to venture capital. Emma spent three glorious years working as an HR Director in India, as an integral part the leadership team in the start-up of a service delivery centre and leading the HR function.

Emma now collaborates with HR Directors to ensure their HR operating model manages costs, minimises risk and develops staff effectively.

Marco Sideri – Toffoletto De Luca Tamajo e soci, Italy

Marco is a senior associate at Toffoletto De Luca Tamajo e soci. He has been with the firm for over 9 years and specialises in all aspects of employment law. He regularly advises clients, both at home and abroad, on various labour law related issues including dismissal, reorganisation, industrial relations, social security, special procedures and all that is related to the employment relationship.

Ellen Temperton - Lewis Silkin LLP, UK

Ellen is a partner in Lewis Silkin's Employment, Immigration and Reward department. She has over 20 years' experience in dealing with all aspects of employment law and has clients in all sectors. As a specialist in workplace privacy Ellen heads up the workplace privacy team and advises on the full range of workplace data issues. She is called on to speak about employment privacy issues at conferences and events, both nationally and internationally.

Ellen also has considerable experience of high court litigation and arbitrations including restrictive covenants, team moves, garden leave and confidential information and partnership disputes. In the Employment Tribunals she have defended my clients against sensitive and high value allegations of discrimination.

Ellen is a regular contributor to publications such as PLC and am a member of the ELA legislative and policy committee and am often called upon to speak at conferences on employment law topics.

Vince Toman – Lewis Silkin LLP, UK

Vince is a senior lawyer in Lewis Silkin's Employment, Immigration and Reward department.

He has a wide employment law practice, include restructuring, outsourcing, injunctions and collective employment issues involving trade unions and European works councils. Vince works with clients ranging from marketing services, telecommunications, airlines, software companies and car manufactures. He leads the Collective Employment team at Lewis Silkin and is a leading expert on European Work Councils, having advised a number of businesses, including manufacturers, on the Recast Directive. Vince has also advised on a large number of Information and Consultation Regulation matters, as well as a number of statutory, and voluntary recognition Trade Union matters. He has been involved in a number of dispute/ issues related to the manufacturing and transport sectors. These have included re-negotiating employee contracts, pension scheme changes, changes to working practices, variations to collective agreements and advising on structural changes involving outsourcing arrangements.

Vince is a member of Brussels European Employee Relations Group (BEERG) and has spoken on issues relating to collective employment law in Europe.

Inger Verhelst – Claeys & Engels, Belgium

Inger is a partner at Claeys & Engels. She advises clients on a daily basis with respect to individual and collective labour issues and assists companies with redundancies, restructuring, acquisitions and negotiations with the unions. She also closely follows developments with regard to end of career issues and UCA and regularly pleads before the labour courts.

Inger has a particular interest in questions concerning discrimination and psychosocial well-being at work. She also frequently advises clients on the protection of privacy and on the processing of personal data.

Inger is a regular speaker at internal and external seminars and has published numerous legal articles. She is co-author of the annual publications "Actief Eindigen" and "Praktijkboek Ontslag". Inger is also a member of the board of directors of the "Personnel Managers Club" and the "International Practice Group Discrimination" in Ius Laboris. Inger is recommended in the "Who's Who Legal" 2015 edition as follows: "Inger Verhelst in Antwerp is the "go-to lawyer" for matters relating to violence and harassment at work as well as discrimination in employment relations."

Andria Vidler - Chief Executive Officer, Centaur Media Plc

Andria joined Centaur as CEO in November 2013.

From August 2009 to July 2013, Andria was CEO of EMI Music UK & Ireland during which time she successfully transformed the business into a high margin global rights management enterprise by driving consumer focus and digital innovation.

Between April 2008 and August 2009, she was CMO of Bauer Media. As part of the UK management team she was responsible for building the Bauer Media brands to generate greater profitability across the portfolio of 53 magazines, 23 radio stations and all online products.

Andria was MD of Magic FM & National Radio from June 2005 to April 2008. Prior to that, she held a number of managerial, operational and marketing roles at Capital Radio and the BBC.

Dan Waldman – FordHarrison, USA

Dan is Co-Chair of FordHarrison's Global Employment Services team and his practice focuses on global employment law.

His team's client base is comprised of global companies ranging from mature start-ups to Fortune 100 companies across a broad spectrum of industries. Dan's team focuses on all aspects of international employment matters, from day-to-day counselling to managing billion dollar transactions impacting tens of thousands of employees. Dan also provides California clients with employment law counselling and advice.

As the former Vice President and Assistant General Counsel for Employment Law and Litigation for a global financial services firm, Dan has a first-hand understanding of the issues that legal departments of large, multi-national corporations contend with on a daily basis. As Vice President and Assistant General Counsel, Dan provided a broad range of employment law counselling and litigation support to a diverse portfolio of the firm's businesses globally.

Keith Warburton - founder Global Business Culture

Keith Warburton is an internationally recognised expert on the impact on international cultural differences and global communication issues. He works with some of the world' great companies as well as professional service firms, governments and Higher Education establishments.

His practical application of this topic to the commerciality of any business comes from a career which saw him work in Europe, the Middle East and Asia for a twenty year period. Having worked across the world at C-level he understands global business and has the ability to ally his vast cultural knowledge to communication skills to your business and your sector.

Areas of expertise include:

- Developing global cultural capability
- Building international virtual teams
- Improving cross-border communication
- Global business development strategies

Ruud van Der Wel - Head of Global Labour Relations - AP Moller Maersk

Born in The Hague, The Netherlands on August 18th, 1961 Ruud is a Dutch national and citizen. He lives in the seaside village of Bakkum in North-Holland with his wife Raquel and their 17 year old son Sam. He studied law at Erasmus University in Rotterdam, The Netherlands and concluded his studies with a master degree in Dutch Private Law.

He started his career as company lawyer, working for the small and medium size enterprises in the Dutch furniture & interior design industry. Ruud soon started to specialize in labour related matters and joined the General Employers' Association of The Netherlands where he worked as consultant for middle size and large (multinational) enterprises, specialized in labour related matters and in negotiations. His interest in negotiations led him to become a certified mediator (CEDR, London) and trainer in negotiations.

After serving as Head of Legal Affairs for the General Employers' Association of The Netherlands, he joined Heineken International as Legal Counsel at their Amsterdam Head Office. As Manager Labour Relations and Employment Law he was responsible for all labour related matters of HQ, including the relationship with the Heineken European Works Council and the international labour relations of the company. He also overlooked the global Heineken Human Rights policy. In 2014 he joined Maersk Group and APM Terminals –one of the business units of Maersk- as Head of Global Labour Relations, based in The Hague, The Netherlands, responsible for Maersk's labour relations vision, strategy and policies.

After the recently announced split-up of Maersk Group in a Transport & Logistics division and Energy division, in January 2017 he was appointed as Head of Global Labour Relations of Maersk Transport & Logistics. Ruud is a member of the global HR Leadership Team of APM Terminals.

Mark Witte - Senior Consultant, Aon

Mark joined Aon in 2004 having previously spent 6 years with another of the country's leading Employee Benefits Consultancy firms. During his time with Aon Mark has been at the centre of Health and Risk consultancy, helping to build propositions and take these out to key clients. Most recently this has focused heavily on the development of Aon's Health & Wellbeing proportions and the increasingly important role that health analytics and technology can play in helping clients achieve their strategic goals in this

increasingly important arena.

Jia Xie – Lewis Silkin LLP, UK

Jia is an associate at Lewis Silkin who focuses on tax and share plans. She has a particular focus on corporate transaction structuring, negotiation of tax provisions in M&A transactions and structuring and implementing executive incentive and share option plans. She also advises employers and executives on UK and international employment tax matters.

Jia am a member of the Association of Taxation Technicians (ATT). She speaks English, Mandarin, Cantonese and a southern Chinese dialect.

Bo Zhou - Fangda Partners, China

Bo started his career at Fangda Partners as an associate in early 2008, and is now a counsel of the firm. He has been focusing on labour and employment law since he joined the firm, and his practice covers all types of labour and employment matters, including counseling on daily operational issues, representation in labour dispute arbitration and litigation, draft and review of employment documentation and assistance in internal investigations regarding employee misconducts. His clients are mostly multinational companies with business presence in China.

The world of employment law: A year in review

1. Deglobalisation - Brexit, Trumpism etc

This time last year, we pondered when the Brexit referendum would be held and mused on the possibility that "*by the time of next year's conference, we could be debating the consequences of a British vote to leave the EU*". We wondered if this would herald a shift into a new era of "deglobalisation". From the wry smiles and shakes of the head that filled the auditorium, it is fair to say few people thought this likely. We didn't even mention Donald Trump. How little we all knew…

Europe

The seismic event of the last 12 months – some would say a generation – was the **UK**'s vote to leave the **EU** on 23 June 2016.

New Prime Minister Theresa May has since confirmed her Government's plan to trigger Article 50 of the Treaty on European Union, which starts the two-year process of formal negotiations over the UK's exit terms, by the end of March 2017. On this timetable, the UK will be out of the EU by 1 April 2019.

May confirmed in January 2017 that the UK intends to leave both the single market and the customs union in favour of seeking out a free trade agreement with the EU instead - effectively, a so-called "Hard Brexit". May also insists that the UK will leave the jurisdiction of the European Court of Justice.

This is has very significant longer term potential implications for employment and immigration law. A reduction in individuals' ability to move freely in search of work and employers' ability to engage them, and the drifting apart rather than the coming together of laws and legal systems, are central features of "deglobalisation" – and the UK is heading in this direction. While there remains a strong possibility of a transitional arrangement in the years after April 2019 in which at least some elements of the supremacy of EU law may be retained, the longer term direction of travel – absent further unforeseen political events – now seems clear. May has even said that, if the UK can't reach an agreement with the EU, it would prefer to leave with no deal at all and fall back on World Trade Organisation rules instead.

Through its so-called "Great Repeal Bill", the UK Government has said that at the point of leaving the EU it intends to adopt as domestic law the full body of law deriving from the EU. In other words, nothing will change immediately - although presumably there will no longer be any referrals to the ECJ, and the precedent weight to be borne by EU law-influenced decisions is uncertain. However, longer term the Government's approach opens up wide ranging possibilities for a radical reshaping of UK employment law. Laws deriving from the EU could all disappear from the statute books – such as the Equal Treatment, Collective Redundancies, Part-time Workers, Posted Workers, Parental Leave, European Works Councils, Transfer of Undertakings, Working Time and Agency Workers Directives, amongst others.

Some further "buts" though. The Government has also made clear that politically it has little appetite to radically change employment rights and protections – although this isn't necessarily easy to square with its threat to become a low tax, low regulation regime in the interest of competitiveness if the EU fails to offer a favourable deal. And it remains possible that, like Switzerland, the UK will negotiate a bespoke arrangement which does involve staying signed up to at least some EU laws. For example, Switzerland has data protection, TUPE, discrimination, collective redundancy and working time laws and free movement of workers, and the Swiss courts sometimes follow ECJ case law.

One thing the Government has made clear is non-negotiable is an end to free movement of workers. It therefore seems certain that EU citizens will lose the automatic right to work in the UK, and vice versa, once the UK leave the EU - although the Government has prioritised agreeing a deal guaranteeing the rights of EU workers already here. We have seen a huge upswing in immigration queries with EU individuals seeking to secure permanent residence (available after five years) or citizenship. Post-departure, it seems very likely that there will be a new form of controlled migration system which will prioritise highly skilled workers in sectors such as financial services, and potentially a resurrection of old schemes such as the Seasonal Agricultural Workers Scheme to meet essential demand for lower skilled workers in certain areas.

While no one knows what the longer term shape of the UK's relationship with the EU will be, or the legal ramifications, the best advice to employers is to sit tight, and engage in scenario planning. For a financial services employer, this might mean preparing to move jobs to Dublin, Frankfurt or Paris if and when passporting is lost. Or for an employer in a sector like healthcare, this may involve working out how to replace lower cost labour from central and eastern Europe. A prolonged period of uncertainty is inevitable. An eye should also be kept on the potential new free trade deals the UK Government wants to strike with the US, Australia and sundry others, which may have implications for labour law standards as well.

While on the theme of laws drifting apart rather than coming together, **Scotland** recently acquired control over its own Employment Tribunals. Much more radical change could be afoot if it votes for full independence, and the Scottish Government continues to threaten another referendum in response to the Brexit vote. This issue could come to a head in the next 12 months. The future of free movement on the island of **Ireland** is also now a source of major uncertainty.

The key political events in the EU in the next 12 months besides Brexit are elections in France, Germany and the Netherlands. All of these countries have their own right wing populist movements with varying degrees of hostility to the EU. **France's** presidential election in May 2017 is likely to see the far right candidate Marine Le Pen, campaigning on a platform including anti-immigration and protectionism, get to the final round. If she won, she would stage a referendum on "Frexit", though that currently seems unlikely. The current favourite is Francois Fillon, a victory for whom could be very significant for employment lawyers. He has promised to reduce the 3,000 page French labor code to 150 pages, raise the retirement age to 65 and lengthen the working week. For the moment, the EU-27 seem determined to hold fast to the sacrosanct principle of free movement – but things have changed unexpectedly fast before…

North America

In the **US**, multinational employers are getting used to Government-by-Twitter. Here are some recent Trump tweets…

Jan 3 @realdonaldtrump: "General Motors is sending Mexican made model of Chevy Cruze to U.S. car dealers-tax free across border. Make in U.S.A. or pay big border tax!"

Jan 6 @realdonaldtrump: "Toyota Motor said will build a new plant in Baja, Mexico to build Corolla cars for U.S. NO WAY! Build plant in U.S. or pay big border tax!"

… and some recent automotive industry announcements:

- Toyota announces it will spend $10bn on new investments in the US over the next five years.
- Fiat Chrysler announces it will invest $1bn creating 2,000 new jobs in the US.
- Ford announces it will abandon production of a new Mexican assembly plant and move it to Michigan instead.

In the new world, the future of the North American Free Trade Agreement among the **US**, **Canada** and **Mexico** is highly uncertain, and the experience of the automotive industry speaks to a wider question for all multinational employers accustomed to managing complex cross-border supply chains: is the past now the future? Are we returning to a world of tariffs and trade barriers, where the generation-old logic of outsourcing and offshoring to the most cost-effective jurisdiction is crushed on the rocks of political reality? Time will tell – and it is possible that this time next year the US will be in the midst of a full blown trade war with China, with all that would entail. At the very least, the Trans Pacific Partnership ("TPP") trade deal among the US and 11 Pacific rim nations in Asia, and the TransAtlantic Trade and Investment Partnership or "TTIP" between the US and the EU, are now effectively dead in the water. Trump announced on his very first day in office that the US was withdrawing from the TPP.

For US employment laws more generally, there is something of a contradiction between the avowed determination of Trump to help workers through protectionist measures and the liberalising instincts of his

party and much of his Cabinet. The Obama government sought to make it much more difficult to classify employees as "exempt" under wage and hour laws at the federal level. A **Texas** judge issued an injunction against this, which the US government was expected to challenge – until Trump won, reversing expectations and leaving federal laws on exempt and non-exempt employees where they were before. This is a major reversal, and will make dealing with US labour laws less complex for overseas employers than it might otherwise have been. It is also expected that efforts to raise the minimum wage at the federal level will be abandoned. One thing that does seem certain is that US immigration law will become more restrictive, with no prospect of a regularisation of the position of the 11 million undocumented migrants in the US any time soon.

2. The rapid rise of the gig economy

Politics is pushing the world towards de-globalisation. But politics can do little to stop the march of technology and the way it is re-shaping workplace relations. An ever more pronounced trend in the last twelve months has been the onward march of the "gig economy" – the move away from traditional "9-to-5" jobs towards technology-enabled "gigging" for a multiplicity of work providers at any one time.

An authoritative study published last year by McKinsey found that 162 million people in Europe and the US, some 20 to 30% of the working age population, engage in some form of independent work. It further found that about 70% of them did so through choice, while around 30% did so out of necessity. This encapsulates very neatly the "flexibility versus insecurity" dilemma at the heart of gigging.

Legislators and judges continue to try and grapple with this issue. The tension between, on the one hand, wanting to embrace the new flexibility and freedom the gig economy offers to individuals and, on the other hand, wanting to protect vulnerable individuals against exploitative practices, is demonstrated very neatly by the **EU's** early attempts to find a legislative solution. As is often the case, the Commission tends to be more liberal and the Parliament more protectionist. The Commission, which continues to push for the creation of a digital single market, has called on Governments to focus on finding innovative ways to offer life-long and personalised support for employment, skills and welfare, adapted to the needs of individuals, and has backed away from calling for robust new employment rights legislation. By contrast, in January 2017 the European Parliament approved recommendations on a new European Pillar of Social Rights which would guarantee basic rights for workers, regardless of the form of employment and contract, and specifically including work intermediated by digital platforms.

In the **UK,** an Employment Tribunal case brought by two Uber drivers found that the individuals concerned were workers, rather than self-employed as they had been categorised by Uber. A more recent case involving CitySprint reached a similar conclusion. In the months to come, the Central Arbitration Commission will decide whether Deliveroo riders have the right to be collectively represented by the IWGB union. Meanwhile, the Government has launched a review into the status of individuals working in the gig economy chaired by Matthew Taylor, and legislative action may follow off the back of this.

In **Italy**, the government has issued a bill aimed at improving protection for "non-entrepreneurial self-employed workers", targeted in large part at those working in the gig economy. It protects such workers from unfair contract terms such as delaying the payment of invoices by more than 60 days from the date of receipt.

In **Australia,** the Unfair Contracts Act came into force in November 2016. Commentators have hailed this as "revolutionary" and a global first in regulating the fairness of the gig economy as it seeks to provide protection to small businesses, including the self-employed.

Commentators in **New Zealand** have said that the UK's Uber decision would not be replicated there, as New Zealand law places greater emphasis on what the paperwork says than the reality of the situation. They would therefore be more likely to be considered independent contractors.

Much of the legal confusion around "gig" results from the fact that many jurisdictions (including the **Netherlands, Belgium, Italy, Hong Kong** and **Ireland** among many others) only have two employment

status categories, namely employee and self-employed. The **UK** is in that sense at least ahead of the game in having the intermediate category of "worker". There nevertheless continues to be a strong sense that this isn't enough in itself. Could other jurisdictions point the way to the future? The concept of economic dependence could become more significant. In **Spain**, if 75% of a contractor's income comes from one client, they are deemed "economically dependent" and entitled to protections such as paid holiday and in some cases severance pay. **Germany** has similar provisions. The **UK** Taylor review could yet lead in a similar direction.

The global trend towards promoting greater flexibility in working arrangements continues to spread. Countries as diverse as **Austria, Japan, Israel** and **Ukraine** have all seen recent legislative measures aimed at increasing flexibility for workers. For many multinational employers, the major challenge of the next few years will surely be "future proofing" their organisations for a world in which jobs are rarely considered to be for life, it becomes normal for individuals to work for multiple organisations at any one time, employees expect maximum flexibility, and the need for life-long learning and continued acquisition of new skills becomes more important than ever.

The issues highlighted above will be considered in greater depth in the breakout session *Gigging for a living – the future for all of us?*

3. Working time

If the gig economy is one way in which technology is changing and posing challenges for traditional employment practices, its effect on working time is another. The "always on" economy is creating a number of headaches for policy makers. In **France**, a law came into effect on 1 January 2017 requiring employers with more than 50 workers to negotiate rules allowing workers with smartphones to ignore them outside working hours – the so-called "right to disconnect". If a deal cannot be reached, the employer must instead publish a charter making explicit the demands on and rights of employees out of hours. The French government has made clear its wish to tackle what it calls "info-obesity"(!). In **Germany**, there is no specific legislation on this issue, but a number of major companies (including Volkswagen, BMW and Puma) and the labour ministry have introduced restrictions on out-of-hours emails.

In **Italy**, a new bill acknowledged the concept of "smart working" ("lavoro agile") where employees work outside of the office and outside of normal working hours, and promised "smart workers" the same pay as colleagues performing the same tasks. The bill also prevented employers from setting maximum thresholds on working hours for this type of employment relationship in collective agreements.

And if this seems like just an "old Europe" preoccupation, think again. In **South Korea** the city legislature of Seoul has considered introducing legislation that would ban employers from messaging employees by telephone, text, social media or via mobile messaging apps after official working hours. This is part of an effort to reduce work-related stress among employees amidst a wide ranging overhaul of employment law, with increasing flexibility seen as being key to boosting a stagnant economy.

Japan is also getting increasingly serious about tackling its famous long hours "salaryman" culture. Prime Minister Shinzo Abe recently announced "work style" reform as one of the primary goals of his administration. These reforms plan to target the country's long working hours which are considered to have serious economic and social implications, such as a low birth rate and low female participation in the workforce. Approximately 30% of full time employees are said to work more than 40 hours of overtime each month. The administration has announced the possibility of placing a legal cap on monthly overtime work for employees, instead of leaving this aspect to agreement between the employer and labour unions. It is still unclear how tight a cap the administration will impose and how it will be implemented, given the possible resistance from employers.

Meanwhile in **Hong Kong**, labour unions are continuing to press the Government to legislate for a maximum 40 to 44 hour working week, with employers to pay employees an 1.5 times their regular wages for every extra hour worked. Some jobs are likely to be exempt from the limit, and final Government

proposals are currently awaited.

Zero hours contracts continue to cause controversy. **New Zealand** followed the UK in effectively banning the use of contracts under which the worker is not guaranteed any work but is expected to be available to carry out work as needed by the employer. Employers making use of such contracts continue to generate adverse headlines. Recall the experience of Sports Direct in the UK, which following significant adverse publicity had to promise to offer directly employed casual retail workers the opportunity to switch from zero hours contracts to permanent contracts providing at least 12 guaranteed hours a week.

And finally, next time you're feeling upset about being chained to your desk, be glad you don't work in **Venezuela**, where a new law has been introduced that effectively means that any employee in the country can be made to work in the fields for a maximum period of 120 days. This is intended to help with battling the food crisis, but human rights organisations such as Amnesty International and Vice have raised concerns that it introduces a form of slavery.

4. Stress and mental health issues

Work and the workplace have always been potentially stressful for workers but it appears that changes in technology and the ways we work may be exacerbating it. The way work is designed and organized, job insecurity, poor pay and conditions, management failings, bullying in the workplace, lack of autonomy and simple overwork can all contribute to stress, anxiety, depression and other mental health issues. These are hardly new phenomena. However, according to the September 2016 International Bar Association Global Employment Institute report (the IBA report) based on responses from 58 countries, many countries are reporting increasing absenteeism from work due to workplace stress and mental health issues. In particular, **Brazil**, **Colombia**, **Finland**, **Israel**, **Slovenia**, **South Africa**, **Spain**, **Sweden**, **Switzerland**, **United States** and **Venezuela** all did so. Meanwhile, in the **UK**, the 2015 CIPD Absence Management Survey reported that 41% of organisations have seen an increase in reported mental health problems (such as anxiety and depression) over the last 12 months.

It seems that, despite this trend, there is reluctance by both employers and government to investigate the issue of stress at work. The IBA report says that there is little empirical data about the scope and nature of the problem in most countries, despite the impact on productivity levels because of days off sick or lower productivity. In the **US**, for example, employees describing themselves as "highly stressed" had double the rate of absenteeism.

Possible reasons that might account for the increase in stress might be the rise in the 'gig' economy, with associated job insecurity and increasing demands on workers. Working hours may also be getting longer. International businesses increasingly demand that workers are always on duty to deal with time differences and customer expectations. Working excessive hours seems to be a problem in many different countries. According to the IBA report, excessive overtime in **China** is having a major impact on the health and well-being of workers. In **Japan**, 22% of the workforce work more than 49 hours per week, and the average number of days' annual leave taken is only around 9 days per year. The TUC recently reported that the number of people in the **UK** working more than 48 hours per week has increased by 15% in the past five years, with 3.4 million now working what are legally considered to be 'excessive hours'. These behaviours are having an increasingly negative impact on workplace health and well-being.

Technological developments, such as email and social media, are exacerbating the 'always on' culture and associated demands on workers. According to a study by an employee healthcare specialist, just over forty percent of **UK** workers admit to checking their emails beyond their contracted hours and thirty-five percent say that doing so increases their stress. It is this type of pressure that has led **France** to introduce a new 'right to disconnect' from 1 January 2017. Under this law, where an employer has 50 or more employees, it must agree terms in a collective bargaining agreement under which employees can exercise their right to disconnect from their digital work tools (emails, intranet, extranet, etc.) in rest time and holidays. If no collective bargaining agreement is concluded, the employer must draw up a 'charter', after consultation with the work council or staff delegates, which defines how to exercise the right to disconnect and must

implement training for management and employees on the reasonable use of digital tools. **Germany** does not have such legislation but some companies and government departments have banned telephone calls and emails out of working hours.

Eurofound, a recent report from the EU Commission, highlights the significant proportion of workers who are confronted with a very high level of work demands, such as working to tight deadlines, needing to work faster, frequent interruptions or simply having too much work to do. Such high levels of work demands can have a detrimental impact on mental health and absenteeism.

An increasing number of employers are concerned about workplace stress and investing in a number of wellness initiatives for their staff. These range from training programmes for managers and staff on topics like managing conflict, time and stress, to advice on lifestyle and diet. Some employers arrange exercise initiatives, such as yoga classes or discounted gym membership or offer healthy food options in a staff canteen. But such benefits are of little use if the company culture is wrong. Employees who feel valued and listened to, who feel they are making a valuable contribution and can make a difference are unsurprisingly less stressed than those who feel harassed, undervalued, overworked and unheard. And there is an increasing amount of research that shows that positive work cultures are more productive. For example research shows that there is a correlation between poor leadership behaviour and heart disease in employees. Whilst some might assume that stress and high pressure push employees to perform better, that fails to take into account the costs incurred, such as work days lost, workplace accidents and healthcare expenditure. High stress environments can also lead to employee disengagement and disengagement is costly -– leading to more absenteeism, more accidents, more errors and lower productivity and profitability.

The IBA report identified that, despite the increased reports of stress in the global workplace, many governments have been slow to take action, as have many employers. That may start to change, as employers recognise that it is becoming an increasing problem for them and their bottom line.

In relation to this topic, you may be interested to attend our breakout session *Global strategies for mental wellbeing.*

5. Data privacy - GDPR, Privacy Shield

The role of data in the workplace has changed dramatically in recent years and data protection and privacy issues are only set to become more significant in the future as the amount of personal data being requested, generated, used and shared increases. The general trend globally is towards individual autonomy and legislation and case law increasingly focuses on an individual's right to protect and control what happens to their personal data, This presents particular challenges in the workplace as employees may be able to assert those rights tactically. The starting point is that the information you need to give employees about your processing activities needs to be fulsome and contain information about their rights. It is clear that comprehensive policies covering data protection, privacy, IT and social media use, "Bring Your Own Device" and so on are essential for compliance purposes and, in many cases, will be key to determining whether or not an employer's processing of employee personal data is lawful.

Privacy Shield

On 12 July 2016 the EU Commission formally adopted the **EU-US** Privacy Shield, the replacement for the Safe Harbor scheme (which was "outlawed" in a ground-breaking ruling by the European Court of Justice in relation to the transfer of data from the EU to the US). Changes included stronger rules on data retention, onward transfers of data, and safeguards on access to data bystate agencies. The position of the US Ombudsman was also renegotiated so that the body will be fully independent from intelligence agencies.

For the first time, the **US** also gave the **EU** written assurances that access to the personal data of EU citizens for law enforcement and national security purposes would be subject to clear limitations, safeguards and oversight mechanisms, and ruled out indiscriminate mass surveillance of European

citizens' data. The Privacy Shield also provides for several accessible and affordable redress mechanisms, in case of any complaints by EU data subjects.

Businesses can now transfer personal data to US certified companies without having to rely on model clauses, binding corporate rules, or other less simple mechanisms allowing the transfer of data. However, because there are still some details of the new scheme to iron out, our advice continues to be for businesses to carry on with their existing alternative arrangements to Safe Harbor. With the **UK** due to leave the EU, the relevance of the Privacy Shield going forwards for UK businesses will depend on the UK's final relationship with the EU.

GDPR

The EU level General Data Protection Regulation (GDPR) comes into force on 25 May 2018. In a post-Brexit **UK**, do UK businesses need to take account of it? The answer is "yes", because even if the UK has left the EU by the time the GDPR comes into force:

- the GDPR may be converted into UK law under the "Great Repeal Act";
- even if this is not the case, the Government will want to ensure that UK data protection law is deemed "adequate" for the purposes of allowing data to be transferred to the UK from the EEA - implementing the provisions of the GDPR will be the most straightforward way of doing this; and
- UK businesses dealing with customers within the EU and/or having operations within the EU will still need to comply.

Below are some practical steps to prepare for the GDPR in regard to the data you hold about your workforce:

- map and audit HR data and processes;
- check whether third party processors are compliant;
- establish a cross-border inventory or data flows;
- don't rely on consent to justify your processing where another justification exists
- get ready for changes to DSARs and prepare for employees wielding their rights;
- adapt privacy notices and policies;
- consider how you will respond to a data breach involving several countries. Have trained response teams in place with well-publicised reporting procedures ;
- implement training ; and
- appoint a data protection officer (where you are required to do so).

International perspectives on data privacy

EU - the Article 29 Working Party has been busy issuing guidance on GDPR compliance issuing important opinions on profiling, when a data protection officer has to be appointed and how to determine who the lead regulator will be for global organisations. Worth reading if these are issues for you but don't expect to find all the answers there.

Germany - the Hamburg Data Protection Authority ("DPA") has announced that it will impose fines on companies still relying on Safe Harbor. It has initiated administrative proceedings against companies that were unable to provide alternative safeguards, such as EU-Model Clauses or Binding Corporate Rules ("BCRs"). The proceedings may lead to fines of up to €300,000 per breach.

Romania - an employee was dismissed for personal internet use at work, contrary to company policy. The ECHR decided that the employer's invasion of the employee's privacy by reading his personal email

correspondence in a disciplinary scenario – even where such emails were sent from a personal Yahoo account and concerned intimate subjects – was proportionate.

Russia - on November 17 2016 the Russian data protection authority, Roskomnadzor, ordered telecommunications companies to block access to LinkedIn in Russia. LinkedIn was found to be in violation of the data localisation requirement as well as a number of other requirements such as collecting personal data from non-users without their consent before the registration process is complete. LinkedIn was not on the list for inspections and there were no claims from users about rights violations.

Germany - Deutsche Bank AG will no longer allow employees to send text messages and use communication apps on company-issued phones or employees' private phones used for work purposes. The move comes as Deutsche Bank works to improve its compliance efforts, as data compiled by Bloomberg found the bank has been slapped with more than $13.9 billion in fines and legal settlements since 2008.

US - 80% of UK citizens fear Donald Trump will use their personal data for his own gain. 75% want the UK government to explain the safeguards in place to protect their data from probable misuse by the Trump administration. **It is widely expected that privacy regulation will be handed back to the FTC and that it will not be a priority under the Trump administration.**

Hong Kong - the Privacy Commissioner has published an information leaflet in light of the Bring Your Own Device ("BYOD") trend. The leaflet highlights the risks of data breaches and advises employers to carry out risk assessments and implement internal policies to ensure appropriate data privacy and security compliance. It recommends providing sufficient employee training and having adequate security measures in place.

South Korea - the International Trade Association has announced that South Korea has submitted its intent to participate in the Asia-Pacific Economic Cooperation Cross-Border Privacy Rules System. South Korea will be the fifth nation to join after Canada, Japan, the US and Mexico. It is hoped that this will promote digital trade, benefit companies in the region, and drive the uptake of higher privacy standards for consumers in the Asia Pacific.

Some of the issues highlighted above will be explored more fully in the breakout session *Workplace data – coping with GDPR and Brexit.*

6. Immigration - skills shortages and protectionism

Many countries across **Europe, Asia** and the **USA** are reporting shortages of highly skilled workers. This is prompting countries to take action to attract such workers and facilitate the issuing of work permits to foreign skilled workers.

In some parts of **Europe** the issue is being addressed by granting work permits to foreign skilled workers who hold a three year University degree and other qualifications and by implementing policies to attract highly skilled workers and entrepreneurs.

In a number of countries, including **France, India** and **Singapore**, more protectionist immigration rules have been adopted, providing for a stricter approach to immigration. A similar approach is reflected in countries including **Estonia, Kenya, Lithuania, Nigeria** and **Russia** where policies are being implemented that provide local workers with priority over foreign workers.

In the **UK**, the fines for employing illegal workers during the first quarter of 2016 increased by 25% on the same quarter in 2015 and resulted in employers receiving fines of over £12 million.

In **Japan** the government is currently considering reducing the required time period for highly skilled foreign professionals to apply for permanent residency in a bid to encourage more global talent to come to Japan.

In 2016, **China** began an extensive remodelling of its work permit system. The new integrated system is vastly different from the existing scheme and will include new electronic application submission and

processing. The system will also combine the two current permit categories (i.e. the foreign work permit and the foreign expert certificate) into a single permit with three occupation groups which are evaluated on a points-based system. The main reason for these changes is to try and increase the pool of highly skilled foreign talent working in China. The new system is already in place in certain cities including Beijing, Shanghai, Guangdong and Tianjin and will be implemented across the country from April 2017.

In June 2016, a legislative committee in Taiwan began amending employment regulations that require foreign guest workers to return to their native countries before they can reapply for renewal of their contracts after three years.

Stay arrangements in **Hong Kong** under the General Employment Policy ("GEP") and the Admission Scheme for Mainland Talents and Professionals ("ASMTP") and the Quality Migrant Admission Scheme ("QMAS") have been relaxed. For example, the QMAS point-scoring scheme will be adjusted to attract talent with exceptional educational background or international work experience. Additionally, stay durations under the GEP and ASMTP have been increased from the initial one year period to an initial two year period and two additional three-year extensions each.

GEP professionals and ASMTP visa holders may also be eligible to apply for a new 6-year extension of stay. To be eligible for this extension, applicants must have been granted a 2-year professional employment visa and have assessable income of HK$2million in the previous tax assessment year.

Although there has not been a formal announcement, the Immigration Department has agreed to implement the recommendations by the Hong Kong Audit Commission which will likely lead to stricter standards imposed on the GEP, ASMTP, QMAS, and Immigration Arrangements for Non-local Graduates schemes. These recommendations which have been accepted by the government now require fully completed visa applications at the point of submission providing the authorities a higher chance to meet their performance requirements of finalising 90% of the applications within the four-week period, and a strict minimum 12-months prior employment period with the overseas entity for intra-company transfer applicants.

Going forward, we can expect the authorities to scrutinise the following standards when assessing visa applications including local worker recruitment methods, market level remuneration rates and, with respect to non-local graduates, the authenticity of supporting documents. The Immigration Department will issue guidelines to set out the required procedures for considering the local resident labour market and market level of remuneration in processing GEP and ASMTP applications. The authorities will also incorporate a list of skills to which the authorities would give preference in order to attract qualified foreign workers to apply for the QMAS scheme.

7. Discrimination and gender pay

According to Lewis Silkin's flagship Winmark report on the future of employment law services, gender pay gap reporting is considered to be the number one risk issue for our HR clients in the years ahead. In the **UK**, every employer with more than 250 staff will soon be required to publish statistics on its gender pay gap on an annual basis – the first reports must be produced by no later than April 2018, based on data from April 2017.

Might more countries follow the UK's lead? In **Ireland** the issue features in the current ruling coalition's Programme for Government, and "wage surveys" of companies with 50 or more employees are promised. For other jurisdictions, it's been more a question of catching up. Since 1 January 2016, **California's** Fair Pay Act has required employers to justify pay differences between male and female employees doing "substantially similar work" (rather than just the "same" work), a measure which sounds rather like longstanding provisions in the UK's Equal Pay Act which aren't thought to have done enough to close the gender pay gap. In **Japan** and **Hungary**, new laws require large companies to formulate equal treatment plans with statistical information which can be monitored by government labour departments.

Japan is also planning to adopt a "same work, same pay" principle aimed at combating the huge gap between what the typical part time worker and typical full time worker earn for each hour worked, which hits women especially hard. The gap is 56.8%, compared to over 89% in France and 79.3% in Germany. If effective, this is also intended to place a dent in the country's seniority based wage system.

New protections against discrimination on the ground of disability have also featured prominently in the last twelve months. **Sweden** and **Mexico** have each passed new laws on access to facilities, while **Japan**, **Chile** and **Peru** have all passed new laws on disability quotas or toughened up existing ones. **Chile** has also passed new laws restricting employers from using genetic testing reports to establish whether employees might experience certain disabilities, an issue which may gain in prominence elsewhere as technology advances. **Indonesia** introduced a new guarantee of non-discrimination for people with disabilities in the workplace, along with a 1% disabled quota for private sector employees and an obligation to make accommodations for employees with disabilities.

There have also been further signs that protection against discrimination is increasingly a global issue rather than just a Western one. **India** has passed a new law restricting harassment of women in the workplace. The **UAE** brought in new restrictions against religious contempt, hatred or incitement, and the Government announced its intention to enforce strictly laws against discrimination on the basis of colour, sect or origin. **Ukraine** has taken steps to harmonise its discrimination legislation with that in force in the EU. **Costa Rica** is bringing in a new ban on discriminating against individuals on grounds such as trade union membership and economic conditions. **South Africa**, long a leader in the field in the post-apartheid era, introduced new legislation on affirmative action programmes for larger companies to ensure that their workforces are representative of the country's race, gender and disability make up.

The future of discrimination protection in the **US** in the Trump era remains to be seen, but the last year of the Obama administration saw further protective measures. The Equal Employment Opportunity Commission declared sexual orientation discrimination to be a form of gender discrimination governed by Title VII of the Civil Rights Act - although the US courts are yet to rule on this issue and other laws which restrict LGBT rights in various states are still on the statute books. The states of **California, Connecticut** and **Maine** all introduced new rules on compulsory discrimination training for managers in companies with more than 50 staff.

Finally, government initiatives aimed at bringing about more female staff in senior positions in private sector organisations continue to proliferate. **France, Slovenia, the Netherlands** and the **Czech Republic** are among those introducing or contemplating such measures. Meanwhile 72 financial institutions in the **UK** have signed up to the Government's Women in Finance Charter, which aims to increase the number of women in senior financial roles by encouraging flexible working and a more even distribution of high-profile work. The institutions have pledged to have at least 30% of senior roles filled by women by 2021.

8. Regulation of pay

The regulation of remuneration in the financial services sector continues to be a hot topic.

Across the **EU**, new European Banking Authority ("EBA") guidelines took effect from 1 January 2017. These are based on the so-called "comply or explain" principle. National regulators were given until 30 August 2016 - that is, two months from the date of publication of the translated guidelines - to confirm whether they intended to comply with the EBA guidelines or, if they did not intend to comply, to give their explanation for failing to do so. The guidelines themselves are aimed at ensuring that financial institutions calculate correctly and consistently the so called "bonus cap". They set out specific criteria for mapping all remuneration components into either fixed or variable pay, and detail how specific remuneration elements such as allowances, sign-on bonuses, retention bonuses and severance pay are to be recognised over time.

Regulatory authorities in **Denmark**, **France**, **Finland**, **Germany**, **Slovakia**, **Sweden** and the **UK** have advised that they do not intend to comply with parts or all of the EBA Guidelines. In the **UK**, in February

2016 the Prudential Regulation Authority ("PRA") and the Financial Conduct Authority ("FCA") announced that they intend to retain their current approach of not requiring smaller firms (i.e. proportionality level 3 firms) to apply the bonus cap, but will simply require them to determine an appropriate ratio between fixed and variable remuneration. The PRA and FCA confirmed, however, that all UK firms subject to Capital Requirements Directive ("CRD") IV must comply with all other aspects of the EBA Guidelines.

In a further development, in November 2016 the European Commission published legislative proposals for amending CRD IV on a variety of issues, in response to feedback on proportionality. These include an exemption from the application of the rules for variable pay on deferral and payment in instruments for:

- small and non-complex firms, which it proposes to define as firms whose asset value over the four year period immediately preceding the current financial year is on average equal to or less than EUR 5 billion; and
- staff members whose annual variable remuneration does not exceed EUR 50,000 and does not represent more than one quarter of that staff member's annual total remuneration.

The proposed exemptions are substantially less generous than the approach currently taken by various national regulators, including those in the UK. The timing of the implementation of these proposed charges is also uncertain. However, given that amendments to CRD IV require the approval of the European Parliament and Council, it is likely that it will be a considerable period before any changes are implemented. It remains to be seen what further complications will be caused in this regard by Brexit.

Within the **UK**, new rules on buyouts agreed on or after 1 January 2017 came into effect for PRA level 1 and 2 firms. These rules require such firms to ensure that buy-outs comply with tough new requirements or risk being void. Consultation papers issued in September 2016 by both the PRA and FCA offer supplemental guidance (not yet in force).

Employers must ensure that such buy-outs are subject to terms which give the new employer a contractual right to reduce the buy-out if it receives a reduction notice from the former employer. The amount by which the new employer must reduce the buy-out is the amount specified in the reduction notice. The former employer will only be able to issue a reduction notice if it has determined, acting fairly and reasonably, that the employee has committed misconduct or has made a material error or there have been risk-management failings. In addition, an employer will only be able to agree a buy-out with a new employee after receiving the remuneration statement issued to the employee by his or her former employer, setting out details of the employee's unvested deferred remuneration with the former employer. Under the new rules, employees will have a legal right to require their former employer to provide a remuneration statement within 14 days of the employee's request. As under the current rules, the new employer must ensure that the buy-out aligns with the long-term interests of the new employer and is not more generous than the unvested variable pay being bought out (both in terms of amount and vesting period). It is worth noting that the new rules will not apply to firms that are regulated only by the FCA. This provides a potential loophole for individuals who move from a PRA-regulated firm to a firm regulated only by the FCA. This loophole is, however, likely to have a short shelf life as it is anticipated that the FCA will apply the same or similar rules to buy-outs in due course.

Notwithstanding proposals from the UK Labour Party leader Jeremy Corbyn for the introduction of a maximum wage, most legislative and regulatory action on pay outside the financial services industry remains focused on the issue of low pay rather than high pay. Developments this year include:

- New powers in **Singapore** from April 2017 for the Employment Claims Tribunals to start hearing salary-related disputes worth up to S$20,000 in most cases between workers and employers over matters such as bonus pay, overtime and retrenchment benefits. This avoids the need for professionals, managers and executives who earn more than $4,500 a month to have to file claims in the civil courts, as was previously the case.
- Hefty increases in minimum wages are still seen by many Governments as a good means of tackling

low pay. In **Germany,** an increase in the minimum wage from the current 8.50 EUR per hour to 8.84 EUR per hour will take effect on 1 January 2019. In the **UK**, the new national so-called living wage for those aged 25 and over increased from £7.20 to £7.50 per hour from April 2017. Similar inflation-busting moves have been seen in **Slovakia** (minimum wage increased to €435 per month in 2017) and the **Czech Republic** (increase in monthly minimum wage from 9,900 to 11,000 crowns per month).

- In **New Zealand,** the new Employment Standards Legislation Act 2016 (in force 1 April 2016) compels all employers to keep records of wages and time worked, either in writing, or in a manner that enables the information to be easily accessed and converted into writing. Labour inspectors' powers have been strengthened, with more authority to enforce penalties, share information with other regulators, and to request records or documents from employers that they believe will help them to decide whether a breach has occurred. The penalties for breaching minimum wage laws have also been significantly increased.
- In **South Africa,** there is growing political pressure for the implementation of a national minimum wage, with Deputy President Cyril Ramaphosa announcing that this would bring South Africa closer to successfully tackling poverty, inequality and unemployment.

9. Risk and compliance - corruption and whistleblowing

As a general trend, protection for whistleblowers across the globe is on the rise in an attempt to deal with the problem of corruption. The ability to blow the whistle without fear of retaliation is a central part of tackling unlawful practices in both the public and private sector. Developments in whistleblowing have largely focussed on public corruption and fraud, regulation of the banking sector, and prevention of the financing of terrorism.

Europe

In the **UK**, recent court and tribunal decisions have taken a broad view of what is in the "public interest" for the purposes of whistleblowing laws. This has widened the scope of the types of disclosures that are covered, meaning that employees who blow the whistle at work are likely to be protected so long as the issue raised affects a group of others as well.

The **Czech Republic** and **Germany** have both introduced new whistleblowing laws relating to public officials, with clearly defined systems for reporting abuse of process by those in public office. **Ukraine** followed this example by setting up a new State Anti-Corruption Bureau which is charged with investigating and prosecuting public officials.

In **Italy**, new legislation has been introduced in the banking sector requiring the implementation of whistleblowing procedures and reporting of breaches of banking regulations.

The **Austrian** courts are successfully implementing whistleblowing legislation which was enacted in 2013. The legislation introduced a government sponsored web-site which the Public Prosecutor's Office's investigators can use to obtain information from anonymous whistleblowers. This enables such evidence to be used in court without compromising the identity of the whistleblower.

North America

In **Canada**, the Ontario Securities Commission has introduced a whistleblower programme which aims to regulate and encourage whistleblowing about securities law breaches. This includes a US-style scheme of financial rewards for whistleblowers of up to £5 million for verified tips that lead to penalties of at least $1 million. In order for a whistleblower to qualify for such rewards, they must voluntarily provide "high-quality" and "original" information relating to alleged breaches of Ontario securities law that provides "meaningful assistance" in addressing such breaches.

Middle East

The **UAE** has tightened its anti-money laundering procedures. For instance, provisions for the protection of witnesses of money laundering have been introduced and the existing laws have been extended to include the financing of terrorism.

South America

The **Argentinian** congress proposed an array of anti-corruption laws in October 2016. Previously only employees could be potentially liable for corruption, not the companies that they work for. Employers who are aware of wrongdoing will be subject to severe penalties, whilst those who cooperate with investigators or adopt internal policies addressing corruption will be treated more leniently.

Under the newly introduced section 41 of the Argentine Criminal Code, whistleblowers who provide reliable information or accurate and credible data that is relevant to preventing corruption or fraud in the public administration, or that could disclosure the identity or location of such offenders, will receive reduced penalties.

Asia

In **India**, According to Human Resources Institute of Development & Analysis reports, recent whistleblowing legislation and an increasingly proactive attitude among companies has led to a decrease in corruption levels across the country.

The Improper Solicitation and Graft Act came into force in **South Korea** on 28 September 2016. It creates a tough new regime aimed at reducing the problem of widespread corruption. The law applies to an estimated 4 million people - mostly civil servants, but journalists and private-school teachers and their spouses are also covered. The culture of gift-giving is deeply rooted in South Korea and this new legislation has prompted widespread fears of the impact that it could have on the economy. The new law also applies to foreign individuals operating in South Korea. The legislation gives examples of what would be illegal, which reveal the extent to which the government is attempting to crack down on this culture. For instance, paying for a Won30,000 meal (approx. 25 EUR), followed by a Won6,000 coffee (approx. 5 EUR) would be illegal.

10. Restrictive covenants

Call for evidence in the UK on non-compete clauses

In May 2016 the **UK** Government called for evidence on non-compete clauses and their impact on innovation in the UK. This was partly triggered by research that in the **US**, the limited use and enforcement of these types of clauses has had a positive impact on growth and innovation.

Employees with knowledge of confidential information, strategic plans, customer and client details and relationships can pose significant risks for businesses after the termination of their employment if they attempt to use this information for the benefit of a new employer (or their own competing business). In order to protect these interests beyond the terms implied into all contracts of employment, including express, reasonable and well-drafted post-termination restrictions in employment contracts prevent damage to the former employer's business.

The current law aims to strike a balance between the legitimate business interests of the employer and an employee's right to earn a living. As a starting point, the courts will treat the restrictive covenant as invalid unless the employer can show that the restriction goes no further than is reasonably necessary to protect its legitimate business interest. Restrictions which are purely designed to prevent competition will not be upheld and the employer bears the burden of proving that the restrictions are valid.

Depending on the results from the survey, the Government could look to introduce new policies as part of its National Innovation Plan. However, the call for evidence acknowledges that legislation to restrict the

use of non-compete clauses could have unintended consequences, as many businesses are attracted to working in the UK because of the level of protection offered to employers in the courts.

The Government is now reviewing all of the responses to the call for evidence.

Cross-jurisdictional issues

Employees of multinational companies are sometimes asked to agree to restrictive covenants subject to foreign governing law, often associated with awards under employee share schemes, LTIPs or bonus schemes. There is little case law on the enforceability of restrictive covenants in these types of schemes. However, it is likely that the English courts will not uphold a restrictive covenant that is not enforceable under English law.

Recent cases suggest that restrictive covenants in the US are being scrutinised by the courts increasingly by reference to precise job responsibilities, geographical scope, length of restriction and the acquired knowledge of the former employee, together with the value of any confidential information to a new employer. Court decisions in other jurisdictions indicate that restrictive covenants are becoming increasingly difficult to enforce.

It is important to note that, in some jurisdictions such as **France**, **Italy** and **Germany**, paying adequate financial compensation is mandatory to support the enforceability of non-compete restrictions.

EU Trade Secrets Directive

In 2016, a new **EU** Trade Secrets Directive, which deals with the unlawful acquisition, use and disclosure of trade secrets, was adopted to impose a minimum harmonised standard of protection across the EU. Under the Directive, a "trade secret" is defined as information that is secret, has commercial value because it is secret and has been subject to reasonable steps to keep it secret. Member States have until 9 June 2018 in which to implement it at national level. Although this Directive is relevant in relation to trade secrets in the employment context, it will not affect non-competition restrictions, which will remain a matter for national law.

Restrictive covenants will be covered in more depth in the breakout session *Break for the border – how best to protect your business from departing senior employees with international responsibilities.*

11. Trade Unions and collective rights

The continuing global trend of declining trade union membership and declining numbers of companies and workers covered by collective bargaining agreements has led some employer organisations and politicians to argue that the collective bargaining system is too static and inflexible.

Labour reform

The pressure to liberalise labour laws has increased since the 2008 financial crisis, when a number of **EU** Member States, in response to high unemployment rates, implemented labour reforms aimed at increasing competitiveness, productivity and job creation. Similar reforms have also recently taken place in **Brazil** and **India**.

Pro-union laws

In some countries, this trend is countered by pro-union legislation and decisions handed down by the courts: a series of pro-trade union reforms in Chile, Costa Rica and South Africa have recently or are shortly due to come into force which are designed to make it easier to take for workers to take industrial action; in Argentina it is now easier for unions to be formed; and in Israel, the role of unions in collective bargaining rights has been established as a fundamental right of association and there is increasing union activity in the hi-tech and bio-tech sectors.

Gig economy and social media

As referred to in section 2 above, there is increasing trade union activity in the gig economy with unions representing people working in the gig economy such as Uber drivers and Deliveroo riders in both individual and collective/class action litigation in the **US and UK**. Trade union activism generally has also greatly benefitted from social media as it has enabled unions to organise more easily and bring greater pressure to bear on employers by targeting their customers through social media campaigns.

Industrial action

Trade union support and activism has strengthened in **Argentina** over recent years as increases in inflation have eroded salaries - we may be beginning to see a similar trend in the **UK** with unions now more inclined to take industrial action against a backdrop of average incomes not having been increased for some time and inflation increasing as a result of the post Brexit fall in the value of sterling. Strike action is also very much on the increase in **Vietnam** and **India.**

In the **UK**, the Trade Union Act 2016 involves a number of measures which restricts the activities of trade unions, including increasing ballot thresholds, and information and timing requirements in relation to strikes. The Prime Minister has also retreated from her controversial proposal to require employers to have worker representation on company boards.

Works councils/social plans

From 1 January 2017, employers in Lithuania with 20 or more employees will be required to establish works councils. In smaller companies, employees will be represented by an employee trustee. A new law in Switzerland requires employers to produce a mandatory social plan when planning large-scale dismissals and to allow employees to enter into collective bargaining agreements that enable them to opt-out of working time recording requirements.

And finally, in light of Brexit, employers with a European Works Council, especially those which are governed by UK law, should now start contingency planning - unlike other UK employment rights derived from EU law, it is inconceivable that rights under the EWC legislation will continue in place as the UK Government has made it clear that UK law will not be subject to the jurisdiction of the European Court of Justice following Brexit.

Please visit www.globalhrlaw.com for comprehensive coverage and analysis of international employment law issues, including the Ius Laboris Global HR law Guide – a unique interactive and detailed source of employment laws in different countries across the globe. For more information, please speak to your regular contact at Lewis Silkin.

Brexit means Brexit - but what does Brexit mean for you?

Free trade and controlling free movement – can the UK and the EU square the circle?

Executive summary

It is axiomatic that the process of the United Kingdom withdrawing from membership of the European Union is highly complex and fraught with potential difficulties, both technical and political. Not least, the terms of any agreement would almost certainly need to be approved by both the EU bodies and all other 27 member states.

There are essentially two possibilities for the UK:

- A so-called "Hard Brexit", which is generally understood to mean that the UK would not only leave the EU but also the European Single Market and the EU Customs Union. As a result, the UK would no longer have to recognise the principle of free movement (and British citizens would no longer be entitled to benefit from it).
- A "Soft Brexit", whereby the UK would continue to participate in the Single Market and the Customs Union. This would require the EU and the UK to find a compromise on free movement of persons.

Accordingly, it is increasingly clear that the ability of the EU and the UK to reach this compromise on the issue of free movement of people will be crucial to both sides agreeing on a mutually acceptable and beneficial on-going relationship. This report explores the possible options for "squaring the circle" by achieving such a compromise, thereby averting the UK "falling off the cliff edge" of a Hard Brexit.

This will most probably need to be a two-stage process. It is extremely unlikely that a comprehensive, bespoke agreement on the UK's future relationship with the EU could be reached during the two-year notice period that will follow the UK triggering Article 50 of the Treaty on the Functioning of the European Union. Some kind of transitional deal will be necessary.

There are various possible options for compromise – whether on permanent or temporary basis – that might enable the UK to continue to participate in the Single Market and the Customs Union while gaining some increased control over EU migration:

- Free movement within existing rules, but with additional administrative hurdles.
- Restriction of free movement to workers who have a job offer in the UK.
- Free movement based on the existing model of the European Economic Area (EEA) agreement, which would potentially enable the UK to take "safeguard measures" on the basis of "serious economic, societal or environmental difficulties of a sectoral or regional nature" (Liechtenstein provides a precedent for triggering such measures).
- Restricting the EU nationals to whom free movement applies. One possibility might be a two-tier system, whereby highly skilled EU migrants would be free of restriction but lower-skilled migrants would require permission to enter the UK. Another model might be bilateral arrangements, whereby the UK could introduce different rules for migrants from different EU countries.
- Restricting the jobs to which free movement applies, either on a geographical basis (by introducing regional visas) or by adopting a sectoral approach.
- An agreed quota for EU migrants to the UK.

There is a separate question, of course, as to how far any of these possible solutions would be politically achievable by either or both sides.

In considering the position of the UK, it is instructive to look at the recent experience of Switzerland, which voted narrowly in favour of imposing quotas for EU migration in a referendum in 2014. Switzerland is not a member of the EU or the EEA, but it has previously negotiated certain preferential access rights to the

Single Market and accepted free movement of people. With the deadline for implementing the referendum fast approaching, it appears the Swiss Government has been unable to reach agreement with the EU on imposing quotas, either generally or on a regional or sectorial basis.

Turning back to the UK, the conclusion of our report is that the existing EEA agreement and the potential "safeguard measures" it contains would provide the most appropriate template for the UK and the EU to reach a *transitional* agreement before the UK's Article 50 notice expires (i.e. the third option in the list of six outlined above). This has sometimes been referred to as the "Norway model". A transitional arrangement of this kind would have various advantages:

- The UK Government could justifiably present this as "Brexit". The UK would no longer be a member of the EU and would no longer be subject to the jurisdiction of the European Court of Justice, even if transitional arrangements might potentially entail the UK remaining within the EEA on a temporary basis,
- The UK would be "taking back control" of its borders, to some extent at least, because it could seek to activate safeguard measures similar to those under the EEA agreement sectorally or regionally.
- For those in favour of a "Soft Brexit", the Government could present the deal as maintaining, at least for some years, participation in the Single Market and membership of the Customs Union. This is assuming that agreement could be reached with the EU on the latter (Norway and the other non-EU EEA members are outside the Customs Union).
- On the other side of the negotiating table, the EU could present this to other member states as not treating the UK as a special case or setting a precedent for breaking the link between participation in the Single Market and acceptance of the principle of free movement.

While the "Norway model" would not represent an attractive long-term arrangement for the UK, it provides a template for a viable and achievable route to a temporary solution that is potentially of major benefit to all parties.

In the longer term, the UK could seek to negotiate more specific arrangements on EU migration as part of a more complex, bespoke trading agreement with the EU. It is estimated that this process would take between five and ten years, during which period there may be significant changes in the political landscape that impact on the options available to the UK.

Introduction

When two partners in a marriage decide to separate, they often soon realise how closely intertwined their lives have become and how complex untangling them can be. Nonetheless, the benefits of compromise and finding a way through issues such as money and family access can be significant.

In the case of the United Kingdom and the European Union, the process of separation is complicated many times over. Theresa May has famously said that "Brexit means Brexit", but one then has to distinguish between "Hard Brexit" and "Soft Brexit".

The UK Government is having to manage the expectations of a British public divided as perhaps never before, as well as opposing camps of parliamentarians split across traditional party lines. The Government must also tackle, on the one hand, a tabloid media prepared viciously to attack any step perceived to be inconsistent with its vision of a "Hard Brexit" and, on the other hand, business leaders and organisations fearful of the consequences of that vision of UK independence.

The Prime Minister Theresa May, in her much anticipated speech on 17 January 2017, set out the Government's negotiating objectives. Superficially, this seemed to add a degree of clarity to matters but, as soon as one scratches beneath the surface, the challenges of the UK seemingly wanting to "have its cake and eat it" become clear.

The EU is understandably concerned about setting a precedent by treating the UK as a special case, thereby merely encouraging movements in other EU states keen on their own version of Brexit. Even if the EU and UK negotiators do reach an agreement, this will almost certainly have to be approved by the other 27 EU member states as well as the various EU bodies and, in Belgium, regional parliaments. We have already seen how difficult that could be, with the Wallonian regional government's recent temporary veto of the much simpler Comprehensive Economic & Trade Agreement (CETA) between the EU and Canada.

As a member of the EU, the UK benefits from membership of and full participation in the European Internal or Single Market and the EU Customs Union. The Single Market provides for free movement of goods and services without tariffs or other regulatory barriers. The Customs Union provides for a common external customs tariff on imported goods, enabling the EU to enter into trade agreements on behalf of its members with other countries outside the Customs Union. Norway, for example, is a member of the European Single Market but not the Customs Union. Turkey, on the other hand, is a member of the Customs Union but not the Single Market.

A Hard Brexit is generally regarded as shorthand for not only leaving the EU, but also the Single Market and the Customs Union. Conversely, a Soft Brexit is generally interpreted as leaving the EU but remaining within the Single Market and the Customs Union.

In her speech on 17 January, Theresa May made it clear that her proposals "*cannot mean membership of the Single Market*", but went on to say that she seeks "*the greatest possible access to [the Single Market] through a new, comprehensive, bold and ambitious free trade agreement.*" In other words, the UK appears to be seeking free movement of goods and services without tariffs or other barriers, but no free movement of persons. Anna Soubry, Conservative MP and co-founder of Open Britain, has described this vision as "*Single Market lite*".

The word "*comprehensive*" is important here. Many commentators have spoken about a relationship with the EU where participation in the Single Market is limited to certain sectors. However, the Prime Minister will understand that World Trade Organisation (WTO) rules require any preferential trading agreement to cover all or substantially all trade. Any agreement covering only certain sectors is incompatible with even falling back on WTO rules.

While she was clear about membership of the Single Market, Theresa May's approach to the Customs Union was much more difficult to pin down. She talked about associate membership or remaining a signatory to parts of the Customs Union. It is, however, very difficult to see how this could be compatible with the UK's repeated desire to be able to enter free-trade agreements with other countries. Conservative

MP and pro-European, Ken Clarke, has described this approach to the Customs Union as "*incomprehensible*".

In this report, we refer to Theresa May's vision as "participation in" the Single Market rather than membership of or "access" to it. (All countries have access to the Single Market, albeit often with tariff and other regulatory barriers.)

If the UK is going to agree an on-going relationship with the EU, it seems increasingly clear that this relationship will be determined by the two sides' ability to find a compromise on the issue of free movement of persons. Successive EU leaders have promised no participation in the Single Market without free movement of people, while the UK Government remains unequivocal that any deal must result in the end of unrestricted free movement.

The tabloid press seized upon Theresa May's comment that "*no deal for Britain is better than a bad deal for Britain*", but a glimmer of optimism can be gleaned from her comments that "*there will be give and take*" in the negotiations and "*there will have to be compromises*".

Effectively, the Prime Minister is saying that the Government wants a Soft Brexit, but is prepared for a Hard Brexit.

Squaring the circle

After the referendum last June, the debate quickly moved on from "Can the result be ignored or overturned?" to "What type of relationship should the UK have with the EU post-Brexit?"

A coalition of "Remainers" who recognise the political difficulty in ignoring the referendum result, and "Leavers" who prioritise participation in the Single Market over immigration control, have united to campaign for a "Soft Brexit". They are pitted against the "Hard Brexiteers", a combination of those who regard the referendum result as grounds for repudiating any relationship with the EU and those who prioritise immigration control over participation in the Single Market.

This conflict divides the Cabinet as deeply as the country as a whole. As the fog begins to lift, the UK essentially faces two options: (1) a Hard Brexit and no on-going participation in the Single Market or Customs Union; or (2) a Soft Brexit and compromise (on both sides) over free movement of persons.

Bridging this divide promises huge potential benefits for everyone, but the current rhetoric suggests that both sides are backing themselves into corners where compromise will prove difficult politically. If, however - and that's a big "if" - there is a real willingness to reach agreement, what scope is there for a compromise on free movement that is politically achievable within the UK and throughout the EU?

A transitional agreement

In recent weeks, the prospect of a transitional agreement has received considerable attention. The Government will shortly trigger Article 50 of the Treaty on the Functioning of the European Union (TFEU), thereby technically triggering negotiations on the terms of the UK's exit from the EU (as opposed to the terms of the UK's future relationship with the EU). On 24 January 2017, the Supreme Court ruled that notice under Article 50 cannot lawfully be given by Government ministers without prior authorisation by an Act of Parliament, whereupon the Government immediately promised swiftly to introduce such legislation to enable this to happen.

A transitional agreement, in fact, embraces two different scenarios. In one, an agreement is reached between the UK and the EU before the expiry of the Article 50 notice, but there would be a period before the new arrangements come into force to allow those affected to prepare for their implications. In the other, it is accepted by the negotiating parties that there is no realistic likelihood of reaching a bespoke agreement before the Article 50 notice expires and an interim agreement is reached which governs the parties' relationship while a permanent agreement is negotiated.

In her speech on 17 January, echoing the sentiments of the Chancellor Philip Hammond, Theresa May advocated the former - a phased process of implementation. She rejected "*some form of unlimited transitional status, in which we find ourselves stuck forever in some kind of permanent political purgatory*."

- This does perhaps leave open the possibility of a time-limited transitional status in which to negotiate a bespoke permanent agreement. Arguably, however, the biggest hole in Theresa May's negotiating objectives is her wish to have reached an agreement on the UK's relationship with the EU by the expiry of the two-year Article 50 negotiating period. There are various serious obstacles to this:
- The time period available will, in practice, be much shorter. Michel Barnier, the EU's chief negotiator, has pointed out that six months would be needed for the voting process on any proposed agreement. In addition, elections this year, particularly in Germany in September, have the potential to derail negotiations.
- It is not clear to what extent the EU will even be prepared to negotiate on the terms of an on-going relationship before the terms of the UK's exit are agreed.
- Sir Ivan Rogers, who recently resigned as the UK's ambassador to the UK, has been widely reported as warning the Government that any deal with the EU could take ten years.

The Government has publicly set out an alternative vision of the UK being a low-tax competitor to the EU if no agreement is reached in time. This is a very dangerous game of brinkmanship. While no agreement would undoubtedly harm the EU, falling to reach agreement and "falling off the cliff-edge" would do immeasurable harm to the UK. It could not even fall back easily on WTO trading rules, as its current participation is partly dependent on EU membership and would need to be renegotiated.

Perhaps, Theresa May already recognises both the improbability of an agreement being reached within two years and the dangers of sticking rigidly to such a timetable. In that case, the rhetoric she has used may merely represent her starting point in negotiations. Let us hope so.

In all likelihood there will be two, successive debates. Firstly, there will be a debate about a transitional agreement and secondly one about the long-term relationship.

In light of the limited time available, it seems very unlikely that even a transitional *bespoke* agreement can be reached before the Article 50 notice expires. Any transitional agreement is, therefore, necessarily likely to be based either on the UK's current membership of the EU or on the European Economic Area (EEA) agreement terms - discussed in more detail below - together with probable continued membership of the Customs Union.

Theresa May has made clear that "*we do not seek to adopt a model already enjoyed by other countries*". This is, no doubt, a veiled reference to the "Norway/EEA model" (see further below). As a long-term solution, a bespoke agreement which largely achieves the UK's objectives may prove to be possible. It is, however, difficult to see how adopting some sort of existing model can be avoided in the short term if the UK is not to fall off the cliff-edge.

What is free movement of persons?

There are four fundamental EU freedoms underpinning the Single Market set out in Article 26 of the TFEU - the free movement of goods, persons, services and capital ("the Four Freedoms").

In the battle leading up to the referendum, the concept of "taking back control" of immigration and restricting free movement of people was arguably the primary ammunition of the Vote Leave campaign. As the smoke cleared following the result, however, many have been left wondering what free movement of people actually means in practice, what potential exists to restrict it and how this could impact the UK.

There are two main elements to consider when discussing this issue: free movement of persons on the one hand; and free movement of workers on the other. Originally, the European Economic Community, the predecessor of the EU, merely provided free movement rights for workers – the employed and the self-

employed. This was extended by the 1993 Maastricht Treaty (which established the EU) to the more extensive concept of free movement of persons, although this right is not without certain restrictions.

The free movement of workers' right is now set out in Article 45 of the TFEU. This is a right to: accept offers of employment; live in an EU member state while working there; and remain in a member state after having been employed there. It is not totally unqualified as it is expressly stated to be "*subject to limitations justified on grounds of public policy, public security or public health*".

Article 49 sets out a right of establishment, which covers a free movement for the self-employed.

There is then the free movement of persons' right, one of the Four Freedoms mentioned above. This is tied to "EU citizenship", a concept underpinned by Articles 20 and 21 of TFEU which give citizens of EU member states and their families the right to move and reside freely (expanded upon in EU Directive 2004/38). These free movement rights can be broken down into four main categories: the right to enter; the extended right of residence; the right to permanent residence; and the right to equal treatment.

Essentially, citizens of the EU can enter the UK for an initial period of three months, after which they can stay if they are a "qualified person" – namely, they are working, studying, self-employed or self-sufficient. After five years of being a qualified person, they can acquire a right of permanent residence.

As well as being a member of the EU, the UK (along with all other EU member states) is a member of the EEA, which also includes three other countries: Norway, Iceland and Liechtenstein: Non-EU EEA citizens as well as Swiss citizens also benefit from free movement of persons' rights through agreements with the EU.

David Cameron's concessions

Before the referendum, David Cameron embarked on negotiations with EU leaders to negotiate concessions to enable him to support continued membership at the referendum. He succeeded in getting agreement for a seven-year brake on EU migrants' full access to in-work benefits in the UK for the first four years after they arrive in this country. However, this was clearly insufficient to convince enough voters to support continued EU membership.

The promise of such restrictions on benefits for new EU migrants seemingly failed to address the sincerely held belief of many voters that the UK was being "flooded" by migrants from the EU. The rather hyperbolic rhetoric deployed by some Leave campaigners did little to allay such fears, and in hindsight it seems clear that the Remain camp did not take these concerns sufficiently seriously.

Challenges in restricting migration

Pro-Brexit campaigners have linked EU freedom of movement provisions with public concerns about rising immigration numbers and the failure of successive governments to reduce net migration – that is, the difference between the number coming into the country and the number leaving. The present Government's target is "tens of thousands", which is generally understood to mean less than 100,000 per year.

Concerns about unrestricted migration range from: migrant labour undercutting and forcing down local wages; increased competition from migrants for local jobs; increased pressure on housing and public services; and even a perception among some people that migration is contributing to unwelcome change to their communities and their lives.

Those opposed to controlling EU migration advance various arguments, including the needs of British business for: top talent (e.g. the world-class designers or researchers); skilled workers to fill gaps (e.g. in the health service); and low-skilled workers to take up work where employers find it difficult to recruit locally (e.g. seasonal agricultural workers). Many also consider that migration contributes to a vibrant, cosmopolitan environment that is valuable and advantageous.

EU migrants occupy both high-skilled and lower-skilled jobs in the UK. For lower-skilled jobs such as agricultural or retail work, the absence of EU migrants would probably increase labour costs because finding enough people from the UK labour force prepared to work at relatively low wages is unlikely to be possible. Indeed, every "rich" nation relies on cheap migrant labour (legal or illegal) to undertake such work.

The UK needs to accept migrant labour - from the EU or elsewhere - to undertake this work. It could, however, once outside the EU, restrict the rights of such migrants to claim state benefits, be accompanied by family members and claim permanent residence. A concern with restricting migration of lower-skilled EU workers is that it would increase employer costs which would make UK producers or manufacturers less competitive at home and abroad. It would also result in increased prices, leading to inflation. This would lead to a decrease in the standard of living for those in the UK.

EU migrants make up a high proportion of the lower-skilled market, particularly in the hospitality, retail, healthcare, construction and horticultural sectors. According to the Office of National Statistics population survey of 2015, almost a third of workers in the hospitality sector, over a quarter of construction workers and a fifth of those working in support and administrative support services are EU/EEA nationals.

In many areas of skilled labour, there are already significant skills shortages – for example, in engineering, healthcare and the arts - as illustrated by the Home Office's own list of shortage occupations. Without EU migrant workers, there would quickly be a shortfall in doctors, nurses and dentists: over half a million EU nationals work in the English NHS alone. With the NHS coming under increasing scrutiny, such a skills shortage is likely to cause the Government great concern.

For businesses, there is a further concern about attracting the top talent in a competitive global market. Indeed, Theresa May in her 17 January speech recognised that the UK needs to be "*a magnet for international talent and home to the pioneers and innovators who will shape the world* ahead". Any immigration system will inevitably permit entry of the most highly skilled, but the extra cost or bureaucracy of requiring EU nationals to obtain work permission would hamper business. Perhaps more significantly, a climate of hostility in the UK to migrants from the EU and elsewhere is likely to make it a less attractive destination for top talent.

A further argument for continuing high levels of migration, which has received little attention, relates to the need for population growth. The UK's fertility rate is about 1.8 children per woman but it was as high as nearly three per woman in the mid-60s. While the current fertility rate is higher than many European countries and nations such as Japan, it is insufficient to maintain an even population level.

A country needs around 2.1 children per woman to prevent the population from shrinking. There are obvious and well-documented economic issues that will arise from a shrinking and ageing population, not least the lack of tax revenues from the working-age population to support the retired population. Immigration has been the historic answer to this across the globe as it increases the working-age population (and also often boosts the proportion of working people to retired people).

The latest figures show that out of a workforce of over 31.7 million, 3.49 million are non-UK nationals. The number of EU nationals working in the UK increased fourfold from less than 500,000 in 1998 to 2.23 million in June 2016, mainly due to high levels of inward migration in the first decade of the 21st century from the "Accession Eight" countries of Central and Eastern Europe.

Non-UK nationals make up 10.9% of the working population and EU nationals account for over 7% of workers. In the year to June 2016, net migration to the UK amounted to 335,000 of which net migration of EU nationals totalled 189,000 and net migration of non-EU nationals came to 196,000 (with 49,000 UK nationals leaving the UK). Unemployment remains relatively low in the UK at 4.8% - the lowest for over ten years and lower than all other major European economies save Germany.

While there is little appetite even amongst arch-Brexiteers to deny EU citizens already present in the UK the right to remain, it is apparent from the numbers that any significant reduction in the number of EU

migrants coming to work in the UK would place a huge strain on the UK labour market. With or without freedom of movement for EU citizens, a target for net migration in the tens of thousands is therefore probably unrealistic whatever one's view of its desirability.

Options for compromise

It is interesting to consider what Theresa May actually said about free movement of persons in her carefully worded 17 January speech. As mentioned above, alongside the robust talk of "*no deal for Britain [being] better than a bad deal*", she did speak of the need for "*compromise*" and "*give and take*". While she spoke twice of controlling numbers of people coming to the UK from the EU, she did include immigration controls as an example of an aspect of the new arrangements with the EU which might need to be phased in.

The politicians and representatives of the EU have steadfastly and consistently maintained two principles. Firstly, the principle that the Four Freedoms cannot be divided and that to benefit from free movement of goods, services and capital within the EU, the UK must accept free movement of persons. Secondly, the principle that the UK cannot be seen to be better off outside the EU than within.

This raises the interesting question of whether or not free movement of persons is perceived to be a good thing. There are forceful arguments for promoting free movement of persons as being beneficial to the UK and the EU generally. Presumably, the EU is of this view, otherwise why maintain the right? Retaining the other three freedoms, without free movement of persons, could therefore be presented as the UK being worse off than if it were to enjoy the rights and accept the obligations of all Four Freedoms.

Although it is given much less attention in the media than the rights of EU/EEA migrants to move to and study or work in the UK, removing free movement of persons will have a major negative impact on the rights of British citizens to move to or study or work in the rest of the EU/EEA.

In seeking to agree the UK's on-going relationship with the EU, whether transitional or long-term, the Government will have to decide whether or not it is prepared to agree to treat EU migrants differently from those outside the EU. The signs are that the UK recognises the potential need for this, as Theresa May repeatedly refused to rule this out when the question was put to her shortly after her speech on 17 January.

The potential consequences of any agreement with the EU to favour its nationals can, however, already be seen from the comments of Alexander Downer, Australia's High Commissioner to the UK: he has said that Australia would want better access for business people working in the UK before reaching a post-Brexit trade deal. In addition, the Indian Government has said that the UK's block on Indian students remaining in the UK after study could be a block on any trade deal between the two countries. It is not difficult to envisage countries looking at any preferential agreement on migration between the UK and the EU as a precedent for their own trade-deal negotiations.

One can foresee free movement of persons becoming an issue in free-trade negotiations with other nations, as the UK sets off on its stated path of entering into such agreements with a whole host of countries. It would be ironic if Brexit led to the UK losing more control over immigration numbers than it gained.

So, what are the alternative compromises which would include some increased control for the UK over EU migration and what prospect is there that they might be acceptable to the UK and to the EU? The options range from something very similar to the current position on the one hand, to treating EU migrants equally to non-EU migrants on the other.

1. Free movement with added administrative hurdles

At one end of the spectrum of possibilities lies increased control of EU migration within its existing rules. Some EU member states have made free movement less easy in practice than the UK. As Conservative MEP, Vicky Ford has argued: *"For example, in Belgium, the home of the EU institutions, it is impossible in practical terms, to move into the country without a well-paid job: one cannot access any local services, or*

rent or buy a property without a social security card and you cannot get a social security card unless you have an employer paying a social security contribution. Many other EU countries have similar systems."

Would this be acceptable to the EU in return for participation in the Single Market?	Almost certainly.
Could Theresa May sell this option to her party and to the UK electorate?	Almost certainly not, either in any transitional or permanent agreement.

2. Restricting free movement to those with a job offer

Another option would be to revert to the original principles of free movement which, as mentioned above, applied when the UK joined the then EEC. This would limit the right to enter to workers with a job offer, representing a clear restriction to EU migrants' current rights. But while this would be a relatively modest departure from current free movement provisions, it is a potential solution that both the UK and EU are likely to find difficult to accept.

This option has in the past received support from key Conservative politicians. In a speech in November 2014, David Cameron stated that EU jobseekers should have a job offer before they come to the UK. At the time of the Conservative leadership election in the aftermath of the Brexit vote, it was widely reported that this option was preferred by Theresa May as well as leading Brexiteers, Michael Gove and Boris Johnson. Mrs May was reported as having said while Home Secretary: "*Reducing net EU migration need not mean undermining the principle of free movement. When it was first enshrined, free movement meant the freedom to move to a job, not the freedom to cross borders to look for work or claim benefits. Yet last year, four out of 10 EU migrants, 63,000 people, came here with no definite job offer whatsoever.*"

The restriction of rights of free movement to those with job offers would probably need to be accompanied by a prohibition on employers advertising for workers exclusively outside the UK to have any meaningful impact.

Would this be acceptable to the EU in return for participation in the Single Market?	Unlikely. Possible as part of a long-term agreement which included partial participation in the Single Market.
Could Theresa May sell this option to her party and to the UK electorate?	Highly unlikely as a part of a permanent agreement as it does not give the UK "control" over numbers and probably would not result in any significant reduction in EU migration. Unlikely, but not inconceivable, as part of a transitional agreement.

3. Safeguard measures similar to those under the EEA agreement

Initially, in his pre-referendum negotiations, David Cameron lobbied for a temporary restriction on free movement but soon realised that agreement from the EU was unachievable and ended with a more modest set of concessions (see above). Is there, however, a potential solution which might be based on safeguard measures (sometimes, arguably misleadingly, labelled an "emergency brake")?

The three non-EU EEA member states, Norway, Iceland and Liechtenstein, benefit from free movement of persons with the EU member states by virtue of the Agreement on the European Economic Area. Importantly, these three countries retain a control on free movement which is unavailable to EU member states.

Article 112 of the EEA agreement states:

"If serious economic, societal or environmental difficulties of a sectoral or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113

Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation…"

Article 112 has been triggered by Iceland in respect of free movement of capital and by Liechtenstein in respect of free movement of people. Liechtenstein has restricted free movement of EU workers since 1995 while participating fully in the Single Market. It unilaterally triggered the safeguard in 1997 and it is now reviewed every five years. Liechtenstein currently grants 72 migrant visas annually for EEA nationals (extrapolated for the UK's population, this would amount to 128,000 migrant visas each year).

Of course, Liechtenstein is tiny, with a population the size of Abingdon, and may not be the best comparator for the UK. Indeed, Liechtenstein's Prime Minister, Adrian Hasler, has rejected this approach as potentially appropriate for the UK.

Further, the text of Article 112 makes reference to "serious" economic, societal or environmental difficulties as a condition of the safeguard. Arguably, the societal difficulties which led to the referendum result could be said to satisfy this requirement, although the provision does make it clear that these need to be "sectoral" or "regional". Article 112 goes on to say that the measures should be restricted to what is strictly necessary.

Nonetheless, the case of Liechtenstein does demonstrate that the principle of free movement is not inviolable and, if there was a political will, a precedent for compromise exists. There are, superficially at least, attractions to this solution. From the EU's perspective, granting the right to take safeguard measures alongside EEA-type trading terms would not mean treating the UK any differently from existing relationships (acknowledging the vast differences between the UK and Liechtenstein). It would also recognise the principle of free movement.

From the UK's perspective, if it were able to agree a Liechtenstein-style agreement with an annual quota, the objective of controlling numbers would be satisfied, albeit subject to continual review. Theresa May has continually said that she is seeking a bespoke agreement for the UK, but reaching such a bespoke agreement before the Article 50 notice expires seems highly unlikely. The negotiating parties may be attracted by the existence of a ready-made arrangement which, at the very least, could work while the UK seeks to negotiate a permanent and bespoke agreement.

Norway, Iceland and Liechtenstein are all members of the European Free Trade Association (EFTA). As such they come within the surveillance and enforcement regimes of EFTA, including the EFTA Court. The UK could probably not actually join the EEA without joining EFTA (which also includes Switzerland, a non-EEA member – see below).

Would this be acceptable to the EU in return for participation in the Single Market?	Possibly. It does incorporate acceptance of the principle of free movement. The conflict might arise were the UK then to implement the safeguard measures unilaterally, as it would be empowered to do. These safeguard measures may well be more acceptable to the EU if limited sectorally or regionally. The EU's negotiations with Switzerland (see below) suggest that overall safeguard quotas are unlikely to be acceptable to the EU.
Could Theresa May sell this option to her party and to the UK electorate?	Highly unlikely as a part of a permanent agreement as it does not give the UK "control" over numbers. More likely to be acceptable as part of a transitional arrangement, pending the negotiation of a permanent bespoke agreement. The existence of the safeguard mechanism does satisfy the passing of "control" about numbers to the UK (arguably, whether or not safeguards are actually implemented). Even for a transitional period, joining EFTA and becoming a member of the EEA is unlikely to be attractive. An alternative, more likely scenario might involve a transitional agreement which used the EEA agreement as a template and mirrored its terms, but did not involve the UK actually joining EFTA or the EEA.

4. Restricting the EU nationals to whom free movement applies

Another compromise might be for preferential free movement to apply to some but not all EU nationals. This could be organised by skill set or by nationality.

a. Two-tier skill set-based system

One possible solution would be a two-tier system for EU migrants, whereby higher-skilled EU migrants were free of restriction but lower-skilled EU migrants require permission to enter the UK.

i. Higher-skilled: free from restriction

There is much less political pressure in the UK in relation highly-skilled EU migrants and finding a way to enable them to access free movement would, at the same time, alleviate many of business's concerns. Philip Hammond stated in Treasury questions on 25 October 2016, that he saw "no likelihood" that the Government would use its powers to control migration from the EU in relation to companies: post-Brexit controls would not apply to "*highly-skilled and highly-paid (EU) workers*." He reiterated that public concern is focused on overseas workers "taking entry-level jobs."

It is not clear how Mr Hammond's assertions would translate into immigration policies. EU nationals could perhaps apply for a document confirming their highly-skilled status. Their current or prospective employer could certify that they are skilled in their industry sector.

UK immigration schemes for non-EEA nationals such as the Highly Skilled Migrant

Programme, Tier 1 (General) and the Tier 1 Post Study work routes were disbanded as it was found that many supposedly highly skilled individuals took up lower-skilled jobs. Furthermore, EEA graduates and postgraduates are more likely than non-EEA nationals to work in low-skilled roles. Arguably, unless a highly skilled scheme is restricted to a small number of regulated professions, it may be necessary for a third party, perhaps the Department for Business, Energy and Industrial Strategy or UK Visas and Immigration, to endorse the individual.

If the EU national was self-employed, they might need to obtain an endorsement directly from a third party having produced objectively verifiable evidence of their skill set. This might be relatively easy for a worker in a regulated profession, but it would be less straightforward for a business-person or a senior consultant.

While these measures may seem onerous, they would be less rigid than the current requirements for skilled non-EEA workers, resembling the skilled-worker points system in Australia. Theresa May has, however, argued that the Australian points-based system is not suitable for the UK as it does not give the Government control over numbers.

ii. Lower skilled: work permits

Even with controls over numbers, the UK would need to admit lower-skilled workers. All developed economies rely on migrant labour to undertake lower-skilled work. Even Japan, a country with traditionally little immigration, has recently announced a relaxation of rules for lower-skilled migrants, following a doubling of foreign workers over the period 2008 to 2015.

The UK could decide to give preferential entry rights for lower-skilled jobs to EU nationals over non-EU nationals. David Metcalfe, the former Head of the Migration Advisory Committee, has suggested that lower-skilled EU migrants should be subject to a work authorisation scheme. The scheme would be modelled after the time-limited and capped Seasonal Agricultural Workers' Scheme (SAWS), which closed in 2013. This applied to Romanian and Bulgarian nationals in the period before they benefitted from full free-movement rights under EU law.

Under SAWS, the Home Office contracted with operators through whom workers would apply and be allocated to employers. Employers had to accommodate workers and they could not bring in family members. At the time SAWS closed, the cap was 21,250 migrants per year. The scheme could be tailored to lower-skilled sectors such as retail, construction and food processing, but the cap would need to be significantly increased to meet the UK's needs and an obligation on employers to accommodate workers would seem less appropriate outside of the agriculture sector..

This two-tier solution has been advocated recently by several Labour MPs who advocate free movement for the highly skilled with job offers and sector-based quotas for lower-skilled workers.

Would this be acceptable to the EU in return for participation in the Single Market?	Unlikely. It is possible that it could form part of a long-term agreement which gave partial participation in the Single Market.
Could Theresa May sell this option to her party and to the UK electorate?	Quite likely, though it would still not give "full control" over numbers unless the quotas extended to the highly skilled as well.

b. Bilateral arrangements

Arguably, most Brexiteers concerned about free movement are focused on migrants from East and Central Europe. Could the UK introduce different rules for different countries?

There would be nothing to stop the UK post-Brexit from setting different rules for citizens of the more affluent Western European member states than for other EU countries, but it could not expect such favours to be reciprocated. It would seem highly unlikely that the EU would, for example, be happy for France to enter into a bilateral agreement with UK to allow free movement of citizens, without such rules applying throughout the EU. There would also be potential complications with France being a member of the border-free Schengen zone.

One complication for the UK is Ireland. David Davis, the Secretary of State for Exiting the EU, has promised that the Common Travel Area between the UK and Ireland, which existed prior to EU membership, and which entitled citizens of each country to work freely in the other, will continue. In her 17 January speech, Theresa May set out maintaining the UK's Common Travel Area with Ireland as one of her key objectives. There appears to be no legal reason why this should not happen.

However, one potential problem in developing an immigration policy which controls EU migration is that EU nationals will continue to have free movement rights into Ireland. Border controls might need to be introduced to control their entry into the UK (and to address the UK's departure from the Customs Union) but any border control between Ireland and Northern Ireland would be politically difficult to introduce.

The alternative would seem to be an increased burden and cost of policing illegal migration being placed on employers.

Would this be acceptable to the EU in return for participation in the Single Market?	Probably for Ireland on a reciprocal basis; unlikely more broadly.
Could Theresa May sell this option to her party and to the UK electorate?	Highly unlikely if rights were not reciprocated for UK nationals wanting to work in countries whose nationals were granted preferential rights of entry to the UK.

5. Restricting the jobs to which free movement applies

Another alternative would be to restrict the jobs to which free movement applied, which could be done by sector or by region.

a. Regional visas

There have been calls to introduce regional visas, based on Australian and Canadian models that target migration to regions with low populations and skills gaps.

Regional skills shortages in Australia and Canada, together with the respective sizes of these countries, mean that skilled workers are based in specific regions and do not live and work in different areas. Australia issues permanent residence visas, which allow visa holders and their family members to live in Australia and work permanently in a particular regional area. (They are not, however, restricted to living in the area in which they work).

The ageing population in Canada has resulted in skills shortages across a wide variety of industries. The Alberta Immigrant Nominee Program (AINP), for example, is an economic immigration programme which was designed to attract and retain immigrants to the province. There are options for skilled and semi-skilled workers, who may apply independently or through an employer. Individuals must demonstrate that they are able to and intend to live permanently in Alberta.

There may be practical difficulties in the UK, given that it is much smaller country where people are

more likely to live and work in different locations and to travel frequently to different sites. However, examples could potentially include:

i. The London/regional centre visa

The London Chamber of Commerce and Industry has called for London to be a "Targeted Migration Area". It has proposed a one-off London visa to grant current EU employees permanent residence and New Capital Work Permit system to control future migrant worker access. (Notably, London voted 60% remain.)

According to the Centre for Economics and Business Research study, over 770,000 EU nationals are working in London, accounting for 30% of the London workforce in the construction sector and 20% in hospitality and distribution.

A report by accountants PwC in October 2016 included proposals for a regional system where regional centres such as Manchester could oversee work visas where workers were obliged to live in the area.

ii. Scotland

In Scotland, an even higher 62% voted remain. In a speech on 20 December 2016, Nicola Sturgeon, Scotland's First Minister, proposed that Scotland should remain in the Single Market with control over its own immigration policies, which could promote unrestricted free movement with the rest of the EU. In her response to Theresa May's speech on 17 January, Nicola Sturgeon she said that the UK leaving the Single Market would "*undoubtedly*" bring a second Scottish independence referendum closer.

b. Sectoral free movement

There are historical precedents for sectoral restrictions on free movement. Back in 2004, the Science and International Graduates Scheme (SEGS) permitted graduates with a degree in a certain subject area to work in the UK after graduation for 12 months. This was replaced by the Tier 1 (Post Study Work) scheme, under which employers are not required to advertise roles for non-EU migrants employed in shortage occupations.

The National Farmers' Union has voiced deep concern about inadequate seasonal labour sourcing, citing the need for a further 40,000 seasonal workers a year. It has mooted a new student workers' scheme, open to all international agricultural students.

In the future, it would be possible to confer rights on EU nationals to work in the UK in certain sectors, where those rights would not be available to non-EU nationals**.**

The EU does seem to prefer the concept of a regional or sectoral basis for interfering with free movement rights, rather than a a general right to do so. As mentioned above, Article 112 of the EEA agreement anticipates that the exercise of the safeguard measures allowing restrictions on free movement can apply where a country faces difficulties of a sectoral or regional nature.

Article 46 of the TFEU expands upon the free movement rights in Article 45 (above) and in Article 46 (d) refers to the "*setting up appropriate machinery ….to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries*."

Would this be acceptable to the EU in return for participation in the Single Market?	From the EU's perspective, any agreement would probably have to recognise the principle of free movement and then place restrictions as exceptions for limited periods (similar to the EEA safeguards, above). Treating Scotland differently (without Scottish independence) is highly unlikely to be acceptable bearing in mind the precedent which would be set and could be used by other regions such as Catalonia in Spain.
Could Theresa May sell this option to her party and to the UK electorate?	A sectoral or regional approach is more likely to be acceptable to the UK if the starting point was a restriction on free movement, but with exceptions where free movement was permitted in certain sectors or geographical regions at the discretion of the Government. This would accord more with the UK's stated wish to "control" numbers. A policy of devolving immigration control to Scotland is highly unlikely to be acceptable to the UK.

6. Quotas

For the UK to regain full control over immigration numbers, a quota would be necessary.

Liechtenstein's arrangements with the EU (see above) have resulted in an agreed quota for EU migrants, currently set at 56 economically-active migrants and 16 non-economically active migrants each year.

Generally speaking, however, where immigration systems include quotas, they only cover part of the immigration. In the US, for example, quotas are set for some but not all of the immigration categories available to migrants.

Quotas, as mentioned above, could apply in any new scheme to certain: skill levels; sectors; regions; or nationalities. The UK could also, in principle, set annual quotas for EU nationals (including presumably EEA/Swiss nationals) that were separate from quotas for non-EU nationals.

Would this be acceptable to the EU?	Almost certainly not (despite the precedent of Liechtenstein, above).
Could Theresa May sell this option to her party and to the UK electorate?	It would certainly satisfy many Brexiteers to establish a hard quota on numbers. It would, however, be generally unacceptable to British employers to operate a hard quota covering the less contentious groups such as the most highly skilled or inter-group transfers. Indeed, as mentioned above, Theresa May said in her 17 January speech that the UK must remain "*a magnet for international talent*" and that the UK must "*continue to attract the brightest and best to work or study in the UK*."

No agreement – the UK's current system for non-EU migrants

What will happen if the UK finds itself unable to reach a compromise with the EU? Or alternatively, what if it is able to reach an agreement whereby it has unfettered rights to restrict free movement? What sort of system might the UK then apply?

There have been calls from UKIP and Brexit campaigners for a points-based system for all migrants (EU or not), similar to the Australian-style system mentioned above, where nationality would no longer affect the ability to work in the UK. The Australian points-based system only forms part of that country's immigration system, however, as many of Australia's migrant skilled workers fall outside it. The points system does not cover employer-sponsored workers and the Australian government has initiated a review in light of apparent exploitation of temporary skilled workers.

Speaking to journalists in China during the G20 summit, Mrs May stated that a points-based model was "not a silver bullet" and stated that it would not let the Government control arrivals.

The UK's current so-called "points-based system" is a five-tier system, consisting of Tier 1: high-value (investors, entrepreneurs and those with exceptional talent); Tier 2: skilled workers; Tier 3: lower-skilled workers (never implemented); Tier 4: students; and Tier 5: temporary migrants. Each tier has an allocation of points for specific attributes. A migrant's visa application is only successful if the migrant fulfils each of a number of strict criteria. Despite the Home Office awarding points for fulfilling each requirement, points awarded for meeting one criterion cannot be allocated toward fulfilment of another criterion where the applicant has a shortfall of points. Consequently, the UK's current system is, in reality, a "points-based" one in name only.

In addition, there is currently a quota of 20,700 for Tier 2 (General) company-sponsored workers (those earning less than £155,300) and an annual quota of 1,000 for Tier 1 (exceptional talent) permissions.

It is arguably impractical to add skilled EU, EEA and Swiss workers to the current Tier 2 of the UK "points-based system", the immigration category used for most sponsored skilled workers. There are over 29,000 companies on the register of sponsors and it is an increasingly under-resourced "one size fits all" system which imposes a heavy administrative and financial burden on employers.

Lower-skilled EU, EEA and Swiss workers could apply under a Tier 3 of the points-based system (see above) if it was activated. This would, however, be costly to implement and it might not be commercially viable for employers to pay high visa and administrative costs to employ lower-skilled workers.

The points-based system replaced the previous work permit arrangements and was designed to streamline immigration categories. We could see a return to something akin to the work-permit regime, although this would place significant administrative burdens on the state and lead to costs that the Government would most likely want to pass on to employers.

Switzerland and the Swiss referendum – lessons for the UK?

While Brexit marks the first time a member state has elected to leave the EU, there will be a sense of déjà vu for the Swiss. In a 2014 referendum, Switzerland voted to impose quotas for EU migration (by a majority of 50.3% to 49.7%- similar to but even narrower than the UK Brexit majority of 51.9% to 48.1%).

Switzerland is not a member of the EU but it is a member of the EFTA (along with the non-EU EEA members – Norway, Iceland and Liechtenstein). The UK was actually a founder member of EFTA, which was originally set up as an alternative trading area to the then EEC. The UK left EFTA in 1973 when it joined the EEC. Switzerland is not a member of the EEA and indeed rejected EEA membership in a 1992 referendum by a slender margin.

Arguably the Swiss model is the closest existing model to Theresa May's vision for the UK. Switzerland has, since 1994 negotiated over 120 bilateral agreements with the EU, many of which relate to matters covered by the Single Market resulting in preferential access rights but not full participation (a sort of

"Single Market lite").

In recent years, however, the EU has been looking to institutionalise Switzerland's relationship with the EU unhappy at the absence of any effective method of surveillance or enforcement of Switzerland's obligations.

Swiss nationals benefit from the same free movement rights as EU nationals and vice versa. Continued free movement of persons' rights for EU nationals has come under scrutiny following the 2014 referendum. The deadline for implementing the Swiss referendum (February 2017) is approaching fast and the pressure is on Switzerland to reach an agreement with the EU. While Angela Merkel has insisted that the EU should "*conduct these talks with Switzerland as if the Great Britain issue never existed*", the negotiations regarding compromises on free movement will undeniably set a precedent for Brexit talks. What lessons can we learn from these negotiations?

The EU has steadfastly stuck to their position that Switzerland's preferential access to the Single Market is dependent on full acceptance of free movement of persons. It has not waivered one iota from this position.

The Swiss President recognised some time ago that a safeguard clause, with a quota on EU immigration when certain limits were reached, had no chance of being acceptable to the EU. He subsequently pondered the prospect of sectoral or regional difficulties justifying action (similar to the EEA safeguards – see above). However, the Swiss seem now to have compromised further to an apparently face-saving solution whereby local residents (of whatever nationality) would have first preference over job vacancies in cases of high unemployment. It has been suggested that reduced EU migration into Switzerland since 2014 might be used as an excuse for not putting this compromise forward to a further referendum.

It will be interesting to see whether, if EU migration into the UK begins to fall, the pressure for "control" of numbers diminishes. The first indication will be the next Office for National Statistics quarterly report on migration statistics, due on 23 February 2017, which will cover the quarter immediately after the referendum.

A way forward?

It is abundantly clear from this report that achieving a compromise on free movement of persons will not be easy, but the rewards of doing so would be significant for all concerned. With the EU bodies and all 27 member states (including the Belgian regions) needing to approve the terms of an agreement, this will be challenging to say the least.

In all likelihood, the parties will need to focus on reaching a transitional agreement before the UK's Article 50 notice expires. It would seem politically unlikely for the UK to agree even a transitional agreement with no additional control on EU migration.

Ideally, the UK would probably wish to have a three-tier system: (1) a sectoral quota for lower-skilled migration (possibly limited to EU migrants); (2) quotas for skills-shortage occupations (which could give preferential rights to EU nationals); and (3) a non-bureaucratic scheme for highly-skilled migrants (which would encourage businesses to base themselves in the UK, confident of being able to attract the best talent from around the world with limited administrative barriers). It is, however, almost inconceivable that the EU will agree to anything like this before the Article 50 notice expires.

As set out above, perhaps the greatest prospect for a transitional agreement, within the tight timeframe available, would be to adopt the terms of an existing relationship so that limited detailed negotiation would be required. The most obvious template would be the EEA agreement, sometimes referred to as the "Norway model".

As set out above, the UK Government could present this to the Brexiteers as:

- "Brexit" – the UK would no longer be a member of the EU.
- A transitional arrangement pending a more detailed UK-specific deal with looser ties to the EU.

- "Taking back (some) control" – e.g. Norway does not come within the EU's common VAT rules or agricultural and fisheries policy.
- "Taking back (some) control over borders" – although the UK would subscribe to the principle of free movement, it would benefit from the safeguard procedure (and could express its intention to use this sectorally and regionally, albeit in a limited way).
- The UK would no longer come under the jurisdiction of the European Court of Justice (ECJ). Although Norway's obligations are policed by the EFTA Court (above) which applies EU laws, it is not the ECJ that is loathed by many Brexiteers. Options for the UK would include: joining EFTA; "docking" to the EFTA Court; or establishing Joint Committees (similar to those which exist in Switzerland, but which are unpopular with the EU as exercising no effective surveillance or enforcement powers).

On the other side of the coin, the Government could present a transitional deal of this kind to those advocating a "Soft Brexit" as maintaining, at least for some years, participation in the Single Market and membership of the Customs Union.

If the UK and the EU were to agree transitional arrangements based on Norway's relationship with the EU, the UK would also need to agree a transitional arrangement to remain part of the Customs Union. As mentioned above, Norway and the other non-EU EEA members are not members of the Customs Union.

If the UK were so minded, it could leave the Customs Union once trading agreements were reached with countries outside the EU. It would not have to wait for any long-term agreement with the EU regulating free movement, access to the Single Market, financial contributions to EU, and adherence to EU laws.

Just as the UK might well be able to present this transitional agreement to appease its Brexiteers, the EU could present this to sceptical member states as:

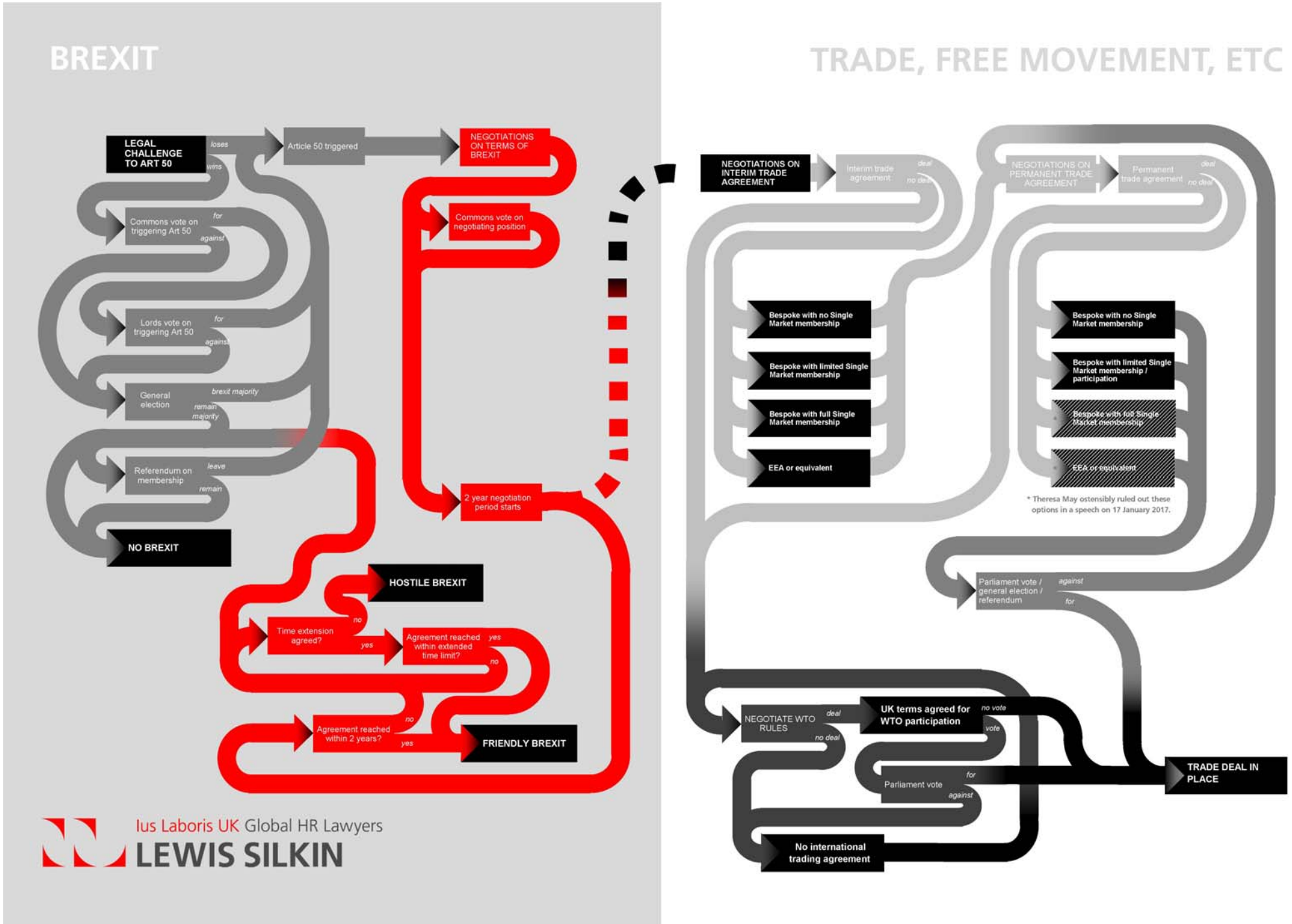
- Not treating the UK as a special case or allowing it to be better off out than in.
- Not creating a precedent which might break the link between participation in the Single Market and acceptance of the general principle of free movement.

The "Norway model" does not represent an attractive long-term arrangement for the UK, not least because as well as not giving real "control" over EU migrant numbers, non-EU EEA members must comply with most EU laws but have little say and no vote in deciding upon these rules. But if a transitional model could be agreed along the lines discussed above, this would square the circle of restricting free movement but allowing continued participation in the Single Market and Customs Union, albeit only for a transitional period.

A transitional agreement would then give the parties space and time to negotiate a comprehensive agreement involving compromise and give and take.

Further, during the five to ten years which it is estimated that a bespoke trading agreement would take to be negotiated, an awful lot is likely change. The EU might even change radically in a way that would make a return to the fold for the UK politically acceptable. Alternatively, EU migration may fall significantly within the UK as it becomes a less attractive location for EU nationals and/or the political situation changes significantly. The economic consequences of Brexit may become more apparent to those who supported Leave. The options a few years down the line may look very different from how they appear today.

Even if the political climate were not to change, there would be sufficient time to develop a complex arrangement which - with compromise and a willingness to achieve a mutually beneficial agreement - could result in a blueprint for a harmonious long-term relationship between the EU and the UK.


BREXIT
TRADE, FREE MOVEMENT, ETC
LEGAL CHALLENGE TO ART 50
loses
wins
Article 50 triggered
NEGOTIATIONS ON TERMS OF BREXIT
Commons vote on triggering Art 50
for
against
Commons vote on negotiating position
Lords vote on triggering Art 50
for
against
General election
brexit majority
remain majority
Referendum on membership
leave
remain
NO BREXIT
2 year negotiation period starts
HOSTILE BREXIT
Time extension agreed?
no
yes
Agreement reached within extended time limit?
yes
no
Agreement reached within 2 years?
no
yes
FRIENDLY BREXIT
NEGOTIATIONS ON INTERIM TRADE AGREEMENT
Interim trade agreement
deal
no deal
Bespoke with no Single Market membership
Bespoke with limited Single Market membership
Bespoke with full Single Market membership
EEA or equivalent
NEGOTIATIONS ON PERMANENT TRADE AGREEMENT
Permanent trade agreement
deal
no deal
Bespoke with no Single Market membership
Bespoke with limited Single Market membership / participation
Bespoke with full Single Market membership
EEA or equivalent
* Theresa May ostensibly ruled out these options in a speech on 17 January 2017.
Parliament vote / general election / referendum
against
for
NEGOTIATE WTO RULES
deal
no deal
UK terms agreed for WTO participation
no vote
vote
Parliament vote
for
against
TRADE DEAL IN PLACE
No international trading agreement
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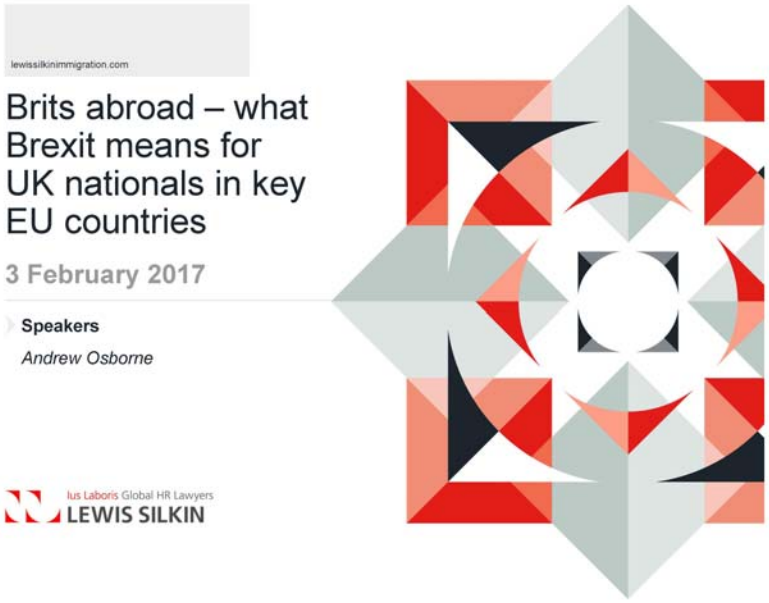
LEWIS SILKIN

Breakout session
Brits abroad - what Brexit means for UK nationals in key EU countries



Reciprocity and negotiation

UK Prime Minister's 'Plan for Britain' speech 17 January 2017

'We want to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states'

'Brexit must mean control of the number of people who come to Britain from Europe'

Agreement to be reached by conclusion of 2-year Article 50 process

- Phased implementation process from that point onward

Brexit and the end of freedom of movement

What will replace the Immigration (EEA) Regulations 2006?

Points-based system extended to EEA nationals

Exemption for EEA bankers and highly skilled businesspeople

London visa

Sector and possibly region-specific scheme for industries with lots of low-skilled workers – like Seasonal Agricultural Workers' Scheme (SAWS)

Brexit and the end of free movement

New requirements for EEA nationals working in the UK

Visas will be required for EEA nationals to work in the UK

Points-Based System – Tier 2 for sponsored skilled workers

- Existing restrictions may be relaxed for EU or for both EU and non-EU
  - Quotas
  - Minimum salary levels
  - Sponsorship and compliance
  - Only specific job for specific employer authorised
  - Resident Labour Market Test
- Extremely complex route
  - Might be redesigned
  - Processing of applications might grind to a halt

Brexit and the end of free movement

Brexit's burden on resources

Implementation costs

Surge in applications

- EU nationals in UK
- Entry clearance and leave to remain applications by EU nationals

Recruitment of Home Office staff

Drafting new laws, rules, policy and guidance

Retraining staff

New premises and running costs for British consulates in the EU

Litigation costs

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Claeys & Engels

Belgium Immigration Key Points

Non-EEA/Swiss employees

Sophie Maes
Partner Claeys & Engels
sophie.maes@claeysengels.be
3 February 2017

1 Two seperate documents are needed

- **Work permit** = right to work: regional matter (Flanders, Brussels, Wallonia and German community)
- **Visa/residence permit** = right to stay: federal matter

  → But both documents are connected: work permit is without value if not covered by legal stay and to obtain legal stay, work permit is required (unless other ground)
- **Single Permit Directive**

  → Not yet implemented in Belgian law ....

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2 Heavy penalties...

- ...for the **employer** in case of non-compliance:
  - If employing *legal* employee without work permit: criminal fine of 800 to 8,000 EUR/employee or administrative fine of 400 to 4,000 EUR/employee (penalty level 3)
  - If employing *illegal* employee without a work permit: imprisonment of 6 months to 3 years and/or criminal fine between 4,800 and 48,000 EUR/employee or administrative fine of 2,400 to 24,000 EUR/employee (penalty level 4)
  - Joint liability for repatriation costs

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3

3 Obligation for employers of non-EEA employees

- To check if employee has valid visa/residence permit
- To have a copy of valid visa/ residence permit at all times available for Social Inspectorate
- To declare commencement and termination of employment in accordance with legal provisions and regulations ('Dimona'/'Limosa')

In case of non-compliance:

- Penalty level 4 (criminal/administrative penalties)
- Joint liability for repatriation costs
- Joint liability for lump-sum indemnity for cost of housing, residence, health care for employee and family members

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4 Procedure and timing

- Step 1: work permit application at relevant region: 2 - 4 weeks
- Step 2: visa/residence permit:
  - Less than 90 days in rolling period of 180 days: Visa type C ('Schengen visa'): 15 days or exemption based on nationality

  Or

  - More than 90 days in rolling period of 180 days: Visa type D: important variations between embassies/consulates

  Alternatively, if employee is already legally in Belgium: direct application residence permit at Belgian commune before expiry of 90 days 'short stay'

➡ **General advice: start at least 2 months in advance**

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5 35 exemptions to have a work permit

- EEA nationals + their non-EEA family members possessing a Belgian residence permit (electronic F-card/F+-card or Annex 19ter + immatriculation certificate or Annex 35 or Annex 15)
- Non-EEA nationals having permission of establishment (electronic C-card) or a permanent residence permit (electronic B-card → after 5 years of work under a work permit B)
- Scientific congresses
- Business travel ?
  - Yes but not 90 days (= right to stay) !
  - Exemption of work permit for 'meetings in closed circle':
    - Max 20 consecutive days per meeting; and
    - Max 60 days per year in total

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5 35 exemptions to have a work permit

- Training ? Very limited ...
  - Exemption for training at Belgian seat of multinational group but:
    - Limited number of nationalities
    - Max 3 months
    - BUT no training on the job !!
- Leading personnel or executives in service of Belgian headquarter of multinational group:
  - Annual gross salary ≥ 66,942 EUR gross
  - Headquarters in Belgium – certain activities
  - Preliminary announcement – proof conditions ? Certificate auditor
- 'Vander Elst' – exemption – provision of services within EU

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6 If no exemption...

- Most often **work permit B** will need to be applied for by the employer
- Work permit B= valid for 1 year (but renewable), for 1 employer only
- Before the employee starts working
- General conditions for work permit B are extreme severe (EEA labour market test, only 8 nationalities, standard employment contract and medical certificate) = ➡ 'exception'

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6 If no exemption...

Exceptions = general rule - most frequent categories:

- Highly qualified employees:
  - Batchelor degree
  - Annual gross salary ≥ 40,124 EUR gross (amount 2017)
- Leading personnel
  - Must be able to bind and represent the employer
  - Annual gross salary ≥ 66,942 EUR gross (amount 2017)
- Trainees:
  - 18-30 years
  - Confirmation of education (degree and certificate !!)
  - Maximum 12 months in total
  - Minimum wages
  - Full-time and training program

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6 If no exemption...

Conclusion

- Easy for highly qualified employees to obtain work permit
- [*But very difficult for blue collar workers to obtain work permit*]
- Students ?
  - Only if enrolled in Belgian higher educational institute upon certain conditions
  - Some exemptions

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7 Once work permit is obtained, visa/residence permit application

- Straightforward but 'certificate of good conduct' is needed for stay of more than 90 days
- More complicated if family members join (6 months) + possible travel restrictions if application is made from Belgium

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8 But important changes are to be expected

Belgian implementation of:

- Single Permit Directive
- ICT Directive
- Seasonal Workers Directive

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BREXIT
Immigration-Related Consequences

Ana Garicano Solé
Partner, Immigration Manager at Sagardoy Abogados

1

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In vs Out

- UK as part of the EU→ Right to free movement, residence and provision of services within the EU Member States.
- UK out of the EU→ End of the right to free movement, residence and provision of services within the EU Member States?

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Potentially Affected Areas

1. **Short term stays in Spain for tourism/ business**
2. **Residence and work in Spain**
3. **Provision of services from The UK in Spain**

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1. Short term stays in Spain for Tourism/ business

- Schengen acquis applies.
- EU decision whether or not to waive The UK from the stay visa.

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2. Residence and work in Spain

A. Continuity of the EU scheme: spouses/ relatives included in the EU scheme dependents on Spanish or other EU nationals.

B. Shift to another permit, depending on the particular circumstances: section 200.3 of the immigration Act & long term residence section 147 and 151 of the **Royal Decree 557/2011**

C. Shift to another permit, depending on the particular circumstances, regulated by Act 14/2013 on support to Entrepreneurs

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2. A) Continuity of the EU scheme

Royal Decree 240/2007

- Access pursuant to section 2 & 2bis vs section 1
- Obligation to apply for a residence card for dependents of EU citizens
- Continuity of the right to reside and work in Spain

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2. B) Shift to General immigration framework

Organic Act 4/2000 and Royal Decree 557/2011

- Shift to a permit pursuant to section 200.3 of the Royal Decree 557/2011:
  - ✓ Non-lucrative residence authorisation
  - ✓ Residence and work authorisation as employee/ self-employee
  - ✓ Blue card
  - ✓ Work permit exemption
  - ✓ Work and residence authorisation for researchers
- Long term residence permit: Sections 147 and 151 of Royal Decree 557/2011
- Non-application of the labour market test
- No visa

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2. C) Act 14/2013 on support to Entrepreneurs

Act 14/2013

- Type of permits
  - ✓ Residence permit for investors
  - ✓ Residence permit for highly qualified professionals
  - ✓ Residence permit for Entrepreneurs
  - ✓ Residence permit under intracompany transfer
- The non- application of the labour market test
- No visa

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3. Provision of services from UK to Spain

- End of provision of services.
- Non- application of the Van der Elst doctrine
- Agreement on social security?
- Obligation to obtain an authorisation to work, before enabling the provision of services.

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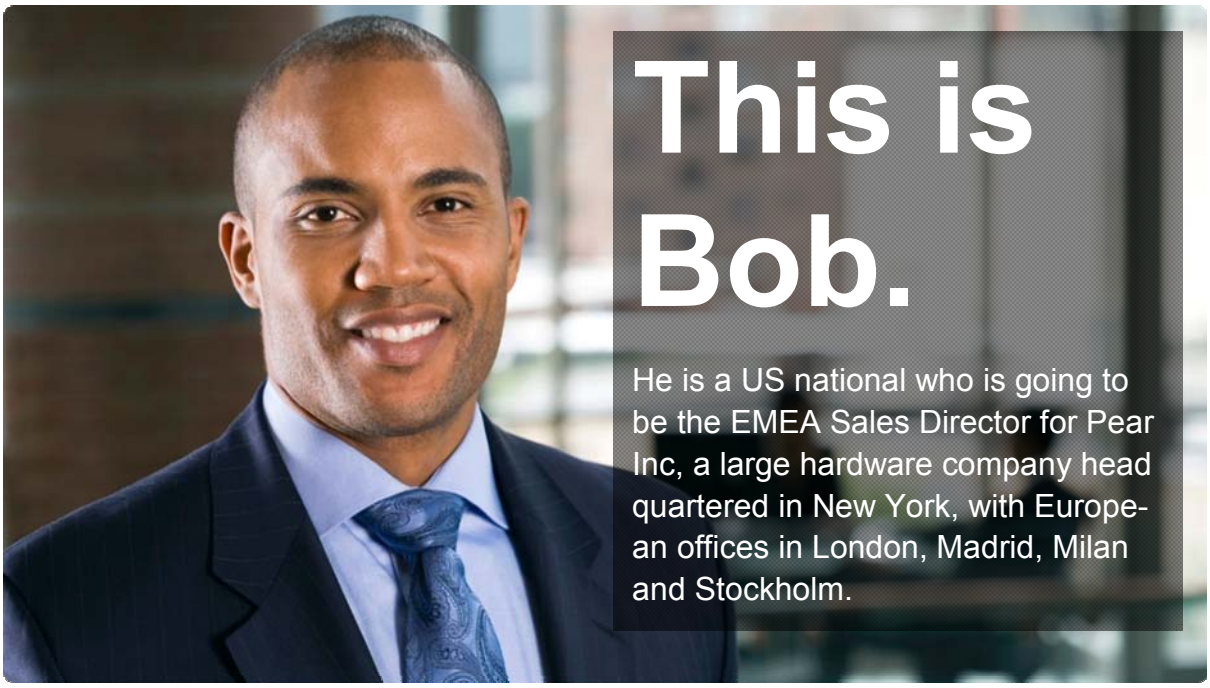
UK nationals living in Spain: Recommendations

- Certificate of registration (mandatory)
- Certificate of permanent registration (if applicable)
- To apply for Spanish citizenship.
- Gathering of evidence to prove continuous residence : option to apply for long term residence permit
- Registration of marriage: UK national married to EU national → possibility to apply for residence card for spouses/partners of EU citizens

Breakout session
Break for the border - how best to protect your business from departing senior employees with international responsibilities

Case study



Facts

Bob's role will involve a lot of travel, supporting the other offices in EMEA. He is multilingual, has been with Pear in New York for several years, has prior European experience and has a great track record of developing large client relationships.

The key priority is to protect Pear's confidential information and client relationships, if Bob leaves for any reason.

Pear's US employment contract

Employment at will (no notice). Should we have a notice period? Is there a statutory minimum? If so, should it be supplemented by a longer contractual period?

1. The Employee will not, during the employment (save in the proper course of his or her duties) and at any time thereafter, for whatever reason, directly or indirectly, furnish, disclose, use or misuse in any way, any confidential information belonging to the Company.
2. The Employee will not, directly or indirectly, whether on his own behalf or on behalf of any other person or entity, during the employment and for 12 months after the Termination Dae (for any reason and howsoever effected), without the prior written consent of the CEO:
    a. Be employed or engaged by, or otherwise provide services to, any other business, entity or organisation engaged in the business of the Company;
    b. Solicit, or attempt to solicit, or hire, any of the employees of the Employer; and
    c. Solicit or endeavour to (i) solicit the custom of, (ii) interfere with, or (iii) entice away from the Company any person, firm, company or other entity who or which was a client of or was accustomed to dealing with the Company or any subsidiaries or associated entities, at any time during the 12 months prior to the Termination Date.
3. This Agreement is subject to New York law and the exclusive jurisdiction of the Courts of New York.

Breakout session
EWCs - Back to the future

Background

Brexit

- The people of the United Kingdom voted to leave the European Union on 23 June 2016
- The Prime Minister has indicated that the UK is likely to leave, not only the EU, but also the European Economic Area with effect from 1 April 2019

European Works Councils

- European Works Councils are the only bodies providing employees with legally enforceable information and consultation rights on a transnational basis
- EWC legislation applies across, not only the EU, but also the EEA
- EWC legislation applies to companies or groups of companies with at least 1,000 employees in the EU/EEA AND employees in at least two member states
- The UK initially opted out of the EU "Social Chapter" and thereby EWCs during the 1990s

The Government's Position

- *"And let me be absolutely clear: existing workers' legal rights will continue to be guaranteed in law – and they will be guaranteed as long as I am Prime Minister"* – The Prime Minister, 2 October 2016
- *"And we are not leaving only to return to the jurisdiction of the European Court of Justice"* – The Prime Minister, 2 October 2016
- *"The third category of rights is those which have an effect in the domestic law of the United Kingdom and which would be lost upon withdrawal from the European Union and which could not be replicated in domestic legislation… These include the right to stand for selection or, later, for election to the European Parliament… The right to seek a reference to the CJEU is another example… [t]he Secretary of State accepts that category (iii) rights would be lost upon withdrawal" – R (on the application of Miller)* [2016] EWHC 2768 Admin

Case Study

Facts

- ABC Inc. is an American company with subsidiaries in the UK, France, Germany and Ireland
- Its European headquarters are based in London and it has designated its UK entity as its "representative agent" for the purposes of EWC legislation
- Its subsidiaries employ 500 people in the UK, 500 people in France, 400 people in Germany and 200 people in Ireland
- It commenced a special negotiating body process on 22 June 2016

Questions

- What steps should ABC Inc. take to prepare for Brexit?
- How might your answer differ if ABC Inc. had in fact concluded an "Article 13" EWC agreement in 1995 or an "Article 3" EWC agreement in 1998?
- How might your answer differ if ABC Inc. had in fact concluded an "Article 6" EWC agreement in 2015?
- How might your answer differ if ABC Inc. had in fact failed to reach an agreement with its special negotiating body and operates an EWC under the UK's "subsidiary requirements"?
- How might your answers above differ if ABC Inc. was in fact ABC plc (i.e. a UK company)?
- How might your answers above differ if ABC Inc. doesn't in fact have any employees in Germany?

Breakout session
State of flux: restructuring and redundancies across APAC

Case Study: Part One

Kerry Ko is the Hong Kong-based APAC HR Director for Maier. Maier is a Cologne headquartered company which specialises in the manufacture and distribution of kitchen appliances.

One of Maier's fastest growing business units in the past 15 years has been its microwave division, fuelled largely by the sale of microwaves in China to the country's burgeoning middle class. Maier has no other business units dedicated to the Asian markets. The growth in its eastern microwave market has led to a considerable increase in the number of Maier's employees across APAC. Maier now employs the following individuals across three jurisdictions who are all exclusively dedicated to the APAC microwave business unit:

- 275 production staff in China across two offices in Dongguan (200) and Shanghai (75). 45 of these staff (30 in Dongguan; and 15 in Shanghai) are engaged on three year fixed term contracts.
- 40 support staff (HR, accounting, legal and payroll) based in Kowloon Bay, Hong Kong, 15 of whom are employed part-time for 15 hours a week each;
- 70 telephone sales staff based in Gurgaon (30) and Bangalore (40) including five agency workers in the Bangalore office.

Maier prides itself on its low turnover of staff. Aside from a handful of employees in each of the above jurisdictions, all APAC-based employees have been employed for at least three years.

Due to the slowing economy, sales of the microwave in China have slowed significantly in the past two years to the extent that the microwave business has now been unprofitable for two quarters.

As a result, the board of Maier now feel they have no other choice but to take action. In particular, they have asked Kerry to look into their proposal to cut numbers by 50% in each of the above jurisdictions.

Put yourself in Kerry's shoes. What are the key considerations? e.g.

- How easy/difficult is it to dismiss for redundancy in the jurisdictions?
- What would the process look like?
- What are the risks? What payments will be due to the employee on termination?
- What are the key employee relations considerations?

Case Study: Part Two

The Maier board now wishes to press ahead with the closure of its microwave business unit in APAC. Kerry has received the following additional information about specific employees:

- There are three employees in India, two in Hong Kong and nine in China who are pregnant or on maternity leave.
- There are two employees in India who are on leave recovering from an injury.
- Two employees in China and three in India are members of the company-level union.
- Two employees in China have recently been diagnosed with an occupational disease.
- One of the employees in China has 18 years' service with Maier and is only two years away from her statutory retirement age.

HONG KONG	INDIA	CHINA
Is there a statutory definition of redundancy? If yes, what is it?		
Yes. Redundancy is defined under the Employment Ordinance as one of the following: - An employer has ceased (or intends to cease) to carry on business for the purpose for which they were employed. - An employer has ceased (or intends to cease) to carry on business in the place where they were employed. - The requirements of the business for employees to carry out work of a particular kind either generally or in the place where the employee was employed have ceased, diminished or are expected to cease or diminish.	No although courts have generally interpreted redundancy to mean the cessation of a particular type of business or introduction of new technology that may lead to the role of an employee becoming redundant. Under the Industrial Disputes Act 1947, the services of a 'workman' can be terminated by reason of redundancy. A 'workman' is defined as employees whose role is not primarily supervisory, administrative or managerial. The meaning of the term redundancy is wide, and usually refers to the termination of the workman's services by the employer for any reason **other than**: - Dismissal as a result of disciplinary action; - Retirement (whether voluntary or otherwise); - Termination on grounds specified in a fixed term contract (or the non-renewal of a fixed term contract).	Redundancy is defined as the situation where an employer reduces its workforce by 20 or more people, or by 10% or more of the total number of its employees, under any of the following circumstances: - The employer is restructuring under the Enterprise Bankruptcy Law. - The employer is experiencing serious difficulties in production and/or business operations. - The employer changes production techniques, introduces a major technological innovation or revises its business method, and, after amending existing employment contracts, still needs to reduce its workforce. - The employer is experiencing other major changes to the economic circumstances that originally formed the basis of the employment contracts at the time when they were executed. National law does not cover the situation where less than 20 people, or less than 10% of the total workforce, are laid off. As a result, local practice varies in different cities. Collective redundancies are rare in practice. In such situations, it is more common for employers to seek a

HONG KONG	INDIA	CHINA
		mutual agreement with the employee over termination.
Is individual redundancy consultation required? If so, what does it involve?		
None required by statute.	None required by statute.	Not covered by statute.
Is collective redundancy consultation required? If so, what does it involve?		
None required by statute.	None required by statute, but in cases where trade unions exist, in order to minimise the chances of disputes, it may be advisable to consult with them and the relevant employees. . In the case of a manufacturing unit, plantation or mine with 100 or more workmen, prior government approval of the terminations is required. An employer will be required to: - give information about the reasons for the proposed redundancy; - give details of the numbers and descriptions of employees to be made redundant; - give details of the total number of employees who are employed by the employer at the establishment; - display a seniority list of the employees proposed to be made redundant at the establishment at a specified place in the workplace; and - seek approval from the federal or state government, as appropriate, about the redundancies and the payment of redundancy compensation. If undertaken, a consultation process typically lasts up to one month. Organisations generally announce	The following consultation process must be followed by the employer: - The employer must give an explanation of the circumstances to the trade union or all of the employees 30 days in advance. - The employer must make an employee dismissal plan, including a list of names of employees to be dismissed, a schedule of employee dismissal and a compensation package. - The employer must seek an opinion from the trade union or all of the employees and, based on its feedback, improve and finalise the employee dismissal plan. - The employer must file the employee dismissal plan with the local labour authority and consider the authority's opinion. Although the authority's approval is not required by law, successful completion of this reporting procedure is subject to the authority being satisfied with the plan. - The employer must publicise the employee dismissal plan to all employees and implement the plan. The timeframe within which to complete the process varies on a case-by-case basis but in practice will

HONG KONG	INDIA	CHINA
	redundancies in a meeting with employees, during which details of severance payment will be revealed and information provided about any opportunities for alternative employment. Generally, employers provide an enhanced severance package to redundant employees, in order to help avoid disputes.	depend mainly on how long it takes to obtain the local labour authority's approval.
Must an employer "justify" the redundancy? If so, what is the test?		
No statutory requirement. The employer is not obliged to give the employee the reasons for the termination. However, the law does allow a dismissed employee who has been employed continuously for two years to claim for unreasonable dismissal. It is only at that point, once such a claim is made, that an employer must then produce a valid reason for the dismissal (being conduct, capability or qualifications and redundancy). Nevertheless, despite there being no strict legal obligation to do so, it is best practice to still give the employee a reason for their dismissal at the time.	Yes. Terminations by reason of redundancy must be for 'valid reasons'. Although there is no statutory test, the valid reason should provide that the role is not required any more by the employer.	Yes, see above. The law is not clear on what information must be provided and therefore, it is difficult to be certain what the consequences would be for failure to provide any particular information. However, the basic consequence of breach of procedural requirements is that the dismissals would be unlawful and therefore invalid.
If redundancy "pools" are to be used, what selection criteria may (and may not) be applied?		
There are no statutory requirements governing the manner in which positions to be made redundant are determined. In selecting positions, however, care must be taken to ensure not to discriminate on any of the prohibited grounds (sex, pregnancy, marital status, disability, family status and race), as a dismissal on one of these grounds is unlawful.	There are no statutory requirements governing the manner in which positions to be made redundant are determined. In selecting positions, however, care must be taken to ensure not to discriminate on any of the prohibited grounds (trade union membership or activity, filing complaints against the employer, race, colour, sex, marital status, religion, political opinion, or social origin), as termination of employment on one of these grounds is unlawful. Additionally, the "last in, first out" rule must be followed unless there is good reason not to follow it.	There are no statutory requirements governing the manner in which positions to be made redundant are determined. However, the following categories of employees must be retained with priority: - Those with long fixed-term employment contracts. - Those with open-term employment contracts. - Those who are the sole income earners in a family with dependent children or elderly people.

HONG KONG	INDIA	CHINA
Are any employees "protected" from redundancy?		
Yes – the termination of the following employees' contracts is prohibited: - a female employee who is employed under a continuous contract of employment (i.e. has worked for 18 or more hours for the same employer for at least four consecutive weeks) and has served notice of her pregnancy on her employer; - an employee on statutory sick leave; - an employee who gives evidence or has agreed to give evidence in enforcement proceedings under the Employment Ordinance; - an employee who is entitled to compensation under the Employees' Compensation Ordinance; and - an employee who is involved in trade union activity.	Yes. A workman has the right to appeal before the labour authorities against a redundancy if the employer has failed to provide the reason of termination or if the process of the dismissal is deemed to be unfair. Generally, employees on statutory maternity leave and statutory sick leave may not be terminated for redundancy during their leave.	The following employees can only be terminated in restricted circumstances: - employees who are engaged in operations exposing them to occupational disease hazards and who have not undergone pre-departure occupational health check-ups, or who are suspected of having contracted an occupational disease and are being diagnosed or are under medical observation; - employees who have been confirmed as having lost or partially lost capacity to work owing to an occupational disease contracted, or a work-related injury sustained, whilst employed by the employer; - employees who have contracted an illness or sustained a non-work-related injury and the prescribed medical treatment period has not expired; - female employees who are taking pregnancy, maternity leave or nursing leave; and - employees who have been working for the employer continuously for no less than 15 years and who are less than five years away from the legal retirement age. Employees in any of these circumstances cannot be terminated on grounds that require 30 days' prior notice (e.g. incompetence or sickness), but could be terminated on grounds that do not require prior notice

HONG KONG	INDIA	CHINA
		(e.g. serious misconduct or criminal liability).
Must an employer consider alternative roles? If yes, how far does this obligation extend?		
There is no statutory requirement to consider alternative roles.	**Yes.** An employer is required to offer re-employment to the first retrenched workman who is an Indian citizen (however this rule is rarely observed).	There is no statutory requirement to consider alternative roles.
What is the typical redundancy procedure and how long does the process take (both collective and individual)?		
There are no specific statutory individual or collective redundancy procedures although any redundancy procedures set out in the employer's policies should be followed. In the absence of these, the employer is free to simply issue the employee with the termination letter in order to effect the redundancy. All that is required is giving the relevant notice of termination or PILON, following any other termination procedures specified in the contract and paying the employee all their contractual and statutory entitlements. No other formal statutory procedures are required (although care should be taken to follow any contractual processes and not to discriminate the employee on any of the prohibited grounds). When the employment ceases, the employer is required to notify the Inland Revenue Department, the Immigration Department (if applicable) and the Mandatory Provident Fund Schemes Authority.	The process an employer must follow differs according to the number of employees in the establishment and the type of establishment. In the case of an establishment with less than 100 workmen, an employer must: - Follow the 'last in first out' rule, unless there are sufficient reasons not to follow it; - Give one month's notice or a payment in lieu of notice; - Provide the workman with the reason for termination; - Provide severance pay (detailed below); - Serve notice on the government / relevant local authority. In situations where there are 100 workmen or more, they are entitled to three months' notice or payment in lieu, and the prior approval of the appropriate government department must also be acquired before dismissing such workmen. In the case of non-workmen, an employer must follow either the terms of the employment contract or the provisions of specific state law, depending on which one is more favorable to the non-workmen.	See answers above

HONG KONG	INDIA	CHINA
What are the costs involved in making an employee redundant?		
Notice and any other contractual benefits; any accrued but untaken annual leave. Employees whose roles have been made redundant and who have been employed continuously for at least two years are also eligible to receive a statutory severance payment. The severance amount is capped at a relatively low level (the formula is 2/3 of the employee's last month's wages, which are capped at HK$22,500 (effectively meaning HK$15,000) multiplied by years of service). The severance payment amount may be offset against the employer's contribution to the employee's Mandatory Provident Fund scheme, meaning that the sum actually paid by the employer can be further reduced, should the employer elect. Termination payments should usually be paid within seven days of the termination date. However, if the employer is aware that the employee is leaving Hong Kong for good or for a substantial period of time after termination, the employer must withhold payments to the employee until they have cleared their taxes with the Inland Revenue Department.	The severance payment is calculated as follows: - Either 30 days' notice or payment in lieu (in case of establishments having more than 100 workmen the notice period is 90 days); - Severance compensation of 15 days' salary for every completed year of service (equivalent to 240 days) or period of more than six months; - Gratuity payable for each workman who has completed five years or more of continuous service. This is always payable unless: • Employment has been terminated for an act or negligence that has caused loss, damage or destruction to employer's property, or • Employment has been terminated for the violent conduct of the employee. If contract terms provide for a longer notice period, or better severance pay, then these will prevail over the statutory minimum outlined above. Aside from the above, a redundant employee has additional entitlements such as payment for any accrued but untaken annual leave.	Generally, statutory severance is one month's salary for every year of service. Since the Employment Contract Law took effect on 1 January 2008, severance pay must be calculated in two parts: - For the service period before 1 January 2008: severance pay will be calculated in accordance with the applicable laws and regulations before 1 January 2008 (these can vary from the calculations that apply after 1 January 2008). - For the service period after 1 January 2008, severance pay will be: one month's salary for every year of service (a service period of at least six months but less than a year will be counted as one year); half a month's salary for a service period of less than six months. The one month's salary will be calculated based on the employee's average monthly salary during the 12 months prior to termination. However, in any event this amount is capped at three times the average monthly salary of local employees, as determined by the local government.
What are the risks if an employer gets it wrong?		
Very limited. The principal legal risks are a claim of unreasonable and/or unlawful dismissal.	Very limited. In cases where the employer has failed to follow the proper procedure, a workman (i.e. a blue-collar worker) may bring a claim for unfair dismissal in a labour	The employer would be deemed to have committed an unlawful termination. It is possible that the employee could be reinstated with a salary back

HONG KONG	INDIA	CHINA
The remedies available to the employee for unreasonable dismissal are very narrow – in most cases, save where there's a discrimination element, they will only be unpaid statutory and contractual entitlements that should have been paid anyway on termination.	court or an industrial tribunal, as appropriate. If successful, depending upon the employment status of the workman, the labour court or industrial tribunal may order that he or she be reinstated with or without back-pay in the same job, or paid compensation in lieu of reinstatement and/or back-pay. In the case of wrongful termination, a non-workman (i.e. a white-collar worker) can file a case in the civil court seeking damages.	payment or, as is more likely in a redundancy scenario, be issued damages amounting to double severance pay.

Hot employment and immigration law topics across APAC

Employment

China

Overtime calculation base clarified in Shanghai

In June 2016, the Shanghai government amended the Measures of Shanghai Municipality for Payment of Wages by Enterprises ("Measures").

One of the key amendments to the Measures clarified the calculation base of an employee's overtime compensation and leave salary, which had been misinterpreted to be 70% of an employee's monthly base salary. The amendments provide that this should be the monthly base salary, excluding bonus, transportation, meal, accommodation subsidies, shift allowance, high temperature allowance and overtime compensation.

Longer maternity leave in Guangdong Province

Authorities in the Guangdong Province amended the Regulation on Population and Family Planning ("Regulation") on 29 September 2016. According to the new amendment, female employees are now entitled to 80 days' extended maternity leave, which is longer than the 30 days' extended maternity leave in Shanghai, Beijing, Jiangsu Province and other areas. (Both in addition to the standard 98 days' basic entitlement). This regulation also extends to female employees who had given birth prior to the announcement but are still on maternity leave.

Possible amendment to the Employment Contract Law

Discussion about amendments to the Employment Contract Law ("ECL") has been stirring up extensive debate. According to the Report of the 12th National People's Congress, the Ministry of Labour and Social Security plans to initiate a comprehensive review of some controversial provisions in the ECL, including open-ended employment contracts and statutory severance payments.

Permit for foreigners working in China: "Two in One"

The Bureau of Foreign Experts Affairs recently issued the Notice on Implementation of Permit System for Foreigners Working in China ("the Notice") in certain cities including Beijing, Shanghai, Guangdong and Tianjin. According to the Notice, from November 2016 the Employment License for foreign employees and the Permit for foreign experts working in China will be consolidated into one Permit Notice. The main purpose of this change is to unify the management service system for foreigners working in China and simplify the application and approval process. Under the new system, applicants and employer companies are required to complete the online registration for pre-approval first. The new system will be implemented across the nation from April 2017.

Hong Kong

Proposals to change the Mandatory Provident Fund (MPF) offsetting scheme for severance and long service payments

The MPF scheme is Hong Kong's social security fund which requires compulsory monthly contributions from employers and employees. On 18 January 2017, Hong Kong's Chief Executive issued his final annual policy address which included the proposal to change employment termination payments and the MPF offset mechanism that allows employers to reduce payments to employees.

Under certain circumstances on termination, an employee may be entitled receive statutory severance payment on redundancy or a long service payment. As the law presently stands, these payments may be offset against the accrued MPF benefits that derive from the employer's contributions to the fund. In other words, the employer is able to dip into the redundant employee's pension to pay their statutory severance payment or long service payment. It is estimated that in 2015 alone, HK$3.3 billion was offset and the

offset mechanism has long been cited by as unfair on employees.

The three key points of the proposal are: (1) the abolition of the right to reduce severance pay and long service pay will not apply retrospectively, (2) the formula for calculating severance pay and long service pay may be reduced from two-thirds of one month's wages for each year of service to one half a month's wages, and (3) there will be a rebate scheme from the government over a ten-year transitional period to help employers.

These proposals will still be subject to rounds of Legislative Council debates before coming into effect.

Update on the Hong Kong Employment (Amendment) Bill 2016

The Hong Kong Employment (Amendment) Bill 2016 ("Bill") proposed amendments to the Employment Ordinance to provide (among other measures) that where an employee is unreasonably and unlawfully dismissed, the Labour Tribunal may make a reinstatement or re-engagement order without the employer's consent. However, the Bill was not discussed during the previous term of the Legislative Council ("LegCo") and lapsed on 16 July 2016. It is possible that the Bill may be reintroduced during the next term of LegCo which commences this month.

Privacy compliance and best practice for the Bring Your Own Device (BYOD) trend

Hong Kong's Privacy Commissioner published an information leaflet on 31 August 2016 in light of the trend towards BYOD which permits employees to use their own mobile or personal devices to access work systems. The leaflet highlights the risks of data breaches and suggests best practices for employers allowing BYOD.

The Commissioner has suggested that employers should at the outset of implementing BYOD, first conduct risk assessments and implement internal policies to ensure appropriate data privacy and security compliance. The Commissioner has also outlined several issues that employers should consider to remain compliant with Hong Kong's data protection rules. These include providing sufficient employee training regarding the use of personal data stored in the device, and having adequate security measures in place to ensure secure transfer and storage of personal data.

It is clear from the leaflet that the Commissioner will hold employers fully responsible for compliance with the Personal Data (Privacy) Ordinance (Cap. 486) and the Data Protection Principles.

Possible compromise of working hours

Unionists met with the Chief Executive in mid-November to offer a compromise on working hours of 44 hours a week. This extended the November deadline for the Standard Working Hours Committee to submit its final recommendations, giving the Committee two more months until January 2017 to study the labour sector's consultation report.

According to official data, in mid 2015 the median weekly working hours for Hong Kong men were 45.7 and for women the figure was 44.3.

The labour sector has long pushed for legislation to implement a 40 to 44 hour working week, and for employers to pay employees an additional amount of 1.5 times their regular wages for every extra hour. In calling for the standardised 44 hours a week, the labour sector also proposed that the goal could be reached in phases to persuade the reluctant business sector accept such legislation. They are also willing to exempt some jobs from the limit, although these jobs have yet to be identified.

Although the Chief Executive did not indicate if he would be able to standardise the working hours during his term, the labour sector has expressed their determination to pursue this aim.

India

Model Shops and Establishments Bill

In June 2016, the Government passed the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill 2016 ("**Shops Bill**), giving the option to the States to:

i. adopt its provisions in totality; or

ii. modify the provisions of the Shops Bill as per their requirements and amend their respective Shops and Establishments Act.

The purpose of the Shops Bill is to liberalise the working environment of commercial and non-commercial enterprises. The Bill suggests that certain establishments, in particular malls, should be allowed to operate 365 days per year and 24 hours a day. It also aims to deregulate working hours and provide that highly-skilled workers (including workers employed in IT and biotechnology) will be exempted from the mandatory provision of working hours of no more than nine hours per day, 48 hours per week.

Social Security Agreement with Japan

The Agreement on Social Security between India and Japan ("SSA") became effective on 1 October 2016 even though the two nations had signed the agreement in November, 2012. The SSA will principally facilitate the position whereby Indian employees posted in Japan (and vice versa) on contracts of up to five years will not be required to pay social security contribution in the host country. This is subject to the provision that the employee continues to make social security contribution in his or her home country and obtains a certificate of coverage in this regard. Where the period of service extends over five years, the social security authority in the respective country may agree to extend the benefit further.

Upper House passes maternity reforms

On 11 August 2016, the Rajya Sabha (Upper House of the Parliament of India) passed the Maternity Benefit (Amendment) Bill 2016 ("Bill") to amend the existing Maternity Benefit Act 1961. The Bill is seen as a step by the Government to provide enhanced support and benefit to working women in the formal sector. The Bill is now awaiting its passage in the Lower House and assent from the President of India to become enforceable as an Act. Following are some of the salient features of the Bill:

i. maternity leaves increased from 12 to 26 weeks;

ii. surrogate mothers and mothers who adopt will get 12 weeks of maternity leave;

iii. provisions for crèche facility and option to work from home.

Labour and Wage Code

The Government plans to replace 44 labour laws with five codes relating to industrial relations, wages, social security, safety and welfare, and working conditions. The aim is to decrease the multiplicity of compliances in labour laws, improve labour relations and ease the process of doing business in India to boost the 'Make in India' initiative.

The Government also introduced a first draft of the Labour Code on Industrial Relations Bill ("LCIR") in May 2015 with the purpose to integrate the three important labour law statutes - the Industrial Disputes Act 1947, the Trade Unions Act 1926 and the Industrial Employment (Standing Orders) Act 1946. Among an array of suggestions meant to ease doing business in India, the LCIR proposed to:

i. enhance the numerical limit of workers to be employed for an employer to follow the statutory provisions of lay-off; and

ii. increase the statutory number of members required to form a trade union.

The Government also introduced the Labour Code on Wages Bill 2015 ("**Wage Code")** on 19 March 2015 which aims to consolidate four Acts - the Minimum Wages Act 1948, the Payment of Wages Act 1936, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 into a comprehensive Code.

Japan

Abe's newly announced "work style" reforms

Prime Minister Shinzo Abe recently announced "work style" reform as one of the primary targets of his administration. These reforms plan to target the big wage gap between irregular workers and regular full-time corporate employees, and long working hours which have serious economic and social implications. Although the administration intends to solidify plans of action and achieve goals by the end of March 2017, it is still unclear as to how these goals will be implemented.

Part-time wage gap

According to the Health, Labour and Welfare Ministry, a part-time worker earns an hourly wage equivalent to 56.8% of a regular full-time employee. The administration is aiming to narrow the wage gap to be similar to that in Europe (where part-time workers are earning 89.1% of full-time employee earnings in France, 79.3% in Germany and 70.8% in the UK).

Abe has highlighted the importance of improved wages as a way to expand consumer spending and boosting the nominal GDP of Japan to ¥600 trillion. To achieve this, he intends to adopt the "same work, same pay" principle and has asked his administration to produce a guideline prohibiting irrational wage discrimination against irregular workers. However, the seniority based wage system which is prevalent in many local companies may make it difficult for the administration to adopt the "same work, same pay" principle as compensation is increased with the length of service. The definition of "same work" may therefore not be an accurate representation when the "extra responsibility of regular employees" is taken into consideration.

Working hours

The long working hours in Japan's working culture have also been a longstanding concern and one which the national labour policies have considered a key priority - although there has been limited progress on this front, which has continued to contribute to the low fertility rate. Overtime hours for full-time employees are still on the rise each year since 2003, and approximately 30% of them clock more than 40 hours of overtime a month. The administration has announced the possibility of placing a legal cap on monthly overtime work for employees, instead of leaving this aspect to agreement between the employer and labour unions. It is still unclear how tight a cap the administration will impose and how it will be implemented given the possible resistance from employers.

Korea

Korean Supreme Court Clarifies Characteristics of Independent Contractor Status

On 24 August, 2016, the Korean Supreme Court upheld an earlier decision that sales representatives who worked for Korea Yakult Corporation were independent contractors rather than employees.

This case involved a plaintiff who had sold yoghurt products supplied by Korea Yakult from 2012 to 2014, ostensibly as an independent sales representative. When the service agreement term ended, the plaintiff claimed severance pay and compensation for unused annual leave on the basis that she was an employee.

The Busan District Court had found that these representatives, commonly referred to as "yogurt ladies" in Korea, were not employees under the totality of the circumstances. The District Court decided that the representatives were correctly classified as contractors, and the Supreme Court adopted the District Court's reasoning in its entirety. The relevant facts found by the court were as follows:

- The representatives had entered service agreements and agreed to receive commissions based on their performance
- The representatives determined for themselves the volume and the type of products that they would request and sell each day.

The location of their sales activities was determined by the representatives themselves rather than the

company.

- Their work hours were not fixed. Although representatives mostly came to the agency around 8a.m. to pick up product, and sold until 4p.m., the working hours were not controlled.
- When representatives were unable to deliver products for personal reasons, they notified their managers in advance of how many days they would be unavailable.
- The representatives received commissions in proportion to their sales. Depending on their sales volume, monthly commissions ranged from several hundreds of thousands of Korean Won to more than a million KRW.
- Although the representatives were provided with electronic carts to carry the yogurt, a KRW100,000 rental fee was deducted from their commissions and all operating expenses for the cart vehicle were borne by the representatives.
- The representatives paid taxes as independent contractors rather than as employees, and did not pay social insurance premiums as employees.
- The company provided twice-a-month training sessions on sales techniques, however the representatives were not punished for failing to attend these sessions.
- The company did not apply its “rules of employment” (primary workforce policies) and other personnel rules to the representatives.
- The court, based on the above facts, reasoned that:
- The commission that the representatives had received was linked to sales performance, and not necessarily proportional to the actual service and the working hours provided by the representatives.
- Although the representatives were provided with uniforms, insurance premiums, and subsidies for funeral services, this was found to have been done to promote sales activities.
- The training sessions were to educate representatives about the nature of the work, thereby promoting sales activities; whereas there was no evidence that the representatives had received specific supervision or control in the actual process of providing their services.
- Although a work calendar was posted in the agency, and a consent form agreeing to abide by the calendar was collected, it was not evidence of any particular supervision or control but rather served merely as a reminder of the representatives’ contractual obligations.
- Since the representatives were not covered by the company’s rules of employment and other personnel policies, no disciplinary measures could be imposed against them based on the company’s policies apart from terminating the contractual relationship under the service agreement. The representatives were not deemed employees under the tax code and other relevant social-insurance laws.

This case demonstrates that the degree of control and supervision of the manner in which a purported contractor works remains the most significant factor in determining employee status, and clarifies additional factors that buttress the argument.

Seoul Administrative Court upholds punitive damages against worker-dispatch agency and using company

For the first time, a Korean court has approved the imposition of punitive-damages against both a worker-dispatch agency and the company using the dispatched workers, for discrimination prohibited under the Dispatched Worker Protection Act (“DWPA”).

Under the DWPA, both a worker-dispatch agency and the company using its workers are prohibited from subjecting the dispatched workers to discriminatory treatment. However, in past cases involving discriminatory payment of wages to dispatched workers, the worker-dispatch agency alone has more often

been held liable.

Moreover, for wilful or repeated violations of the anti-discrimination rule, the Labour Relations Commission ("LRC") can impose damages of up to three times the actual damages suffered, as a punitive measure. The punitive-damages system was adopted in September 2014 by amendments of the Protection of Fixed-Term and Part-Time Employees Act and the DWPA, and it applies to unjustified discrimination against fixed-term, part-time, or dispatched workers. But this case is the first instance when its application has been approved by a court.

The present decision disposed of a challenge, before the Seoul Administrative Court ("Administrative Court"), seeking to overturn a ruling by the Central Labour Relations Commission ("CLRS"). The dispatched workers who brought the initial claim had received lower bonus compensation compared to regular employees of the using company, and had not been compensated for unused annual leave. The CLRS found that there had been discriminatory treatment against the dispatched workers, and it held both the worker-dispatch agency and the using company jointly liable and ordered them to pay the dispatched workers double damages.

The Administrative Court agreed that the dispatched workers had been subject to discriminatory treatment due to differential payment of bonuses. And the Administrative Court further upheld the CLRS's decision that both the using company and the worker-dispatch agency were jointly liable for double damages.

However, the Administrative Court found that other Labour Standards Act violations, such as failure to compensate for unused annual leave, did not constitute discriminatory treatment prohibited by the DWPA; and thus the using company could not be held liable because the worker-dispatch agency, as the legal employer, is solely responsible for compliance with those requirements (as opposed to non-discrimination).

In another relatively recent case involving a major automobile company, the employees of a contractor of the company sought civil damages on the basis that the contractor was in substance providing dispatched workers, and they were subject to discriminatory treatment proscribed by the DWPA. The court found there to be, in substance, a worker-dispatch relationship between the contractor and the automobile company, and imposed liability for discriminatory wage payment not only on the contractor but also on the using company. However, that case was a civil tort case, and thus the court could not consider imposing additional penalties beyond awarding compensation for actual damages.

It is possible that these cases may signal that imposition of liability for discrimination on both worker-dispatch agencies and using companies will be a continuing trend. Companies that use contractors whose employees could potentially be characterized as dispatched workers should carefully assess whether there is any risk of discrimination claims, which can lead to liability greatly in excess of workers' actual damages.

Singapore

Singaporean core policy

The Singapore Government has in recent years introduced several initiatives to strengthen the Singaporean core in the workforce. The rationale for this is to level the playing field for Singaporean professionals, managers and executives ("PMEs") by ensuring that businesses do not engage in nationality -based or other forms of discriminatory HR practices.

- One of the cornerstone policies in this area is the Fair Consideration Framework ("FCF"), which was introduced in 2014. FCF aims to ensure that businesses fairly consider Singaporeans for jobs, particularly in managerial or executive positions, and engage in fair employment practices. For example, this includes the requirement for vacancies to be advertised in a government jobs bank.
- The Singapore Government has enhanced the FCF by requiring companies who are applying for an Employment Pass ("EP") for an employee to publish the approximate salary for the role on the jobs bank. The Ministry of Manpower ("MOM") has also increased the scrutiny of EP applications for companies that have a weaker Singaporean core of PMEs compared to other companies in the same industry.

- Even though the Tripartite Guidelines on Fair Employment Practices ("TGFEP") is not legally binding, the MOM has made it clear on a number of occasions that it will refer to the TGFEP and impose sanctions on companies who have failed to comply with the guidelines.
- The Tripartite Alliance for Fair and Progressive Employment Practices, the employment watchdog, has been given a bigger role to investigate companies and determine which should be placed on a watch list. There have recently been 38 companies placed on MOM's watch list for not adopting policies in line with the core initiative. Companies placed on watch list will be required to submit more information in order for MOM to consider whether Singaporeans were considered fairly. This may include the number of applications submitted by Singaporeans, whether Singaporeans were interviewed for the vacancy, and the company's current share of Singaporeans in PME position at various levels within the company. There are also 300 EP applications from 250 companies which are currently subject close scrutiny by MOM, as they have been labelled 'triple-weak' - i.e. weak in the Singaporean core, in commitment to nurturing the Singaporean core, and in relevance to the economy.

Establishment of the Employment Claims Tribunal

The Employment Claims Tribunal ("ECT") is a new tribunal set up by the MOM with the intention to address salary-related employment claims for all workers.

Currently, there are three avenues to resolve salary-related employment disputes:

- Through the unions for employees who are union members in unionised companies who would have recourse to conciliation under the Industrial Relations Act and have access to the Industrial Arbitration Court.
- Employees covered under the Employment Act Cap 91 (the "Employment Act"), which only includes employees earning up to S$4,500 per month, have access to the MOM's Labour Court ("Labour Court").
- The civil courts, which are accessible to all employees.

Even with these three avenues in place, there still remains a growing demand for access to an affordable and expedient way to resolve employment disputes. MOM has set up the ECT in order to provide a more accessible system to resolve salary-related claims for all employees.

From April 2017 the ECT will begin to start hearing salary-related disputes arising from the Employment Act or from expressly provided terms in employment contracts for all employees, regardless of their job scope and salary levels (with the exception of public servants, domestic workers and seafarers). The ECT will replace the current Labour Court, and will reside within the Singapore court system.

Parties will first be required to undergo a mandatory mediation process conducted by MOM-approved mediators or the tripartite mediators, before the claim can be heard at the ECT. Where mediation is successful, a settlement agreement will be signed, and the parties will be able to apply for the registration of the settlement agreement in the District Court of Singapore for it to be enforceable as a binding court order. Where mediation is unsuccessful, the mediator will issue a referral certificate for the claimant to lodge a claim at ECT.

There will be a cap of S$20,000 per claim (or higher where claimants go through other mandated mediation procedures). The timeline for filing claims will be 12 months after the dispute arose if the employment relationship is intact, or 6 months after the end of employment if the employment relationship has ended.

Thailand

Import of foreign workers becomes more restricted

There are new laws and regulations regarding the import of foreign workers, which became effective in May and August 2016. These laws were issued to control and prevent illegal import of foreign workers, in preparation for the anticipated free flow of labour within the ASEAN Economic Community region and to

resolve human trafficking issues.

Employers in certain types of businesses are now required to apply for a quota prior to employing unskilled workers from Cambodia, Laos, and Myanmar. There are 25 types of businesses that fall within the new regulations, including: the construction business; businesses involving the delivery of products by land or water; warehousing, manufacturing and selling of certain products such as construction materials and food; provision of services (except employment outsourcing services); and wholesale and retail businesses. Recruitment agents are not eligible to apply for a quota unless such agents intend to employ the foreign workers themselves.

There are also new laws that require employers who wish to import foreign workers to Thailand to obtain a permit from the Department of Employment. These requirements apply to the employment of foreign workers either pursuant to treaties between Thailand and other countries (covering Cambodia, Laos, Myanmar and Vietnam), or under a specific government policy. As the laws are still new, the exact application process is not yet clear.

Increase in minimum daily wage and minimum wages for skilled workers

The National Wage Committee has recently passed a resolution to increase the minimum daily wage in 69 provinces, to become effective on 1 January 2017. The new daily rate of Baht 310 will apply to Bangkok, Nonthaburi, Pathum Thani, Nakhon Pathom, Samut Prakan, Samut Sakhon, and Phuket. There are new daily rates of Baht 305 and Baht 308, which will apply to 62 provinces, with the rate for the remaining 8 provinces remaining unchanged at Baht 300 per day.

In August 2016, minimum daily wage rates were set for skilled workers in five industry groups, including: the electrical and electronics industry; the motor vehicle parts and spare parts industry; the motor vehicle industry; the jewellery/gems industry; and the logistics industry. The daily rate covers 20 professions and varies from Baht 340 to Baht 550 per day. However, the minimum wage rate for skilled workers does not apply automatically and therefore, an employee would be required, amongst other things, to pass a professional skills test or comply with other requirements stipulated in the relevant legislation in order to be eligible.

Introduction of a Maritime Labour Protection law

The new Maritime Labour Protection Act came into effect on 5 April 2016. Its main objective is to provide minimum protection for maritime employees, specifically those who work permanently on board vessels, to be in line with international standards. Examples of provisions under the new law include: (i) prohibiting a person under 16 years of age from being employed on board a vessel; (ii) prohibiting a person under 18 years of age from being employed to work on a night shift on board a vessel; (iii) requiring an employment agreement for maritime employees to be in writing; and (iv) requiring certain measures to be implemented for the health and safety of workers on board. The new law imposes criminal penalties for failure to comply. As a result of enactment of the new law, on 7 June 2016 Thailand officially ratified the Maritime Labour Convention 2006.

Immigration

Hong Kong

Enhanced stay periods for foreign nationals

Stay arrangements under the General Employment Policy ("GEP") and the Admission Scheme for Mainland Talents and Professionals ("ASMTP") and the Quality Migrant Admission Scheme ("QMAS") have been relaxed. For example, the QMAS point-scoring scheme will be adjusted to attract talent with exceptional educational background or international work experience. Additionally, stay durations under the GEP and ASMTP have been increased from the initial one year period to an initial two year period and two additional three-year extensions each.

GEP professionals and ASMTP visa holders may also be eligible to apply for a new 6-year extension of stay. To be eligible for this extension, applicants must have been granted a 2-year professional employment visa and have assessable income of HK$2million in the previous tax assessment year.

Stricter standards expected for visa system reviews

Although there has not been a formal announcement, the Immigration Department has agreed to implement the recommendations by the Hong Kong Audit Commission which will likely lead to stricter standards imposed on the GEP, ASMTP, QMAS, and Immigration Arrangements for Non-local Graduates schemes. These recommendations which have been accepted by the government now require fully completed visa applications at the point of submission providing the authorities with a higher chance to meet their performance requirements of finalising 90% of the applications within the four-week period, and a strict minimum 12-months prior employment period with the overseas entity for intra-company transfer applicants.

Going forward, we can expect the authorities to scrutinise the following standards when assessing visa applications including local worker recruitment methods, market level remuneration rates and, with respect to non-local graduates, the authenticity of supporting documents.

The Immigration Department will issue guidelines to set out the required procedures for considering the local resident labour market and market level of remuneration in processing GEP and ASMTP applications. The authorities will also incorporate a list of skills to which the authorities would give preference in order to attract qualified foreign workers to apply for the QMAS scheme.

Breakout session
Gigging for a living - the future for all of us?

What is the "gig economy"?

- This term is generally used to describe individuals who earn their living by undertaking multiple short-term engagements or "gigs", often for multiple work providers, on a freelance / independent contractor basis. Such work is generally facilitated through technology, such as web platforms and mobile apps.
- Some refer to this as the "on demand", "open talent" or "sharing" economy. It has also been described as the "uberisation" of the workforce.
- Although this kind of workforce can be difficult to define and track, it is estimated that, out of a total workforce size of 32 million in the UK, there are around 5 million people earning at least some income from the gig economy.
- A *McKinsey Global Institute* report on the gig economy published in October 2016 on "Independent Work: Choice, Necessity and the Gig Economy" found that 20% to 30% of the working-age population in the EU and the US (up to 162 million individuals) engage in some form of independent work. They break into four groups:
  - "Free agents" – 30%: actively choose independent work and derive primary income from it;
  - "Casual earners" – 40%: carry out independent work to supplement their income, and do so by choice;
  - "Reluctants" – 14%: make primary living from independent work but would prefer traditional jobs;
  - "Financially strapped" – 16%: carry out supplemental independent work, but out of necessity rather than choice.

Who are we talking about?

We have set out below some of the well-known players in the gig economy…

amazon mechanical turk™ Artificial Artificial Intelligence

Hermes Makes delivery easy.

deliveroo

TaskRabbit

lyft

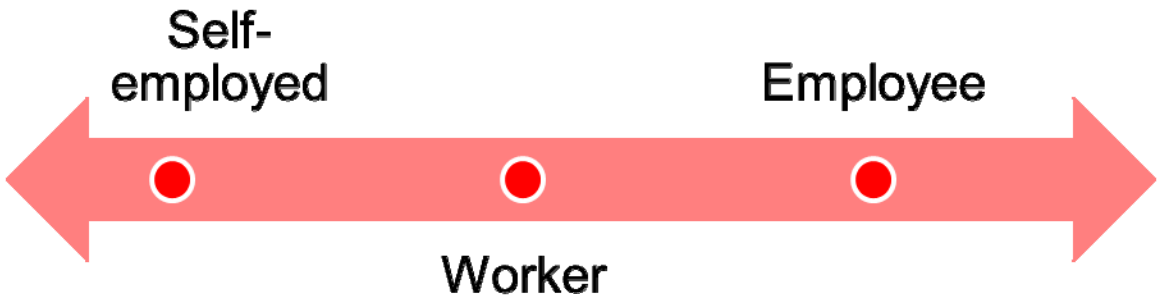
CitySprint We deliver

"Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world's largest accommodation provider, owns no real estate. Something interesting is happening."
(Tom Goodwin, Havas Media)

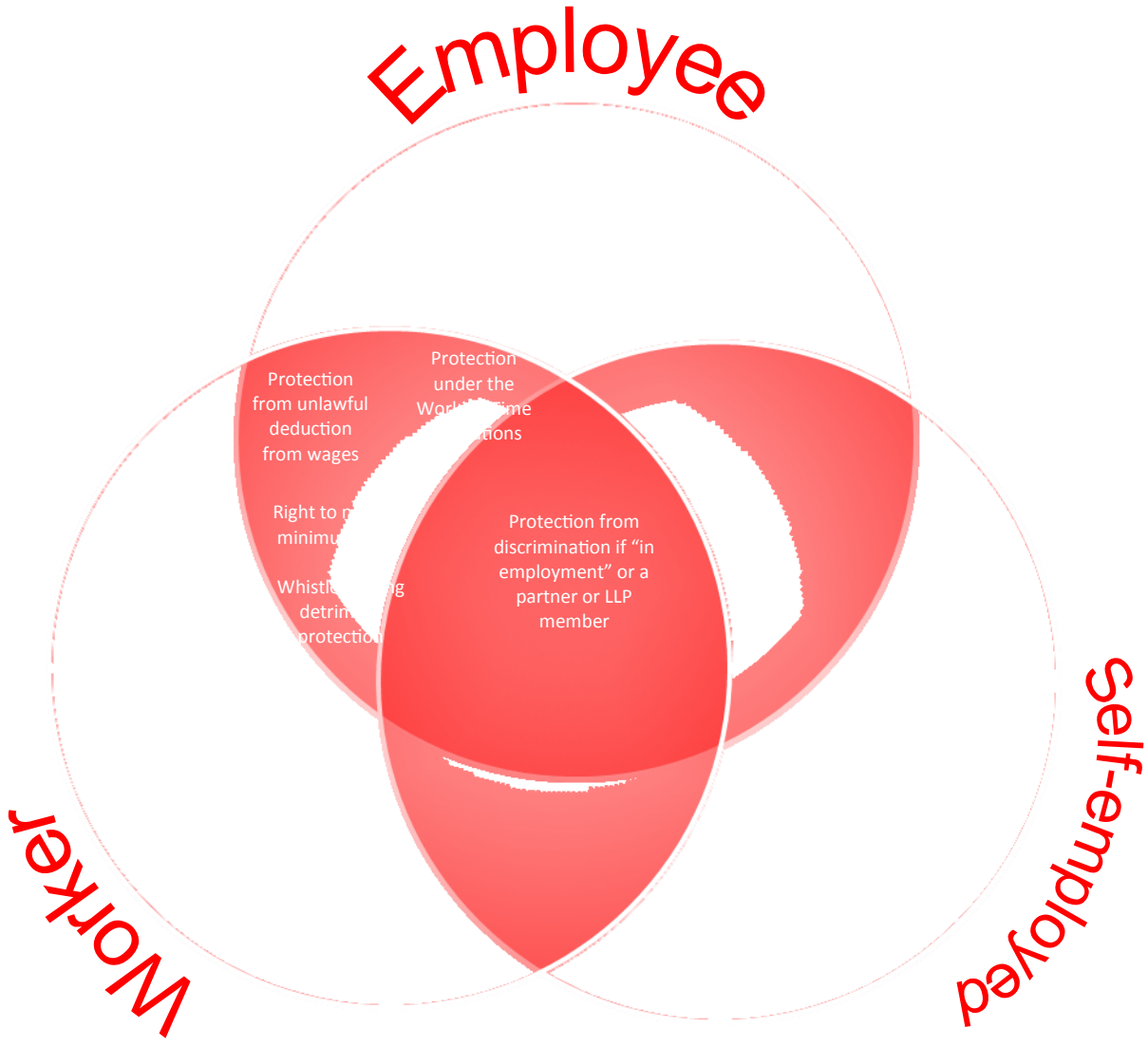
Legal issues for international "gig" workforces: employment status

Worker rights and protections

- The rapidly changing nature of the gig workforce means that, in many cases, the traditional classifications of employment status do not translate into the gig world. In other words, the employment status of gig economy workers is often unclear.
- In the UK, there have been a number of high profile cases about employment status in the gig economy.
- In two recent cases, Uber drivers and a CitySprint cyclist were ruled to be "workers", meaning that they are entitled to holiday pay, paid rest breaks and the national minimum wage.
- The UK is unusual compared to most other jurisdictions in that it recognises 3 categories of employment status (rather than two):



From an employment law point of view, status really matters because employees and workers are entitled to greater protections and privileges than self-employed people.



- Many other jurisdictions (including the Netherlands, Belgium, Italy, Hong Kong and Ireland) only recognise two categories of status: employee and self-employed, without any intermediate category.
- Some jurisdictions recognise that certain contractors tend to depend mainly on a single employer or client and recognise such individuals as "dependent" contractors. For instance:
  - in Spain, if 75% of a contractor's income is derived from one client, they are deemed "economically dependent" self-employed persons and are entitled to certain protections (such as paid holiday and, in some cases, severance pay where an engagement is terminated without a reason);
  - in Germany, if an individual's income comes mainly from one client, the individual is viewed as an "employee-like" person who is entitled to certain rights (including holiday pay and pension contributions); and
  - in France, although there is no intermediate status between employee and self-employed, recent regulations specifically applicable to platforms have granted rights traditionally reserved for employees to self-employed workers (including work injury insurance, vocational training and the right to unionise and to strike).

Opportunities and challenges

As stated in the Recruitment & Employment Confederation's report on "Gig economy: the Uberisation of work", the gig economy presents opportunities to businesses who have historically favoured a more traditional employment model. For instance, it enables companies to:

- Source talent from the global market place;
- Bring in talent more quickly and cheaply than via traditional recruitment channels;
- Develop a more flexible workforce which meets the changing demands of the business (e.g. seasonal/project-based work);
- "Try before you buy" and avoid the cost of unnecessary long-term or permanent hires;
- Experiment with a wide range of different service providers.

Of course there are challenges for businesses too. For instance, businesses engaging gig workers may have concerns around:

- Ensuring they get high-quality talent and that the person engaged is as experienced as they claim to be;
- Gig workers not being as loyal to their business as the permanent staff and not "buying into" the organisation's culture;
- Potential disputes around obligations to individuals (e.g. employment status issues);
- Potential damage to the brand if it is perceived as an organisation which predominantly uses gig workers to run its "core business".

The future in the UK

- The government's BEIS committee has launched an inquiry into the future world of work. The inquiry focuses on the rapidly changing nature of work as well as status and rights of self- employed and other workers in the gig economy.
- An independent review has been launched ("the Taylor Report") to look into how employment practices need to change in order to keep pace with modern business models. The review is wide ranging and will examine a number of issues, including how flexibility can be maintained while also supporting job security and workplace rights.
- The Work and Pensions Committee has launched an inquiry to consider whether the UK welfare system adequately supports the growing numbers of self-employed and gig economy workers.
- The Chancellor's Autumn Statement in November 2016 stated that the gig economy will cost £3.5bn in lost tax revenues by 2020/2021 unless "something is done".
- HMRC intends to "crackdown" on companies using large numbers of self- employed/agency workers. A specialist unit has been set up to investigate "abuses".

The future more generally

Some possible future developments are:

- New categories of employment status, or greater clarity around existing categories?
- A focus on the degree of dependence – based on hours worked or degree of bargaining power?
- A better infrastructure to support self-employment, from tax returns to social insurance?
- Tax authorities turning the spotlight on companies using large numbers of self-employed workers?

Breakout session
Is a global performance management framework workable?

Developing any performance management framework can be a challenge, but how do you design and implement a system that offers fairness and parity across a range of territories and cultures? During this interactive session we will explore with our expert panel how to go about designing and rolling out such a programme. We will consider some practical examples and identify common pitfalls. A summary of the output will be collated and emailed to all the attendees of the session.

To create a global framework, how widely do you canvass views?

Cultural interpretations?

Minimising unconscious bias when using the framework

Roll-out and implementation – helpful hints and tips

Thank you for participating in this session. If you would like to arrange for a further meeting at your organisation on this topic, please speak to Emma Richardson, Director - Worksphere.

Global cultural fluency

As part of our Worksphere initiative, Lewis Silkin has recently launched a new global cultural fluency programme which is designed to help clients operate more effectively across the boundaries of geography, culture and language. We recognise that most clients now operate in a global environment and that this can bring with it a whole new set of challenges at both strategic and operational levels.

We develop specific training programmes to meet your needs, to help you reach your global goals. Recognising that every company and every sector is different – therefore your input is key to the success of any initiatives we develop. Working together, we can deliver high quality training which brings about real mindset and operational change and achieve greater global fluency.

Our experts have led training and consultancy events in over 50 countries and are skilled at working with multi-cultural, multi-lingual teams in this sensitive, yet vital, area.

What can we help with?

Offering a comprehensive range of training options which address different client needs. For example:

- Developing a global mindset amongst the employee base
- Working effectively with specific countries or regions
- Effective global virtual team working
- Building efficient working collaborations in outsourced or shared service centre environments
- Improving cross-border communication
- Cross-border post-merger integration
- Pre-secondment briefings
- Global culture and global appraisals
- Global culture and global compliance

Training options

With a wide range of training options and formats, we develop a solution that best meets your individual needs. We will work with you to understand your exact requirements before coming back with a detailed proposal of how to address those needs. From short training interventions of a couple of hours to more in-depth sessions spread over two days – the format is always determined by your objectives.

We are happy to provide detailed sample training formats and case-studies to give you a feel for the type of activities we have used and the outcomes we deliver.

How does it work?

You tell us what you need – the skills, level of experience and what is to be achieved. We will then propose a detailed solution which we believe meets your requirements.

Lewis Silkin manages the process from beginning to end, with you, the client, being involved at all stages of the process.

What does it cost?

The cost of a global cultural awareness programme will depend on your requirements. However, we will normally be prepared to agree a fixed fee after we have talked to you about the scope of the programme. This gives you the comfort of knowing what it will cost before we start work.

How can I find out more?

Emma Richardson would be delighted to speak to you to discuss any global cultural fluency needs you might have. We are constantly adding to the range of services we offer, so please do contact Emma to chat through how we can help.

Emma Richardson
Director
T + 44 (0) 20 7074 8390
emma.richardson@lewissilkin.com

Breakout session
Workplace data - coping with GDPR and Brexit

Agenda

1. **Is Brexit irrelevant?**

2. **Overview of main challenges and changes brought about by GDPR for employers**
   - What do businesses need to do to react to increased data subject rights?
   - Mapping and Auditing: the importance of understanding what you process and why
   - Policy changes

3. **DPOs**
   - 29WP Guidance- does it help you to determine whether you need a DPO
   - "Protected" workers

4. **One stop shop, transfers and lead regulators**
   - Brexit (again)
   - What does the one stop shop mean in an employment context?
   - Can we continue to rely on model clauses or privacy shield going forwards?
   - Article 29 WP guidance on determining the lead regulator: does it help?

Workplace privacy: 11 ways to prepare for the GDPR

Introduction

Significant changes are on the horizon; The EU General Data Protection Regulation ("GDPR") comes into force on 25 May 2018. In a recent blog, Elizabeth Denham, the UK Information Commissioner, said: "I acknowledge that there may still be questions about how the GDPR would work on the UK leaving the EU but this should not distract us from the important task of compliance with the GDPR by 2018".

This is because the GDPR will come into force in the UK before it withdraws from the EU. And even once the UK has left, it must still offer sufficient protection by EU standards to avoid being designated as inadequate in terms of the level of protection afforded to personal data.

It also goes without saying that where you have operations in the rest of the EU, you will need to comply with the GDPR.

1. Map and audit HR data and processes

You should conduct a data-mapping exercise (a process that shows how data from one information system transfers to another) and an audit. An audit is a process that assesses your data protection practices by looking at whether you have effective policies and procedures in place, whether you are following them and identifies where improvements could be made.

The point of these exercises would be to determine what workforce data you process and why, where you send it and who you share it with. This will help to inform decisions about the basis for processing such data in future. You will need to move away from over-reliance on employee consent (see below) and will want to consider the implications of relying on any bases for processing which will trigger rights for the data subject such as the right to withdraw their consent or to object to or to freeze such processing. An audit can also identify any areas of risk which will need to be fixed before your business is impacted by the GDPR.

2. Are your third-party processors compliant?

You should start by identifying your processors, such as payroll providers, and review the contractual terms. Your audit should review what due diligence you have in place to vet third-party processors prior to appointment and check that the written agreements you have with them meet compliance requirements. The GDPR imposes more onerous obligations to ensure that the right contractual guarantees are in place where you appoint processors and so these agreements should be overhauled. Where you share data with other controllers, you should also examine the protocols in place.

3. Establish a cross-border inventory of data flows

You will need to establish a cross-border inventory of your data flows of workforce data, and then consider your approach to overseas transfers in light of recent developments such as the EU-US Privacy Shield, challenges to model clauses and the UK's eventual relationship with the rest of the EU.

4. Don't rely on consent to justify your processing (where possible)

Many employers rely on employee consent to justify all their workforce data-processing activities, by including a clause in the employment contract at the outset of the relationship.

The GDPR incorporates the long-held view of the European regulators that consent to processing in the context of an employment relationship cannot be freely given. For consent to be a valid basis for data processing under the GDPR, it must be actively and freely given – silence or inactivity do not count. Consent must be "divisible" and it must be as easy to withdraw it as to give it. Signing an employment contract with a consent clause will not amount to consent which is freely given. The employee has no real choice to reject a particular clause or a particular aspect of the proposed processing, and the consent to the full range of processing activities cannot be separated out. In addition, typically insufficient information is given in the employment contract to meet fair-processing requirements under the current law, let alone when the GDPR comes into force.

Another reason to move away from consent is that where it is the basis for processing, it will trigger certain rights on the part of the employee. In particular, employees will be able to retract their consent, preventing data controllers and processors from processing their data at any time.

Consent is only one of the valid bases for processing personal data. If you have conducted an audit, you will have identified the need to process each of the classes of personal data that you collect about the workforce in the course of your relationship and will be in a better position to move away from consent. To take a straightforward example, you need bank details to pay salary - you do not require consent and should instead rely on the justification that this processing must occur for the performance of the contract. Other activities are less obvious but, for example, where you monitor employee use of IT systems for data security reasons, you would not want to rely on consent (or seek it) in case it is withheld. Instead, you would justify the processing on an alternative ground, such your legitimate interests based on the reasons for the monitoring, or your legal obligations to maintain the security of the data that you handle.

We would expect employers to rely more heavily on these alternative bases in future, such as the processing of data being necessary for the performance of the employment contract (e.g. data processing related to payroll) or for the purposes of legitimate interests pursued by the data controller (e.g. the performance management of employees).

Where it remains necessary to obtain consent to process data, you should consider how specific information regarding the consent is provided to the data subject. You should also ensure that where consent is obtained, it is given actively, separately and freely - another point emphasised in the GDPR is that you need to be able to evidence compliance.

And while you may move away from having a clause in the employment contract which addresses “data protection” generally, there are some rules that you will want to retain and should not be lost if you have a generic clause – in particular, ensuring that employees are aware of their own responsibility to process personal data properly and the consequences of breach. Other policies (such as bring or choose your own device policies and data security), your training rules and your disciplinary rules should be checked to ensure that they address the issue of employee accountability.

5. Get ready for changes to data subject access requests and prepare for employees wielding their rights

The 40-day time limit for responding to data subject access request (“DSARs”) is being reduced to one month. This timeframe can be extended by a further two months, taking into account the complexity of the request and the number of requests from the same source. In addition, the £10 fee is being scrapped, in favour of a fee being charged if the request is manifestly unfounded or excessive.

Existing guidance from the Information Commissioner’s Office (“ICO”) already recommends that you have a process which logs and tracks DSARs. You may need to instigate processes if you do not already have them

Responding to a DSAR is often complex and you should ensure people are trained to recognise and handle them, to apply consistent principles where objections are made (such that the request is “complex” or “excessive”) and to ensure that third party data is handled appropriately . Depending on the size of your organisation, this may be one person or a team, most typically in HR or legal. The right of access is extended under the GDPR and so you will need to review any existing training provided to those handling requests to ensure that you remain compliant.

Because in effect the GDPR enhances individual rights to control what happens to their personal data you also need to work with IT to ensure that HR systems are geared up to deal with an employee who objects to the processing of their data in the course of a grievance investigation. For example, can you segregate it while you debate the point with the employee?

6. Adapt your privacy notices and policies

Under the GDPR data subjects will be entitled to receive a lot more information than under the current law about

their data and how it is handled, including who has access to it, why they have access to it, for how long it is held, and the rights that they have over it. This means that you have to spell out the rights of the data subject - such as the right to withdraw consent to data processing and lodge a complaint with the ICO.

The notice needs to specify the purpose and legal basis for processing each category of personal data, and this should be informed by the audit which you have undertaken (see above). Existing privacy notices for your workforce will need to be reviewed and revised considerably.

7. Make sure you're ready for "Privacy by Design"

Under the GDPR, you will need to design compliant policies, procedures and systems at the outset of any product or process development which impacts the processing of personal data. Privacy impact assessments will be required where there is a high risk to the rights and freedoms of data subjects, in order to establish whether any proposed processing is reasonable in the circumstances. Some HR activities may fall within those regarded as high risk.

As a general rule, recording how you balance the conflicting interests and rights of data subjects against your business's rights or those of other data subjects is a central theme of privacy compliance. Impact assessments which record how you arrived at a particular decision are recommended.

8. Data breach management

Demonstrating compliance and being able to respond to any data breach within 72 hours requires that organisations give very careful thought to breach prevention and ensuring that any breaches are handled in the right way This involves raising awareness of data handling issues, training staff as to appropriate behaviour and ensuring they know what they need to do in the event of a data breach. It is also necessary to implement joined-up training across multinationals, as a breach may concern more than one jurisdiction.

Part of your approach to prevention is to ensure that the entire workforce is trained and data aware and keep records of who has received training. Those with specific responsibilities to handle personal data should receive enhanced training.

9. Training

This is mentioned above but deserves a heading in its own right – key topics are data awareness, data security, and subject access

10. Appoint a data protection officer

Companies whose core activities consist of processing operations that require regular and systematic monitoring of data subjects on a large scale have to appoint a data protection officer. This must be a person with expert knowledge of data protection law and practices, whose job will be to monitor internal compliance with the GDPR.

Even if you are not required to appoint a data protection officer, we would recommend appointing somebody within your organisation to monitor the data processing that occurs and ensure that it is done in accordance with your GDPR obligations.

11. Consider who your lead regulator will be

The lead regulator is the supervisory authority in the country where the controller/processor has its main establishment. Once the UK leaves the EU, a non-EU controller or processor can nominate a main establishment within the EU. Which country should that be for your business?

- Although the GDPR will not be in force until 2018, it is important to start thinking now about how to prepare. The ICO will soon be publishing a timeline setting out what areas of guidance will be prioritised over the next six months. This will give us more of a steer on the UK's approach to the new law.

Ius Laboris Belgium Global HR Lawyers
Claeys & Engels

Newsletter: **Today the long-awaited new General Data Protection Regulation (GDPR) has been published**

Ten things you need to know as an employer about these new European rules

4 May 2016

Table of contents

Dear reader,

Employers process personal data of their staff on a large scale.

“Personal data” is an umbrella term for any information by which one can identify a person, directly or indirectly, such as the name, the address, the national registry number, the salary data, the online profile, or the log-in details.

The concept of “processing” is defined so broadly that almost any operation performed on personal data is considered as processing, such as collection, recording, storage, adaptation, alteration, consultation, use, disclosure by transmission, dissemination, or erasure. However, one condition is that the processing is at least partially carried out by automated means or, if not, that the personal data are intended to be contained in a filing system.

Employers often do not realise how many processing operations are carried out within their company. Some examples:

- the payroll and personnel administration;
- a database with personal data of individual applicants or employees;
- specific HR software to follow up evaluations or training programmes;
- the publication of a photo book of staff members on the intranet;
- uploading or transmitting data by e-mail to the social secretariat, the group insurer;
- presence registration using a badge, through the fingerprint, the iris;
- monitoring employees’ use of e-mail and the internet, as well as their use of social media;
- camera surveillance at work;
- the storage of data relating to telephony and video files;
- tracking the movements of employees using track and trace systems;
- etc.

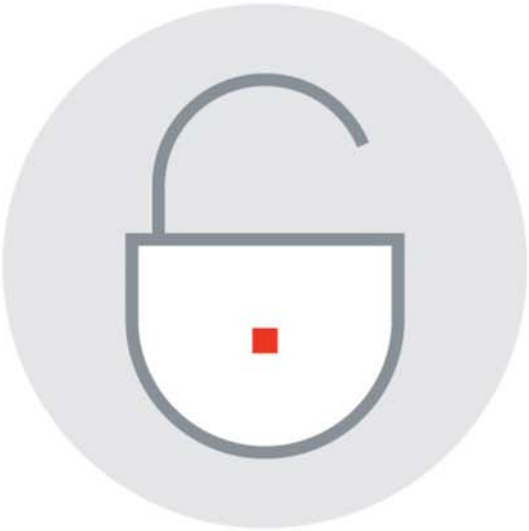
Today, 4 May 2016, the long-awaited General Data Protection Regulation has been published.

This Regulation will mark the beginning of a new era with respect to the protection of everyone’s personal data within the European Union.

Almost every employer will be impacted by the new rules and will have to adjust the way personal data of staff members are processed.

Below, we summarise ten things you should know as an employer about these new European rules.

We hope you enjoy the read.



1 Harmonisation in a digital single market

Currently, the European Union has 28 different legislations concerning the processing of personal data. This is the result of an EU Directive adopted about 20 years ago and then implemented by each Member State individually into national legislation with its own character.

The new Regulation aims to get rid of this fragmentation. Unlike a Directive, a European Regulation is directly applicable in each Member State, without the need for transposition into national legislation.

However, this does not mean that separate national legislation will no longer exist.

Member States must ensure compliance with the Regulation and the protection it provides. But the Regulation itself for example stipulates that each Member State, by law or by collective agreement, may provide for more specific rules on the processing of employees' personal data in the employment context.

It can be expected that several Member States will make use of this possibility and that local specificities will continue to exist.

Furthermore, an important advantage of the new Regulation is that all companies who want to offer goods or services in Europe or to monitor the behaviour of European citizens (e.g., through online profiling) will have to comply with the Regulation, even if they are not based in the Union.

2 Confirmation and reinforcement of existing principles

The Regulation mainly confirms the existing principles, for example with respect to the processing of personal data in an acceptable, legitimate and secure way. The basic rules with respect to the transfer of personal data to countries outside Europe remain largely the same as well. Furthermore, the existing rights and obligations are reinforced. Think about employees' right to have access to, rectify or erase personal data (the so-called "right to be forgotten") or to transmit them to a third party ("data portability"). But also the employer's obligation to process personal data as securely as possible, using safeguards such as anonymisation, pseudonymisation or encryption, is reinforced ('data protection by design and by default'). Employers also will still have to enter into contracts with companies who process personal data on their behalf (e.g. payroll administrators, external IT service providers, insurance companies). However, the processors themselves will have greater responsibility than they have today.

3 The "one-stop-shop" principle

In the future, companies doing business in different European Member States will only have to work with one single central administration, whereas previously they had to verify in each Member State separately which actions they had to undertake.

4 Reinforcement of the information obligation

Under the current rules, the employer has to provide specific information to (potential) employees when processing their personal data. For example, the persons concerned have to know for which purposes their data are processed, to whom the data are communicated and who they can contact to execute their rights.

This information obligation is further reinforced by the Regulation.

Henceforth, the employer will for instance have to indicate, in addition to the information which

is currently already required, on which legal ground the processing of personal data is based.

In the employment context, employees' personal data are often processed because it suits the employer's legitimate interests. This is one of the possible grounds on the basis of which data may be processed. The Regulation now obliges the employer to describe this legitimate interest in the information.

Employers will also, for example, have to communicate in advance if they intend to transfer data outside the European Union, the period for which the data will be stored, the right to lodge a complaint with the Belgian supervisory authority (the Commission on the Protection of Privacy, the "Privacy Commission") the right to withdraw consent (in case the processing is based on that, wholly or in part), the identity of the "Data Protection Officer" (if applicable).

This more extensive information has to be provided in an intelligible and easily accessible form, using clear and plain language. The information should, as a general rule, be provided in writing either on paper or electronically.

5 Consent as a legal ground for the processing

Under the current legislation, the employee's consent is already a potential legal ground for the processing of personal data. Nevertheless, there has always been some debate about whether employees can "freely" give their consent.

Although the Regulation maintains consent as a legal ground, this consent is subject to stricter conditions.

A declaration of consent should be freely given, specific, informed and unambiguous and should be provided by using clear and intelligible language. In this case, the employer will have to demonstrate that the employee has given consent. Therefore, consent must be explicit. The employee also has the right to withdraw consent at any time.

For this purpose, we advise you to provide consent as an additional legal ground, but to ensure that, as an employer, you also have another legal ground for the processing of personal data.

6 Record-keeping obligations

As of the entry into force of the Regulation, companies employing 250 employees or more will probably no longer be obliged to report to the Privacy Commission, but will have to maintain a written or electronic register of all processing activities which are carried out under their responsibility. This register should contain a number of mandatory provisions and should be submitted at the request of the Privacy Commission. In case a company employs fewer than 250 persons, this register will also have to be kept if the processing of personal data is likely to result in a risk to the rights and freedoms of data subject, is not occasional or if sensitive data are processed.

7 Mandatory appointment of a "data protection officer" for some companies

Some employers, such as public authorities or companies whose core activities consist in processing personal or sensitive data, will be obliged to designate a so-called "data protection officer". The data protection officer may be a staff member, or fulfil the tasks on the basis of a service contract. This person will advise the employer of the measures which have to be taken pursuant to the new Regulation and will also monitor compliance with the principles of this Regulation. This officer should be in a position to perform his

duties within the company in an independent manner. He will have to report to the highest management level and may not be dismissed for performing his tasks.

8 Mandatory notification of breaches

If employees' personal data were to fall into the wrong hands, for example because the data have been hacked or due to a human or system error, the employer will in some cases be obliged to report this to the Privacy Commission and to the individual concerned. Just think of an employee whose laptop, on which personal data are stored, is stolen or of an e-mail containing personal data which is accidentally sent to the wrong address. A policy with a description of the various possible situations and its affiliated actions can be useful.

9 Higher risk of penalties

Today, we feel that employers on the Belgian market do not see it as a top priority to comply with the rules on the processing of personal data. This is, among other things, due to the fact that under the current Belgian legislation, unlike in some of our neighbouring countries, there is no real risk of penalties: criminal sanctions are provided, but are rarely applied. The Privacy Commission also does not have sanctioning powers.

This will change drastically under the new Regulation.

Employees will be able to lodge a complaint with the Privacy Commission and may file a claim for damages.

Henceforth, companies that do not respect the rules will run the risk of being substantially fined by the Privacy Commission, with administrative fines of up to EUR 20 million or 4% of the company's annual global turnover.

10 Finally, when will these new rules become applicable?

The Regulation enters into force 20 days after its publication, but will only be applied two years later, i.e. as of 25 May 2018.

This period is to give Member States the time to adapt national legislation and to give companies the chance to adjust their processing activities and to design an appropriate framework.

Claeys & Engels informs you

If you would like to learn more about the new European rules and the exact measures you should take as an employer, we invite you take part in a teleconference about this subject on 14 June 2016 in Dutch or on 28 June 2016 in French. You will soon receive an invitation for these events.

Shortly after the Summer holidays, an information session in English will be held in our Brussels office as well. On this occasion, several of our Ius Laboris colleagues from other European countries will share their experiences.

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Partners with you.

GDPR

Implications for employers

 2 2

Introduction (1)

- **GDPR is first new EU-wide DP legislation for over 20 years…applies fully from 25 May 2018**
- **DP Directive (95/46/EC) conceived in early 1990s at a time when:**
  - No internet
  - No broadband
  - No smartphones
  - No social media
  - No Google
- **Things have changed!**
- **Processing of data is central to most aspects of life**

 3 3

Introduction (2)

- **GDPR applies to all personal data – including suppliers, website users, customers… but going to focus on the employment context**
- **Employment context is different from others**

Range of data

(CCTV, access data, web use, phone use, computer use, travel…)

Unstructured data

(Example emails – contrast with data in pre-set fields)

Potential for disputes

(with employees/unions/works councils – who may use threat of penalties tactically)

 4 4

Overview

- **GDPR applies directly (no need to implement), but will be elaborated by national legislation and subsidiary EU rules**
- **GDPR sets up "one-stop shop"**
  - Common rules
  - Common approach to regulation
  - Common approach to penalties

  BUT specific carve out for employment so employers operating cross-border may still need to check national laws
- **Basic concepts – similar to old legislation**

5

Key changes – in brief

- **More granularity and procedures**
  - More information for employees
  - More employer documentation – policies and processes, records of processing
  - Identify and record legal basis for processing
- **Wider data subject rights**
- **Data protection officers**
- **DP Impact assessments**
- **Much higher potential penalties – up to €20m or 4% of undertaking's global turnover if more**

6

Information (privacy notice) for employees

- **Information (privacy notice) must be**
  - Concise, intelligible and easily accessible
  - Transparent – explain what you are doing and why
- **Information to be provided includes**
  - legal basis for processing
  - retention periods
  - data subject rights (including right to withdraw consent and to object to processing)
  - transfers of data outside the EU
- **Tension between clarity and level of detail?**

7

Data subject rights – subject access request

- **Similar to current arrangements but more information**
  - Storage period
  - Right to request rectification or object
  - Safeguards on third country transfer
- **Right to refuse (or charge) if manifestly excessive**
- **Creates lever for negotiation over information to be provided?**

8

Data subject rights – Delete it, freeze it, correct it!

- **Rights to**
  - erasure (be forgotten)
  - freeze processing
  - Rectification, if inaccurate
- **Various conditions but, in general**
  - if unlawful
  - processing no longer necessary
  - dispute over "legitimate grounds" basis for processing
- **May be used in employment disputes**
- **Also new right to data portability… role in employment?**

9

Employers' duties

- Maintain detailed record of processing activities and security measures
- Data protection by design – and default
  - Build data protection into system design (e.g. new HR system)
  - Minimise data collected
- **Employer as data controller must**
  - not only comply with data protection principles (as currently)
  - but also… *demonstrate* compliance (i.e. reverses burden of proof)

10

Data protection officers (DPO)

- **Required if**
  - core activities involve systematic monitoring or large scale processing of sensitive data
  - a public body
- Main role
  - advice about legal obligations
  - monitor compliance
  - training
  - point of contact for regulator
- Independent – employee or consultant/contractor

 11

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Transfers outside EU

- **Approach similar to previous rules**
  - Model clauses
  - Binding Corporate Rules
  - EU-US Privacy Shield – replacing Safe Harbor

Transfers outside EU: privacy shield

Tighter conditions

Mechanisms to ensure compliance

Sanctions

Response obligation to complaints – 45 days

If handling HR data, US companies must **cooperate** and **comply** with "advice" from EU regulators

PRIVACY SHIELD

…but does it go far enough?

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Data breaches (1)

Breach of security leading to accidental or unlawful data destruction, loss, alteration or unauthorised disclosure

Notify regulator promptly and within 72 hours unless breach unlikely to result in a risk (e.g. all data encrypted).

If late notification - provide a "reasoned justification" explaining the delay.

In notifying a breach, describe

- what happened
- approximate numbers of individuals affected
- likely consequences
- measures taken or proposed

 14

Data breaches (2)

Data breaches not uncommon – short time frame…need clear policies on handling

Tell data subject if there is a high risk to them.

Records must be kept of all data breaches and action taken – even if no notification obligation.

 15

Penalties

- **Tiered approach – depending on nature of breach**

€20m or **up to 4% of worldwide turnover**

breach of requirements on international transfer or basic principles

€10m or **up to 2% of worldwide turnover**

other breaches (e.g. records of processing activities, data protection by design, notification of breaches to regulator)

 16

Penalties

- Factors taken into account include:

Nature, gravity and duration of infringement

Number of persons affected

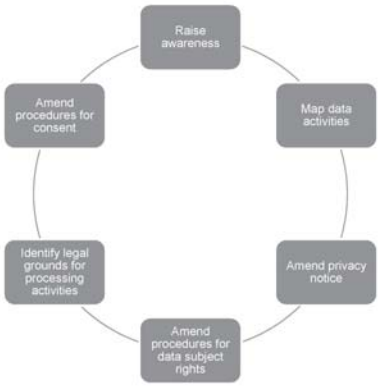
Previous record

Action taken to mitigate damage

Whether notified

17

Recommendations *(relevant for HR)*



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Recommendations

19

Is a DPO required?	***Yes if the organisation is a "public authority"*** ‘ • To be defined at the state level • Likely to include public bodies and entities subject to public law, such as utility providers, transport and infrastructure services providers and public broadcasters.
	And also where core business activities consist of large scale regular and systematic monitoring • ‘**Core activities’** are an inextricable part of the pursuit of business goals, such as processing health data in a hospital, or personal data in a surveillance security company. Support functions such as HR and payroll are not considered ‘core activities’. • ‘**Large scale’** has not yet been defined but factors to consider include the number of individuals monitored, the geographic extent and permanency of the personal data collected and the volume or range of data processed. • ‘**Regular and systematic monitoring’** includes internet tracking and profiling for the purpose of behavioural advertising, providing telecoms services, credit and risk assessment, location tracking, loyalty schemes and the operation of smart appliances.
	And your core activities consist of processing sensitive personal data or criminal records on a large scale.
	Where a mandatory appointment does not apply, organisations are encouraged to voluntarily appoint a DPO. The same requirements, restrictions and protections will apply as with mandatory DPOs. Organisations are encouraged to document why a mandatory appointment does not apply where they opt against a voluntary appointment.
Status	A DPO can be employed directly or engaged as a contractor.
Protected Status	DPOs are protected from dismissal or any less favourable treatment as a result of performing their tasks. This protection applies equally to employees and those engaged under a service contract.
Requirements	• The DPO must be personally available and easily accessible from each establishment as a contact point for external authorities, data subjects and colleagues. • DPOs must be independent: they cannot receive instructions on how to fulfil their duties.
Attributes/skillset	• DPOs must be able to communicate effectively with data subjects and authorities in their own language. • Appropriate data protection expertise commensurate with the sensitivity, complexity and amount of data processed by the organisation. • Knowledge of the business sector and organisation, its data protection needs and processing operations, as well as national and European data protection laws and practices • Contractor DPOs must have a sufficient understanding of the contracting organisation to properly perform the role. • The integrity and professional ethics to enable compliance with the GDPR.
Conflicts	A DPO can hold other posts in the organisation, but cannot hold a position that allows them to determine the purpose and means of processing personal data. CIOs and CISOs should not be DPOs.
Resources	DPO should be provided with necessary resources and data access to carry out their tasks as well as the opportunity to maintain their knowledge
Responsibility	The DPO is to be involved in all issues relating to the protection of personal data including: the monitoring of compliance with the GDPR, advising on whether a data protection impact assessment is required, and where requested maintaining a record of processing activities.
Liability	Responsibility for compliance with GDPR lies with the organisation, not the DPO.

Breakout session
Global strategies for mental wellbeing

International organisations are becoming more and more aware of the fact that a failure to address wellness, and particularly issues around mental health, can be costly. In the UK alone, 21% of employees are reported to have called in sick to avoid workplace stress and 25% of people are likely to suffer some form of mental health problem every year.

In this interactive session we will look at:

- The extent to which addressing mental wellbeing is on the agenda for international organisations
- What a 'best in class' international wellbeing strategy looks like
- The particular challenges that arise when it comes to managing the mental wellbeing of an international workforce
- Innovative approaches to opening up discussion about mental wellbeing
- Products and services which can help organisations to identify where to focus their efforts and how effective those initiatives are

EMEA Health Survey

Aon's 2016 EMEA Health Survey identified that stress and mental health issues are seen as the biggest health issue for employers across EMEA, yet found that less than one third of those surveyed are taking steps to address this.

From this survey, it can be seen that for EMEA employers as a whole:

- 93% see a correlation between health and employee performance
- 40% have a defined health strategy
- 40% say they have a clear view of the current impact of health on their organisation
- 26% make use of data analytics to inform their approach to health
- 13% measure the outcomes of their investment in employee health programmes (and 85% of those who do not measure these outcomes wish they did)

Best in class: the Unilever approach

After finding that a significant number of sickness absences were caused by mental ill health, consumer goods giant, Unilever transformed how it approached mental health. The company's comprehensive mental wellbeing programme trains all line managers and provides bespoke resources, empowering staff to improve their resilience, mental health and wellbeing. Senior managers openly share their personal experiences of mental health, underlining that mental health is taken seriously throughout the organisation. The programme has delivered real business benefits, reducing absence and increasing productivity.

Unilever's award-winning Lamplighter Program, an innovative approach to employee wellness that uses health risk appraisals alongside exercise, nutrition and mental resilience to help employees improve their health and wellbeing. The program, operating in 46 countries, focuses on non-communicable diseases (NCDs) such as coronary heart disease, hypertension, diabetes, high cholesterol, and tobacco-related illnesses. It has reached 35,000 Unilever employees, driving improvements in health status across 30 countries.

The Lamplighter program uses health risk assessments to create individual scorecards for each employee on measures of nutrition, exercise, mental resilience and biometric indicators. The global program is adapted to each country's particular context and major causes of ill health among workers; however, each includes global mandatory standards on medical and occupational health, HIV/AIDS, non-smoking and mental well-being.

Employees are given a biometric grading based on their body mass index (BMI), blood pressure,

cholesterol level and sugar fasting. There are three grades: green, indicating excellent health; orange, indicating the need for periodic reviews; and red, indicating the need for both focused attention and periodic reviews. Employees then develop a personal work plan that includes exercise and nutrition. Appropriate interventions are offered to people in the orange or red categories, differing from country to country. For example:

- Nutritionists work with Unilever's food providers to ensure portions are controlled, salt intake is at a healthy level, and daily caloric requirements are not exceeded
- Unilever builds exercise facilities where they are not already present, or works with local gyms to subsidize employees' memberships
- Employees facing high levels of stress are offered an online stress reduction course, cognitive behavior therapy to improve mental resilience, and referrals to psychiatric professionals when necessary

A review of the global program is conducted every five years and takes into account internal and external stakeholder feedback. In addition, the Lamplighter programs in each country review their progress on a yearly basis. An external benchmarking against similar programs from other leading multinationals and peer group industry is performed as well.

The results have been encouraging: In India, for example, over half of the original "red" employees have moved out of the danger zone, while a survey found a widespread boost in morale among participants at all grades.

Specifically, Unilever reports that Lamplighter has achieved globally:

- An 8% reduction in overweight/obesity
- A 16% reduction in hypertension
- A 5% reduction in physical inactivity
- A 17% reduction in poor or under nutrition
- A 3% reduction in smoking
- A 40% increase in mental resilience (varying by region)
- A 3.5:1 return on investment (ROI)

Critical success factors

Unilever believes that when employees have personal development plans focused on wellbeing which they can achieve, it is also translated into an enhanced work performance.

- **Leading by example**: adopting a healthy lifestyle is a personal option, but the key here is the visible participation by senior leadership. What a manager says or writes has limited effect, but what s/he actually demonstrates through his or her behaviour is extremely powerful. The behaviour of leadership has encouraged participation in the Lamplighter Program more than any medical advice from doctors.
- **Measurement and availability of data:** business managers collect data on the program, citing the well-known mantra 'you can only manage what you can measure.' Producing data on health and wellbeing was new to most of the participants in Unilever's program, and they found it not merely of interest but actively motivating to continue maintaining a healthy lifestyle.
- **Coaching and specialist interventions:** in Unilever's experience, giving individuals intensive personal coaching over six months seemed to get them to a level at which the healthy lifestyle was accepted by the participants. The challenge, as always with health, is sustainable behaviour, and

long-term commitment is needed from both the provider of coaching and the recipient.

- **Business alignment:** the key to a health and wellbeing program's sustainability is ensuring that it is aligned with a genuine business initiative. Unilever's mission statement is "*to add vitality to life. We meet every day needs for nutrition; hygiene and personal care with brands that help people feel good, look good and get more out of life*." A healthy workplace is a way of living this commitment in the company's day-to-day work atmosphere.

Lessons learned

Unilever was able to overcome pockets of internal resistance that were based mainly on issues of cost by highlighting the business benefits of the health and wellbeing program. Feedback on reduced absenteeism, reduced presenteeism (reduced productivity when an employee is at work due to illness) and the positive ROI of health promotion programs helped Unilever to garner support for the Lamplighter program. In some cases a "not-invented-here" syndrome was overcome by showcasing benefits from other companies that had successfully adapted similar programs.

Top leadership support was crucial to the program's success. At the grassroots level, enlisting the support of those who benefited from the program to promote it brought in more voluntary participation.

Mental Health programme

Unilever's Mental Health programme guarantees staff access to appropriate support whenever they may need it. The mental health programme incorporates manager training and awareness, employee learning, and information, and tools for individuals and teams to improve their positive mental health.

It was developed to ensure that each employee is never more than a phone call, a conversation or a click away from the help and support they need.

While providing care for individuals, it also aimed to create an environment in which it is "good to talk", to build resilience in teams and individuals across the organisation and to develop line managers who can lead and support a culture of mental wellbeing.

Long-term commitment to mental health

The programme is supported both centrally – recognising the importance of visible leadership – and at a local site level. Each site has a local wellbeing team, responsible for implementing a site plan based on the different needs of each location.

The programme is communicated through events and promotional materials, as well as a dedicated portal page on the intranet, Mental Health and You, which houses online tools for staff and managers.

Bespoke training courses and support tools include individual and group training sessions, personal support, and access to professional help where needed. A Personal Resilience tool is available to all staff and, depending on their response, provides external support where needed. This has greatly reduced the time it takes for employees to access mental health treatment. Many were unlikely to have sought help for their mental health if they had bot used the tool.

Managers at priority sites attend face-to-face training in managing mental health. There is also an online mental health awareness course for all line managers.

The programme is seen as a long-term commitment rather than a one-off initiative, and is supported by continuous communication to promote the tools and support available.

To perform better, sleep better

How energized, productive and creative is your team? Are people properly taking care of themselves in order to be able to lead others and contribute to the team?

Sleep specialists, such as Els ven der Helm, work with organisations to identify the status quo of the team or organisation and any potential problems that need to be addressed. Els and her team assist with issues such as:

- **Policy recommendations:** in order for organizations to fully embed sleep and energy management practices in their culture Els and her team offer their clients advice on the introduction of company policies and approaches to enhance awareness. Policy changes will differ greatly depending on the client context, but can relate to travel, work-time limits, emails, nap-rooms and smart technology to support sleep.
- **Personalised assessment:** online sleep and energy assessments offer participants the opportunity to gain insight into their current sleep status, energy levels and sleep habits. Furthermore, they allow the tracking of progress over time.
- **Energy assessment:** four different types of energy are distinguished
  - **Physical energy:** How much energy do you have available?
  - **Mental energy:** What is the level of your mental focus?
  - **Emotional energy:** To what extent are you experiencing positive emotions?
  - **Spiritual energy:** Are you spending your time and energy on what is really meaningful to you?
- **Sleep assessment:** Sleep habits and current sleep status is measured, in addition to the impact of sleep status on performance at work & at home.
- **Tailored workshops:** in her sleep workshops Els explains why sleep management is so important to leaders and organisations. She explains why we sleep, what happens when you don't get enough sleep: short and long term consequences for your health and performance, how it works (different types of sleep and the role of the biological clock) and practical tips on how to improve your sleep.
- **Maximize impact:** in order to maximize the impact of the workshops, Els believes creating accountability and providing continued support is key. She achieves this in a number of ways:
  - **Sleep consultation sessions:** In order to maximize the impact of the sleep workshop over time, Els offers individual and group consultation sessions focused on the behavioural changes made after the workshop. In these sessions they review the commitments made in the workshop, what worked well and what has been difficult to implement, offer guidance on sustaining the change and setting new targets to further improve sleep. These sessions have been found to be critical in creating accountability and supporting sustained change.
  - **Resources:** Els shares helpful resources with her clients during and after the programs ends (if they wish so). These resources include articles, videos, blogs, and additional tools and gadgets we recommend.
  - **Track progress:** participants can retake their online assessment at any time in order to track their progress, get reminded of the helpful practices and help them in forming new goals to attain.

94% of clients have said that after working with Els and her team, they have made a change in their behaviour which led to an improvement in their sleep.

Aon: advice and support for wellness, wellbeing and healthcare

Employee benefits specialists, Aon, are committed to sourcing the right health and wellbeing solution for organisations and their employees. They provide advice on the optimum benefits mix for a business, and conduct a benchmarking exercise and full market review, along with controlling the tender process.

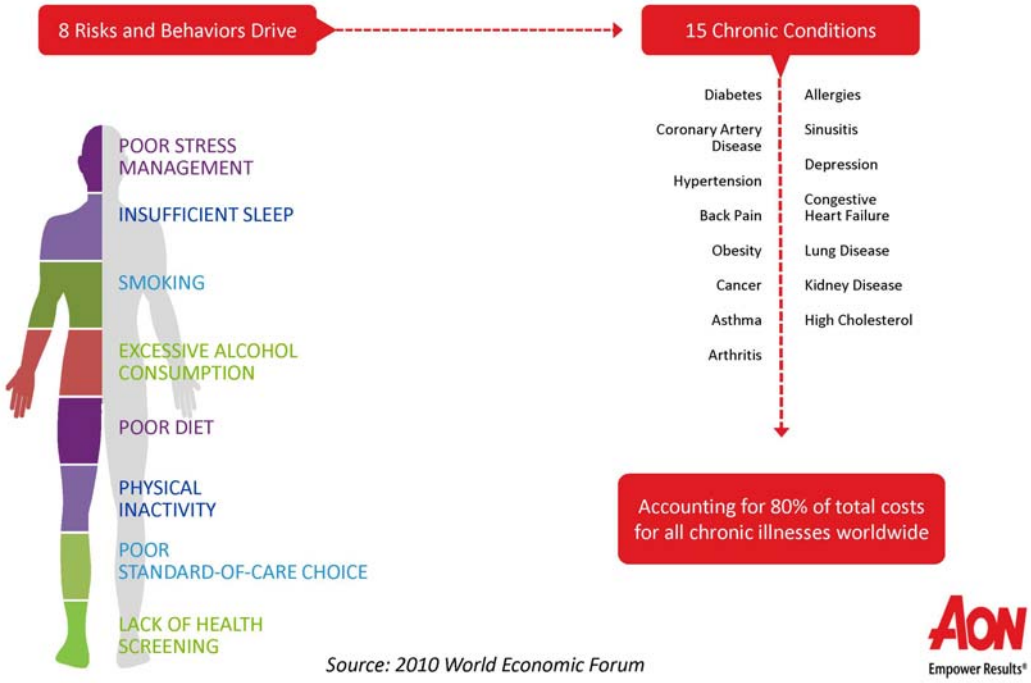
To assist organisations in understanding, measuring and improving their wellbeing offering, Aon offers products which can provide useful data analytics. Their products include:

- **Risk Forecaster**: a product which analyses and quantifies absence data, health data and premium trends and benchmarks performance enabling Aon to calculate the total cost of health and project future premium spend. It supports the implementation of integrated strategies and provides access to key activities, tools and services that will help drive down the employer's total cost of health. The Risk Forecaster increases the likelihood of better employee engagement, provides strong governance reporting and demonstrates Aon's best practice protocols to the insurance industry.
- **Aon Bench**: a cutting-edge benchmarking tool for claims rated private medical insurance, group income protection, group life assurance and defined contribution pension schemes. Aon Bench provides organisations with market insights and a measure of how their benefit plans compare to the competition, using the latest technology via an interactive, web based tool. It enhances plan comparisons, providing insights around premium rates and specific plan design features.
- **Aon Pulse**: provides healthcare insights through deep dive claims analytics. The tool delivers financial monitoring of claims, identification of key claims trends and health risk issues, along with demographic and/or business unit breakdown and the ability to measure network performance and key cost drivers.
- **Health Hub**: the destination dashboard for organisations requiring access to key employee health and benefits information. It provides on-going aggregation of data across all individual health benefits and service lines that are pulled through into a dashboard to inform the organisation's key stakeholders about their performance against their people, risk, health and engagement strategy. Based on Aon's interpretation of the data, they highlight key areas to focus on in order to deliver against key objectives.


Location
2,240
Average Days Absent
20,712
Incidence of Absence
£9,292,752
Total Cost of Absence
£651.2
Average Cost of Absence Per Employee
Most common sickness reason and their average cost
Number of Employees against the Number of Absence Instances
London
Sickness Timeline
AON
Empower Results®

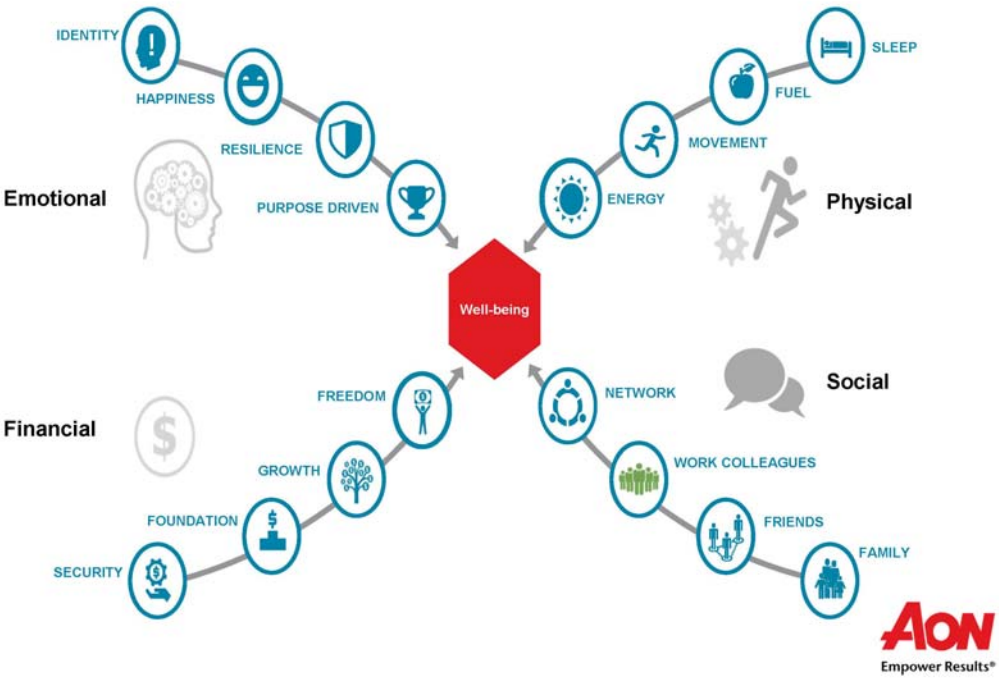

Age Band
20,712
Incidence of Absence
£9,292,752
Total Cost of Absence
2,240
Average Days Absent
£651.2
Average Cost of Absence Per Employee
Most common sickness reason and their average cost
Number of Employees against the Number of Absence Instances
Sickness Timeline
AON
Empower Results®

Why? Focus on the most important risk factors



Source: 2010 World Economic Forum

Creating an integrated culture



Breakout session
TUPE then (perhaps) not TUPE - that is the question?

The topic for discussion

With Brexit on the horizon, what is the future for the UK's much maligned Transfer of Undertakings Regulations (Protection of Employment) Regulations ("TUPE")? Will they survive in their current form or at all? What may be changed or diluted? What are the other international models for business transfers outside of the EEA and how do they work, from no legislative intervention to "TUPE lite"? How can you future-proof outsourcing agreements and long-term plans against these uncertain developments?

In this session, we will examine all of these questions, drawing on the expertise of an international panel to give you some insight into how this important area of law may be reshaped in the years to come - and how your business may need to adapt.

Introduction - how likely is post-Brexit TUPE reform?

Following the UK's vote to leave the European Union, much is being discussed and written about the future shape of post-Brexit employment law, shorn of the requirement to comply with underlying EU directives. While many EU-derived employment laws are widely supported and so expected to be retained in largely unchanged form, what does the future hold for TUPE?

First introduced in 1981, TUPE is the UK's implementation of the EU Acquired Rights Directive. Labour and Coalition governments have both tinkered with TUPE in recent years, in order to promote greater certainty in outsourcing situations (2006) and to give it a slightly more pro-business makeover (2014). It is also noteworthy that TUPE is an example of where the UK has gone further than EU law actually requires. Some of this so-called "gold-plating" was stripped away by the 2014 reforms (notably in relation to restrictions on changes to terms and conditions), but the concept of a service provision change ("SPC") remains an exclusively UK enhancement to the minimum requirements of EU law.

So could TUPE now be for the chop? As with all things Brexit, the answer is not yet known. The starting question should probably be: why bother? There is clearly a possibility (albeit unlikely) of a wholesale clear-out of any EU-related legislation, in the hope that this somehow creates a more favourable business climate in the UK. The reflective and nervous economic mood in the country would not seem to support indiscriminate change for change's sake. That said, recent comments by the Prime Minister and Chancellor suggest that, if the UK is not offered a favourable economic deal by the EU, there may be some tit-for-tat deregulation and lowering of corporation taxes.

A case could theoretically be made for the wholesale repeal of TUPE to stimulate foreign investment in UK businesses. One of the cornerstones of TUPE is the automatic transfer principle, which protects jobs when businesses are bought and sold. Without TUPE, the argument goes, ailing businesses may be more attractive to potential foreign investor purchasers who could then purchase the assets and leave the employees behind. But there is little evidence to suggest that TUPE deters purchasers, as employees who are surplus to requirements can usually be made redundant with relatively little difficulty. Facilitating higher unemployment figures would, moreover, not exactly ease problems for the government of the day.

On the flipside, there are two specific reasons for thinking TUPE may be spared. Firstly, in 2014 when the Coalition government had the opportunity to remove the gold-plating SPC provisions, it decided not to do so. Ministers ultimately appeared to be persuaded by the benefits of continuity and certainty that the SPC rules offered (although it is questionable in light of recent case law how much certainty remains). Employers usually plan and bid on the basis that employees transfer when a business or contract changes hands. If that assumption gets unravelled, it can only add to the economic and commercial turbulence that UK business will already be feeling. If certainty and stability are favoured objectives, the safe money will be on TUPE staying – at least for the medium term.

The counter argument is that as there will be so much uncertainty for businesses anyway as a result of Brexit, little would be risked by throwing TUPE on the bonfire at the same time. The political preferences of those in power will inevitably be the critical factor. It is not rocket science to predict that a right-wing government in a post-Brexit era would be under pressure to deregulate heavily and create at least the impression of a more pro-business climate. A more left-wing Government would be more inclined to cling

on to the employment protections for which TUPE stands.

However, as employment laws go, TUPE is relatively apolitical in the sense that it does not fit as neatly as others into an "employer vs employee" equation. Take SPCs, for instance. If TUPE was repealed in its entirety, not only would employees lose valuable protections, but there would be both winners and losers among employers as well. Take a business that loses a significant contract, to which many hundreds of employees are assigned, to a competitor. In a post-TUPE era, such a business may find itself left with all of those employees at the end of the contract and an unexpected and costly redundancy bill.

The second reason why TUPE may survive is that there is an unresolved question as to whether Parliament could get rid of it even if it wanted to. A precondition of continued access to the European Single Market or Customs Union may be that the UK continues to honour fundamental EU employment rights, in order to maintain a reasonably level playing field. If that happens, the UK may well have no choice but to retain TUPE anyway. In the cut and thrust of exit negotiations, the retention of less emotive employment laws is probably something the Brexiteers would happily compromise on in return for participation in the Single Market and greater political capital of migration controls.

If the UK is in a position to jettison EU-derived employment legislation at will, political motivations will no doubt dictate the pecking order with the most unpopular laws being the first to go. TUPE is an unfamiliar concept to much of the UK public and has what could be described as a "Marmite" standing in the business community. That suggests it would be unlikely to be front of the queue. The prevailing state of the labour market could also have a bearing. If there is a shortage of labour in many sectors as a result of immigration reforms, there may be less clamour from business to abandon the automatic transfer of employees.

A final question is what would happen to the significant body of European Court of Justice ("ECJ") case law in the event that TUPE is retained but the UK courts are no longer bound to follow the Court's judgments. While the higher courts would most likely feel more liberated in their interpretation of TUPE, Employment Tribunals would no doubt continue to be influenced by past ECJ jurisprudence – at least until new binding case law emerged and they were told to do otherwise.

What should businesses be doing to prepare for this eventuality?

So the future is impossible to predict with any certainty but the odds would seem to be on TUPE remaining in some shape or form, albeit with a possible red tape and employee rights haircut. This leads us to the immediate problem of what businesses can do now to prepare for this uncertain future, with or without TUPE. Current indications are that nothing is likely to happen in a great hurry, so we can expect TUPE to be around in its current form for at least another couple of years and probably longer. Forward-thinking businesses, particularly those who outsource or provide outsourced services, may nonetheless wish to consider the following:

- When tendering for new contracts that may have an expiry date past a likely Brexit, it would be prudent to consider the possibility that TUPE may not be around at that point - with the result that the incumbent provider will potentially need to redeploy or make its own employees redundant. We are increasingly seeing examples of service providers seeking to agree a shared apportionment of redundancy costs in this eventuality.
- Service providers may wish to review their business structure so they are better placed to cope without the automatic transfer of employees at the start and end of contracts. The ability to hire significant numbers quickly (particularly in an uncertain labour market) or to absorb periods of inactivity between losing one account and winning another will be greater challenges to grapple with. We may see short-term lay-off provisions coming back into fashion, or a trend towards broadening employee skills sets to make redeployment easier.
- Finally, businesses may wish to review existing agreements for the provision of services, particularly those with many years still to run, to assess the impact of TUPE being repealed in the meantime. The prognosis may not make pleasant reading for some parties, but at least there is time to prepare for this contingency.

A comparative guide to business transfers and the applicable transfer legislation in three other jurisdictions - China, USA, New Zealand. Potential alternative models for the UK?

Is there protection for employees where the identity of their employer changes as a result of a share takeover?	
China	There is no specific protection for employees on share takeovers. However, the law is clear that a change of shareholders does not affect the employment relationship between the employees and the employer, as the employer remains the same and the employment relationships remain intact.
New Zealand	Where changes are made to ownership of an employer through the sale or transfer of shares in a company, there is no statutory protection for employees. This is because the legal identity of the employing entity does not change.
USA	There is no specific legal protection for employees on share takeovers. In practice, one set of stock owners is simply substituted for another and the enterprise continues. In the case of unionised operations, the new employer generally is obliged to assume or adopt the substantive provisions of any existing collective bargaining agreement, as well as to recognise and bargain with the incumbent labour union.
Is there protection for employees when the business they work for is sold to a new employer?	
China	There is no specific legal protection for employees on business sales. However, in those circumstances, the seller must continue performing the employees' employment contracts unless: • the employees agree to be transferred to the buyer; or • the seller has a sufficient legal grounds to terminate the employees (e.g. because the employment contract can no longer be implemented owing to major changes in the conditions on which the contract was based, or for other dismissal reasons, such as gross misconduct or incompetence).
New Zealand	Yes, but the protection differs depending whether they fall into a very limited class of "vulnerable employees", namely those who are working in particular services in particular sectors (as specified by regulations in a schedule to the main NZ employment statute). ***Employees working in protected sectors*** Employees working in cleaning, catering, laundry, orderly or caretaking services, in specific industry sectors have special protections when a business is sold or the work of the employee is contracted out to a new employer. A vulnerable employee is an employee who provides:

	• cleaning or food catering services in any place of work; • laundry services in the education, health, or age-related residential care sectors; • orderly services in the health or age-related residential care sectors; or • caretaking services in the education sector. If the employer proposes to restructure its business by contracting out the work or selling or transferring the business to a new employer, and the employee's work is to be undertaken by the new employer, employees in the protected sectors: • can elect to transfer to the new employer on the same terms and conditions of employment as they currently have; • will become employees of the new employer; and • if the new employer wishes to make them redundant the employees have the right to bargain with their new employer for redundancy entitlements (and to have these determined by the Employment Relations Authority if agreement cannot be reached). NB: if the new employer formally warrants that it has 19 or fewer employees then it will qualify as an "exempt employer", in which case employees have no right to elect to transfer to them. A small-sized new employer is not obliged to provide this warranty if it wants the employees to have the option of transferring to it. ***Employees not working in these sectors*** If an employee is not performing a role in the above protected sectors, the employees still have some minimal protection when a business is sold or the work of the employee is contracted out, in that the law requires that every collective employment agreement and every individual employment agreement must contain an employment protection provision. This provision must include the process that the employer must follow in negotiating with a new employer about the restructuring, what matters the employer will negotiate with the new employer, whether the new employer will take on the employees, possible terms of transfer, and the process to be followed to determine entitlements if an employee does not transfer. However, new employers have no obligation to take on employees if the new employer cannot or does not wish to do so. If the new employer elects not to offer employment to an employee, the employee has no right to redundancy compensation from the original employer unless this is specified in the employment agreement. There is no statutory right to redundancy compensation.
USA	There is no specific legal protection for employees in the context of the sale of a business or sale of assets. Typically, a sale of assets operates as a formal termination of employment with the seller, and there is no guarantee of re-employment with the buyer. Re-employment is contingent on the buyer extending individual offers of employment to each employee. The buyer's hiring decisions cannot be discriminatory or based on unlawful considerations (e.g. labour union membership or belonging to a protected category under discrimination law).

	Generally, the buyer is free to set the initial terms and conditions of employment offered to the seller's employees upon the closing of the transaction. Often, there is little difference between the old and new terms and conditions, and the transition occurs without significant interruption or change for employees. With regard to unionised operations and work locations, a buyer's obligations typically depend on the composition of the buyer's workforce after the sale and whether the seller's business continues without "substantial change". Union representation, but not necessarily the union contract, may pass from seller to buyer, but only if: • a majority of the buyer's workforce is comprised of the seller's unionised former employees; and • the business of the seller or substantial portions of it continue substantially unchanged after the asset sale. If a majority of the buyer's workforce is not comprised of the seller's unionised former employees, union representation does not pass automatically. If, however, the buyer expresses an intention to take all, or a majority of, the seller's unionised workers, union representation of the employees passes to the buyer even before the buyer hires anyone. In addition, in certain circumstances where the buyer makes it clear that it intends to hire a majority of its employees from the existing union bargaining unit and fails to appropriately communicate prior to or simultaneously with its offers of employment that it intends to set new initial terms and conditions of employment, the buyer may be deemed a "perfectly clear successor". As a result, the buyer will be prohibited from changing existing terms and conditions of employment of the seller's former employees until it bargains with the existing union over new terms and conditions. Accordingly, it is often prudent for asset buyers wishing to set new terms and conditions of employment in such circumstances to: • be careful to review and control what is said in purchase agreements, bid proposals, and other sale/purchase or proposal-related documents concerning the potential employment of the seller's or predecessor's employees; and • communicate that it plans to set new terms and conditions prior to or simultaneously with the offers it makes to the former employees of the asset seller or predecessor. A buyer in this transfer of asset or business context cannot base its hiring decisions on a desire to avoid union representation by refusing to hire the seller's unionised former employees, as this is considered an unlawful discriminatory motivation. Rejection of a trained workers of the seller who are otherwise needed and who are willing and able to work under the buyer's employment terms may result in charges of unfair labour practice or findings by the federal administrative agency that administers US labour law (the National Labor Relations Board), unless there is some other lawful basis or explanation for the hiring decisions. In some cases, the seller's collective bargaining agreement may include a "successor provision" that obliges the seller to require a buyer to take on all or some of the provisions of the collective bargaining agreement – and not to sell to a buyer that refuses to do so. If the seller breaches the provision, the union may have the ability to seek an injunction to prevent the sale going ahead.

	In California, some additional special rules apply around accrued but unused vacation. Where the employees are terminated by the seller and re-engaged by the buyer, California law requires companies to pay out any accrued but unused vacation at that point. This may not be a good outcome for the employee who receives payment but may then have insufficient vacation to use with the new employer. California law permits the buyer to roll over unused vacation, provided the employee consents.
If so, how do the rules affect the old employer and new employer?	
China	There are no rules protecting employees on business transfers.
New Zealand	**Obligations on the old employer:** ***Employees working in protected sectors*** The old employer: • needs to provide statutory information to all the employees about whether they have a right to make an election to transfer (which they will unless the new employer is an exempt employer), information sufficient to make an informed decision whether to do so, and when they must exercise that election; • may bargain with employees about alternative arrangements; • must notify the new employer of any employee who elects to transfer; • is deemed to give an implied indemnity to the new employer about not having made pre-transfer changes; • may need to continue employing employees on a part time basis if only part of their job is contracted out (and the rest remains with the old employer); • must provide Employee Transfer Costs Information to the new employer in sufficient time (this is the number of employees entitled to elect, the pay in a stated period for performing the work, the total employee hours spent performing that work, and the cost of entitlements); • must provide Individualised Employee Information to the new employer as soon as practicable and no later than the transfer date. This is personnel records, disciplinary and grievance history, and other information required to be kept by law; • must notify updated Employee Transfer Costs Information and Individualised Employee Information immediately to the new employer, if the information becomes outdated. ***Employees not working in these sectors*** The old employer: • must negotiate with the new employer as to whether the employees will transfer, and if so whether it will be on the same terms and conditions; • if employees will not transfer, must follow the pre-determined contractual process with the employees to determine what

	entitlements, if any, are available for them from the old employer. **Obligations on the new employer:** ***Employees working in protected sectors*** The new employer: • (unless it is an exempt employer) must accept all transferees who elect to transfer on the same terms and conditions of employment and with recognition of continuous service and leave entitlements; • is deemed to become a party to any applicable pre-transfer collective agreement in respect of that transferring employee; • if the new employer proposes to make the transferred employees redundant, it must comply with existing contractual redundancy entitlements or (if not specified and not specifically excluded) bargain with the employees to agree redundancy entitlements; • if no agreement can be reached the Employment Relations Authority, may determine redundancy entitlements. ***Employees not working in these sectors*** The new employer: • must negotiate with the old employer as to whether the employees will transfer, and if so whether it will be on the same terms and conditions; • is not obliged to make employment offers or accept transferring employees unless agreement is reached that it will do so.
USA	There is no specific legal protection for employees in the event of a business transfer. However, a buyer of assets cannot base its offers of employment on unlawful discriminatory considerations. Otherwise, it generally has broad latitude to select which of the employees from the predecessor business it wishes to hire.
Are employees protected where the part of the business they work for is contracted out to a new provider?	
China	There is no protection for employees in relation to contracting out.
New Zealand	Yes, in exactly the same way as with business sales. Protected sector employees are entitled to transfer employment to the new employer (unless new employer is an exempt employer) on the same terms and conditions and with recognition of continuous service and leave entitlements. If only part of their work is contracted out (or the work is fractured between providers) they are entitled to become part time with a number of different employers corresponding to how their work was fractured. A new employer is under no obligation to make employment offers or accept transferring employees from the old employer if they are not working in the protected sectors.

USA	There is no specific legal protection for employees if the part of a business in which they work is contracted out to a new service provider, or if an outsourced service moves from one provider to another. In the case of unionised operations, however, specific provisions of a collective bargaining agreement may create obligations or limit an employer's ability to make such changes. For example, there may be provisions that limit an employer's ability to subcontract bargaining unit work. Collective bargaining obligations may also be triggered if the change is motivated by a desire to reduce labour costs.
Is there a requirement to consult with employees (or their representatives) on a business transfer? If so, what are the requirements?	
China	There is no requirement to consult with employees in relation to business transfers.
New Zealand	Employers must always act in good faith in relation to their employees, including in these circumstances. ***Employees working in protected sectors*** • Statutory information needs to be provided to the employees by the old employer (see above). • The old employer may bargain with employees about alternative arrangements. • Otherwise there is no particular requirement to "consult" as such. ***Employees not working in these sectors*** In terms of consultation on the business transfer, as a matter of practicality (not statute) the old employer will need to inform the employees whether there will be an option to be offered employment with the new employer when the restructure occurs. If not, the old employer must follow a pre-determined contractual process with the employees to determine what entitlements, if any, are available for them if they do not transfer to the new employer. If redundancies will result, the old employer will be obliged to follow a normal redundancy consultation process before terminating employment on the ground of redundancy. In that process, employees are provided with all relevant information and given an opportunity to comment and make suggestions before final decisions are made.
USA	There is no law specifically requiring an employer to consult with employees or their representatives in the event of a business transfer. In the case of unionised operations, however, provisions within a collective bargaining agreement may create an obligation to consult with employee representatives. In addition, whether or not an employer is required to bargain with the union about a decision to transfer the business, by US labour law, the employer may have an obligation to engage in negotiations about the effects of the change, including the effects of a decision to terminate a part of its business, sell its business or subcontract bargaining unit work (i.e. "effects bargaining"). Subjects for effects bargaining vary with the circumstances, but may include topics such as the effects of a provision in a sales agreement,

	the methods by which employees might transfer to a new location, severance pay, or rights to benefits that will be discontinued. The purpose of effects bargaining is not necessarily to reach agreement, but to give employees a chance to soften the blow of a change by meaningfully discussing their concerns with the employer. As in other bargaining, the employer is not obliged to agree to a union's specific demands, but it must bargain in good faith. There is no set rule for timing, but effects bargaining must generally take place sufficiently in advance of the effective date of a decision to provide the union an opportunity to bargain meaningfully. The employer is not required to engage in effects bargaining to satisfy its obligation: it is only required to notify the union of the decision and make itself available should the union request bargaining. It is up to the union to request effects bargaining once notified of the matter by the employer. An employer also has an obligation to provide information requested by its employees' bargaining representative if needed for the meaningful performance of the union's duties. This includes information in support of claims or assertions made at the bargaining table. An employer's duty depends on the facts in each case, and there are exceptions if the information is confidential, privileged or not relevant to the parties' bargaining relationship. The requested information must be relevant to a union's collective bargaining responsibilities to trigger the employer's duty to make it available. Information is considered relevant if the union needs it to perform its obligations as a bargaining representative.

Breakout session
Performing on the global stage:
Working across borders - getting the tax right

Top tax tips

- Do not assume that because you continue to pay the employee through their home payroll, there is no tax or social security liability in the host country or that there is a continuing tax or social security liability in the home country.
- Seek professional advice in both the home and host countries. Do so, in particular, in relation to any relevant double tax treaty, so that you are clear on what the tax and social security withholding, payment and reporting obligations are for you and your employee. There could be withholding and reporting obligations in the host country even if ultimately the employee does not have any income tax liability in that country.
- Consider the social security position. The cost of social security and the benefits that are available may vary significantly from one country to another. Also, the employee may want to continue to be covered by his home social security regime, depending on the circumstances.
- Consider whether it is possible to structure the arrangement so that it makes the most of any income tax and social security exemptions or reliefs that may be available under a relevant double tax treaty and/or local laws in the home or host country. However, bear in mind the immigration and employment law implications. For example:
  - Is a secondment better than a transfer and, if so, what should be the length of the secondment?
  - If the employee is working for more than one company in the group, would dual or multi-employment contracts be appropriate?
  - Is there a special expat tax status in the host country and, if so, what conditions need to be satisfied to benefit from that status?
- Consider the implications of the arrangement for corporate tax purposes. For example, if the employee is sent on secondment or is a local hire by a foreign company, try to ensure that the employee will not create a permanent establishment for corporate tax purposes in the host country. For example, the employee should not have authority to conclude contracts on behalf of the employer.
- Inform the tax authorities in both the host and home countries and apply for any necessary clearances/certificates from the tax and social security authorities in each country (including an A1 certificate or certificate of coverage).
- Consider the position with pensions. The employee may want to remain an active member of his home country pension scheme.
- Consider the position with stock awards and stock options. For example, can the employee still participate in these plans and what are the tax and social security consequences? Remember that stock options and awards may be taxable at different times (at grant, at vesting or at exercise) in the different countries.
- Consider whether to give tax support to the employee and, if so, the appropriate level of support - for example, help with completing tax returns in both the home and host country. Also consider tax equalising the employee so that they are no better or worse off in tax terms as a result of the secondment.
- Make sure you get the contractual documentation right, including any secondment agreement, inter-company agreement, international assignment policy and/or tax equalisation policy.
- Plan ahead. Don't (if possible!) leave dealing with the tax and social security issues until the last minute.

- **Remember these are only tax tips.** Depending on the circumstances, there may be other points that will need to be considered, including:
  - Immigration – in some cases, a local contract may be necessary to get a visa or a work permit in the host country.
  - Employment law considerations.
  - Practical issues around structuring the remuneration package, such as: the currency in which the employee will be paid: what costs will be covered (e.g. travel and subsistence): and what benefits will be provided (e.g. private health care, help with schooling for children).

Case study 1: International secondment

Seconding a UK employee to the US

UK Ltd, a UK company, is considering seconding Jane Moore (JM), a UK resident and citizen, to work for US Inc, a US-subsidiary based in New York for one year full-time. JM is a director and will be paid $150,000 per year in wages, a housing allowance and education reimbursement. She will continue to perform services for UK Ltd and will be paid by UK Ltd for those services.

Questions to discuss

- What is JM's US tax position?
- What is JM's tax liability?
- What are the employer's US obligations?
- What is JM's social security position?
- Is there a risk of UK Ltd having a permanent establishment in the US?
- What is JM's UK tax position?
- What are the employer's UK obligations?

Case study 2: Working in two or more countries

Belgo NV, a Belgian company, specialises in online services and more specifically in the integration of the internet in the daily activities of a business. It is a full-service company (web design, e-commerce, digital transformation). Belgo NV is part of an international group, but does not have a permanent establishment in another country.

Belgo NV is considering hiring a UK employee, Lola Cooper ("LC"). She is a civil engineer and would be hired as the "Executive Creative Director". She has a lot of experience in web design and e-commerce.

LC will work three days a week in the UK (teleworking from home), about one day a week in Belgium, at the premises of Belgo NV, and about one day a week in France visiting customers.

Questions to discuss

- What is LC's tax position?
- Is it possible to set up a tax-efficient situation and how could this be achieved?
- What is LC's and Belgo NV's social security position?
- What are the tax withholding obligations?
- Are there any other administrative obligations for Belgo NV?
- Is there a risk of Belgo NV having a permanent establishment in the UK and/or in France?

CLIENT NAME	Belgo NV
EMPLOYEE NAME	Lola Cooper
DATE	13/01/2017
SUBJECT	Simulations BE/UK

Personal Information

General

- Residence	UK	
- Fiscal status	Employee	
- Civil status (Married/legally cohabitating = Y/Single = N)	N	
- Partner with income (Y/N)	N	
- Number of children at charge	0	
- Gross base remuneration (gross monthly salary x 12)	€ 86.206,90	£74.864,66
- End of year premium	€ 7.183,91	£6.238,72
- Holiday pay (85%)	€ 6.106,32	£5.302,91
- Holiday pay (7%)	€ 502,87	£436,71
- Total gross salary	€ 100.000,00	£86.843,00
- Exchange rate (1 EUR =)	GBP 0,86843	

Overview of Calculations

Calculation 1:	100% taxation in Belgium - Belgian social security
Calculation 2:	100% taxation in UK - UK social security
Calculation 3:	Split taxation: 20% Belgium - 80% UK - UK social security

Calculations

	Calculation 1		Calculation 2		Calculation 3	
1. Gross-net wage	**EUR**	**GBP**	**EUR**	**GBP**	**EUR**	**GBP**
Gross base salary	86.206,90	74.864,66	86.206,90	74.864,66	86.206,90	74.864,66
Gross end of year premium	7.183,91	6.238,72	7.183,91	6.238,72	7.183,91	6.238,72
Gross double holiday pay	6.106,32	5.302,91	6.106,32	5.302,91	6.106,32	5.302,91
Gross supplementary holiday pay	502,87	436,71	502,87	436,71	502,87	436,71
Total gross income	**100.000,00**	**86.843,00**	**100.000,00**	**86.843,00**	**100.000,00**	**86.843,00**
(Minus) Belgian social security contributions for employees (13,07%)	-13.004,27	-11.293,30	0,00	0,00	0,00	0,00
Taxable income	**86.995,73**	**75.549,70**	**100.000,00**	**86.843,00**	**100.000,00**	**86.843,00**
(Minus) Belgian income taxes (including communal taxes)	-37.122,43	-32.238,23	0,00	0,00	-4.519,39	-3.924,78
(Minus) Special social security contributions (Belgium)	-731,28	-635,07	0,00	0,00	0,00	0,00
(Minus) UK income taxes	0,00	0,00	-27.563,76	-23.937,20	-23.044,37	-20.012,42
(Minus) UK social security contributions for employees (NIC)	0,00	0,00	-5.837,73	-5.069,66	-5.837,73	-5.069,66
Estimated net income	**49.142,01**	**42.676,40**	**66.598,51**	**57.836,14**	**66.598,51**	**57.836,14**
Difference net for the employee			**17.456,49**	**15.159,74**	**17.456,49**	**15.159,74**

	Calculation 1		Calculation 2		Calculation 3	
2. Employer's cost (ignoring any corporate tax deduction)	**EUR**	**GBP**	**EUR**	**GBP**	**EUR**	**GBP**
Total remuneration	100.000,00	86.843,00	100.000,00	86.843,00	100.000,00	86.843,00
Belgian social security contributions for employer on wage	29.885,06	25.953,08	0,00	0,00	0,00	0,00
UK social security contributions for employer on wage	0,00	0,00	12.510,95	10.864,88	12.510,95	10.864,88
Total estimated cost for the employer	**129.885,06**	**112.796,08**	**112.510,95**	**97.707,88**	**112.510,95**	**97.707,88**
Difference cost for the employer			**-17.374,11**	**-15.088,20**	**-17.374,11**	**-15.088,20**

Case study 3: business visitors to the UK

Widget Inc, a US company, is a global manufacturer of tools. It has a subsidiary in the UK, Widget UK Ltd.

Widget Inc has appointed a new global CEO, Martin Grant ("MG"), who regularly comes across to the UK to get to know the team and discuss business opportunities. His visits average 70 days a year. Martin is paid by Widget Inc and no part of his remuneration is recharged to Widget UK Ltd.

Questions to discuss

- What is MG's UK tax position?
- What are Widget Inc's withholding obligations?
- What are Widget UK Ltd's withholding obligations?
- Is there a risk of Widget Inc having a permanent establishment in the UK?

Women in leadership - creating a change

Improving Gender Balance – The Checklist

Many companies are now working to improve their gender balance, not just at Board level but in their senior teams and throughout the organisation. They are looking for some simple guidance on how to do this. Below is a straight forward checklist which sets out what components and processes need to be in place, to help organisations on their journey.

1. Know Your Starting Point

Collect and analyse relevant data

- Know the gender split at every level in the organisation
- Know all of the senior women in the organisation
- Analyse promotion rates by gender, both internal promotions and external hires
- Analyse turnover rates by gender and returner rates (e.g. post maternity, career break, secondments)
- Conduct Pay Gap audits annually and take swift action to re-dress the gap
- Assess work and key client allocation by gender to ensure pivotal career roles and/or clients are allocated equally to men and women.

2. Feedback and Targets and Monitoring

Seek feedback, act on it, monitor and reward progress

- Ask the women for views on gender equality, what obstacles are in the way and what might hold them back
- Conduct independent 'Exit' interviews for leaving employees, ask about equality and fairness
- Set realistic but stretching internal targets to improve gender balance
- Hold senior employees to account for progress through performance appraisals and bonus awards, reward and celebrate success
- Monitor overall performance and action plans to address gaps at Executive and Board level
- Seek out and adopt best practice from other organisations further on the journey.

3. Unconscious Bias

Recognise unconscious bias is prevalent in decision making and interactions

- Implement unconscious bias training for line and senior managers, with regular refresher training and action plans to support learning
- Ask the women when opportunities arise – don't make assumptions about women's ambition, preferences or personal circumstances
- Encourage and support women into challenging, high visibility assignments, or to gain international experience
- Heavily weight authentic and different leadership styles and make room for all styles at the top.

4. Processes

Lift the lid on talent management processes which sit deep within the organisation

- Evaluate Recruitment processes for gender bias, ensure diverse selection panels and good gender balance when short listing candidates
- Build cross validation steps into performance appraisals to limit personal bias and judgements
- Encourage men and women to take up flexible and part-time working options, shared parental leave, and return ships, showcasing examples of both genders.

5. Talent Management and Development

Smart talent management and initiatives to profile women

- Engage and include men, they are the majority decision makers and are key to facilitating change
- Ask Executive and senior most employees to each sponsor one capable, high potential women
- Set up formal mentoring programmes whereby senior men and women, mentor aspiring women
- Encourage cross-organisation networks for men and women, helping increase the visibility of women as senior role models
- Encourage senior women to go for board positions outside the organisation, raising their profile, value and skill set.

Additional reading and resources

- The Pipeline: Women Count 2016: the Number and Value of Female Executives in the FTSE 350

  http://pipelinewomen.org.uk/wp-content/uploads/2015/02/WOMEN-COUNT-20162.pdf

- The Female FTSE Board Report (Cranfield University)

  http://www.som.cranfield.ac.uk/som/dinamic-content/research/ftse/FemaleFTSEReportMarch2015.pdf

- CIPD: Gender diversity in the Boardroom

  https://www.cipd.co.uk/Images/gender-diversity-boardroom_2015-reach-for-the-top_tcm18-10828.pdf

- Davies Review (report and 5 year review)

  https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

  https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482059/BIS-15-585-women-on-boards-davies-review-5-year-summary-october-2015.pdf

- Opening the black box of board appointments: comparing women's and men's routes to the boardroom

  http://www.openingtheblackbox.co.uk/uploads/1/6/6/1/16613194/opening_the_black_box_of_board_appointments.pdf

- Good intentions, imperfect execution? Women get fewer of the "hot jobs" needed to advance (Catalyst)

  http://www.catalyst.org/system/files
  Good_Intentions_Imperfect_Execution_Women_Get_Fewer_of_the_Hot_Jobs_Needed_to_Advance.pdf

- Linchpin – Men, Middle Managers and Gender Inclusive Leadship (Cranfield School of Managemnt)

  https://www.cranfield.ac.uk/som/research-centres/global-centre-for-gender-and-leadership/gender-inclusive-leadership

- The 30% club (growth through diversity):

  https://30percentclub.org/

- Women in executive management inquiry

  http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/women-in-executive-management-one-off-evidence-session-15-16/

- Ensuring strong equalities legislation after EU exit inquiry

  http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/ensuring-strong-equalities-legislation-after-eu-exit-16-17/

- Gender pay gap inquiry

  http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/584/58402.htm