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**New Directive Capping
Bankers' Bonuses**

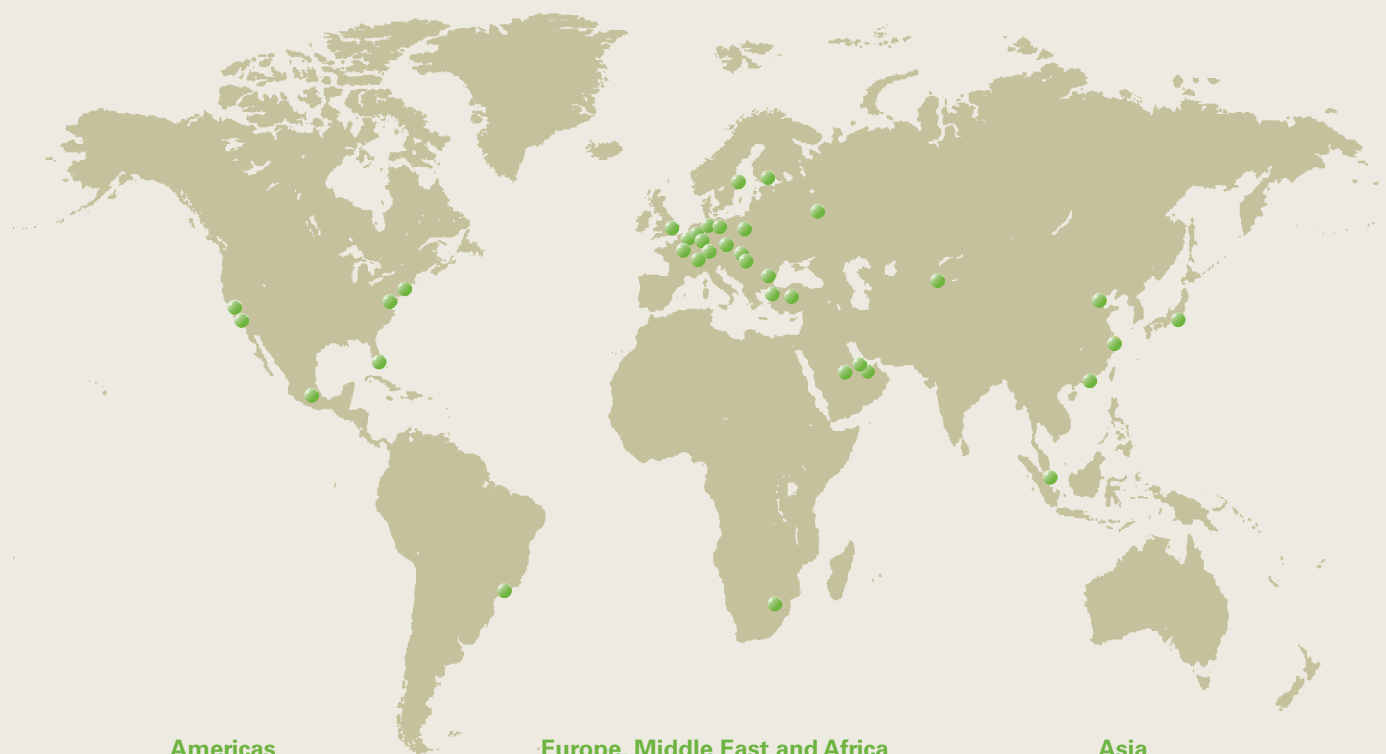
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Europe, Middle East and Africa

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New Directive Capping Bankers' Bonuses

The European Parliament agreed at its plenary in Strasbourg on 7 July, on the wording of the new Capital Requirements Directive (the "Directive") following the agreement reached between the European Council and Parliament on 29 June. A summary of the provisions appears below.

The Directive imposes restrictions on the way in which bankers' bonuses are to be paid and aims to promote the long term health of the financial system by preventing risk-taking and encouraging stability including the introduction of new rules concerning capital. The bonus provisions of the Directive are due to take effect in January 2011, whilst the capital requirement provisions will take effect by 31 December 2011 at the latest. The Directive will require implementation into UK law through the adoption of domestic legislation. Each Member State must implement the Directive within prescribed time limits, usually in the region of 2 years after the Directive takes effect.

The new rules

- (i) Bonuses will be capped to salary in accordance with EU guidelines, in order to reduce the disproportionate use of bonuses in the banking sector.
- (ii) Cash bonuses will be capped at 30% (or 20% for particularly large bonuses). This strict limit aims to ensure that bonuses are linked to the long term benefit of the bank, rather than short term risk-taking.
- (iii) 40-60% of any bonus must be deferred and will be clawed back in the event that investments do not perform as expected.
- (iv) At least 50% of the total bonus will be paid in the form of contingent capital and shares whereby such money or shares can be called upon at first instance in the event of bank difficulties.
- (v) Bonus-like pensions will be regulated. In particular, exceptional pension arrangements will be held back and linked to the underlying strength of the bank in question.
- (vi) Banks which were bailed out by taxpayers will receive additional stringent restrictions restraining the amounts to be paid out in bonuses. The Directive seeks to make it clear that the top priority of such banks shall be the repayment of the taxpayer.
- (vii) Details of pay and bonus practices must be made publicly available in order to aid transparency and accountability.

- (viii) New capital rules for re-securitisations are included to encourage banks to sufficiently cover the risks which are exercised.
- (ix) The way in which banks assess the risks connected with their trading books (their portfolio of securities) will be reformed in order to increase substantially levels of capital held against it.
- (x) Corporate governance reforms are included which are aimed at addressing current failures. These reforms include the requirement to establish Remuneration Committees, comprised solely non-executive directors.

Commentary

The new Directive aims to deliver a clear message to banks, as well as to the general public, regarding the activities of bankers and the impact that such activities have had on the recent global economic crisis. In the context of a new era where excessive risk-taking and short-termism are frowned upon and where employees in the financial sectors are being forced to address their previous behaviour, this new Directive will set into law, once implemented in the UK, a further layer of regulation and scrutiny.

As stated by Arlene McCarthy, Vice Chair of the Economic and Monetary Affairs Committee,

"Tough new rules on bonuses will transform the bonus culture and end incentives for excessive risk taking...In the last two years the banks have failed to reform, and we are now doing the job for them."

Whilst the aim of the legislation is to reward long term performance over short term risk-taking, there is a school of thought which highlights various concerns, particularly regarding the dampening of competition and returns. In fact, whilst this is a European Directive, unless these changes are reflected globally, such caps on bankers' bonuses could lead to an inevitable brain drain as top executives search for higher salaries. The only way to prevent this would be to achieve a global consensus. The Directive is in fact in line with the G20 communique, which took place just over a week before the agreement between the Council and Parliament was finalised. As yet there is no global cap on banking bonuses, however Western nations are likely to follow in the near future.

On a practical note, both bankers and regulators have been caught by surprise following the agreement reached at the end of June. Each side is now trying to figure out how the rules will work and how the Directive will be implemented into law in each of the EU Member States.

News in Brief

In this section we highlight some recent legislative changes which may affect your business.

Employment and Labor Law

Czech Republic



The new right wing parliament, elected on 29 and 30 May 2010, is proposing several liberal changes to labor law over the next four years, in particular changes in the hiring and redundancy of employees, and matters regarding employment during times of recession. Czech labor law, which has thus far remained quite rigid, may therefore experience some of the greatest changes it has seen in 45 years. These changes will reflect matters of employment in times of economic slow-down and try to modernize forms of employment, work management, labor agencies, the hiring-out of workers between companies, the sharing of a work position between workers with half-time employment, and working hours.



Those employers who are sending their employees to work abroad on secondment are looking forward to favorable changes as of 1 January 2011. The Czech government has responded to requirements of the European Council Directive as well as to the needs of the market by adjusting options for fixed-term employment.

According to the present arrangement, fixed-term contracts can be a maximum of only two years, even for workers seconded abroad to finish a particular project. This line was drawn to protect the employees and to prevent employers pushing employees to accept offers of indefinite term employment.

The new statutory regulation proposes the extension of the maximum fixed term from two to five years for workers on secondment, not only within EU but also further afield. The employment contract will be governed by Czech law but an exception from the general fixed term employment

rule will be made. Companies will therefore avoid painful processes on termination of the indefinite term employment.

The statutory regulation also resolves the situation of different timing of bank holidays in the Czech Republic and the place of business of the employee. The employee will enjoy bank holidays of the country in which he/she is working.

France



In application of decree number 2010-64, dated 18 January 2010, an employer must mention on the work certificate, remitted to the employee upon his/her departure from the company, the acquired rights with respect to the individual training right, this indication being complementary to the other compulsory information (dates of entry and departure, nature of the position or of the positions subsequently held and respective periods of time). More precisely and pursuant to Article D.1234-6 of the Labor code, the employer must indicate (i) the number of acquired and unused hours, (ii) the corresponding amount, and (iii) the name of the institution that is competent for financing the training measures undertaken within the frame of the individual training right.



According to French Labor law, the internal redeployment obligation by which all French employers are bound when contemplating redundancies for economic reasons is assessed at the group level. Within companies operating on an international level, this obligation leads French employers to propose to affected employees redeployment positions situated outside the French territory, irrespective of the conditions of employment linked to these positions (notably in terms of application of local labor law and salary). This obligation has given rise to numerous debates and interpretations over recent years which have forced the French legislature to intervene. A bill passed on May 18, 2010 sets forth a specific procedure applicable to the redeployment

of employees outside the French territory (article L. 1233-4-1 of the French Labor Code). Under this new procedure, French employers are required to ask their employees, prior to notifying them of their redundancy, whether or not they are interested in receiving redeployment offers for positions situated abroad and, if so, such redeployment offers shall be subject to certain limits to be observed by the employer, particularly in terms of location and salary. From a practical standpoint, such queries will be carried out by means of a questionnaire to be provided to the employees concerned. As from the receipt of said questionnaire, the employee has six business days to accept or decline. Only those employees who have responded positively to the questionnaire will receive offers for redeployment positions abroad. The redeployment offer made by the company must be precise, in writing and meet, as the case may be, the employee's requirements mentioned in the questionnaire.



For the first time, the French Supreme Court (Cour de cassation) has ruled that, in order to avoid any potential discrimination, the (quantitative) targets set by the employer with respect to variable remuneration need to be adjusted when dealing with an employee representative. Indeed, employees that serve as employee representatives must not be penalized by the fact that they spend less time on the performance of their actual professional functions due to their activity as employee representative. In other words, the performance of such role(s) must not negatively influence the employee's remuneration. The calculation method which will need to be adopted by French employers from now on is as follows: for the portion of the employee's activity dedicated to his/her employee representative role, the employee is entitled to the average amount paid to other employees for an equivalent period of time; for the portion of activity that corresponds to the performance of the employee's actual professional activity

(called “temps de production”), the calculation of the variable remuneration must be based on reduced targets in light of the time spent in the role of employee representative. Companies will have to anticipate these new rules when preparing and negotiating 2011 bonus plans in the next months.

Germany



Currently, the core regulation for the protection of employee data is found in section 32 of the German Data Protection Act. The government plans to replace this provision and extend the scope of protection. Among the corner stones of the proposed new regulation are the following issues:

- Any collection, usage and/or transfer of employee data will only be permissible, if the requirement of necessity is met. The government proposal elaborates on the new necessity criteria in further detail.
- The new law will have provisions to fight corruption and rules regarding compliance issues will be added.
- Special provisions will govern the use of email, internet and telephone data. According to the proposal employers are allowed to collect and save all necessary data of communication acts of their employees. However, if the communication has obviously been for private purposes, the employer has to observe certain restrictions. Private data may only be collected if there is – for instance – a suspicion of criminal behaviour or a serious breach of contract by the employee.
- The proposal restricts the use of video surveillance and biometric control methods with regard to the employment relationship.

The change in the law can be seen as a consequence of recent data protection scandals in Germany. Some major companies were accused of not respecting the employee’s privacy and data protection rights when surveilling the workforce or collecting data about the employees financial situation and other sensitive issues.

Poland



Pursuant to Polish Labour law, employers are obliged to allow employees time to improve their professional qualifications.

The parameters of this obligation have been set by several government ordinances.

However, the Polish Constitutional Tribunal considered these incompatible with the Polish Constitution. On 16 July 2010, an amendment to Labour Law entered into force which regulates the rights and duties of an employer and employee in this area.

According to the amendment, improving qualifications is understood as an employee gaining or supplementing their knowledge or skills at the employer’s initiative or consent.

All of the rights and duties of the employer and of the employee connected with this should be specified in a written agreement between those parties. The employer is generally obliged to enter into such agreement with the employee, except when the employer does not wish to continue the employment relationship with the employee after they have completed courses undertaken to improve their qualifications.

In general, employees are entitled to paid leave to allow them time to improve their qualifications. The employer may (but is not obliged to) make additional payments to the employee to cover the employee’s costs of education, transport and accommodation in connection with activities undertaken to improve the employee’s qualifications.

The employee may have to reimburse any payments made by the employer if the employee terminates the employment agreement while still undertaking activities to improve their qualifications, or after such improvement is completed, but before the term agreed in the employment agreement has expired.

Romania



On 11 August 2010, the Romanian Prime Minister publicly announced that the Government is preparing a

comprehensive legislative package seeking to amend the existing employment and labour framework. The Labour Code, the law on trade unions, the law on employers’ associations and the law on collective bargaining agreements are the main enactments that are likely to undergo changes. The Romanian Government announced that it may also put up for debate a Social Assistance Code, establishing unitary regulation for the social security rights and welfare, as well as a

new law concerning wages in the public sector. Although no specific details have been made public yet, it is hoped that the new legislative package would increase the flexibility of the labour force and provide incentives for investors to create new jobs and for Romanian citizens to renounce welfare benefits in favour of active employment. The new legislative package will be sent to the Parliament most likely in September or October, but the Romanian Prime Minister has suggested that it might be possible to have this legislative package passed without parliamentary debate, by an accelerated procedure.

Russia



According to new amendments to the Criminal Code introduced on 11 May 2010, failure to respect the labor safety rules may entail, in particular, criminal liability for the company’s executives (if the violation of the labor safety rules has caused, as a result of negligence, serious harm to health), including (i) a penalty of up to RUB 200,000 (US\$ 6,667) or the executives’ salary or other income for up to 18 months; (ii) correction works for a maximum of two months, (iii) imprisonment of up to one year, or (iv) mandatory works for a term of up to 240 hours.

It is also noteworthy that the criminal sanctions may be more severe if the violation has caused human death. In this case the company’s executive may be imprisoned for up to three years and deprived of the right to occupy certain positions or perform certain activities for up to three years.

Slovakia



As a result of respective EU regulations and proceedings initiated by the European Commission, the Slovak Parliament adopted an amendment to the Labor Code which enables employers to conclude or prolong an employment contract for a definite term twice in two years, as opposed to the current restriction of once in three years. The amendment also abolishes the simpler termination regime for part-time employment contracts, thus making the regime the same as the termination regime for full time contracts.

News in Brief



The new right wing Government elected in June 2010 has proposed amendments to the Labour Code which aim to motivate employers to support work-life balance by establishing more flexible labour relations. The Government hopes to propose changes to lower expenses for employers by abolishing the overlap between termination notice period and severance pay (at present, a minimum of two months wages on top of the payment in respect of the notice period). The proposed changes should remove the possibility for extension of collective bargaining agreements without the consent of the employer, thus lessening the privileges of labour unions and better enabling the employer and employee to agree on operative changes of working conditions directly at the site. The conditions for the provision of medical care at workplace should also be simplified. Employers' expenses may increase as a result of anticipated changes in the field of social and health insurance payments, which shall affect both employees and employers as contributors to the system.

South Africa



In South Africa, the duties and liabilities of directors are governed by both common law and statute. Failure to properly perform common law duties may render a director personally liable for monetary damages, whereas the inability to perform certain statutory duties may result in a director facing criminal liability. Currently, statutory duties are regulated by the Companies Act, 1973 (the "Companies Act"). The Companies Bill, 2008 (the "Companies Bill"), which will replace the Companies Act in its entirety, is anticipated to come into effect in October 2010 but may only be enacted in early 2011.

The new Companies Bill has codified director duties, clarifying what is legally required and asserting that directors must be sufficiently qualified and where necessary, have relevant experience to perform the role. The Companies Bill proposes that directors are personally liable

for losses sustained by the company as a result of a failure to perform their duties with adequate care, diligence and skill. There are certain notable additions in the Companies Bill that will extend directors' duties and liabilities, thereby increasing the accountability of directors to the shareholders of a company. These additions include those requirements which relate to directors' use of information and conflicting interests (section 75), the standard of directors' conduct (section 76) and certain liabilities which are placed on directors and officers (section 77). The Companies Bill also incorporates a section addressing the standard of conduct expected from directors (section 91) in the "business judgment rule," which qualifies a director's judgment as being "reasonable" if the director has taken reasonably diligent steps to become informed about the subject matter at hand, does not have a material personal financial interest in such subject matter and demonstrates judgment that a reasonable individual in a similar position could hold in comparable circumstances. These provisions are in addition to, not in substitution for, a director's common law duties. Furthermore, the Companies Bill refers to directors as including alternate directors and a prescribed officer or a person who is a member of a committee of a board of a company or of the audit committee of a company.

While not statutory, the third King Code and Report on Governance in South Africa ("King III") recently become effective in March 2010 and provides guidance on certain corporate governance principles that will be enacted in the Companies Bill. King III requires directors to act in "the best interests of the company," as does the Companies Bill. King III is drafted on an "apply or explain" basis that requires management to explain how the principles of the code were applied, or if not applied, their reasons for not applying them.

United Kingdom



The UK government has announced that the Equality Act 2010 will be implemented on 1 October this year. The Act

consolidates existing equality law into a single piece of legislation and introduces a number of new rights and remedies to protect individuals from discrimination. For example, pay transparency will be increased by making secrecy clauses unenforceable in certain circumstances and there is a power for the government to require employers to publish information relating to differences in pay between male and female employees.

The Act now prohibits employers from asking pre-employment health questions of a prospective employee other than in certain limited circumstances and also extends the scope for employers to positively discriminate in relation to under-represented groups.

The Government have announced their proposal for the abolition of the default retirement age of 65 in the UK. Under this proposal, employers will be prohibited from issuing new notifications of retirement using the default retirement age from 6 April 2011. An employer will no longer be able to prescribe a compulsory retirement age, unless it can justify it as a proportionate means of achieving a legitimate aim.

The Agency Workers Regulations 2010 come into force in October 2011. The Regulations give temporary agency workers in the UK the right to the same basic employment conditions after 12 weeks in a given job as if they had been employed directly by the entity to whom they provide their services.

United States



On 15 April 2010, Congress voted to approve the Continuing Extension Act of 2010 (H.R. 4851) (the "Act"), which, among

other things, extends eligibility for the COBRA premium subsidy provided by the American Recovery and Reinvestment Act of 2009. President Obama signed the Act into law on 16 April 2010. Eligibility for the COBRA premium subsidy, which had previously expired on 31 March 2010, has now been extended to 31 May 2010. Under the Act, individuals who are involuntarily

terminated between 1 April 2010 and 31 May 2010, and who would have otherwise been qualified to receive the COBRA premium subsidy, will now be eligible to receive it. Another bill passed by the Senate and currently being considered by the House of Representatives, would further extend eligibility for the COBRA premium subsidy until 31 December 2010.



On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act

into law. The Dodd-Frank Act contains, among other things, provisions intended to encourage employee whistleblowers by providing monetary rewards for providing information to the Securities and Exchange Commission ("SEC") and/or the Commodity Futures Trading Commission ("CFTC"). Sections 748 and 922 also prohibit retaliation against a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower (i) in providing information to the SEC or CFTC in accordance with the whistleblower reward provisions; (ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the SEC or CFTC based upon or related to such information; or (iii) in the case of Section 922, making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 ("SOX Act"), the Securities Exchange Act of 1934, Section 1513(e) of Title 18 of the United States Code, or any other law, rule, or regulation subject to the jurisdiction of the SEC. Sections 748 and 922 create a private right of action in federal court for whistleblowers who have suffered such unlawful retaliation. Section 1057 of the Dodd-Frank Act also creates a private right of action for employees in the financial services industry who are retaliated against for disclosing information about fraudulent or unlawful conduct related to the offering of a consumer financial product or service primarily for personal, family or household purposes.

The Dodd-Frank Act also clarifies that the SOX Act applies to employees of all subsidiaries and affiliates of publicly traded companies "whose financial information is included in the consolidated financial statements of [the publicly traded company]" – many courts had previously held that the SOX Act applies only to

publicly held companies and not to their non-publicly traded subsidiaries. Among other things, the Dodd-Frank Act also doubles the statute of limitations for SOX Act whistleblower claims from 90 to 180 days and also prohibits predispute arbitration agreements for SOX Act claims.

Compensation and Benefits

Australia



From 1 July 2009, an entity which provides employee share schemes in Australia (an "ESS Provider") is subject to reporting obligations to both the individual employee and the Australian Tax Office (ATO). An ESS Provider is required to provide a 'ESS statement' to each employee no later than 14 July each year if an ESS taxing event occurred for that employee in that financial year. In addition, such an ESS Provider is required to lodge an 'ESS annual report' in the approved form to the Commissioner of Taxation no later than 14 August for each year in which an ESS taxing event occurs for at least one employee during that year.

France



The Government has announced proposals to enact President Nicolas Sarkozy's flagship pension reforms, which include raising the legal retirement age from 60 to 62 or 63, extending contribution periods and increasing taxes in order to plug the country's pension deficit, which stands at between 1.7% and 2.1% of GDP.

Greece



The new capital tax regime is set to come into effect as of 1 January 2011. The new rates will mean that the sale of shares which have been held for 3-12 months will be taxed at a 10% rate, whilst shares held for less than 3 months will be taxed at 20%. No capital gains tax will be due on the sale of shares held for over 12 months. The previous capital gains tax regime will continue to apply to shares acquired prior to 1 January 2011, where all shares sold would be subject to a flat transaction tax rate of 0.15%.

A new method of income calculation has been introduced following a new Greek tax law effective as of on 27 April 2010, applying to all outstanding options as of this date. Income from options is now calculated as the difference between market value of the shares at exercise and the exercise price. It is advised the issuers apply for a tax ruling from the Ministry of Economy and Finance to confirm the tax treatment of equity awards other than options. Furthermore, a number of key issues have been left unaddressed including employer tax withholding and reporting obligations as well as social security contributions. Once again, it is advised that clarification is obtained from the Ministry of Economy and Finance, and/or the Greek social insurance authorities.

Romania



The Constitutional Court has rejected the Government's demands for a 15% cut in state pensions as part of a deficit-reducing financial austerity measure. In a decision that cannot be appealed, the court ruled that the pension cut was unconstitutional. The court did not publish its reasoning behind the ruling, but unions say pensions partly funded by worker contributions to are protected by the constitution.



On 1 July 2010, significant amendments to the Romanian Fiscal Code entered into force. In this respect, the standard VAT rate was increased from 19% to 24% and several new taxes were introduced for the purposes of increasing the tax revenues. As such, the interest paid by credit institutions in relation to bank accounts and deposit to natural persons will be taxed at a rate of 16%. Meal, nursery and vacation tickets are henceforth considered as taxable benefits, subject to a 16% tax, as well as compensation paid to employees made redundant. The tax on capital gains from share transfers was set at 16%, regardless of the period of time during which such shares were held. As of the same date, all persons gaining income from an independent professional activity on a regular basis are required to pay mandatory social security contributions.



Stephen Ravenscroft

Stephen Ravenscroft (centre) runs out for England against Australia led by Jonny Wilkinson

“The reason I chose to work in employment law is that it has a very human face”

Sitting across the table from Stephen Ravenscroft, you have to look closely to see the scar above his right eye which required 14 stitches and is just one of many lasting memories of an England and Premiership rugby career which preceded his career as a partner in the global employment team at White & Case.

He collected the scar against Australia playing in one of two full England cap appearances, on tour to Australia, New Zealand and South Africa, playing alongside people such as Jonny Wilkinson.

But as he explains, while rugby was at one time the driving force in his life, employment law was always something he wanted to practise, and now takes a clear first place.

“I came to London to study for my law degree at Kings College, but the main priority was to play for a top rugby club.

Throughout University and in fact my trainee lawyer years and beyond I was a part of top English side Saracens, playing 115 first team games for them, in addition to representing England at all levels including England students, Under 21 and 'A'.

But employment law was always an interest with my law degree at Kings, my option was labour law and my LPC option was employment law.

My main reason for focusing on employment law is that you can put it into the context of real life. Most people want a secure job, in a fair working environment, with equitable rewards, so the detail of employment is very real to everyone.

I had some great times as a rugby player, even spending a year playing abroad in New Zealand, in the same team as a number of All Blacks, and another in South Africa, the year they won the World Cup – but as I got older, the focus shifted from rugby to the law.

Nowadays, I play occasionally, I'm president of Saracens and participate in some games for Wooden Spoon, the rugby charity, but the next step will be to get involved in mini rugby with my two kids.

I joined White & Case in 2008 a couple of weeks before the recession really bit, so my first five weeks I, like everyone, sat there and watched in trepidation, as the stock markets dropped like a stone.

As a consequence, much of my immediate client workload was focused on redundancy advice, cost cutting and tying up deals before funding dried up.

It's fair to say that this was the same picture for the first half of 2009, but then in the second half of the year we did see some momentum which has continued in 2010 – but the number of transactions is, of course, still nowhere near the level of three or four years ago.

The biggest difference working with White & Case is that virtually everything has an international element to it whether it be our clients or the cross-border nature of the advice we provide – which makes both interesting and challenging work.

You have to have a broader understanding of the requirements across a range of countries and you also have to be used to working closely with our excellent colleagues in local offices, who really understand the local requirements in depth. That is an aspect of the work I really enjoy.

Our international client base is fantastic, and we do seek to serve our clients on a global basis, not just domestically.

Our clients have a range of issues that are keeping them busy at the moment – many still related to the current business climate.

Regulation

In the financial industry, it's about greater regulation around pay, bonuses and benefits, combined with the disclosure and transparency now expected by shareholders and the public too.

The difficulty is that there has been no consistent approach to these issues across all countries, so now we have different requirements in each country, which doesn't make it easy for our clients. And it's also a difficult balance for the governments too, as they try to ensure that the regulatory burden isn't such that companies think about moving their key workers, or total operations somewhere else.

We've seen clients actively assessing moving their operations.

There's also still a great deal of uncertainty out there – many businesses are taking a conservative approach to HR and hiring at the moment and the gamut of laws dealing with employment across the EU continues to grow. We are getting to the point where there is so much regulation around the employment relationship that it is a huge burden for employers.

Trade Unions

One common effect of a downturn is the rise of trade union activity, which is something we are seeing widely across Europe and further afield.

Having a global team gives us a real advantage here as it is often very tough to understand the requirements of local trade union laws. In fact in some countries, our lawyers are actively involved in face to face negotiations with trade union representatives.

Tax

Tax issues are another major concern, and again here this is something that is very jurisdiction-specific so clients are always looking for information on tax effective structures that are still available, as part of their reward packages. We have in-house tax knowledge, plus the support of our local experts, which helps us on this score.

Globalising policies

Global clients are looking more and more to establish global policies, procedures, standards and rules, which can be a real challenge as we have to look at the countries with the most onerous requirements in order to create a global policy that satisfies those requirements.

Data Protection

Data Protection continues to be a concern, as companies continue to operate globally, and need to be able to review and manage employee information across jurisdictions.

Incentives and Restrictive Covenants

In a downturn, creating incentives to persuade top people to stay with a business, or preventing them jumping ship and taking business with them, become even more important.

To encourage people to stay, we are seeing an increased interest in stock option plans and incentive plans with deferred elements, while restrictive covenants which can be effectively applied to individuals and teams, perhaps across a range of jurisdictions, are on the agenda for a number of businesses we are working with.

And we have also advised 'on the other side of the fence' too – working with clients seeking to recruit teams and individuals from competitors notwithstanding their restrictive covenants.

Career to date



Joined White & Case in 2008 as a senior associate, became a partner just 14 months later. Joined from Ashursts where he was an associate for eight years and qualified at Lovells.

Graduated from Kings College, London.

Married to Sarah with two children, Evie who is four and Thomas who is one and a half.

Home is Greenwich, South London, originally from Ilkley in West Yorkshire.

Proposed EU Directive facilitating intra-corporate transferees



On 13 July the European Commission published its long-awaited proposal for a new EU Directive on intra-corporate transferees (ICT), intended to make it easier for multinational corporations to transfer non-EU employees temporarily to another branch or subsidiary located in the EU.

Specifically, it is intended to address a number of obstacles which currently exist for companies wanting to transfer non-EU nationals to the EU temporarily: the lack of clear specific schemes, the complexity and diversity of visa or work permit requirements, costs and delays in transferring foreign ICTs from one European corporate headquarters to another and the difficulties with securing family reunification. Additional difficulties exist for the mobility of ICTs across Member States within the EU.

The main highlights of the proposal are:

- Transparent and fast-track entry procedure: 30 days to process applications, with a common definition and harmonised criteria;
- Single application for a combined work and residence permit;
- Procedural safeguards: possibility to challenge rejection decisions and requirement that authorities give reasons for such decisions;
- More attractive residence conditions for the families: handling of applications for family reunification in the first State of residence within two months;
- Enhanced mobility within the EU: ICTs would be issued with a permit allowing them to carry out their assignment in the employer's various entities, including, under certain conditions, those located in other Member States;
- Level playing field with EU workers: ICTs should enjoy the same working conditions as posted workers whose employer is established on the territory of the EU;
- Flexible system to take account Member States' needs: this Directive would not create a right of admission; Member States would still be able to determine themselves the volumes of admission of third-country nationals entering their territory;
- A fast-track procedure for recognised undertakings, allowing accelerated procedures for the issuance of permits and visas.

This is just the first stage of the legislative procedure. The proposal still has to be agreed by the European Parliament and the Member States in the Council, a process which can take more than a year and during which the proposal can be amended many times.

Once adopted, an EU Directive has to be transposed into national law by the EU Member States. Therefore it will be some years before these new rules become reality.

Clarification of rules on pay during pregnancy or maternity leave



The European Court of Justice (“ECJ”) has clarified the obligations of employers to pay allowances to workers during pregnancy or maternity leave, where they are temporarily transferred to another job or granted leave from work.

Two separate references on the application of the Pregnant Workers Directive (92/85/EEC) had been made to the ECJ by national courts, one from Austria and another in Finland.

In the first case, Ms Gassmayr had worked before as a junior hospital doctor, and received in addition to her basic pay, an allowance for on-call duty. She stopped working during her pregnancy and was refused that allowance during the period when she was not working. Austrian law excluded the payment of the on-call duty allowance to persons who are not actually performing on-call duty.

In the second case, Ms Parviainen had worked before her pregnancy as a purser for the airline Finnair. A substantial part of her pay was made up of supplementary

allowances attached to her seniority or intended to compensate for the specific disadvantages connected with the organisation of working time in the air transport sector. On becoming pregnant, she was temporarily transferred to a ground job until her maternity leave began. Following that transfer, her monthly pay was reduced, in particular because she no longer received the allowances for being a purser.

Both women brought actions against their employers on the ground that their remuneration had been reduced during their pregnancy or maternity leave. The national courts referred the cases to the ECJ, asking whether the Pregnant Workers Directive allows employers to refuse to pay certain allowances which the workers had received before their pregnancies.

The ECJ held that:

Both Ms Gassmayr and Ms Parviainen were no longer able to perform the duties which had been entrusted to them before their pregnancies.

Certain allowances were dependent on the performance of specific functions, intended to compensate for the disadvantages

related to those functions. The payment of these allowances may therefore be conditional on the pregnant worker actually performing specific duties in return.

A pregnant worker who is granted leave from work or temporarily transferred to another job because of her pregnancy must be entitled to remuneration consisting of her basic monthly pay and the pay components and supplementary allowances relating to her occupational status, such as those relating to her seniority, length of service and professional qualifications.

The remuneration which must be maintained for a pregnant worker temporarily transferred to another job cannot be less than that paid to workers occupying that job. For the duration of the temporary transfer, the pregnant worker is also entitled in principle to the pay components and supplementary allowances relating to that job.

As regards workers on maternity leave, the Court notes that their position is not comparable to those actually at work, and they are not therefore entitled to continue to receive their full pay or to be paid an on-call duty allowance. Moreover, the directive itself provides that the minimum remuneration payable to them is equivalent to that which the worker concerned would receive in the event of a break in her activities on health grounds.

Finally, the Court noted that the Directive only lay down the minimum and that Member States were free to maintain, for workers granted leave from work or temporarily transferred to another job during their pregnancy or on maternity leave, their entire remuneration, at a higher level than that guaranteed by the Directive.

The cases now return to the national courts for final determination.

Upcoming Events

European Networking Group

14-15 September, Amsterdam

Representatives from the White & Case Employment & Benefits practice will be attending the 9th annual ENG Executive Compensation and Benefits conference on 14-15 September 2010 in Amsterdam.

Nicholas Greenacre and Euan Fergusson from the White & Case London office will be leading a workshop on "A Practical Guide to Implementing International Share Plans".

NASPP Conference

20-23 September, Chicago

Nicholas Greenacre and Euan Fergusson from the White & Case London office and Mark Hamilton from the White & Case New York office will be attending the NASPP 18th Annual Conference which will be held from 20-23 September in Chicago.

Nicholas Greenacre will participate in a panel session entitled "You Asked for It Again: Hot Topics from NASPP's Global Stock Plans Q&A Discussion Forum", as well as present a session, together with Julie Rumberger from PwC, on "Global Performance Plans".

Codes of Conduct and Corporate Social Responsibility: Global Strategies for Global Compliance

24 September, New York

International Employment Counsel Donald C. Dowling, Jr. will co-chair the 3rd Annual Conference on International Employment Law titled "Codes of Conduct and Corporate Social Responsibility: Global Strategies for Global Compliance" organized by the New York State Bar Association Labor and Employment Law Section and Cornell University ILR School, Labor and Employment Law Program. Mr. Dowling will also moderate a panel entitled "Real World Case Studies and Strategies".

For more information and registration details, please contact Lynn Coffey-Edelman at lsc4@cornell.edu or +1 212-340-2842.

International Labor & Employment Law Boot Camp for US Attorneys

27- 28 September, New York

International Employment Counsel Donald C. Dowling, Jr. will co-chair the "International Labor & Employment Law Boot Camp for US Attorneys" conference hosted by the American Conference Institute, featuring leading employment lawyers and expert in-house counsel from around the globe. Mr. Dowling will also participate in a panel discussion on "Ensuring Compliance with International Employee Privacy and Data Protection Laws".

To register please call +1 888-224-2480 or E-mail: AmericanConference.com/intlemp.

Employment & Benefits Autumn Roundtable Seminar Programme 2010

Selected Dates (Sept-Nov), London

The White & Case London office is hosting a series of Autumn seminars for our clients covering various employment and benefits issues including TUPE, disability/sickness absence, budget issues, redundancy, restrictive covenants and data protection. Each session will be presented by an Employment or Benefit specialist and is tailored to the need of our clients.

TUPE: latest law and practice on managing business acquisitions, outsourcing and insourcing

28 September, London

This session will give an update on the law relating to transfer of undertakings, focusing particularly on recent cases of business acquisition and reorganisation which have had TUPE implications. The workshop will offer practical advice on managing outsourcing and insourcing, in particular service provision changes, contractual protection and cross-border transfers.

Managing disabled employee and sickness absence

12 October, London

Disability discrimination law is constantly evolving. This session will analyse the status and impact of proposed new legislation and offer guidance in handling disability discrimination claims, and in managing periods of sickness absence. Topics to be addressed include types of absence and illness, health checks at recruitment stage, working with the new 'fit notes' and the impact of the recent Stringer and Pereda rulings on holiday accruals.

LexisNexis seminar on Employment Law for In-house Advisers

14 October, London

The White & Case London office will be sponsoring the LexisNexis seminar on 14 October. London partners Oliver Brettle and Stephen Ravenscroft will present on:

- Managing disabled employees and sickness absence
- TUPE: latest law and practice on managing business acquisitions, outsourcing and insourcing

Benefits after the Budget

9 November, London

This session will analyse the impact that the successive 2010 Budget changes have had on the structure and operation of equity based incentive plans. An update will also be provided on (i) measures likely to be taken by HM Revenue & Customs to tackle tax avoidance arrangements through the use of employee benefit trusts, and (ii) recent notable changes to overseas legislation which may impact the implementation and operation of global share plans. The session will also consider the impact of the 2010 Budget on pensions, including the proposed scrapping of the "special annual allowance" in favour of a simplified (but lower) annual allowance to curtail tax relief available to high earners, and the move to scrap compulsory annuity purchase at age 75 for defined contribution scheme members.

Each seminar will be held at our White & Case London office at 5 Old Broad Street, London EC2N 1DW. To reserve your place at one or all of the seminars, please reply to rsvp@whitecase.com stating which seminar(s) you wish to attend.

JSB International Employment Law Seminar

10-12 November, Eastern Europe

White & Case lawyers from the London, Prague, Bratislava, Bucharest, Budapest and Istanbul offices will be chairing and presenting at the JSB International Employment Law Seminars for HR advisors on Employment Law in the Czech Republic, Slovakia, Romania, Hungary and Turkey.

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