

LOOKING BACK, MOVING FORWARD

2011 was another eventful year in corporate governance. The phone hacking scandal, with its impact and ramification on many other fronts such as privacy intrusion, data protection, personal and corporate ethics, shareholder backlash, scrapped takeover bids and even the collapse of one of Britain's oldest newspapers, was certainly the most eye-catching.

Banking reform was also a major issue although commentators felt that much of it was 'two steps forward, one step back'. The Vickers Report was generally welcomed across the political spectrum but many economists and financial 'experts' fear that they could put Britain's major service industry in jeopardy internationally. Only time will tell but the backlash that was generated by what has been for a long time perceived as insider 'arrogance' and an overall disinterest in the outsider view, could mean that the new *Financial Services Bill* will change the face of banking in Britain forever.

There is also increasing concern that 'ambitious finance houses in emerging markets from the Arabian Gulf to Asia' could have taken over this country's banks even before the final implementation of the Vickers Report.

The perennial issue of transparency on all aspects of company activity, especially pay etc. won't go away, and the 'path-breaking' report of the High Pay Commission could provide signs of where we go next in the UK. Leading research and advisory consultancy, PIRC, suggest that remuneration committee reform and simplification of pay structures will take centre stage while the Prime Minister has pointed the way with his recent comment that: 'excessive growth in payments unrelated to success; frankly ripping off the customer and shareholder, is crony capitalism and it is wrong!'

The publication of the Davies Review, published in February 2011, along with numerous other international initiatives, helped make board diversity one of the most significant governance issues of the year. The absence of any compulsion in the report was criticised by some, and though significant progress is expected under 'comply or explain', the Davies benchmark of 25 per cent

female representation on boards by 2015 remains a tough one for some companies.

In 2012, we can surely expect much of the same but certainly City pay and corporate transparency will be two of the main areas to remain under scrutiny.

The FRC has published a progress report on the way the UK Corporate Governance Code and the Stewardship Code are being implemented. There will be continuing examination of the 'comply or explain' factor and the FRC are committed to clamping down on non compliers.

The Stewardship Code will also be a major issue as initial investor feedback indicates that 'greater clarity is required as to the role of owners' and 'what exactly is meant by Stewardship'.

Computer hacking has also been in the news over the past quarter and if the so called 'Robin Hood' attack on Christmas Eve on the clients of leading security analysis company, Stratfor, is any measure of potential activity, this area will remain one of the most sensitive and dangerous for organisations worldwide.

The role of auditors and accounting standards seem likely subjects for review, if not change in the coming year. International Financial Reporting Standards, (IFRS), have come under increasing criticism, most noticeably from the Accounting Standards Board which have said that the standards are 'not fit for purpose.'

The Competition Commission are also looking into audit market concentration while the EC is considering a ban on auditors carrying out non-audit work for the same client and mandatory auditor rotation.

A busy and challenging New Year and one in which many of the same old problems will continue to be debated and fought over, but with mounting shareholder and public pressure, could be the one which heralds productive and welcome change in many sectors.

COMPANY LAW

STOP CRONY CAPITALISM

Prime Minister David Cameron stated during an interview on BBC One's Andrew Marr Show on 8 January, that shareholders are to be given binding votes on corporate remuneration proposals.

In a bid to create a better match between pay and performance, he confirmed that the government will be introducing new regulations to help limit excessive executive salaries in the UK and has suggested that legislation to deal with the issue could be announced as part of the Queen's Speech in spring 2012.

There has been an expected backlash following his announcement. The Institute of Directors has been reported of the view that 'allowing shareholders to reject a wage or bonus would create a litigious minefield that could also damage a company's ability to attract top-notch directors.'

Commenting on the prime minister's remarks, Dr Richard Wellings of London's Institute of Economic Affairs, said: "David Cameron has highlighted a genuine problem but is targeting the wrong cause. Crony capitalism is certainly an issue, but simply legislating for shareholder power is not the solution.

"Shareholders already have the ability to act on perceived excessive pay. The effect of further regulating listed firms will be to encourage more of them to go private. This will not solve the issue.

There will be concern in many boardrooms that Mr Cameron has set the bar for reform quite high. It's also clear that business secretary Vince Cable favours a hardline approach and will endorse the proposal that shareholder votes on companies' remuneration policies should become binding votes, as opposed to being merely advisory.

Vince Cable is also expected to pave the way for greater transparency on executive pay, including making it compulsory for businesses to publish some kind of ratio showing the relationship between senior executive rewards and the earnings of typical employees.

NO MORE HIDDEN CHARGES

Following recommendations made in June 2010 by the Office of Fair Trading, (OFT),

the UK will be the first EU member state to enforce a part of the new **Consumer Rights Directive** by which consumers will be protected against hidden charges on the Internet.

According to the Department for Business, Innovation and Skills, (BIS), 'misleading' payment charges, especially those charged for online transactions, will be banned by the end of 2012, a year before the Directive is required to be fully transposed into UK law.

The aim is to ensure that any fees that some companies add at the last minute to a bill, for example when buying rail or air tickets online using a credit or debit card, are fair and not 'excessive'. Under the new Directive, traders will not be able to charge consumers more for paying by card, (or other means of payment), than what it actually costs the trader to offer such means of payment.

In addition, those who operate telephone hotlines allowing the consumer to contact them in relation to any contract with them, will no longer be able to charge more than the basic telephone rate for the telephone calls.

There will also be increased price transparency as traders, even those online, will have to disclose the total cost of the product or service, as well as any extra fees, before purchase. Mark Hoban, Financial Secretary to the Treasury, said in a statement that: "We're leading the way in Europe by stopping this practice. The Government remains committed to helping consumers get a good deal in these difficult times."

The OFT said recently that UK consumers spent £300m on payment surcharges when booking with airlines during 2009.

One constant irritant with online shopping is where consumers are often forced to untick boxes if they do *not want* extra services. With the new Directive, pre-ticked boxes will be banned across the European Union.

The period under which consumers can withdraw from a sales contract will be extended to 14 calendar days, (compared to seven days legally prescribed by EU law today). This means that consumers can return goods for whatever reason if they change their minds.

Where a seller hasn't clearly informed the customer about the withdrawal right, the return period will be extended to a year.

Consumers will also be protected and enjoy a right of withdrawal for *solicited visits*, such as when a trader calls beforehand and presses the consumer to agree to a visit. In addition, circumvention of the rules will be prevented as a distinction no longer needs to be made between solicited and unsolicited visits.

This right of withdrawal will also be extended to online auctions, such as eBay – though goods bought in auctions can only be returned when bought from a professional seller. When applied, traders must refund consumers for the product within 14 days of the withdrawal. This includes the costs of delivery. In general, the trader will bear the risk for any damage to

goods during transportation, until the consumer takes possession of the goods.

A new set of common rules for businesses will make it easier for them to trade all over Europe. These are to include:

- a single set of core rules for distance contracts (sales by phone, post or internet) and off-premises contracts (sales away from a company's premises, such as in the street or the doorstep) in the European Union, creating a level playing field and reducing transaction costs for cross-border traders, especially for sales by Internet.
- standard forms such as one to comply with the information requirements on the right of withdrawal;
- specific rules which will apply to small businesses and craftsmen, such as plumbing. There will be no right of withdrawal for urgent repairs and maintenance work.

Member States may also decide to exempt traders from some of the information requirements when they are requested by consumers to carry out repair and maintenance work in their home of a value below €200.

FIRST BRIBERY ACT SENTENCE

Redbridge Magistrates Court's former administrative clerk, Munir Yakub Patel, who was the first person to be prosecuted under the **Bribery Act 2010**, has been sentenced to spend three years in prison for bribery plus an additional six years for misconduct in public office. The sentences are to run concurrently.

The Bribery Act finally came into force on 1 July 2011 and this first prosecution and sentence makes legal history. 22 years old Patel had admitted requesting and accepting a £500 bribe to avoid putting details of a traffic summons on a court database and pleaded guilty to an offence under section two of the Bribery Act.

Sitting at Southwark Crown Court, Judge Alistair McCreath said the indictment involved at least 53 separate cases in which Patel had manipulated the process in order to save individuals from the consequences of their offending. The prosecution believed that he may have earned more than £20,000 from doing so.

Under the Act, the maximum penalty for individuals found guilty of bribery is 10 years' imprisonment and an unlimited fine.

In sentencing, the Judge said: "This involved a very substantial breach of trust. (Your) position as a court clerk had at its heart a duty to public confidence in it. A justice system in which officials are prepared to take bribes in order to allow offenders to escape the proper consequences ... is inherently corrupt and is one which

deserves no public respect and which will attract none. The public would expect, and rightly expect, the courts to take strong action to protect and defend the integrity of the justice system."

The sentence would have been even greater but for a one-third discount given to Mr Patel for his early guilty plea.

LONGER COMMENT TIME

In an effort to give a further boost to the transparency of the EU's decision-making process, the European Parliament and the European Commission, launched a joint, public Transparency Register, on 23 June 2011, which provides more information than previously available, on those who seek to influence European policy.

From 1 January 2012, the Commission is now giving at least 12 weeks to comment on plans for new policies and legislation, compared to 8 weeks previously. The purpose is to make it easier for people to get involved in EU policy-making at an early stage.

A new alert service for upcoming initiatives has also been introduced and organisations that sign up for the Register can subscribe to this alert service to get early information on the roadmaps for new initiatives in their fields of interest about one year before their adoption.

The new Register replaces the one set up by the Commission in 2008, which already contains more than 4000 organisations. These will be gradually transferred to the Joint Transparency Register over the coming 12 months. It also extends its coverage well beyond traditional lobbyists to include law firms, NGOs, think tanks - indeed any organisation or self-employed individual wishing to influence EU policy making and implementation. The Commission believes this is a key step towards the EU's goal of a more participatory democracy.

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CORPORATE GOVERNANCE

GOVERNANCE STILL A CONCERN

Despite the Financial Reporting Council's, (FRC), guidance clearly making company chairman responsible for establishing good governance practices, Grant Thornton's recently published Corporate Governance Review highlights a number of facts which should concern even the most complacent regulator.

Their 10th Annual FTSE 350 Review reveals that only 43 per cent of chairmen use their annual report statement to make reference to the company's governance practice. More worrying however, is that only 10 per cent provide any meaningful insights into how they and their board's set and embed an appropriate governance culture throughout their organisation.

With many Institutional and other shareholders now also demanding a more influential voice in improving corporate governance, it is interesting to note that company disclosures on shareholder engagement have continued to improve with 62 per cent now explaining in some detail how they are attempting to engage with shareholders.

However, the Investment Management Association's first report on adherence to the Stewardship Code has revealed that the majority of Institutional investors engage predominantly with the executive management team, only contacting the chairman or non-executive directors (NEDs) in exceptional circumstances or to raise concerns.

The report also demonstrates that the UK's principles - based approach has led to many significant improvements over the 10 years of the review. Positive development is seen in many practices; the rise in independent directors up from 60 per cent in 2004 to 80 per cent. The almost universal adoption of board evaluations (98 per cent) and the developing business model disclosures at 74 per cent compared to 30 per cent in 2004. This quiet revolution has seen full compliance find its natural level from a low point of 28 per cent compliance in 2004, to around 50 per cent for the last two years.

Simon Lowe, Partner at Grant Thornton comments, "Governance practice in the UK has continued to evolve in response to changing guidance, but compliance does now appear to have plateaued, with the balance choosing to 'explain'. As such, governance now has to switch from looking for compliance to focusing on the quality of explanations. "

Another area in need of improvement is board diversity. Although high on the media agenda this is still lagging perceived best practice with only one in 10 of the FTSE 350 currently having 25 per cent female representation on their boards. Indeed, 72 per cent of the FTSE 350 make no public reference to their policy on gender diversity.

TROUBLE AT THE SUMMIT

Following an unprecedented uproar at Japanese giant Olympus, when ex chief executive Michael Woodford resigned from the board over his questioning of suspicious payments, it has now been reported that the

company is suing 19 current and former executives and board members, including its current president, for up to \$47 million in compensation.

The Tokyo based Olympus Corporation is a multibillion-dollar manufacturer of digital cameras and electronic equipment with operations worldwide.

In what must be one of the world's largest accounting scandals there is speculation that the company could possibly be delisted from the Tokyo stock Exchange, although the shares surged as much as 28 per cent on investors belief that the company's own clean up efforts would avoid this humiliation.

In what has been described as 'a distinctly Japan Inc. approach to corporate governance,' the company is letting the discredited president and the implicated board members stay on until later this year.

"The plan is for the current board members who were found responsible and are subject to lawsuits over the \$1.7 billion accounting fraud to complete passing on their roles to avoid any impact on business implementation, and all resign at an extraordinary shareholders' meeting that is set to be held in March or April," Olympus said in a statement.

Six of Olympus' 11 directors are being sued: five of its eight internal directors and one of three external directors.

British born Woodford, who went public with his concerns, said last week he was abandoning a bid to be reinstated to his old job, lashing out at big Japanese shareholders for their failure to back his bid.

CR COMES OF AGE

According to a new report by KPMG International, ninety-five percent of the 250 largest companies in the world, (G250 companies, drawn from the Fortune Global 500 List, 2010), now report on their corporate responsibility, (CR), activities.

Americas and the Middle East and Africa region are quickly gaining ground, although at present, two-thirds of non-reporters are based in the US and only around half of Asia Pacific companies report on their CR activities.

The KPMG International Survey of Corporate Responsibility Reporting 2011 is claimed to be the largest and most comprehensive survey of its type published and since its first edition in 1993, has provided an increasingly in-depth snapshot of national, global and industry trends.

It claims that around the world, corporate responsibility reporting has become a fundamental imperative for

businesses and that, 'almost across the board, companies are demonstrating an increasing willingness to account for their behaviour on key societal issues.'

Where CR reporting was once seen as fulfilling a moral obligation to society, many companies are now recognizing it as a business imperative and KPMG observe that, 'Companies are increasingly demonstrating that CR reporting provides financial value and drives innovation, reflecting the old adage of 'what gets measured gets managed.'

The latest findings suggest that much work remains, particularly in the Asia Pacific region and within privately-held companies around the world. These areas still show some lack of transparency, but could be helped by Government will to further drive the uptake of CR reporting. Strong examples of this are evident in varying degrees from Sweden to South Africa and provide compelling proof that government intervention can enhance the adoption of CR reporting overall.

With the increasing scrutiny of CR data by both external stakeholders and internal management, it is thought by many commentators that companies will quickly find that misstated data poses not only a risk to their credibility and reputation, but also impacts the management insight and innovation that CR reporting provides. As a result, greater focus will have to be placed on developing higher levels of data integrity through better governance, systems and controls that meet future demands of both the company and its stakeholders.

RECONNECT FINANCE WITH ETHICS

Responsible capitalism was top of the agenda at Business in the Community's (BITC's) AGM at the beginning of December 2011. The charity, which campaigns for all businesses to act responsibly, brought together 300 senior business leaders, for its annual gathering of members in The Old Vic Tunnels in London.

Investment Banker and recently appointed Chairman of the St Paul's Initiative, Ken Costa, urged the gathered business leaders from companies including Google, Kingfisher, Lloyds Banking Group and Procter & Gamble to reconnect the financial with the ethical.

'There is no shame in a business making a profit', he said, 'and we do need to build economic growth and prosperity, but today we must be talking about making that profit in a responsible and sustainable way and using those profits to build and support growth in local communities.'

Costa, who is leading a new initiative exploring practical ways to reconnect business and ethics, added that while the delegates at the AGM might look very different to the protestors at Occupy London, and may have very different jobs, the issues that were under the spotlight are the same. 'Business leader and protestor alike are responding to fundamental issues that impact on us all wherever we live, work or raise our families', he claimed.

BITC Chairman and Waitrose Managing Director Mark Price used the meeting to stress the growing importance of responsible business in light of economic uncertainty and growing public distrust towards banks and big business.

In his address, Mark Price emphasised the mutual benefits to both business and society when the former integrates responsible behaviour into every aspect of its work. He highlighted the key role that businesses are already playing to tackle some of society's most pressing issues such as youth unemployment and community cohesion, but challenged BITC members to set an example to the wider business community by scaling up the activities which work and better communicating that business can be a force for good.

He added: "Now more than ever business must strive to work together for good and build an economy which engages young people, nurtures enterprise, encourages sustainable growth and enables communities that can live in harmony.

RECORD FINE FOR MIS-SELLING

The Financial Services Authority, (FSA), has issued its largest ever retail fine of £10.5 million to HSBC because of inappropriate investment advice provided by one of its subsidiaries, NHFA Limited, (NHFA).

Between 2005 and 2010, NHFA advised 2,485 customers to invest in asset-backed investment products, typically investment bonds, to fund long-term care cost. The products were sold to individuals, entering or already in, long-term care, who in many cases were reliant on the investments to pay for their care.

Typically these investments are recommended for a minimum period of five years and it was considered that NHFA's advice and sales were unsuitable as, in a number of cases, the individual's life expectancy was less than this. As a result, these customers had to make withdrawals from the investments sooner than is recommended, and with charges, this resulted in a faster reduction of capital than should have been the case if they had received correct advice.

A review by a third party of a sample of customer files found unsuitable sales had been made to 87 per cent of customers. It was also apparent that NHFA's advisers failed to consider the tax status of customers before making a recommendation and had failed in many cases to recommend suitable products for individual circumstances.

The fine would have been much larger but HSBC agreed to settle at an early stage entitling it to a 30 per cent discount. It also demonstrated its commitment to making changes to its operations and closed NHFA to new business on 1 July 2011.

The FSA views the failings as particularly significant because:

- NHFA's customer base was particularly vulnerable. The average customer age was almost 83 and had limited means or opportunity to make up any financial loss resulting from an unsuitable sale.
- NHFA was the leading supplier in the UK of independent financial advice on long-term care products to help pay for care costs, with a market share in recent years approaching 60 per cent.
- the mis-conduct occurred over a period of approximately five years.
- a significant number of these 2,485 customers may have suffered financial detriment. During the relevant period they invested close to £285 million in asset-backed products; the average amount invested per customer being approximately £115,000.

The failings breached Principle 9, which states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

FIRST INVESTMENT IN BIG SOCIETY

Nick Hurd, Minister for Civil Society, announced on 28 December, that £3.1 million from dormant bank accounts would be used to help the long-term unemployed set up business, vulnerable youngsters find jobs, fund a community energy project and the first social business stock exchange.

In total, about £400m in unused bank accounts will be made available.

The Big Society Investment Fund, set up by the Big Lottery Fund under the **Dormant Accounts Act**, has agreed in principle to invest the money in four projects

including: money to help the long-term unemployed set up their own businesses; support for vulnerable young people to get into employment; a community energy project and the creation of the first ever social stock exchange.

The Minister said: "This is about putting money that has been lying around dormant in bank accounts for years to good use in projects that will benefit our local communities and social entrepreneurs. These investments will bring real changes to people's lives. They will help young people into jobs and give the long-term unemployed the opportunity to set up their own businesses.

Big Society Capital (BSC, previously known as the Big Society Bank) was established by government, in the middle of 2011, to help grow the market for social investment, by making it easier for social business to access capital.

BSC will focus mainly on supporting the development of new social investment products and intermediaries with its success depending heavily on the mainstream investors' willingness to engage with this type of investment.

Despite the concept being criticized by many MPs as 'confusing', and this being the policy's fourth re-incarnation, David Cameron maintains his enthusiasm by stating at the end of last year that: "The 'top-down' model of politics no longer works and it is time to try something different".

The four organisations benefiting from the initial money are:

- FranchisingWorks will receive a £1 million investment, which will help long-term unemployed people to set up their own franchise business;
- Triodos Bank will set up a new payment by results initiative using its £500,000 investment to improve educational, training and work outcomes for vulnerable young people in Merseyside;
- Community Generation Fund run by Finance South East will receive £750,000 to set up an initiative to create community owned social enterprises within deprived communities which offer affordable, green energy and reinvest profits in the neighbourhood and;
- The Social Stock Exchange will use its £850,000 investment to set up the world's first stock exchange for social enterprises, to be located in London and improve access to capital for social entrepreneurs.

The Fund will consider more proposals at its Investment Committee in February, where it hopes to make further investments. It is envisaged that this will be the final meeting of the Committee as Big Society Capital is on target to be fully operational by the end of the first quarter of 2012.

AGENDA: WOMEN EXECUTIVES

Much has been written, and even more discussed, about the role of not only women in business, but also of women in the boardroom. This is at the forefront of current concerns on gender diversity.

Lord Davies's report in February 2011, brought the issue of boardroom diversity to the attention of a wider public and represents a huge step in a direction for change through voluntary action rather than through 'regimented' quotas.

Quoted companies will be required to set out the proportion of women they aim to have on their boards in 2013 and 2015 and will be required to disclose, year on year, exactly how many women they have in senior positions within the company. They will also have to indicate what proactive steps they are taking to achieve better gender balance at senior levels.

The Financial Reporting Council's announcement in October 2011 was a major step forward and reinforced by its December Report, *Developments in Corporate Governance 2011* which heralded changes to the UK Corporate Governance Code in 2012, will require all companies to explain their policy on boardroom diversity and to report on how it is being implemented.

In the six months following the publication of Lord Davies' report, *Women on Boards*, also increased the focus on diversity and following its publication, 22 per cent of directors appointed to FTSE 100 companies and 18 per cent of directors appointed to FTSE 250 companies were women, many of whom had no previous experience on FTSE 350 boards. This means that women now hold 14 per cent of FTSE 100 directorships and nine per cent of FTSE 250 directorships.

While the Davies report focused on FTSE 350 companies, the Code requirements will apply to all companies with a Premium listing. At present, just fewer than eight per cent of directors of FTSE Small Cap and Fledgling companies are women.

Gender is only one aspect of diversity of course, and companies are being advised to not neglect other attributes and experience that can improve a board's ability to act effectively. For large companies operating in global markets, for example, international experience will be an important consideration; the number of directors of FTSE 350 companies that are not UK nationals increased significantly in the last six years, from 15 per cent in 2005 to 22 per cent in 2011.

Other research shows that the boards of the largest UK companies include a higher percentage of directors with

current or previous CEO experience than most of their European counterparts.

These figures show progress but there is still a long way to go. A recent report by Deloitte showed that 20 per cent of companies in the FTSE 100 had no women in their boardroom and women hold just 5 per cent of executive positions. It concluded that at the current pace of recruitment it would take 20 years for one in three directors in the boardroom to be female.

Of more concern, research by Cranfield University found that only 33 companies in the FTSE 100 have set targets for the number of women on their boards, despite the call from Lord Davies for a target of 25 per cent women directors by 2015.

Although he stopped short of recommending a quota, and settled on a set of goals and improved disclosure of diversity strategies and development, it should all be set against the fact that the UK's target is significantly lower than the 40 per cent quotas adopted by Norway, France and Spain.

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EMPLOYMENT

DEREGULATION PLANS

On 23rd November 2011, Vince Cable gave a speech to a selection of businesses at the EEF, (the manufacturers' organization), on the topic of deregulation of employment law.

Among other things, its proposals include an overhaul of tribunals so that:

- all claims will go to ACAS to be offered pre-claim conciliation before going to an employment tribunal.
- the unfair dismissal qualification period will rise from one to two years in April 2012.
- a consultation will be published on protected conversations which will allow employers to discuss issues like retirement or poor performance in an open manner with staff - without this being used in any subsequent tribunal claims.
- a further consultation will be published on simplifying the use of compromise agreements (where employers pay an agreed amount to an individual if both parties agree the employment contract should end).

- an exploration of options for a rapid resolution scheme – an alternative system of determining cases, to provide quicker, cheaper decisions in low-value, more straightforward claims.
- the tribunal system will be streamlined – removing witness expenses, taking witness statements as read and needing only one judge in unfair dismissal cases. Mr Justice Underhill will also undertake a fundamental review of the Rules of Procedure Governing Employment Tribunals and will report back to Ministers in 2012.
- the use of mediation will be encouraged between parties by introducing a regional pilot scheme for SMEs.

The package will also include a call for Evidence on the Collective Redundancies consultation rules - looking at the impact of reducing the current 90 day consultation period, possibly to 60,45 or even 30 days. Evidence suggests that the current 90 day period is too restrictive for businesses and in periods of redundancy doesn't give enough flexibility with the business plans. He also announced that in response to the Red Tape Challenge more than 70 employment-related regulations are to be merged, simplified or scrapped.

The Government will:

- publish a call for evidence on proposals to simplify the Transfer of Undertakings (Protection of Employment) - TUPE - rules which many businesses say are too complex and bureaucratic.
- close a whistleblowing case law loophole which allows employees to blow the whistle about their own personal work contract.
- merge 17 National Minimum Wage regulations into one set which will simplify the current regime, making it easier for employers to navigate the law, to complement the work the Low Pay Commission is doing on how best to streamline the system.
- consult in the spring to streamline the current regulatory regime for the recruitment sector.
- create a universally portable Criminal Records Bureau check that can be viewed by employers instantly online, from early 2013. These policy changes are being led by the Home Office.

Finally, the Government announced its intention to launch a call for evidence on two proposals:

- seeking views on a proposal to introduce compensated, no fault dismissal, for 'micro' firms with fewer than 10 employees;
- looking at ways to slim down existing dismissal processes, how they might be simplified, including potentially working with the Advisory, Conciliation and Arbitration Service (Acas) to make changes to

their Code, or supplementary guidance for small businesses.

The proposals/promises haven't been met with total joy in some areas, although the general view is positive.

The Federation of Small Businesses', (FSB), national chairman, John Walker, is reported as saying: "Small-business owners will welcome these moves as it will allow them to talk freely with their workforce without fear of reprisal, but only time will tell if conversations will really be protected. However, there would be no need for initiatives such as this had the default retirement age [DRA] not been scrapped in the first place."

CBI director for employment, Neil Carberry claims his organisation called for protected conversations 'in the wake of the DRA being removed in April' and says he's 'delighted' they are now going to happen.

Balancing the argument, Unite general secretary Len McCluskey commented: "Ministers are hell-bent on removing long-established rights at work, making dismissal easier and promoting a culture of fear in the workplace. These proposals are a charter for rogue employers and bullies."

NOT TOO OLD TO WORK

The government scrapped the default retirement age, (DRA), from 6 April 2011. Between then and 1 October 2011, only those people who were told before the April date and who were due to retire before 1 October can be compulsorily retired under the rules.

Employment Relations minister Edward Davey commented: "It is high time we ended this outdated form of age discrimination. We are putting in place support to help business adapt to the change, but it is important to remember that about two-thirds of employers already operate without fixed retirement ages - and many of those with retirement ages, already offer flexibility for workers to work longer."

Secretary of State for Work and Pensions, Iain Duncan Smith added: "People are living longer and healthier lives than ever, and the last thing we want is to lose their talent and enthusiasm for the workplace due to an arbitrary age limit."

According to the Department for Business, Innovation and Skills, (BIS), there are currently 850,000 people over the age of 65 actively working in the UK. This out of a working age population of 30.4 million people.

Employers are now required to 'performance manage' individuals, as the only way to dismiss someone will be on grounds of performance or capability. However, exceptions will be made for employers

who can 'objectively justify' compulsory retirement, in occupations such as air traffic control and similar skilled jobs where reaction times may be critical.

PENSION SAVING LOWEST IN YEARS

New analysis by the Department for Work and Pensions shows that only 38% of working-age people - 11.6 million out of 30.4 million - are saving into a private pension, the lowest level in the past ten years.

The figures highlight why automatic enrolment, being introduced from October 2012, is so critical.

The figures show a steady decline in pension saving between 1999/2000 (46%), and 2009/10 (38%), with the decrease being most dramatic among men, (from 52% to 39%) and among people aged between 20 and 39 years old pension provision fell from 43% to 31%.

Minister for Pensions Steve Webb said: "These are alarming figures and they underscore exactly why our pension reforms are so vital. With fewer people saving into a pension, lower annuity rates and an average of 23 years in retirement, many people could face a poorer future in their later lives.

"We simply must put a stop to this trend and get people saving. Automatic enrolment, beginning for the largest employers later this year, will get millions of people saving, many for the first time."

The analysis also reveals a map of pension provision across the UK in 2009/10, with higher pension provision in the South East (43%), Scotland (42%), the South West (41%) and the East (41%), and lowest pension participation in Northern Ireland (33%), London (34%) and West Midlands (34%).

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DATA PROTECTION

TIME FOR CHANGE

A leaked copy of the new EU **General Data Protection Regulation**, not due to be published until 26 January 2012, indicates that despite competing viewpoints and localized interests, this new legislative proposal firmly intends to harmonise the protection of data protection rules across the European Union, while taking account of and paying consideration to the current legislative and technological environment.

The purpose of the Regulation is to repeal and replace the previous/current 1995 Directive, and the draft regulation proposes to establish a European Data Protection Board to replace the existing Article 29 Working Party.

Among a number of ambitious, and what will surely be controversial, proposals is the potential of firms facing fines of up to 5 per cent of their global turnover for breaches of EU privacy rules. This will be a major concern to many companies and will fall into the general dilemma of how much to spend on prevention. The practice of 'disaster management' seems to have fallen off the scale in past years as it is always difficult to assess risk until a problem occurs. Also the financial aspect of planning for a disaster scenario shows nothing positive on the bottom line, despite the possibility of wiping out that bottom line following catastrophe.

However, it is likely that there will now be a requirement for 'privacy impact assessments, which helps assess privacy risks to individuals in the collection, use and disclosure of information and which will require companies and governments to consult with individuals and NGOs. Interestingly it also requires that the processing of criminal data is only done by government agencies, unlike in the UK where it is carried out by a private organisation.

Another financial implication of the new Regulation is for organisations with more than 250 employees to appoint a qualified data privacy officer.

Apart from the duty to appoint a privacy officer, these new obligations appear to apply equally to large multi-nationals and small and medium enterprises.

The next step is for the measures to be reviewed over the next few weeks by the different Directorates-General of the European Commission and then to be approved by national governments before being passed into law. Each of these stages will inevitably lead to changes although there seems to be increasing international pressure that hard measures have become necessary.

CHRISTMAS HACKING

While most of us were enjoying Christmas and the usual festivities over the holiday weekend, computer hackers affiliated with the Anonymous group, infiltrated one of the worlds leading security firms, defaced its website and published, what is claimed to be, the private US security firm Stratfor's confidential client list as well as thousands of credit card details, passwords and home addresses for clients, including Goldman Sachs, the US Defense Department, Los Alamos National Laboratory, Bank of America and the United Nations.

The published lists included information on individuals including former US Vice President Dan Quayle, former Secretary of State Henry Kissinger and former CIA Director Jim Woolsey.

The hackers also said they had details for more than 90,000 credit card accounts and have threatened to release more card details and a trove of 3.3 million e-mails between the organisation and its clients.

Stratfor, (Strategic Forecasting Inc), is a private intelligence company that claims to provide 'non-ideological, independent analysis of international affairs and security threats' although in some quarters the company is often dubbed a 'shadow CIA' because it gathers non-classified intelligence on international crises.

In addition, in a 'Robin Hood'-style attack which started on Christmas Eve, thousands of customers are having to be provided with specialised identity theft protection after the hackers claimed to have diverted more than \$500,000 from their private bank accounts to charities including the Red Cross, CARE and Save the Children.

The breach at Stratfor could be particularly embarrassing, not just because the firm markets its security expertise but if hackers can prove their claims that they were able to gain access to the company's sensitive data because it was not encrypted, (one of the most basic first steps in data protection), then the ramification to the firm's business could be enormous.

Stratfor has not clarified whether its data was encrypted, but interestingly, with its web site still down, the company has been using its page on Facebook to share updates about matters like its offer of identity-theft protection for customers. A temporary answer perhaps, but one which could add to the public relations disaster as some customers are leaving comments on the page complaining that they did not hear directly from Stratfor about the breach, and only found out that their card information was compromised, when their banks notified them of unauthorized charges.

However in an odd stab at customer relations, Stratfor has urged its customers to exercise caution when complaining publicly about the hacking. In a statement released following the website take-down, the company said: "It has come to our attention that our members who are speaking out in support of us on Facebook may be being targeted for doing so and are at risk of having sensitive information repeatedly published on other websites. So, in order to protect yourselves, we recommend taking security precautions when speaking out on Facebook or abstaining from it all together."

Peer group comments such as that from John Bumgarner, chief technology officer of the US Cyber Consequences Unit, a non-profit group that studies cyber threats, highlight the seriousness of the attack when he says: 'There are thousands of email addresses here that could be used for very targeted spear phishing attacks that could compromise national security'.

BAE SYSTEMS ABANDONS CLOUD

Defence equipment maker BAE Systems has abandoned its plans for using Microsoft's Office 365 cloud based productivity platform, claiming that there was no guarantee that their data and business secrets would not be accessible to the US government.

In fact, as early as the June 2011 launch of its Office 365 product, Microsoft UK's managing director Gordon Frazer, sent a wave of panic through businesses across Europe when he told a room full of journalists that he could not guarantee that data stored in Microsoft's European datacentres would not end up in the hands of the US government as, under the Patriot Act, it can order Microsoft to provide access to the data.

Cloud computing, which has been claimed could 'change the entire computing industry,' refers to the use of Internet ('cloud') based computer technology for a variety of services. It is a style of computing that means by installing only one simple interface application, users are allowed to log into a Web-based service which hosts all the programs the user would need for his or her job and are accessible on any computer.

Remote machines owned by another company would then run everything from e-mail to word processing to complex data analysis programs. Computer users who have an existing account with Web-based e-mail services like Hotmail, Yahoo! Mail or Gmail, are already using it as the software and storage for the account is not on the user's computer but on the service's computer 'cloud'.

In the aftermath of the September 11 attacks on the World Trade Center and the Pentagon, the US government implemented the Act to combat international terrorism, and since this legislation, its Section 215 has been the focus of much attention from those engaging in cloud services in Europe. The specific Section 215 reads as follows:

ACCESS TO RECORDS AND OTHER ITEMS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT:

(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring

the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities.

Some industry watchers even believe the US could use the powers enshrined in the Patriot Act to gain information for purposes other than fighting terrorism with some claiming that its powers could allow US companies to gain a competitive advantage against those in Europe. Although our own **Data Protection Act**, DPA, is expected to safeguard UK companies information, as it stipulates 'a company cannot hand over data to other parties without the consent of the person or party that the information relates to,' some expert legal opinion suggests that the US would win access to UK data in the end because as the Patriot Act refers to terrorist activity, it would override the DPA.

Good news at least for the UK/EU service providers who are not affected by the US laws and are governed by the same data protection laws as the companies for whom they act.

HEAD IN THE CLOUDS?

Despite widespread worry over data privacy and in particular 'Cloud Computing', European Commission vice-president Viviane Reding, speaking at a recent GSMA Europe conference in Brussels, said she proposes to protect internet users and unlock the technology's potential.

"Reliable and consistent rules are essential," she said, "if we want the digital economy and our digital single market to grow. These rules make people feel comfortable about using new technologies and services but we need a framework for privacy that protects individuals and boosts the digital economy."

Among the proposals will be a commitment to ensure users would be able to remove their photos, videos or contacts from a cloud service without leaving any digital trace because "their profiles belong to them, not to the company.

"Individuals should not be discouraged from switching from one cloud service to another," she insisted, adding that there should be "no downside risk" for someone if they decided to cancel an account or erase data. "Locking-in not only stifles effective competition but, more importantly, deprives users of their effective right to freely choose and freely change the best privacy environments for their personal data. This right to data portability will be an essential element."

She said businesses would be forced to take security more seriously, including acting more quickly to tell

users if their data has been compromised. "We see that large internet companies that hold vast quantities of data increasingly come under constant attack from hackers. We have also seen data breaches on major online game services that have affected millions of users," she said. The data of 77 million users of Sony's PlayStation Network was compromised earlier in 2011 and the company was criticised for its delay before announcing the security breach to its customers. Sony said it took a week to investigate the scale of the data theft.

But Reding warned: "There can be no excuses for not letting people know what has happened to their personal information. These data security breaches risk undermining people's trust in the digital economy. My proposal introduces a general obligation for data controllers to notify such breaches immediately.

"Co-ordination between national watchdogs should be strengthened", she said, "so companies will be able to sell goods and services to 500 million people in the EU under the same data protection rules."

She backed the creation of a "real single online market for online services" in the EU, guaranteeing the free flow of data beyond Europe's borders, warning that the EU should not fall into the trap of restricting users to a European cloud. But she said that the cloud would only be valuable if it was trusted – and business would gain a competitive edge if they complied with privacy rules.

Her proposals would have to stand the test of time, she agreed, because it was impossible to predict changes in technology. "Europe's new data protection rules should continue to guarantee a high level of protection of our citizens and provide legal certainty to businesses, no matter what marvels and life-changing innovations arrive in the coming years. The upcoming reform needs to be legally sound, citizen friendly and future proof."

Reding also announced that Digital Agenda commissioner Neelie Kroes would unveil a European Cloud Computing Strategy in 2012.

NEW YEAR – NEW REGS

The European Commission has issued a Proposal on the Regulation of the European Parliament and of the Council, on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**General Data Protection Regulation**).

One of the main thrusts of the proposal concerns the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (**Police and Criminal Justice Data Protection Directive**).

Rapid technological developments have brought new challenges for the protection of personal data and the scale of data sharing and collecting has increased dramatically. Now, as individuals increasingly make personal information available publicly and globally, both private companies and public authorities are able to make use of this data on an unprecedented scale.

The Lisbon Treaty defines the right to personal data protection as a principle of the EU and introduced, with Article 16 of the Treaty on the Functioning of the European Union (TFEU), a specific legal basis for the adoption of rules on the protection of personal data. Article 8 of the Charter of Fundamental Rights of the EU enshrines protection of personal data as a fundamental right.

In its Communication on *A comprehensive approach on personal data protection in the European Union*, the Commission concluded that the EU needs a more comprehensive and coherent policy on the fundamental right to personal data protection.

The current framework remains sound as far as its objectives and principles are concerned, but it has not prevented fragmentation in the way personal data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks associated notably with online activity.

This is cited as the main reason why it is now time to build a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities.

This initiative is the result of extensive consultations with all major stakeholders, over a period of two years and included a high level conference in May 2009 and two phases of public consultation: From 4 November 2010 to 15 January 2011, the *Consultation on the Commission's comprehensive approach on personal data protection in the European Union* received 305 responses, of which 54 were from citizens, 31 from public authorities and 220 from private organisations, in particular non-governmental and business associations.

Heavy criticism has been expressed regarding the current fragmentation of personal data protection in the Union, in particular by economic stakeholders who asked for increased legal certainty and harmonisation of the rules on the protection of personal data. The complexity of the rules on international transfers of personal data is considered as constituting a substantial impediment to their operations as they regularly need to transfer personal data from the EU to other parts of the world.

In line with its 'Better Regulation' policy, the Commission conducted an impact assessment of policy alternatives based on the three policy objectives of improving the internal market dimension of data protection, making the exercise of data protection rights by individuals more effective and creating a comprehensive and coherent framework covering all areas of EU competence, including police co-operation and judicial co-operation in criminal matters.

It is intended that implementation will lead to considerable improvements regarding legal certainty for data controllers and citizens, reduction of administrative burden, consistency of data protection enforcement in the Union, the effective possibility of individuals to exercise their data protection rights to the protection of personal data within the EU and the efficiency of data protection supervision and enforcement.

The policies are also expected to contribute to the Commission's objective of simplification and reduction of administrative burden and to the objectives of the Digital Agenda for Europe, the Stockholm Action Plan and the Europe 2020 strategy.

ODDS AGAINST?

In what could be argued as the biggest betting dispute in the history of horseracing, the escalating row between Betfair and a large number of its online customers, continues to intrigue both the traditionalists who bet over a counter and those who use the internet.

The Betfair betting exchange was forced to void over 200 bets on one of its 'in-running', (betting on a race as it is taking place), markets on the Christmas Hurdle race at Leopardstown, following an unprecedented series of events that would have left them with a potential payout of nearly £23m.

The company was also in the news at the end of last year with similar negative effect. In October 2011, Betfair admitted that a database on more than three million of its customers, including 2.9 million user names and almost 90,000 bank account details, was hacked by cybercriminals, 'possibly from Cambodia'.

In the wake of this news, the company's security director Sean Catlett left the betting exchange to work at a start-up company in the US. Prior to joining Betfair in October of 2009, Catlett had been global head of threat and vulnerability management at Barclays Bank and a senior vice president at Bank of America.

It has also been reported that Catlett was not the only security professional to leave the company since the data breach, as the exchange's head of application security,

an application security specialist and data protection manager also left the business.

That revelation came to light as the betting exchange admitted it did not disclose in its 2010 flotation prospectus the details of attack on customers' payment card details. In addition, the company, which claims to process five million transactions a day, did not inform its customers about the theft, which it said was of no fraudulent use to the cybercriminals because of encryption and which was recovered intact. It did say that it informed the Serious Organised Crime Agency of the attack.

The latest problem was instigated when an automated bet was made, using the company's own interface, during the early stages of the race, offering odds of 28-1 that the second favourite would win the race. Around 200 Betfair clients placed bets with these odds, their wagers totalling over £800,000.

The moment the horse crossed the the line in first place, the company immediately 'voided' the bets due to what it has called 'an obvious technical fault which allowed a customer to exceed their exposure limit'. This allowed them to return only stake money.

"These bets were large in size and mispriced," said the acting chief executive officer for Betfair, Stephen Morana. "As our customers know, the Betfair system is designed to prevent them betting unless they have the funds to cover their maximum liability."

"In this case the customer had less than £1,000 in their account so none of these bets should have been accepted," said Morana. "However, due to a technical glitch within the core exchange database one of the bets evaded the prevention system and was shown on the site. This was an issue that was triggered because of a unique sequence of events that had never happened before."

On New Years Day, the sport's most senior racing correspondent, J A McGrath, often called 'the voice of racing', asked in his regular Daily Telegraph column, "... who polices Betfair?" He reports that he has been told by 'senior figures at the company that, like other gambling firms, they come under the jurisdiction of the Gambling Commission'. McGrath goes on to state that this has 'not been the case since March 2011 when Betfair went offshore and was registered and licensed in Gibraltar.'

In the past, Betfair have been active in monitoring all accounts, reporting any curious or suspect betting patterns to racing's integrity department. This has led to several 'bad eggs' being excluded from racing and has also given the company enormous power.

Despite acting chief executive Stephen Morana describing himself as "personally devastated", this didn't stop the share price becoming the biggest faller in the FTSE 250 on 29 December.

Betfair is the world's largest Internet betting exchange, claiming over 4 million customers and a turnover in excess of £50 million a week. The company employs about 2300 people worldwide with 1200 in the UK.

A betting exchange allows individuals to bet at odds set and requested by other punters rather than by a bookmaker. Betfair claims on average 20 percent better odds than those offered by a traditional bookmaker. It charges a commission on all winning bets, which is set at 5 percent of the net winnings for most markets, although according to how much a client wagers on the site, it is possible to reduce the amount of commission paid to as low as 2 percent.

The Betfair interface can be seen as bearing a strong similarity to that of a stock exchange with the 'back' and 'lay' options comparing to the buying and selling of derivatives. It is known that there are many professionals who play the Betfair market for profit, using purpose-designed software 'robots', in much the same way as a stock exchange market trader would.

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INTELLECTUAL PROPERTY

© LAWS TO BE IMPROVED

Proposals to modernise the UK copyright system and remove unnecessary barriers to growth have been unveiled by the Government.

Following up the recommendations in the Hargreaves Review, the new consultation is part of a wider programme of work from government that includes action to tackle online infringement of copyright and to make sure the system best encourages the creation and use of music, books, video and other copyright material.

The proposals include:

- creating an exception to allow limited private copying, such as making it legal to copy a CD to an MP3 player. This move will bring copyright law into line with modern technology and the reasonable expectations of consumers.
- widening the exception for non-commercial research to allow data mining which will enable researchers to achieve new medical and scientific advances from existing work. Currently researchers cannot use some new computer techniques to read data from journal articles, which they have already paid to access, without specific permission from the copyright owners of each article.

- introducing an exception for parody and pastiche, to give comedians and other people the creative freedom to parody someone else's work without seeking permission from the copyright holder.
- establishing licensing and clearance procedures for 'orphan works', (material with unknown copyright owners). This would open up a range of works that are currently locked away in libraries and museums which are currently unavailable for consumer or research purposes.
- introducing provision for voluntary extended collective licensing schemes, which would make it simpler to get permission to use copyrighted works and help ensure rights owners are paid. These schemes would allow authorised collecting societies to license on behalf of all rights holders in a sector (except for those who choose to opt out).
- modernising other exceptions to copyright including those for education, quotation, and people with disabilities.

Minister for Intellectual Property, Baroness Wilcox said: "The Government is focused on boosting growth and some freeing up of existing copyright legislation can deliver real value to the UK economy without risking our excellent creative industries. We are encouraging businesses to come forward with thoughts and evidence on our proposals to help us achieve this.

"It's an exciting time for the development of intellectual property in the UK. We have already appointed Richard Hooper to run a feasibility study into a Digital Copyright Exchange and this consultation is the next step to ensure copyright legislation in the UK keeps up to date with emerging technologies and consumer demand."

The Government is encouraging responses to the consultation, which will close on 21 March 2012.

NEW IP SUPPORT FOR SMEs

As part of the *Government's Innovation and Research Strategy for Growth*, which was published in December, new plans have been announced to boost growth through substantial investment in research and innovation across the UK.

New measures which will help small and medium sized firms protect their intellectual property include:

- a new online business adviser training tool that will give them the skills and information they need to help businesses protect the value of their intellectual property;
- an online register of advisers to help businesses find the right adviser for them quickly and easily;

- free intellectual property audits to businesses through the Technology Strategy Board;
- the enhancement of existing schemes such as mediation to provide a more efficient dispute resolution service that can prevent potentially costly legal cases.

Measures the Intellectual Property Office has already taken to support SMEs following the Hargreaves Review include:

- the announcement that a small claims process for cases under £5,000 will be introduced at the Patents County Court for cases involving copyright, trade marks and designs;
- the launch of Ipsum, an online patent service that could save UK business nearly £100,000 per year by removing the cost to businesses of requesting patent documents. They will now be available free online;
- re-running the Fast Forward Competition which encourages Higher Education Institutions and Public Sector Research Establishments to work together with businesses to share research, innovation and intellectual property. £760,000 is available for winning bids to invest in research and knowledge transfer projects that have the potential to create new companies or services; and
- a Supporting the Technology Strategy Board to develop an IP strategy for the new technology and innovation centres.

INVALID PASSCODE

The Office For Harmonization Of The Internal Market, (OHIM)'s Cancellation Division has ruled that the Community trade mark, (CTM), SMS PASSCODE owned by a Danish company of the same name is partially invalid after considering a request from a UK business rival.

Brøndby based SMS Passcode developed an autonomous system of remote authentication that provides access to IT systems, for example, when travelling. It applied to register SMS Passcode as a CTM in 2007 and this was granted in 2008 for a number of goods and services in classes 9 and 42.

In November 2009, a UK company based in Reading, called Securenvoy Ltd. asked for the mark to be invalidated, alleging it was filed in breach of Article 7 CTMR, within the meaning of Article 52(1) (a) CTMR. The applicant also accused its Danish competitor of filing the application in bad faith.

The applicant argued that the ordinary meaning of the term SMS passcode would be a 'password

sent via an SMS message', and would therefore be descriptive of any goods and services that may be linked to 'passcodes' sent via SMS. It also argued that the terms have become a customary designation in the current language of trade for the CTM owner's goods and services.

The applicant accused SMS Passcode of acting in bad faith, saying that by the time it filed the CTM application the term 'SMS passcode' was already used by specialists in the sector, and that the CTM owner's only aim was to unfairly prevent competitors from using those terms.

In response, the CTM owner said that the dispute was part of a long-running battle over the mark between the two companies and that the applicant itself had acted in bad faith by trying to register a domain name in the UK that was the same as the disputed CTM.

The Cancellation Division first considered whether the CTM was descriptive and examined the terms 'passcode' and 'SMS' both separately and together. It concluded that the meaning of the combination of the words 'could clearly be identified, by the relevant public, as corresponding to the description of particular goods and services offered on the market: a code for access (for example, to an Internet site) is sent via SMS to a customer'.

The Office then considered whether the words were descriptive for the actual goods and services for which it was registered and concluded that it was in relation to 'data processing equipment and computers; software (for downloading/installation) to support one-off codes via (flash) SMS to EDB systems' in class 9 and 'design and development of computer hardware and computer software, including software that supports guaranteed access to IT systems via one-off codes in SMS that are sent by the hosting centre' in class 42 .

However, the CTM was invalidated in respect of these descriptions but it remains registered for the other goods and services in classes 9 and 42 for which it initially had protection.

When assessing bad faith, the Cancellation Division described the applicant's line of reasoning as 'vague and generic' and concluded that it had not put forward evidence and facts allowing a safe conclusion to be reached about the alleged bad faith.

WAR AGAINST THE PIRATES

In the US, seizure orders have been executed against 150 domain names of commercial websites engaged in the illegal sale and distribution of counterfeit goods and copyrighted works.

'Operation In Our Sites' is a sustained federal law enforcement initiative that targets the sale of counterfeit goods and intellectual property piracy on the Internet.

The combined operation includes teams from the Department of Justice, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), the ICE-led National Intellectual Property Rights Coordination Center (IPR Center), and the FBI Washington Field Office.

Attorney General Eric Holder explained that: "Through this operation we are aggressively targeting those who are selling counterfeit goods for their own personal gain while costing our economy much needed revenue and jobs. Intellectual property crimes harm businesses and consumers, alike, threatening economic opportunity and financial stability, and today we have sent a clear message that the Department will remain ever vigilant in protecting the public's economic welfare and public safety through robust intellectual property enforcement."

"The ramifications of this type of criminal activity can be even greater because the illicit profits made from these types of illegal ventures often fuel other kinds of organized crime," said ICE Director John Morton.

"The theft of intellectual property, to include the trafficking of counterfeit goods, creates significant financial losses," said FBI Section Chief Zack Miller of the Cyber Division. "The FBI aggressively pursues intellectual property enforcement through traditional investigative methods, intelligence initiatives and coordinated efforts with private industry and domestic and foreign law enforcement partners."

During this operation, federal law enforcement agents made undercover purchases of a host of products, including professional sports jerseys, golf equipment, DVD sets, footwear, handbags and sunglasses, representing a variety of trademarks from online retailers who were suspected of selling counterfeit products. In most cases, the goods were shipped directly into the United States from suppliers in other countries. If the trademark holders confirmed that the purchased products were counterfeit or otherwise illegal, seizure orders for the domain names of the websites that sold the goods and associated websites were obtained from federal magistrate judges.

Since the operation's June 2010 launch, the IPR Center has seized a total of 350 domain names, and the seizure banner has received more than 77 million individual views. Of those domain names seized, 116 have now been forfeited to the U.S. government. Visitors to the sites will now find a seizure banner that notifies them that the domain name has been seized by federal authorities and educates them that willful copyright infringement is a federal crime.

The federal forfeiture process affords individuals who have an interest in the seized domain names a period of time after the 'Notice of Seizure' to file a petition with a federal court and additional time after the 'Notice of Forfeiture' to contest it. If no petitions or claims are filed, the domain names become property of the U.S. government.

The IPR Center is one of the U.S. government's key weapons in the fight against criminal counterfeiting and piracy and uses the expertise of its 19 member agencies to share information, develop initiatives, coordinate enforcement actions and conduct investigations related to IP theft.

FIRST IP ATTACHÉ FOR CHINA

The UK's first ever Intellectual Property, (IP), Attaché has been appointed and started work in China on 14 December.

Tom Duke is the former head of the IP Centre at the European Union Chamber of Commerce in South Korea and combines a detailed knowledge of Asia-Pacific IP enforcement with China specific expertise. He also has a track record of working proactively to address industry IP concerns in Asia. Based at the British Embassy in Beijing, he will be working alongside UK Trade & Investment, (UKTI), and British businesses operating in China, to provide support and advice on industry concerns about the enforcement of IP rights.

At the first, annual, UK-China Symposium held in London in December, Minister for Intellectual Property Baroness Wilcox said that in 2010, trade between the two nations was worth an estimated £42 billion and this appointment of an Attaché in Beijing will provide a physical presence for British businesses and help to build relations with intellectual property agencies in China.

"The Chinese market presents a great opportunity for UK businesses," she said, "We need an efficient global intellectual property system where businesses have the confidence to trade in growing markets. I'm delighted that we have been able to agree to share information and ensure that intellectual property rights both here and in China are enforced robustly."

UK companies are often put off from dealing in China due to fears that their intellectual property will be appropriated.

Tom Duke said: "I am looking forward to playing an important role in addressing the intellectual property protection and enforcement issues that have been raised by UK companies."

Commissioner Tian Lipu, Minister from the State Intellectual Property Office of the People's Republic of China, (SIPO), was in attendance along with around 60 senior UK business leaders and senior representatives from the Chinese business community.

Follow us on 

ENVIRONMENT

NEW TASKFORCE TACKLES ILLEGAL SITES

A specialist environmental crime taskforce that will blitz illegal waste sites in England and Wales over the next two years has been set up by the Environment Agency.

The taskforce will be supported by up to £5million of Environment Agency funding for the first two years and already, approximately 600 active sites have been identified, of which over half are estimated to be within 50 metres of schools, homes or sensitive environmental sites.

Identifying sites and closing them can often involve complex investigations and legal action so the new taskforce, which includes former police detectives, will work closely with enforcement partners to gather intelligence and act quickly to close them.

The big push is part of the Environment Agency's continued action to combat serious, organised waste crime. Increasingly, those involved in waste crime often take part in other criminal activities such as drugs and theft. Working closely with key partners, including local authorities and the police, the Environment Agency has stopped, or brought into regulation, 1195 illegal waste sites and took over 400 waste-related prosecutions during 2010/11.

In the last six months the Agency was granted court orders to recoup almost £1million from offenders through the **Proceeds of Crime Act**. In August 2011, a Berkshire man was given a two year community service order, a month after being ordered to pay almost £900,000 for running an illegal waste site which had a serious impact on local residents. People living near the site suffered serious disturbance at night from powerful floodlights and noise from barking dogs and car crushing operations.

In another example, a Leicestershire company was prosecuted for illegally burning waste and affecting local air quality. Nearby residents' homes were affected by smoke. The defendant was fined over £10,000.

More recently, on 30 November 2011, a contractor was fined over £22,000 in relation to an illegal waste site near

Pontypridd. Environment Officers found illegally treated and stored waste at the site including asbestos, stone, soil, wood and metals as well as general household waste.

Environment Agency Chief Executive, Dr Paul Leinster, said: "Waste crime is a serious offence that poses a risk to human health and can damage the environment. We must ensure that illegal waste operators do not profit and the worst offenders are prosecuted.

If you're involved in illegal waste activities, you should be looking over your shoulder and expecting a visit from our enforcement officers.

♪ A LIFE ON THE OCEAN.... ♪

It has been confirmed that the offshore marine energy project in Cornwall, which allows developers to test new wave energy technology, will be taken on by the Government to secure its future as a vital part of the UK's green energy sources.

The Department for Business Innovation and Skills, (BIS), took over ownership of the Wave Hub asset from the South West Regional Development Agency, (RDA), on 1 January 2012.

To manage the day-to-day operation of the testing facility on its behalf, BIS has set up a stand-alone operating company, Wave Hub Limited, which will be based in Hayle, Cornwall. This arrangement will allow the project to build on the operational plans already put in place by the RDA.

BIS and the RDA have been discussing the Wave Hub's future since closure of the Agency was confirmed by the Government last summer.

Business Minister Mark Prisk reported that BIS has always recognised Wave Hub's unique position as a nationally-important asset to develop the UK's capacity to generate energy through the power of ocean waves. He said: "As part of the transition to a green economy the Government is committed to developing clean energy sources including marine.

"Development of the Wave Hub in Cornwall will bring both environmental and economic benefits to the UK and I am pleased that we are able to take this positive step."

Claire Gibson has been confirmed as Wave Hub's permanent General Manager having acted in an interim capacity since May. She said: "This is good news for Wave Hub, for Cornwall and the South West and for the future of wave energy development across the UK. It secures Wave Hub's status as a publicly-owned asset, ensures it will continue to be locally run, and reinforces the pivotal role of Wave Hub and Cornwall to the development of a commercial marine energy industry in the UK.

Wave Hub is a grid-connected offshore 'socket' in South West England for the large scale testing of technologies that generate electricity from the power of the waves. The infrastructure was installed in 2010 about 16 km off the North Cornwall coast with the undersea connecting cable coming ashore at Hayle.

Follow us on 

HEALTH AND SAFETY

NEW SAFETY WARNINGS

The Health and Safety Executive, (HSE), has issued fresh warnings about workplace safety after the number of deaths rose across Great Britain in 2010/11. It is urging employers to make the safety of workers their top priority for 2012, and is reminding them of their legal responsibility to ensure lives are not put at risk.

A total of 171 people were killed at work in Britain last year, compared to 147 deaths during 2009/10. More than 24,700 workers also suffered a major injury in 2010/11.

The latest provisional figures show that, on average, six in every million workers were killed while at work between April 2010 and March 2011.

In London alone, the number of work-related deaths increased from 9 to 17 over 2009/10, with 2,480 compared to 2,630 major injuries over the same period. An additional 11,101 workers suffered an injury or ill health which required them to take at least three days off work in 2010/11, compared to 11,676 in 2009/10.

High-risk industries include construction, which had 50 deaths last year, agriculture with 34 deaths, and waste and recycling with nine deaths, making up more than half of all workplace deaths in the country during 2010/11.

Despite these figures, Britain has still one of the lowest rates of workplace deaths in Europe.

UNIVERSITY FINED FOR BREACH

Lincoln University has been fined for putting staff, students and contractors at risk of exposure to asbestos.

The failings came to light when a lecturer became trapped in a room after a door lock broke. She enlisted the help of a colleague to release her and once freed, they noticed debris around the door handle.

They notified the university's health and safety department, who examined the door and others in the area, and discovered most were lined with asbestos insulating board and that some were damaged.

The university notified the *Health and Safety Executive*, (HSE), which carried out its own investigation. It was found that a number of areas across the university's estate had been subject to asbestos surveys over a number of years and many areas were found to contain asbestos based materials or even asbestos debris, yet no remedial action had been taken.

Lincoln University Higher Education Corporation, pleaded guilty to two counts of breaching Regulation 5(1) of the **Management of Health and Safety at Work Regulations 1999** at Lincoln Magistrates' Court and the university was fined £10,000 and ordered to pay £12,759 costs.

Following the hearing, HSE inspector Edward Walker said: "Exposure to asbestos fibres is a well known health hazard that results in approximately 4,000 deaths a year.

"The university had an asbestos management plan but had failed to follow it and failed to take appropriate steps to manage the risks associated with the product over a number of years, putting staff, students and contractors at risk of potential exposure."

NO INSURANCE = FINE

A kitchen and bedroom furniture manufacturer from Corby has been fined for failing to insure the company against liability for employee injury or disease.

When the Health and Safety Executive, (HSE), visited Alina Trade Limited's premises in 2011, the company was unable to produce on request a compulsory certificate of Employers' Liability Compulsory Insurance, (ELCI), to HSE inspectors.

Corby magistrates heard that despite letters, and the issuing of a formal Notice to Produce the ELCI document, Alina Trade did not. Even a second visit produced nothing.

The company pleaded guilty to contravening Section 1(1) of the **Employers' Liability (Compulsory Insurance) Act 1969** and was fined £2,000 with £1,567 in costs.

Following the hearing, inspector Sally Harris said: 'Alina Trade Limited had so many opportunities to produce a valid insurance certificate, that the firm appeared to be deliberately flouting the law.

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COMMERCIAL

BIG FOUR UNDER INVESTIGATION

The four large players in the audit market (Deloitte, Ernst & Young, KPMG and PwC), between them earned an estimate of nearly 99% of all the audit fees paid by FTSE 100 companies in 2010, amounting to nearly £600 million.

The Office of Fair Trading, (OFT), has been monitoring the 'Big Four' and the accountancy and audit market since November 2002 and has been concerned for some time about a number of issues such as the fact that nearly all FTSE 350 companies are audited by one of the 'Big Four'; that FTSE 100 companies only switch auditor on average every 43 years and FTSE 250 organisations only every 24 years.

The concerns are reinforced by proposals being adopted in Europe to change and clarify the role of auditors and introduce more stringent rules. Internal Market and Services Commissioner Michel Barnier said recently: "Investor confidence in audit has been shaken by the crisis and I believe changes in this sector are necessary: we need to restore confidence in the financial statements of companies. Our proposals address the current weaknesses in the EU audit market, by eliminating conflicts of interest, ensuring independence and robust supervision and by facilitating more diversity in what is an overly concentrated market, especially at the top-end."

Other areas of concern include the fact that companies put their audit work out to tender infrequently; there are substantial barriers preventing others entering this particular, large audit, market and the high costs of switching between auditors.

John Fingleton, OFT Chief Executive, said: 'Voluntary and industry-led efforts to increase competition and choice in this market have proved unsuccessful. Following extensive consultation, we have concluded that a reference to the Competition Commission, (CC), is appropriate and believe that such an inquiry will also complement the EU's legislative process.'

The OFT also believes that a CC inquiry has the potential to address UK-specific competition concerns that may not be within the scope of the EU's work.

The Competition Commission issued a statement in December 2011 covering the issues, in which they state that their statutory remit is therefore to assess competition in the market or markets for the provisions of statutory audits to large companies.

They are required to determine whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.

The CC must reach its decisions and publish its report within a maximum of two years although, where appropriate, they aim to complete investigations in 18 months or less.

TEST-ACHATS UNISEX GUIDANCE

In Brussels on December 24, the European Commission adopted guidelines to help the insurance industry implement unisex pricing, after the Court of Justice of the EU had ruled that different premiums for men and women constitute sex discrimination.

In its ruling on the Test-Achats case on 1 March 2011, the Court gave insurers until 21 December 2012 to treat individual male and female customers equally in terms of insurance premiums and benefits.

Vice-President Viviane Reding, the EU's Justice Commissioner, met with leading EU insurers in September 2011 to discuss how the industry should adapt to the Court's ruling. Following consultations with national governments, insurers and consumers, new Commission guidelines now respond to the need for practical guidance on the implications of the ruling.

Gender is a determining, risk-rating factor for at least three main product categories: motor insurance, life insurance/annuities and private health insurance. In all three categories, it is likely that a transition towards unisex pricing will have consequences on premiums and/or benefits at the individual level for men and women. Depending on the product concerned, premiums might increase or decrease for certain categories of consumers.

Although the guidelines 'aim to benefit both consumers and insurance companies', there are potential ramifications which could have wide ranging impact on certain sections of society. According to Oxford - based Oxera, one of Europe's foremost independent economics consultancies: 'on average, men (aged 65) could see a reduction in pension income from pension annuities of around 5 per cent or more; women (aged 40) could see life insurance premiums rise by around 30 per cent or more and young women (aged 20) could see motor insurance premiums rise by 11 per cent or more.

Among other parameters, unisex pricing requirements restricts the way in which insurers price risks and requires adjustments in the supply of insurance, with potentially adverse consequences for consumers, who would ultimately bear any cost increases or other supply-side adjustments due to the competitive nature of the insurance markets.

EU Justice Commissioner Viviane Reding, the Commission's Vice-President has said that 'adopting these guidelines a full year ahead of the deadline to comply with the court's ruling, gives time to the insurance industry to ensure that there is a smooth transition to fully equal treatment of men and women'. She further stated that the Commission will remain vigilant in how the industry implements the court's ruling and expected that the first insurers that move to a unisex tariff will have a competitive advantage on the European market.

The guidelines clarify that the ruling applies only to new contracts, in particular to contracts concluded as from 21 December 2012. They also give specific examples of what is considered a 'new contract' to ensure a comprehensive application of the unisex rule at EU level from the same date.

In addition, they provide examples of gender-related insurance practices which are compatible with the principle of unisex premiums and benefits, and therefore will not change because of the Test-Achats ruling. These practices are very diverse, ranging from the calculation of technical provisions to reinsurance pricing, medical underwriting or targeted marketing

The most immediate effect of banning the use of a relevant risk factor on insurance pricing is through redistribution of premiums from the high-risk group to the low-risk group. It is being suggested in certain quarters that such alterations in premiums are likely to result in some changes in consumer demand, with this adverse selection resulting in less efficient adoption of insurance products. Adverse selection can also lead to unintended wider social implications, including damaging the incentives for people to save for their old age, thus threatening to worsen old-age poverty in the future;

The Commission is now confirming that the Court's ruling in the Test-Achats case has only implications for insurance contracts that are covered by the Gender Directive and not for insurance and occupational pensions that are offered in the employment relationship and to which the employer is a party. As far as the latter contracts are concerned, reference is made to **Directive 2006/54/EC**, containing provisions that indicate under which conditions the use of actuarial factors differing on the basis of sex, should and should not be considered discrimination.

HM Treasury has published a consultation on amendments to UK legislation that will be required in order to recognise the decision of the ECJ. As the judgement is binding in UK law, any conflicting national law must be amended to comply with the decision. Responses to the consultation are invited by 1 March 2012.

REFORM OF TAX REPORTING

The Accounting Standards Board, (ASB), part of the Financial Reporting Council, FRC, has set out proposals for the reform of income tax reporting, as the current standard, IAS 12, is 'difficult to understand and apply in practice'.

In a joint consultation paper with the European Financial Reporting Advisory Group, (EFRAG), they intend to solicit views on how the financial reporting of income tax could be improved. Complete financial reporting has become increasingly complex because the tax effects of transactions do not always fall in the same period as they are reported in the financial statements.

Some consider that the information that is provided in compliance with IAS 12 is not as useful as it might be, and that the standard is cumbersome and difficult to understand and apply. The new paper discusses ways in which the usefulness of information prepared in accordance with the standard could be enhanced. In particular it discusses possible changes to the reconciliation of tax expense to a standard rate; revisions to the requirements in respect of uncertain tax positions; and whether deferred tax should be discounted.

The paper also discusses alternative approaches that could form the basis for a new accounting standard that would replace the current. These are the flow-through approach (under which only the tax payable on taxable income for the period is reported as an expense); the partial allocation approach (under which only those tax effects likely to affect the tax payable for future periods is deferred); the valuation adjustment approach (under which tax effects are dealt with as part of the carrying amount of related assets and liabilities); and the accruals approach (under which the tax effect of all transactions are recognised and allocated to the period to which they relate).

The Discussion Paper is open for comment until 29 June 2012.

AUDIT INVESTIGATION SHOCK

Audit regulators have handed out a potentially embarrassing inspection report on Deloitte & Touche's conduct of the audits of US corporations.

The Public Company Accounting Oversight Board's, (PCAOB), a private sector, non-profit corporation created by the **Sarbanes-Oxley Act 2002**, recently published its inspection report on Deloitte, finding fault with 45 percent, or 26 of the 58 audits reviewed. In the year before, 2009, the Board pointed out problems with 22 percent, or 16 of 73 audits that were scrutinized.

PCAOB issued similar findings for PwC and KPMG in those firms' 2010 inspection reports. The audit problem rate jumped from 12 percent to 39 percent for PwC, and from 13 percent to 23 percent for KPMG in the same time frame.

In Deloitte's case, the PCAOB said it found failures to identify or properly address financial misstatements, including failures to comply with disclosure requirements. It also found failures to perform necessary audit procedures, including one instance that led to a change in the public company client's accounting. Some of the problems were so significant, the PCAOB said, that it appeared the firm did not obtain the evidence it needed to support the opinion it issued on the financial statements or the effectiveness of internal control over financial reporting.

That unflattering report follows a separate report in October where the PCAOB pointed out problems with Deloitte's audit quality control dating back to 2007. The Board normally keeps such criticisms private and gives firms a year to resolve them before making those concerns public. In October, however, the Board updated a 2008 inspection report with concerns that the overall design of Deloitte's audit methodology and policies is problematic.

In a letter accompanying the inspection report, Deloitte says it has evaluated the issues raised by the inspection team and taken appropriate actions.

RECORD FINE FOR MISCONDUCT

The UK arm of PricewaterhouseCoopers LLP, (PwC), has been fined a record £1.4m and severely reprimanded by the Accountancy & Actuarial Disciplinary Board, (AADB), over its failure to report to the FSA that JP Morgan Securities, (JPMSL), was not properly ring-fencing clients' money.

The Executive Counsel of the AADB had filed an admitted disciplinary complaint against PwC in relation to its role in reporting to the FSA on JPMSL's compliance with the FSA's Client Money Rules, which govern the segregation and protection of client money. During 2002 and 2008 up to \$23bn of clients money was mixed in with the bank's own cash.

As the Tribunal found that PwC had committed 'very serious' misconduct in respect of each allegation it also imposed a severe reprimand.

The fine was reduced from £2m for cooperation and other mitigation, with PwC paying the AADB's costs in investigating and prosecuting the case.

CHANGES AHEAD FOR SMEs

It's not only the large accounting firms likely to have challenges in 2012. Proposals to simplify financial reporting for micro businesses could affect the business of many high street and regional accountants.

The EU parliament voted just before Christmas to agree proposals for simplified accounting requirements for micro companies. The vote comes after a two-year struggle between the European Parliament and EU Member States in the Council over the definition of a 'micro entity'. Euro MPs wanted to include as many small and medium sized businesses, (SMEs), as possible under the relaxed accounting rules whereas Member States pushed for a tighter definition.

Micro businesses are now defined as firms with a total balance sheet of less than €350,000 (around £300,000), a net turnover of less than €700,000 (around £590,000) and no more than 10 employees on average a year.

Qualifying businesses must now only comply with national reporting rules, which usually demand very basic information.

The UK government enthusiastically embraced the European proposals as part of its deregulation drive for small business. Secretary of State Vince Cable joined in when he confirmed that he also wanted to take advantage of increased audit thresholds that would take more small companies out of the audit regime.

NEW HELP FOR MANUFACTURING

A new national programme which will focus on helping small and medium manufacturing businesses to grow was officially launched by Business Minister Mark Prisk

and the Manufacturing Advisory Consortium, (MAC), on 3 January 2012.

The Manufacturing Advisory Service, (MAS), is now available to all businesses in the sector across England and it has been estimated that the new initiative will help to generate £1.5 billion in economic growth, 23,000 new jobs and safeguard 50,000 existing. It will be delivered by the MAC, which is comprised of Grant Thornton, Pera, WM Manufacturing Consortium Ltd and SWMAS Ltd.

Karl Eddy, Head of Government Infrastructure Advisory at Grant Thornton and Head of MAS, said: "This type of programme is vital to support Britain's businesses and economy in growth and MAC is driven by a passion for dynamic, innovative business and has proven experience in delivering advice for growth.

Small manufacturing businesses will also have access to another new initiative recently announced by the Government to improve the global competitiveness of UK advanced manufacturing supply chains. The fund, which will be up to £125 million, will cover the whole of England and will help to support existing suppliers and encourage new operators to invest in the UK and support economic growth.

FIGHT AGAINST EVASION

The European Court of Auditors have issued a special report which observes that the application of customs exemption procedure 42 has led to significant losses to national budgets. Based on results of sample tests, the extrapolated amount of the losses in 2009 was approximately €2200 million, representing 29 % of the VAT theoretically applicable on the taxable amount of all the imports made under procedure 42 in the seven selected Member States.

Of these losses, €1800 million were incurred in the seven audited Member States of importation, (Belgium, Denmark, Spain, France, Austria, Slovenia and Sweden), and €400 million in the twenty-one destination Member States of the goods imported in the sample.

Customs procedure 42 is a mechanism a EU importer uses in order to obtain a VAT exemption. It is applied when goods imported from outside the EU into a Member State are transported to another. In such cases, the VAT is due in the latter - the Member State of destination. There is a risk that imports may remain in the Member State of importation without payment of VAT. Imports may be also consumed in the Member State of destination without VAT being collected there.

The ECA found that although the Commission has proposed some improvements to the EU regulatory

framework, it considers more needs to be done. At present, the regulatory framework does not ensure the uniform management of this VAT exemption by customs authorities. For example, it does not ensure that information concerning these transactions is always made available to the tax authorities in the destination Member State either.

The Court remarked that all of these deficiencies can be exploited by fraudsters, helped in many cases by the fact that control in Member States was also deficient in that they do not ensure that exemption conditions are met as essential information is not made available to tax authorities to ensure that the tax is eventually paid.

In addition, the report says that tax authorities do not exploit the possibilities offered by the information available to them to detect and prevent VAT evasion, and there was no agreement to impose joint and several liability for not reporting information relating to such intra-Community transactions.

The Court is now recommending that the Commission take the following actions:

- amend the Customs Code Implementing Provisions to implement uniform communication of the complete VAT data for each intended transport;
- importers should be held jointly and severally liable for VAT losses in the Member State of destination when the VAT statement is not submitted by them;
- the Member States' custom electronic clearance system should carry out automatic verification of VAT data;
- create a common EU risk profile for these imports; and
- legislation should be changed to improve the exchange of information necessary for correct charging of VAT in the Member State of destination.

BEST CHRISTMAS YET

A south London teenager, Nick D'Aloisio, is making headlines all over the world for a new mobile phone app he has developed and which has gained investment of hundreds of thousands of pounds from a private equity investment firm controlled by a Chinese billionaire.

Launched in mid-December 2011, initially for the iPhone and iPodTouch, the new app is called Summly and can currently condense reference pages, news articles and reviews, although its developer says it has the potential to go a lot further. There are plans to launch Android and web versions in the New Year.

The new app clocked up 30,000 downloads in its first week and has summarised many times that number of web pages. The first version clocked up 1000,000 downloads which caught the eye of the Hong Kong based billionaire Li Ka-Shing, whose previous investments include Skype, Facebook and Spotify. According to Forbes magazine's 'rich list', he ranks as the eleventh wealthiest person in the world – despite being recorded as a high school dropout.

The 16-year-old Londoner is the son of a lawyer and an investment banker and had the idea for it while studying for a history exam. While using Google, he said clicking in and out of search results seemed quite inefficient and what he really wanted was a content preview, which could then simplify and summarise web searches.

All this despite not taking computing as a subject at school; he studies Chinese and Russian and wants to do philosophy at university.

FEWER SAVING FOR RETIREMENT


According to new figures released by the Department of Work and Pensions, DWP, savings into private pension schemes have dropped substantially over the past ten years, with less than four in 10 Britons are now making their own provision for retirement.

The analysis shows that rates of pension saving have dropped from 46 per cent in 1999-2000 to 38 per cent in 2009-2010 which assumes that only 11.4m people out of the 30.4m estimated working age population are saving for retirement.

According to DWP, the decline over the past decade has been most pronounced among men, where rates of saving have fallen from 52 per cent to 39 per cent, and younger people, with saving rates falling from 43 per cent to 31 per cent for those aged between 20 and 40.

DWP has used the data to emphasise why it feels the introduction of auto-enrolment pension saving, which will be phased in from October this year, is 'critical'.

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For further information on any of the above,
please call and speak directly to a partner:

**Douglas Armour, Robert Armour, Martha Bruce,
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Update

David Venus



David is a Chartered Secretary with over 35 years' experience of company secretarial work. He initially gained commercial experience with subsidiaries of Nestlé and ITT and formed David Venus & Company in 1980.

Since then, he has acted for numerous listed organisations, private companies, government bodies, solicitors and accountants. He has written several accepted works on company law and company secretarial practice and speaks regularly at conferences and seminars on corporate governance and other issues.

He recently received an Outstanding Achievement Award from the Institute of Chartered Secretaries, (ICSA), 'in recognition of a significant and long-lasting contribution to the profession'.

He is currently a member of Council at the ICSA.

Martha Bruce



Martha has been with the firm since 1992 having started her career in company secretarial work in 1988. She previously worked with Chantrey Vellacott and before that Morgan Grenfell. She acts as company secretary to many listed and unlisted companies and, as well as focussing much of her time on core company secretarial work, heads provision of our trade mark, health & safety and employment law services.

Martha has written four books: Rights and Duties of Directors published by Bloomsbury Publishing and updated annually; The ICSA Director's Guide; The ICSA Legal Letters and Agreements and A Practical Guide to the Memorandum and Articles of Association, all published by the ICSA.

Douglas Armour



Douglas joined the practice in 1985 having completed the ICSA professional examinations as a post graduate student. In addition to acting as company secretary to several public and private companies he also heads our share registration division which specialises in smaller fully listed, AIM and PLUS companies.

Douglas has written and contributed to a number of company law reference books and in particular two published by the ICSA: The ICSA Company Secretary's Handbook, first published in 1999 and updated annually and The Company Secretary's Checklists first published in 1992 and updated bi-annually.

Susan Wallace



Susan joined the practice in 2001 after gaining her initial experience within accountancy and legal practices including Eversheds and KPMG in Hong Kong. She has her own portfolio of clients; predominantly AIM listed groups and oversees our outsourced work for professional service companies. She also heads our services relating to the establishment and administration of approved and unapproved share option plans.

Susan has written the ICSA Company Secretary's Troubleshooter. She co-ordinates and edits the firm's Q&A section in the ICSA's monthly journal Chartered Secretary and Butterworths' Company Secretarial Procedures and Precedents Manual, first written by David in 1993 and updated quarterly.

Robert Armour



Robert Armour became a director in 2010, joining the practice after many years as Company Secretary and General Counsel of British Energy Group plc, a FTSE 100 company until its acquisition by EDF SA in 2009. Following a career in private legal practice, he spent almost 20 years as company secretary of significant companies in the energy sector and has extensive experience as Secretary and Director of Regulated Businesses.

Robert was in house counsel of the year in 2005 and awarded an OBE in 2007 for services to the electricity sector.

Based in Edinburgh, he chairs the Scottish Council, Development and Industry and is an adviser to Equiniti and EDF Energy. He also acts as a member of Gowlings Toronto based international strategic advisory group.



Established in 1980, we are part of the Equiniti Group which acts as share registrars to over 50% of the FTSE 100 companies. Through our team of 25 staff based in Esher in Surrey, we are able to perform the entire company secretarial function for clients, which range from companies listed on the main London market and the AIM and PLUS markets, to private companies, UK subsidiaries and overseas subsidiaries of foreign parents.

