Spring/Summer 2015

Perspectives:
A review of current legal issues and trends

Contents

Introduction

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Welcome to the first 2015 edition of *Perspectives* – an overview of key topical issues and legal trends across competition, employment, intellectual property, pensions, real estate, tax and technology. In this issue, we also consider the role of the forthcoming general election with respect to party pledges on employment law, and its effect on property tax.

2014: the year in review

2014 represented another stellar year across our London office. We helped pioneer the use of "yankee" loans in Europe, were heavily involved in the wave of private equity-led London IPOs, secured our role as the leading advisor for European leveraged finance and CLO mandates, and acted as lead advisor on landmark judgments in high-profile U.K. restructuring and litigation cases – with the majority of our work involving multidisciplinary teams and cross-border issues, leveraging the strength and expertise of our global network and capabilities.

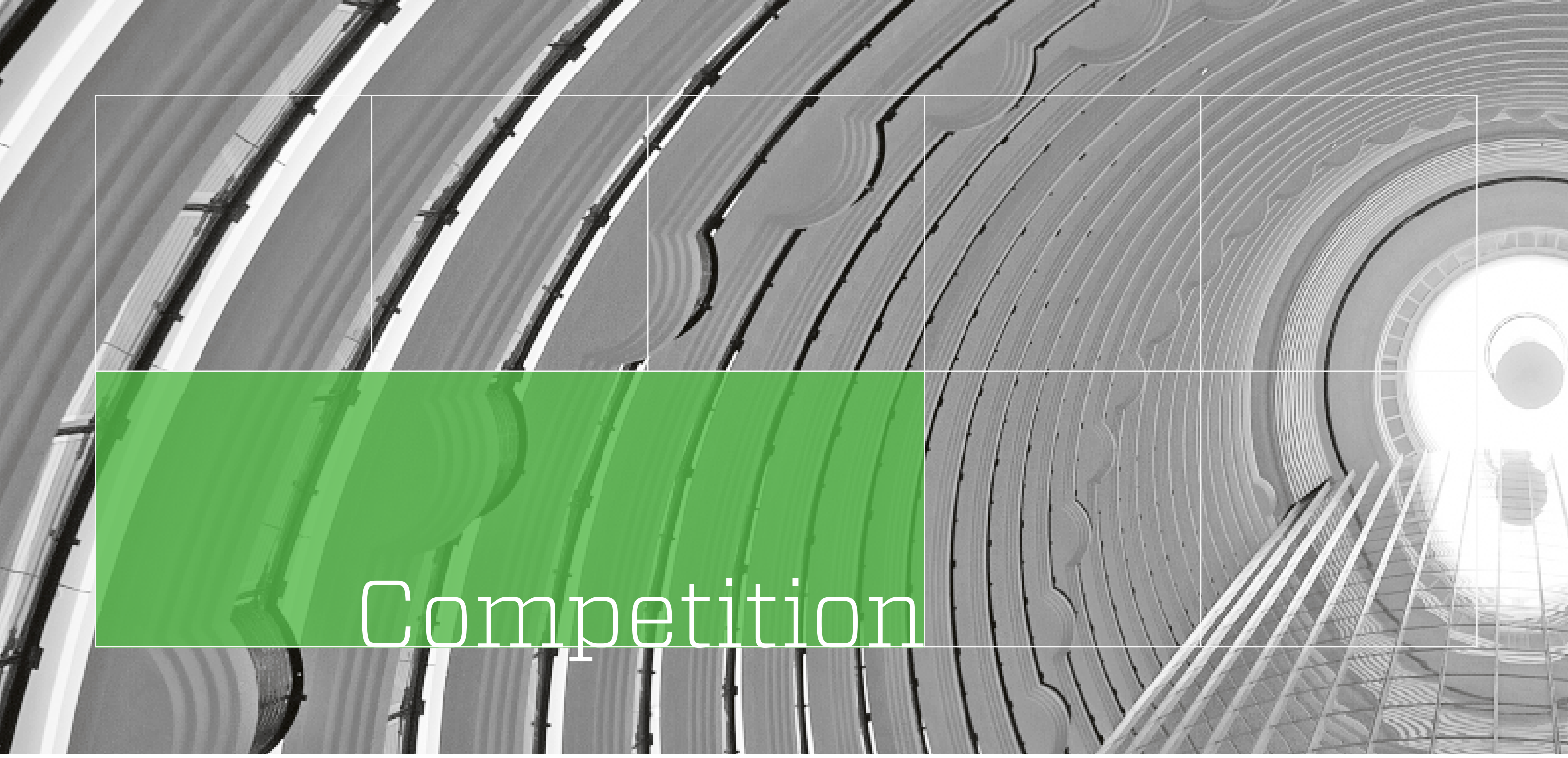
Our continued successes have been recognised in the market, being named *Corporate and Commercial Specialist Firm of the Year – Private Equity* at the 2014 Legal 500 Awards, *Private Equity Practice Group of the Year* by Law360 2014, and winning *M&A Deal of the Year* at the IFLR Awards 2014, in addition to topping the M&A league tables – ranking #1 for Global M&A, and in the top 3 for U.K. M&A in the 2014 Full Year Thomson Reuters League Tables.

We also welcomed a number of lateral partners, including restructuring partner Andrew Wilkinson who joined from Goldman Sachs, and Chris McLaughlin previously from Hogan Lovells and Reena Gogna previously from Latham & Watkins joining the banking practice. Recognising the depth of talent in the office, in November we announced the election of four new partners across leveraged finance, structured finance and funds. This investment in the future of the firm means we are in excellent shape to further develop the business, and we look forward to continuing to support our clients in 2015 and beyond.

Recent matters

Throughout 2014 our transaction specialist team continued to advise a broad range of clients globally, including corporates, private equity houses and financial institutions, on some of their most significant mandates, including:

- Gores Group on its Hovis joint venture agreement with Premier Foods.
- Principal shareholders of Ono on the landmark €7.2 billion sale to Vodafone, in one of the largest European deals in 2014.
- Working with our Paris office on one of the most high-profile deals of 2014, advising Alstom on GE's $16.9 billion bid to acquire Alstom's power and grid business, representing GE's biggest ever deal.
- DFS on its IPO and listing on the Main Market of the London Stock Exchange.
- InfraRed Capital Partners on the raising of its latest real estate fund, InfraRed Active Fund III.
- Forest Laboratories on its $25 billion merger with Actavis and its $2.9 billion acquisition of Aptalis.
- Barclays Bank in the £1.5 billion restructuring of General Healthcare Group, owner and operator of the BMI hospital chain.
- Securing a £1.25 billion High Court victory for the Littlewoods group in its long-running dispute with HMRC concerning interest on overpaid VAT.
- Continuing to advise on the U.K. pension and insolvency issues arising from the Lehman Brothers bankruptcy proceedings, including successfully advising on the landmark settlement of the Lehman group's U.K. liabilities, concluding four years of pensions-related litigation.
- Continuing to advise KPMG as special administrators of MF Global UK, in the first Special Administration under the new regime.



Competition

Doug Nave
Antitrust/Competition

Changing Regulators – New Ideas, or More of the Same?

Over the years, there has been a growing consensus among regulators worldwide that the competition laws should be used to promote the free and efficient operation of markets, rather than to choose commercial winners and losers. Accordingly, amorphous "public interest" tests that used to characterise antitrust enforcement have been widely replaced by economically oriented assessments, and competition-law enforcement is less sensitive than many other regulatory programmes to the electoral cycle.

The past year nonetheless has seen some significant changes, both at the European Commission and in the U.K. While these are still relatively new, the regulators are beginning to stake out their priorities and demonstrate how they are likely to enforce the law.

Europe's new Competition Commissioner

On 1 November 2014, Margrethe Vestager became the EU's new Competition Commissioner, in charge of the enforcement of Articles 101-102 of the Treaty on the Functioning of the European Union (that is, rules regulating cooperation between companies and potential abuses of market dominance) and the EU Merger Regulation. Commissioner Vestager has an economics background, and has served for roughly 20 years as a career politician in Denmark (representing the Social Liberal Party).

Vestager inherited several ongoing investigations that have drawn a great deal of publicity, and has stated that she intends to pursue them actively. These include:

- **Google:** Vestager is continuing an investigation into a series of complaints that the Internet search firm is abusing its dominance by, e.g. displaying its own specialised search services ahead of its rivals' services; using content from competing services without their consent; and imposing exclusivity obligations on advertisers. Following intense industry opposition to the EC's announcement that it would accept a negotiated solution, Vestager has launched a new round of information-gathering to determine what enforcement action might be warranted.
- **Gazprom:** Vestager is continuing an investigation into whether the Russian supplier of natural gas is abusing its position in Central and Eastern Europe through market partitioning, obstruction of network access, and excessive pricing. While some predict that the Ukrainian crisis has made a challenge by the EC unlikely, Vestager recently affirmed her intention to proceed with the inquiry.

- **Preferential taxation:** Finally, Vestager has given a strong push to investigations into whether Member States are providing selective tax advantages to multinationals who make significant in-country investments. Such preferences, if they exist, could distort competition in violation of the EU's rules on state aid. Targeted investigations are pending into the taxation of Apple in Ireland, Amazon and Fiat in Luxembourg, and Starbucks in the Netherlands, and Vestager recently announced an extension of the enquiry to the tax-ruling practices of all EU Member States.

It is still too early to know whether there is likely to be an appreciable change in the assessment of mergers and acquisitions under Vestager's watch. Ten transactions have received conditional clearances (requiring divestitures or other measures) in her four months on the job, which seems to be relatively high (the EC has issued an average of 17 conditional clearances annually over the last 10 years). However, caseloads can give rise to significant variations from year to year, and it is too early to draw very meaningful conclusions. To the extent any change can be detected in the EC's approach so far, it might be found in a somewhat greater emphasis on preserving competition in innovation (as well as the more traditional concern with pricing).

It will be interesting to see Vestager's approach to ongoing investigations – pending now in at least ten Member States – into the terms of dealings between hotel operators and online travel agents (i.e., companies like Booking.com). The investigations raise a number of important issues, including the recognition of *bona fide* "agencies" and the permissibility of "best price" guarantees, and the national regulators are pursuing a variety of different, mutually inconsistent approaches. Remarkably, while the EC has offered some (limited) "coordinating" assistance, it has refused so far to assume jurisdiction and combine all of these enquiries into a single review. Whether Vestager takes a more active role may say a great deal about how much efficiency and coherence the EC is prepared to offer businesses in development and application of the rules.

The Competition and Markets Authority

The U.K. substantially revamped its regulatory apparatus on 1 April 2014, when it replaced several agencies with the new Competition and Markets Authority ("**CMA**"). While the reform was meant to make proceedings more efficient, early experience suggests that little has changed in practice, with merger reviews (in particular) continuing to involve high levels of redundancy.

Recent cases suggest that Phase II investigations may be increasing. While small numbers afford hazardous predictions, it is perhaps noteworthy that four transactions have been referred in the first two months of 2015 alone, as against only four referrals in all of 2014. While last year appears to have been unusually slow (there were nine referrals in 2013 and 14 in 2012), indications for 2015 so far suggest a busy year. Cases referred to date are diverse, concerning hospitals, food packaging, chilled savoury pastries, and personal lubricants.

The CMA appears willing to conduct detailed merger investigations even in relatively small markets. Thus, the agency has launched a Phase II enquiry into Johnson & Johnson's sale of its personal lubricants business, even though total sales in the affected market are less than £10 million. The CMA's concomitant decision not to investigate concerns about another small deal, involving specialised insurance software, suggests that the agency may be especially prepared to commit its resources to cases involving consumer branded goods.

Another year of experience under the current agency leadership will provide more solid grounds for assessment, but this much is clear: while the election may change a good deal (or not), active enforcement of the competition laws is a constant on the commercial landscape.

Employment

Ivor Gwilliams
Employment

General Election 2015: Party Pledges on Employment Law – Spin or Substance?

With the General Election fast approaching, now is a good time to peer into the future and explore some of the employment law pledges of the U.K.'s main political parties. However, one might reasonably ask which of these pledges have real substance and which are just political spin?

The Conservative Party

The Conservative Party is proposing to introduce four key rules on industrial action:

- Firstly, a rule that at least 50% of the total number of union members must vote on strike action in order for a strike to be lawful;
- Secondly, a rule that a strike affecting certain key public services (namely health, transport, fire services and schools) would need the backing of at least 40% of eligible union members. Currently, a strike is valid if backed by a simple majority of those who vote;
- Thirdly, a rule that a strike must conclude within three months of a ballot. Currently, unions are able to hold repeated strikes based on the results of just one ballot. As long as initial action is taken within four weeks of a ballot, a mandate remains live for as long as the dispute continues; and
- Fourthly, a rule that 14 days' notice must be given before industrial action can take place. The Conservatives also intend to criminalise certain types of picketing and to end the current ban on agency workers being brought in to cover the work of striking employees.

There has been a lot of discussion in the last year or so regarding so-called "zero hours" contracts. These are contracts for casual working, under which the employer does not guarantee to provide the worker with any work and pays the worker only for work actually carried out. Typically, the worker is expected to be available for work when or if called on by the employer. In particular, there seems to be a general consensus that the use of "exclusivity clauses" in such contracts is unfair. These are clauses that prohibit the worker from working for others whilst employed under the zero hours contract by the employer in question. Therefore, the current Conservative-Liberal Democrat Coalition Government aims to make such clauses unenforceable.

The Conservatives are also considering giving self-employed mothers a right to statutory maternity pay.

In addition to the commitment to an “in/out” referendum on British membership of the European Union in 2017, the Conservatives have proposed a new British ‘Bill of Rights’, which the Prime Minister, David Cameron, has suggested will replace the Human Rights Act 1998.

Labour Party

Labour have pledged to increase the National Minimum Wage to £8.00 an hour by the end of the next Parliament in 2020 and will aim to impose stronger National Minimum Wage avoidance measures, in particular by increasing the fines for deliberate breach of the legislation to £50,000 (from £20,000).

Labour appear to want to go slightly further than the current Coalition Government in relation to zero hours contracts. Labour is proposing to “ban exploitative zero hour contracts so that if you work regular hours you get a regular contract”. Labour is arguing that, after a period of 12 months’ continuous employment, workers on zero hours contracts who are working regular hours should have the right to be offered a contract that is “other than zero hours” and that provides a minimum amount of work. However, it may be argued that workers who have been given regular hours to work over a 12-month reference period are not the main “victims” of zero hours contracts, and that it is the employees who have no pattern to their work who experience the greatest exploitation. Labour has also proposed to provide workers on zero hours contracts with the right to refuse requests to be available outside contracted hours, and the right to compensation when shifts are cancelled on short notice.

Labour has also pledged to do more to promote equal pay between men and women. In particular, Labour proposes to require companies to publish details of average pay to promote equal pay (the Liberal Democrats have also proposed this but only in relation to companies with at least 250 workers).

Additionally, Labour has pledged to tackle ‘rogue’ employment agencies and to ensure equal rights for the self-employed.

The Liberal Democrats

An interesting proposal of the Liberal Democrats involves instituting a ‘name-blank’ application form policy in public sector recruitment, in an effort to improve equality and cut discrimination. Interestingly, certain employers have already piloted similar ideas, particularly in the context of graduate recruitment. However, steps to introduce anonymous CVs have received mixed successes abroad. A plan for anonymous CVs to be made compulsory at all large French companies was abandoned after it was deemed to be counter-productive. The Liberal Democrats have also proposed an increase in the national minimum wage (with details to follow).

UKIP

Unsurprisingly, the main UKIP policies focus on the central theme of Britain withdrawing from the European Union, which would obviously result in some radical changes to U.K. employment law.

UKIP has proposed withdrawing from the European Convention on Human Rights and, like the Conservatives, repealing the Human Rights Act (replacing it with a Bill of Rights). UKIP would provide zero hours workers with the right to a fixed contract after one year, but this would apply to ‘large’ employers only and be implemented through a code of conduct.

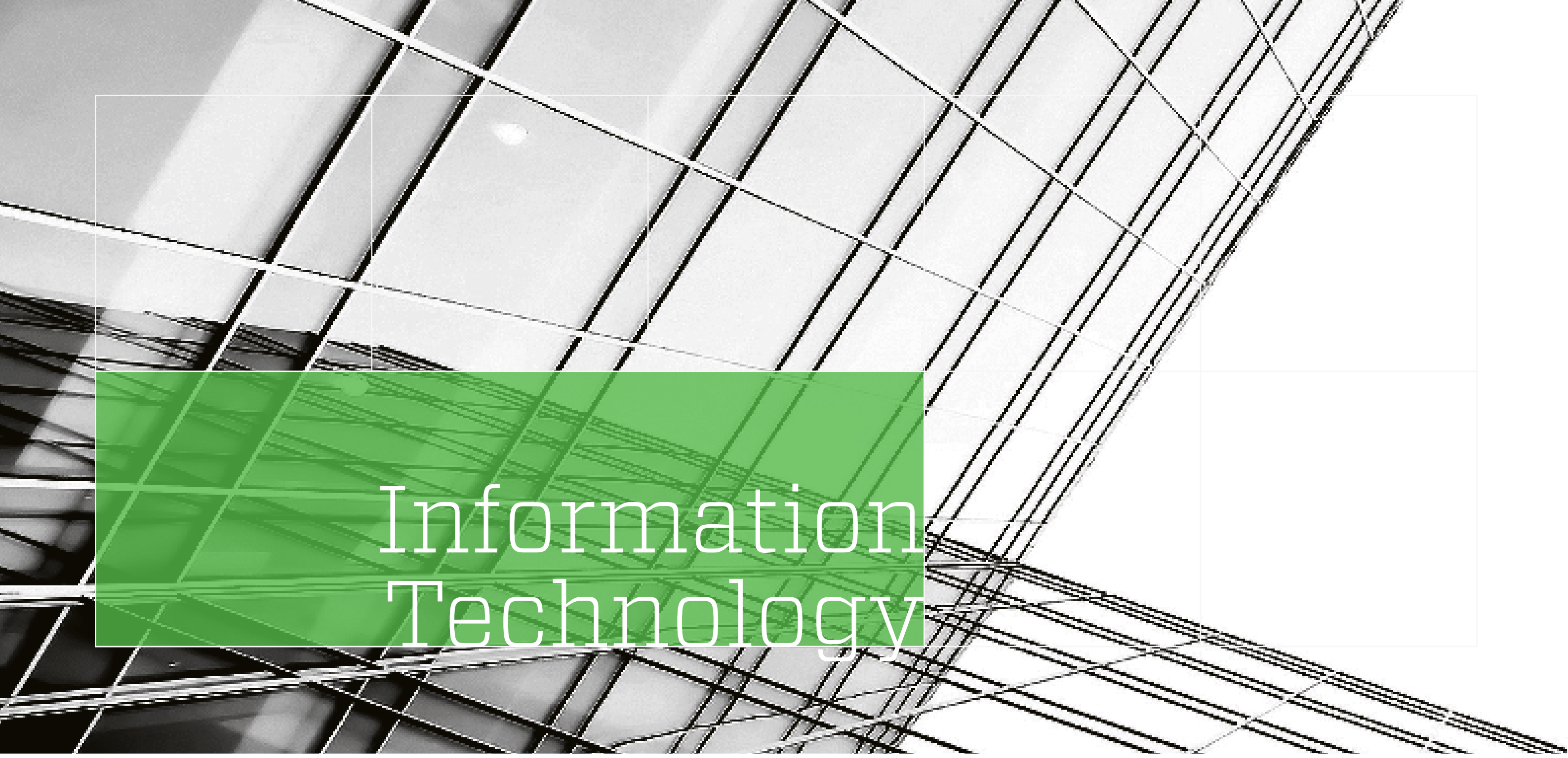
UKIP also proposes to make sweeping changes to existing discrimination law, including guaranteeing that employers cannot be sued for discrimination if they decide to favour a young unemployed British person (under the age of 25) for a job ahead of a better qualified or more experienced foreign applicant.

Spin or substance?

Certain proposals, including the British Bill of Rights, may need to be debated further before their full implications are understood, whilst others, such as Labour's proposal to ensure equal rights for self-employed individuals, are not yet clear and may be more aspirational than substantive at this stage. However, other proposed changes, such as the ban on exclusivity clauses in zero hours contracts, look far more certain to come into effect.

Regardless of which party leads the next Government, other areas of employment law are also likely to change. The employment tribunal system has seen a significant drop in the number of claims as a result of the recent introduction of tribunal fees payable by claimants. A second application to challenge this fee system by the trade union, UNISON, was rejected at the end of 2014, but UNISON is set to appeal this decision. A Labour government would be likely to review the existing system and the current business secretary, Vince Cable (of the Liberal Democrats), has recently ordered his officials to investigate whether the system is proving to be a barrier to justice. If the drop in the number of claims continues, pressure will grow to scrap the system, or, failing that, to reduce the amount that employees have to pay to bring cases or to bring in improved means testing.

Both Labour and the Liberal Democrats have proposed increasing the amount of paternity leave granted to fathers and to make greater steps towards equal pay for equal work by implementing disclosure requirements. With both equal rights and parental rights being hotly-debated topics (and with the shared parental leave regime applying to parents of babies due on or after 5 April 2015), it would not be a surprise to see further legislative moves in these areas.



Information Technology

Barry Fishley
IP/IT/TMT

Cyber Security – Directors' Liability – Questions for the Board

2014 saw cyber security attacks providing headlines throughout the year, beginning with the fallout from the Target debacle in the U.S., and more recently the political and reputational consequences arising from the attack on Sony Pictures. It seems inevitable that the number of attacks is going to grow in 2015. It is also likely that the attacks will be even more destructive. This now means that all companies (and their board of directors), large and small, digital and 'bricks and mortar', should be more alive to cyber security risks than ever before and have in place appropriate and documented measures. The repercussions from any cyber attack are clear: negative PR, financial losses, governmental and/or regulatory action, and potentially for the director, loss of office and, in some cases personal liability.

UK regime

- The Data Protection Act 1998 (the "**DPA**")

  The DPA only applies to personal data relating to living individuals and therefore not all types of data.

  Principle 7 of the DPA requires that appropriate technical and organisational measures are taken against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, such data. Whilst no definitive list of appropriate "measures" exists, a cyber attack which results from a failure to implement appropriate cyber security mechanisms will certainly be caught by the legislation. This was recently demonstrated by a fine of £200,000 which the U.K. Information Commissioner's Office imposed on the Pregnancy Advisory Service for failing to secure a website from which personal data was hacked.

  A director is personally liable under the DPA for certain offences committed by the company with their consent, connivance or attributable to their negligence. Among other things, it is an offence for a company to fail to comply with an enforcement notice which has been issued as a result of any breach of the DPA Principles including Principle 7.

- Fiduciary Duty

  Section 174 of the Companies Act 2006 codifies the pre-existing common law duty of care imposed on directors. Every director must exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent person with (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and (b) the general knowledge, skill and experience that the director actually has.

The objective test in (a) is the minimum, therefore if the director has specialist knowledge (e.g. IT) then the higher subjective test in (b) must be met.

- Financial Conduct Authority ("**FCA**")

  Entities regulated by the FCA must comply with the FCA Handbook. The Handbook requires regulated entities to take reasonable care to establish and maintain effective systems and controls for compliance with the regulatory requirements and maintain adequate policies and procedures. Accordingly, cyber security measures form a key part of compliance from a FCA perspective. One of the most high profile examples of this is the £2.27 million fine imposed on Zurich Insurance for failing to have adequate systems and controls covering the security of customer data.

- Publicly listed companies ("**PLCs**")

  In addition to taking reasonable steps to establish and maintain adequate procedures, systems and controls under the FCA's Listing Principles, a PLC may need to disclose a cyber security breach to the market under the Disclosure and Transparency Rules ("**DTR**") if it constitutes "Inside Information" (DTR 2.2). For the breach to be categorised as Inside Information, it must be information which concerns the company, is not generally available, and would have a significant effect on the company's share price. The FCA has stressed that there is no fixed percentage of share price movement that would trigger this obligation and therefore one must take into account all of the circumstances including the nature of the company's business and the seriousness of the cyber security breach.

  The U.K. Corporate Governance Code (the "**Code**") "softly" regulates cyber security. PLCs have to comply with the Code's principles, and if failing to do so, must "explain" why in their annual report. Under C.2 of the Code, a PLC must have effective risk management systems in place, and assess the "principal risks" the company may face, but as the Code does not specifically identify cyber security as one of the risks that needs to be assessed, it is up to the board to determine the relevant risks.

  Eurasian Natural Resources Corporation PLC reported the loss of a laptop and a cyber attack under these provisions.

  If a director is "knowingly concerned" with a breach then the FCA can fine the director such amount as it considers appropriate.

Questions

1. What IT-based information / intellectual property / data is most critical to the business and what value is at stake in the event of a cyber security breach? In other words, the company needs to identify critical areas of risk.
2. Is the company spending adequately on cyber security protection?
3. Is the company taking any non-standard risks; what is the company's risk appetite?
4. Which stakeholders have responsibility for cyber security matters – should be more than just CIO?
5. Are the company's employees educated on prudent safety measures? If so, how often and by what means?
6. Does the company have appropriate IT policies in place e.g. IT security, network access, BYOD, etc.?
7. Does the company have a written business continuity plan?
8. Has the company undertaken a business impact analysis that identifies the company's most critical systems and the maximum downtime that can be tolerated if they go down?

9. What are the company's systems' back-up procedures? How often is the full system backed up? Are back-ups maintained on the network?

10. Have there been any security breaches? If so, what lessons were learned and what measures have been implemented to mitigate against further risk?

11. Does the company perform regular penetration tests and what are the results?

12. Does the company have comprehensive IT monitoring in place?

13. Does the company have a fully documented cyber attack response plan ready in case of a breach?

14. Does the company's Audit Committee receive reports on cyber security on a regular basis?

15. What data is handed to, or accessible by, third parties such as through an outsourcing, cloud computing or other arrangements?

16. Is cyber security a regular component of counterparty diligence for transactions, such as outsourcing?

17. Consider insurance position; does it cover cyber attacks; cost of product recall, forensic investigations etc.

Pensions

Joanne Etherton
Pensions

Pensions Reform: The Employer's Perspective

Although many aspects of retirement provision in the U.K. have been subject to scrutiny and change over the last 25 years, in April 2015 we shall see some of the most significant U.K. pension reforms ever. The headline reform, which has been well publicised, is that from age 55, members of defined contribution ("**DC**") pension arrangements will no longer have to use their "pension pot" to buy an annuity, with its (expensive) guarantee of a lifetime retirement income, but will instead be able to use the money in the pot at any time and in any way. Employees with defined benefit ("**DB**") schemes will also be able to "benefit" from this new flexibility by opting to change their DB benefits to DC and then drawing money down. It is hardly surprising that there has been widespread concern in the press that people will blow their pension pot and find themselves left with nothing but the state pension.

So do these latest pension reforms affect employers as well as employees? The answer is yes. Tempting as it may be for employers to think this is something for employees to deal with, there are actions employers will need to take.

Communicating with employees

For many employees, the decision about how to use their pension savings in the new flexible pensions regime will be one of the most difficult and important decisions they have to make. It is therefore likely that many people, particularly those nearing retirement, will turn to their employer for help.

Employers need to consider carefully, and if necessary take professional advice on, how to handle employees' pensions questions and what information to provide to staff nearing retirement, bearing in mind that they should not at any time give employees advice on their pensions decisions. The Government has promised to provide individuals with access to guidance (not financial advice or recommendations based on an individual's personal circumstances and objectives) to assist them in making decisions about their retirement savings. No details on how this will work in practice have yet been published, but this should be a useful starting point to direct employees towards.

Employers will of course need to give specific training to their HR professionals who will be fielding calls from employees.

Pensions literature and administration

Employers should now be reviewing and updating employer-provided pension literature and employment handbooks to reflect the flexible pensions changes. They should also review and update administration processes and HR policies, as necessary.

Default funds for company DC plans

The pensions reforms also impact employees' pension pot investment choices and the employer, who chooses the default fund in a company DC pension scheme, will need to ensure the right one is in place.

A default fund is the fund a member's pension contributions are invested in if they fail to make an alternative choice. It is also, in practice, the fund most DC members invest in as a result of a positive decision.

The majority of default funds are "lifestyle" funds, under which the investments change with the member's age or distance to retirement. These funds are predominantly invested in equities or higher risk funds for younger members but up to now, have been aimed at protecting a member's ability to purchase an annuity at retirement in a fluctuating market (with de-risking taking place within five to ten years of a member's selected retirement age, with a gradual move into less risky funds such as bonds or cash).

With the advent of the flexible pensions regime, employers will need to review the traditional "lifestyle" default fund to ensure they are relevant to those members who choose from age 55 to cash out some or all of their pension pot at retirement with the remainder of their pension fund remaining invested for many years. For them, the traditional de-risking under a lifestyle fund would not necessarily be appropriate.

Manpower and HR forward planning

The new flexible pensions regime is likely to increase the employee trend towards the later and more staged retirement process started by the anti-age-discrimination legislation, leaving employers with an ageing workforce. Rather than working full-time until a retirement age of 60/65 and then stopping work and taking their pension, some employees may opt to delay retirement and continue to work on a part-time basis, supplementing a reduced income with drawdown from their pension pot. Others may be forced to continue working, having spent their pension pot from age 55, possibly to pay off debts, and then found they are not in a position to retire when they had hoped. Employers need to be aware of the knock-on effect these retirement choices will have on their business, increasing uncertainty as to when employees are likely to retire, creating issues when formulating plans regarding manpower and human resource.

Conclusion

There is no doubt that the next few months will be challenging for employers and employees (and their advisers) as they grapple with complex pension changes brought in at breakneck speed. Changes that seem on the surface to be employee-friendly and employer-neutral may not turn out to be so. What is for sure is that the stakes are high.

And will the April 2015 changes mark the beginning of the end of all this pensions change? This seems unlikely. The election is just a few months away and some parties are already talking of more pension changes, including possibly curtailing some of this new April 2015 flexibility. Recent history suggests more changes in the pensions space are inevitable.

Real Estate & Tax

Rupert Jones
Real Estate

Oliver Walker
Tax

Worth a Mansion? Tax on Property and the General Election

Introduction

It was Vince Cable who, at the 2009 Liberal Democrat party conference, first proposed a "mansion tax" on owners of residential properties. Despite drawing much criticism—even among Liberal Democrat MPs—the policy made it into the party's manifesto for the 2010 general election. The proposal was for an annual levy on that portion of a property's value above £2 million, and was expected to raise approximately £1.1 billion for the Treasury every year.

Five years on, and the Liberal Democrats look to have shelved the policy in favour of revisions to the council tax system, and it is now the Labour party that is pushing mansion tax as a flagship policy for the general election in May this year. Labour's current proposal, championed by Ed Balls, is for a tiered mansion tax collected annually, with bands for properties valued at more than £2 million, £3 million, £10 million and £50 million. The thresholds will, it is proposed, be revised from time-to-time by reference to the average rise in high-value property prices.

Of the main parties, only the Conservatives have ruled out the tax. However, with senior figures like Boris Johnson suggesting increases to council tax banding for "Russian oligarchs" and "empty homes", even whilst "vehemently" opposing a mansion tax, the position may not be as clear-cut as their manifesto implies.

Elsewhere, both UKIP and the Greens have rejected the idea of a mansion tax. UKIP has expressly challenged the policy and, further, has suggested that they will cut the amount of VAT charged on the renovation of listed buildings (so, a "mansion tax cut" of sorts). The Greens are looking at a direct personal wealth tax affecting individuals worth over £3 million.

Summary

Labour's mansion tax has a number of similarities to the existing annual tax on enveloped dwellings which is charged to non-natural persons that hold an interest in U.K. residential property worth more than £2 million ("**ATED**"). Introduced by the Finance Bill 2013, ATED was designed to dissuade property owners from holding and transferring properties through companies (known as enveloping), a strategy which had been used by property owners to avoid paying Stamp Duty Land Tax ("**SDLT**").

Given their similar nature, it is likely that, if implemented, Labour's mansion tax would look fairly similar to ATED. We can expect to see a "slab" system of taxation, with increasing charges for higher value properties. However, although there is currently little information on what the rates would be for the mansion tax, Labour have suggested that properties within the £2 – £3 million band would attract a charge of approximately £3,000 per annum, which pitches it at a much lower level than that of ATED. Like ATED, the proposed mansion tax system would likely have to rely on self-certification by homeowners based on existing valuations or homeowner-commissioned professional valuations. If the mansion tax were to be implemented, it is likely that the legislation would be pushed through quickly so as to make the first payments due in April 2016, in arrears for the 2015/2016 tax year.

Potential Pitfalls

The "Slab" System

The main problem with the "slab" system, and one that is already encountered with ATED, is the way that it can "warp" house prices. The increase in the amount of tax payable once a property hits a certain value often results in fewer properties on the market at (or slightly above) that value. Instead, there is often a clustering of properties at just below the threshold amount. By way of example, a property which might be worth £2.01 million in the ordinary course, may be unlikely to achieve that valuation if the additional £10,000 means that the new owner will suffer a £3,000 per annum tax charge.

It is worth noting that the present Government acted against the slab system at the end of 2014, through the introduction of a "sliding scale" or "slice" basis of SDLT on residential properties. A more consistent outcome was partially achieved, and those buying a residential property for less than £937,000 will benefit from an effective reduction in SDLT under the new regime. However, there was not, in all cases, a corresponding increase in the SDLT charge for properties worth over this amount: notably, properties worth between £1 million and £1.125 million actually saw a decrease in SDLT following the changes.

Valuation

The house price "warp" ties in with another issue with the proposed mansion tax – that of valuation. As mentioned, Labour's current proposal will largely rely on self-certification by homeowners based on existing valuations, rather than a new valuation of property on a national scale. Therefore, whilst a homeowner could commission his or her own professional valuation, this is unlikely to be a default requirement. However, it may not always be clear which band properties fall into, particularly as the implementation of the tax will itself inevitably impact property values.

Enforcement

Without a central valuation exercise, it is difficult to see how (in the absence of a recent sale) HMRC would be able accurately to assess if a property is chargeable to tax (and if so, in which tax band). Enforcement of the tax is therefore likely to prove difficult, and the possibility of valuation disputes between homeowners and HMRC (particularly where the owner has taken the trouble to obtain a professional valuation) should not be overlooked.

Further, as the mansion tax would constitute a 'dry tax charge', in that there would be no liquidity event accompanying the charge, taxpayers may find it difficult to fund the liability. Labour have suggested that anyone whose income is not subject to the top rate of tax will be able to take advantage of a relief to defer the tax charge until the property's eventual sale, in order to shelter pensioners and those who have seen the price of their house increase significantly during their tenure. However, this approach might itself disturb the housing market, as it could risk becoming a bar to relocation, as homeowners face potentially large tax bills on disposal. This effect would be further magnified if subsequent annual tax rate increases were on the scale of those for ATED. At its 2013 introduction, the lowest bracket applied to properties worth £2 million +, and amounted to an annual charge of £15,000 – the charge on properties in this band is, from April 2015, £23,350, and two new bands have been introduced below this threshold, the lowest of which applies to properties worth over £500,000.

Location, Location, Location

A more general point is that this tax will apply, overwhelmingly, to properties in London. A study by Zoopla suggests that only 87 properties in Wales and approximately 1,000 properties in Scotland would be subject to the tax, compared to 90,000 in London. Leaving aside political banner-waving around wealth redistribution, there is a subtler point at work here. Since the mansion tax policy and the £2 million threshold was first proposed in 2009, prices have risen by 12% in the U.K., but by 65% in parts of central London. Assuming there remains a sizeable difference in price increases between London and the rest of the U.K., the implication is that if indexation is tied to the U.K. property market as a whole, the scope of the charge in London will increase significantly year-on-year as against the rest of the country; but if the indexation were to be tied to London prices, a disproportionate amount of properties in the rest of the country will begin to fall outside the charge. Attempts to tie indexation more locally are likely to lead to odd results as between postcodes, and engender a further level of complexity.

Investors

The discussions around the mansion tax seem to have largely ignored institutional investors and those holding luxury property as a business.

Property developers are certainly opposed: for example, it was recently reported that the Jaspar Group has been forced to cut the price of new Bloomsbury properties by £500,000, to bring them under the £2 million mark and outside the scope of the charge, purely due to investor concerns regarding the mansion tax. Nick Candy, a well-known name in the field of high-value property, alluded to the mansion tax when he stated that: “Every investor has a choice and they don’t need to choose London”. Unless business investments are somehow sheltered from the charge, it is likely that we will see a move away from the popularity of high-end residential property as an investment choice. The point extends to the not-for-profit sector, where charities which own large amounts of residential property are querying how they will be treated under the proposed regime.

Alternatives

An obvious alternative is further SDLT reform: according to a report by the Centre for Policy Studies, the recent reforms to the SDLT regime for residential properties have increased the tax burden on properties in the £2 million + bracket by £1.1 billion to date: i.e., around the same amount as Vince Cable initially thought would be raised by his party’s proposed mansion tax (and just shy of the £1.2 billion which Labour expect the mansion tax would raise). It remains to be seen whether the bands for commercial property will be brought in line with those for residential property when the pre-election budget is delivered in mid-March. As already detailed, the Liberal Democrats and the Green party would implement revised council tax rates (a move supported by the Institute for Fiscal Studies); and Boris Johnson has mooted a similar proposal, suggesting that the super-rich and absentee owners could see their council tax rise by significant multiples. Finally, there have been murmurings in the press about amendments to (or even the abolition of) the Capital Gains Tax relief on the sale of residential homes – such a step would constitute an extension of the recent abolition of the relief in respect of certain overseas-owned properties (which becomes effective from April 2015).

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Peter is a Corporate partner in London. He has over 30 years of experience across a wide range of industries, transaction types and geographies, with a particular expertise advising boards of directors on corporate governance and related issues, including the U.K. Bribery Act 2010.

Peter is a regular speaker at conferences and seminars on matters such as the UK Takeover Code, London listing rules and anti-corruption programmes. He is co-chair of the firm's Pro Bono Committee, a trustee of several U.K. charities, a director of the Salvation Army International and was a founder, together with Archbishop Desmond Tutu, of the Tutu Foundation UK.

Peter is consistently highly ranked throughout the legal directories for Corporate/M&A and Equity Capital Markets. *Chambers UK* describes him as "client-focused, practical and commercial...an expert in his field" who is "highly responsive and delivers results." Peter is also recognised as a "Leading Lawyer" for Equity Capital Markets in *IFLR 1000 UK*, recommended for Equity Capital Markets and M&A in *Legal 500 UK* and selected to the 2014 *London Super Lawyers* list for his M&A expertise.

Recent experience includes advising:

- Multi-national companies, including the British Venture Capital and Private Equity Association, on developing procedures to comply with the U.K. Bribery Act and the FCPA (including businesses based outside the U.K.)
- DFS on its IPO and listing on the Main Market of the London Stock Exchange
- Access Industries on its takeover offer for Perform Group plc
- Edwards Group on its IPO and subsequent takeover by Atlas Copco
- Numerous U.K. clients on an ongoing basis on corporate governance issues

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Doug is a partner and head of the EU Competition practice in London. Doug is a U.S.-qualified practitioner who has been involved in competition law for over 30 years, including practising in Europe for over 15 years. Doug advises and represents clients on matters arising under the competition laws of the EU and its Member States. He acts on a wide range of corporate/M&A and private equity transactions across a variety of sectors and has an impressive track record of winning unconditional clearances from both the European Commission (EC) and the U.K.'s Competition & Markets Authority (CMA). He also regularly advises clients on joint venture applications, competition-law rules on competitive conduct and customer-supplier relationships, issues arising from potential abuse of dominance, and the licensing and use of intellectual property.

Doug is recognised as a leading practitioner in Competition/European Law by *Chambers UK* and *Legal 500 UK*, where he is "applauded for his strong commercial capabilities and ability to provide an in-depth understanding of merger control and joint venture concerns", and praised as being "valued for his succinct and targeted advice". Doug has also been selected to the 2014 *London Super Lawyers* list for his EU & Competition expertise.

Recent experience includes advising:

- Hilton Worldwide in various EU Member State investigations of dealings between hotel operators and online travel agents
- Lenovo on EU and other regulatory reviews of its $2.9 billion acquisition of Motorola Mobility from Google
- Forest Laboratories on global pre-merger reviews of both its $25 billion merger with Actavis and its $2.9 billion acquisition of Aptalis
- Sanofi on restructuring and national regulatory reviews of its alliance with Bristol-Myers Squibb for global distribution of Plavix (the world's second best-selling prescription drug) and other cardiovascular pharmaceuticals
- Johnson & Johnson on the sale of its KY business in Europe

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Ivor is head of the Employment practice in London. He advises on the full range of employment law issues, both contentious and non-contentious, and has extensive experience advising on the employment aspects of a wide variety of private equity, M&A and outsourcing transactions, as well as restructuring schemes and IPOs.

Ivor is recognised for his employment law expertise by *Chambers UK* where he is a "noted expert in transactional employment concerns" and praised by clients as "exhibiting sound judgement in highly sensitive situations" and for his "phenomenal commitment" and ability "to succinctly explain problems and outline different approaches". He has also been selected to the 2014 *London Super Lawyers* list for his employment expertise.

Recent experience includes advising:

- Gores Group on its joint venture agreement with Premier Foods in the Hovis business
- Eli Lilly on its acquisition of Novartis Animal Health
- Volution Group on its initial public offering and listing on the London Stock Exchange
- KPMG as joint administrators on the special administration of MF Global UK
- Ongoing advice to various private equity and corporate clients

Barry Fishley
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Barry is a partner and head of the Technology and IP practice in London. He specialises in intellectual property and technology, as well as data protection, commercial contracts and social media. Barry has extensive experience advising major international companies and private equity funds on a range of issues including the IP and IT aspects of M&A transactions, complex international licensing arrangements, outsourcing, strategic alliances and general commercial matters.

Barry is 'Recommended' for Media and Entertainment in *Legal 500 UK*, which also describes his TMT practice as showing "cutting-edge knowledge and keen commercial sense."

Recent experience includes advising:

- Facebook on its acquisition of WhatsApp, in what was Facebook's largest acquisition at the time
- Gores Group on its joint venture agreement with Premier Foods in the Hovis business
- Montagu Private Equity on its acquisition of the Healthcare Devices and Prescription Retail divisions from Rexam in the U.K.
- eBay on the IP and IT aspects of its acquisition of Shutl Limited
- Yahoo Inc. on the IP, data privacy and IT aspects of its acquisition of Summly

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Joanne is a partner and head of the Pensions practice in London. Joanne is experienced in advising on the pensions aspects of high profile cross-border mergers, acquisitions, disposals, private equity transactions, joint ventures, IPOs, re-financings and insolvencies, as well as on market-leading pensions litigation. She has a particular expertise advising on strategy for employers in dealing with pension trustees and the Pensions Regulator both in the context of corporate transactions and also in issues relevant to the lifecycle of occupational pension schemes.

Joanne is a Fellow of the Pensions Management Institute, was awarded a Diploma in International Employee Benefits and is a member of the Association of Pension Lawyers. She is ranked in *Chambers UK*, and described as "tremendously good and a pleasure to work with." Joanne is also highlighted in *Legal 500 UK* as an "Excellent team player" who is "extremely knowledgeable and client driven" and has been selected in the 2014 *London Super Lawyers* list for her pensions expertise

Recent experience includes advising:

- Lehman Brothers Holdings Inc. on the U.K. pension and insolvency issues arising from Lehman Brothers bankruptcy proceedings, including successfully advising on the landmark settlement of the Lehman group's U.K. pension liabilities
- Alstom on GE's $16.9 billion bid to acquire Alstom's power and grid business, representing GE's biggest ever deal
- Gores Group on its joint venture agreement with Premier Foods in the Hovis business
- The Joint Special Administrators to MF Global UK on the settlement of the Group's pension liabilities
- Lion Capital in the sale of a 60% interest in iconic breakfast cereal maker Weetabix to China's Bright Food Group

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Rupert is head of the Real Estate practice in London. Rupert advises on the real estate aspects of private equity transactions encompassing due diligence of U.K. and pan-European portfolios, transitional service agreements, complex separation issues, post-completion asset transfers and provision of security. He has significant experience in providing day-to-day support on management issues relating to lease negotiations, lease renewals, break clauses and terminations and devising solutions to maximise the return on real estate assets through outsourcing, partnering Opco/Propco and other structures. Rupert also advises administrators and other insolvency practitioners on all aspects of real estate issues in restructurings and insolvency related transactions.

Rupert is Chairman of the City of London Law Society's (CLLS) Planning and Environmental Law Committee, and recipient of the 2014 CLLS and City of London Solicitor's Company "Distinguished Service Award" for outstanding service as Chairman of the Future of the Livery Working Party. Rupert has also been awarded "Property Lawyer of the Year" by *Legal Business*, is recommended for Real Estate by *Legal 500 UK* and has been selected to the 2014 *London Super Lawyers* list for his commercial property expertise.

Recent experience includes advising:

- Gores Group on its joint venture agreement with Premier Foods in the Hovis business
- Barclays Bank in the £1.5 billion restructuring of General Healthcare Group, owner and operator of the BMI hospital chain
- KPMG as joint administrators on the special administration of MF Global UK
- Ontario Teachers Pensions Plan Board on its acquisition of Busy Bees from Knowledge Universe
- Advent International in its acquisition of U.K. furniture retailer Sofa Workshop

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Oliver leads the Corporate Tax practice in London. He focuses on providing tax and structuring advice in relation to private equity and general corporate M&A transactions and reorganisations, designing and advising on complex equity incentive arrangements, and providing VAT advice on structured finance transactions.

Oliver is also regularly involved in tax cases before the English and European Courts. He was recently selected to the 2014 London *Super Lawyers* list for his tax expertise.

Recent experience includes advising:

- Gores Group on its joint venture agreement with Premier Foods in the Hovis business
- Littlewoods in relation to its claim for compound interest on overpaid VAT, resulting in a £1.25 billion judgment
- The Principal Shareholders in the €7.2 billion sale of Spanish telecoms company Ono to Vodafone
- RPC Group in its acquisition of ACE Corporation Holdings Limited
- The Access Industries, Alfa and Renova Consortium in the $28 billion sale of their stake in the Russian oil joint venture TNK-BP, to state-owned oil company Rosneft

Training Offered

We offer a comprehensive range of training presentations and would be delighted to come and speak on any of the topics listed below. We could also arrange a bespoke training session if there is a particular issue of importance to your team.

Back to the Future? Use of IPRs under the competition laws	Regulators worldwide have placed the licensing and use of intellectual property rights under greater competition-law scrutiny than they have done in decades. This presentation focuses on these trends and emerging rules, which must be borne in mind both in ongoing commercial operations and in evaluating potential acquisitions.
Competition law – basic rules and emerging trends	This presentation provides an overview of the basic rules on competition, as well as emerging regulatory emphases (such as on information exchanges) that will help companies to comply with their legal obligations, identify when competitors or business partners may not be doing so, and evaluate important regulatory considerations in possible joint ventures or acquisitions.
Social media – brand, reputational and governance issues	This presentation is focused on the benefits, but also the risks, of social media including its impact on brand reputation and therefore value. It also covers IP infringement, privacy, defamation and governance matters, together with looking at social media issues from an M&A perspective, both in terms of due diligence and warranty protection.
Data protection/ privacy – what's on the horizon?	The EU Commission has published a draft regulation which will fundamentally change data protection laws in Europe. This will impact every organisation, particularly those which exploit and seek to monetise personal data. This presentation highlights these changes and the potential impact on businesses.
Holiday pay—practical steps to deal with the recent court decisions	The recent European and U.K. court decisions regarding statutory holiday pay have caused much debate (and indeed significant concern) in recent months. This presentation suggests some practical steps that employers can take to respond to the decisions.
TUPE regulations – developments	The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") apply to protect employees in relation to business (asset) transfers as well as on service provision changes (e.g. outsourcings and insourcings). There have been a number of interesting decisions by the Employment Appeals Tribunal in the last few years, many of which shed light on issues relating to service provision changes. This presentation explores the main themes to emerge from these cases and to explain what they mean in practice for employers.
Monitoring employee use of email and internet – the basics	Monitoring e-mail and internet use of employees has always been a legal minefield. This presentation summarises the main rules whilst also exploring how employers are attempting to manage the risks posed by the use of social media by their employees.
Employment law – what's on the horizon?	This presentation includes a round-up of the most important recent and planned changes to U.K. employment law including the shared parental leave and pay.
Investor directors—issues to think about at different stages in a portfolio company's life cycle	Private equity houses appoint directors to the boards of companies on almost all of their investments. We consider the directors duties and related issues which those individuals will have to consider through the life of an investment.

Training Offered

Trends in anti-corruption and anti-money laundering compliance	This presentation reviews developing practice in anti-corruption and anti-money laundering programmes adopted by businesses in response to increasingly aggressive enforcement by U.K. and other non-U.K. authorities (including the U.S. in relation to FCPA enforcement). Trends in due diligence in this area are also discussed.
Preparing for an IPO	The equity markets are providing more opportunities for businesses to access capital and develop their public profile. This training reviews steps which companies can take at an early stage to ensure that they are prepared for an IPO on a recognised market in Europe or the US in the short to medium term.
U.K. Pensions and Restructuring – how to cope when the pressure points arise	This presentation looks at how to manage pension risk when the pressure points arise and considers the possible options and strategies to adopt in restructuring situations, taking into account the Pensions Regulator's powers, the potential involvement of the Pension Protection Fund and the considerations of the different stakeholders.
U.K. Pensions—pitfalls to avoid in corporate and financing transactions	This presentation looks at the risks of triggering significant cash payments to a U.K. pension plan either as a result of deal structure or the powers of the U.K. Pensions Regulator. In addition, the risk of significant unforeseen pension liabilities as a result of a proposed or previous TUPE transfer where employees have or used to have defined benefit pension rights and strategies to adopt in these situations.
U.K. Pensions—when is it necessary to involve the UK Pensions Regulator and/or the Pensions Trustees?	This presentation looks at the powers of the U.K. Pensions Regulator and the pension trustees to intervene in corporate transactions (including internal reorganisations, restructurings and refinancings or where there may not initially appear to be a U.K. angle), potentially demanding cash injections to the pension plan or otherwise impacting the deal's financial viability and possible strategies to adopt when navigating these issues.
Do Pension Trustees have a place at the table in public takeovers?	This presentation examines the Takeover Panel rules in relation to the rights of pension trustees to be involved during takeover discussions and how these rights link to the Pensions Regulator's powers in the context of takeovers and suggests strategies for navigating these discussions.
Financial Support Directions and Contribution Notices—how significant a risk in practice?	This presentation examines the situations where the Pensions Regulator has exercised its moral hazard powers to date, lessons to learn from these cases, and the key uncertainties on the extent of the Regulator's powers.
End of lease term opportunities and liabilities	This presentation looks at the end of a lease from both a landlord and a tenant's perspective; how to negotiate better lease terms on a potential renewal or negotiating end of term liabilities, for example, dilapidations, where the tenant is vacating.
Commercial rent arrears recovery	April 2014 saw a revolution in the procedures relating to the recovery of commercial rent arrears. Traditional remedies, such as the landlord's right of distraint, are to be replaced by a set of remedies which are considerably more tenant friendly. This presentation explains the changes and considers possible impacts for affected parties such as landlords and insolvency practitioners.
Realising value from asset-rich real estate	Realising value from asset rich real estate is the holygrail for private equity and similar investors who are attracted to financing structures which differentiate between capital rich real estate, which many see as "dead money", and leased operational real estate assets. This presentation looks at the evolution of the propco/opco type structures, the reasons for disenchantment with those structures and possibilities for the future.
Current tax issues in M&A transactions	This presentation will outline key tax issues tailored to the particular audience.

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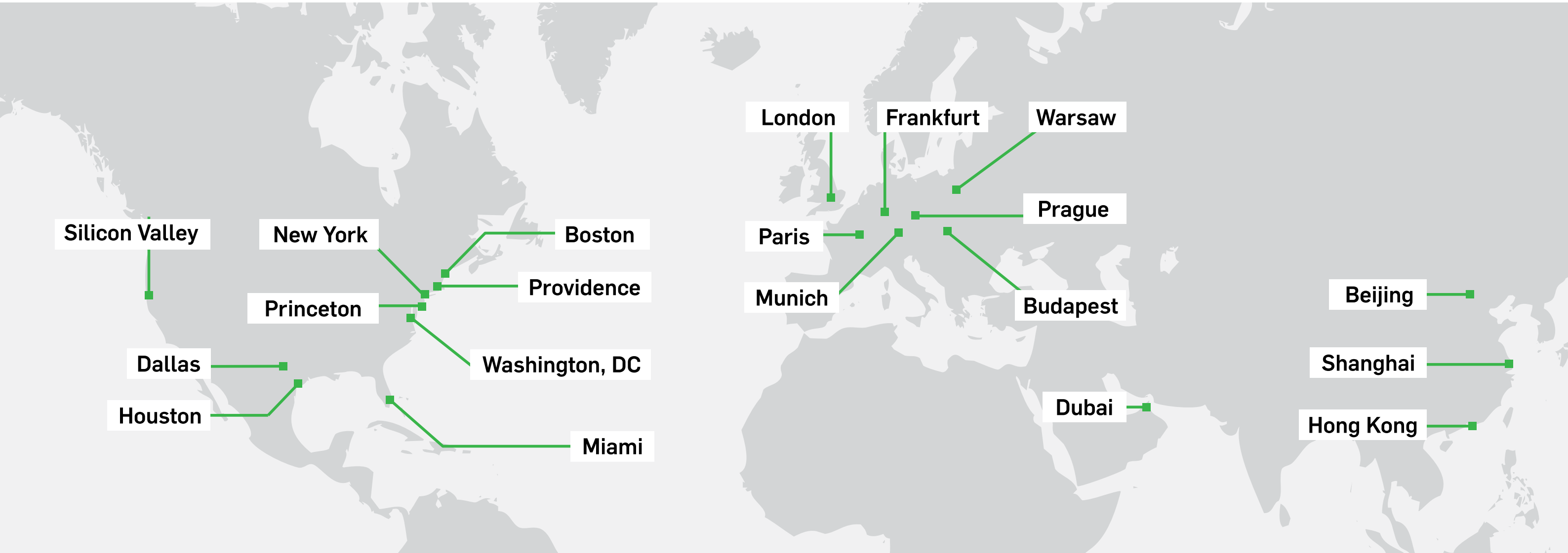

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