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World@Work

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Editorial

Welcome to our final edition of World@Work, our global bulletin for multinational employers, for 2016.

In this edition we consider how to navigate cross-border acquisitions from an HR perspective. We include part 1 of our analysis of the HR implications of Brexit, looking at the General Data Protection Regulation. We also look at the Singapore Court of Appeal's first definitive statement on the duty of care that employers must satisfy when issuing employee references, and the French Supreme Court's reversal of position about automatic damages for employees for breaches by employers of employment conditions.

Finally, we look at the emergence of Scabby the Rat in Australia, and the use of anti-bullying laws to control union pickets.

We hope you enjoy this edition of World@Work and welcome your feedback.

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How to navigate cross-border acquisitions from an HR perspective

BY ANDREW VALERIO

The 21st century offers unparalleled opportunities for businesses to operate on a global basis. But when it comes to employment, the law remains stubbornly local. Nowhere is this more apparent than with cross-border transactions, where HR professionals and in-house counsel need to navigate conflicting rules on workforce consultation, transfer of employment and harmonisation of employment terms. In most cases, adopting a uniform approach across borders will not be possible.

Competing legal and commercial demands also mean that employment considerations may be pushed down the transaction priority list. However, HR issues can cause a transaction to stall if not properly identified at an early stage. In this article we consider the HR issues arising on the sale of a business and highlight pitfalls and traps for the unwary.

UNDERSTANDING THE STRUCTURE OF THE DEAL

From an employment perspective there can be significant differences where a transaction is structured as a share sale versus an asset sale.

ASSET SALES

On a business sale, the assets of the business are being acquired rather than the employing company itself. This means that employees working in the target business need to be 'transferred' from the seller to the buyer on completion of the deal.

In European jurisdictions this generally happens automatically by operation of national legislation implementing the EU *Acquired Rights Directive* as amended. Subject to certain rights to object, assigned employees will generally transfer on existing terms and conditions of employment and with continuity of service. The European automatic transfer principle is commonly referred to as 'TUPE', which is an abbreviation of the UK's particular implementing legislation, the *Transfer of Undertakings (Protection of Employment) Regulations 2006*.

Other jurisdictions, like Australia, Hong Kong and India, do not provide for automatic transfer. When employees move across to a buyer this involves a buyer making an offer of employment to the target employees and, if they accept, the employees resign from their employment with the seller (or the seller dismisses them) with effect from completion. Theoretically this gives the buyer greater flexibility to pick and choose who they want to take. But the flip side is that there is less certainty from the employees' perspective.

SHARE SALES

By way of comparison, share sales tend to be straightforward. Employees remain employed by the entity being acquired and the buyer takes on that entity with all associated employment obligations and liabilities. It isn't necessary to put the employees on new contracts (unless as part of a harmonisation exercise – see below). Consultation requirements are generally less onerous than for an asset sale.

SHARE SALES INVOLVING AUTOMATIC TRANSFERS

However, TUPE (or its equivalent) cannot simply be ignored on a share sale. Transactions are often structured in stages, involving pre- or post-closing reorganisations, hive downs or the disposal of particular assets. Any of these steps, although potentially secondary to the main acquisition, could involve the transfer of some or all of the employees pursuant to applicable automatic transfer legislation. These transfers should be examined on a case by case basis. A diagram can be a useful tool for this purpose.

In France, the transfer of employee representatives must be authorised in advance by the labour inspector. This process may take several weeks to complete.

In the UK, so called 'gold plating' of EU transfer legislation adds another layer of complexity. Here TUPE transfers are not limited to transfers of undertakings (ie the traditional sale of assets scenario) but can also encompass what is known as a 'service provision change'. Subject to meeting certain requirements, this means that TUPE can theoretically apply to pre- or post-closing outsourcings/in-sourcings, intra-group employee transfers or shared service arrangements. In France, however, in the event of a 'service provision change', TUPE would generally not apply unless it constitutes a more general transfer of activity that continues afterwards on similar conditions, and is operated through the transfer of material assets.

Following the UK's vote in June this year to leave the European Union, there has been speculation as to whether the UK Government will look to repeal or amend parts of TUPE, including the rules about changes to service provision. However, major changes seem unlikely because businesses are used to how these rules work, and the current requirements are reflected in contract drafting and market practice.

DUE DILIGENCE

UNDERSTANDING THE MAKE-UP OF THE WORKFORCE

As a prospective buyer, one of the first steps in HR due diligence is to work out how the target business is staffed and what the employees actually do. Workers can be engaged in very different ways, particularly where the business has grown inorganically through acquisitions, undergone reorganisations or relies on third party labour arrangements. Regardless of the structure of the transaction or countries involved, getting a handle on these arrangements is important. Some questions to consider include:

- Which company actually employs the employees servicing the target business? If the employees are employed by an entity outside the target group, will they need to be moved or transferred into the target before the acquisition? Is that possible under local law?
- Are any functions (eg IT, HR, marketing, accounting) carried out at a group level rather than by the target? Do you have a plan in place for transitioning those functions after the deal closes or will you need to put in place transitional service arrangements?
- Does the target rely on outsourced labour or dispatch worker arrangements? If so:
  - do the service contracts need to be assigned or novated to the buyer or does the buyer have its own providers?
  - which of the contracting parties bears the costs of terminating the employment of any surplus employees on a change of control?
  - have the outsourced arrangements been carried out in compliance with local law? Indonesia, for example, has a very strict regime relating to outsourcing. Breaching these rules means workers are automatically deemed to be employees of the target business.
- Are any of the employees sponsored to work in the relevant jurisdiction? If so, which entity sponsors them and will the buyer need to apply for new visas as part of the transaction?

IDENTIFYING RISK AREAS

The scope of due diligence will vary from transaction to transaction. In broad terms, the key areas of focus will be:

- key executive terms of employment (particularly provisions dealing with termination and protection of proprietary interests)
- general terms and conditions of employment and staff policies
- benefit and incentive arrangements
- pension liabilities
- on-going or pending employment litigation; and
- collective bargaining arrangements and trade union issues.

A buyer should look out for any contractual or statutory change of control entitlements that may be triggered as a result of a transaction. Key executive employment contracts often contain contractual entitlements providing for bonus payments, increased notice periods or accelerated vesting of benefits. Statutory entitlements are less common but can have a significant impact on a deal.

For example, in Indonesia, even in the absence of termination of employment by the employer, employees can elect to walk away from a business on a change of ownership and receive a generous statutory severance payment.

In Australia, a buyer should seek confirmation that appropriate superannuation contributions have been made by the target company to a complying fund, and look out for participation in defined benefit funds.

Similarly, in the UK, if the target company participates or has participated as an employer in an underfunded defined benefit scheme, arrangements will need to be made to deal with the target company's share of the deficit before it is sold. The buyer will also want as much comfort as possible from the seller that the UK Pensions Regulator will not be able to exercise its moral hazard powers against the target company in the future.

When dealing with an asset sale in the UK, a buyer should consider the risk of any potential liability for enhanced pension scheme benefits of transferring employees arising on redundancy or on an agreed early retirement age for certain employees. The buyer may want to consider, for example, a purchase price adjustment to take account of the potential risks involved.

Where employees participate in a seller employee share scheme, it may be difficult for a private buyer to replicate that employee benefit. The consequences of the transaction and the ongoing value of the benefit (including whether it is contractual or discretionary) need to be carefully assessed. Often the rules of an employee share plan provide for vesting if the employing entity is sold outside the group. Where vesting is a taxable event and there are withholding obligations in respect of the tax due and/or social security contributions, it is important to establish where those obligations fall. If the legal position does not coincide with the commercial intention, an indemnity or other contractual provision may be required.

Buyers and sellers should take care when handling employee data as part of any due diligence exercise. Personal data of the target business's employees will usually attract protection under local data privacy laws. There will often be restrictions on the ability to send this personal data outside the home jurisdiction.

EMPLOYEE CONSULTATION

Employee consultation varies across jurisdictions and doesn't always lend itself to adopting a uniform approach. It may be necessary to allow for differing closing timetables across jurisdictions to take account of the time needed to consult in each country involved.

The stages at which consultation is required also differ. For example, in France, consultation with Works Councils about the sale of a business needs to take place before any definite decision has been made on the sale.

Statutory consultation processes may be required for both the sale of the business itself and for any proposed restructuring or redundancies.

While some countries, like Hong Kong, do not provide for mandatory statutory consultation processes on asset or share sales, in Australia there are legislative obligations to consult. These arise when an employer has decided to dismiss 15 or more employees under certain circumstances (which may include asset or share sales). Although Japan also does not provide for mandatory statutory consultation processes on asset or share sales, Ministerial guidelines recommend consultation processes on asset sales.

Even where there are no statutory consultation obligations, the consultation obligations under any applicable collective agreements or instruments in each jurisdiction should be checked (such as modern awards in Australia).

RETENTION AND INCENTIVISATION

A buyer will typically want to ensure that managerial employees remain engaged and motivated in the run up to completion and beyond. A key feature of most deals is to put in place incentivisation arrangements for any key executives, linked as appropriate to financial targets or retention conditions. This can take the form of cash-based retention bonuses, share options or other awards.

More generally, a buyer should carefully review key executive terms and conditions to ensure that they contain appropriate protections for the target/buyer business going forward, for example, in relation to restrictive covenants and termination provisions. If they don't, then as part of the transaction process (and often as a condition to closing), these individuals may need to be placed on new contracts of employment, to the extent this is permitted under local law.

TRANSACTION DOCUMENTATION

The parties to a transaction will seek to protect their respective positions on employment matters by allocating costs and liabilities under the relevant purchase agreement. For a buyer, protection will typically come in the form of employment warranties, effectively ensuring that the seller has disclosed all relevant information and provided accurate copies of key documents such as employment contracts, handbooks and benefit/incentive plans. Pay close attention to the time limits and caps that apply to warranties as these will dictate the extent of any remedies available in the event of any inaccuracies discovered after completion.

A purchase agreement will also usually contain indemnities whereby particular risks are ring-fenced and liability is allocated to either the buyer or seller. While it isn't possible to contract out of TUPE (assuming it applies), 'wrong pocket' clauses are often included in an asset purchase agreement. Under these clauses the seller picks up the costs associated with anyone who inadvertently transfers and the buyer remains responsible for anyone who did not transfer by operation of law but whom the parties intended to transfer.

HARMONISING TERMS AND CONDITIONS / RESTRUCTURING

Acquiring a workforce is often just a first step towards an equally challenging process of workforce integration. Assuming that the target business acquired will not operate independently from the rest of the buyer's business, a buyer will often look to achieve synergies and reduce duplication with its existing business.

From a European perspective, there are restrictions on what the buyer can actually do following automatic transfer of employees. For example, in the UK, changes to terms and conditions in connection with a TUPE transfer will be void unless they are made for economic, technical or organisational reasons. Similarly, there are rules providing for unfair dismissal protection where employees are dismissed in connection with the transfer. In France, if an employee is dismissed to avoid a transfer that would be compulsory under TUPE regulations (and it is not part of a plan to avoid closing down the business), the dismissal has no effect and the employee can either be transferred to the buyer or claim damages in court.

In Indonesia, if employees have accepted an offer of employment with a buyer as part of a business sale, they have a right to enjoy the same terms and conditions as they had with the seller. In Hong Kong, if ownership of a business changes, severance pay may not be payable if the terms of employment with the new employer are on an overall basis no less favourable. There are similar requirements in Australia in an asset sale, with the added requirement that the buyer recognises the employee's service with the target company.

Even where changes to terms and conditions or redundancies are possible, local consultation requirements will need to be followed and governmental approvals or notifications may need to be made as appropriate.

Further resources

The Ashurst Global Guide to Public M&A also provides guidance on global M&A issues.

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French Supreme Court reverses position on damages for employer breaches

BY NATALINE FLEURY

Since 1991, the French Supreme Court has ruled that when an employer breaches one of its obligations, or delays to execute it, the employer "necessarily causes damage" to the employee. As a result, where an employer had not complied with an existing labour obligation, an employee could obtain compensation without having to establish loss. Initially recognised in a case of non-compliance in the context of a dismissal, this approach has since been extended to other breaches, and is now a general principle of French labour law, despite its uncomfortable relationship with the traditional mechanisms of contract law.

On 13 April 2016, the French Supreme Court abandoned this reasoning.

In proceedings in the labour court, an employee sought payment of damages for the prejudice he suffered because of the late delivery of his payslip and certificate of employment. The labour court dismissed the employee's claim on the ground that he had not established any prejudice due to the late delivery of the documents by the employer.

The employee appealed this decision to the Supreme Court. It was anticipated that the French Supreme Court would reaffirm the principle of systematic indemnification of the employee due to non-compliance by the employer with its labour obligations. However, the court instead confirmed the reasoning adopted by the lower labour court. The judges agreed that in the absence of any evidence of damage to the employee, the employee was not entitled to compensation.

The French Supreme Court strictly applied the general principles of civil liability. These principles require the applicant to an action for compensation to prove the prior existence of damage and a causal link between the operative event (in the present case, the employer's failure) and the prejudice suffered.

The publication of this decision in the Annual Report of the French Supreme Court suggests that a similar approach will be taken in cases where, in the past, the courts would have held that the employee would have necessarily been entitled to be indemnified (e.g., lack of reference of the applicable collective bargaining agreement on a payslip). We expect that this approach could be extended to any breach by an employer.

Standard of care when providing employee references in Singapore

BY SUMIN AHN AND HANNAH FITZPATRICK OF ASHURST,
AND STEPHANIE WEE AND CARL LIM OF SHOOK LIN & BOK

Employers are often asked to provide references for current and former employees. Providing references can present risks, particularly if the employee is joining a competitor or is otherwise departing on acrimonious terms. In *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2016] SGCA 47, Singapore's Court of Appeal considered the standard of care required of employers when issuing employee references.

WHAT HAPPENED?

Mr Ramesh was engaged by AXA in 2005. From late 2010, the parties' relationship deteriorated. After negotiations, AXA agreed to record Mr Ramesh's departure from AXA as a resignation.

Shortly after, Mr Ramesh applied for a position at Prudential and received an employment offer subject to conditions, including a successful reference check. Prudential sought a Representative Notification Framework Licence (RNF Licence) from the Monetary Authority of Singapore (MAS) and asked AXA to complete an industry standard Reference Check Form (Form) in respect of Mr Ramesh's appointment, in accordance with regulatory requirements.

Prudential requested further details from AXA about its Form, which contained details about compliance issues and Mr Ramesh's performance ratings. AXA did not address Prudential's queries, but referred to a separate complaint made about Mr Ramesh's "aggressive" behaviour. Thereafter, Prudential continued to seek clarification from AXA of the information provided on the Form. Three months later, AXA sent a letter to Prudential about certain aspects of Mr Ramesh's performance, but still did not answer Prudential's question about how certain ratings had been calculated. Further, AXA expressed adverse opinions about Mr Ramesh which suggested unethical practices that were detrimental to clients' interests. Two months later, the MAS advised Prudential that it was prepared to issue a conditional RNF Licence in respect of Mr Ramesh, but Prudential decided that it did not want to proceed with its application for the RNF Licence, or with Mr Ramesh's employment offer.

At first instance Mr Ramesh brought proceedings against AXA for defamation, malicious falsehood and negligence. The court dismissed all claims, and Mr Ramesh appealed on the negligence claim only.

THE DECISION – STANDARD OF CARE

The Court of Appeal summarised the standard of care required of employers in preparing references for current and former employees as follows:

- employers must exercise reasonable care to:
  - ensure that the facts in the reference are true and any opinions are based on and supported by true facts
  - ensure that the reference does not give an unfair or misleading overall impression of the employee, e.g. where the manner in which facts and opinions have been presented gives rise to a false or mistaken impression, even if the discrete pieces of information are correct; and
  - disclose additional information relating to information that has been shared, where withholding such additional information would render the disclosed information incomplete, inaccurate or unfair
- employers are not required to give a full and comprehensive reference, including all material facts about the employee
- in assessing what constitutes "reasonable care", the courts will consider the gravity of an adverse suggestion or inference in a reference, such that the greater the gravity, the more closely an employer's conduct will be scrutinised to see whether it took reasonable care to ensure that the suggestion or inference is based on true facts and is fair and reasonable; and
- employers should generally not disclose an allegation against an employee that:
  - the employee had no knowledge of and had not been given an opportunity to respond to; or
  - was not conveyed to the employee because it was found to be baseless unless it is obliged to do so, in which case the employer should state in *both* the reference and to the employee that the allegation was dismissed as baseless and that the employee was not informed of it.

The Court confirmed that these principles also apply to principals and agents, such as AXA and Mr Ramesh.

BREACH OF DUTY OF CARE

The Court found that AXA had breached its duty of care to Mr Ramesh in preparing its reference, for reasons including that AXA had:

- referred to different performance measures in its answers, the outcome of which would cause a reasonable person to mistakenly perceive Mr Ramesh as not competent
- withheld relevant information and failed to respond to Prudential's requests for information
- provided information on compliance issues that was incomplete, misleading and inaccurate, and which unfairly gave rise to the inference that Mr Ramesh had been involved in serious misconduct and that the conduct had been investigated by AXA; and
- made serious allegations of, and allusions to, potential ethical violations by Mr Ramesh and the advisers under him which did not appear to be substantiated.

CAUSATION

To establish causation, Mr Ramesh had to show that *"… by reason of that negligence he has lost a reasonable chance of employment … he does not have to prove that, but for the negligent reference, [the prospective employer] would have employed him."* The Court found that Prudential's eventual decision not to hire Mr Ramesh arose from delays concerning his job application and RNF Licence, which in turn had been caused by AXA's delays in replying to Prudential's requests for information regarding the Form and subsequent correspondence with Prudential and the MAS. The appeal was allowed.

IMPLICATIONS

This decision is the first time that the Court has laid down a definitive statement on the duty of care that employers must satisfy when issuing references. It is a timely reminder that an ill-prepared reference can have significant consequences for employers, particularly in highly regulated industries. On receiving a request for a reference, employers should take care in preparing a response, involve relevant stakeholders, such as HR or Legal, early on, and respond swiftly.

Ashurst gratefully acknowledges the contributions of Stephanie Wee and Carl Lim of Shook Lin & Bok in preparing this article.

DEFLATING SCABBY THE RAT:

Australia’s stop bullying laws used to control union picket

BY DAVID LLOYD AND HANNAH MARTIN

A long-running industrial dispute in Melbourne has brought international picketing tactics to Australia and highlighted a novel way in which local laws can be used to control union pickets.

In August 2016, former maintenance workers and their unions had been engaged in aggressive picketing at the Carlton & United Breweries (CUB) site for around 3 months. The background to the pickets was a dispute over CUB's decision to terminate one maintenance company's contract and to engage a replacement contracting company whose employees, the unions allege, are employed on inferior terms and conditions.

The union's pickets were directed at the employees of the replacement contractor, and focused on terms and conditions of that contractor's workforce and its non-employment of the workers whose employment was terminated by the first contractor on redundancy grounds.

The picketing involved the abuse and harassment of the replacement contractor's workforce, including calling out to them using the words "scab", "dog" and "rat". The unions also gave physical form to those criticisms by bringing a giant inflatable rat to the picket line. "Scabby the Rat", as it is called, features large teeth and a scabby belly. Inflatable rats are commonly used in the United States by striking or protesting unions, including against non-union contractors, and have achieved some degree of legal protection under US law. They have also been used in industrial disputes in the UK.

Australian courts have held that the use of the word "scab" and similar language in a workplace context is offensive and abusive. The Australian High Court has also upheld the dismissal of an employee who repeatedly held and waved a sign with the words "No principles SCABS No guts" directed at other employees at a protest at the front of a mine site.

At CUB, five of the contractor's employees responded to the abuse and harassment at the picket line by applying to Australia's independent industrial tribunal, the Fair Work Commission, for a stop bullying order under Australia's anti-bullying laws that have been in operation since 2014. Those laws protect workers against workplace bullying, which is defined as repeated, unreasonable behaviour that creates a risk to health and safety.

The Commission decided to make interim orders against two unions (applicable to all of their officers, employees and members), and seven named union representatives. The Commission was satisfied the conduct at the picket line may constitute workplace bullying, and the making of orders would de-escalate further inappropriate conduct and minimise the risk to the health and safety of the employees being targeted by the picketing.

The orders stopped the unions photographing the contractor's employees, abusing or harassing them, calling out to them using offensive or insulting names (including "scab"), accosting or obstructing them, holding up any sign containing offensive or insulting language (including "scab"), and approaching them or any vehicle they were driving or in which they were a passenger.

The Commission decided to restrict the publication of the names of the five applicants, and extended the orders to all of the contractor's employees so as to preserve the confidentiality of the applicants. Some of the applicants have since become directly employed by CUB, so the Commission subsequently made an amended order which protects all "CUB Workers" who are either current employees of the replacement contractor or former employees of the replacement contractor and now employed directly by CUB.

The making of the stop bullying orders coincided with the emergence of the inflatable. While the orders did not stop its use on this occasion, the anti-bullying laws could potentially be used in the future to deflate "Scabby the Rat".

The use of the stop bullying laws to control a union picket is significant for two reasons:

- It was a novel use of those laws. While the laws have previously been used against unions and union officials, this is the first time they have been used in an industrial dispute. This represents a potential new field of operation for the anti-bullying laws, which could prove useful to employers concerned for the safety of employees, and where police are often considered to be ineffective in dealing with pickets; and
- The traditional response to pickets has been to seek remedies such as injunctions in the courts. The legal process involved can be time consuming and costly, and can be thwarted by an inability to identify individual defendants and a union's ability to call in a "rent a crowd" of protesters. In contrast, the Commission was willing in its recent decision to make an order of broad application, protecting the whole of the relevant workforce at the site.

HR IMPLICATIONS OF BREXIT (PART 1):

The General Data Protection Regulation and Brexit

BY JAMES ALMOND AND RUTH BUCHANAN

The EU referendum in the UK on 23 June 2016 resulted in the UK voting to leave the European Union (Brexit). Brexit will undeniably have a massive impact on many areas of employment law and HR practice, particularly where existing UK law is derived from EU legislation. Data Protection is a prime example of such an area, as the UK's current *Data Protection Act 1998* (DPA) implements the provisions of the *EU Data Protection Directive 1995* (DPD) into UK law.

Upon Brexit, in relation to other EU countries (and EEA countries) that are governed by the DPD, the UK will immediately become a "third country" (a country outside the EU for data transfer purposes). The position is complicated by the fact that the EU requirements are themselves changing due to the implementation of the new *EU General Data Protection Regulation* (the GDPR).

THE GDPR

The GDPR will apply in all EU member states from 25 May 2018 without any need for domestic implementing legislation. Brexit is most likely to occur around March/April 2019. So, UK businesses will have to go:

- from operating under the DPA
- to operating under the GDPR
- to operating under whatever regime is introduced post-Brexit.

DATA PROTECTION OPTIONS POST-BREXIT

On 2 October 2016, Theresa May confirmed that all existing EU legislation (including the GDPR) would be transposed directly into UK law on Brexit. However, post-Brexit, it is expected that each piece of legislation will be evaluated and a decision will be taken on whether it should be kept, amended or repealed. When the GDPR falls to be considered, there are a number of options, which will be heavily influenced by the model of relationship that is negotiated with the EU post-Brexit.

Retain the GDPR: The UK could seek an adequacy decision, under which the European Commission would formally recognise the UK's post-Brexit data protection laws as adequate ("on the White List"). Personal data can be transferred to or from a "White List" country on the same terms as transfers between EU Member States.

As the GDPR will already be in place at the time of Brexit and will have been transposed directly into UK law, obtaining an adequacy decision from the European Commission should be straightforward as the UK's law would mirror the EU requirements.

EFTA Membership: If the UK joins the European Economic Area as an EFTA state, it will be able to transfer personal data to and from EU member states, but again this would involve retaining the GDPR in full.

Bilateral Data Pact: Another possibility would be to negotiate a bilateral data protection agreement (either stand alone or within a wider trade agreement) with the EU under which UK companies would agree to voluntarily adhere to enhanced protections in order for them to be able to transfer personal data to and from the EU freely. This would be a long process, similar to the one the USA has just gone through to obtain the Privacy Shield, but would enable the UK to repeal the GDPR.

Liberalisation: Another option could be for the UK to transpose the GDPR into domestic law and then amend/repeal aspects of it to reduce restrictions on personal data export. Although liberalisation could be helpful in some areas of business, it would be more difficult for UK businesses to trade with the EU and a number of other countries that impose restrictions on exports to "inadequate" countries (such as Australia).

Alternatively, the extent of the liberalisation could be more limited, but still achieve the required regulatory equivalence. This would be very difficult to achieve as it depends on the European Commission being prepared to accept a model with fewer protections than the GDPR as offering "equivalent" protection.

THE LIKELY OUTCOME

It is probable that other issues will be a priority in Brexit negotiations (e.g. financial services passporting and immigration) when reviewing the EU legislation that has been transposed into UK law on Brexit. Given the practical difficulties of transferring data to and from EU member states without the GDPR or equivalent protections, the GDPR is likely to remain untouched post-Brexit. So, rather than Brexit, the key forthcoming development is likely to be the introduction of the GDPR itself. The Information Commissioner's Officer has warned that organisations should not delay in preparing for the GDPR.

In the next edition of *World@Work* we will explore the key terms of the GDPR, its impact and what HR teams will need to do to prepare for its implementation.

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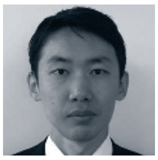

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