RESPONDING TO THE CHALLENGES AND OPPORTUNITIES PRESENTED BY BREXIT – TALENT ACQUISITION AND MANAGEMENT

Immediately following the UK referendum vote to leave the European Union on 23rd June 2016, the UK was plunged into a period of significant uncertainty not only in regard to the process for separating itself from the European Union ("EU") but on the separation timetable and the nature of its ongoing relationship with the EU.

Some of the timetable uncertainty has been eliminated following the announcement by the Prime Minister, Theresa May, that Article 50 will be triggered by March 2017. However, the UK remains in uncharted waters in the lead-up to formal negotiations around the mechanics of separation from the EU and establishing a new relationship with the EU. Consequently, many businesses are still left weighing up both the implications that will arise as the UK moves through the process of separation from the EU and the consequences of a range of decisions that could be taken by the UK and by the EU.

We have previously discussed the broad range of issues we believe organisations should be considering. We have said that organisations should focus on developing impact and risk assessments of current state and planned future changes. These include major investments and new product launches, M&A, technology and data, people issues, change opportunities and the impact on the extended enterprise (i.e. on suppliers and on meeting customer expectations). Within this paper we focus on the short- and long-term challenges and opportunities Brexit presents for the acquisition and management of talent and Brexit’s impact on the mobility of the workforce both into and out of the UK.

Post Brexit Considerations - Talent acquisition and management

For a variety of reasons, the UK has long attracted talent from across the globe and the EU. Identifying where key dependencies and risks lie with respect to the tenure and personal circumstances of individuals will be crucial to making informed decisions about how to retain and attract the talent needed to meet business objectives.

One of the core tenets behind the decision to leave the EU related to immigration and the implications on the UK of the principle of the free movement of people, which continues to be a central issue domestically in the UK and in Europe. There are still sensitivities and uncertainties affecting those benefiting from existing EU arrangements (both UK nationals working and living elsewhere within the EU and other EU nationals working and living in the UK).

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1 Conservative Party conference - 2 October 2016. The implications of the ruling by the High Court on 3 November 2016 on the role of the UK Parliament in triggering Article 50 and the UK Government’s appeal to the Supreme Court, that is likely to be heard in December 2016, creates some further uncertainty.

Key questions include: Will the UK’s new relationship with the EU be aligned with the EU’s principle on the free movement of people or will the the UK be able to reach a successful compromise, such as the use of a “brake” on immigration? Could the immigration models such as those in place with Switzerland and Norway find traction, and if so, what are the consequences? Could a points-based immigration system be created to provide the desired control over immigration?  

Current employment and immigration arrangements will continue to apply until the date of a formal separation from the EU. In the meantime, responsible employers are looking to address the inevitable concerns of those potentially affected and to ensure that they continue to attract and retain the best talent. Post separation from the EU, immigration requirements for EU nationals in the UK (and vice versa) will depend on negotiated trade agreements, which are still to be decided. During this period of uncertainty, we believe organisations will want to consider some of the following key questions and practical actions in order to face the future with confidence.

How reliant is your organisation on EU nationals? - The key first step for all UK-based organisations who employ EU nationals is to carry out a risk assessment to identify the proportion of the workforce potentially impacted by any future changes. Second, identify which of these people are critical to achieving future business objectives. A risk-based assessment that envisages different potential immigration policy outcomes (or scenarios) will provide an appropriate basis for making future decisions. By doing so early enough, employers can adjust their recruitment, retention and succession planning activities to manage existing and any future risks, especially those that arise in future amendments to relevant government policy and legislation.

Organisations should also be considering the “extended enterprise.” What people implications does Brexit have on critical suppliers and their ability to meet demand; are other alternative or new contingency suppliers required? How will the organisation itself continue to satisfy the expectations of its own customers by having the right people to provide goods and services.

What could Brexit mean for EU nationals already employed in the UK and for ongoing recruitment? - At present there is no immediate threat to the rights of EU nationals currently working in the UK. The first course of action for employers is to reassure their people that they are not facing any immediate risk to their job security. This engagement should be an ongoing feature of organisational communication and engagement strategies.

The implications for UK firms recruiting EU nationals are intrinsically linked the UK’s future immigration policy. Prime Minister Theresa May has rejected a radical shake up of immigration rules and has expressed concerns about moving to a points-based system similar to that in Australia. Therefore, the options available to the UK will have to balance the concerns over immigration in general with the need for UK businesses to remain attractive and able to compete for the best talent. Some of the potential options available to the UK government when they start to focus on what the future immigration policy are:

Limited Levels of Free Movement – The UK could apply ceiling limits on the number of national insurance numbers that are available to issue to EU nationals in a year. Once the ceiling threshold has been reached, EU nationals would then be required to apply for entry in the same way that non-EU nationals currently do. Free movement would still be available for EU citizens for business trips and holidays, but tighter controls would limit the number of people who would wish to work in the UK. In this scenario, employers would need to think more carefully about their annual recruitment plans and ensure they have clarity around the numbers of people they are looking to bring into the UK and when they would be required. This would also place organisations in direct competition with each other as they start to vie for a limited number of places. Any allocated quotas will need to take account of existing and future requirements and may leave a significant shortage in some industries.

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1 Theresa May “What the British people voted for on 23 June was to bring some control into the movement of people from the European Union to the UK”. 

"A points-based system does not give you that control." Quoted in The Guardian newspaper at the G20 summit on 5 September 2016.

4 Some have responded very strongly to proposals announced on 4 October 2016 at the Conservative conference for employers to disclose the percentage of non-British workers http://www.bbc.co.uk/news/uk-politics-37563064. Our purpose for risk assessment and identification is to support affected individuals as well as inform decision making by responsible employers.
Switching from free movement of people to free movement of employees – Rather than allowing the free movement of all EU citizens, the UK could require that anyone applying for entry to the UK must have a job offer in place before allowing them to live and work in the UK. How these arrangements might work in practice is the subject of considerable political debate. Such a solution would allow firms operating in the UK to continue to access the EU talent pool without limitation on the numbers involved.

Adopting the Norway model – As a member of the European Economic Area, Norway has full access to the EU’s single market and, in return, accepts free movement of people. They also, however, have a safeguard clause that allows them to place a block on immigration in the event that the country experiences severe social, economic or other geo-political events. If adopted, this option would allow UK employers continued access to the EU recruitment market, subject to UK Government policy and its relationship with the EU.

One thing is clear: the longer the uncertainty remains, the greater the risk that individuals will take their own decisions about their future livelihood. These decisions will be coloured by factors such as the cost and availability of housing, the supply of appropriate schooling, the need for certainty and tenure over pure financial gain. Another important factor will be the consequences on couples made up of UK and EU nationals – there may be indirect and unclear uncertainty and risk. These considerations must be included in the risk assessment and identification of individuals critical to achieving future business objectives.

What are the implications for employers’ mobility programmes and their ability to access scarce skills? - Organisations that have cross-border operations across Europe often develop mobility programmes to encourage movement of their employees throughout the company, adding to their talent and development programmes and bringing a diversity that they would not see from a static workforce. In addition, the mobility programmes, sitting alongside global recruitment policies, provide employers with access to wider talent pools and enable them to access skills and experience that may not be available in a single location. It is possible that organisations with UK citizens working under mobility programmes in the EU may consider repatriation of those employees.

Any changes to immigration policy designed to reduce the net migration into the UK could make it harder for employers to mitigate recruitment challenges and skills shortages. The cost and resourcing implications of complying with a points-based system (if one were to emerge) may deter employers from looking to overseas employment markets for hiring options. Employers need to look at their current workforce to assess the scale of the implications but also look at future sources of talent that could be accessed to ensure they continue to attract a diverse workforce with the right calibre of skills.

What challenges will arise in retaining existing EU nationals? – Retention of existing employees from other EU member states may become more difficult for the next couple of years. In order to regain some stability and to ensure their own job security, employees may look to secure roles elsewhere in the EU or even further afield. This is likely to have an impact on employers as they face succession gaps in the short term. Employers should actively engage with their current employees now to provide reassurance, but they should also be looking to their current and future succession plans to identify where they are at risk and where they need to focus efforts to ensure continuity of operations in the event that people chose to move on.

What are the considerations regarding remuneration regulations and employment legislation? - Legislation generated from within the EU is often enacted through national legislation which means that even after leaving the EU those pieces of legislation would remain in effect until amended in UK law. The UK regulators have also confirmed that firms should go ahead with the planned implementation of any new regulations that have still to come into effect. This would indicate that in the short term there would be no immediate changes for UK employers to make to current policies and procedures. In addition, much of the UK legislation goes over and above that stipulated by the EU.5

While there will not be immediate changes, the UK Government may take the opportunity to re-examine some of the aspects of EU legislation and regulation that it did not originally favour, such as bonus caps that were applied via EU remuneration regulations. Employers may need to start reviewing those aspects of employment and remuneration legislation that they feel may come under scrutiny and start planning for future changes.

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5 In addition, it is proposed at the date of publication that the Great Repeal Bill on enactment will achieve the repatriation of EU law to the UK. It remains to be seen whether this will be achieved.
What can UK firms be doing right now?

Based on the announcement to trigger Article 50 in March 2017, and based on a two-year negotiation path, the earliest date the UK can leave the EU would be March 2019. During the negotiations, the UK and the EU will seek to determine the terms of how and on what basis (if any) the UK will leave the EU and what the UK’s relationship will be with the EU (and the UK will also look to define its relationship with the rest of the world post exit from the EU). Whilst it is imperative that UK firms keep a close watch on these negotiation activities to understand the implications for their business and for their employees, there is nothing preventing them from taking actions right now to prepare for separation and to get ahead of the change curve. Adopting a proactive approach will allow firms and leaders to identify the opportunities that may arise as well as focusing on mitigating the risk and addressing the impacts. Firms should be considering the following:

1. Initial Risk Assessment

**Undertake a people and talent risk assessment** - Fully understand the impact on the organisation and identify those individuals who are critical to achieving business objectives and who are directly or indirectly affected by the current uncertainty and potential future outcomes on immigration policy. This may require that business managers and HR teams work together to identify critical individuals and then to determine the direct and indirect status of each.

**Review data quality** - Review HR systems and records to validate relevant employment data and ensure they contain accurate and reliable information. This data would cover critical individuals’ residency, immigration status and tenure (including indirect aspects as noted above). This will affect EU nationals working in the UK and UK nationals working in the rest of the EU.

**Assess succession and contingency planning** - Assess current talent management and succession planning processes for individuals in critical roles and ensure succession and/or contingency arrangements are in place. Key questions to ask and address include: What alternative arrangements are there to secure employment, even if outside the UK, and what will be the financial implications on the individual and the employer?

2. Communication and Leadership

**Demonstrate leadership** - With the very direct consequences on individuals, EU nationals working in the UK and UK nationals working in other EU member states will be sensitive to their right of tenure and job security. Responsible employers, through their leaders, must communicate clearly and often to their employees to keep them engaged and to ease, as far as possible, concerns over the future.

**Developing a talent response plan** - Implement a robust change management, communication and engagement approach with key messages that address the immediate and ongoing impact of Brexit across the business as well as the strategy for moving forward over the next two years and beyond. This will help to instil confidence not only in employees but also a full range of key stakeholders, including shareholders, investors and regulators.

**Create a communication plan** – Firms should develop communication plans that anticipate the various potential outcomes related to the changes to employment legislation and adapt them as clarity emerges. Implementing timely communication plans will be key to the successful retention of individuals in critical roles and should include forums for two-way communication, providing employees with channels and media to voice their concerns and raise any issues they may have.

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6 There is no certainty that agreement can be reached and there are various calls for so called hard exit and soft exit.
Point of View

Provide education and awareness updates to minimise uncertainty and rumours – Consider how to educate managers and leaders on the evolving situation to ensure they have the right levels of knowledge and understanding of the organisation’s plans in order to be equipped to manage queries from their teams. As well as protecting the rights and interests of the organisation as a whole, responsible employers will want to provide their staff with timely, accurate and appropriately messaged information as it becomes available in order to continually provide reassurance. These messages should not only be aimed at those at-risk but also to the wider teams to minimise inevitable and unsettling rumours.

Anticipate indirect factors – Uncertainties over the rights of those currently affected may cause them to seek certainty, possibly by moving locations, even in advance of actual termination of the UK’s participation within the EU. Although the focus is on employees themselves, many will have families with other practical needs such as housing, education and health that need to be anticipated. Often, it is certainty in these other practical needs that ranks higher than employment issues – these must not be overlooked.

Make use of flexible working and mobility programmes – Those employers that have the scale and resources to do so may wish to consider adapting mobility programmes so that individuals in critical roles are retained even if they relocate to resolve uncertainty.

3. Talent Acquisition and Retention

Recognise the value of people - In most businesses, the most valuable asset is their people. Although clichéd, it is also generally true -- especially in areas where there is reliance on taking advantage of new and emerging technology (such as in fintech) or where research and development is key to longer term financial success (such as in pharmaceuticals and bi-sciences). Organisations should take additional steps to recognise and communicate the value of their people to the enterprise’s objectives.

Identify potential new labour markets – With UK immigration policy likely to change substantially, organisations need to review their talent acquisition and development policies and programmes. Within this work stream, employers will need to evaluate not just the implications on the movement of people between the UK and the EU, but also the movement of people between the rest of the world and the UK. As trade negotiations progress and as business priorities and objectives evolve, UK firms may see new labour markets emerging with the necessary language, educational and technical skills and empathy with their culture. By focusing on the development of future recruitment plans now, those opportunities may be more readily identified. Could previously discounted or overlooked markets and centres come to the fore and need to be reappraised?

4. Rewards, Incentives and Benefits

Anticipate effects of changes in labour markets - Closely monitor the labour markets and watch for any evidence that they may be either tightening or relaxing. If the market tightens, organisations will inevitably find it more challenging to attract and retain talent, and this could result in increases in compensation arrangements for those individuals, especially in those roles that are in high demand and have short supply.

Review budgets and compensation arrangements - Reassess spend on talent and acquisition. The mix within compensation arrangements may also need to change significantly for those employees who are relocating either into the UK or outside to other EU hubs (or beyond) where firms have an active mobility programme.

Assess financial risks – Following the Referendum decision and since, there has been considerable volatility in the financial markets. Whilst that volatility is expected by some market commentators to stabilise over time as further clarity emerges over the way forward, firms will need to consider the implications on items, such as:

- The impact of share price and currency fluctuations on reward and retention arrangements such as Long Term Incentive Plans (LTIP’s), employee share plans and Executive Shareholding arrangements.

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7 “GBP/USD plunged to the lowest in more than three decades last week on speculation the UK economy will weaken in the aftermath of Britons’ June vote to exit the European Union.”

• How the relative strength or weakness of sterling impacts on bonus arrangements, especially those linked to financial performance.

Consider implications on investment governance arrangements - Companies either based in or with operations in the UK should be starting to review their investment governance arrangements. Firms must evaluate and ensure that arrangements are sufficiently robust to react appropriately to market volatility. For defined contribution pension arrangements, employers will need to work with their scheme providers to identify how increased and continued fluctuations may impact, or already have impacted, across a range of employees wherever they are in their employment lifecycle, but specifically any who are nearing retirement in the coming months.

Address employer’s covenant - Pension Trustees should consider the effect that leaving the EU could have on the employer’s covenant, both in the short and longer term, and the consequences on trustees’ risk management plans.

Conclusions

As with almost everything relating to the effect of the leave decision, there is great uncertainty for employers and employees. Some areas of the economy will be more affected than others, especially those reliant on highly skilled and high tech individuals that have in recent years been attracted to the UK from Europe and further afield.

Employers that anticipate the concerns of their non-UK citizen employees, that put in place mechanisms to accommodate them, and who have effective communication plans will, in the longer term, be better placed to make informed decisions when clarity does emerge. In order to achieve these goals, employers should undertake a risk assessment, demonstrate responsible leadership and put together communications plans. In addition, organisations should consider and respond to the impact on reward and incentives and the continual challenges of attracting and retaining world class talent, in order to remain competitive in a global economy.

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