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Editorial: Dark shadow falls over a once promising economy

At first glance it appears to be just another trade union merger. But look at developments in their broader context and recent initiatives by South Africa's still powerful NUMSA Metalworkers' Union take on greater significance.

NUMSA has announced that on May 1st it and several other unions will be launching a highly militant Workers' Federation. NUMSA has also formed a 'United Front' organisation to fight the all-important local government elections this Summer and the new Workers' Federation will spawn a new socialist workers' party later this year.

This is no empty rhetoric nor just one more party to add to the 20+ parties already operating at a national level — for there is huge power vacuum growing in the country following the numerous scandals associated with President Jacob Zuma. The formerly dominant ANC party is losing its grip and Zuma's decision late last year to sack Finance Minister Nhlanhla Nene led to

a run on the rand. The economy is highly reliant on exports to China and China's slowdown is adding to the economic woes. Also into this void is stepping Russia.

Russia sees South Africa as a back door to the West and used its links through the BRIC economic grouping to create an almost invisible, but nevertheless tightening, stranglehold on South Africa as the US-led embargo against it began to bite. Now Russia is secretly helping to fund its nuclear programme and is also backing the growth of radical politics like the flourishing South African Communist party in a headlong 'divide and rule' strategy.

The situation is particularly worrying for multinational employers that have invested heavily in the country. But many are now reacting sharply to what they fear is a pending economic collapse. Foreign direct investment (FDI) into South Africa fell by 74% in 2015 and there is plenty of bad news to follow. That is why May 1st will be a significant date for employers — as well as the union movement.

France: Case reminds employers about importance of complying with legal formalities

In a recent case the French Supreme Court highlighted the importance of complying with statutory obligations with regards to internal company rules.

According to the French Labour Code, internal rules must be submitted to the relevant office of the Labour Relations Board and displayed in an accessible location in the workplace. The rules will then come into force one month after these formalities have been complied with.

In this case an employee, who was responsible for operating machinery as part of his role, had been dismissed (following initial suspension) after being found to be under the influence of alcohol in the workplace. The employee had been required to take an alcohol test (as permitted under the internal company rules) when empty alcohol bottles were found in the staff changing room.

In France, alcohol tests may only be undertaken in the workplace if the internal rules allow for this and provided the testing is not undertaken systematically. Although the employer in question had included this right in the internal rules and there was justification for requiring this test in the circumstances, the Supreme Court found that the internal rules could not be enforced against the employee because there was no evidence that the rules had been submitted to the relevant office of the Labour Relations Board.

Failure on the part of the employer to comply with the relevant statutory obligations therefore allowed the employee to successfully challenge the lawfulness of his dismissal — despite the serious health and safety risk that was posed by the employee's behaviour.

[Arrêt du 4 novembre 2015, Cour de cassation 14-18.574]

Irish Republic: Court of Appeal overturns significant award for bullying in the workplace

The Irish Court of Appeal recently overturned what had been the biggest award granted to date by the High Court in Ireland for bullying in the workplace.

In 2014 Ms Ruffley, a special needs assistant at a school in County Kildare, Ireland, was awarded 255,000 euros (278,200 US dollars) in damages and compensation for loss of earnings after she went on long-term sick leave because of work-related stress that was allegedly due to bullying and harassment in the workplace. The High Court made the award after hearing about Ms Ruffley's treatment during a workplace investigation and disciplinary process. The Court considered that the disciplinary action was unnecessary in the circumstances and Ms Ruffley's treatment amounted to persistent inappropriate behaviour by her employer — which continued for a period of more than a year and had the effect of undermining her dignity at work.

The Court of Appeal, in overturning the High Court's decision, concluded that the investigation and disciplinary process was indeed 'hopelessly flawed' but that the behaviour in question could not be considered to fall within the definition of bullying. [Ruffley v The Board of Management of St Anne's School]

Israel: Changes to rules on employment of foreign experts

At the tail end of last year Israel overhauled its regulations on the employment of foreign experts (those workers requiring a B-1 visa). The changes to

the regulations affect both professional and administrative processes.

Under the new regulations, jobs which require academic qualifications are distinguished from those that do not. When a company hires a foreign expert in a role that does not require academic qualifications they must fulfil certain specific requirements. Firstly, they must pay the employee's salary into an Israeli bank account set up in the employee's name. Secondly, they must provide confirmation by an Israeli lawyer that the foreign expert's contract is fully compliant with Israeli labour law. Finally, when applying for an extension of the visa, they must show evidence of past bank transfers and proof that the employee has exclusive access to the bank account in question.

In addition, the new regulations require all B-1 visa applicants to obtain police clearance, issued within the previous 12 months, and medical clearance issued within the last three months by an approved medical facility.

According to the new regulations, visa applications will be confirmed by the authorities within 21 days of submission. If the application is forwarded to another ministry for review a decision will be issued after a further 30 days. Applications for visa extensions must be submitted at least 60 days before the current visa expires or at least six months before expiry of the current visa if the extension would take the duration of work beyond five years and three months (in such cases extraordinary circumstances must also be shown).

All foreign experts in Israel must be paid at least twice the average salary whether their role requires professional qualifications or not. However, under the new regulations the Ministry of the Interior may require a salary higher than twice the average wage if the average wage in that specific profession is higher than the general average salary. An increase in the average

salary for 2016 was recently announced so the minimum wage for foreign experts in 2016 is 18,668 new shekels (4,725 US dollars) per month. This is a 422 new shekel (106 US dollar) increase on the 2015 minimum rate.

Japan: Dismissal with monetary compensation under discussion

In Japan the Labour Ministry has set up a working group to examine the possibility of introducing a system of dismissal with monetary compensation. The introduction of such a system would be a positive change for employers as the current rules make it very difficult to dismiss employees.

Currently the Labour Contracts Act states that if a dismissal lacks 'objectively reasonable grounds' and is not appropriate on 'social terms' it will be invalid and the employee will be entitled to reinstatement. Although there is no option at present for an employee to be dismissed with financial compensation where the relevant criteria for a fair dismissal are lacking, employees unhappy with a decision to dismiss often seek financial compensation as an alternative to returning to their previous employment.

The Labour Ministry would be looking to set a minimum level of compensation that is high enough not to encourage employers to dismiss their staff too easily.

Sweden: New whistleblower protection law proposed

A law that would give special protection to workers who blow the whistle on serious wrongdoing in the workplace has been proposed by the Legislative Council in Sweden.

The proposed law would protect employees from reprisals by their employer when they report serious

wrongdoing in their employers' business. The protection would also extend to leased workers who report wrongdoing in the operations of the company leasing them. However, neither employees nor leased workers would be protected if they commit a crime in the act of whistle blowing.

According to the draft law, wrongdoing should be reported internally. Workers will only be protected when they make reports externally if they had previously reported the matter internally, but the employer failed to take reasonable measures in response to the report, or if they had reasonable cause to make the report externally. In addition, the worker must have had reasonable (*prima facie*) grounds for making the accusation.

Employers breaching the legislation in relation to whistleblowers would be liable to pay damages to the employee in question. The legislative changes are proposed to come into force on January 1st 2017.

USA: Widening concerns over data disclosure rights

The state legislature in Minnesota and a dozen other US states are currently considering new legislation designed to prevent employers and state authorities from accessing individuals' emails without first obtaining a court order. The laws are all based on one that has already been introduced in California.

Opposition to the Federal Cyber Security Act signed by President Obama in December 2015 is also growing. The Act gives companies legal incentives to share more data on cyber threats with the government. Although it is intended to help counter hackers, civil liberties groups fear that it will provide a back door opportunity to allow government intelligence agencies to gather more data on employees.

In a further move, a committee within the US Senate has just approved a Bill that would allow citizens of the European Union to examine data shared by their government with USA criminal investigation agencies and sue the federal government in a US court if it intentionally discloses their data to other parties without their permission. No date has been set for a full hearing of the Bill — which is a rear-guard attempt to address the European Court of Justice's decision last Autumn to invalidate the 'Safe Harbor' data transmission rules agreed between the European Commission and US Federal government.

Pay, Tax and Benefit Trends

LUXEMBOURG: The tax office in Luxembourg (Bureau RTS) now requires employers to give them two months notice before introducing any equity-based employee share plans — including share option schemes. This will consist of submission of the plan itself and names of those benefitting under it. Details of schemes introduced prior to January 1st 2016 should also be submitted before the end of February 2016.

MALTA: In order to adjust income to the cost of living, the minimum wage rate in Malta was increased by 1.75 euro (1.95 US dollars) per week on January 1st 2016. The minimum wage rate is now 168.01 euros (187 US dollars) per week (728.04 euros/811 US dollars per month) for full time workers over the age of 18. Minimum weekly pension payments to those aged over 75 had not been changed for 25 years. However, from January 1st these too have been increased — by 8.92 euros (9.96 US dollars). Those on such pensions now receive 140 euros (156 US dollars) per week.

MEXICO: The Mexican Supreme Court has declared that a provision in the Federal Labour Law that limits the accrual of wage arrears to 12 months in employment disputes is constitutional. This finally

clears up a number of conflicting decisions by lower courts. Now the only ongoing charge for wage arrears is a 2% interest payment for a further 15 months. Before the cap was introduced in 2012 employers were driven to settle on generous terms to prevent court cases being prolonged by plaintiffs.

NETHERLANDS: In the Netherlands, a Bill that would give works councils more influence over pension schemes has been submitted to parliament. Under the current law works councils have the right to disagree with the establishment or withdrawal of a company pension scheme, but not to disagree with a change to the scheme. The proposed law would give works councils this additional right — a right which already exists in relation to schemes administered by an insurance company or a premium pension institution. In addition, the Bill would give works councils the right to be informed of proposed changes to the administration agreement and to oppose these changes if they would have a direct effect on the pension agreement. Currently the law does not give works councils a right to be involved with administration agreements of pension schemes. It is not clear at this stage when this Bill would enter into force.

POLAND: A Bill that would introduce an hourly minimum wage rate for contracted services in Poland has just been submitted for public consultation. The proposed minimum wage rate of 12 zloty (2.97 US dollars) per hour (which is slightly higher than the current hourly minimum wage for employees) would apply to all individuals working under a mandate contract or contract for services, with just a few exceptions. In addition, the Bill proposes the repeal of a provision that currently allows employees to be paid at just 80% of the minimum wage rate during their first year of employment. The minimum wage for contractors is expected to come into force on July 1st 2016 whilst the repeal of the 80% minimum wage provision would take effect on January 1st 2017.

RUSSIAN FEDERATION: In a country where the state is so prone to massage the truth, it is surprising to receive from the official statistical service, Rosstat, an admission that Russian real wages fell by 9.5% between 2014 and 2015. The fall was largely due to double digit consumer price inflation brought about by the western embargo, the collapse in oil prices and a poor ruble exchange rate. Consequently, a high proportion of Russians are now relying on savings and switching their spending to cheaper goods to survive. The government's 2016 budget is based on an oil price of 50 US dollars per barrel — which may well not be achieved this year.

SWITZERLAND: On June 5th 2016 the Swiss people will vote on a proposed guaranteed basic monthly income from the state of 2,500 francs (2,455 US dollars) per month. If approved, every child would also receive 625 francs (614 US dollars) per month. This is the first time that any electorate in the world will decide whether to introduce an unconditional income for all. For the government it would mean raising a further 208 billion francs (204 billion US dollars) in taxes per year, whilst for employers it would present the prospect of some employees refusing to work.

TUNISIA: A national agreement has been reached between Tunisia's Chamber of Commerce and Industry (UTICA) and the UGTT trade union covering 1.5 million private-sector employees. This gives immediate pay rises of 6% plus a 10 dinar (4.9 US dollar) monthly rise in transport allowances. However, the country remains beset by wide-scale protests by unemployed workers — to such an extent that France has hurriedly pledged one billion euros to its former colony over the next five years to assist deprived areas and improve job prospects for young workers.

URUGUAY: This year the national monthly minimum wage in Uruguay for those aged 18 and above rose from 10,000 pesos (322 US dollars) to 11,150 (359 US

dollars). However, according to Uruguay's latest Household Survey published by the Instituto Nacional de Estadística, 32.2% of the country's workforce (and more than 50% of 14-19 year-olds) operate in the informal economy. Workers in the grey economy are denied any pay minima, overtime, healthcare, holidays, unemployment benefits and injury insurance.

USA: A Bill has been introduced in the legislature of the North West US State of Washington to allow the state to levy its own income tax. Currently Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not tax people's wages whilst Tennessee and New Hampshire only tax dividends and interest. But US voters tend to be strongly averse to new taxes and the Bill requires any proposed tax to be ratified by at least 60% of the electorate. It would also have to overcome a probable challenge before the state Supreme Court as its trade-off against state consumer taxes would adversely impact on more affluent people. The last time a state income tax was successfully introduced anywhere in the USA was in 1991.

Other Global HR News in Brief

BULGARIA: The European Commission (EC) has published a report highlighting the continued incidence of high-level corruption, organised crime and failure of the rule of law in Bulgaria. The Bulgarian parliament rejected a draft law against corruption last year and although a body has been established to review corrupt practices it remains without any true political backing. This EC report comes hard on the heels of an international review of corruption by Transparency International (TI) which found Bulgaria to be the most corrupt nation in Europe. However, TI also found that Italy, Romania and Greece were not far behind Bulgaria and that Hungary, Spain, Macedonia and Turkey were becoming more corrupt.

DENMARK: The leading Danish trade union 3F has begun a name and shame campaign against Danish companies with high workplace accident rates. They have published a list of such companies and highlighted those which have not been inspected by the working environment authority Arbejdstilsynet. One reason for non-inspection is due to a system in Denmark where companies may obtain a working environment certificate exempting them from regular Arbejdstilsynet inspections. The union's top ten, however, includes companies with such certificates. None of the offending companies are FedEE Global members.

EUROPE: Although there are 24 official languages in the European Union, by far the most common foreign language taught in schools is English. In fact, virtually all primary school children in Austria, Cyprus, Italy, Macedonia, Malta, Norway and Spain learn English as part of their core curriculum — as do 90% of primary children in Croatia, Poland and France. In secondary education 94.1% of children in all European Union schools learn English. Moreover, the majority of upper secondary children in the EU learn two foreign languages (generally English plus French, German or Spanish) — but only 10% do so in Greece, Ireland, Portugal and the United Kingdom.

GLOBAL: The Financial Times (FT) has just published its latest annual report on MBA programmes worldwide. Top of the rankings this year is INSEAD, which offers a one-year programme unlike all previously top-ranked business schools. The reports continue to highlight the increasing access of women to MBA programmes — up from 30% of all students in 2005 to 35% last year. But part of the shortfall may be due to the lower value of an MBA for women. The FT survey found under-representation of women in Directorship/CEO positions and the gender earnings gap widened from 14% before entering the programme to 19% three years after its completion.

IRISH REPUBLIC: The Irish Cabinet has agreed to the introduction of legislation that will give fathers the right to take two weeks' paid paternity leave following the birth of their child. This new leave, which is expected to be introduced in September, will be paid at the same rate as maternity leave (currently 230 euros/256.50 US dollars per week) and fathers will be able to take their leave any time within 26 weeks of their child's birth.

ITALY: Following an amendment to Italian law, private-sector employees suffering from serious illnesses requiring life-saving treatment or from medical conditions 'underlying or connected to' a recognised disability are now formally exempt from the requirement to be available at their home during certain hours during sickness absence. In the case of employees requiring life-saving treatment the employee must have appropriate documentation from the relevant health services stating the nature of the illness and the life-saving treatment being followed. In the case of medical conditions linked to a disability the employee must have a reduced capacity to work that is equal to or greater than 67%. The law came into force on January 22nd 2016.

JAPAN: The Japanese government has announced that it is drawing up new legislation to prevent the harassment of pregnant women in the workplace. This will extend the existing protection that prevents women from being demoted or being forced to resign from their jobs due to pregnancy or childbirth. From January 2017 it will also be an offence for superiors or colleagues to unfairly treat, sideline or bully pregnant women in the workplace. Employers will be obliged to take active steps to prevent such conduct (for example by conducting training courses).

SAUDI ARABIA: The consultative assembly (Shura Council) and Saudi Labour Ministry have rejected representations made by Chambers of Commerce on why they should reconsider their decision to introduce

a 40-hour week and obligatory two-day weekend in the private sector in Saudi Arabia. The Labour Ministry has recently warned employers that they will be fined if they ignore the weekend work ban or seek to include weekends when calculating annual holiday entitlements.

UAE: In order that employees better understand their rights, the UAE's Ministry of Labour has approved nine languages — in addition to the obligatory Arabic and English — in which job offers and employment contracts may be written. The nine languages were chosen for being the most widely spoken among workers in the country and include Bengali, Chinese, Dari, Hindi and Malayalam, Nepalese, Sri Lankan, Tamil and Urdu.

UK: According to the UK's Office for National Statistics, the proportion of people aged 16 to 64 who were in work between September and November 2015 reached 75%. This is the highest proportion since records began in 1971. The number of people employed grew by 588,000 over the last year — with 74% of all new jobs being on a full-time basis. As a consequence, unemployment fell to its lowest level since October 2005.

UK: The UK government is introducing legislation one year ahead of the 2017 EU deadline to require companies to form a register of persons of significant control (PSC) in an enterprise. The new rules will be introduced in April 2016 and apply to all public and private companies incorporated in the UK — including LLPs and overseas holding companies. All those classified as PSCs must be informed that they are to be entered onto the register and are obliged to give their consent. The register will then have to be submitted to Companies House in company returns made on or after June 30th 2016. Failure to comply will result in criminal sanctions.

Dates for your diary:

February 22nd 2016: Amendments to the rules on fixed-term contracts and other Labour Code amendments come into force in [Poland](#).

March 2nd 2016: New rules on drug testing professional drivers come into force in [Brazil](#).

March 14th 2016: In the [USA](#), amendments to Philadelphia's Fair Criminal Screening Standards Ordinance come into force.

April 1st 2016: A new law requiring large companies to encourage the employment and promotion of women comes into force in [Japan](#).

Latest news for business travellers:

A planned 48-hour London Underground strike due to start at 9pm on February 6th will cause disruption to travel in the [UK](#)'s capital. Further strikes initially scheduled for February 15th-16th and 17th-18th have been called off.

Protests against plans to privatise Pakistan International Airlines lead to the death of two employees at Jinnah International Airport in Karachi on February 2nd 2016. Further protests at airports in [Pakistan](#) are likely.

From March 15th 2016, visa-exempt foreign nationals flying to, or transiting through, [Canada](#) will require an Electronic Travel Authorization (eTA). US citizens and those with a valid visa are exempted from this requirement.

UK nationals are now able to obtain two-year multiple entry visas to [China](#) and Chinese nationals may obtain two-year multiple entry visas to the [UK](#) under a reciprocal visa arrangement between the two countries.

FedEE news:

WEBSITE IMPROVEMENTS: We are delighted to announce that the first stage of our website upgrade is now live! Our [Members' Area](#) has a **new look** and it is now possible to **search** our resources using our **new and highly-effective search function**. We also have some **new material** in our [HR Knowledgebase](#) including a brand new country section on [New Zealand](#). Furthermore, we have introduced a facility that allows members to **change their passwords online** at any time, day or night. We hope these changes will have a positive impact on your experience of using our resources. Further website upgrades will be taking place over the coming months and we will keep you informed of the latest developments.

NETWORK WITH OTHER FEDEE PROFESSIONALS: Don't forget to sign up to FedEE's face-to-face networking community, butN. Join for free today at <http://www.but-n.com>.

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