



Executive Compensation and Benefits Practice

US Overview



36 Offices Around The World

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Budapest
Doha
Düsseldorf
Frankfurt
Geneva
Hamburg
Helsinki
Istanbul
Johannesburg
London
Moscow
Munich
Paris
Prague
Riyadh
Stockholm
Warsaw

Asia

Beijing
Hong Kong
Shanghai
Singapore
Tokyo

Our US Executive Compensation and Benefits Practice



As organizations seek to attract and retain top talent, employee benefit questions assume increased significance in corporate transactions. Important opportunities and large potential liabilities have been created by an almost steady flood of new legislation and regulations beginning with the Employee Retirement Income Security Act of 1974 (ERISA). Today, more people are covered by various executive compensation and benefits plans than at any time in history. As a result, continuing governmental scrutiny, political pressure and legislative action can be expected in this arena for years to come. In this rapidly changing environment, White & Case provides counsel on the entire spectrum of executive compensation and employee benefit concerns from a perspective of broad exposure and long experience.

An Overview

Our Executive Compensation and Benefits Practice can be summarized under six principal headings:

Plan Design

We help clients create—and counsel them on the structure of—employee benefit plans of all types with a view to ensuring compliance with legal requirements (including ERISA, the Internal Revenue Code and, where applicable, securities law) and positioning the sponsor for maximum flexibility and tax-favored benefits to employees at the least after-tax cost to the plan sponsors.

Advice to Plan Trustees and Other Fiduciaries

Owing to ERISA regulations on such matters as prohibited transactions, investment requirements and other fiduciary responsibilities, legal counsel is essential for plan trustees and other employee benefit plan fiduciaries and service providers. We advise bank trust departments and other trustees, fiduciaries and service providers regarding general fiduciary and liability issues.

Our US Executive Compensation and Benefits Practice (continued)

Transactional Counsel

Employee benefit plans are an important consideration in mergers and acquisitions, from the buyer's, seller's and lender's respective points of view. Increasingly, these plans are used to an advantage in financings, takeover defenses and a variety of other transactions. We represent clients who are the principal parties in M&A transactions, as well as lenders to the acquiring parties and fiduciaries of affected plans. We counsel clients on leveraged buyouts, joint ventures and other transactions. We also advise companies, including issuers and investors, concerning ERISA considerations in securities offerings, leveraged lease transactions and other financing transactions.

Advice to Corporate and Individual Clients on Executive Compensation Issues

We help clients negotiate employment, severance, change-in-control, consulting and employment settlement agreements, severance, "tin parachute" and stock option, equity and other incentive compensation plans and arrangements; we also counsel clients on golden parachute payment issues and preserving tax deductions for compensation in excess of US\$1 million for certain executive officers. The Firm also provides litigation support in disputes arising out of these matters.

Plan Asset Counseling

We counsel investment fund sponsors, investing plans and lenders on prohibited transactions and the fiduciary and other implications of ERISA's "Plan Asset" regulations.

Ongoing Advice to Clients

We provide counsel on new legislation, regulations, rulings and lawsuits and their implications, specific actions concerning compensation or benefit plans, the creation of special trusts and related issues. We also represent clients before government agencies, including the Internal Revenue Service (IRS) and United States Department of Labor (DOL), with respect to plan audits. On a monthly basis, the Firm publishes the Executive Compensation, Benefits and Employment Law Focus newsletter to keep clients up-to-date on developments of general interest in the compensation and benefits field.



A Comprehensive, Coordinated Approach

Central to our practice is the recognition that many of the employee benefit questions that our clients confront are interrelated. Providing the best possible advice means marshalling the overall resources of the Firm to provide the right mix of knowledge and experience. Partners, associates and benefit consultants in the Executive Compensation and Benefits practice work closely with colleagues concentrating in litigation, securities, banking and corporate law. We use our team approach to gather and exploit firmwide knowledge based on our extensive and collective employee benefits and executive compensation experience. When necessary, our assignment teams include other White & Case lawyers located in major financial and commercial centers across the United States and throughout the world.

Our experience gives us a wide perspective. We have represented fiduciaries and sponsors, buyers and sellers and lenders and borrowers in virtually all types of transactions in the employee benefits and executive compensation fields. We advise and comment on new legislation, regulations, rulings and lawsuits. In addition, we draft standard documents that we urge all of our clients to use in applicable situations.

The Scope of Our Practice

The following summary of typical assignments is by no means complete. It does, however, convey something of the scope and diversity of our Executive Compensation and Benefits practice.

- Developing employee benefit plans for corporate clients: tax-qualified pension (including cash balance) plans; savings plans and 401(k) plans; employee welfare plans including medical, dental, life and disability insurance and “cafeteria” plans for paying dependent care and health care expenses on a before-tax basis.
- Designing non-qualified pension plans and special funding arrangements to provide flexibility in special situations, particularly in arranging benefits for senior executives.
- Advising trustees and investment managers, including bank trust departments, registered investment advisers, general partners and others investing pension fund assets, on matters relating to minimizing risk as well as ERISA compliance, especially in regard to prohibited transactions, plan asset regulations, exemptions from prohibited transactions and other fiduciary matters. The Firm advises on the tax and fiduciary implications of investment strategies, including the creation and funding of investment funds.
- Counseling clients on the requirements of regulations concerning the tax and financial implications of possible discrimination between lower and more highly compensated employees in pension and other benefit plans and practices.
- Advising parties, including lenders, in mergers and acquisitions on both readily apparent and latent ERISA and Internal Revenue Code obligations and the potential concerns involving comparability of different plans and drafting “due diligence” memoranda for buyers and sellers.
- Keeping pension fund sponsors and other clients aware of changes in legislation and regulations, both through monthly publications and individual memoranda.
- Assisting employers and individuals in preparing and negotiating executive employment contracts, bonus and other incentive compensation plans and stock option, stock purchase, phantom equity and deferred compensation and supplemental retirement plans.
- Devising “gold,” “silver” and “tin” parachute plans for employees, particularly for companies facing potential takeovers.
- Helping corporate clients develop “window” plans to encourage early retirement and drafting severance pay plans that observe IRS and DOL requirements.

Our US Executive Compensation and Benefits Practice (continued)

- Counseling corporate takeover targets regarding ERISA and other legal requirements under their plans (including employee stock ownership plans or ESOPs and other stock-based plans which hold employer securities) related to defending their corporate independence.
- Counseling on protection of executive compensation and employee benefits in potential takeover situations.
- Performing periodic defensive reviews to determine the adequacy of change-in-control protections in existing plans and arrangements.
- Advising clients on the uses of ESOPs.
- Analyzing the ERISA issues involved in setting up partnerships and directed or discretionary group trusts.
- Advising clients on reporting requirements under the Internal Revenue Code and DOL regulations.
- Creating, and advising with respect to, voluntary employees' beneficiary associations to fund welfare benefits.
- Advising foreign clients making acquisitions in the United States on their potential employee benefit liabilities and US market practices.
- Providing litigation services in all benefit and fiduciary-related claims.

Among Our Clients

The Firm's experience in executive compensation and benefit matters is evidenced by the range of clients we have represented.

We have also provided guidance concerning employee benefits and executive compensation issues arising in many companies' portfolio company investments.

Our clients span the globe. For example, we have counseled:

- **UBS AG** on the entire range of fiduciary and ERISA matters
- **Banque Nationale de Paris** in counseling investment fund sponsors and lenders regarding plan asset issues
- **EMCORE Corporation, River Run Software Group, Infront Services Corporation** and **Electro Mechanical Solutions, Inc.** with respect to stock option plans
- **OMI Corporation, Solomon Guggenheim Foundation, Koninklijke Ahold** and **Echelon International Corporation** on executive compensation matters
- **BT Industries** on a parachute plan designed to ensure fair treatment of executives in a takeover situation

Other clients include:

- Apache Corporation
- BNP Paribas
- Expedia
- Hess Corporation
- Keefe Bruyette & Woods
- Newmont Mining Corporation
- Soros Fund Management
- Stolt-Nielsen



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Supporting Clients Across the Globe

White & Case is a leading global law firm with lawyers in 36 offices across 25 countries.

We advise on virtually every area of law that affects cross-border business and our knowledge, like our clients' interests, transcends geographic boundaries.

Whether in established or emerging markets our commitment is substantial, with dedicated on-the-ground knowledge and presence.

Our lawyers are an integral, often long-established part of the business community, giving clients access to local, English and US law capabilities plus a unique appreciation of the political, economic and geographic environments in which they operate.

At the same time, working between offices and cross-jurisdiction is second nature and we have the experience, infrastructure and processes in place to make it happen effortlessly.

We work with some of the world's most well-established and most respected companies—including two-thirds of the *Global Fortune 100* and half of the *Fortune 500*—as well as start-up visionaries, governments and state-owned entities.

Ranked among the top Executive Compensation and Employee Benefits practices

Chambers USA 2009

White & Case's Executive Compensation practice is "highly recommended" by clients and noted for being "very client-friendly...very responsive" and "providing great advice and follow-up" as well as "practical solutions on a timely basis."

Legal 500 United States 2009

Our Employee Benefits and Executive Compensation group "handles a plethora of employee benefits and executive compensation matters and...cover[s] ERISA, welfare plans, qualified and non-qualified pension plans, equity plans and executive compensation."

Chambers USA 2009

Our Employee Benefits practice is "a wide one, targeted at both US domestic and international markets as part of the firm's full-service, business-targeted offering."

Legal 500 United States 2009

Clients praise our "excellent service levels" and also our strengths "in ERISA, in the design of new agreements and particularly in the complex combining of pension and benefit schemes which flow from cross-border transactions."

Legal 500 United States 2009

Worldwide. For Our Clients.

36 Offices. 25 Countries.

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