



Employee Stock Ownership Plan (ESOP) Practice

Overview



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Our ESOP Practice



An employee stock ownership plan (ESOP) is a type of defined contribution retirement plan that is qualified for favorable tax treatment under the Internal Revenue Code. In recent years, ESOPs have become increasingly popular among corporations, especially subchapter S corporations, as an effective way for employees to share in company ownership. In addition, ESOP's are often used to raise capital and give a voice to those most affected by a hostile takeover. The White & Case ESOP Group provides counsel on all aspects of ESOPs for both private and public companies.

Our ESOP practice can be summarized under three principal headings:

Representation of the Company-Sponsor

We help clients create and maintain ESOPs that are structured to comply with ever-changing legal requirements and that position the sponsor for maximum flexibility as well as provide benefits to the employee-owners. We provide ongoing advice to the company with respect to the ESOP and the role of ESOPs in major corporate transactions and ongoing corporate governance. Our role includes litigation support and counseling, and we represent the sponsors in seeking rulings from the Internal Revenue Service and the Department of Labor and in audits by such agencies. In addition, we represent companies in advocating changes in legislation and in IRS regulation to promote and facilitate ESOP formation. For example, we were instrumental in the legislative change that allowed subchapter S Corporations to have ESOP shareholders.

Representation of ESOP Trustee

Legal counsel is essential for plan trustees because of ERISA regulations on matters such as prohibited transactions, investment requirements and other fiduciary responsibilities. We advise bank trust departments and other trustees regarding general fiduciary and liability issues and we represent trustees in transactions involving the leveraging of ESOPs, ESOP purchases of company stock and in the ongoing administration of ESOPs.

Representation of ESOP Lender

Legal counsel is also crucial for ESOP lenders when structuring loans made directly to ESOPs, given the ERISA requirements with respect to prohibited transactions.

A Comprehensive, Coordinated Approach

Central to our ESOP practice is the recognition that many of the ESOP questions our clients confront are interrelated. Accordingly, we marshal the overall resources of the Firm to provide the right mix of knowledge and experience. Partners and associates in the ESOP Group work closely with colleagues concentrating in tax, ERISA, securities, banking, corporate and employment law. We use our team approach to gather and exploit firmwide knowledge based on having well over 100 years of employee benefits experience.

Our experience gives us a wide perspective: We work to enact, and then advise and comment on new legislation and regulations, accounting rules and tax rulings. We have represented fiduciaries and sponsors as well as lenders and borrowers in virtually all types of ESOP transactions. For example, we are a leading firm in advising on ESOP-funded LBOs.

The Scope of Our ESOP Practice



The following summary of typical assignments is by no means complete. It does, however, convey some of the scope and diversity of our ESOP practice.

- Advising clients on the uses of ESOPs and determining whether an ESOP should be established.
- Designing and drafting the ESOP and amending the constitutive documents as laws and regulations change.
- Advising ESOP trustees, including bank trust departments, in matters relating to minimizing risk as well as ERISA compliance, especially in regard to prohibited transactions and other fiduciary matters.
- Keeping ESOP sponsors aware of changes in legislation and regulations, both through periodic publications and individual memoranda.
- Counselling corporate takeover targets regarding ESOP and ERISA questions related to defending their independence.
- Acting as General Counsel to “Employee-Owned S Corporations of America” (ESCA), a trade association formed to promote and expand S corporation ESOPs representing over 100,000 employee-owners.
- Advising clients on the uses of financing in leveraged buyouts and utilizing the tax-advantaged finance strategies involving ESOP loan refundings. The ESOP Group has been involved in all aspects of these transactions, from developing financing plans, to structuring loans, to providing audit support.
- Advising clients on the use of ADRs in ESOP-financed acquisitions. Our significant non-US client base has made this an especially interesting area.
- Advising clients regarding the merger, termination or downsizing of established ESOPs. We are increasingly faced with clients whose changing corporate goals require a redesign of a mature ESOP.

Among Our Clients

The Firm's experience in ESOP matters is underlined by the range of clients we have represented. Examples of these representations include:

Representation of the Company-Sponsor

- Appleton
- Avis, Inc. (ESOP leveraged buyout)
- Clark Equipment Company
- Moog Inc.
- Chicago Pneumatic
- Citizens First Bancorp, Inc.
- The Sherwin-Williams Company

Representation of Lenders

- Fairchild Industries
- Blue Bell—multi-investor leveraged buyout
- Enron—recapitalization
- EPIC Healthcare—multi-investor ESOP leveraged buyout of a number of hospitals from American Medical International
- Golodetz Corporation
- Greater New York Savings Bank
- Cincinnati Milicron Interlake Corporation—recapitalization
- Dyncorp—multi-investor ESOP leveraged buyout

Representation of ESOP Advisor

- Lockheed Corporation

Representation of ESOP Trustee

- ITT Corporation
- Bell Atlantic
- Southwestern Bell
- United Technologies Corporation
- US West
- Phillips Petroleum
- Textron, Inc.
- Owl Group/WPP
- Home Federal Savings Bank
- Russell Reynolds Associates, Inc.
- American Savings Bank
- Pactel
- NYNEX
- Bell South
- Southern New England Telephone
- Recognition Equipment
- ChemLink Group, Inc.
- Mobil
- Rohm & Hass
- AT&T

Miscellaneous

- Representation of Northwest Airlines Pilots Association in auction process for Northwest Airlines
- Representation of Chicago Pneumatic in ESOP litigation

Representation of Trade Association

- Employee-Owned S Corporations of America (ESCA)



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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.

Leading industry publications consistently recognize White & Case for exemplary work, including:

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

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

Linda Carlisle is highly recommended as a “strategic tax planning specialist.”

PLC Which Lawyers? USA 2009

Linda Carlisle “is noted for the ‘sheer quality of her work product and communication skills.’”

Chambers USA 2009



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36 Offices. 25 Countries.

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