



Global Equity Based Compensation

A Global Practice



36 Offices Around The World

Americas

Los Angeles
Mexico City
Miami
New York
Palo Alto
São Paulo
Washington, DC

Europe, Middle East and Africa

Abu Dhabi
Almaty
Ankara
Berlin
Bratislava
Brussels
Bucharest
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 Global Equity-Based Compensation Practice



The scope and depth of our experience enables us to help companies avoid cultural, legal and company-specific problems as they expand throughout the world.

As companies look for ways to take advantage of opportunities in the global marketplace, they often find unexpected challenges created by the culture, legal regulations and business practices of the markets into which they are expanding. How well a company handles these challenges directly affects its ability to hire key employees and motivate existing employees. One approach that many companies have found to be successful in attracting and retaining employees is offering them additional compensation based on equity in the company. Our Global Equity-Based Compensation Practice assists multinational companies in finding solutions to the challenges of offering equity-based compensation plans. White & Case's strong presence in the leading financial centers, industrialized economies and emerging markets positions us to assist clients with the full array of equity-based compensation issues in every corner of the world.

An Overview

Our team of specialist lawyers have worked with over 100 multinational companies in the design, management, implementation and maintenance of equity-based compensation plans. The scope and depth of our experience enable us to help companies avoid cultural, legal and company-specific problems as they expand throughout the world.

Many companies offer equity-based compensation plans—including stock options, stock purchase rights, restricted stock or stock appreciation rights—in overseas jurisdictions without first considering compliance with the laws of those jurisdictions. Retrospective attempts at compliance are usually frustrating and costly. Companies may find that they have not given themselves sufficient flexibility in their administrative practices or plan designs to make grants to employees throughout the world without significant and costly modifications.

Implementation of global equity-based compensation plans can be complex and filled with obstacles. The greatest obstacles come in the form of cultural, tax and legal issues that vary greatly from country to country. Failure to identify these issues can result in employee dissatisfaction, negative publicity to the company, fines, unnecessary tax liabilities, administrative costs and in some rare cases, criminal penalties. We have found that the key to successfully implementing a global equity-based compensation plan is to assess the cultural,

Our lawyers have worked with more than 100 multinational companies in the design, management, implementation and maintenance of equity-based compensation programs.

tax and legal landscape in each country before offering participation in the plan to the local employees.

We regularly assist our clients with the following matters:

- The design, implementation and maintenance of equity-based compensation plans for domestic and multinational clients. This often includes: establishing offshore trusts; implementing repricing and exchange plans for underwater options, stock appreciation right plans and/or profit-sharing plans; advising non-US companies on offering equity-based compensation plans in the US and advising companies regarding equity-based compensation plans in the context of the spin-off of divisions.
- Drafting comprehensive plan documents and related employee communications, including offer letters, plan summaries, participation agreements and explanatory booklets.
- Advice on the consequences of corporate transactions on our clients' equity-based compensation plans.
- Advising on equity-based compensation in the context of the hiring and firing of senior executives.
- Advising clients on tax-efficient remuneration planning for their senior executives, including the use of family benefit trusts, co-investment plans and deferred compensation plans.
- Concise but comprehensive advice regarding local tax regulations, social security, securities restrictions, exchange controls, employment law, data protection and e-commerce rules on the international operation of equity-based compensation.

The services we provide include:

Project Management

The prospect of introducing equity-based compensation plans to employees around the world can be daunting. At White & Case, we can manage the development and implementation of these plans at the parent company and subsidiary level. Our goal is to provide a full-service platform that allows us to alleviate our clients' concerns about the day-to-day planning and implementation issues associated with these plans.

Cultural Issues

Aside from the legal and regulatory issues that our clients encounter in offering global equity-based compensation plans, the local cultural issues must be considered. With our vast international presence, we are able to provide our clients with guidance on the cultural nuances that are of such importance to successfully structuring and communicating the benefits of these plans.

Plan Design

Global plans must provide the flexibility necessary to give the company the tools it will need to comply with the legal requirements of multiple countries. We work with our clients to draft comprehensive plan documents that both address their current needs and anticipate future developments in local law. In addition, we work with our clients in amending existing plans to create the flexibility needed to offer these plans around the world.



Employee Communications

An important aspect of any equity-based compensation plan is the manner in which the plan and its benefits are communicated to the employees. We routinely assist our clients in drafting employee communication materials, including offer letters, plan summaries, award agreements, enrollment forms and tax supplements. Relying on our considerable experience, we are able to help our clients communicate unfamiliar concepts in terms that are understandable for the local employees. In addition to drafting these documents, we assist our clients in preparing any necessary translations.

Employment Law

It is crucial to have an understanding of potential employment claims before operating an equity-based compensation plan in any country. Many countries have mandatory employment law provisions that will override plan rules and others have laws that will necessitate changes to plan rules. Of particular concern to our clients are European discrimination laws and we are well placed to advise on this area; most recently, we have advised extensively in the field of age discrimination.

Securities Restrictions

Because equity-based compensation plans generally involve the offer of company stock to employees, local securities laws must be considered. We guide our clients through the local country securities compliance requirements, including registering shares and other interests under equity-based compensation plans, drafting prospectuses and completing any ongoing filing requirements. Wherever possible, we will

identify exemptions and make any modifications necessary to take advantage of these exemptions in order to mitigate or eliminate filing requirements. We have highly regarded and extensive experience in dealing with European securities requirements under the EU Prospectus Directive.

Exchange Controls

Most global equity-based compensation plans involve the transfer of funds across borders. We guide our clients through the intricacies of local exchange control restrictions. We also obtain the necessary exemptions or approvals from regulatory authorities to allow remittance of funds abroad and receipt of benefits under the plans.

Data Privacy

Data privacy is a complex and often confusing area of the law. Because employees' information needs to be collected, stored and transferred in the administration of equity-based compensation plans, local data privacy laws must be addressed. We work with our clients to structure the administration of these plans so that they comply with local data privacy laws and, where necessary, obtain the appropriate approvals.

Employee Taxation

The taxation of equity-based compensation is always a concern of our clients and their employees. We help our clients find solutions to potentially onerous tax obligations by structuring their equity-based compensation plans to take advantage of local tax regulations and minimize the employees' tax liability wherever possible. In some



countries, we are able to provide our clients with alternatives, such as adopting sub-plans, which allow the company and its employees to take advantage of preferential tax treatment.

Social Security

We have found that the payment of social security benefits under equity-based compensation plans is a significant factor in determining whether a company will offer these plans. We advise clients on the potential social security liabilities that should be considered when offering equity-based compensation plans to employees. The potential can be significant, but, with planning, we can offer solutions to mitigate or eliminate these liabilities in a number of countries.

Employer Taxation

The taxation of the local entity and the allocation of costs for offering equity-based compensation plans is often a significant internal issue for our clients. We provide our clients with alternatives to: (i) mitigate the tax consequences to the local subsidiary or branch that result from extending equity-based compensation plans to its employees (ii) arrange for the costs of the plans to be allocated to the appropriate entity and (iii) mitigate the tax consequences that result from the local subsidiary or branch reimbursing the parent company for the cost of these plans.

Tax Withholding and Reporting

One of the concerns in offering equity-based compensation plans is the scrutiny that can be imposed by the local tax authorities. We work with our clients to determine whether the parent company or the local subsidiary is required to withhold income tax on benefits received by employees. We also help set up the administrative procedures necessary to remit the taxes owed to the local agencies.

Accounting Issues

Depending on the structure of the plans, US GAAP and UK GAAP, the International Accounting Standards, and local country accounting treatment may have a negative impact on the company. While we do not advise on accounting issues, we do assist our clients in identifying issues that they should address with their accountants.

E-Commerce

The traditional paper-intensive practice of administering global plans is financially and administratively burdensome. We work with our clients in structuring the administration of global equity-based compensation plans so that they can take advantage of their e-mail and intranet systems to communicate the benefits of the plans to employees and to facilitate the electronic grant acceptance, plan enrollment and exercise of the benefits.



Our Global Network

Americas

Los Angeles
Mexico City
Miami
New York
Palo Alto
São Paulo
Washington, DC

Europe, Middle East and Africa

Abu Dhabi
Almaty
Ankara
Berlin
Bratislava
Brussels
Bucharest
Budapest
Doha
Düsseldorf
Frankfurt
Geneva
Hamburg
Helsinki
Istanbul
Johannesburg
London
Moscow
Munich
Paris
Prague
Riyadh
Stockholm
Warsaw

Asia

Beijing
Hong Kong
Shanghai
Singapore
Tokyo

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.

"A superb firm with an excellent practice and great global coverage, White & Case is respected by both peers and clients."

Chambers Global 2009

Dealmaker of the Year 2009

American Lawyer

Ranked in Capital Markets and Finance Super Leagues 2009

PLC Which Lawyer?

Ranked No. 1 in Bloomberg Americas and Global Capital Markets Legal Adviser League Tables Q1 2009

Bloomberg

Top Global Bankruptcy Law Firm 2009

The Deal

Named Global Elite Firm 2009

Legal Business

Top Tier in Global Arbitration 2009

Focus Europe

Named a Top Global Arbitration Firm 2009

Global Arbitration Review

Global Elite in Antitrust/Competition 2009

Global Competition Review

Corporate Finance Deal of the Year 2009

Latin Lawyer

Corporate/M&A Team of the Quarter (Q3) 2009

Financial News

Won Five Firm of the Year Awards 2009

Asian-Counsel

Worldwide. For Our Clients.

36 Offices. 25 Countries.

London

Nicholas Greenacre
Partner and Head of the Global Executive
Compensation, Benefits, Employment
and Labor Practice
Tel: + 44 20 7532 2141
E-mail: ngreenacre@whitecase.com

White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom
Tel: + 44 20 7532 1000
Fax: + 44 20 7532 1001

ecbel.whitecase.com

www.whitecase.com

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, corporations and undertakings.