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CHANCE

Employee Share Plans in Europe and the USA

Introduction

The purpose of this guide

This guide is designed to summarise the main legal and tax issues arising on the operation of employee share plans in key European countries and in the USA.

It has been prepared with the assistance of Clifford Chance colleagues in Amsterdam, Brussels, Frankfurt, Madrid, Milan, Moscow, New York, Paris, Prague and Warsaw. We are also grateful for the assistance provided by the following firms in the other countries covered by this guide: DLA Piper Weiss-Tessbach Rechtsanwälte (Austria), Kromann Reumert (Denmark), Sorainen Law Offices (Republic of Estonia), Lakatos, Köves & Partners (Budapest), Roschier Holmber, Attorneys Ltd. (Finland), Bahas, Gramatidis & Partners (Greece), McCann FitzGerald Solicitors (Republic of Ireland), Skudra & Udris (Republic of Latvia), Lideika, Petrauskas Valiunas ir Partneriai LAWIN (Republic of Lithuania), Serra Lopes, Cortes Martins & Associados (Portugal) and Mannheimer Swartling Advokatbyrå (Sweden). Further details of all the offices which have assisted in preparing this guide are set out at the end of this guide.

Clifford Chance

The Clifford Chance Employee Benefits Group has extensive experience of advising on all aspects of employee share plans and other aspects of employee remuneration both in the UK and internationally. Our approach is multi-disciplinary, in that we cover securities and regulatory laws, employment laws, accounting, tax and institutional investor guidelines. We help clients decide which type of plan will meet their commercial objectives, as well as designing the rules of a new plan, or modifying existing plan rules in light of new tax or other technical developments. We also have extensive experience of helping clients project manage share plan launches and advising on their ongoing operation and we regularly advise on the share plan implications of flotations, mergers, takeovers and other corporate transactions.

We help public and private companies deal with various legal technicalities such as tax practice, stock exchange rules, securities and employment regulations.

Further information

This guide provides an outline of the legal and tax issues affecting employee share plans in Europe. We also have separate guides on Employee Share Plans in the United Kingdom, Employment and Benefits in the United Kingdom, Employment in the European Union and Employment in Eurasia and the Middle East.

Our regular newsletters are designed to keep you up-to-date with new developments in the world of share plans. If you would like to join our distribution list please contact Sally Robinson (sally.robinson@cliffordchance.com) or any other member of the Employee Benefits Group.

You can obtain further information and advice on all aspects of employee share plans and other remuneration techniques from Daniel Hepburn, Kevin Thompson or Robin Tremaine. Further information about Clifford Chance and our network is set out at the end of this guide.

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Employee share plans in Europe and the USA: an outline

1. The aim of the guide

Employee share plans are an important way for companies to recruit, retain and motivate their employees. Companies which already have share plans frequently wish to extend the benefits of those plans throughout their international operations. The aim of this guide is to summarise the key legal and tax issues relevant to establishing and operating share plans in 21 European countries and the USA.

All of the European countries covered in this guide are, except for the Russian Federation, member states of the European Union (the EU). As a result, in some areas, notably data protection and employment, the relevant law in each member state is based on EU Directives. However, in other areas, in particular taxation, member states generally retain the ability to set their own laws independently of the EU.

2. What are the key regulatory issues?

The main issues which companies need to consider are the following.

2.1 Securities laws

All EU member states have implemented the EU Prospectus Directive (Prospectus Directive). However, the situation across Europe is still not a harmonised one, due to differences in the way in which the Prospectus Directive has been implemented and is being interpreted at a national level.

The Prospectus Directive has a number of implications for employers who wish to offer securities to employees in an EU country. An offer of shares to employees will in principle be classed as an offer of securities to the public under the Prospectus Directive, which requires the publication of a prospectus. However, an employer who wishes to offer shares to employees in the EU may benefit from certain exclusions or exemptions from the requirement to publish a prospectus if:

- the securities of the employer (or an affiliated company) are admitted to trading on a regulated market in the EU, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer ("the employee share plans exemption"); or
- the offer of securities is to fewer than 100 persons per EU member state; or
- the total consideration under the offer is less than, generally, €2.5 million (this limit is calculated over a period of 12 months).

Furthermore, securities for the purpose of the Prospectus Directive are defined as "securities which are transferable and negotiable on the capital market". Both the European Commission and the majority of the members of the Committee of European Securities Regulators (CESR) have indicated that in their view (which has no binding force) non-transferable options granted under an employee share plan generally fall outside the scope of the Prospectus Directive, which is very helpful for companies operating share option plans.

In February 2009, CESR published some "short-form prospectus" rules that will benefit many non-EU listed companies operating employee share plans in the EU. The short-form prospectus can omit various items of information (as set out in CESR guidance) which would otherwise be required under a full prospectus.

In June 2010, the EU Parliament approved (and the EU Council is expected to approve before the end of 2010) a number of amendments to the Prospectus Directive, including some amendments to the employee share plans exemption. The employee share plans exemption is to be extended to all companies whose head office or registered office is in the EU. This applies regardless of whether or not the company is listed (or where that listing, if any, is). Companies which are established outside the EU will qualify for the exemption if they are listed on an EU regulated market (as is the case under the current exemption wording) or if they are listed on a "third country market" which is recognised by the EU Commission (under a formal process) as being governed by a regulatory regime equivalent to the EU regulatory regime. In such a case, the company will be required to provide "adequate information" including the employee information note referred to above. Member states are expected to be given 18 months to implement the changes to the employee share plans exemption (and the other changes to be made to the Prospectus Directive) once those changes have been brought into force by the EU. In the meantime, the current employee share plans exemption remains in force.

Certain of the other exclusions/exemptions on which companies may be able to rely when making an offering under an employee share plan are to be extended:

- the exemption which applies to offers made to fewer than 100 individuals per member state is to be increased to fewer than 150 individuals per member state; and
- the exclusion which applies where the consideration for the offer over a period of 12 months is less than €2.5 million (across the EU) is to be increased to less than €5 million (across the EU).

Although the Prospectus Directive came into force more than 5 years ago, many of the issues raised by the Prospectus Directive remain unresolved. Further information on the effects of the Prospectus Directive and the implementing legislation is separately obtainable from Clifford Chance.

Offers of securities to employees in the US are regulated by both the federal and state governments, although it is often possible for companies to take advantage of one or more exemptions from the relevant registration requirements.

2.2 Financial services issues
Many countries have laws which limit the way in which companies can make offers of securities, unless certain conditions are met. For example, in the UK there are restrictions on arranging deals in securities (for which there is an employee share plan exemption) and giving investment advice on securities (for which, by contrast, there is no equivalent exemption).

2.3 Exchange controls
There are generally no exchange controls for employee share plans in the EU but they do exist in other European countries. The USA does not have exchange controls for employee share plans.

2.4 Financial assistance
Most countries in Europe prohibit a company from assisting others to acquire shares in itself or in its parent company (e.g. by way of a cash gift or loan). Financial assistance may be relevant where the parent company or any of its subsidiaries provides gifts, loans or guarantees to employees or the trustees of an employee benefit trust to acquire shares in the parent company. In many countries (such as Belgium, France and the UK) there is an exemption from the financial assistance rules for employee share plans. In general, US companies are permitted to give financial assistance for the purposes of an employee share plan.

2.5 Data protection
Data protection laws restrict the processing of employees' personal information. The restrictions apply to the employer's collection and processing of employees' personal information for the purposes of an employee share plan but also, for example, to the sharing of information with group companies, share plan administrators or other third parties. The position was harmonised to some extent across the EU member states by the 1995 framework directive on data protection, although significant differences remain between the various data protection regimes. Data protection laws will generally require employees to be fully informed about the processing of their personal information in connection with an employee share plan. In some member states it may be necessary for employees to consent to the processing. Processing of employee information will also be subject to a series of general requirements - for example, that the processing should be fair and lawful, that no excessive information should be processed and that steps should be taken to ensure that the information is accurate, secure and not retained when no longer needed. In many member states it is also necessary to register processing with a national data protection authority or to consult an internal data protection officer. There are specific restrictions which arise if personal information is transferred outside the European Economic Area.

3. What are the tax issues?
The tax issues depend on the structure of the relevant plan.

3.1 Taxation of share acquisitions
When an employee acquires shares for free or at a discount to their market value, he will usually be liable to income tax and, in some cases, social security contributions on the difference between the market value of the shares acquired and the price, if any, paid for them. Some countries, such as the USA, Denmark, Italy and the UK, have favourable regimes which can reduce or defer this tax charge.

3.2 Taxation of share options
When an employee is granted a share option, usually there is no tax liability at the time of grant. On exercise of the option, the employee will generally be liable to income tax and, in some cases, social security contributions on the difference between the market value of the shares acquired and the price paid for them. Some countries, such as Belgium, tax share options differently so that there can be a tax charge on grant instead of on exercise. In the USA, adverse tax consequences may arise if share options are granted at less than market value.

3.3 Taxation of share disposals
An employee who sells shares will usually be liable to tax on the difference between the sale price and the market value of the shares at the date they are acquired. Some countries reduce the amount of tax payable if the shares are held for a certain period (e.g. Austria and the USA).

3.4 Tax favoured share plans
In order to encourage wider share ownership, the USA and a number of European countries, including Denmark, France, Ireland, Italy and the UK, have tax-favoured employee share plans. Structuring a plan so that it meets the requirements of a favourable tax regime can provide beneficial tax consequences for both employee and employer.

3.5 Employee benefit trusts
Many UK companies operate their employee share plans using shares bought by the trustees of a discretionary employee benefit trust. Some countries, such as Ireland, recognise the concept of trusts but others, such as Lithuania, do not. This can impact on the tax treatment of the employees and the employer.

3.6 Transfer pricing
The principle behind transfer pricing is that subsidiaries should bear the cost of goods or services provided to them by the parent company and vice-versa. Some countries, e.g. the UK, have seen increasing interest from tax authorities in seeking to apply transfer pricing to employee share plans. It is often the case that a parent company will require its employing subsidiaries to bear the cost of participation of their employees in a share plan under a recharge arrangement. Apart from apportioning the costs between group members, this is often advantageous for the group as a whole because the subsidiary company can often obtain a corporation tax deduction for the payments made. However, in some jurisdictions no corporation tax deduction is available for the payment. If no arm's length recharge is operated, under the transfer pricing laws of certain countries, the profits of the parent company may be increased as if it had received payments on an arm's length basis from its employing subsidiaries. This will increase the tax liability of the parent company. Whether it is advantageous for each subsidiary to make a payment

to the parent company or whether it is better to allow a transfer pricing adjustment to be made, depends upon the overall tax treatment of the group companies concerned.

4. How does employment law affect employee share plans?

Employment law is a constantly developing area. In many countries, employee share plans are still relatively new and this means that the number of Court decisions is relatively limited. As a general trend, employment law claims in relation to employee share plans are increasing and the Courts are generally sympathetic to employees. Where there are specific issues in a country (e.g. in Denmark) in addition to the more general issues mentioned below, these are dealt with in the relevant chapter. However, the comments below highlight risks which are likely to be relevant to a greater or lesser degree in all countries.

4.1 Acquired rights and discrimination

During the course of employment, an employee may claim that he has acquired a right to receive an award (or a particular level of award) under an employee share plan. This is often referred to as a claim for an "acquired right". Alternatively, an employee may bring a claim on the grounds of unequal treatment or discrimination. For example, an employee who participates in a discretionary share plan may claim that he or she has received a lesser award than a colleague and they have therefore been discriminated against on the grounds of, e.g., age, sex or disability. Even if a plan is operated on an all employee basis, claims may arise. For example, there may be issues if part-timers, those employed on fixed term contracts or those absent from work due to parental leave or because of long-term sickness are excluded from participating.

4.2 Termination claims

In a number of EU jurisdictions, the Courts have included rights granted under employee share plans in calculating compensation due to employees on termination of employment. This is usually on the basis that the value of awards granted under share plans is treated like salary. In some jurisdictions this is only the case if the employee concerned has made previous gains under a share plan during employment.

In a small number of jurisdictions, the Courts have gone further and deemed the terms of a plan to apply differently from how the terms were originally drafted. For example, a plan may provide that on termination of employment in prescribed circumstances, certain (e.g. unvested) awards will lapse. Despite this express term, the Courts in some jurisdictions have deemed the terms of the plan to apply more favourably to employees so that, for example, the unvested awards do not lapse. This is of particular concern if an employee is dismissed a short way into a long vesting period. Assuming that the Court did not accelerate vesting of some or all of an award, the employee would have a right to continue to receive the unvested portion of the award, in accordance with the normal vesting schedule, long after he had ceased employment.

4.3 Jurisdiction/exclusion clauses

Employee share plans often contain clauses which specify the law which applies to the terms of the plan. This is generally the law of the jurisdiction in which the parent company is based. It is also usual to include a clause which seeks to exclude an employee's right to bring a claim for lost rights under the plan in the event of termination of employment. Some countries will respect these clauses and others will not. The problem is that claims are usually brought under local employment laws, rather than under the terms of the plan. Nonetheless, both types of clause should normally be included because (subject to some limited exceptions) they do no harm and may be effective in some jurisdictions.

4.4 Consultation

In some countries works councils may be established. Where this is the case, there may be an obligation on the employer to consult with the works council about the introduction or amendment of any employee share plan even though all decisions in respect of the plan are made by the parent company. In some countries, failure to inform and/or consult the works council may be a criminal offence and minimum time periods are often prescribed for consultation. Even where there is no obligation to consult, it is often expected as a matter of good employee relations that consultation will take place, especially if changes to an existing plan are proposed. It may also be the case that there is an obligation to consult with employee representatives about the introduction or amendment of an employee share plan under the terms of a collective bargaining agreement.

5. Do other factors affect employee share plans?

In practice, other issues will arise such as the role of double-tax treaties, accounting treatment and public disclosure requirements which are outside the scope of this guide. These issues need to be considered when establishing an employee share plan in a particular country and specific advice should be obtained.

6. Basis of the information

The following assumptions are made in this guide:

- The tax treatment of employees summarises the position for employees resident for tax purposes in the relevant jurisdiction.
- References to "the 2010 tax year" indicate the rates of tax applicable during some or all of 2010. However, the tax year in each jurisdiction will not necessarily be a calendar year and, as such, the applicable rates may differ from those stated.
- Unless otherwise stated, the sections on securities law refer to the offer of options and shares.

This guide is based on applicable laws in force in September 2010.

Austria

1. Securities law

1.1 Offer of securities

The offer of securities to the public generally requires the publication of a prospectus. However, there is an exemption from that requirement where securities are only offered to existing or former directors or employees:

- by their employer (which has securities already admitted to trading on an EU regulated market); or
- by an affiliated undertaking.

To rely on this exemption, a document must be made available containing information on the number and the nature of the securities and the reasons for, and details of, the offer.

There is also an exemption for offers made to fewer than 100 natural or legal persons per EEA member state (other than qualified investors).

1.2 Regulatory issues

There are no other regulatory issues which affect the offering of securities to employees.

1.3 Disclosure

An Austrian joint stock company (AG) must report the grant of stock options under employee share plans to shareholders and stock options granted to employees or directors must not exceed 20% of the company's issued share capital. The annual financial statements of all Austrian companies must include a summary of the company's employee share plans and of rights granted under them. Companies listed on the Vienna stock exchange have additional reporting obligations.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 Austrian company

An AG and a limited liability company (GmbH) are generally prohibited from acquiring their own shares or shares in their parent, although an AG can acquire up to 10% of its own shares for an employee share plan. In addition, an AG is prohibited from providing financial assistance to acquire its own shares or shares in its parent company. There is no such prohibition on a GmbH, although loans made by a GmbH to acquire its own shares or shares in its parent company could be subject to rules which prohibit a reduction of capital

3.2 Austrian subsidiary of non-Austrian company

The application of the restrictions on financial assistance to an Austrian subsidiary of a non-Austrian company remains unclear. It is recommended that Austrian subsidiaries comply with the same requirements as are set out in paragraph 3.1 above.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year income tax rates range from 0% to 50%

4.1.2 Social security contributions

An employee will be subject to social security contributions on the amount of his gross monthly salary (up to a maximum of €4,110) at rates ranging from 18.07% (white collar workers) to 18.20% (blue collar workers).

4.1.3 Tax and social security contributions exemption

Austrian employees can acquire shares with a value of up to €1,460 a year free of income tax and social security contributions, subject to certain conditions.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

The employer may obtain a corporation tax deduction for the employee share plan costs incurred.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount to market value if the employee is subject to social security contributions and the value of the shares is higher than the special exemption (€1,460 a year – see paragraph 4.1.3 above). The maximum rate of employer's social security contributions for the 2010 tax year is 21.70% for blue collar workers and 21.83% for white collar workers. The upper income limit for employer social security contributions in 2010 is an employee's gross monthly salary of €4,110.

Under certain circumstances, an amount equivalent to 1.53% of the employee's monthly gross salary must be paid by the employer into a fund for future severance payments (this is a scheme which has applied since January 2003).

4.3 Tax withholding

The employer must withhold any income tax and employee social security contributions due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax or social security contributions charge on the grant of a share option unless the option is characterised as an economic good.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year income tax rates range from 0% to 50%.

5.1.3 Social security contributions

Social security contributions arise on the exercise of options at rates ranging from 18.07% (white collar workers) to 18.20% (blue collar workers). The basis for liability is the employee's gross monthly salary subject to an upper income limit for social security contributions of €4,110 for 2010.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
The employer may obtain a corporation tax deduction for the employee share plan costs incurred.

5.2.2 Social security contributions
Employer social security contributions arise on the exercise of an option in circumstances where an employee is subject to social security contributions. The maximum rate of employer's social security contributions is 21.70% (blue collar workers) and 21.83% (white collar workers) for the year 2010 (the upper income limit for social security contributions is a gross monthly salary of €4,110).

Under certain circumstances, an amount equivalent to 1.53% of the employee's monthly gross salary must be paid by the employer into a fund for future severance payments.

5.3 Favourable tax regime

Previously, a favourable tax regime applied to non-transferable options if certain conditions were met. However, under the Tax Reform Act 2009, the favourable tax regime for share options was restricted so that it now only applies to options granted before 1 April 2009. If non-transferable options, granted before 1 April 2009 meet certain conditions, then the favourable tax regime will continue to apply to them.

5.4 Tax withholding

The employer must withhold any wage tax and employee social security contributions and other duties due.

6. Taxation of share disposals

6.1 If the employee sells shares within one year of acquiring them, the difference between the market value of the shares on the date of acquisition and the sale proceeds will be subject to income tax at the employee's marginal tax rate.

6.2 If the employee disposes of shares more than one year after acquiring them, any gain on sale will be free of tax provided that the employee holds less than 1% of the company's total issued share capital at the time of sale.

7. Employee benefit trusts

There is a special form of employee benefit trust in Austria. Under this arrangement, the trust holds shares in the employing company and dividends paid on those shares are transferred by the trust to employees. Such dividends are subject to a 25% withholding tax, up to a limit of €1,460 per employee per year. (Where the dividend amount exceeds €1,460 then the dividends are treated as income from employment, i.e. they are taxed at the employee's marginal tax rate and social security contributions also apply).

More generally, advantageous tax rules apply to Austrian trusts. When setting up an Austrian trust specific advice should be sought to determine the legal and tax issues.

8. Data protection

Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Belgium

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there are some exemptions from that requirement.

1.1.1 No filing, application or other formality need be made with the BFIC:

- for an offer of securities to fewer than 100 individuals in Belgium (even if, in our view, the offer is being made to more than 100 individuals in a different EU state);
- for an offer of securities (e.g. shares or stock options, whether or not listed) which are granted free of charge. However, any communication made within Belgium relating to such a free offer must contain information on the number and nature of the securities and the reasons for and details of the offer, which must be made available to employees;
- where transferable securities (e.g. listed shares or listed stock options) are offered to existing or former directors or employees by their employer (or an affiliated company) which has securities listed on a regulated market in the EEA, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer. For offers to the public in Belgium where the total consideration of the offer is less than €2,500,000, the exemption is also available for an employer (or an affiliated company) which is an issuer listed on a market other than a regulated market in the EEA, provided that the relevant market offers equivalent regulatory standards.

1.1.2 Offers to employees under the Prospectus Directive where a prospectus is required (e.g. an offer by an employer of securities which are not listed on a regulated market in the EEA, where the total consideration of the offer is more than €2,500,000) can benefit from the "short-form prospectus" regime adopted by CESR in February 2009.

1.1.3 In addition, offers to employees that fall outside the scope of the Prospectus Directive which do not benefit from any of the exemptions referred to in paragraph 1.1.1 above, will not normally be prospectus-exempt in Belgium, but the BFIC may grant a partial or total dispensation from the obligation to publish a prospectus, for example:

- where non-transferable securities are offered in Belgium to 100 or more existing or former directors or employees by their employer (or an affiliated company) which is a listed (either on a regulated market in the EEA or on any other market) or a non-listed issuer;
- for an offer of transferable securities in Belgium where the total consideration of the offer is less than €2,500,000 (but more than €100,000) and the offer is made to 100 or more existing or former directors or employees by their employer (or an affiliated company) which is an issuer listed on a market other than a regulated market in the EEA and where the relevant market does not offer equivalent regulatory standards.

Where any offer of securities is subject to prospectus approval by the BFIC, then the marketing materials should also be submitted to the BFIC for approval.

1.2 Regulatory issues

There are no other significant regulatory issues that affect an offer of securities to employees. A company which issues securities direct to employees in Belgium does not need a licence as an investment firm or securities intermediary. However, if a company uses another entity (e.g. a securities broker) in connection with the issue of the securities, that other entity would require a licence as an investment firm unless an exemption applies

1.3 Disclosure

In principle, disclosure requirements other than those resulting from the Transparency Directive and the Market Abuse Directive do not apply where securities are offered to employees and/or directors in Belgium.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 Belgian company

Belgian law allows a company to make loans (or grant security interests) to its employees (or to the employees of its affiliates) with a view to the acquisition of the company's shares within the limits of the distributable reserves available to the company and provided that the company maintains a non-distributable reserve for the amount of the financial assistance.

3.2 Belgian subsidiary of a Belgian or a non-Belgian parent company

Assisting the acquisition of shares in a non-Belgian parent company is considered to be outside the scope of the Belgian financial assistance rules and assisting in the acquisition of shares in a Belgian parent company is generally also considered to be outside the scope of the Belgian financial assistance rules, provided certain conditions are met.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 income tax year personal income tax rates range from 25% to 50%.

4.1.2 Social security contributions

Employees will be subject to social security contributions on the amount subject to income tax at a rate of 13.07%. Social security contributions are not due on discounts granted to employees if and to the extent the income tax exemptions described in paragraph 4.1.3 below apply.

4.1.3 Tax exemption
There are exemptions from tax and social security contributions for shares which are offered to employees at a discount:

- Newly issued shares may be offered with a tax-free discount of up to 20%, provided certain conditions are satisfied, including a 5 year lock-up period. This tax exemption is technically available only to Belgian companies, but in practice the tax authorities also agree to exempt the discount in the case of share issues by non-Belgian companies if all the main conditions are satisfied.

- Existing shares in listed entities may in certain circumstances be offered at a tax-free discount of up to 16.67%, subject to a lock-up period of 2 years. This regime provides an attractive alternative to the tax exemption described above.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction
The employer can normally claim a corporation tax deduction in respect of the costs incurred in establishing and administering an employee share plan. Capital losses on shares are not deductible.

4.2.2 Social security contributions
Employer social security contributions are due to the extent that the employee is subject to social security contributions. The employer's social security contributions amount to around 35%.

4.3 Tax withholding

4.3.1 Belgian company
A Belgian employing company must withhold any tax and employee social security contributions due.

4.3.2 Belgian subsidiary of a non-Belgian company
If the employing subsidiary is considered to be an intermediary for tax purposes, it must withhold the tax and employee social security contributions owed by the employee. If the subsidiary only plays a minimal role in the plan (for example, it is restricted to providing the names and addresses of the employees), then the subsidiary should not be considered an intermediary and would not be required to withhold the tax and employee social security contributions.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant
There is a tax charge on the grant of a share option which is calculated using a formula based on the market value of the shares.

Tax is normally charged on an amount equal to 15% of the value of the shares at the time that the option is granted. If the option can be exercised more than 5 years after the grant of the option, the tax charge is increased by 1% for each year or fraction of a year beyond the fifth year that the option is exercisable.

It is possible to reduce the taxable basis by 50% (so that the initial standard taxable basis would be 7.5%, rather than 15%, of the value of the shares) if (i) the exercise price of the option is set at the time of grant, (ii) the exercise period begins no earlier than 1 January of the fourth calendar year after the year in which the option was granted and ends no later than the end of the tenth calendar year following the year of the offer, (iii) the option is non-transferable, (iv) the grantor of the option or any related party of the grantor does not provide any protection against a decrease in the value of the underlying shares, and (v) the underlying shares are shares of the employer or the parent of the employer.

If the exercise price is less than the market value of the shares at the time of the offer, the taxable benefit is increased by the discount. In addition, if the terms of the option include a guaranteed benefit (for example, a guaranteed minimum value for the shares), the taxable benefit is increased by the value of that benefit.

The employee is deemed to refuse the share option for tax purposes unless he accepts it in writing within 60 days following the offer of the option. If the employee accepts the option before the end of the 60-day period, the option is deemed to have been granted on the 60th day for tax purposes.

5.1.2 Exercise
There is no tax charge on exercise.

5.1.3 *Social security contributions:*
Social security contributions do not arise on the grant of a "qualifying" share option unless the exercise price is less than the market value of the shares at the time of the offer or the terms of the option include a guaranteed benefit. Where this is the case, social security contributions are due on the amount of the discount and/or the value of the guaranteed benefit.

In any event, where the options are granted by a company other than the employing company (e.g. an affiliate of the employer or the parent company), the grantor does not charge back the costs to the employer and the employer is not the contact point to whom employees must address any questions that may have in relation to the plan, no social security contributions should normally be payable.

5.2 Employer tax and social security contributions

5.2.1 *Corporation tax deduction*
The employer can normally claim a corporation tax deduction in respect of the costs incurred in establishing and administering an employee share plan. Capital losses on shares are not tax deductible.

5.2.2 Social security contributions
Employer social security contributions are due to the extent that the employee is subject to social security contributions. The rate of employer's social security contributions is approximately 35%.

5.3 Tax withholding

5.3.1 Belgian company

A Belgian employing company must withhold any tax and social security contributions due.

5.3.2 Belgian subsidiary of a non-Belgian company

If the employing subsidiary is considered to be an intermediary for tax purposes, it must withhold the tax and employee social security contributions owed by the employee. If the subsidiary plays a minimal role in the plan (for example, it is restricted to providing the names and addresses of the employees), then the subsidiary should not be considered an intermediary and would not be required to withhold the tax and employee social security contributions.

6. Taxation of share disposals

No tax charge normally arises on the disposal of shares where the shares are sold by an employee.

7. Data protection

There should be no data protection issues if the participant has given his consent to the collection, processing and worldwide transfer of his personal data in connection with each employee share plan in which he participates. It is useful to specifically collect the employee's data which will be used for the plan and to obtain employee consent for the processing of their personal data, particularly since the validity of employee consent for the processing of non-sensitive data by the employer is not generally questioned in Belgium (as opposed to the situation in certain other European countries). The Belgian Data Protection Commission must be notified of the data processing and of the data transfers to be carried out in connection with an employee share plan.

8. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Czech Republic

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there is an exemption from that requirement where securities which are (i) issued by the employer or by a company in the same group as the employer; (ii) offered by a person in the same group as the employer; and (iii) admitted to trading on an EU regulated market, are offered to employees or to members of the “statutory body” (an executive body of the company), executive directors or persons who otherwise actually manage the activities of the employer, provided a document containing information about the number and the type of securities and the reasons for, and details of the offer are delivered to the Czech National Bank and are made available to the addressees of the offer.

There is also an exemption for an offer to fewer than 100 individuals in the Czech Republic (even if the offer is being made to more than 100 individuals in a different EU state).

1.2 Regulatory issues

There are no other regulatory issues which affect the offering of securities to employees assuming that no third party intermediary is involved in the offering.

1.3 Disclosure

Extensive disclosure obligations exist under the EU Market Abuse Directive as implemented in Czech law, in particular in relation to dealings in shares by persons discharging managerial responsibilities within the issuer and certain other persons closely associated with them.

2. Exchange controls

The employee must notify the Czech National Bank of any acquisition or disposal of securities or related payments if certain thresholds are met and the Czech National Bank requires the information. The thresholds are met, in broad terms, if the transactions amount to at least CZK 1 million or if an employee acquires 10% or more of the share capital of a non-Czech company.

3. Financial assistance

3.1 Czech company

A Czech company is allowed to provide financial assistance (including the provision of security or a guarantee) to acquire its own shares or shares in its parent company provided certain conditions are met. These conditions are less onerous for employee share plans.

3.2 Czech subsidiary of non-Czech company

A Czech subsidiary is allowed to provide financial assistance (including the provision of security or a guarantee) to acquire its own shares or shares in its parent company provided certain conditions are met. Such conditions are less onerous for employee share plans.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year the income tax rate is 15%.

4.1.2 Social security contributions

An employee will only be subject to social security contributions if the cost of the share plan is borne by the employer (e.g. if a recharge payment is made to a parent company). If social security contributions are payable, these are charged on an amount equivalent to the cost of the share plan borne by the employer per employee at a rate of 11% for the 2010 tax year. There is a cap of CZK 1,707,048 on the amount which is subject to employee social security contributions for the 2010 tax year.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

A corporation tax deduction may be available for a Czech company which bears the cost of an employee share plan if the benefit is included in the employment contract, or in a collective agreement, or within the internal wage regulations of the employer.

4.2.2 Social security contributions

Employer social security contributions will only be payable if the employee is subject to social security contributions. For the 2010 tax year the rate of employer’s social security contributions is 34%. There is a cap of CZK 1,707,048 on the amount which is subject to employer social security contributions for the 2010 tax year.

4.3 Tax withholding

If the cost of a share plan is borne by the Czech employer, it must withhold any income tax and employee social security contributions due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax or social security contributions charge on the grant of a share option.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year the income tax rate is 15%.

5.1.3 Social security contributions

An employee will only be subject to social security contributions if the cost of the share plan is borne by the employer (e.g. if a recharge payment is made to a parent company) at a rate of 11% for the 2010 tax year. There is a cap of CZK 1,707,048 on the amount which is subject to employee social security contributions for the 2010 tax year.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

A corporation tax deduction may be available for a Czech company for any costs which it bears in relation to an employee share plan if the benefit is included in the employment contract, or in a collective agreement, or within the internal wage regulations of the employer.

5.2.2 Social security contributions
Social security contributions arise on the exercise of an option in circumstances where an employee is subject to social security contributions. For the 2010 tax year the rate of employer's social security contributions is 34%. There is a cap of CZK 1,707,048 on the amount which is subject to employer social security contributions for the 2010 tax year.

5.3 Tax withholding
If the cost of a share plan is borne by the Czech employer, it must withhold any income tax and employee social security contributions due.

6. Taxation of share disposals
If the employee sells shares within 6 months of their acquisition, the difference between the market value of the shares on the date of acquisition and the sale proceeds will be subject to income tax at the rate of 15% for the 2010 tax year. If the employee sells the shares after a period of six months following their acquisition, the gain from the sale is exempt from taxation, assuming that the employee does not receive any purchase price payment during the six month holding period.

7. Employee benefit trusts
7.1 It is currently unclear whether an employee who is a beneficiary of a discretionary employee benefit trust should be taxable for that reason alone. However, it is thought that he should be taxed only when he actually receives benefits from the trust, as if he had received those benefits directly from his employing company.

7.2 It is currently unclear whether an employee who is a beneficiary of a discretionary employee benefit trust should be taxable for that reason alone. However, it is thought that he should be taxed only when he actually receives benefits from the trust, as if he had received those benefits directly from his employing company.

8. Data protection
Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan. In addition, express consent must be obtained from employees for the processing of their birth numbers. Birth numbers are normally used by Czech businesses as the key identifier in databases as they provide unambiguous identification of all Czech citizens.

9. Employment law
Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Denmark

1. Securities law

1.1 Offer of securities

The Danish prospectus regime consists of three tiers.

- Tier 1 applies to offers of securities with an aggregate value above €2,500,000 and to securities which are listed or admitted to trading on a regulated market.
- Tier 2 applies to offers of unlisted securities with an aggregate value of between €100,000 and €2,500,000.
- Tier 3 applies to offers of unlisted securities with an aggregate value below €100,000.

Under the Danish prospectus regime, the main rule is that any offer of securities to the public with an aggregate value above €100,000 (i.e. an offer within Tier 1 or Tier 2) results in the obligation to issue a prospectus.

There are, however, a number of exemptions in place, which may apply to share plans. The exemptions can be divided into three categories namely:

- those applying to the offer of securities which are not listed or admitted to trading on a regulated market ("Unlisted Securities");
- those applying to the listing of securities, which are to be listed or admitted to trading on a regulated market ("Listed Securities"); and
- those applying to the offer of securities which are to be listed or admitted to trading on a regulated market.

The exemptions outlined below apply equally to Tier 1 and Tier 2 offerings although they follow different sets of rules.

Exemptions for offers of Unlisted Securities

The following are the relevant exemptions (for offers of Unlisted Securities) from the requirements to issue a prospectus:

- **100-offeree exemption.** Offers of Unlisted Securities addressed to fewer than 100 natural or legal persons in Denmark (even if the offer is being made to more than 100 individuals in a different EU state).
- **Employee exemption.** Unlisted Securities offered, allotted, or to be allotted to existing or former directors, members of the supervisory board or employees of the issuing company or an affiliated company. If the offer constitutes a Tier 1 offering of Unlisted Securities (offer of Unlisted Securities with an aggregate value above €2,500,000), the exemption only applies if the Unlisted Securities are offered, allotted, or to be allotted by the issuing company, provided it already has securities admitted to trading on a regulated market, or by an affiliated company.
- **Free offers with no element of choice on the part of the employee.** If the share plan entails an offer of shares free of charge with no element of choice on the part of the employee there is no obligation to publish a prospectus.
- **Free offers with an element of choice on the part of the employee.** If the share plan entails an offer of shares free of charge with an element of choice on the part of the employee (the employee decides whether to accept the offer), the offer is regarded as an offer for zero consideration and will as such be subject to the exemption for offers of less than €100,000.

Exemptions for listings of Listed Securities

The following are the relevant exemptions (for listings of Listed Securities) from the requirements to issue a prospectus:

- **10% exemption.** Shares representing, over a period of 12 months, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market.
- **Employee exemption.** Listed Securities offered, allotted, or to be allotted to existing or former directors, members of the supervisory board or employees of the issuing company or an affiliated company by the issuing company, provided it already has securities admitted to trading on a regulated market, or by an affiliated company. The securities offered, allotted or to be allotted must be of the same class as the securities already admitted to trading on the same regulated market.

Exemptions for offerings of Listed Securities

The following are the relevant exemptions (for offers of Listed Securities) from the requirements to issue a prospectus:

- **100-offeree exemption.** If the Listed Securities (i.e. listed or admitted to trading on a regulated market within the EU/EEA) will not be listed or admitted for trading on a regulated market in Denmark, the 100-offeree exemption is available. This exemption applies in Denmark even if the offer is being made to more than 100 individuals in a different EU state.
- **Employee exemption.** Listed Securities offered, allotted or to be allotted to existing or former directors, members of the supervisory board or to employees of the issuing company of an affiliated company by the issuing company, provided it already has securities admitted to trading on a regulated market or by an affiliated company.
- **Free offers with no element of choice on the part of the employee.** If the share plan entails an offer of shares free of charge with no element of choice on the part of the employee there is no obligation to publish a prospectus.
- **Free offers with an element of choice on the part of the employee.** If the share plan entails an offer of shares free of charge with an element of choice on the part of

the employee (the employee decides whether to accept the offer), the offer is regarded as an offer for zero consideration and will as such be subject to the exemption for offers of less than €100,000.

Under the specific employee share plan exemption for both Listed Securities and Unlisted Securities, the employer must provide the employees with a document containing information on the number and class of the securities and the reasons for and details of the offer.

1.2 Regulatory issues

If the offer is made by entities other than the issuer, marketing, promoting, soliciting, offering, transferring, selling and delivering the securities must always be conducted by an entity licensed to carry out such activities in Denmark, unless these investment services are provided by an undertaking whose investment services solely consists of management of a scheme for employee participation.

The employer does not need to make any applications, filings or fulfil any other requirements under Danish securities laws. Furthermore, the Danish employees will not be required to report the grant and/or exercise to the Danish FSA.

1.3 Disclosure

In relation to a company whose shares are quoted on the NASDAQ OMX Copenhagen A/S (OMX), the OMX must be notified immediately of all decisions regarding the establishment of share based remuneration programmes. Information regarding the share based remuneration programme must also be provided in the company's annual accounts. Furthermore, if a company quoted on the OMX buys or sells its own shares in connection with the grant or exercise of share options, additional disclosure obligations may arise. If a prospectus must be published, it must be made available to the Danish public.

2. Exchange controls

There are currently no exchange controls in Denmark.

3. Financial assistance

3.1 Danish company

A Danish company may issue shares to employees free of charge if it complies with the requirements of Danish company law relating to bonus shares (which principally requires that free shares are only provided out of available distributable reserves). A Danish public or private limited company may acquire existing shares and hold them (subject to the aggregate purchase price not exceeding company's available distributable reserves and provided that the remaining share capital amounts to (i) DKK 500,000 in relation to public limited companies and (ii) DKK 80,000 in relation to private limited companies).

As a general rule, a Danish company is prohibited from making loans to its managers, directors and shareholders. This applies irrespective of the reason for the loan or use of the loan proceeds. Furthermore, subject to certain exceptions (see below), a Danish company is prohibited from making loans (or in any way providing funds) to employees (or anyone else) in connection with the acquisition of shares in the company or in its parent company.

However, subject to certain conditions, a Danish company may provide loans to enable its employees to buy shares in the company or in a subsidiary (but not a parent company). The main conditions are that the loans are provided in connection with an all-employee share plan and are only provided out of reserves which could be used to pay dividends.

3.2 Danish subsidiary of a non-Danish company

The general prohibitions on the making of loans for the acquisition of shares set out in paragraph 3.1 above generally also apply where the loan is being made by a Danish subsidiary to its employees for the acquisition of shares in its non-Danish parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employer or its parent company free of charge or at a discount to market value will be liable to pay income tax at his marginal tax rate unless a favourable tax regime as described in paragraph 4.1.3 below applies. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year the highest marginal income tax rate is 51.5% (excluding compulsory labour market fund contributions).

4.1.2 Social security contributions

An employee will be subject to compulsory labour market fund contributions of 8% for the 2010 tax year on the amount subject to income tax, unless a favourable tax regime as described in paragraph 4.1.3 below applies. No other social security contributions apply.

4.1.3 Favourable tax regime

There are two tax-favoured plans available in Denmark. One of the plans provides for deferral of the tax due on the employee shares until the employees sell them, provided the plan is offered to all employees of the company in question. Another plan allows employees to defer the tax due on their shares until they sell them, without any requirement for a general roll-out to all employees, but subject to certain conditions, the most important being that the value of the shares must not exceed 10% of the employee's annual salary and the employee and employer must agree on the tax deferral.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

The employer can obtain a corporation tax deduction for the cost of an employee share plan. However, under one of the favourable tax regimes described in paragraph 4.1.3, only limited corporation tax deductions are available.

4.2.2 Social security contributions

No employer social security contributions are due.

4.3 Tax withholding

The employer is not required to withhold tax or employee social security contributions. The employee is responsible for paying any tax and employee social security contributions due himself. The employer will, however, be required to inform the tax authorities of each employee's total income, including the amount of any discount provided to the market value of the shares at the time the employee acquires them.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

In limited circumstances, the grant of an option may give rise to income tax on the value of the option at grant. However, where an employer (or its parent company) grants options to employees, the options are normally taxed on exercise. If income tax arises on grant, tax will be due at ordinary employment income marginal tax rates of up to 51.5% for the 2010 tax year (excluding compulsory labour market fund contributions).

5.1.2 Exercise

If the option was not subject to tax at grant, as is normally the case for an employee share option, income tax arises on the exercise of the option on the difference between the market value of the shares at the time of exercise and the option exercise price. The gain will be taxed as ordinary employment income at marginal rates of up to 51.5% for the 2010 tax year (excluding compulsory labour market fund contributions).

5.1.3 Social security contributions

An employee will be subject to compulsory labour market fund contributions of 8% for the 2010 tax year on the amount subject to income tax unless the favourable tax regime referred to in paragraph 5.1.4 below applies.

5.1.4 Favourable tax regime

The tax-favoured share plans referred to at paragraph 4.1.3 can also apply to the grant of share options. In broad terms, options must satisfy the same requirements as share awards to fall within the favourable tax regime. However, the tax-favoured plan which does not have to be rolled-out to all employees previously had an alternative method of defining the maximum value of share options granted, which depends on the exercise price of the options. However, this alternative method has been abolished in relation to options where the employee has not received "unconditional rights" in relation to an option before 1 January 2010. Although the Danish tax authorities have issued guidance as to what constitutes "unconditional rights" for these purposes, there remains some uncertainty as to its exact definition. Where the conditions for favourable treatment are met, no tax or social security contributions apply at the time of grant or exercise of the options.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

The employer can obtain a corporation tax deduction for the cost of an employee share plan. However, under one of the favourable tax regimes described in paragraph 5.1.4, only limited corporation tax deductions are available.

5.2.2 Social security contributions

No employer social security contributions are due.

5.3 Tax withholding

The employer is not required to withhold tax or employee social security contributions. The employee is responsible for paying any tax and employee social security contributions due himself. The employer will, however, be required to inform the tax authorities of each employee's total income, including the amount of any discount in the market value of shares at the time the employee acquires them.

6. Taxation of share disposals

Any gain realised on a share disposal is taxable as a capital gain. The effective tax rate (for 2010) is 28% or 42% depending on the level of the employee's income from shares etc, and provided the employee is not trading in shares. From 2012, the 28% rate is to be reduced to 27% (i.e. from 2012 the two rates will be 27% and 42%). Grandfathering provisions apply to shares acquired prior to January 2006. These provide for, amongst other things, a tax exemption for gains on minor holdings of listed shares owned for at least 3 years on the date of disposal.

7. Employee benefit trusts

7.1 A Danish resident who is a potential beneficiary of a discretionary trust, but has no right to any benefits, is not likely to be subject to any Danish tax on property held in the trust. A Danish resident who receives benefits from a discretionary employee benefit trust is normally subject to income tax on the value of the benefits.

7.2 A Danish company that makes voluntary payments to an employee benefit trust may, under normal circumstances, be able to obtain corporation tax relief for the payments.

8. Data protection

There should be no data protection issues provided that the employee has given his specific written consent to the collection, processing and worldwide transfer of his personal data in connection with employee share plans.

9. Employment law

9.1 Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable. In addition to these general employment law issues, specific issues arise in Denmark which are mentioned below.

9.2 Share awards granted on or after 1 July 2004: The Stock Option Act 2004

The Stock Option Act 2004 (SOA) applies to all awards of share options, restricted share units and other rights to acquire or subscribe for shares at a later date granted to employees on or after 1 July 2004. All of these rights are referred to as "share options" for the purposes of the information on Danish employment law set out below. The SOA applies to all employees, including directors who are salaried employees.

The SOA provides that an employee whose employment is terminated by the employer (for reasons other than the employee's misconduct) retains all rights to share options already granted to him at the date of termination, whether vested or unvested. (The same principle applies if (i) the employee resigns because of the employer's gross misconduct, (ii) the employment is terminated because of the employee's illness, or (iii) the employee has reached his retirement age). Provisions in employee share plans purporting to restrict employees' rights to share options upon termination of their employment will be set aside by Danish courts as invalid. Instead, the employees' exercise rights will continue as if they were still employed with the employer on the original terms and conditions of the share option plan.

An employee who resigns from his position by giving notice of termination to his employer or an employee who is terminated for misconduct automatically forfeits all his rights to share options already granted whether vested or unvested. The employee also forfeits his rights to any future share options that he could have expected to receive, had he continued his employment. However, it is permissible to agree more favourable rights in a share plan, e.g. that an employee may exercise his vested share options within a certain period after his termination.

The SOA also introduces an obligation on the employer to give the employee certain information in writing and in Danish about the terms and conditions of the employee share plan. The actual plan documents need not be in Danish.

9.3 Share awards granted before 1 July 2004

Grants of share options made before 1 July 2004 are not subject to the SOA. Such grants are instead subject to the Danish Salaried Employees Act and principles of Danish employment law as outlined by the Supreme Court and other Danish courts in cases already decided and in future cases. It is likely that share options granted before 1 July 2004 will be considered part of an employee's salary for severance purposes, regardless of whether the share option plan contains provisions stating that share option benefits are not considered part of the employee's salary.

Provisions in an employee share plan purporting to restrict or limit employees' exercise rights upon termination of employment will most likely be set aside and/or held invalid by Danish courts. This risk applies equally to vested and unvested share options. In a termination situation, an employee is entitled to receive all salary components that he has already earned and will or could have expected to earn during his notice period.

Republic of Estonia

1. Securities law

1.1 Offer of securities

In accordance with the provisions of the Estonian Securities Market Act (the "Act"), an offer of securities is not an offer to the public requiring the publication of a prospectus if it is:

- addressed solely to qualified investors; or
- an offer of securities addressed to fewer than 100 persons per EU state (other than qualified investors); or
- addressed to investors who acquire securities for a total consideration of at least €50,000 per investor (in respect of each separate offer); or
- an offer whose denomination or book value per unit amounts to at least €50,000; or
- an issue or offer of securities with a total consideration of less than €100,000 in a period of 12 months.

If the offer does not fall within one of these exemptions then the offer is a public offer and a prospectus must be published.

1.2 The Act also provides an exemption from the requirement to publish a prospectus where securities are offered to current or former employees or management of the issuer (or of an affiliated company) where those securities are traded on a regulated market. Where this is the case, the issuer must produce a document which contains relevant information regarding the securities being offered and the nature of the offer. The required information is determined by the Estonian Financial Supervisory Authority on a case-by-case basis.

1.3 Regulatory issues

Other than the above exemption from the requirement to publish a prospectus, the Act does not include any specific provisions for employee share plans.

Regulatory matters are unlikely to be an issue in relation to offers of shares to employees in Estonia.

1.4 Disclosure

No specific disclosure regulations apply in Estonia.

2. Exchange controls

There are no exchange controls for employee share plans in Estonia.

3. Financial assistance

There is no social tax liability for the employee on the exercise of an option.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

Under the Estonian corporate income tax system, undistributed corporate profits are exempt from tax, and corporate income tax deductions are not available. The profits of an Estonian company are instead taxed when they are distributed (or deemed to be distributed).

5.2.2 Tax and social security contributions

The employer will be liable to income tax and social tax on the fringe benefit (unless the option is a non-resident option). Fringe benefits are subject to income tax at the rate of 26.58% and social tax at the rate of 33%.

5.2.3 Timing of fringe benefit tax

The tax liability arises at the time the fringe benefit is provided. If the option has no monetary value the fringe benefit is provided at option exercise. If the option does have a market value the fringe benefit is provided at the time of the option grant. If tax arises at grant then the amount of the fringe benefit equals the monetary value of the option. If tax arises at exercise then the fringe benefit is based on the monetary value of the shares less (1) the price paid for the option (if any) and (2) the exercise price (if any).

6. Taxation of share disposals

On a sale of shares (or the option), the employee will be liable to income tax on the capital gains at a rate of 21%. If the acquisition of the shares was taxed as a fringe benefit, then the acquisition cost for the purposes of determining the gain is the amount taxed as a fringe benefit plus any amount paid for the acquisition of the option and shares by the employee.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Estonian law. However, an Estonian company may make a contribution to such a trust for the benefit of its employees.

7.2 Contributions made by a company to a discretionary employee benefit trust will be deemed to be fringe benefits and the employer (but not the employee) will be subject to tax and social taxes at the time the contribution is made to the trust.

8. Data protection

8.1 In accordance with the Estonian Personal Data Protection Act, employee consent is generally required for the processing of personal data except in limited circumstances where the employer is ensuring the performance of a contract.

8.2 As there are no specific regulations for employee share plans, the general requirement for consent needs to be considered on a case-by-case basis.

9. Employment law

There are no specific employment laws in relation to employee share plans. Depending on the terms of the particular share plan and the nature of the awards, the grant of a share award may be deemed to be either (i) an agreement regarding other benefits that is governed by employment law or (ii) an ordinary sales agreement between the employer and the employee. If the former, then the employee is afforded additional protection under Estonian employment law. However, in practice, shares are normally offered to management level employees only, in respect of whom Estonian employment laws do not apply (provided they are members of the management board).

Finland

1. Securities law

1.1 Offer of securities

The Prospectus Directive has been implemented in Finland and the exemption regarding employee offerings under the Prospectus Directive is therefore available where an employer offers securities to employees in Finland.

There is also an exemption for an offer to fewer than 100 individuals in Finland (even if the offer is being made to more than 100 individuals in a different EU state).

Where the total consideration of the offer is less than €2.5 million (calculated over a period of 12 months) the offer falls outside the scope of the Prospectus Directive. In these circumstances Finnish regulations will apply. These provide for an exemption from a prospectus requirement where securities are only offered to directors or employees of the issuer or a group company. Employees must be given information on anything that may significantly affect the value of the securities being offered. The information required is not prescribed. However, at a minimum, employees should be provided with details of the issuing company (including recent financial information) and information on the tax implications of acquiring the securities.

Employee offerings should normally be exempt from the Finnish prospectus requirements if employees are granted non-transferable options which do not, by definition, qualify as securities under Finnish Law.

1.2 Regulatory issues

There are no other regulatory issues which affect the offer of securities to employees.

1.3 Disclosure

Employees must continuously be provided with all information that may significantly affect the value of the securities concerned.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 Finnish company

Finnish company law prohibits all forms of financial assistance by a Finnish limited liability company in connection with the acquisition of its own shares or shares in its parent company.

3.2 Finnish subsidiary of non-Finnish company

Under the Finnish Companies Act only domestic entities qualify as parent companies. Therefore, the prohibition referred to in paragraph 3.1 above would not appear to prevent a Finnish subsidiary of a non-Finnish company from providing financial assistance in connection with the acquisition of shares in e.g. its foreign parent company. However, this is only possible if doing so is in the best commercial interests of the company at a company level (group level is not sufficient).

3.3 Employees of Finnish company

The prohibition referred to in paragraph 3.1 above does not apply to the provision of financial assistance for the purpose of facilitating the acquisition of shares by employees of the company or of a related company (including loans to certain qualifying personnel funds) up to an amount corresponding to the distributable assets of the company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

If an employee is offered the opportunity to acquire shares free of charge or at a discount to market value and if the offer is attributable to the employment relationship, the discount will normally be construed as earned income and subject to progressive income tax. The taxable income is the difference between the market value of the shares at the time of acquisition and the price, if any, paid for the shares. For 2010, the highest rate of tax is 55.40% (including a medical care premium at a rate of 1.47% and a daily allowance premium at a rate of 0.93%).

4.1.2 Partial exemption

If a right to subscribe for new shares at a discount to market value is offered to the majority of employees, the discount will be tax exempt to the extent that it does not exceed 10% of the market value. Any discount in excess of 10% will be subject to income tax as referred to above.

4.1.3 Social security contributions

In general, all social security related payments are payable (being medical care premium of 1.47%, a daily allowance premium of 0.93%, a pension premium of 4.5% and an unemployment security premium of 0.40% (2010 rates). However, where the partial exemption at paragraph 4.1.2 above applies or in certain circumstances where listed shares are offered, no pension or other social security related payments will be due other than the medical care premium at a higher rate of 1.64%.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

Expenses charged to a Finnish employer on arm's length terms are generally deductible for Finnish corporation tax purposes where market purchase shares are used.

4.2.2 Social security contributions

In general, the employer must pay statutory social security contributions (at a rate of 2.23% for 2010) on the amount of the taxable income. However, if the right to subscribe for newly issued shares at a discount to market value is offered to the majority of employees (i.e. the partial exemption referred to in paragraph 4.1.2 above applies) or in certain circumstances where listed shares are offered, no statutory social security contributions are payable by the employer. In these circumstances, no pension or other social security related payments are payable by the employer either.

4.3 Tax withholding

Advance income tax (including the medical care premium and the daily allowance premium referred to above) must be withheld monthly by the employer. The final tax assessment takes place in the calendar year following the year in which the income or benefit was received. If the amount of advance income tax withheld is insufficient to cover the final amount of income tax due, the employee has to pay the difference, together with interest, usually in December of the tax assessment year and in February of the year following the tax assessment year. Employees can avoid the interest charge by topping up the advance income tax by the end of January in the tax assessment year.

If a tax audit reveals that the employer has failed to withhold advance income tax, tax on the income from which the employer has failed to withhold advance income tax is levied on the employer at a rate of up to 40% (and interest and penalty charges may also become payable). This tax can be refunded to the employer upon application, once it has been established that the employee has fully paid the final tax in respect of the employment income.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option.

5.1.2 Exercise

On the exercise of a share option, progressive income tax is levied on the value of the option benefit, calculated as the difference between the market value of the shares received upon exercise and the aggregate of the exercise price paid and the price (if any) paid for the option. For 2010, the highest rate of tax is 55.40% (including a medical care premium at a rate of 1.47% and daily allowance premium at a rate of 0.93%).

5.1.3 Social security contributions

No pension or other social security related payments other than the medical care premium at a rate of 1.64% are payable by the employees.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

Expenses charged to a Finnish employer on arm's length terms are generally deductible for Finnish corporation tax purposes where market purchase shares are used.

5.2.2 Social security contributions

No statutory social security contributions, pension or other social security related payments are payable by the employer.

5.3 Tax withholding

The employer must withhold advance income tax as described at paragraph 4.3 above.

6. Taxation of share disposals

6.1 If an employee disposes of his shares, he will be subject to capital gains tax at a fixed rate of 28% on the sale proceeds less the acquisition cost.

6.2 The acquisition cost is the aggregate of the price paid for the shares (and, if applicable, the options) and the amount, if any, treated as taxable employment income at the time of acquisition/exercise. Sales related expenses can be deducted for the purpose of calculating the capital gain.

6.3 As an alternative to using the actual acquisition cost, the employee may elect to apply a so-called hypothetical acquisition cost. The hypothetical acquisition cost is 20% of the sale price or, where shares have been held by the employee for a minimum of 10 years, 40% of the sale price. If the hypothetical acquisition cost is used, no sales related expenses can be deducted.

7. Employee benefit trusts

The concept of a trust is not recognised as such in Finland. The tax status of a foreign trust is determined on a case-by-case basis in accordance with the general principles of law.

8. Data protection

8.1 Employee consent is not required for the collection and processing of personal data by the employer or companies belonging to the same group of companies as the employer provided that the processing is necessary for the employment relationship.

8.2 If the processing of personal data in relation to an employee share plan does not fall within the scope of processing activities that the employees have previously been informed of, the employer must inform the employees of such processing activities. If the data processing is outsourced to an outside plan administrator, the employer must notify the outsourcing to Finland's Data Protection Ombudsman.

8.3 International transfers of personal data within the EU/EAA or to countries which the European Commission has included on its list of countries which provide adequate protection for personal data are treated as domestic transfers. In addition, transfers outside the EU/EEA may also be permitted based on the employee's consent or by providing adequate protection through contractual arrangements. Other bases for transferring personal data related to international share plans are seldom relevant.

8.4 Transfers based on adequate protection in the destination country as confirmed by the European Commission, the data subject's unambiguous consent or on European Commission model documents do not need to be notified to the Data Protection Ombudsman. If other contractual arrangements or bases for the transfers are used, these will generally require notification.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

France

1. Securities law

1.1 Offer of securities

In principle a public offering will generally require the prior publication of a prospectus. However, certain offers of securities in France are not considered to be public offerings and therefore do not require the publication of a prospectus. These include in particular (but are not limited to):

- offers made through a mutual fund (Fonds Commun de Placement d'Entreprise – FCPE), i.e. an undertaking for collective investments in transferable securities ("OPCVM") dedicated to employee saving schemes and regulated by articles L. 214-39 or L. 214-40 of the French Monetary and Financial Code. (Note that OPCVMs must still be approved by the AMF, although this is under a different set of rules than those applicable to public offers;)
- offers of stock options and free shares provided that they are granted in accordance with French Commercial Code requirements;
- offers (i.e. the issue or transfer) made to a restricted circle of investors i.e. fewer than 100 persons acting on their own account other than qualified investors in France (even if the offer is being made to more than 100 persons in a different EU state);
- offers (i.e. the issue or transfer) of shares or debt securities by French *sociétés anonyme* or *sociétés en commandite par actions* or any equivalent foreign corporate structure where the total consideration of the offer is less than €100,000 or between €100,000 and €2.5 million (these limits are calculated over a period of 12 months) provided, in this case, that the securities offered do not represent more than 50% of the issuer's capital;
- offers (i.e. the issue or transfer) of shares or debt securities by French *sociétés anonymes* or *sociétés en commandite par actions* or any equivalent foreign corporate structure where the securities offered have a nominal value of at least €50,000 or where the minimum investment by an investor is at least €50,000.

Other offers of securities, although within the scope of the public offering regulations, are exempt from the requirement to publish a prospectus. In particular, an offer of securities to directors, executive officers and to existing or former employees by their employer (or an affiliated company) where such securities are of the same category as those already admitted to trading on an EU regulated market does not require a prospectus provided that a document is made available containing information on the number and nature of the securities as well as the reasons for and details of the offer.

1.2 Regulatory and corporate governance issues

No regulatory problems should arise in relation to employee share plans. However, the French rules which apply to the solicitation of investments must be considered on a case-by-case basis.

In relation to corporate governance, according to the French Commercial Code, no stock options or free shares may be granted to executive officers of a French listed company, unless the company implements, for the benefit of all its employees and 90% of the employees of its affiliated companies in France, a qualifying stock option or free share plan or a profit-sharing scheme (*accord d'intéressement or accord de participation*).

Furthermore, the management body of a French listed company must decide either (1) that the exercise of the stock options must be deferred, or the disposal of the underlying shares or the free shares must be deferred, until the termination of the executive officer's position with the company or (2) to fix the number of shares (resulting from the exercise of the stock options or the free shares) which must be held by the executive officer until the termination of his position. Information regarding this decision should be communicated to the shareholders of the company on an annual basis.

1.3 Disclosure

If an employee share plan requires the publication of a prospectus, the issuing company must disclose any information which may affect the share price or shareholders' rights. Where the issuer is a foreign company, the information given in France must be equivalent to the information given in the issuer's home country. With respect to an offer of French tax-approved options and free shares, specific reports must be made annually to inform the shareholders of the options and free shares granted.

2. Exchange controls

There are no applicable exchange controls. However, certain filings must be made for statistical and information purposes.

3. Financial assistance

3.1 French company

A French company is not permitted to provide funds, make loans or act as a guarantor to assist a third party in acquiring shares in the company. However, there is a specific exemption relating to certain employee share plans where the company provides financial assistance to allow employees of the group to acquire shares in the company or an affiliated company. Only employees benefit from this exemption and a French company cannot make a loan or provide a guarantee to an individual who is a director.

3.2 French subsidiary of non-French company

A French employer may make loans or provide guarantees to enable employees to acquire shares in a non-French parent company.

4. Taxation of "non-qualified" employee share plans

The taxation of employee share plans which do not qualify for French favourable tax and social security treatment is as follows:

4.1 Taxation of share acquisitions

4.1.1 Employee tax and social security contributions

■ *Tax*

Where shares are acquired for free or at a discount, employees are subject to income tax on the difference between the value of the shares at the date of acquisition and the amount paid by the employee (if any). For the tax year 2010, the rate of income tax varies from 0% to 40%.

■ *Social security contributions*

The amount subject to income tax is also subject to employee social security contributions at an approximate rate of 20-30%, subject to earnings caps. The applicable rates and earnings caps depend on the nature of employment. The rates of social security contributions and the earnings caps may be varied twice a year (in January and July).

4.1.2 Employer tax and social security contributions

■ *Corporation tax deduction*

No corporation tax deduction is available for a French employing company on the acquisition by French resident employees of shares in a French or a non-French parent company by way of gift or at a discount to market value. However, where a French or a non-French parent company recharges the costs of providing existing shares to employees of the French employing company, the French employing company may normally deduct these costs from its taxable profits.

■ *Social security contributions*

The employer must pay social security contributions on any discount on shares which is taxable in the hands of the employee. The amount subject to income tax is subject to employer social contributions at an approximate rate of 45-50% subject to earnings caps. The applicable rates and earnings caps depend on the nature of employment. The rates of social security and the earnings caps may be varied twice a year (in January and July).

4.2 Taxation of share options

4.2.1 Employee tax and social security contributions

■ *Grant*

There is no tax charge on the grant of a share option.

■ *Exercise*

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year, the income tax rates range from 0% to 40%. However, the tax position on exercise is different if the option complies with the favourable tax regime described in paragraph 5 below.

■ *Social security contributions:*

Employee social security contributions are due at an approximate rate of 20-30% on the exercise of the option, subject to earnings caps.

4.2.2 Employer tax and social security contributions

■ *Corporation tax deduction*

French companies may deduct from their taxable profits, subject to certain limitations, the expenses incurred as a result of the exercise by their employees of options to buy existing shares. Allowable expenses would include the cost of buying shares in the market to satisfy the exercise of options, to the extent that the cost of buying the shares exceeds the exercise price due from the employee.

Where a French or a non-French parent company recharges the costs of providing options to employees to the French company, the French company may deduct the costs from its taxable profits where the options are to buy existing shares (see also paragraph 5).

■ *Social security contributions:*

Employer social security contributions are due at an approximate rate of 45-50% on the exercise of the option, subject to earnings caps.

4.3 Tax withholding

The employee is responsible for paying any income tax due but the employer is responsible for withholding employee social security contributions.

4.4 Taxation of share disposals

An employee may be liable to capital gains tax on the disposal of shares. Tax is charged on the difference between the proceeds of sale received by the employee and the price paid by the employee to acquire the shares (or, if the shares were subject to income tax when they were acquired, the market value of the shares at that time). For 2010 income (declared in 2011), the rate of tax is 30.1% (capital gains tax at 18%, CSG at 8.2%, CRDS at 0.5%, social tax of 2% and an additional contribution of 1.4%).The capital gains tax charge only arises if the total sale proceeds of all shares disposed of by the employee in any one calendar year exceed a certain level (€25,830 for sales realised in 2010).

5. Tax favoured employee share plans

5.1 Favourable tax regime for options

A favourable tax regime is available for employees of French companies for options granted by their employer, or by a parent of their employing company in accordance with article L. 225-177 to L. 225-186 of the French Commercial Code. This favourable tax regime can also apply to options granted by a foreign parent company of the French employing company provided the options are granted in accordance with the relevant provisions of articles L.225-177 to L.225-186 of the French Commercial Code. However, the French tax authorities have confirmed that only the “essential” French law requirements need be met for the favourable tax regime to apply to a foreign parent company. A non-exhaustive list of such requirements was published in a revenue ruling. The scope of this ruling is not clearly defined but further guidance in particular cases could be sought from the tax authorities if required.

If the conditions apply, the following tax regime applies:

5.1.1 Grant

French employers are subject to a 10% employer social security contribution payable on the grant date of qualified stock options (options granted prior to 16 October 2007 are not subject to this charge).

The amount subject to this social security charge is 25% of the fair market value of the underlying shares on the grant date. However, companies which report on a consolidated basis under international accounting standards may instead choose to determine the amount of the employer social security contribution on the basis of the fair value of the options under IFRS 2. The choice made by a company is irrevocable for all options granted in the same year.

The above employer social security charge is triggered on grant, regardless of whether the exercise of the options is subject to any conditions.

5.1.2 Exercise
Where an approved option relates to shares quoted on a stock exchange, tax and social security contributions only arise on exercise if the option exercise price was set at a discount exceeding, in broad terms, 5% of the average price of the shares over the 20 dealing days before grant.

The part of the discount which exceeds 5% is subject to income tax at the time of exercise at the employee's marginal rate which, for the 2010 tax year varies from 0% to 40%. In addition, employer and employee social security contributions (at a combined rate of approximately 20%-30% for employee contributions and 45%-50% for employer contributions) are due.

For the employer, the costs incurred in relation to the exercise of the options are deductible from its taxable income. A deduction would also be available for a capital loss realised in respect of (i) the difference between the value of the treasury shares and the exercise price in the case of options to acquire existing shares or (ii) the difference between the value of the stock on the date of the share capital increase and the exercise price in the case of options to subscribe for newly issued shares, provided, in the latter case, that the following conditions are met:

- the options to subscribe for shares benefit all of the employees of the company; and
- the options are granted on a uniform basis, either in proportion to the length of presence in the company during the relevant financial year or in proportion to wages, or by virtue of a combination of these criteria.

5.1.3 Disposal
Tax is charged at disposal on both the acquisition gain and the disposal gain. The acquisition gain is the difference between the market value of the shares on exercise and the exercise price, less any gain taxed on exercise. The disposal gain is the difference between the sale proceeds and the market value of the shares on exercise.

There are three possible tax treatments of the acquisition gain, depending on how long the shares have been held. The tax charge is reduced the longer the shares are held from the date of grant (not the date of exercise). The disposal gain is subject to capital gains tax at the rate of 30.1% for 2010 income.

In addition, the acquisition gain resulting from the exercise of options granted since 16 October 2007 is subject to a 2.5% employee social security contribution.

To benefit from the favourable tax regime, it is also necessary to comply with certain filing requirements. Companies offering options to their employees are required to issue, on or before 15 February in each year, individual statements in respect of each employee who (i) has exercised options during the course of the preceding calendar year and/or (ii) during the course of a calendar year, has sold or converted into bearer shares, shares acquired on the exercise of an option before the end of the four-year holding period from the date of grant.

5.2 Favourable tax regime for free shares

In order to encourage employee share ownership in France, the French 2005 Finance Act introduced a new regime consisting of the grant of free shares to employees and executive officers. Prior to this law, the grant of free shares was not governed by any specific regulation and the tax and social security regime was not favourable.

The favourable tax regime is available for employees of French companies in relation to free shares granted by their employer or by a domestic or a foreign parent company of their employing company if certain conditions are met, i.e. if the grant of free shares is made in accordance with the relevant conditions of the French Commercial Code. These include, in particular, a minimum four-year lock-in period. Where the free shares are granted by a foreign company, the French tax authorities have confirmed that only the "essential" requirements of the French Commercial Code need be met.

5.2.1 Grant
French employers are subject to a 10% employer social security contribution payable on the grant date (free shares granted prior to 16 October 2007 are not subject to this charge).

This social security charge arises on the fair market value of the shares on the grant date. However, companies which report on a consolidated basis under international accounting standards may instead choose to determine the amount of the employer social security contribution on the basis of the fair value of the shares under IFRS 2. The choice made by a company is irrevocable for all awards granted in the same year.

The above employer social security charge is triggered on grant, regardless of whether the definitive transfer of the shares is subject to any conditions.

5.2.2 Vesting
The benefit of the free shares (the so-called "acquisition gain"), equal to the market value of the shares at the time of the vesting (i.e. at the end of the vesting period) is subject to income tax at a flat rate of 30% plus 12.1% of additional contributions. However, tax is payable only at the time of disposal of the free shares by the employee. The employee can also elect to be taxed on the acquisition gain at the progressive taxation rate of employment income (this election is favourable if the employee's marginal income tax rate is lower than 30%).

The acquisition gain is also subject to a 2.5% employee social security contribution calculated on the basis of the fair market value of the shares on the acquisition date (date of transfer of the shares to the employee). The 2.5% contribution is due at the time of the disposal of the shares (free shares granted prior to 16 October 2007 are not subject to this charge).

As regards the employer, French tax law provides that a French company issuing free shares to its employees can deduct the difference between the value of the free shares on the date of the increase in share capital and the subscription price (being zero in the case of free shares), if the following conditions are met:

- the free shares benefit all employees of the company; and
- the free shares are granted on a uniform basis, either in proportion to the length of presence in the company during the relevant financial year or in proportion to wages, or by virtue of a combination of these criteria.

5.2.3 Disposal

The disposal gain, which is equal to the difference between the sale price and the market value of the shares at the time of vesting is taxed at a flat rate of 18% plus employee social contributions amounting to 12.1%.

6. Employee savings plan (PEE)

French employees may subscribe for/acquire shares issued by their employer or its parent company (including a non-French parent company), whether directly or through a FCPE), within the scope of an employee savings plan (Plan d'Epargne d'Entreprise or PEE), which benefits from favourable terms such as an employer contribution (*abondement*) and/or a discount on the subscription/acquisition price (either in the form of cash or free shares). A favourable tax and social security regime applies if a number of conditions are met, including the requirement that the PEE is offered to all employees, that the employee's annual contribution to the PEE is not in excess of 25% of his annual gross salary and that the investment of the employee is kept in the plan over a minimum five-year holding period.

6.1 Tax free discount

Employees may invest in shares at a discount to market value of up to 20% if the shares are either listed on a stock exchange or not listed and subject to a 5-year holding period without a liability to income tax or social security contributions arising for the employee or employer (the early release of shares within the holding period is permitted in a number of circumstances, including termination of employment for any reason). This discount may amount to up to 30% if the shares are subject to a holding period of 10 years. The discount may however be subject to social taxes at the combined rate of 12.1% (2010 income) as part of the capital gain when the employee disposes of his investment (see paragraph 6.3 below).

French companies may deduct an amount equal to the difference between the value of the shares issued on the date of the increase in share capital and their subscription price, in the case of an increase of share capital reserved to the employees participating in a PEE.

6.2 Employer contribution

The employer may make a contribution into the PEE (i.e. for the benefit of an employee), which is deductible for corporation tax purposes and is not subject to employer social security contributions. The employee is not subject to income tax or employee social security contributions on the contribution, provided that the contribution remains invested in the PEE for five years (subject to certain exceptions). However, 97% of the employer contribution is subject to CSG (7.5%) and CRDS (0.5%). The full amount of the employer contribution is subject to a 4% social security contribution (*forfait social*).

There are also tax benefits in connection with dividends and loans made to employees to subscribe for shares.

6.3 Capital gains

Capital gains realised by the employees on the disposal of their investment are exempt from income tax provided that the disposal occurs after the 5-year (or, if applicable, 10-year) holding period (or before 5 or 10 years in the early release circumstances specified by French law referred to above apply). The gains remain subject to social taxes payable at 12.1% by the employee.

6.4 Other tax advantages of a PEE

An employee may use the funds in his PEE at any time during the holding period to exercise stock options that satisfy the requirements of the French tax-favoured option regime. This is subject to the condition that the shares acquired on exercise of the options are immediately placed in the PEE for a holding period of 5 years from the date of exercise with no possibility of an early release. In these circumstances, the funds used to exercise the options will be subject to (i) CSG at 8.2% (ii) CRDS at 0.5% (iii) social levy at 2% and (iv) an exceptional contribution of 1.4% at the time of exercise. The shares will be treated as having been acquired at the exercise price plus the proportion of any discount exceeding broadly 5% of the market price of the shares at grant and will benefit from the normal PEE tax treatment.

It is also possible to channel profit sharing bonuses (*intéressement*) into a PEE, which would then invest in a company's shares, in a tax efficient way.

7. Employee benefit trusts

7.1 If a French resident is a potential beneficiary of a discretionary employee benefit trust, he does not face any adverse tax consequences purely by virtue of being a potential beneficiary. If a French resident actually receives benefits from such a trust, these will be treated as benefits-in-kind subject to income tax and social contributions (employee social contributions at the approximate rate of 20%-30% and employer social contributions at the approximate rate of 45%-50%, subject to earnings caps in each case).

7.2 A French company cannot claim a corporation tax deduction for a contribution to an employee benefit trust.

8. Data protection

8.1 The French Data Protection Law No. 78-17 of 6 January 1978 (as amended) (the French DPL) requires a company to inform employees of the identity of the data controller and/or its representative, the purpose of the processing, whether replies to questions are obligatory or voluntary and the possible consequences of a failure to reply, the recipients or categories of recipients of the data, the existence of rights (in particular) to access and correct the data, the name and address of the person or service to whom data subjects should address their requests with respect to their rights and the envisaged transfers of their personal data to countries outside the European Economic Area (EEA). The employees must be informed of the above at the time of collection, unless they have already been provided with such information.

8.2 All employers must file a prior declaration with the French Data Protection Authority, the *Commission Nationale de l'Informatique et des Libertés* (CNIL) to allow them to use the personal data they collect about employees in the course of employment where the personal data is processed by automated means. Unless a share plan is specifically covered in a declaration, a new declaration will be required when a new plan is introduced.

8.3 The consent of each employee should in principle be obtained for the use and transfer of personal data to a country situated outside of the EEA and which does not ensure adequate protection of his personal data in connection with each employee share plan in which he takes part. However, the CNIL has expressed some doubt as to whether consent obtained from existing employees meets the requirement for consent to be "freely given, specific and informed". Therefore, it is recommended that a data transfer agreement should be entered into (between the transferor and the recipient situated outside the EEA) which is then submitted to the CNIL for approval. An exception exists for the transfer of personal data to the US and a transfer to entities located in the US is possible if these entities have adhered to Safe Harbour principles.

8.4 The employees of French entities participating in an employee savings plan (PEE) must be informed that they have a right to object, on legitimate grounds, to the processing of their personal data before or after such processing.

9. Employment law

9.1 Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

9.2 Where the employee share plan is to be offered to a significant number of employees in France, this will be subject to the prior notice to and consultation with the relevant French works council. Under the French Labour Code, failure to inform and consult the works council may constitute a criminal offence.

9.3 Companies operating employee share plans in France should ensure that they are aware of the risks associated with the operation of any "good/bad leaver" rules in those plans.

The French Labour Code provides that any "fines or other financial sanctions" imposed on an employee are null and void. This provision has, in the past, been successfully invoked by employees in relation to their entitlement to a number of different types of employment-related benefits on termination and there had long been a concern that the French courts might also take a similar approach in the context of entitlements under employee share plans.

At the end of 2009 the French Supreme Court held that a rule in a share option plan providing for the forfeiture of share options if an option-holder was dismissed from employment for serious misconduct breached the French Labour Code. The rule was therefore unenforceable against the ex-employee.

It is not entirely clear whether the scope of this Supreme Court decision is limited to plan rules which differentiate between different categories of leaver, or whether it could also apply to a general "presence" condition even if that condition does not differentiate between different kinds of leaver (i.e. a provision under which all employees forfeit their awards on termination, regardless of the reason for termination). However, even if a general "presence" condition remains valid for French Labour Code purposes, this may not be an attractive solution from an employee incentive/commercial perspective.

However, there may be other ways in which more "normal" good/bad leaver provisions can be retained whilst minimising the risk of the French Supreme Court decision applying. For example, the risks may be minimised if awards are structured so that no rights are acquired until such time as the awards vest (rather than being structured as an award which provides "rights" from grant which are then forfeited if the award does not vest).

Germany

1. Securities law

1.1 Offer of securities

The Prospectus Directive was implemented in Germany by the Securities Prospectus Act (*Wertpapierprospektgesetz*) (WpPG). Generally, the principles referred to in paragraph 2 on page 5 of this guide will apply. Some possible exceptions to those principles are outlined below:

- The German Federal Financial Services Supervisory Authority (BaFin) takes the view that non-transferable options do not qualify as securities within the meaning of the WpPG. However, in case of options being offered under employee participation plans, the BaFin takes into account not only the option but also the exercise of the option and the subsequent delivery of the underlying securities when deciding whether, and at what point, a "public offer of securities" is made which triggers the prospectus requirements. The decisive factor is whether the underlying security is delivered automatically or whether the option has to be exercised by submitting a notice etc.

  Where a physically-settled option directly results in the acquisition of shares in the relevant company on the maturity date (i.e. there are no intermediate steps such as the requirement to submit an exercise notice etc.), BaFin considers the offer of the options to be a public offer of securities. Where the offer requires an exercise, it will depend on the circumstances of the case as to whether the acquisition of the underlying securities is to be considered as a public offer of securities within the meaning of the WpPG.

- The wording of the employee share plans exemption as implemented into the WpPG could potentially be construed as not covering the offer of shares in an affiliated company of the employer. However, in practice, this exemption may be construed more broadly.

- A company considering the use of a "short-form prospectus" (see further paragraph 2 on page 5 of this guide) should discuss this in advance with BaFin.

1.2 Regulatory issues

Provided the offering of securities to employees by the employer does not include the provision of banking business to the employees, no German banking licence requirements apply. When offering securities to employees under an employee share plan, general rules under German civil law regarding the way in which securities are offered must be observed. In particular there are doorstep-selling restrictions, which in certain circumstances also apply to offers of securities and related services made in person to employees at their workplace.

Furthermore, even if no prospectus is published, any written selling material which is provided to an actual or potential investor (i.e. employees) and which contains information on an investment can qualify as a prospectus which can lead to a general civil law prospectus liability in Germany (i.e. a liability for false, missing or misleading information may be incurred).

1.3 Disclosure

Disclosure and publication requirements apply for German and, in principle, also to non-German companies which are listed on an organised market in Germany (or to which admission has been applied for) in relation to insider information and directors' dealings. Furthermore, registers must be maintained by companies listed on a German exchange, or acting upon instruction or on account of such a company, of persons having knowledge or insider information in the course of their business.

Employees who are in possession of inside information at the time of subscription under an employee share plan are not permitted to participate in the employee share plan as section 14 of the Securities Trading Act prohibits the acquisition of shares on the basis of inside information. Receipt of inside information after subscription is, however, irrelevant.

2. Exchange controls

There are no exchange controls.

3. Financial assistance

3.1 German company

Although a German stock corporation (*Aktiengesellschaft*) (AG) is not allowed to finance the acquisition of its own shares by any third party, there is an exemption for advances, loans or the provision of security for the purpose of the acquisition of shares by employees of the company or employees of group companies provided that the company has certain capital reserves. An AG is in principle permitted to acquire its own shares for the purposes of an employee share plan, provided (i) this has been, in certain circumstances, approved by shareholders, (ii) it has certain capital reserves and (iii) shares already held and to be acquired do not exceed 10% of the company's share capital.

3.2 German subsidiary of non-German company

The restrictions set out in paragraph 3.1 above also apply to a German AG which is a subsidiary of a non-German company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

A German employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay wage tax and a solidarity surcharge (and church-tax, if any). The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year wage tax ranges from 0% to 45%. The solidarity surcharge amounts to 5.5% of the wage tax liability. The maximum income tax rate applies from an annual overall income of €250,001 or €500,002 in the case of jointly-assessed couples. The rates of church-tax currently vary between 8% to 9% upon income tax subject to certain caps.

4.1.2 Tax exemption
A tax exemption for share-based payments has been available since 1 April 2009.

Any discount on the acquisition of the shares is tax exempt to the extent this does not exceed €360 per year. In order for the new exemption to apply, two requirements must be met: (1) participation in the plan must be an additional benefit for the employee (i.e. the benefit may not be deducted or credited against the employee's agreed wage) and (2) the employer (i.e. the German subsidiary) must offer participation in the plan to all employees. Companies may amend their existing plans to benefit from the new exemption for future share acquisitions.

Where the tax exemption applies, then an equivalent exemption from social security contributions will also apply.

4.1.3 Social security contributions
Social security contributions are due where the employee is subject to wage tax. The rates in 2010 are 19.9% for retirement benefit insurance, 2.8% for unemployment insurance (to be increased to 3% from 1 January 2011), 1.95% (plus an additional charge of 0.25% for childless employees born after 1 January 1940 and older than 23) for nursing insurance and 14.9% for statutory health insurance. Social security contributions are, in principle, borne 50/50 by the employer and the employee.

For any income in excess of specific salary thresholds, no further social security contributions have to be paid. The applicable annual salary thresholds in 2010 are: €66,000 for retirement benefits insurance, €66,000 for unemployment insurance, €45,000 for statutory health insurance and €45,000 for nursing insurance. These thresholds only apply to the West German federal states and the thresholds for the East German federal states are considerably lower.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction
A German company cannot generally claim a corporation tax deduction for the cost of providing shares, but if it buys shares in its foreign parent or its own shares and delivers those shares to its employees for less than the purchase price through an employee share plan, it should be able to claim a tax deduction. The corporation tax deduction would be for the difference between the price that the employer paid for the shares and any amount paid by the employees. If the German employing company makes a payment to a parent company or to an employee benefit trust, that payment should also be tax deductible.

A German employing company can generally claim a tax deduction for any ancillary costs and expenses of establishing an employee share plan.

4.2.2 Social security contributions
Social security contributions are due where the employee is subject to wage tax.

4.3 Tax withholding

The employer must withhold wage tax and social security contributions (and church-tax, if any) if the employer provides the shares directly or if the shares are provided by another person (for example, the parent company or a trust) under an agreement with the employer. In the latter case, a withholding obligation of the employer arises if the employer is aware or should be aware of the provision or grant of shares or is involved in any activities in relation to the plan, which is assumed to be the case where a group company makes the awards.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant
There is no tax charge on the grant of a share option provided that the share option is non-transferable.

5.1.2 Exercise
Wage tax and solidarity surcharge (and church-tax if any) arise on the exercise of a non-transferable share option on the difference between the market value of the shares at the date of transfer (the date on which the shares are booked out from the account of the transferor) and the option exercise price and the price (if any) paid for the option. For the 2010 tax year wage tax ranges from 0% to 45%. The solidarity surcharge amounts to 5.5% of the income tax liability.

5.1.3 Tax exemption
A tax exemption for share-based payments has been available since 1 April 2009.

The gain on the exercise of a share option is tax exempt to the extent it does not exceed €360 per year. In order for the new exemption to apply, two requirements must be met: (1) participation in the plan must be an additional benefit for the employee (i.e. the benefit may not be deducted or credited against the employee's agreed wage) and (2) the employer (i.e. the German subsidiary) must offer participation in the plan to all employees.

Companies may amend their existing plans in order to benefit from the new exemption for future option grants. In addition, in principle, the tax exemption may apply to options granted prior to 1 April 2009 if the relevant conditions are met and the option was not taxed at grant.

Where the tax exemption applies, then an equivalent exemption from social security contributions will also apply.

5.1.4 Social security contributions
The same principles apply as set out at paragraph 4.1.3.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
A German company cannot generally claim a corporation tax deduction for the cost of providing shares. However, if it buys shares in its foreign parent or its own shares and delivers those shares to its employees on the exercise of a share option and the price paid by the German company is more than the

exercise price, the company should be able to claim a corporation tax deduction. If the employing company makes a payment to the parent company or to an employee benefit trust equal to the difference between the price paid for the shares (paid by such parent company or employee benefit trust) and the exercise price, a corporation tax deduction should be available for the amount paid in these circumstances.

5.2.2 Social security contributions
In principle, 50% of the social security contributions due (see paragraph 4.1.3) are borne by the employer.

5.3 Tax withholding
The employer must withhold wage tax, social security contributions (and solidarity surcharge and church-tax if any) from the employee's earnings.

6. Taxation of share disposals

6.1 Shares acquired before 1 January 2009
In relation to shares acquired before 1 January 2009, an employee will generally not be subject to tax on capital gains realised upon the disposal of shares acquired under an employee share plan provided that the employee holds the shares as private assets (*Privatvermögen*) and a holding period of one year from acquisition has elapsed. If the shares are sold within one year of acquisition, 50% of any capital gains will qualify as income from so-called private disposals (*private Veräußerungsgeschäfte*); such income will be subject to income tax at the employee's individual tax rate (which ranges from 0% to 45%) and solidarity surcharge and church-tax, if any, provided that the sum of all capital gains from private disposals in one calendar year is €750 or more. Capital gains means the difference between (i) the sales price and (ii) the sum of the acquisition cost and any income-related expenses (*Werbungskosten*).

6.2 Shares acquired after 31 December 2008
In relation to shares acquired after 31 December 2008, 100% of any capital gains will qualify as income from capital investments (*Einkünfte aus Kapitalvermögen*) irrespective of any holding period. Income from capital investments will, in general, be subject to income tax at a flat tax rate for income from capital investments (25%), together with a solidarity surcharge and church-tax, if any. Such tax will be withheld and no expenses are deductible.

7. Employee benefit trusts
The tax status of a foreign trust is determined on a case-by-case basis, and specific advice should be sought in relation to a plan that involves a trust.

8. Data protection
Depending on the structure of the employee share plan administration, employee consent may be necessary for the collection, processing and transfer of personal data. In most cases, the requirement to obtain consent can be avoided if all recipients of employee data are located in the EU or there is an adequate level of data protection as further defined in EC Directive 95/46. In any event, the data collection should be limited to the extent necessary for the plan administration and employee data should only be shared on a need-to-know basis.

9. Employment law
9.1 Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide.

9.2 There is a risk that employees may claim a right to initial or continued participation in an employee share plan or that rights under a plan may be included in compensation on termination or may be considered pensionable income. However, following a decision of the Federal Labour Court, any entitlements under an employee share plan are, as a rule, not considered part of the employment relationship with the employing company where its parent company grants the share rights to the employees and the employing company is not (directly or indirectly) involved in the grant of the rights or the provision of benefits and the operation of the plan and the costs of the plan are not recharged by the parent company to the employing company. If the entitlements under an employee share plan are deemed to be part of the employment relationship with the employing company, then the share plan rules will be considered "general terms" (*Allgemeine Geschäftsbedingungen*) falling within the scope of terms that may be reviewed by the Labour courts. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

9.3 Under the "German Act on the Adequacy of Directors' Remuneration", the minimum vesting period for share options granted by a German public company to its directors and employees has been increased from two to four years. The remuneration of directors of German public companies must be oriented towards long-term success and be based on long-term incentives for sustainable business development. Consequently, shares granted to such directors should be conditional upon a holding period of at least four years, and phantom options or similar awards should also only reward directors based on comparably long-term stock-exchange rate increases.

10. Consumer Protection Law
In accordance with German consumer protection law, consumers have a right of revocation in relation to contracts concluded in certain situations where the consumer is "taken by surprise" or where the consumer may make imprudent decisions (e.g. doorstep transactions, distance selling transactions). In accordance with general case law, employees qualify as consumers, and if they enter into transactions at their place of work, this may, depending on the circumstances, qualify as a doorstep transaction leading to right to revocation for the employee/consumer.

The general revocation period is two weeks. However, if the consumers are not informed that they have this right to revocation, then such right will not expire. If revocation occurs then the whole transaction would have to be unwound.

Although it is arguable that participation in an employee share plan would not fall within the scope of consumer protection law, it is considered advisable to provide information on the right of revocation so as to avoid the possibility of the right of revocation lasting beyond the two week period.

Greece

1. Securities law

1.1 Offer of securities

The Prospectus Directive was implemented into Greek legislation by Greek Law 3401/2005 on the "prospectus for securities offered to the public or admitted to trading". In principle, it applies to share plans offered in Greece, including both share option plans and free share plans. Although the offer of securities to the public generally requires the publication of a prospectus, there is an exemption from that requirement where securities are only offered to existing or former directors or employees by their employer (or an affiliated company) which has securities listed on an EU regulated market provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer. This document must be registered with the Greek Capital Market Committee (GCMC) before the grant date, although the GCMC's approval for the document is not required.

In addition, the obligation to publish a prospectus does not apply to certain other types of offer, including:

- an offer of securities addressed solely to qualified investors; and/or
- an offer of securities addressed to fewer than 100 natural or legal persons per EU member state, other than qualified investors.

1.2 Regulatory issues

There are no other regulatory issues which affect the offering of securities to employees.

1.3 Disclosure

There are no relevant requirements.

2. Exchange controls

There are no applicable exchange controls. Payments must be made through a commercial bank in Greece (which is obliged to keep records of foreign exchange transactions).

3. Financial assistance

3.1 Greek company

Greek Law 3604/8-8-2007 provides that Greek companies may acquire their own shares for an employee share plan. The nominal value of the shares so acquired must not exceed 1/10 of the paid up share capital. Loans by group companies are prohibited.

3.2 Greek subsidiary of non-Greek company

There is no prohibition on the provision of financial assistance by a Greek company to allow its employees to acquire shares in a non-Greek parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or a foreign company in the same group free of charge or at a discount to market value is liable to pay income tax. The tax charge is on the difference between the stock exchange value of the shares at the time of acquisition and the amount, if any, paid for the shares. This income is aggregated with the other income of the employee (salary and income from other sources, if any) and the total income is subject to income tax calculated by reference to the tax scale applicable for individuals. The tax scale is increased progressively through thresholds of €31,600 and €100,000 and, for income over €100,000, the tax rate is 45%.

4.1.2 Social security contributions

No social security contributions will arise where an employee acquires shares free of charge or at a discount to market value (although the employee will be subject to social security contributions on his salary, including any amount of salary used to pay for the shares (at a rate of 16% for the 2010 tax year).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

If a parent or foreign company in the same group recharges the cost of providing shares to its Greek employing subsidiary under a written recharge agreement, the recharged amount should be accounted for as a salary cost and in principle should be deductible by the subsidiary in Greece.

4.2.2 Social security contributions

A Greek employer must pay social security contributions on the amount subject to income tax at a rate of 28.06% for the 2010 tax year.

4.3 Tax withholding

No tax withholding is required. At the start of the year following the year in which the shares were acquired, the employer must provide a certificate to the employee with the information necessary (date of acquisition of shares, value of shares, number of shares purchased etc) so that the employee can include the income in his/her annual income tax return.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

A tax charge arises at the time an amount is paid by the employee for the shares. Therefore, there is no tax charge on the grant of a share option.

Exercise

As noted above, a tax charge arises at the time the employee pays for the shares, i.e. normally at exercise. (If no amount is payable for the shares then it is considered that the taxable date is when the employee "exercises" the option, as defined in the relevant plan rules.) The tax charge is on the difference between the stock exchange value of the shares when the employee pays for the shares and the amount paid (if any). Income tax is charged on a progressive scale, through thresholds of €31,600, and €100,000. Income over €100,000 is taxed at a rate of 45%.

5.1.2 Social security contributions

No social security contributions will arise in relation to the acquisition of the shares under the option (although the employee is subject to social security contributions on his salary, including any amount of salary that is used to fund the exercise price (at a rate of 16% for the 2010 tax year)).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

If a parent or foreign company in the same group recharges the cost of providing shares to its Greek employing subsidiary under a written recharge agreement, the recharged amount should be accounted for as a salary cost and in principle should be deductible by the subsidiary in Greece.

5.2.2 Social security contributions

A Greek employer must pay social security contributions on the amount subject to income tax at a rate of 28.06% for the 2010 tax year.

5.3 Tax withholding

No tax withholding is required. At the start of the year following the year in which the shares were acquired, the employer must provide a certificate to the employee with the information necessary (date of acquisition of shares, value of shares, number of shares purchased etc) so that the employee can include the income in his/her annual income tax return.

6. Taxation of share disposals

Capital gains realised on a disposal of shares purchased before the end of 2010 are tax-free.

For shares purchased on or after 1 January 2011, the following tax regime will apply:

- If the shares are sold within a period of twelve months from the date of acquisition, there will be a tax charge on the difference between the sale value of the shares and the stock exchange value of the shares at the time of the acquisition of shares. This taxable amount is added to income from other sources and will be taxed based on an individual's tax scale. Upon sale of the shares, a tax withholding must be applied, which is offset against the ultimate tax liability of the employee. The tax withholding is 20% if the shares are sold within a period of three months from the date of acquisition and 10% if the shares are sold between four and twelve months from the date of acquisition. The Societe Anonymes of Investment Services and the bank institutions, which maintain the share accounts of their clients, must make the tax withholding and provide their clients with the relevant tax withholding certification.

- If the shares are sold more than twelve months from the date of acquisition, the capital gain realised upon a disposal of the shares is tax-free.

7. Employee benefit trusts

7.1 A Greek employee who is a beneficiary of a discretionary employee benefit trust will not be taxable for that reason alone but he may be taxed on the receipt of benefits from the trust.

7.2 Employee benefit trusts are not recognised under Greek law and a corporation tax deduction will not be available for contributions made to a trust, for example to allow the trust to purchase shares in the market.

8. Data protection

Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Hungary

1. Securities law

1.1 Offer of securities

As a general rule, the Hungarian Capital Markets Act (the Act) applies to offers of securities. Although not an explicit provision of the Act (nor explicit in any another regulation or guidance) in interpreting the definition of securities the Hungarian Regulator appears to take the view that the provisions of the Act relating to offers of securities only apply to securities that are transferable and negotiable on capital markets ("transferable securities"). Consequently, where transferable securities are offered to employees, then the prospectus requirement must be followed, if applicable. Where a prospectus exemption applies, then private offer rules will apply instead. Where securities offered to employees are not transferable securities then the provisions of the Act do not apply.

Practice indicates that most companies operating share plans in Hungary offer securities which do not meet the Hungarian Regulator's view of what constitutes transferable securities. The procedure which then appears to be accepted by the Hungarian Regulator is that in such cases the issuers should follow the rules for private offers. Under these rules, an information document setting out the relevant elements of the offer is prepared and a notification is made to the Hungarian Regulator.

1.2 Regulatory issues

the absence of specific legal provisions covering employee share plans where the securities or options being offered are not transferable securities, it may be advisable to request a ruling from the Hungarian Regulator regarding the launch of such a share plan.

1.3 Disclosure

Where the securities or options being offered to employees are not transferable securities, a notification must be sent to the Hungarian Regulator and information on the features of the share plan must be provided to employees in accordance with general practice.

The Company should also consider requesting clarification from the Hungarian Regulator regarding any other disclosure requirements.

2. Exchange Controls

There are no applicable exchange controls in Hungary.

3. Financial assistance

3.1 Hungarian company

A company limited by shares is generally prohibited from providing financial assistance for the acquisition of its own shares. A company limited by shares cannot grant loans, provide any security or satisfy third party payment obligations in connection with the acquisition of its own shares. However, there is an exception to this prohibition where financial assistance is provided to employees of the company to acquire shares in the company.

3.2 Hungarian subsidiary of a non-Hungarian company

The same considerations apply as set out in paragraph 3.1 above.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employer or its parent company free of charge or at a discount to market value is deemed to have received employment income. The employment income is equal to the difference between the fair market value of the shares at the date triggering the tax liability and the amount paid by the employee for the shares, if any. The tax liability is triggered on the date the employee acquiring the shares acquires any rights (dividends, voting rights etc.) attaching to those shares.

Employment income arising from the acquisition of shares is subject to consolidation with other income and the consolidated income not exceeding HUF 3,937,000 (approximately €13,000) per annum is subject to tax at 17.1%. Income in excess of that amount is subject to tax at 32%.

Shares (worth up to HUF 1,000,000 per annum) received under a share plan which is reported to, and registered with, the Hungarian fiscal authorities are exempt from income tax provided a number of criteria are met and certain administrative requirements are complied with (an "approved employee share plan"). One such requirement is that the shares must be subject to a minimum holding period of at least 2 years.

Under such approved employee share plans, the capital gain arising on the sale of the shares is taxed at the time of sale and the income (i.e. the difference between the value of the shares when they are first acquired by the employee and the amount paid for them, if any) is classified as a capital gain, taxed at a rate of 25% (or 20% if the sale takes place on a regulated capital market of an OECD or EEA member state).

4.1.2 Social security contributions

Social security charges are payable by the employee at a rate of 17% on employment income up to HUF 7,453,300 and at a rate of 7.5% on employment income in excess of that amount. Note that if the awards are granted by a foreign tax resident parent company then the employee is also required to pay the social security due from the employer (see paragraph 4.2.2 below), unless this is paid by the local employer.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

The costs of a share plan borne by the employer (e.g. via a recharge payment to the parent company) are normally tax deductible for the employer.

4.2.2 Social security contributions

The employer is subject to social security charges at a rate of 27%.

4.3 Tax withholding

Where the awards are made by, or the plan is arranged via, the local employer, then the local employer is required to withhold any income tax and social security contributions payable by the employee. A foreign parent company making awards which does not have a taxable presence in Hungary is not subject to tax withholding obligations.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax or social security liability on the grant of an option to acquire shares.

5.1.2 Exercise

The difference between the income earned by exercising the option (i.e. the value of the shares acquired on exercise) and the amount paid by the employee to exercise the option (together with the amount paid for the option, if any) is deemed to be employment income (see paragraph 4.1.1 above for the applicable tax rates). A tax liability is also triggered if the employee receives consideration for e.g. selling, cancelling or waiving the option based on the difference between the consideration received and the price paid by the employee for the option, if any (see paragraph 4.1.1 above for the applicable tax rates).

5.1.3 Social security contributions

The same rules apply as set out in paragraph 4.1.2 above.

5.1.4 Approved employee share plan

Shares acquired under an option exercise are eligible for the preferential tax treatment referred to in paragraph 4.1.1 above, provided the relevant plan is reported, and registered with, the Hungarian fiscal authorities and all of the relevant criteria and administrative requirements are complied with.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

The costs of a share plan borne by the employer (e.g. via a recharge payment to the parent company) are normally tax deductible for the employer.

5.2.2 Social security contributions

The employer is subject to social security charges at a rate of 27%.

5.3 Tax withholding

Where the awards are made by, or the plan is arranged via, the local employer, then the local employer is required to withhold any income tax and social security contributions payable by the employee. A foreign parent company making awards which does not have a taxable presence in Hungary is not subject to tax withholding obligations.

6. Taxation of share disposals

6.1 The capital gain (being the difference between the sale price of the shares and the fair market value of the shares at the point income tax was charged in respect of the acquisition of the shares) is taxable when the shares are sold. For shares acquired under an approved employee share plan, the capital gain is equal to the difference between the sale price and the amount paid by the employee for the shares, if any.

6.2 The capital gain is subject to tax at a rate of 25%. If the shares are sold on a regulated capital market of any EEA or OECD member state, the gain is subject to 20% tax (instead of tax at 25%). A capital gain subject to 25% tax (but not the capital gain realised on a regulated capital market transaction) may also be subject to a 14% health care tax, if the amount of social security contributions paid on behalf of the employee does not amount to HUF 450,000 in the relevant fiscal year.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Hungarian law. However, a Hungarian company may make a contribution to such a trust for the benefit of its employees.

7.2 An employee who is a beneficiary of a discretionary employee benefit trust should not be taxable for that reason alone. He should only become taxable on benefits he actually receives from the trust, which in the case of shares will be when he has acquired the rights (dividends, voting rights etc.) attaching to those shares.

8. Data protection

8.1 As a general rule, the transmission of personal data out of Hungary requires the express consent (in writing) of the individual to whom the data relates. This rule applies in relation to an employer when transferring data in relation to employees and the employees should be informed of the purpose of the data transmission. However, information and data concerning employees may be used for statistical purposes without obtaining consent provided it is used in a manner that precludes identification of the relevant employees.

8.2 The employer must notify the Hungarian Data Commissioner of the relevant data transfers.

9. Employment law

Information regarding the terms of the employee share plan to be offered to employees should be provided to the local works council on the basis that it provides an employment-related benefit that is an incentive.

Republic of Ireland

1. Securities law

1.1 Offer of securities

The Prospectus Directive has been implemented into Irish law and therefore in general the principles referred to in paragraph 2 on page 5 of this guide will apply.

In addition to the employee share plans exemption referred to in paragraph 2 on page 5 of this guide, the obligation to publish a prospectus does not apply to an offer of securities in Ireland if:

- the offer is made to fewer than 100 people in Ireland (other than those registered as sophisticated investors) (even if the offer is being made to more than 100 individuals in a different EU state); or
- the offer is made only to people who are registered as sophisticated (or "qualifying") investors in Ireland; or
- the offer of securities is addressed to investors where the minimum consideration payable pursuant to the offer is at least €50,000 per investor, for each separate offer; or
- the denomination per unit of the securities concerned amounts to at least €50,000; or
- the offer expressly limits the amount of the total consideration for the offer to less than €100,000 calculated over a period of 12 months.

In addition, the Companies Act 2005 sets out certain requirements for local offers. The Companies Act 2005 defines a "local offer", among other things, as an offer of securities to the public in the State (i.e. Ireland) where the offer expressly limits the amount of the total consideration for the offer to less than €2.5 million (the Local Offer Exemption). The Local Offer Exemption is relevant for local offers where the consideration payable for the securities is between €100,000 and €2.5 million. An offering document prepared for a local offer must contain certain statements which are detailed in section 49 of the Companies Act 2005.

1.2 Disclosure

Under Irish company law a company is required to maintain a register of Irish directors' and secretary's interests in the shares of the company or its parent company.

The Market Abuse (Directive 2003/6/EC) Regulations 2005 which implement the EU Market Abuse Directive in Ireland introduced a regime for the disclosure of transactions in shares and other securities by "persons discharging managerial responsibilities" and "persons closely associated with them". These rules apply to (i) Irish issuers whose financial instruments are admitted to trading on a regulated market whether in Ireland or elsewhere in the EU and (ii) to any non-European Economic Area issuer for which Ireland is a 'home state' under the Irish law implementing the Prospectus Directive.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 Irish company

Irish law prohibits an Irish-incorporated subsidiary from giving financial assistance, directly or indirectly, in connection with the purchase of or subscription for shares in its parent company, whether the parent company is Irish-incorporated or not. Three exceptions are relevant to employee share plans. First, there is an exception for the provision by a company, in accordance with any plan for the time being in force, of money for the purchase of, or subscription for, shares in the parent, where the shares are to be held by or for the benefit of employees or former employees of the company, including any salaried director. Secondly, there is also an exemption for loans to employees (other than directors) with a view to enabling them to purchase or subscribe for fully paid shares in the parent to be held by themselves as beneficial owners. Thirdly, there is an exemption for the provision of financial assistance by a holding company in connection with the subsidiary purchasing or subscribing for shares in the holding company on behalf of:

- the present or former employees of the holding company or any subsidiary of it;
- an employees' share scheme within the meaning of the Companies (Amendment) Act 1983; or
- an employee share ownership trust referred to in section 519 of the Taxes Consolidation Act 1997.

3.2 Irish subsidiary of non-Irish company

The restrictions (and exemptions) set out above apply equally to an Irish subsidiary of a non-Irish company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax and an income levy. The income tax and income levy charges are on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year the income tax rates are either 20% or 41% depending on the level of the employee's income. The amount of the income levy depends on the level of the employee's income. For the 2010 tax year, the levy rates are 2% on annual income up to and including €75,036, 4% for annual income in excess of €75,036 but less than €174,980 and a charge of 6% on income from €174,980.

4.1.2 Social security contributions

Social security contributions are not payable.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

A corporation tax deduction may be available to the employer in respect of amounts expended in providing benefits consisting of shares to employees where it can be shown that the relevant expenses are of a revenue nature and are incurred wholly and exclusively for the local employer's trade.

If the employer's contribution exceeds the amount on which employees are subject to tax, then the amount of the deduction will be restricted to that lower amount.

4.2.2 Social security contributions
Employer social security contributions are not payable.

4.3 Tax withholding
The employee must account for the income tax due. There is no withholding obligation on the employer.

4.4 Favourable tax regime
Where shares are provided under a tax approved profit sharing plan, the employee will be entitled to an exemption from income tax on the value of the shares he receives if he holds the shares for at least 3 years. A tax approved profit sharing plan must satisfy a number of conditions of which the most important are that all full time employees are offered participation and the scheme is approved by the Irish tax authorities. Employees may acquire shares with a value of up to €12,700 each year under such a plan.

In addition, an employer will be able to claim a tax deduction in respect of the cost of issuing shares to a tax approved employee share plan. Payments made to the trustees of an approved profit sharing plan are tax deductible, provided the relevant sums are applied by the trustees in acquiring shares for appropriation to participants.

A favourable tax regime also exists where employees subscribe for shares in an Irish company. Under this regime employees can deduct the acquisition cost of the shares from their taxable income, subject to certain conditions, the most important of which is that the employee holds the shares for at least 3 years. The maximum deduction allowable is €6,350 and this is a lifetime limit.

5. Taxation of share options

5.1 Employee tax and social security contributions
5.1.1 Grant
There is no income tax charge (or income levy) on the grant of a share option unless the option exercise price is less than the market value of the shares at the date of grant and the option is capable of being exercised later than 7 years after grant.

5.1.2 Exercise
There are income tax and income levy charges on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. If the employee has been taxed on grant, the income tax and income levy paid on grant is credited against the income tax/income levy charged on exercise. Income tax must be paid within 30 days after the date of exercise of the option. For the 2010 tax year the income tax rates are either 20% or 41% depending on the level of the employee's income. The amount of the income levy depends on the level of the employee's income. For the 2010 tax year, the levy rates are 2% on annual income up to and including €75,036, 4% for annual income in excess of €75,036 but less than €174,980 and a charge of 6% on income from €174,980.

5.1.3 Social security contributions
Social security contributions are not payable.

5.2 Employer tax and social security contributions
5.2.1 Corporation tax deduction
In circumstances where an employer meets the cost of the difference between the option exercise price and the market value of the shares at the date of exercise (the spread) a corporation tax deduction may be allowed provided that the cost of the spread is recharged or otherwise met by the employer, on an arm's length basis.

Costs associated with implementing a share option plan may be tax deductible where the costs are of a revenue nature and are incurred wholly and exclusively for the purpose of the employer's trade.

5.2.2 Social security contributions
Social security contributions are not payable.

5.3 Favourable tax regime
There are two tax favoured share option plans in Ireland: the Revenue approved savings related share option plan (SAYE Plan) and the Revenue approved share option plan (Approved Plan).

Participation in a SAYE Plan must be offered to all employees on similar terms and the employee must agree to make monthly savings for at least 3 years. The option exercise price under a SAYE Plan may be set at a discount to market value of up to 25% at grant (the option price cannot be less than market value under an Approved Plan). Where an option is granted under a SAYE Plan, no tax is due on the exercise of the option provided that the exercise takes place more than 3 years after the date the option was granted. Where an option is granted under an Approved Plan, no tax is due on its exercise provided that the shares acquired on exercise of the option are not disposed of within 3 years after the date on which the option was granted.

5.4 Tax withholding
The employee must account for the income tax and levy due. There is no withholding obligation on the employer.

6. Taxation of share disposals

6.1 A charge to capital gains tax may arise on the disposal of shares on the difference between the proceeds of sale and (i) the value of the shares at the time of acquisition (where they were acquired free or at a discount to market value) or (ii) the exercise price paid for the shares plus any amount assessed to income tax in respect of exercise, where the shares were acquired on exercise of an option.

6.2 Where the employee disposes of shares acquired on the exercise of an option under a SAYE Plan or an Approved Plan, the capital gains tax charge will be on the difference between the sale proceeds and the price paid on exercise, plus the cost of the option (if any).

6.3 Irish capital gains tax is charged at the rate of 25% on disposals made on or after 8 April 2009. There is an annual exemption from capital gains tax on the first €1,270 of gains made by an individual in the 2010 tax year.

7. Employee benefit trusts

7.1 An Irish employee who is a beneficiary of a discretionary employee benefit trust will not be taxable for that reason alone but he may be taxed on the receipt of benefits from the trust.

7.2 Certain employee trusts which require shares to be transferred on similar terms to employees carry tax advantages which allow the employer guaranteed corporation tax deductions for contributions made to the trust.

8. Data protection

Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Italy

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there are exemptions which are relevant to offerings under employee share plans. In particular, in accordance with article 34-ter, paragraph 1, lett. (m) of CONSOB Regulation No. 11971, as subsequently amended (which mirrors article 4(1)(e) of the Prospectus Directive), offers of securities to existing or former directors or executives or employees by their employer which has securities already admitted to trading on a regulated market or by other companies in the same group are exempt from the prospectus requirements, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

1.2 Regulatory issues

Where a company promotes or offers in a communication its shares or options somewhere other than in its registered office or in an office which is "dependent" (*dipendenza*) on its registered office, such offer must be made either through an authorised financial promoter (*promotore finanziario*, a category of financial adviser), or at the premises of a bank or a financial intermediary duly authorised in Italy.

1.3 Disclosure

Offerings of shares in Italy (whether or not to the public) must be notified to the Bank of Italy by the 10th day of the month following the month in which the offer took place if the value of the securities offered, when aggregated with the value of securities offered by the same offeror in Italy in the preceding 12 months, exceeds €500,000.

2. Exchange controls

2.1 There are no applicable exchange controls.

2.2 Transfers of cash or securities into or out of Italy which are in excess of €5,000 must be reported in writing to the Financial Information Unit. Italian money laundering legislation provides that all payments with a value in excess of €5,000 must be made through an authorised intermediary (e.g. a bank).

2.3 Authorised intermediaries and, in general, entities undertaking financial activities, as well as registered auditors and professionals, must for the purposes of Legislative Decree n. 231/2007 undertake mandatory anti-money laundering checks where a client transfers cash or securities into or out of Italy which are in excess of €15,000 and/or where they are aware of a transaction that may be deemed to entail a money laundering purpose. Clients are obliged to provide stipulated information relating to such transactions where required to do so by the professionals/entities referred to above.

2.4 In addition, Italian tax residents must report on their annual income tax return any investments or financial assets held outside Italy and/or transfers from and to a country other than Italy (as well as transfers from one foreign country to another foreign country) where the value exceeds €10,000 in total. If the financial assets are deposited with an Italian based intermediary, this reporting obligation falls on the intermediary.

3. Financial assistance

3.1 Italian company

An Italian company may make loans or provide guarantees for the purpose of enabling or facilitating the subscription or acquisition of its shares by employees (or by employees of its subsidiaries or its controlling companies). However, the overall amount of the loans granted and/or of the guarantees provided must not exceed the aggregate of the Italian company's profits and its distributable reserves, as shown in that company's latest duly approved financial statements.

3.2 Italian subsidiary of non-Italian company

In the absence of a specific rule under the Italian Civil Code, and by way of interpreting the rationale behind the financial assistance regime applicable to Italian companies, it can be argued that an Italian employer may make loans or provide guarantees for the purpose of enabling or facilitating the subscription or acquisition by its employees of shares in its non-Italian parent company. However, the overall amount of the loans granted and/or of the guarantees provided must not exceed the aggregate of the Italian company's profits and its distributable reserves, as shown in that company's latest duly approved financial statements.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company, its parent company or another group company free of charge or at a discount will normally be liable to pay income tax. The tax charge is on the relevant employment income, which is equal to the difference between the market value of the shares (calculated under Italian tax law) at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year personal income tax rates range from 23% to 43%. Personal income taxes are increased by regional and municipal surtaxes applicable at different rates depending on the region and municipality of residence of the employee (in general, the regional surtax rates vary from 0.9% to 1.4% and municipal surtax rates vary from 0% to 0.8%).

However, where shares are offered (free of charge or at a discount) to all employees, the difference between the market value (for tax purposes) of the shares and the amount (if any) paid is not taxable up to a threshold of approximately €2,065 for each tax year. However, the shares must not be repurchased by the issuing company or the employer (if different) and must be held by the employee for a minimum of

3 years. If the holding period requirement is not met, or if the shares are repurchased by the issuing company or the employer (if different), income tax will be payable in the tax period in which the sale takes place on the amount that was not taxed when the shares were acquired.

4.1.2 Social security contributions

In principle, social security contributions are due if and to the extent income tax is due. An employee will be subject to social security contributions on the amount subject to income tax at rates ranging from approximately 8% to 10% for the 2010 tax year. The rates depend on the employer's industry and on the number and category of employees.

However, there are some specific exceptions to this principle, i.e. there are circumstances in which employment income arises for tax purposes but is not subject to the payment of social security contributions. One such exception is that social security contributions are not due on employment income arising for tax purposes from share option plans where the option is exercised on or after 25 June 2008. This exception applies to "stock option" plans.

Moreover, in its Circular Letter No. 123 issued on 11 December 2009, the Italian Social Security Agency provided its interpretation on, amongst other things, the meaning of "stock option" plans for this purpose. On the basis that (1) the exception does not require any specific requirements to be met and (2) the Italian legislation does not provide a definition of "stock option", the exception, in addition to applying to traditional stock option plans (whether broad-based or not), may also apply to all "non-general" share plans (i.e. those plans which are not broad-based but which are instead offered to a select group of employees) that provide for free awards of shares. Such plans must incorporate certain performance and/or vesting conditions, e.g. a requirement that the award holder is employed by the grantor company at the time of vesting.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

As a general rule, any actual cost incurred by the employer in relation to a plan offering shares to employees is tax deductible. A case-by-case analysis is required, especially for intra-group charges.

4.2.2 Social security contributions

Employer social security contributions are due if and to the extent employee social security contributions are due. Employer social security contributions vary from approximately 26% to 38% of the employee's gross remuneration (the exact thresholds vary depending on the employer's industry and on the number and category of employees).

4.3 Tax withholding

Income tax and employee social security contributions must be withheld by the relevant employer, shown on the employee's monthly payslip and then paid to the relevant agencies. If the salary is not sufficient, the employee is required by Italian law to provide the employer with the funds necessary to pay the taxes and employee social security contributions which are due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option, provided the share option is not transferable.

5.1.2 Exercise

- *Current tax regime*

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares (calculated under Italian tax law) at the date of exercise and the purchase price of the shares (exercise price plus any premium payable on grant). For the 2010 tax year personal income tax rates range from 23% to 43%. Personal income taxes are increased by regional and municipal surtaxes applicable at different rates depending on the region and municipality of residence of the employee (in general, the regional surtax rates vary from 0.9% to 1.4% and municipal surtax rates vary from 0% to 0.8%).

- *Current social security contributions regime*

In accordance with new legislation, the income for tax purposes on the exercise of a share option will not be subject to social security contributions. The reason for this exemption is to avoid the income arising on a share option exercise from being included in the calculation of pensionable income for the year (so as to avoid distorting the calculation of a pension which is based on such income).

Pursuant to its Circular Letter No.123 issued on 11 December 2009, the Italian Social Security Agency provided its interpretation of the social security contributions exception. According to this interpretation, there are no specify requirements that need to be met in order for a stock option to qualify for the exception.

- *Previous tax and social security contributions regime*

In respect of options exercised prior to 25 June 2008, a favourable tax regime applied to options if certain conditions were met including: (i) the amount paid by the employee was at least equal to the market value of the shares (calculated under Italian tax law) at the date of grant of the options; (ii) shares held by the employee represented less than 10% of the voting rights or of the capital of the issuing company; (iii) the options were not exercisable before three years from the date of grant; (iv) when the options were exercisable, the issuing company was listed and (v) the employee maintained a minimum investment in the shares equal to the difference between the market value of the shares (calculated under Italian tax law) at the date on which the options were exercised and the amount paid by the employee for at least 5 years from the date of the exercise. If the relevant conditions were met, the employees were not subject to any tax or social security contributions on the grant or exercise of the options.

In addition, in relation to the exemption from social security contributions only, plans approved before 6 July 2006 needed only to meet conditions (i) and (ii) referred to above for the exemption to apply (even if the relevant option was granted/exercised after that date).

If the holding requirement under condition (v) above was not met, income tax (and social security contributions, if the plan was not approved before 6 July 2006) was payable on the amount that was not taxed when the option was exercised. If social security contributions were due, an employee would be subject to social security contributions on the amount subject to income tax at rates ranging from approximately 8% to 10% (the rates depended on the number and category of employees). For options exercised on or after 25 June 2008 (regardless of when they were granted) the above regime no longer applies (see further paragraph 5.1.2 above). For options exercised before that date the holding requirement referred to in (v) above continues to apply.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

As a general rule, any actual cost incurred by the employer in relation to a plan granting share options to employees is tax deductible. A case-by-case analysis is required, especially for intra-group charges.

5.2.2 Social security contributions

Employer social security contributions will not be payable on the exercise of an option unless the employee is subject to social security contributions.

5.3 Tax withholding

Income tax (and employee social security contributions, if any) must be withheld by the relevant employer, shown in the employee's monthly payslip and then paid to the relevant agencies. If the salary is not sufficient, the employee is required by Italian law to provide the employer with the funds necessary to pay the taxes and employee social security contributions which are due.

6. Taxation of share disposals

6.1 If the employee sells shares, the capital gain will be subject to capital gains tax.

6.2 If income tax was not payable at the time the shares were acquired, the capital gain will be the difference between the sale proceeds and the price paid by the employee for the shares.

6.3 If the shares were subject to income tax at the time of acquisition (including where shares are acquired on the exercise of a share option), the capital gain will be the difference between the sale proceeds and the market value of the shares at the time of acquisition of the shares/exercise of the share option.

6.4 If the shares disposed of in a 12-month period are a "non-qualified shareholding", any capital gains are subject to a flat 12.5% capital gains tax charge for the 2010 tax year.

7. Employee benefit trusts

There is no legislation dealing specifically with employee benefit trusts. As a general principle, an employee who is a beneficiary of a discretionary employee benefit trust should not be taxable for that reason alone (provided the trust cannot be regarded as transparent for Italian tax purposes). The employee should be taxed when he actually receives benefits from the trust, as if he had received those benefits as employment income directly from his employing company.

8. Data protection

As a general rule under Italian law, employee consent must be obtained for the collection, processing and worldwide transfer of personal data. However, it is arguable that there are circumstances where this would not be required in connection with an employee share plan. Specifically, Legislative Decree No. 196 of 30 June 2003 (the Data Protection Act) requires all processing of personal data to be authorised by the interested persons (the so-called data subjects), who are requested to give their consent. However, the data subject's consent is not necessary where the processing is justified by meeting at least one of a series of specified conditions. If personal data is collected and processed in connection with an employee share plan, the justifying condition known as "contractual necessity" (i.e. the processing being necessary for the performance of a contract to which the data subject is a party or in order to take steps at the data subject's request prior to entering into such a contract) could apply, in which case the employee's consent, should not be necessary.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in remuneration for termination purposes. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Republic of Latvia

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there is an exemption from that requirement where securities are offered to employees or persons discharging managerial responsibilities within the employer which are (i) issued by the employer or by a company in the same group as the employer; (ii) offered by a person in the same group as the employer; and (iii) admitted to trading on a Member State's (European Union or European Economic Zone state) regulated market, provided that a document containing information about the number and the type of securities and the reasons for, and details of the offer is publicly available.

There is also an exemption for an offer to fewer than 100 individuals or legal entities that are not qualified investors in Latvia (provided that the offer is also made to fewer than 100 persons in every other EU member state in which the offer is being made).

1.2 Regulatory issues

There are no other regulatory issues which affect the offering of securities to employees, assuming that no third party intermediary is involved in the offering.

1.3 Disclosure

Extensive disclosure obligations exist under the EU Market Abuse Directive, as implemented in Latvia, particularly in relation to dealings in shares by directors and other persons discharging managerial and internal auditing/controller responsibilities within the issuer.

2. Exchange controls

There are no exchange control restrictions in Latvia.

3. Financial assistance

3.1 Latvian company

A Latvian joint stock company is generally prohibited from providing financial assistance (including the provision of security or a guarantee) to acquire its own shares. There are no exceptions to this prohibition for employee share plans.

3.2 Latvian subsidiary of non-Latvian company

A Latvian subsidiary that is incorporated as a joint stock company is generally prohibited from providing financial assistance (including the provision of security or a guarantee) to acquire its own shares but there is no express prohibition on financial assistance for the acquisition of shares in a non-Latvian parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year, the personal income tax rate for Latvian residents is 26%.

4.1.2 Social security contributions

An employee will only be subject to social security contributions if the cost of the share plan is borne by the employer (e.g. if a recharge payment is made to the parent company). If social security contributions are payable, these are charged on the amount subject to income tax at a rate of (generally) 9% (which is part of a total rate of 33.09% which is allocated between the employer (24.09%) and the employee (9%)) for the 2010 tax year. There is no cap on the amount of an employee's earnings that are subject to employee social security contributions.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

It is unlikely that any corporation tax deduction will be available for a Latvian company which bears the cost of an employee share plan.

4.2.2 Social security contributions

Employer social security contributions will only be payable if the cost of a share plan is borne by the employer (e.g. if a recharge payment is made to a parent company). If social security contributions are payable, these are charged on the amount subject to income tax at a rate of (generally) 24.09% (which is part of a total rate of 33.09% which is allocated between the employer (24.09%) and the employee (9%)) for the 2010 tax year. There is no cap on the amount of an employee's earnings that are subject to employer social security contributions.

4.3 Tax withholding

If the cost of a share plan is borne by the Latvian employer, it must withhold any income tax and employee social security contributions due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no liability to tax or social security contributions on the grant of a share option.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year, the personal income tax rate for Latvian residents is 26%.

5.1.3 Social security contributions

An employee will only be subject to social security contributions if the cost of the share plan is borne by the employer (e.g. if a recharge payment is made to the parent company) at a rate of (generally) 9% for the 2010 tax year. There is no cap on the amount of an employee's earnings that are subject to employee social security contributions.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

It is unlikely that a corporation tax deduction will be available for a Latvian company for any costs which it bears in relation to an employee share plan.

5.2.2 Social security contributions
Employer social security contributions arise on the exercise of an option in circumstances where an employee is subject to social security contributions. For the 2010 tax year the rate of employer's social security contributions is (generally) 24.09%. There is no cap on the amount of an employee's earnings which are subject to employer social security contributions.

5.3 Tax withholding

If the cost of a share plan is borne by the Latvian employer, it must withhold any income tax and employee social security contributions due.

6. Taxation of share disposals

A new capital gains tax regime was introduced in Latvia from the start of the 2010 tax year. This new law applies to capital gains made on the disposal of shares. An employee who sells shares will usually be liable to capital gains tax at a rate of 15% for the 2010 tax year on the difference between the sale price and the market value of the shares on the date they were acquired.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Latvian law. However, a Latvian company may make a contribution to such a trust for the benefit of its employees.

7.2 An employee who is a beneficiary of a discretionary employee benefit trust should not be taxable for that reason alone. It is likely that the employee will be taxed when he actually receives benefits from the trust, as if he had received those benefits directly from his employing company.

8. Data protection

Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Republic of Lithuania

1. Securities law

1.1 Offer of securities

In accordance with the Law on Securities of the Republic of Lithuania (Law on Securities), the offer of securities to the public generally requires the publication of a prospectus. However, there is an exemption from this requirement where securities, which are admitted to trading on a regulated market, are offered, are allotted or are to be allotted to existing or former directors or employees of the issuer or an affiliated group undertaking, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

Under the Law on Securities, there are also other exemptions to the prospectus requirements, for example, where securities are offered only to professional investors, or the offer is made to fewer than 100 individuals or legal entities in each EU and EEA member state.

1.2 Regulatory issues

There are no other regulatory issues that affect the offering of securities to employees. However, under the Law on Securities, if an employee acquires a block of shares in a public company and this results in the crossing, in either direction, of certain percentage thresholds in relation to the total voting shares in the relevant company, then the employee must notify the Lithuanian Securities Commission (the Commission) and the company of the total number of voting shares which the employee owns.

1.3 Disclosure

Under Lithuanian legislation, the head of an issuer (which includes members of the board and certain other employees having access to non-public information) must provide a notice to the Commission and the issuer in relation to the execution of transactions in the issuer's securities at the head's expense.

2. Exchange controls

Exchange controls are not applicable in Lithuania.

3. Financial assistance

3.1 Lithuanian company

A Lithuanian company is generally prohibited from providing financial assistance (including the provision of security or a loan) for the acquisition of its own shares. There are no exceptions to this prohibition for employee share plans.

3.2 Lithuanian subsidiary of non-Lithuanian company

There is no direct prohibition on the provision of financial assistance by a Lithuanian subsidiary for the acquisition of shares in the non-Lithuanian parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

As from 1 January 2010, shares granted to employees either by the employing company or by a group company at a discount to market value or free of charge are treated as taxable "income-in-kind" received by the employee. The taxable value is the difference between the market value of the shares at the time of acquisition and the amount paid by the employee. Income-in-kind is taxed as employment-related income (subject to personal income tax at a rate of 15%).

4.1.2 Social security contributions

Where the grantor of the share award is the employing company then, as from 1 January 2010, the acquisition of shares by an employee at a discount to market value or free of charge is subject to social security contributions (at a rate of 3%) and health insurance contributions (at a rate of 6%).

However, if the grantor of the share award is a group company established outside Lithuania, then the acquisition of shares is not subject to social security contributions or health insurance contributions.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

From 1 January 2010, a Lithuanian company bearing the cost of an employee share plan is entitled to a corporation tax deduction, as the benefit received by employees is treated as employment-related income subject to personal income tax.

4.2.2 Social security contributions

As from 1 January 2010, the employer is subject to social security contributions (at a rate of 30.98%), where shares are granted to an employee by the employing company at a discount to market value or free of charge.

4.3 Tax withholding

As from 1 January 2010, tax withholding obligations arise for the Lithuanian employer where shares are granted to an employee at a discount to market value or free of charge by the employing company. The following taxes must be withheld by the Lithuanian employer in relation to the taxable amount: (i) personal income tax (at a rate of 15%), (ii) employee social security contributions (at a rate of 3%), and (iii) health insurance contributions (at a rate of 6%).

If the share awards are granted by a group company established outside Lithuania, then there is no obligation on the employing company to withhold the personal income tax arising and social security/health insurance contributions do not arise.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no income tax charge on the grant of a share option.

5.1.2 Exercise

Shares acquired by employees at a discount to market value or free of charge upon the exercise of a share option granted by the employing company or a group company are treated as taxable income-in-kind received by the employee. The taxable value is the difference between the market value of the shares at exercise and the amount paid by the employee. These new rules apply regardless of when the option was granted (i.e. the rules extend to options granted prior to 1 January 2010).

5.1.3 Social security contributions
Where the grantor of the share award is the employing company then the acquisition of shares by an employee at a discount to market value or free of charge upon the exercise of a share option is subject to social security contributions (at a rate of 3%) and health insurance contributions (at a rate of 6%).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
From 1 January 2010, a corporation tax deduction is available for a Lithuanian company for any costs which it bears in relation to an employee share plan, as the benefit received by employees is treated as employment-related income subject to personal income tax.

5.2.2 Social security contributions
Where the options are granted by the employing company, the employer is subject to social security contributions (at a rate of 30.98%), if shares are acquired by an employee at a discount to market value or free of charge upon exercise of a share option.

5.3 Tax withholding

Tax withholding obligations arise for the Lithuanian employing company if shares are acquired by an employee at a discount to market value or free of charge upon exercise of a share option granted by the employing company. The following taxes must be withheld by the Lithuanian employer in relation to taxable amount: (i) personal income tax (15%), (ii) social security contributions (3%) and (iii) health insurance contributions (6%).

If the share options are granted by a group company established outside Lithuania, then there is no obligation on the employing company to withhold the personal income tax arising and social security/health insurance contributions do not arise.

6. Taxation of share disposals

6.1 Income received by an employee who is a tax resident of Lithuania from the sale of shares is tax exempt provided that (i) the shares are sold not earlier than 366 days after the date of their acquisition and (ii) the individual was not the owner of more than 10% of the shares in the company in respect of which the shares are being sold for the 3 years preceding the end of the tax year during which those shares were sold.

6.2 This relief does not apply if the shareholder sells the shares to the issuer of those shares or the sale proceeds are received from a company established in a tax haven.

6.3 Where the exemption does not apply, the capital gains (being the difference between the sale proceeds and acquisition costs of the shares) are subject to Lithuanian personal income tax at a rate of 15%. As from 1 January 2010, where an employee disposes of shares in his employing company or in a group company (whether acquired from the exercise of an option or otherwise), the taxable capital gains is calculated based on the difference between the sale proceeds and the market value of the shares at the time they are acquired by the employee. Any income taxes computed and paid upon the acquisition of the shares are also not deductible for capital gains tax purposes as part of the acquisition costs when those shares are sold.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Lithuanian law, but a Lithuanian company may make contributions to such a trust for the benefit of its employees.

7.2 The tax treatment of benefits received by employees from employee benefit trusts is unclear under Lithuanian tax legislation and advice should be sought on a case-by-case basis.

8. Data protection

It is recommended that the employee's consent is obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Under Lithuanian employment law, there is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in any compensation due on termination of employment. Companies should seek advice on a case-by-case basis on these issues and/or other employment law issues that may be applicable.

The Netherlands

1. Securities law

1.1 Offer of securities

The Prospectus Directive is implemented into Dutch law and therefore in general the principles referred to in paragraph 2 on page 5 of this guide will apply.

1.2 Regulatory issues

There are no other significant regulatory issues which affect an offer of securities to employees. A company which issues securities directly to employees in the Netherlands does not need a licence as an investment firm or securities intermediary. However, if a company uses another entity (e.g. a securities broker) in connection with the issue of the securities, that other entity would require a licence as an investment firm unless an exemption applied.

Entities which take deposits (repayable monies) from the Dutch public should in principle be authorised under the Financial Markets Supervision Act and registered with the Dutch Central Bank, unless an exemption applies. One of the exemptions applies where deposits are obtained or solicited from within a closed circle, as defined in Dutch law (besloten kring). The definition of a closed circle includes, amongst other things, the relationship between an employer and its employees or the relationship between group companies. However, the authorisation requirement for deposit-takers may be relevant in participation plans where employees save monies through an account held with a third party bank.

1.3 Disclosure

In principle, ongoing disclosure and filing requirements other than those resulting from the Prospectus Directive and the Market Abuse Directive do not apply if and to the extent securities are offered to employees and/or directors in the Netherlands, in accordance with the Prospectus Directive and the Dutch Financial Markets Supervision Act.

2. Exchange controls

Dutch foreign exchange control rules do not apply specifically to employee share plans and are unlikely to apply in practice to dealings in connection with an employee share plan.

3. Financial assistance

3.1 Dutch company

A Dutch company (NV or BV) may not provide financial assistance to enable third parties to purchase or to subscribe for shares in its capital, subject to the following exemptions.

- The restrictions do not apply to an NV if the shares are acquired by, or on behalf of, employees of the NV or its group companies. If that is the case, the NV may also lend money to enable the employees to acquire the shares.

- A BV may lend money to enable a third party (including an employee) to purchase or subscribe for shares in its capital, but only to the extent that it has distributable reserves and provided that (i) its articles of association allow such a loan to be made; and (ii) the company maintains a non-distributable reserve for the amount outstanding on such a loan from time to time. (Note that it is expected that the financial assistance prohibition for BV's will be abolished following a legislative proposal that is expected to enter into force in the course of 2011).

3.2 Dutch subsidiary of non-Dutch company

From a Dutch law perspective it is arguable that the general restriction on a Dutch subsidiary providing financial assistance (e.g. a loan) for the acquisition of shares in its Dutch parent company should not apply where the parent company is not Dutch. However, there is no specific case law on this point and the position is not free from doubt.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year the progressive rates of income and social security charges range from 33.45% to 52%.

4.1.2 Social security contributions

An employee will be subject to general social security contributions as part of the income tax due (these contributions are capped on income at €33,189 for 2010). The rates of general social security contributions are included in the progressive income tax rates referred to in paragraph 4.1.1.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

In respect of shares awarded after 24 May 2006, the amount of any discount charged to the Dutch company by the foreign parent company or, as the case may be, the difference between the arm's length purchase price and the lower purchase price charged to the employee is no longer deductible for corporate income purposes. Furthermore, the Dutch employing company is no longer able to deduct the cost of establishing and administering a share plan to enable employees to acquire shares in a foreign parent company. The costs of cash-settled stock appreciation rights should still qualify for a tax deduction if paid by, or charged to, a Dutch company.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount to the extent that the employee's income for the relevant year (excluding the share-based income) does not exceed €48,716 (i.e. such contributions are capped on income at this level). The rate of employer social security contributions is approximately 11.6% for 2010.

4.3 Tax withholding

The employer must withhold any income tax and social security due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant
No taxation of share options occurs at grant.

5.1.2 Exercise
Income tax will arise on the exercise of a share option on the difference between the option exercise price and the market value of the shares at the time of exercise. For the 2010 tax year the progressive rates of income and social security charges range from 33.45% to 52%.

5.1.3 Social security contributions
An employee will be subject to general social security contributions as part of the income tax due (these contributions are capped on income at €33,189 for 2010). The rates of general social security contributions are included in the progressive income tax rates referred to in paragraph 5.1.2.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
For options granted after 24 May 2006 the amount of the taxable benefit for employees on exercise of the options is no longer tax deductible for the Dutch employing company. It should be noted that the costs of cash-settled stock appreciation rights will still qualify for a tax deduction if paid by or charged to a Dutch company.

5.2.2 Social security contributions
Employer social security contributions will be payable where an employee's income for the relevant year (excluding the share-based income) does not exceed €48,716 (i.e. such contributions are capped on income at this level). The rate of employer social security contributions is approximately 11.6%.

5.3 Favourable tax regime

Although there are no tax approved employee share plans in the Netherlands, it is possible to replicate savings-related employee share purchase and/or share option plans to a certain extent by using a special employee savings plan. The plan allows an employee to make contributions to a special savings account on a pre-tax basis (maximum of €613 a year for the 2010 tax year). The contributions can be invested in shares in the employing company (or a group company). In addition, the contributions can be made in the form of shares in the employing company (or a group company), in which case the maximum amount is doubled. There are a number of requirements, including that the savings must be held for at least four years. The employing company is obliged to pay a 25% tax charge on the contributions.

5.4 Tax withholding

The employer must withhold any income tax and social security due.

6. Taxation of share disposals

The employee is not subject to capital gains tax or income tax on a disposal of shares.

7. Employee benefit trusts

7.1 If a resident of the Netherlands is a potential beneficiary of an employee benefit trust, he will not be subject to tax simply by being a potential beneficiary.

7.2 The receipt of benefits from an employee benefit trust by an employee will constitute taxable income in the hands of that employee and the benefit may be subject to income tax and employee and employer social security if the cost of the benefit is borne by the employer.

7.3 The Dutch employing company can only claim a tax deduction for payments made to an employee benefit trust if (i) the employer has no influence on the trust and (ii) the employer is not entitled to any payments from the trust (in other words, the payments made to the trust must have been irrevocably made by the employing company).

8. Data protection

8.1 The processing of personal data by the Dutch employer in the context of an employee share plan must be carried out in accordance with the Dutch Data Protection Act.

This Act requires personal data to be processed (i) for specified and legitimate purposes, (ii) in accordance with the law and (iii) in a careful and proper manner.

8.2 Under the Dutch Data Protection Act, the employer is required to inform its employees of the purpose of the intended data processing and to provide the relevant contact details before the personal data is collected.

8.3 In principle, all personal data processing activities must be notified to the Dutch Data Protection Commission (*College Bescherming Persoonsgegevens*) before the collection of the personal data.

8.4 If, in connection with an employee share plan, the personal data of employees is being transferred to countries outside the EEA, additional requirements must be met. In principle, transfers of personal data to such countries are only permitted if the recipient country provides an adequate level of protection for such data. However, there are a number of ways of legitimising an international transfer, such as obtaining a data transfer licence from the Dutch Ministry of Justice, even if the country to which the personal data is being transferred does not offer an adequate level of protection.

8.5 A system regarding the processing and protection of personal data of employees may require Works Council approval. Whether such Works Council approval is required must be considered on a case-by-case basis.

9. Employment law

9.1 Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable. In addition to these general employment law issues, specific issues in the Netherlands are mentioned below.

9.2 Following a case in the Dutch Court of Appeal in 2002, management decisions relating to the implementation, amendment or withdrawal of an employee share plan may require the prior approval of the relevant Works Council if the plan is considered a system for the remuneration of (a group of) employees. In the case of an international group plan, the extent of the involvement of the Dutch management in decisions to implement, amend or withdraw the plan is one of the aspects taken into account in determining whether such decisions can be attributed to the Dutch management and therefore whether the plan will be subject to Works Council approval. The requirement for Works Council approval and the scope thereof must be decided on a case-by-case basis.

Poland

1. Securities law

1.1 Offer of securities

In accordance with the Prospectus Directive, the Polish legislation provides an exemption from the obligation to prepare, to obtain approval for, and to publish a prospectus in respect of an offer of securities to existing or former directors or employees by their employer (or an affiliated undertaking) which has its securities already admitted to trading on an EU regulated market. Under this exemption, Polish legislation requires the preparation of an information memorandum, which must be in Polish.

There is also an exemption for offers where the total consideration under the offer is less than €2.5 million (calculated over a period of 12 months). In the case of this exemption, Polish legislation requires the preparation of an information memorandum, which must be in Polish.

A further exemption is available in Poland if, under the strict interpretation of Polish law, the offer is addressed to fewer than 100 individuals in each EU state in which the offer is being made. In this case, the offer is deemed not to be a public offering and therefore there is no obligation to prepare either a prospectus or an information memorandum. Note that, in practice, the Polish Regulator will allow the application of the exemption if the offer is to fewer than 100 individuals in Poland, regardless of the number of offerees in other EU states. However, this is only an interpretation of the law by the Polish regulator and therefore may be subject to change.

1.2 Regulatory issues

If the share plan is directed at Polish employees, the plan documentation addressed to them should be translated into Polish.

1.3 Disclosure

If the securities offering requires the publication of a prospectus, the issue of shares must comply with detailed disclosure requirements.

2. Exchange controls

There are generally no exchange controls relevant to employee share plans in Poland, although there may be restrictions where transactions take place with companies or persons that are outside the EU, EEA or OECD. There are some notification requirements for statistical purposes.

3. Financial assistance

3.1 Polish company

Generally, joint stock companies may not provide financial assistance, directly or indirectly, for the purchase or subscription of their own shares. This does not apply to payments made to the company's employees or employees of its subsidiaries to facilitate the purchase of or subscription for the company's shares if those payments are made from a special capital reserve of the company.

3.2 Polish subsidiary of non-Polish company

Polish law does not prohibit a Polish company from providing financial assistance to its Polish employees in order to enable them to acquire shares in a non-Polish parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

There is no tax on an employee's acquisition of newly issued shares at a discount or free of charge.The acquisition of existing shares is subject to tax at progressive rates of 19%-32% (the 32% rate starts from approximately €21,000) on income determined at the point of acquisition, i.e. on the difference between the market value of the shares and the purchase price paid by the employee (if any).

4.1.2 Social security contributions

There is no social insurance (social security contributions) on an employee's acquisition of shares at a discount or free of charge.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

No corporation tax deduction will be available.

4.2.2 Social security contributions

There is no employer social insurance (social security contributions) on an employee's acquisition of shares at a discount or free of charge.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax on the grant of a share option.

5.1.2 Exercise

There is no tax on the exercise of a share option to acquire newly issued shares. The exercise of a share option to acquire existing shares is subject to tax at standard progressive rates of 19%-32% (the 32% rate starts from approximately €21,000) on income determined at the point of exercise, i.e. on the difference between the market value of the shares and the exercise price paid by the employee (if any).

5.1.3 Social security contributions

There is no social insurance (social security contributions) on the grant and exercise of share options.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

No corporation tax deduction will be available.

5.2.2 Social security contributions

There is no employer social insurance (social security contributions) on the grant and exercise of share options.

6. Taxation of share disposals

If the employee sells shares, the capital gain (i.e. the surplus of the sale proceeds over the acquisition costs/exercise price increased by the income determined at the point of acquisition of the shares or the exercise of the share option - if any) is taxed at a flat rate of 19%.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Polish law. However, a Polish company may make a contribution to such a trust for the benefit of employees.

7.2 An employee who is a beneficiary of a discretionary employee benefit trust will not be taxable for that reason alone. He will be taxed when he actually receives benefits from the trust, as if he had received those benefits directly from his employing company.

8. Data protection

Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Portugal

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there is an exemption from that requirement where securities are offered to existing or former directors or employees by their employer (or an affiliated company) which has securities listed on an EU regulated market, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

There is also an exclusion from the prospectus requirements for an offer to fewer than 100 non-qualified investors in Portugal (as this is not treated as a public offer), even if the offer is being made to more than 100 individuals in a different EU state.

1.2 Regulatory issues

There are no other regulatory issues which affect the offer of securities to employees.

1.3 Disclosure

Where the securities are offered to fewer than 100 employees there are no disclosure requirements unless the offer is made by a Portuguese public company classified as an open company or by a company whose securities are traded on a securities market, in which case the Portuguese securities regulator (the CMVM) must be notified for statistical purposes only.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 Portuguese company

A company may not make loans or issue guarantees to members of its board of directors. Although under Portuguese law members of the board of directors are not considered employees of the company, it is usual for members of the board of directors to be included in employee share plans. Subject to certain restrictions a Portuguese employer may, however, make loans or issue guarantees to enable its employees to acquire its own shares, or shares in its parent company, provided that as a result of such loans, the net asset value of the company does not fall below its issued share capital plus its non-distributable reserves.

3.2 Portuguese subsidiary of non-Portuguese company

The financial assistance position for a Portuguese subsidiary of a non-Portuguese parent company is the same as described in paragraph 3.1 above.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year the income tax rates range from 11.08% to 45.88%.

4.1.2 Social security contributions

An employee will be subject to social security contributions on the amount subject to income tax at the rate of 11% for the 2010 tax year. However, social security contributions will not arise if the gain is viewed as a non-recurring bonus (which will depend on how the relevant employee share plan is operated in practice).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

Costs incurred by the Portuguese employer in relation to an employee's acquisition of shares at a discount or as a free bonus should be deductible.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount if the employee is subject to social security contributions. The maximum rate of employer social security contributions is 23.75% for the 2010 tax year.

4.2.3 Reporting requirements

The employer must declare the existence of the employee share plan to the tax authorities by the 30th June of the following year (even if the plan relates to a group company).

4.3 Tax withholding

The employee is responsible for accounting for income tax. The employer must withhold any social security contributions.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year income tax rates range from 11.08% to 45.88%.

5.1.3 Social security contributions

Social security contributions arise on the exercise of options at the rate of 11% for the 2010 tax year. However, social security contributions will not arise if the gain is viewed as a non-recurring bonus (which will depend on how the relevant employee share plan is operated in practice).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

Costs incurred by the Portuguese employer in relation to an employee's acquisition of shares on exercise of an option at a discount to the then market value of shares should be tax deductible.

5.2.2 Social security contributions

Employer social security contributions will be payable if the employee is subject to social security contributions. The maximum rate of employer social security contributions is 23.75% for the 2010 tax year.

5.2.3 Reporting requirements
The employer must declare the existence of the employee share plan to the tax authorities by the 30th June of the following year (even if the plan relates to a group company).

5.3 Tax withholding
The employee is liable to account for any income tax due. Social security contributions must be withheld by the employer.

5.4 Other tax rules
The vesting of rights attaching to shares may give rise to income tax in certain circumstances if the shares were subject to certain restrictions.

Payments made to the employee on account of the right to any income inherent in the shares as well as on account of any increase in value in the shares are deemed to be employment income.

6. Taxation of share disposals
6.1 If the employee sells shares, the difference between the market value of the shares on the date of acquisition and the sale proceeds will be subject to tax at the rate of 20% for the 2010 tax year. The annual positive balance between capital gains and capital losses arising from the sale of shares and debt securities during that year is subject to an exempt amount of up to €500.

6.2 If the shares are bought back from the employee by the employer or by a group company, the gain may be taxed as employment income (and not as a capital gain).

7. Employee benefit trusts
Trusts are not recognised under Portuguese law. If a Portuguese resident is a beneficiary of a discretionary employee benefit trust, he will not be taxable for that reason alone but he may be taxed when he actually receives a benefit from the trust.

8. Data protection
Employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law
Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

Russian Federation

1. Securities law

Offer of securities: Employee share plans are not explicitly regulated under Russian law. Any offering under an employee share plan is, therefore, subject to general Russian legal requirements and restrictions.

Shares in foreign companies and options relating to shares in foreign companies.

With effect from May 2009, the Federal Law "On the Securities Market" No. 39-FZ dated 22 April 1996 (as amended) ("Securities Market Law") was significantly amended to incorporate provisions governing the "placement" and "circulation" of foreign securities in Russia. These amendments were followed by substantial additional amendments to the Securities Market Law, which introduced the regulation of derivative financial instruments from 1 January 2010. It is now the case that shares in foreign companies may only be offered in Russia to qualified investors unless:

- the shares are assigned with both an International Securities Identification Number (ISIN) and a Classification of Financial Instruments Code (CFI);
- the shares are classified as "securities" in accordance with the procedure established by the Federal Service for Financial Markets ("FSFM") (in the absence of such a qualification, foreign securities are regarded as "foreign financial instruments"); and
- such shares are admitted to public placement and/or public circulation in Russia.

Where the shares fail to satisfy any of the criteria referred to above, they may only be offered to employees who are qualified investors. The necessary transactions with the shares should be undertaken through a Russian broker (although it is understood that the securities market regulator intends to remove this requirement for employee option plans in the future). In addition, a prospectus should be registered with the FSFM if the shares in a foreign company transferred to employees are newly issued shares placed with employees for the first time.

Options relating to shares in a foreign company are likely to be treated as "foreign financial instruments" and as such may only be offered in Russia to qualified investors.

Under the current regulatory regime, a qualified investor (e.g. a broker) is not permitted to buy foreign securities or foreign financial instruments for, and hold them on behalf of, an individual non-qualified investor (e.g. an employee). However, the Securities Market Law allows an individual to obtain the status of a qualified investor. The criteria which an individual must satisfy to obtain this status includes, in particular, reference to the value of securities owned by the investor or the amount (value) of obligations under derivative contracts to which he is a party and the volume of his dealings in securities and derivatives.

There is a considerable degree of ambiguity in the new rules governing the offering of foreign financial instruments and securities in Russia. The application of these provisions will depend in particular on their interpretation by the FSFM.

So far the FSFM has not issued any relevant clarifications. Once such clarifications have been issued, the interpretation and implementation of the Securities Market Law may change. Therefore, advice in relation to the proposed launch of an employee share plan in Russia should always be sought on a case-by-case basis.

One possible alternative to an international employee share option plan for Russian employees would be to use a discretionary bonus plan (with the bonuses being calculated by reference to the value of a number of shares).

Shares in Russian companies and options relating to shares in Russian companies

The Securities Market Law allows the offer of shares in a Russian company to employees subject to compliance with certain regulatory and corporate requirements.

Depending on how an employee share option plan is structured, options relating to shares in a Russian company may be categorised as "mass-issued securities" under Russian law. If this is the case, their offer in Russia will be subject to the general requirements and restrictions of the Russian securities market legislation.

1.1 Regulatory issues

Shares in foreign companies
As discussed above, shares in a foreign company which are not admitted to public placement and/or public circulation in Russia may only be offered to qualified investors in Russia and the relevant transactions should be undertaken through a Russian broker. Furthermore, where shares transferred to the employees are newly issued shares, there is a requirement to register a prospectus in respect of those shares with FSFM.

Options relating to shares in foreign companies
To the extent that an option to buy shares in a foreign company is treated as a "foreign financial instrument" under the Securities Market Law, such options may only be offered to qualified investors in Russia.

Shares in Russian companies
The offer of newly issued shares in a Russian company is subject to a registration of the issue with the securities market regulator. However, registration of a prospectus is only required where the offer is to be made to more than 500 persons or otherwise to an indefinite number of persons.

Options relating to shares in Russian companies
The offer of "mass-issued securities" is subject to certain registration procedures with the securities market regulator. If the options are recognised

as "mass-issued securities", such options will be subject to the same procedures as for securities. However, these procedures are not designed for the registration of options offered in the context of an employee share plan. As a result, the registration of such options and, consequently, their offer, may be impeded.

1.2 Disclosure

Shares in Russian companies
If, in acquiring ordinary shares, a person reaches or exceeds a 5% shareholding threshold, then that person is obliged to disclose the acquisition. Where implementation of an employee share plan involves the registration of a prospectus, or where a prospectus has been previously published in relation to the underlying shares, an issuer will be subject to Russian disclosure rules. Such rules include, in particular, an issuer's obligation to disclose shareholders who hold in excess of a 5% shareholding.

Shares in foreign companies
There are no specific regulations in Russia governing the disclosure by a person of his acquisition of shares in a foreign company.

2. Exchange controls

Foreign currency transactions between a Russian resident and a non-resident are generally unrestricted. As a general rule, foreign currency transactions between Russian residents are prohibited. It is recommended that exchange control issues are analysed on a case-by-case basis.

3. Financial assistance

3.1 Russian company

A Russian company is not prohibited from providing financial assistance (including the provision of a security or a guarantee) to acquire its own shares or shares in a Russian parent company. However, the provision by a Russian company of financial assistance to acquire shares in its Russian parent company may require the Russian company to obtain certain corporate approvals.

3.2 Russian subsidiary of non-Russian company

A Russian subsidiary is not prohibited from providing financial assistance (including the provision of a security or a guarantee) to acquire its own shares or shares in its parent company. However, the provision by a Russian subsidiary of financial assistance to acquire shares in its parent company may require the Russian subsidiary to obtain certain corporate approvals.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Income Tax
An employee who acquires shares in his employing company or its parent company free of charge or at a discount to their market value will normally be liable to pay income tax. The tax is assessed on the so-called "material benefit" where shares are acquired at less than market value, i.e. on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares.

For the 2010 tax year the tax rate is 13% for Russian tax residents (individuals who have spent more than 182 days during 12 consecutive months in the Russian Federation) and 30% for non-residents.

4.1.2 Social security contributions
Social security contributions should not be due from employees, since, in general, social security contributions in Russia are payable by the employer rather than the employee.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction
Generally it is unlikely that any corporation tax deduction will be available to a Russian company for any costs related to granting shares to its employees for free or at less than their market value. However, if the opportunity to purchase shares in an employer's parent company at less than market value is expressly provided for in the relevant employment contract (e.g. by reference to an incentive plan offered by the employer, in which the terms and conditions for purchasing such shares at less than market value are set out), then the Russian employer could attempt to argue before the Russian tax authorities that the relevant costs are deductible.

4.2.2 Social security contributions
A Russian employing entity may become liable for payment of social security contributions in circumstances where it sells its shares to its employees at less than market value or otherwise absorbs the costs of the securities being sold to its employees at less than market value (e.g. if the costs are charged back to the Russian employing entity).

Although the position is less clear in circumstances where a Russian employing entity neither provides its securities to its employees at less than market value nor incurs any costs associated with the employee share plan, there may be good arguments to support the view that no social security contributions should be due from the employer. This is because, as a matter of Russian law, in the absence of partial satisfaction of the securities price or payments to third parties which are providing the securities, there are no payments or compensation connected to the employee's employment contract and, consequently, no basis on which social security contributions can arise.

Social security contributions are paid to the social security funds, (i.e. the Pension Fund, the Social Insurance Fund and the Compulsory Medical Insurance Fund). Social security contributions are capped on income up to RUB 415,000 for 2010. The total contribution rate is set at 26% for the 2010 calendar year and 34% for 2011.

4.3 Tax withholding

The employer has the duty to withhold individual income tax if an employee purchases shares at less than market value directly from the employer. However, it is less clear whether the withholding obligation arises for the employer if the shares are provided to an employee by the employer's parent company or another third party.

Should the duty to withhold arise, the employer must withhold the income tax from any cash payments made to the employee, i.e. from the employee's salary or other remuneration. If the employer is not able to withhold the income tax (e.g. if the amount of salary paid in cash is insufficient to cover the amount of income tax for the particular month in which it is to be withheld), the employing entity must notify the tax authorities of this in writing within one month after the date on which the withholding obligation arises. It should be noted that withholdings from an employee's salary made by an employer cannot exceed 50% of the employee's monthly salary.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no income tax or social security contributions charge on the grant of a share option.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option, at a rate of 13% for Russian tax residents and 30% for non-residents. As mentioned in paragraph 4.1.1, the tax is assessed on the so-called "material benefit" on the purchase of shares at less than market value. The comments made in paragraph 4.1.1 also apply here.

5.1.3 Social security contributions

Social security contributions should not be due from the employee.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

Generally, it is unlikely that a corporation tax deduction will be available for a Russian company that bears the cost of an employee share plan. However, if the opportunity to purchase shares in an employer's parent company at less than market value is expressly provided for in the relevant employment contract (e.g. by reference to an incentive plan offered by the employer in which the terms and conditions for purchasing such shares at less than market value are set out), then the Russian employer may at least try to argue before the Russian tax authorities that the relevant costs are deductible.

5.2.2 Social security contributions

Social security contributions will be due if the employee purchases the shares at less than market value directly from the Russian employer or if the Russian employer absorbs the costs of the securities being sold to its employees at less than market value otherwise (e.g. if the costs are charged back to the Russian employing entity). The comments made in paragraph 4.2.2 also apply here.

5.3 Tax withholding

Individual income tax should be withheld by the employing entity if the shares acquired by employees at less than market value are in the employing company. If, however, the shares are sold to employees by the parent company or by a third party, then the duty on the part of the employer to withhold the tax is less clear (see the comments in paragraph 4.3).

6. Taxation of share disposals

6.1 If an employee is a Russian tax resident, tax is charged at a rate of 13% for the 2010 tax year on the difference between the sale proceeds and the market value of the shares at the time when the shares were acquired (whether directly or by way of a share option), provided that the costs of acquisition (i.e. the amount paid and the tax paid, if relevant) are confirmed by supporting documents. In addition, the taxable amount can be decreased by certain other documented expenses in relation to those shares, e.g. brokerage fees etc.

6.2 In relation to non-resident individuals, the Tax Code states that they are taxed only on income arising from sources in the Russian Federation (whereas residents are taxed on their worldwide income). According to the Tax Code, income from sources in the Russian Federation includes, amongst other things, income from sales of securities in Russia. There may be a good basis for arguing that this provision primarily encompasses sales of Russian securities and that it should not apply to sales of foreign securities by non-resident employees (e.g. sale of shares in a Russian employing entity's foreign parent company), although there is a theoretical risk that the tax authorities may take a different view and claim that a non-resident making a disposal of foreign securities while staying in Russia is also liable for Russian individual income tax. If this risk ever materialises, the non-resident individual should be able to deduct their acquisition costs from the taxable proceeds, and the resulting taxable gain would be subject to 30% income tax.

7. Employee benefit trusts

7.1 Employee benefit trusts are not recognised under Russian law. Theoretically, a Russian company could attempt to claim a corporation tax deduction for a contribution made to the employee benefit trust, but as Russian law is not familiar with this concept, the likelihood of the tax authorities accepting such a deduction would appear to be fairly low.

7.2 From a strict legal perspective, an employee who is a beneficiary of a discretionary employee benefit trust should not be taxable for that reason alone. Such an employee should be taxed when he actually receives a benefit from the trust on the same principles as described in paragraph 4.1.1.

8. Data protection

8.1 Russian personal data legislation contains detailed requirements regarding the processing of an individual's personal data. Russian employment legislation also contains specific requirements with respect to the processing and transfer by an employer of an employee's personal data.

8.2 Subject to certain exemptions, an individual's written consent must be obtained for the processing (including collection, use and transfer) of the individual's personal data. The processing of specified categories of personal data is never exempt from a requirement to obtain such written consent. In particular, written consent is always required for cross-border transfers of an individual's personal data to countries with a lower standard of personal data protection than the standard stipulated by Russian law.

8.3 It is recommended that the documentation governing a particular employee share plan includes a template for each employee's consent for those transactions in relation to which personal data will be required for the purposes of implementing and administrating the plan.

8.4 In certain cases, a notification to the Russian personal data authority may be required prior to commencing the processing of an individual's personal data.

9. Employment law

Russian employment law does not contain any specific regulations with respect to employee share plans. As a general rule, Russian employment law is favourable to employees. However, there are no significant legal difficulties or obstacles from an employment law perspective in implementing an employee share plan in Russia. Due to the lack of specific regulations, it is recommended that advice is sought on a case-by-case basis.

Spain

1. Securities law

1.1 Offer of securities

Although an offer of securities to the public generally requires the publication of a prospectus, there are several exemptions from that requirement, including:

- if the offer is addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors;
- if the total amount of the offer is below €2.5 million over 12 months;
- if the securities are offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the securities are of the same class as securities already admitted to trading on a regulated market within the EU and a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

1.2 Regulatory issues

There are no other regulatory issues that affect the offering of securities to employees. However, the implementation of share plans by Spanish companies may be subject to certain corporate requirements.

1.3 Disclosure

There are no specific disclosure requirements for employee share plans. However, share plans in which directors and senior executives of Spanish listed companies can participate are subject to certain reporting requirements.

2. Exchange controls

There are no applicable exchange controls in Spain, although there are reporting requirements regarding payments abroad or collections received from abroad and the holding of accounts abroad. In addition, there are reporting requirements where an employee acquires shares in a non-Spanish company.

3. Financial assistance

3.1 Spanish company

A Spanish limited liability company (*sociedad anónima*) (SA) may provide financial assistance to facilitate the acquisition of its shares (or shares in another group company) by employees of that company. However, a *sociedad de responsabilidad limitada* (SL) may not make advance payments, grant credits or loans, give guarantees or provide financing for the acquisition of its own shares or those of companies within its group. While SAs expressly benefit from the employees' exemption from the prohibition on financial assistance, this exemption does not appear to apply to SLs.

3.2 Spanish subsidiary of non-Spanish company

See paragraph 3.1 above.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 tax year income tax rates range from 24% to 43%.

4.1.2 Social security contributions

An employee will be subject to social security contributions on the amount subject to income tax at a standard rate of 6.35% for indefinite employment contracts and 6.40% for fixed-term employment contracts for the 2010 tax year. The maximum earnings threshold for the 2010 tax year is €3,198 per month.

4.1.3 Tax exemption

The first €12,000 of taxable benefit received in the form of shares by an employee from his employer or a group company may be exempt from tax if certain conditions are met. The main conditions are that the offer is made to current employees who must then hold the shares for at least 3 years. If the shares are disposed of within 3 years, the previously tax free amount must be declared by the employee as personal taxable income. The employee will be taxed at the relevant rates applicable at the time of the share acquisition (plus interest for late payment).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

The costs involved in the administration of a share plan and employer social security contributions are deductible. When shares are purchased or a cost is incurred under a recharge arrangement with a foreign parent, the costs are also deductible.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount on the amount subject to income tax at a standard rate (for the 2010 tax year) of 29.90% for indefinite employment contracts, 31.10% for full-time fixed-term employment contracts and 32.10% for part-time fixed-term employment contracts, plus contributions for occupational accidents and illnesses (which range from 0.90% to 8.15%, depending on the type of activity carried out). The maximum earnings threshold for the 2010 tax year is €3,198 per month.

4.3 Tax withholding

The employer must withhold any income tax and social security contributions arising from the acquisition of shares.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option provided that it is not transferable.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 tax year income tax rates range from 24% to 43%.

5.1.3 Social security contributions
Social security contributions arise on the exercise of an option on the amount subject to income tax at a standard rate of 6.35% for indefinite employment contracts and 6.40% for fixed-term employment contracts for the 2010 tax year. The maximum earnings threshold for the 2010 tax year is €3,198 per month.

5.1.4 Tax exemption
The tax exemption referred to in paragraph 4.1.3 applies if the relevant conditions are met at the time of exercise of the option.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
The costs involved in the administration of a share plan and employer social security contributions are deductible. When shares are purchased or a cost is incurred under a recharge arrangement with a foreign parent, the costs are also deductible.

5.2.2 Social security contributions
Social security contributions arise on the exercise of an option on the amount subject to income tax at a standard rate (for the 2010 tax year) of 29.90% for indefinite employment contracts, 31.10% for full-time fixed-term employment contracts and 32.10% for part-time fixed-term employment contracts, plus contributions for occupational accidents and illnesses (which range from 0.90% to 8.15%, depending on the type of activity carried out). The maximum earnings threshold for 2010 is €3,198 per month.

5.3 Tax withholding

The employer must withhold any income tax and social security contributions arising from the exercise of the option.

6. Taxation of share disposals

The difference between the sale proceeds of the shares and (if lower) the market value of the shares on the date of acquisition is taxed at a fixed rate of 19% on the first €6,000 and at 21% on any excess, regardless of how long the shares have been held.

7. Employee benefit trusts

Trusts are not recognised by Spanish law. If a Spanish resident is a potential beneficiary of a discretionary employee benefit trust he will not be subject to tax unless he actually receives benefits. A Spanish company cannot claim a tax deduction for payments made to such a trust.

8. Data protection

In addition to certain other formalities that are required, unambiguous employee consent must be obtained for the collection, processing, assignment and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

9.1 Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable. In addition to these general employment law issues, specific issues arising in Spain are mentioned below.

9.2 On termination of employment in certain circumstances, options and similar rights granted under employee share plans can be taken into account in determining the compensation due to the former employee.

9.3 In relation to the treatment of outstanding stock option rights where the employees had been unfairly dismissed, the Labour Courts have decided in certain cases that employees were entitled to keep their existing option rights (including unvested rights) and that these should retain their normal vesting/exercise terms. The reasoning was that the employer could not evade its contractual obligations to the employees by acting unilaterally in an unfair matter. However, the decisions in termination cases which involve share options are issued on a case-by-case basis and are not long-established.

9.4 Unfortunately, the usual exclusion clause found in option contracts and the reference to the contract being governed by the laws of a foreign jurisdiction have generally been disregarded by the Spanish courts. However, these clauses are present in most incentive plans and do no harm.

Sweden

1. Securities law

1.1 Offer of securities

Although the offer of securities to the public generally requires the publication of a prospectus, there is an exemption from that requirement where securities are offered only to existing or former directors or employees (of the company or a group company) where the securities are of the same type as securities already admitted to trading on a regulated market within the EEA or related to such instruments, provided a document including information on the instruments and the reasons for and details of the offer is made available. In addition to the CESR Recommendations for such a document, the document must, in accordance with Swedish stock market practice, also include such information as is necessary to enable the investor to make a well-founded assessment of the offer and its consequences, including e.g. information relating to the offeror's financial position and the employee's tax position. There is also an exemption for an offer to fewer than 100 individuals (other than qualified investors) per state within the EEA. The grant and exercise of non-transferable options generally falls outside the Prospectus Directive on the basis referred to in paragraph 2 on page 5 of this guide.

1.2 Regulatory issues

There are no other regulatory issues which affect the offer of securities to employees. The company and employees must, however, comply with Swedish insider rules. In addition, the company must comply with good stock market practice when offering securities to its employees.

1.3 Disclosure

Managing directors, directors and other senior executives participating in employee share plans must notify their holdings to the Swedish Financial Supervisory Authority.

2. Exchange controls

When a payment exceeding SEK150,000 is remitted abroad, the bank making the remittance must notify the tax authorities.

3. Financial assistance

3.1 Swedish company

Under Swedish company law, a Swedish limited liability company may not provide loans or security to a shareholder, managing director or director of the company or a group company, or to a person related to such a shareholder, managing director or director. Furthermore, a Swedish limited liability company may not grant an advance, provide loans or security for the purpose of financing the acquisition of its shares or shares in a parent company or a fellow subsidiary in the same group of companies, although there is an exemption for advances, loans and security to employees if certain conditions are met.

3.2 Swedish subsidiary of non-Swedish company

It appears that a Swedish company is not prohibited from providing financial assistance (by way of loan or otherwise) for the purpose of financing the acquisition of shares in a non-Swedish parent company. However, the position is not certain and has never been tested in a Swedish court.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares in his employing company or its parent company free of charge or at a discount to market value will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the 2010 income year income tax rates range from approximately 31% to 57%. An exemption may apply if shares are offered at the same time to persons other than employees.

4.1.2 Social security contributions

An employee will be subject to social security contributions on the amount subject to income tax at a rate of 7% on income up to SEK 412,377 for the 2010 income year. The social security contributions reduce the income tax by a corresponding amount and are included in the marginal tax rates stated in paragraph 4.1.1.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

A Swedish subsidiary may be entitled to deduct any costs incurred or charged by the parent company. However, the position is complex and specific advice should be sought in each case.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount on the value of taxable benefits received by the employees at a rate of, generally, 31.42% for the 2010 income year. Employer social security contributions are not subject to any earnings caps.

4.3 Tax withholding

The employer is only liable to withhold tax from the employee's cash salary (and cash benefits) in the month in which the benefit is received. Where there is insufficient cash salary to cover the necessary withholding then the employee is required to pay the shortfall to the Swedish Tax Agency.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option if the option is deemed to be an employee share option and, as such, is not treated as a security. This will, generally, be the case if the option is not transferable and will lapse on cessation of employment. If the share option is deemed to be a security, and is deemed to have been fully acquired at grant, then taxation occurs at grant.

5.1.2 Exercise
There is an income tax charge on the exercise of an employee share option (which is not a security) on the difference between the market value of the shares at the date of exercise and the option exercise price. For the 2010 income year income tax rates range from approximately 31% to 57%.

5.1.3 Social security contributions
Social security contributions arise on the exercise of employee share options at a rate of 7% for the 2010 income year on income up to SEK 412,377. The social security contributions reduce the income tax by a corresponding amount and are included in the marginal tax rates stated in paragraph 5.1.2. If the share option is a security, social security contributions arise at grant (see paragraph 5.1.1).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction
A Swedish subsidiary may be entitled to deduct any costs incurred or charged by the parent company. However, the position is complex and specific advice should be sought in each case.

5.2.2 Social security contributions
Social security contributions arise on the exercise of an employee share option in circumstances where an employee has been covered by Swedish social security during the vesting period. The rate for employer social security contributions is, generally, 31.42% for the 2010 income year. Employer social security contributions are not subject to any earnings caps. If the share option is a security, employer social security contributions arise at grant (see paragraph 5.1.1.).

5.3 Tax withholding

The employer is only liable to withhold tax from the employee's cash salary (and cash benefits) in the month in which the benefit is received. Where there is insufficient cash salary to cover the necessary withholding then the employee is required to pay the deficit to the Swedish Tax Agency.

6. Taxation of share disposals

6.1 Any gain realised on a sale of shares is taxed as capital income at a rate of 30% for the 2010 income year.Capital gains on unlisted shares are, under certain circumstances, taxed at a rate of only 25%. The gain is the difference between the sale price and the acquisition cost of the shares (calculated according to the "average method"). The acquisition cost is the total of the price paid by the employee and the value of the taxable benefit at the time of acquisition.

6.2 Alternatively, if the shares are quoted, the tax payer may choose to calculate the acquisition cost as 20% of the net sale proceeds. Special tax rules apply to holders of shares in close companies.

7. Employee benefit trusts

7.1 Generally, a Swedish resident who is a potential beneficiary of a discretionary trust (but has no immediate right to any benefits and may not demand that shares are distributed), will not be subject to any tax on property held by the trust. This is the case provided that the trust is not deemed to be transparent for Swedish tax purposes. An employee will be subject to income tax when he receives a benefit or when he becomes entitled to receive a benefit.

7.2 It may be possible for an employer to obtain a corporation tax deduction if an employee benefit trust can be structured as a foundation under Swedish law. A Swedish subsidiary may be entitled to deduct any payments it makes to establish and/or fund the trust. However, the position is complex and specific advice should be sought in each case.

8. Data protection

Employee consent should be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

The United Kingdom

1. Securities law

1.1 Offer of securities

As noted in the first chapter of this guide, the offer of securities to the public generally requires the publication of a prospectus. There are certain exemptions from that requirement that may be relevant to employee share plans. Details of these exemptions are set out in the first chapter of this guide.

1.2 Regulatory issues

The operation of an employee share plan and the distribution of explanatory material normally falls within exemptions from the need for approval under the UK financial services legislation. The exemptions do not extend to the giving of investment advice and the wording of employee communications should be carefully reviewed to exclude investment advice.

1.3 Disclosure

Extensive disclosure obligations exist under UK financial services and markets law, in particular in relation to dealings in shares by directors and other persons discharging managerial responsibilities.

2. Exchange controls

There are no exchange controls in the UK.

3. Financial assistance

3.1 UK company

3.1.1 Public limited companies

Financial assistance is permitted in relation to the acquisition of shares in a UK company, provided that it is given for the purposes of an employee share plan subject to certain requirements relating to the company's net assets.

3.1.2 Private limited companies

As from 1 October 2008 the financial assistance provisions for private limited companies were, subject to some exceptions (e.g. where the financial assistance is given by a private subsidiary for the acquisition of shares in a public holding company), abolished in the UK. Financial assistance is now permitted in relation to the acquisition of shares in a private limited company, whether for the purposes of an employee share plan or otherwise.

3.2 UK subsidiary of non-UK company

A UK company is permitted to give financial assistance to its UK employees to enable them to acquire shares in a non-UK parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

An employee who acquires shares (which are not subject to restrictions) by reason of employment at a discount to market value or free of charge, will normally be liable to pay income tax. The tax charge is on the difference between the market value of the shares at the time of acquisition and the amount, if any, paid for the shares. For the tax year 2010-2011 (6 April - 5 April), tax rates range from 20% to 50%.

If an employee acquires shares by reason of employment and the shares are subject to a risk of forfeiture which will be lifted within 5 years of acquisition, there will be no tax charge on acquisition, unless the employee elects to pay tax at that point. There may be a later charge to income tax when the shares cease to be subject to the risk of forfeiture or cease to be subject to other restrictions (e.g. restrictions on dividend rights) or are disposed of by the employee. Additional tax charges may arise if share values are artificially reduced or increased.

4.1.2 Social security contributions

An employee will be subject to social security contributions on, broadly, the amount subject to income tax if the shares are "readily convertible assets" (RCAs). Shares will be RCAs if they are quoted on a stock exchange, are subject to trading arrangements (for example, if there is an internal market for the shares), or do not satisfy the conditions permitting the relevant employer to obtain a UK corporation tax deduction (see paragraph 4.2.1 below). The normal rate of employee social security contributions is 11% for the tax year 2010-2011. Employee social security contributions are capped at this rate at £844 per week, and arise at a rate of 1% for income in excess of this amount.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

An employer is entitled to a statutory corporation tax deduction in relation to benefits received by its employees under its (or its parent company's) employee share plans, subject to certain conditions. Generally, the deduction equates to the amount on which the employee is subject to income tax in respect of the acquisition of the shares.

If a statutory tax deduction is not available, it may still be possible to obtain a deduction in respect of contributions made to an employee trust which acquires shares pending transfer to employees. Even where a deduction is available in these circumstances, the deduction will be delayed until the employee incurs an income tax and social security contributions charge and careful structuring is needed to ensure that a deduction is obtained.

4.2.2 Social security contributions

Employer social security contributions will be payable in respect of shares provided to employees for free or at a discount if the employee is subject to social security contributions (see paragraph 4.1.2). Employer social security contributions are charged at a rate of 12.8% for the tax year 2010-2011. No earnings cap applies in the case of employer contributions.

4.3 Favourable tax regime

Employees may acquire shares free from income tax and social security contributions under a tax approved Share Incentive Plan (SIP). A SIP can be operated in several ways. First, employees can be awarded free shares in the employer or its parent company (free shares). Secondly, employees may use pre-tax salary to buy shares (partnership shares). The employer can provide an incentive to the employee to buy partnership shares by providing additional free shares on a matching basis (matching shares). Finally, employees can reinvest dividends received on shares held in the SIP to buy additional shares (dividend shares). A company may offer all or some of these types of share.

In order for a SIP to qualify for tax benefits, a number of conditions must be met. The most important conditions are that all UK employees of the company and its subsidiaries must be allowed to participate (although the company may impose a qualifying period of service subject to certain limits), no more than £3,000 worth of free shares can be given to any one employee each tax year (6 April - 5 April) and employees cannot authorise a deduction of more than £1,500 in each tax year (or 10% of annual salary, if lower) from their pre-tax salary to buy partnership shares. Shares awarded under the SIP must be held in a special SIP trust.

If a SIP is approved by HM Revenue & Customs, no income tax or social security contributions arise at the time shares are awarded to participants. Employees who keep their shares in the SIP for 5 years (or who are "good leavers" within that period) pay no income tax or social security contributions on those shares. The employee will only be liable to capital gains tax on any increase in the value of the shares after they have come out of the SIP.

An employer has a statutory right to deduct from its taxable profits contributions made to a SIP, provided the statutory requirements are met. There is also a statutory right to deduct the costs of setting up a SIP from taxable profits.

4.4 Tax withholding

The employer must withhold within strict time limits any income tax and social security contributions due if the shares are RCAs.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

There is no tax charge on the grant of a share option.

5.1.2 Exercise

There is an income tax charge on the exercise of a share option on the difference between the market value of the shares at the date of exercise and the option exercise price (plus the amount, if any, paid for the option). For the tax year 2010-2011, tax rates range from 20% to 50%.

5.1.3 Social security contributions

Social security contributions are charged on the exercise of options if the shares are RCAs at the time of exercise. The amount on which social security contributions are chargeable is broadly the same as for income tax. The normal rate of employee social security contributions is 11% for the tax year 2010-2011. Employee social security contributions are capped at this rate at £844 per week, and arise at a rate of 1% for income in excess of this amount.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

A company will be entitled to a statutory corporation tax deduction in relation to the exercise of options in the circumstances described in paragraph 4.2.1 above. The deduction will be the amount on which the employee is subject to income tax on the exercise of the option.

5.2.2 Social security contributions

There is a charge to employer's social security contributions if social security contributions are charged on exercise of an option (as set out in paragraph 5.1.3 above). Employer social security contributions are charged at a rate of 12.8% for the tax year 2010-2011 and no earnings caps apply.

5.3 Favourable tax regimes

5.3.1 CSOP

The tax approved company share option plan (CSOP) offers tax benefits if a number of conditions are met. The most important conditions are that the plan must only be open to employees and full-time directors, the option exercise price cannot be less than the market value of the shares at the time the option is granted and no individual employee may hold options under the plan with a total option exercise price of more than £30,000.

No tax or social security contributions will be chargeable on exercise of an option granted under a tax approved CSOP, provided that the option is exercised between 3 and 10 years from its grant date (or earlier in the case of specified "good leavers").

The CSOP is flexible as the company has discretion to select which directors and employees will be granted options under the plan and to decide the number of shares to which the option relates. As a result of the £30,000 individual limit, it is common for companies to use a separate plan to permit the grant of "unapproved" options in excess of the £30,000 limit. Unapproved options are taxed as described in paragraphs 5.1 and 5.2.

The statutory corporation tax deduction referred to at paragraph 5.2.1 is available even if the employee does not in fact pay income tax on the exercise of an option because the option is granted under an approved plan and is exercised in circumstances where the employee is not subject to income tax on exercise.

5.3.2 Sharesave plan

The tax approved sharesave plan is an all-employee share option plan under which employees are granted options to acquire shares on condition that they agree to make savings into a special savings account, with the savings being used to pay the exercise price at the end of the savings period. The most important conditions for approval of a sharesave plan are that all UK employees and full time directors must be offered the opportunity to participate in the plan (although the company may impose a qualifying period of service of up to 5 years), the option exercise price must not be less than 80% of the market value of the shares and the savings contract must last either 3 or 5 years.

No tax will usually be chargeable on the exercise of an option granted under a tax approved sharesave plan. Social security contributions are not payable in any circumstances in connection with the grant or exercise of an approved sharesave option.

The statutory corporation tax deduction referred to at paragraph 5.2.1 is available even if the employee does not in fact pay income tax on the exercise of an option because the option is exercised in circumstances where the employee is not subject to income tax on exercise of the option.

5.3.3 EMI plan

The enterprise management incentive plan (EMI) is an option arrangement which allows a company to grant options over up to £3 million worth of shares to employees. It is designed for smaller companies, particularly those in the high technology sector.

Options will only qualify for EMI treatment if a number of conditions are met, the most important of which are that only companies which are independent (i.e. not controlled by another company), have gross assets of no more than £30 million and operate in certain business sectors can grant EMI options. In addition, from 21 July 2008 EMI is only available to a company which (together with any subsidiaries) has fewer than 250 employees in aggregate.

Although options are usually granted under plan rules, the rules do not need to be approved by HM Revenue & Customs. The option grant must be structured as an agreement between the grantor company and the employee. The employer must notify HM Revenue & Customs after a grant has been made.

No income tax or social security contributions will usually be chargeable on the grant or exercise of an EMI option provided that the exercise takes place within 10 years of grant and the option was granted at no less than market value at the date the options were granted. The disposal of shares is subject to capital gains tax. The tax advantages of EMI will be lost if an employee holds unexercised options under a CSOP and unexercised EMI options which together have an aggregate market value at the date of grant of the relevant options of more than £120,000.

5.4 Tax withholding

The employer must withhold within strict time limits any income tax and social security contributions due if the shares are RCAs.

6. Taxation of share disposals

6.1 On the sale of shares acquired free or at a discount to their market value, or on the exercise of an option which gives rise to an income tax charge on exercise, the employee will be subject to capital gains tax, based on the sale proceeds less the market value of the shares at the date they were acquired.

6.2 Where the employee was not subject to income tax on exercise of an option under the tax approved CSOP, sharesave plan or EMI, the employee will be subject to capital gains tax on the sale proceeds less the price paid for the shares under the option. Special rules apply to shares acquired under an approved SIP (see paragraph 4.3).

6.3 For disposals of shares made on or after 6 April 2008 and on or before 22 June 2010 a single CGT flat rate of 18% applied. For disposals of shares made from 23 June 2010 onwards, a new CGT rate of 28% applies, in addition to the existing rate of 18%. For individuals, the rate of CGT remains at 18% where their total taxable gains and income are less than the upper limit of the income tax basic rate band (£37,400 for 2010-2011). The 28% CGT rate applies to gains (or any part of gains) above that limit.

6.4 A UK tax resident is not subject to capital gains tax on the first £10,100 (2010-2011 tax year) of gains each tax year.

7. Employee benefit trusts

7.1 An employee who is a discretionary beneficiary of an employee benefit trust will not be taxable for that reason alone, unless and until he actually receives any benefits. At that point he may be taxed on the receipt of those benefits. In general, an employee who receives benefits from an employee benefit trust is taxed as if he had received the benefit directly from his employer.

7.2 A company may receive any statutory corporation tax deduction in relation to shares received by employees from an employee benefit trust (see paragraph 4.2.1 above). If this is not available, it may still be possible to obtain a deduction in respect of contributions made by the company to the employee benefit trust, although careful structuring will be needed to ensure that a deduction is obtained.

8. Data protection

8.1 Employees should be fully informed, in advance, of the collection, processing and disclosure of their personal information in connection with an employee share plan.

8.2 The processing should be covered by a registration with the office of the UK Information Commissioner and a series of general “data protection principles” set out in the Data Protection Act 1998 (DPA), should be followed. These include, for example, a requirement that all processing should meet one of a series of specific justifying conditions and requirements in relation to general fair processing, security and destruction when information is no longer needed. Further restrictions will apply if employee information is to be transferred outside the European Economic Area.

8.3 In many cases, companies have taken the approach of obtaining employees’ consent to the data processing in relation to an employee share plan as a means of meeting the specific justifying conditions. Some doubt has been expressed as to whether, strictly, such an approach is valid and a possible alternative approach may be for the data processing to be justified on the basis that it is necessary for the purposes of the legitimate interests of the company.

9. Employment law

Please refer to paragraph 4 on page 7 of this guide. This explains the employment law issues which are generally applicable to a greater or lesser degree in all the countries covered by this guide. There is a risk that employees may claim a right to continued participation in an employee share plan or that rights under a plan may be included in compensation on termination. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

10. Further information

A more detailed analysis of employee share plans in the UK can be found in Clifford Chance's publication "Employee Share Plans in the United Kingdom".

The United States of America

1. Securities law

1.1 Offer of securities

The sale of securities is regulated by both federal and state securities laws. The Securities Act of 1933, as amended (the "Securities Act") provides that all securities offered in the U.S. must either be (i) registered with, the Security and Exchange Commission (the "SEC"), or (ii) exempt from registration. Both the sale or grant and exercise of an option are considered to constitute the offer or sale of the underlying securities.

State securities laws (which also generally require that offers of securities must be registered or exempt) vary from state to state. Some states require certain filings or approvals before offers or grants can be made.

1.2 Regulatory issues

Generally, if the issuer is subject to, and is in compliance with the U.S. securities law reporting requirements (i.e. its securities are registered with the SEC), it can then register the securities on Form S-8, which is a short registration statement that applies to employee benefit plans. In addition, a prospectus is required to be distributed to plan participants, and summary information about the plan and the shares being offered to employees is required to be published.

At the federal level, there are various exemptions from the requirement to register the shares which might be available (although compliance with state law registration requirements would still be required). One of the most often used exemptions is Rule 701 under the Securities Act, for "Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans". To rely on this exemption, the issuer must not be an SEC-reporting company. Sales made in reliance on Rule 701 during any consecutive 12-month period may not exceed the greater of (i) $1 million (ii) 15% of the issuer's total assets or (iii) 15% of the class of securities offered. Additional disclosure requirements, discussed below, apply when $5 million of assets have been sold under the plan in a 12-month period.

Offerings to employees may also be made without registration in reliance on Rule 506 of Regulation D. Under Rule 506, an offering only to persons who are "accredited investors" is exempted under the Securities Act and no disclosure is required.

It is possible to combine reliance on these two exemptions, and, for example, rely on Rule 506 for offers and sales to employees who are accredited, and Rule 701 for other employees, in order to avoid additional disclosure requirements, although state-level regulation may dictate which exemption is used at the federal level.

Securities sold in the United States pursuant to an exemption from registration are "restricted" under U.S. securities laws and cannot be easily resold in the United States for 12 months.

1.3 Disclosure

1.3.1 Federal

Under Rule 701, an employer must disclose a copy of the compensatory benefit plan or contract to investors. In addition, if the aggregate sales price of the amount of securities sold during any 12 month period exceeds $5 million, the employer must also disclose certain additional information. Further disclosure obligations under anti-fraud, civil liability or other provisions of federal securities law may also apply.

Rule 506 only requires disclosure in the event that offers or sales are made to non-accredited persons.

1.3.2 State

Most states do not impose significant disclosure requirements on Rule 701 offerings. In addition, states are pre-empted from imposing disclosure requirements on Rule 506 offerings.

2. Exchange controls

There are no exchange controls in the U.S.A.

3. Financial assistance

3.1 US company

Generally, a US company is permitted to give financial assistance to its US employees to enable them to acquire shares in that company. However, a loan which is made to a director or executive officer of a publicly traded US company (or any transaction which could be deemed to be such a loan) may be prohibited under the Sarbanes-Oxley Act 2002. Otherwise, generally, employers can make loans to employees for the purpose of purchasing securities.

3.2 US subsidiary of non-US company

In general, a US company is permitted to give financial assistance to its US employees to enable them to acquire shares in a non US-parent company.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax

- **Shares:** An employee who acquires shares (which are not subject to any restrictions, as discussed below) would generally recognise ordinary compensation income equal to the fair market value of the shares received (less any amount paid for the shares). The rate of the employee's tax on the ordinary federal income recognised will be based on the individual employee's ordinary income tax rate (currently, in general, from 15% to 35%, depending on the individual's level of income). State and local tax rates vary by location.

- **Restricted stock:** Restricted stock is stock issued to employees that is subject to a "substantial risk of forfeiture" and is subject to transfer restrictions.

  The tax consequences of restricted stock are determined under Section 83 of the Internal Revenue Code of 1986, as amended (the "Code"). Generally, if stock is transferred to an employee in exchange for services, the employee is taxed when the stock is either transferable (free of transfer restrictions and transferable other than to the employer) or is no longer subject to a substantial risk of forfeiture ("substantially vested"). The amount of taxable income is the fair market value of the stock at the time that it becomes substantially vested less any amount that the employee pays for the stock. The rate of the employee's tax on the ordinary federal income recognised will be based on the individual employee's ordinary income tax rate (currently, in general, from 15% to 35%, depending on the individual's level of income). State and local tax rates vary by location.

The employee may make an election under Code Section 83(b) to include in income the fair market value of the stock, less any amount paid for the stock, within 30 days of the issue of the granted stock, regardless of applicable restrictions.If such an election is made, the employee does not recognise income when the forfeiture and/or transfer restrictions lapse.

Any dividends paid during the period of restriction are taxed to the employee as compensation income, and the employer will be entitled to a corresponding corporation tax deduction. If the employee makes an election under Code Section 83(b), dividends paid after the date of the election are taxed to the employee as dividend income, rather than compensation income.

4.1.2 Social security contributions

At the time the employee recognises compensation income on restricted stock (i.e. when the stock becomes substantially vested, or when the employee makes an election under Code Section 83(b)), the compensation income will be subject to Medicare taxes and social security taxes. Currently, the employee's share of (i) the Medicare tax is at a rate of 1.45% and (ii) the social security tax is at a rate of 6.2%. Social security taxes are not due on compensation income that exceeds the taxable wage base (currently $106,800 for 2010). (The actual full rates (including both employee and employer portions) for Medicare taxes and social security taxes are 2.9% and 12.4% respectively. However, these rates are divided equally between the employer and the employee).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction

- **Shares:** The employer is generally entitled to a corporation tax deduction equal to the fair market value of the shares (less any amount paid by the employee to acquire the shares) when the employee recognises ordinary compensation income with respect to such shares.

- **Restricted stock:** If the employee does not make a Code Section 83(b) election (see paragraph 4.1.1) the employer is generally entitled to a corporation tax deduction when the employee's rights to the stock become substantially vested (e.g. when no longer subject to a substantial risk of forfeiture and/or become transferable). If the employee does enter into a Code Section 83(b) election the employer is generally entitled to a corporation tax deduction at the time the election is made. In either case, the amount of deduction is equal to the amount of ordinary income recognised by the employee.

4.2.2 Social security contributions

At the time the employee recognises compensation income (i.e. when the stock becomes substantially vested, or when the employee makes an election under Code Section 83(b)) on restricted stock, the compensation income will be subject to Medicare and social security taxes. Currently, the employer's share of (i) Medicare tax is at a rate of 1.45% and (ii) social security tax is at a rate of 6.2%. Social security taxes are not due on compensation income that exceeds the taxable wage base (currently $106,800 for 2010). (The actual full rates (including both the employee and employer portions) for Medicare and social security taxes are 2.9% and 12.4% respectively. However, these rates are divided equally between the employer and the employee).

4.3 Tax withholding

The employer is required to withhold federal (and, generally, state and local) income and employment taxes when compensation income is recognised by the employee.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant

In general, at the time of grant of a share option, (unless the option is traded on the open market) no taxes will be owed or payable by the employer or employee.

5.1.2 Exercise

- **Non-qualified stock options:** The employee would generally have ordinary compensation income upon exercise equal to the excess (if any) of (i) the fair market value of the stock received upon exercise over (ii) the aggregate exercise price.In addition, compensation income is generally subject to applicable state and local income taxes.

  The rate of federal income tax on the income from the exercise of the option will be based on the individual employee's ordinary income tax rate (currently, in general, from 15% to 35%, depending on the individual's level of income). State and local tax rates vary by location.

  As noted in paragraphs 5.5 and 5.6 below, options over employer shares with an exercise price that is no less than the fair market value of a share on the date of grant should generally not raise any issues under Code Sections 409A and 457A (provided that the option has no other deferral features).

- **Incentive stock options:** Incentive stock options (ISOs) may only be awarded to employees of a corporation (as well as employees of certain subsidiary and parent entities). The exercise of an ISO generally will not result in any federal income tax consequences, except to the extent it results in an alternative minimum tax for certain taxpayers.

5.1.3 Social security contributions
The exercise of an ISO generally will not result in any federal Medicare or social security tax consequences, except in the event of a disqualifying disposition (e.g. where the ISO Holding Period, as described under paragraph 6.2 below, is not satisfied).

On the exercise of a non-qualified stock option, the compensation income arising on exercise (being equal to the excess of (i) the fair market value of the stock received on exercise over (ii) the aggregate exercise price) will generally be subject to Medicare taxes and social security taxes. Currently, the employee's share of (i) the Medicare tax is at a rate of 1.45% and (ii) the social security is at a rate of 6.2%. Social security taxes are not due on compensation income that exceeds the taxable wage base (currently $106,800 for 2010). (The actual full rates (including both the employee and employer portions) for Medicare and social security taxes are 2.9% and 12.4% respectively. However, these rates are divided equally between the employer and the employee).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction

- **Non-qualified stock options:** An employer is entitled to a corporation tax deduction upon the exercise by an employee of a nonqualified stock option. The amount of the deduction is equal to the ordinary income recognised by the employee.

- **Incentive stock options:** The exercise and qualifying disposition of stock acquired under an ISO will not provide any corporation tax deduction for the employer. However, the employer is entitled to a deduction for the amount the employee recognises as compensation on a disqualifying disposition e.g. where the ISO Holding Period, as described under paragraph 6.2 below, is not satisfied.

5.2.2 Social security contributions
At the time the employee recognises compensation income (i.e. when the employee exercises the stock options) the compensation income will be subject to Medicare and social security taxes. Currently the employer's share of (i) Medicare tax is at a rate of 1.45% and (ii) social security tax is at a rate of 6.2%. Social security taxes are not due on compensation income that exceeds the taxable wage base (currently $106,800 for 2010). (The actual full rates (including both employee and employer portions) for Medicare and social security taxes are 2.9% and 12.4% respectively. However, these rates are divided equally between the employer and the employee.)

5.3 Tax withholding

- **Non-qualified stock options:** At the time of exercise of a non-qualified stock option by an employee, an employer is required to withhold federal income and employment (e.g. social security, Medicare and unemployment insurance) taxes on the difference between the fair market value of the stock at the time of exercise and the exercise price.

- **Incentive stock options:** An employer is not required to withhold federal income and employment taxes in connection with the exercise of an ISO or a disqualifying disposition of the stock acquired by an employee pursuant to the exercise of an ISO.

5.4 Favourable tax regimes

5.4.1 Incentive stock options
ISOs may only be awarded to employees of a corporation (as well as employees of certain subsidiary and parent entities). An option will qualify for favourable tax treatment, if certain requirements are satisfied. These requirements include that, generally, the exercise price of the ISO must not be less than the fair market value of the underlying stock at the grant date. In addition, the fair market value of the underlying stock (determined at the date of grant) that are first exercisable by the employee in any one calendar year cannot exceed $100,000.

As noted below, grants that qualify as ISOs should generally not raise issues under Code Sections 409A and 457A.

5.4.2 Employee stock purchase plan
The purpose of an employee stock purchase plan is to provide eligible employees with the opportunity to acquire company stock through periodic after-tax payroll deductions. Such payroll deductions are applied during designated offering periods and are used to purchase shares of the company's common stock at the conclusion of the applicable offer period (often at a discount to the current fair market value). Under an employee stock purchase plan that meets the qualifications set out in Code Section 423, no taxable income is recognised by the employee either upon receipt of the purchase right, at the time of entry into the offering period or upon actual purchase of shares on the purchase date.

To qualify as an employee stock purchase plan under Code Section 423, certain requirements must be met. These requirements include that the exercise price must be at least 85% of the market price of the shares on the date the option is granted or, if so designed, may be the lower of such price and 85% of the market price on the date the shares are purchased. In addition, the maximum fair market value of stock that an employee may accrue the right to purchase under the plan and all similar plans in any calendar year cannot exceed $25,000.

As noted below, plans that qualify under Code Section 423 should generally not raise issues under Code Sections 409A and 457A.

5.5 Application of Code Section 409A

Code Section 409A generally provides that amounts deferred under a non-qualified deferred compensation plan are currently includible in a service provider's gross income to the extent such compensation is not subject to a substantial risk of forfeiture and was not previously included in the service provider's gross income, unless certain requirements are met. Further, non-complying deferrals are subject to an additional 20% tax and additional interest on any underpayment of taxes. As noted above:

5.5.1 Restricted stock
Restricted stock is generally not subject to Code Section 409A.

5.5.2 Stock options

Stock options are generally not subject to Code Section 409A if (i) granted at fair market value (ii) with respect to "service recipient stock" and (iii) do not have any additional deferral features.

During 2010 the Internal Revenue Service ("IRS") issued guidance intended to provide relief to employers who inadvertently or unintentionally fail to comply with the written document requirements under Code Section 409A. The relief generally only applies (i) to inadvertent and unintentional failures to comply with the documentary requirements under Code Section 409A and (ii) if the service recipient (e.g. the employer) takes commercially reasonable steps to (A) identify all other non-qualified deferred compensation plans that have a document failure that is substantially similar to the document failure initially identified and corrected, and (B) corrects all such failures in a method consistent with the issued guidance. The relief is generally not available (i) if the service provider or service recipient's federal income tax return is under examination with respect to non-qualified deferred compensation for any taxable year in which the document failure existed, (ii) if the failure is directly or indirectly related to participation in a "reportable transaction" under Treasury Regulation Section 1.6011-4(b)(2), (iii) if the non-qualified deferred compensation plan is linked to certain other non-qualified deferred compensation or qualified plans, or (iv) with respect to the issuance of a stock right.

Under a special rule, if the non-qualified deferred compensation plan is corrected in accordance with the guidance on or before December 31, 2010, the plan may be treated as having been corrected on January 1, 2009 for purposes of applying such relief and would be treated as if the plan complied with Code Section 409A from the time documentary compliance was required.

5.6 Application of Code Section 457A

Code Section 457A (added under the USA "bailout" legislation in Autumn 2008) generally provides that amounts deferred under a non-qualified deferred compensation plan of a "non-qualified entity" are currently includible in a service provider's gross income to the extent such compensation is not subject to a substantial risk of forfeiture. However, if the deferred compensation is subject to Section 457A but is not readily determinable at the time it is otherwise includible in gross income (e.g. generally at the time of vesting), such amount will be subject to an additional tax of 20%, plus interest on any related underpayment of taxes when such amount becomes determinable. For these purposes, a "non-qualified entity" is generally (i) any non-US corporation unless substantially all of its income is (a) "effectively connected with the conduct of a trade or business in the US", or (b) subject to a "comprehensive foreign income tax", and (ii) any partnership unless substantially all of its income is allocated to "eligible persons".

Similar to the provisions of Code Section 409A, restricted stock and stock options granted at fair market value are generally not subject to Code Section 457A. However, (unlike Code Section 409A) plans that provide for a right to compensation based on the appreciation in value of an equity unit (such as a stock appreciation right) of the service recipient will generally be subject to Code Section 457A unless they are, among other things, certain partnership interests or stock appreciation rights that are settled in shares.

In general, compensation will not be subject to Code Section 457A if the compensation is paid within 12 months following the end of the service recipient's taxable year in which the right to such amount is no longer subject to a "substantial risk of forfeiture" (the "short-term deferral" exception under Code Section 457A). However, for the purposes of Section 457A, a substantial risk of forfeiture means only that a person's right to compensation is conditional upon the future performance of substantial services by such person (e.g. generally a time-based forfeiture restriction).

6. Taxation of share disposals

6.1 Non-qualified stock options

The employee will pay tax at capital rates on any subsequent sale of the stock. If the shares are held for more than one year, the capital gains tax rate on any gain from the sale will be taxed at a maximum rate of 15% (2010 tax year). If the shares are held for one year or less, then the employee will have to pay taxes on any gain from the sale at the employee's personal tax rate. The tax is based on the difference between the employee's basis in the stock (i.e. the market value of the stock on exercise) and the amount received from the sale of the stock.

6.2 Incentive stock options

If the employee holds the shares received upon the exercise of the ISO for one year from the date he or she exercised such ISO and for two years from the date he or she was granted such ISO (collectively, the "ISO Holding Period"), then the employee will not have any compensation income upon exercise, but will recognise long-term capital gain (or long-term capital loss) upon a subsequent sale of the shares. The amount of long-term capital gain (or loss) recognised is equal to the difference between the amount realised upon the sale of the shares and the purchase price for such shares (i.e. the exercise price of the ISO). The employer would not be entitled to a related corporation tax deduction. (Special rules may apply in the case of non-cash exercises).

If, however, the employee makes a disposition of the shares prior to the expiration of the ISO Holding Period (a "disqualifying disposition"), the employee generally will recognise ordinary income, and the employer generally will be entitled to a corporation tax deduction, in each case equal to the excess of the fair market value of the shares on the date of exercise over the exercise price. Any excess of the amount realised upon such disposition over the fair market value on the date the ISO Holding Period began will be long-term or short-term capital gain depending on the holding period (as determined for purposes of the capital gains rules) involved.

7. Employee benefit trusts

Employee benefit trusts are not generally used for share-based schemes in the USA. Any employee benefit trust for executives would generally need to be a "rabbi trust" and therefore subject to claims of general creditors of the employer. Non-U.S. trusts relating to arrangements not exempt from Section 409A could cause immediate taxation (and penalties) upon vesting of an employee's interest pursuant to Section 409A.

8. Data protection

8.1 With respect to share plans and incentive compensation, there is no comprehensive data protection law that covers all personal data. Instead, there is a collection of various sector-specific federal and state laws that regulate only certain classes of data.

8.2 Notwithstanding the lack of specific data laws, it is recommended that plan enrolment forms should include a written consent, whereby plan participants should expressly authorise the use and disclosure of their data for all purposes of the plan. In addition, plan administrators should comply with (i) any privacy policy of a sponsor employer and (ii) document-retention laws that require retaining tax-related information to be retained for certain periods.

9. Employment law

9.1 When an equity plan is amended or discontinued, a claim for breach of contract may arise. Plan provisions should be drafted so as to (i) prevent leased and/or temporary employees, and/or independent contractors from claiming rights under the plan, and (ii) allow for unilateral termination or amendment of the plan, which should include an acknowledgment of such by the employee. Typically, such termination and amendment is subject to the caveat that the changes cannot negatively affect a grant already made without the grantee's agreement.

9.2 Employers may not prohibit employees, either directly or indirectly, from participating in the plan based on any prohibited grounds of discrimination.

9.3 Although not required by law, plan documents should be available in English unless the participant speaks the language in which the documents are written. Otherwise, the effectiveness of the terms or an obligation of employees that are a matter of contract law may be in question.

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