

GREECE

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INTRODUCTORY NOTE

The concept of employee share participation schemes was first introduced into Greek legislation some ten years ago and the practice of operating such schemes is not widespread. In the current legal context, many issues concerning the grant of shares from Greek subsidiary companies of foreign parent companies based abroad to their Greek employees through a Stock Option Plan are regulated. However, taking into consideration that Greek company and tax legislation governing this institution are at a fairly early stage, a number of practical issues cannot be addressed in this legal analysis in a firm and authoritative manner.

Furthermore, it should be emphasized that the relevant legislation is primarily geared towards enabling the Greek employees of a company to participate in the distribution of its profits or offering them a benefit for their productivity rather than to serve as a performance incentive for individual employees.

1. SECURITIES LAWS

(a) Offering Options or Securities to Employees

Greek Securities Laws do not restrict offers of stock options or securities to Greek employees. Employee stock offerings were not possible under Greek Securities Law about fifteen years ago. Under the current legal system, they are possible •without any securities exemptions. Their general principles are regulated by a number of laws (the most important are Laws Number 1 682/1987 and 1731/1987 and presidential decree Number 30/1988).

Furthermore, the combined interpretation and application of both the legislation on Stock Option Plans (including presidential decrees, etc. governing the estate of Stock Option Plans (these laws do not form a separate body of law but are instead a part of the broader category of Commercial Law)) and the general principle of Labor Law (according to which all employees are entitled to fair and equal treatment) provide that all employees (salaried, part time, etc.) have the right to acquire shares. However, discrimination on objective grounds, such as the seniority, the position held by the employee, or the amount saved, are considered lawful criteria for establishing eligibility for participation in an incentive scheme. In other words, it is

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possible that the Stock Option Plan includes different provisions for employees and executives. For example, a Stock Option Plan may offer the possibility to employees to save up to 10% of their monthly wages and to executives 15% or more.

The application of Greek Securities Laws does not depend either on the number of individuals to whom the "securities offer" or "Stock Option Plan" is made, or on the value of that particular offering made to all relevant employees. There are no such limitations imposed under Greek Securities Laws.

Regarding the implementation and function of a Stock Option Plan and the offering of securities or stock options to employees of a Greek subsidiary by a company having its seat abroad, the requirements to be met are determined by the correspondent governing legislation. Especially with regard to multinational companies, whose shares are usually listed in a Stock Exchange abroad, it is very customary that the same criteria and conditions are determined for the employees of all the companies worldwide as a group. As a result, shares of the parent company may be granted to all employees under the same terms and conditions with amendment for any Greek securities laws.

(b) Ability to Offer: (i) Treasury Shares, (ii) Existing Shares or
(iii) Unissued Shares

Treasury shares do not exist under Greek legislation. Furthermore, our laws do not permit unissued shares to be used to satisfy obligations under a compensatory stock plan. Consequently, only existing shares may be offered in such instances.

As state above, treasury shares do not exist from a Greek point of view, therefore their offer would be impossible under Greek law by a Greek company. On the other hand, a foreign company may use treasury shares for a subsidiary in Greece under the condition that the foreign law governs the Stock Option Plan. Any amounts derived from the exercise of these shares will be taxed according to Greek Law as income.

Similarly, a foreign company may use unissued shares for a subsidiary in Greece under the condition that the foreign law governs the Stock Option Plan. Any amounts derived from the exercise of these shares will also be taxed according to Greek Law as income.

(c) Advantages or Disadvantages of Using Unissued Shares

Please see Section 1(b) immediately above.

(d) Application of Securities Exemptions to Independent
Contractors (i.e., non-employees)

The rules regarding Greek Securities Laws apply to all the employees of the company (i.e., Societe Anonyme), as well as to those engaged by its artiuua companies.

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Moreover, the legislation on Stock Option Plans specifically applies even to independent contractors, such as the Board of Directors and Managers, who do not have a contract of employment. However, there will be a differentiation with respect to independent contractors on taxation matters pertaining to the stock options.

Independent contractors can also participate in the company's Stock Option Plan under the same terms and conditions (the same obligations and rights) as the company's employees. There are no further requirements.

(e) Continuing Securities Requirements for Future Offerings Under the Same Compensatory Stock Option Plan

In case of future offerings under the same compensatory Stock Option Plan, any additional future grant requires first of all the payment of social security contributions. The payment of social security contributions is independent of taxation in Greece. Regardless of the Greek employee's participation in the Stock Option Plan, social security contributions will be paid once a month before the payment of the salary takes place. Consequently, if any difference occurs between the market value of the shares at the time of exercise and the price paid by the Greek employee, such difference is subject only to taxation and not to social security contributions.

In case of a salary based relationship, social security contributions are withheld and paid by the Greek employer each month. Each Greek employer is required to pay in social security contributions at a fixed percentage of the Greek employee's monthly salary including the taxable value of employee shares benefits. Social security contributions are equivalent to 43.86% of the Greek employee's monthly salary. From the above amount 15.9 % is paid by the Greek employee and withheld from his/her salary by the Greek employer. For this reason, where an employer company operates a Stock Option Plan, it should deduct each month from the Greek employee's monthly salary its insurance contributions. Consequently, monthly saving contributions will be made by the participant after the deduction of social security contributions.

(f) Other Securities Filings

Since Greek Securities Laws do not apply to an employee compensatory stock plan offered to Greek employees, there are no types of annual securities filings required.

(g) Translation of Foreign Language Documents

There are no explicit legal provisions imposing the translation of Foreign Language Documents into Greek. However, practical reasons dictate their translation. It should be also noticed that, since the principal features of the Stock Option Plan should be presented to the Greek employees through a promotion and informal] 'e material, it is obvious that the relevant documentation should be in Greek.

2. COMMUNICATIONS AND DATA PROTECTION LAWS

(a) Method of Communication of the Offer (i.e. manner, timing, form and content)

Communication material (i.e., application forms, explanatory booklets, and letters of invitation) must not contain misleading information or advertising and should explain the principle features of the Stock Option Plan. Detailed information and clarification should always be provided when requested by the personnel or the Greek company's employee organization. What determines whether information is misleading is based on the general principles of Greek Law (such as good faith and trust in the relations between the Greek employer company and its Greek employees). The communications aim at advising the Greek employees of the Stock Option Plan's details, as well as of the company's obligations and rights. Therefore, the communication has to contain useful and actual information. Furthermore, the Law on Advertising forbids the inclusion of advertisements on such documents.

(b) Electronic Communications

Electronic communications are permitted pursuant to the relevant Greek legislation. Information such as guidelines, employee booklets and incomplete application forms given to Greek employees at the time of invitation to participation in the Stock Option Plan, should not constitute "personal data", provided that such documents do not detail any specific information related to any particular employee.

Moreover, the European Directive 1999/1993 on electronic signature has been ratified by Greece under Presidential Decree No 150/25-6-2001. Recent legislation provides that electronic signatures will be considered as hand written provided that certain requirements are set out in the legislation in relation to the authenticity and security are met.

In all cases, the use of restricted access (e.g., through the use of a password) is vital for the protection of each Greek employee's personal data. Access to personal data should be restricted to the individual Greek employee and the data controller only (please see Section 2(c) immediately below).

(c) Impact of Data Protection or Data Privacy Rules

Greek legislation provides full protection of personal data through a number of laws and regulations (including Law Number 2472/1997, which implemented the European Convention on personal data protection). By virtue of the relevant provisions, Greek employees (and possibly independent contractors) shall give their consent through the application form (e.g., stock option agreement) regarding their participation in the Stock Option Plan.

Furthermore, if personal data of the Greek participants are to be disclosed to a third party for purposes related to the implementation of the Stock Option Plan.

Greek individual must consent in writing to the disclosure of personal data and may also specify how the data can be used.

Law Number 2472/1997 and the recent decision of the Greek Data Protection Authority have simplified the procedures on the data privacy and protection control for countries which are non-members of the European Union. According to these two laws, if the employer company has adhered to Safe Harbour Principles (namely a number of Principles of minimum protection, which are almost identical to the requirements set forth in the Council's Directive on the same subject and followed by member States of the European Union), then the only requirement for complying with the data privacy rules is the written consent of the individual, whose personal data will be transferred.

In case the employer company had not adhered to Safe Harbour Principles, then the employer company needs to obtain the individual's written consent, as well as sign (together with its Greek subsidiary) a contract which contains the standard clauses provided by the EC Directive 95/46/EC and commit themselves that they will follow these clauses.

3. EXCHANGE CONTROL LAWS

(a) The Purchase and Holding of Foreign Securities

Greece has ratified the European Directives 88/861/EEC and 92/122/EEC and abolished all exchange controls on the movement of capital between Greece and other member states of the European Union.

Furthermore, there are no legal barriers on currency exchange transactions between Greece and non-member States of the European Union which are regulated by the Governor of the Bank of Greece.

However, even though there are no restrictions on the transfer of funds to take up an offer of shares, the payment must be routed through a commercial bank in Greece, which is obliged to keep records of all the above-mentioned exchange transactions.

(b) Responsibility for Exchange Control Applications

Since there are no exchange controls under Greek Law affecting the purchase or holding of foreign securities, there is no exchange control application requirement. Therefore, no exchange control permit is required.

(c) Transaction Reporting Requirements

Since there are no exchange controls under Greek Law affecting the purchase or holding of foreign securities, there is no exchange control transaction reporting requirement. There are no situations in which the currency transactions should be reported to governmental authorities.

(d) Application of Exchange Controls to Cashless Exercise Facilities

Since there are no exchange controls under Greek Law affecting the purchase or holding of foreign securities, there is no exchange control restrictions which affect the ability to use cashless exercises. Cashless exercises are permissible under Greek law.

4. LABOR LAWS

(a) Obligation to Consult with Employee Organizations
(e.g., Works Councils)

There is no legal requirement for the Stock Option Plan to be approved by the Greek employees' organizations. Consulting with the worker's representatives on the Share Option Plan however ensures continued working stability and might also lead to a more flexible and suitable compensatory stock plan. Nevertheless, the SA company (i.e., Societe Anonyme) has the obligation to draft a detailed list of all beneficiaries and submit it to the Employees' Council. In Greece, the role of unions is quite active. It is better to provide Work Councils with a list of the Greek employees who will participate in the Stock Option Plan for the reasons above-mentioned, as well as for them to check if the principle of equal treatment is observed.

(b) Incorporation of Benefits into Employees' Contract of
Employment

Benefit under a Stock Option Plan will not be automatically incorporated into the Greek employee's labor contract. However, special provisions should be made into the contract of employment regarding this matter. It is possible for the Stock Option Plan to provide that the benefits will not be incorporated into the labour contracts of Greek employee, as well as provide that they will be part of labour contracts.

(c) Inclusion of Benefits as "Pensionable" Earnings

According to Greek legislation, the benefits under the Stock Option Plan are not pensionable. Therefore, benefits received by a Greek employee under a Stock Option Plan will not be included within the definition of "salary" for the purposes of determining what his or her pension is upon retirement.

(d) Creation of Vested Rights

The offering of the Stock Option Plan may create vested rights to the benefit of the Greek employees. However, it is also possible that the compensatory stock plan can mention that any rights shall relate to a specific compensatory stock plan's cycle and that the participant employees shall not have any right to continuous participation in the Plan.

In general, the company that is terminating the Stock Option Plan cannot simply .

"cancel" the Stock Option Plan. Taking into consideration that any Stock Option plan mentions its duration (i.e., three years), as well as the causes for its denouncement on the part of the employer company or the Greek employees (which have to be important), the employer company should also state in the Stock Option Plan such eventualities.

(e) Recovery of Benefits in an Action for Unfair Dismissal

In case of an action for unfair dismissal, all potential benefits under the compensatory stock plan are recoverable (because usually the compensatory stock plan states that in case a Greek employee is dismissed, he or she shall be entitled to the compensatory stock plan's benefits up until the date of dismissal).

Greek Law is very protective of employees' rights. Although it is not specially stipulated, it is arguable that a Greek employee cannot forfeit his rights under a Stock Option Plan (i.e., rights already vested, rights the employee has on shares already exercised). It would be hardly permissible under Greek Law to deprive an employee from his income.

5. TAXATION AND WITHHOLDING LAWS

(a) Compensatory Stock Plans Benefiting from Favourable Tax Treatment

The position on the matter whether there are "favourable" tax benefits available in relation to a Stock Option Plan or not is rather equivocal. The responses provided are based either on (i) the tax legislation in force or (ii) the unofficial ad hoc position of the Ministry of Finance.

According to the first opinion, any benefit (i.e., shares delivered on cashless exercise) given to the Greek employees •with regard to the compensatory stock plan may be considered untaxable, because Greek Law does not regulate such cases.

The second opinion is that the benefit may be considered as a donation given by a third party (and not the Greek employer company). In this instance, it should be subject to a donation tax of 20% on the Amount Under Taxation. The "Amount Under Taxation" is the profit that the beneficiaries may have in case there is a difference between the price of the shares the day of the grant of option and the day of the exercise of the option.

The Ministry of Finance recently expressed a third opinion, which, however, is not official and cannot elucidate the matter. The Ministry of Finance characterized the benefit, which the Greek employees acquire as a result of the grant of shares at a favorable price, as "income from salaried sendees" (which is required to be added to the totality of the Greek employee's income)."In such case, it is speculated that the amounts, -which will burden the foreign company because of the grant of stock option to its worldwide personnel, shall be deducted from its gross income. However, the cost specifically associated with stock option exercise by Greek employees shall

be transferred to the Greek subsidiary company as a wages payment expense, which will be taken into consideration for the deduction from the Greek company's gross income.

(b) Relationship, if any, between Tax Approvals and Other legal Exemptions

Under Greek legislation, there is no relationship between Tax Approvals and other exemptions (i.e., from security laws or exchange control laws). Additionally, since there are no favorable tax regimes for stock options under Greek Law, there is no need to have any interrelation of laws under Greek law for compensatory stock plans.

(c) Taxation of "Stock Option"

At the time of granting the stock option, during employee participation in the Stock Option Plan, there is no taxing obligation on the Greek employees' part, since the latter do not acquire any "benefits" "which constitute income.

At the time that all pre-determined terms of the Stock option Plan mature (i.e., typically referred to as "vesting"), there is still no tax obligation for the Greek employees, even though they have the right at this point to exercise their right to buy the pre-determined shares, but still have not yet acquired same.

However, when the Greek employees have exercised their rights and the shares have passed to their ownership, provided that the stock exchange price of the share at the time of the exercise of the stock option is greater than that of the pre-determined preferential price in the Stock Option Plan, this difference (the "spread") will be taxed pursuant to one of the three possibilities analyzed under Section 5(a) immediately above.

Because there are three methodologies for paying tax on the benefit received at exercise, the employer company should state the three possibilities in the Stock Option Plan and that it is not clear how the taxation will be conducted in Greece with regard to this matter.

Greek employees will be taxed on the stock option when the latter is exercised. The taxable value is the difference between the cost of acquisition of the shares and the full market value of the shares at the time of exercise. The value is taxed at a progressive rate between 5% and 45% inclusive. The Greek employer must withhold the tax from the salary. Furthermore, dividends paid to Greek residents from abroad are taxable at a progressive rate between 5% and 45% inclusive. Any capital gains derived from the sale of shares is subject to tax at 0.6% if the foreign shares are listed.

In case the spread is charged to the Greek employer (the Greek subsidiary' company), the following rule applies: provided that the spread is paid by the Greek employer (the Greek subsidiary) whether directly (A) to the foreign parent company that would buy the shares for the employees or (B) to the Greek employees through their salaries, and provided that the Greek employees would pay all the amount 0%

to the foreign parent company as the exercise price, the spread, acquired at the time of the exercise of the stock option, would be regarded as taxable income of the recipient Greek employees. The acquisition of shares by the Greek employees will be taxed according to the applicable income tax scale for that particular Greek employee. Moreover, insurance contributions, stamp duties and other contributions would be measured on the basis of the spread. Any reimbursement agreement with respect to the Greek subsidiary and the parent company has to be effected in written.

(d) Taxation of "Stock Awards"

This subject matter is not directly treated under Greek law. However, any benefit derived may be considered as a donation given to the Greek employees by a third party (not the Greek subsidiary) and, therefore, is subject to donation tax paid by the Greek employee.

(e) Deducibility of Expenses Incurred by the Local Subsidiary with Respect to the Compensatory Stock Plan

The parent company may charge back the costs of issuing shares at an undervalue to the Greek subsidiary at the time of the exercise of stock options by Greek employees. The charge back should be accounted for as salaries and be in principle deductible by the Greek subsidiary. The Greek employee is taxed on the basis of a progressive income tax scale on the date of exercise, assuming that this difference coincides with the amount charged back to the Greek subsidiary. If the Stock Option Plan provides for a reimbursement or chargeback to the Greek subsidiary, this should be accomplished by a written agreement.

Even under the hypothesis that the stock options were untaxable, if the local subsidiary took a tax deduction thereby, that would not render the stock options taxable to the Greek employee.

(f) Social Security Contributions (i.e., employment taxes)

It is required that the Greek employer pay an amount equivalent to the Greek employee's monthly salary, including the taxable value of employee share benefits, in social security contributions before the securities offering. From the above amount, 15.9% is paid by the Greek employee and withheld from his or her salary by the Greek employer. The Greek Employer pays the other 27.96%. For a further discussion, please see Section 1(e) immediately above.

(g) Filing and Withholding Requirements

At present, under Greek Law the Greek employer is not required to file a tax return or provide any other information to any governmental agency on grant, vesting or exercise.

With regard to untholdino requirements, as was already mentioned, if the parent

company charges back the costs of issuing shares at an undervalue to the Greek subsidiary at the time of the exercise of stock option, the charge back should be accounted for "as salaries" to the Greek employees and be in principal deductible by the Greek subsidiary. In that case, the Greek employee is taxed based on a progressive income tax scale in the difference between the grant price and the market price of the shares on the date of exercise. The Greek employee has 20% tax withholding obligation. Such 20% withholding will be collected by the Greek employer.

In order for the Greek subsidiary to claim the deduction, it has to re-report the value of benefit received by the Greek employees to the local tax authorities, and withhold and pay payroll income tax and both employer and employee social security contributions.

6. ALTERNATIVE COMPENSATORY STOCK ARRANGEMENTS

(a) Stock Savings Plan (also referred to as Employees Stock Purchase Plans)

(i) Additional Legal Requirements

There are no further legal requirements or legal restrictions on Greek employees depositing savings with a foreign saving carrier or holding saving with a bank in Greece.

(ii) Payroll Deductions

Since most savings plans are accomplished via payroll deductions, the Greek employer may proceed to collect payroll deductions. These amounts will be withheld in order for the Greek employees to participate in the Stock Savings Plan. The Greek employer usually deposits the aforementioned amounts to a separate bank account. The interest on a Greek saving bank account is taxed only at 15% (which is withheld by the bank itself).

(iii) Use of Employee Share Trusts

It is possible under Greek legislation that a nominee (i.e., an offshore trust) can hold securities on behalf of Greek employees. There are no additional issues arising from the holding of shares in an employee share trust.

(iv) Entitlement to Interest on Savings

The Greek employees are entitled to the interest, which is offered by the Bank in which the savings are held.

(b) Stock Appreciation Rights

(c) Stock Awards

(d) Stock Units/Phantom Stock Awards

Even though Greek law does not provide for Stock Awards, Phantom Stock Awards, etc., this does not constitute an obstacle in the implementation of such a compensatory

stock planⁱⁿ Greece. However, the law of the foreign company's seat, which permits such possibilities, must govern the above plan and this law must be stated in the compensatory stock plan.

7. MISCELLANEOUS ISSUES

(a) Recognition of Choice of Foreign Law

Any dispute arising from the contract is regulated by the legislation chosen by both the contracting parties. Therefore, the stock plan document will control on what choice of law applies. If the compensatory stock plan provides that a particular jurisdiction's law will apply and govern, then, in general, this will contractually be recognized in Greece, unless imposition of such choice of law would undermine the employee's rights.

(b) Financial Assistance for the Purchase of Shares

Under Greek Law it is prohibited that a Greek company gives financial assistance to its Greek employees to enable them to acquire shares in its foreign parent company.

(c) Acceleration of Vesting or Forfeiture

The Greek legislation in force does not make any provisions with regard to early vesting or forfeiture. As such, acceleration and forfeiture clauses may be included in compensatory stock plans and pose no additional or new legal issues under Greek law.

(d) Taxation of Arriving and Departing Employees

There are no special provisions regulating the taxation of arriving and departing employees. The appropriate way to handle tax treatment is very complicated and very dependent on the relevant tax treaties involved. Due to the complicated nature of taxation in these circumstances, advice from Greek counsel should be sought before a compensatory stock plan is extended in order to confirm whether special features or conditions should be used in Greece.

(e) Liability for Stamp or Other Documentary Duties

There are no stamp duties or transfer taxes applicable in Greece with respect to compensatory stock plans.

CONCLUSION

In conclusion, Stock Option Plans are implemented successfully in many Greek subsidiaries of foreign companies. However, various problems arise, as there is not yet a legislative framework in Greece to monitor the implementation of such Stock Option Plans. The above-mentioned taxation system is expected to undergo changes with the issuance of a new Law or Presidential Decree expected in the near future. Such new legislation is hoped to be based on the tactics adopted by other countries and regulate all above issues in a clear manner.