CLIFFORD CHANCE

Guide to International Share Plans 2013

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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 a number of key jurisdictions across the globe.

It has been prepared with the assistance of Clifford Chance colleagues in Amsterdam, Beijing, Brussels, Frankfurt, Hong Kong, Madrid, Milan, Moscow, New York, Paris, Prague, Shanghai and Warsaw. We are also grateful for the assistance provided by the following firms in the other countries covered by this Guide: Grama Schwaighofer Vondrak Rechtsanwälte (Austria), Kromann Reumert (Denmark), Sorainen Law Offices (Republic of Estonia), Roschier Holmber, Attorneys Ltd. (Finland), Bahas, Gramatidis & Partners (Greece), Lakatos, Köves & Partners (Hungary), AZB and Partners (India), McCann FitzGerald Solicitors (Republic of Ireland), Skudra & Udris (Republic of Latvia), LAWIN (Republic of Lithuania), Serra Lopes, Cortes Martins & Associados (Portugal), ECOVIS LA Partners Tax (Slovakia), Edward Nathan Sonnenberg (South Africa) and Mannheimer Swartling Advokatbyrå (Sweden). Further details of all the advisers who 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 several key jurisdictions. 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 an International Guide to Employment.

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 email 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 Kevin Thompson or Sonia Gilbert. Further information about Clifford Chance and our network is set out at the end of this Guide.

International employee share plans: 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 principal legal and tax issues relevant to establishing and operating share plans in 27 key jurisdictions across the globe.

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 securities laws, 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 principal regulatory issues?

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

2.1 Securities laws: All EU member states implemented the EU Prospectus Directive (Prospectus Directive) as originally enacted. This means that the securities law position became relatively harmonised across the EU, although there were some differences between some member states due to the way it was implemented at a national level. More recently, a number of helpful amendments were made to the Prospectus Directive, which came into force on 31 December 2010. The changes are effective when they are implemented into the national laws of member states. Member states had until 1 July 2012 to adopt these changes.

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. Taking into account the 1 July 2012 changes, these exclusions/exemptions include those listed below:

- An exemption where the securities of the employer (or an affiliated company) are admitted to trading on a regulated market in the EU, or where the issuer has its head office or registered office 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"). Companies which are established outside the EU will qualify for the employee share plans exemption if they are listed on an EU regulated market 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 (an "Equivalence Decision"). In such a case, the company will be required to provide "adequate information", including the short information document referred to above.
- An exemption where the offer of securities is to fewer than 150 individuals per EU member state.
- An exclusion where the total consideration under the offer is less than, generally, €5 million (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 European Securities and Markets Authority (ESMA) (formerly 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, ESMA published some "short-form prospectus" rules that continue to benefit many non-EU listed third-country companies operating employee share plans in the EU. A short-form prospectus can omit various items of information (as set out in ESMA guidance) which would otherwise be required under a full prospectus. Despite the various recent amendments to the Prospectus Directive mentioned earlier, the availability of the short-form prospectus remains important to many third country companies as no Equivalence Decision has yet been issued by the EU Commission (and none is expected before the end of 2014 at the earliest).

As noted above, member states had until 1 July 2012 to implement the changes to the employee share plans exemption (and the other changes made to the Prospectus Directive). Although not all member states originally met this deadline, the member states included in this Guide have all now implemented the changes (although in some cases with local variations as referred to in the relevant chapters of this Guide). Companies, particularly third-country companies which do not have a listing on an EU regulated market, should seek specific advice on the application of the Prospectus Directive to them.

Regulatory authorities in different member states continue to have differing interpretations of the relevant provisions. As a result, where companies offer securities in more than one member state, it remains necessary to confirm how each member state is applying the Prospectus Directive.

Further information on the effects of the Prospectus Directive and the relevant 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.

Offers of securities in certain other jurisdictions (such as Hong Kong and South Africa) may in principle require the publication of a prospectus, although there are exemptions for employee share plans if certain conditions are met.

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 Netherlands and 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 affecting employee share plans in the EU but exchange controls do exist in other European countries. In the Slovak Republic, some exchange control reporting requirements may apply, although in practice they should not normally be relevant for employee share plans. The USA does not have exchange controls affecting employee share plans.

Exchange control restrictions/requirements do apply in certain other jurisdictions, including China, India and South Africa.

2.4 Financial assistance: Most countries covered in this Guide 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, Germany, France, Hong Kong, India and the UK) there is an exemption from the financial assistance rules for employee share plans. Recent legislation in the Netherlands has partially abolished the restrictions and prohibitions in relation to financial assistance, in particular for private companies. 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 EU law, 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.

In some countries outside the EU (e.g. China, Hong Kong, India and South Africa), employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan.

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, Italy, South Africa 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. However, 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).

In certain other countries (e.g. Hong Kong), the employee is not subject to tax on any gain realised on a sale of shares.

3.4 Tax favoured share plans: In order to encourage wider share ownership, the USA and a number of other countries, including France, Ireland, South Africa 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. The use of an employee benefit trust (and whether or not it is recognised as a concept) can affect the tax treatment of an employee share plan for both 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 employment law issues in a country (e.g. in Denmark and India) 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 difficulty for the employing group 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 2013 tax year" indicate the rates of tax applicable during some or all of 2013. 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, each section on securities laws refer to the offer of both options and shares.

This Guide is based on applicable laws in force on 1 September 2013.

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, allotted or to be allotted to existing or former directors or employees:

- by their employer; or
- by an affiliated undertaking

provided that the company has its head office or registered office in the EU and 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 exemption also applies to companies established outside the EU whose securities are admitted to trading either on an EU regulated market or on a third-country market. In the latter case, the exemption applies provided that adequate information, including the aforementioned document, is available in a language customary in the sphere of international finance and provided that the EU Commission has adopted an equivalence decision regarding the third-country market concerned. The Austrian Financial Market Authority (Finanzmarktaufsicht) (FMA) can submit a request for an equivalence decision to the Commission, including the reasons for the equivalence of the third-country market.

Public offers made to fewer than 150 natural or legal persons per EEA member state (other than qualified investors) are exempt from the obligation to publish a prospectus.

A further exemption for public offers applies where the total consideration under the offer across the EU over a period of 12 months is less than €100,000.

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 2013 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 €4,440) 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 2013 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 2013 is an employee's gross monthly salary of €4,440.

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 2013 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 €4,440 for 2013.

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 2013 (the upper income limit for social security contributions is a gross monthly salary of €4,440).

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 For shares acquired on or before 31 December 2010 the tax treatment depends on how long the shares are held prior to disposal. 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. 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.

6.2 For shares acquired after 31 December 2010 all sales are subject to tax at a rate of 25%, regardless of how long the shares are held prior to disposal.

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 pages 7-8 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 formalities need be adhered to with the FSMA:

(a) for an offer of securities to fewer than 150 individuals in Belgium;

(b) for an offer where the total consideration in the EEA is less than €100,000. This exemption also applies to an offer of securities free of charge;

(c) for an offer of transferable securities to existing or former directors or employees by their employer (or an affiliated company) whose head office or registered office is 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. Companies which are established outside the EU qualify for the exemption if they are listed on an EEA regulated market or if they are listed on a "third country market" which is recognised by the EEA Commission as being governed by a regulatory regime equivalent to the EU regulatory regime (an "equivalence decision").

1.1.2 Offers to employees under the Prospectus Directive where a prospectus is required (e.g. an offer by an employer established outside the EU of securities which are listed on a "third country market" for which there is no equivalence decision) can benefit from the "short-form prospectus" regime adopted by ESMA in February 2009.

1.1.3 Offers to employees that fall outside the scope of the Prospectus Directive and 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. However, the FSMA 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 150 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.

Where any offer of securities is subject to prospectus approval by the FSMA, then the marketing materials should also be submitted to the FSMA 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 2013 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 18% 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 9%, rather than 18%, 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 they 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 pages 7-8 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.

China

1. Securities law[1]

1.1 Offer of securities: In the case of Chinese companies, the offer of securities to the public generally requires approval by securities regulators and the publication of a prospectus. However, there is an exemption from the prospectus requirement for offers of securities to fewer than 200 persons. There is no approval or filing regime for employee share plans offered by foreign listed companies. Therefore in practice foreign listed companies have operated share plans in China (and in some cases where the number of participants exceeds 200) without approval from the regulator and without publishing a prospectus.

1.2 Regulatory issues: There are no significant regulatory issues which affect the offering of securities to employees by a foreign listed company. Securities regulators in China tend not to regulate share plans offered to employees by a foreign listed company. Different considerations apply for Chinese companies, which are outside the scope of this Guide.

1.3 Disclosure: There are no disclosure requirements in China for a foreign listed company. Different considerations apply for Chinese companies, which are outside the scope of this Guide.

2. Exchange controls[1]

2.1 Exchange control restrictions are relevant where an employee share plan is implemented by a foreign listed company. Where the awards granted under the share plan are share awards or linked to the value of shares (e.g. phantom awards) and the employees are Chinese nationals or foreign nationals who have been resident in China for more than one year, exchange control requirements will apply.

If either the Chinese subsidiary or an employee transfers funds into China in connection with an employee share plan operated by a foreign listed company (e.g. the employee transferring share sale proceeds back into China), the Chinese subsidiary needs to apply to the competent local office of the State Administration of Foreign Exchange ("SAFE") for the approval and registration of the employee share plan with SAFE. If the Chinese subsidiary or employee transfers funds out of China (e.g. paying the exercise price under share options), the Chinese subsidiary will, in addition, need to apply annually for a foreign exchange quota.

SAFE procedures involve:

- a one-off filing applying for approval and foreign exchange registration;
- quarterly filings detailing share awards granted or vesting and shares sold, together with other information about the employee share plan; and
- specific filing requirements imposed by the local office of SAFE where the relevant plan is registered.

Once SAFE approval and registration has been obtained, the Chinese subsidiary would need to set up a special foreign exchange account through which all payments must be transferred to comply with the SAFE approval.

2.2 Although phantom awards are in principle caught by the exchange control restrictions, cash awards paid out locally (that is, where there is no cross-border transfer of funds) should not be caught.

3. Financial assistance

3.1 There is no prohibition on a Chinese company giving financial assistance (e.g. a guarantee or pledge of its assets), for the acquisition of shares in itself or its holding company (whether it be a Chinese or foreign holding company) except in specific circumstances on a takeover of a company. However, there are other restrictions that may make it more difficult for a Chinese company to provide a guarantee or pledge of its assets in favour of a foreign parent company due to, for example, foreign security regulations (under Chinese law, a Chinese company generally needs to obtain regulatory approval before it can provide a guarantee or security in favour of a non-Chinese beneficiary or for a non- Chinese debtor).

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. As a general rule, 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. The taxable amount is treated as salary income and income tax is payable at an employee's marginal rate of 3% to 45%. The taxation treatment of more complex plans (for example those involving restricted shares) should be considered on a case-by-case basis.

4.1.2 Social security contributions: As the acquisition of shares is not cash income, there are no social security implications for the employee unless

[1] The references to foreign companies in sections 1 and 2 of this chapter on China apply only to foreign companies which are listed. The rules applying to foreign private companies are unclear and advice should be sought on a case-by-case basis.

the relevant local authority in charge of social security requires otherwise.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction: A corporation tax deduction is available for a Chinese listed company limited to the employee's gain on acquisition (as salary expenses are deductible only in the year of acquisition). The position in relation to Chinese subsidiaries of foreign companies and Chinese non-listed companies is unclear. A deduction may be available if the costs of providing shares are recharged to the Chinese subsidiary under a written recharge agreement between the Chinese subsidiary company and foreign parent company. However, this depends on the facts of the case and detailed tax advice should be sought on a case-by-case basis.

4.2.2 Social security contributions: No social security implications arise for the employer.

4.3 Tax withholding

The employer will be required to withhold any income tax due from employees.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant: There is no income tax on the grant of a share option unless the option is freely transferrable (e.g. listed and tradable on a stock exchange).

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 acquired and the option exercise price paid by the employee. The amount is treated as salary income and income tax is payable at an employee's marginal rate of 3% to 45%. The taxation treatment of more complex plans (for exampe those involving restricted shares), should be considered on a case-by-case basis.

5.1.3 Social security contributions: As this is not cash income, there are no social security implications for the employee unless the relevant local authority in charge of social security requires otherwise.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction: A corporation tax deduction is available for a Chinese listed company limited to the employee's gain on exercise (as salary expenses are deductible only in the year of exercise). The position in relation to Chinese subsidiaries of foreign companies and Chinese non-listed companies is unclear. A deduction may be available if the costs of providing the shares are recharged to the Chinese subsidiary under a written recharge agreement between the Chinese subsidiary company and foreign parent company. However, this depends on the facts of the case and detailed tax advice should be sought on a case-by-case basis.

5.2.2 Social security contributions: No social security implications arise for the employer.

5.3 Tax withholding

The employer will be required to withhold any income tax due by employees.

6. Favourable tax regime

The employer may apply to the local tax authority for preferential individual income tax treatment for its employees, which allows share plan income to be spread across the number of months the employee worked in order to be entitled to this income (maximum of 12 months), rather than being added to the employee's salary income for the particular month when the share plan income was received. This generally results in a lower tax rate for the employee.

7. Taxation of share disposals

On the sale of shares, the employee will be liable to income tax on any gain, being the difference between the sale proceeds and the market value of the shares on the date of acquisition. A flat rate of 20% applies.

8. 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.

9. Data protection

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

10. Employment law

Please refer to paragraph 4 on pages 7-8 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.

Czech Republic

1. Securities law

1.1 Offer of securities: The Czech Republic has implemented the changes to the Prospectus Directive referred to in the first chapter of this Guide. 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 and offered or allotted (ii) to existing or former employees or persons discharging managerial responsibilities (iii) by their employer or by an affiliated undertaking. The exemption applies provided that a document containing information on the number and nature of the securities and the reasons for and details of the offer is delivered to the Czech National Bank and is made available to the addressees of the offer. The exemption is only available if the employer or affiliated undertaking (a) has its registered office or head office in the EEA or (b) has its registered office outside the EEA and is offering securities which are admitted to trading either on an EEA regulated market or on third country regulated market (provided that the Commission has adopted an equivalence decision in relation to that third-country market).

There is also an exemption for an offer to fewer than 150 individuals in the Czech Republic.

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 2013 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 2013 tax year. There is a cap of CZK1,242,432 on the amount which is subject to employee social security (i.e. retirement and sickness benefits) contributions. There is no cap on the amount which is subject to compulsory health insurance contributions for the 2013 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 2013 tax year the rate of employer's social security contributions is 34%. There is a cap of CZK1,242,432 on the amount which is subject to employer social security (i.e.

retirement and sickness benefits) contributions. There is no cap on the amount which is subject to compulsory health insurance contributions for the 2013 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 2013 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 2013 tax year. There is a cap of CZK 1,242,432 on the amount which is subject to employee social security (i.e. retirement and sickness benefits) contributions. There is no cap on the amount which is subject to compulsory health insurance contributions for the 2013 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 2013 tax year the rate of employer's social security contributions is 34%. There is a cap of CZK 1,242,432 on the amount which is subject to employer social security (i.e. retirement and sickness benefits) contributions. There is no cap on the amount which is subject to compulsory health insurance contributions for the 2013 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 2013 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 in advance during the six month holding period.

7. Employee benefit trusts

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

7.2 Under Czech tax law, it is currently unclear whether an employee who is a beneficiary of a discretionary employee benefit trust should be taxable at the time a contribution is made into the trust. However, there is a view that the employee 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 pages 7-8 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 consist of three tiers.

- Tier 1 applies to offers of securities with an aggregate value above €5,000,000 and to admission of securities to trading on a regulated market.
- Tier 2 applies to offers of securities with an aggregate value of between €1,000,000 and €5,000,000.
- Tier 3 applies to offers of securities with an aggregate value below €1,000,000.

Under the Danish prospectus regime, the main rule is that any offer of securities to the public with an aggregate value above €1,000,000 (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 two categories namely:

- those applying to the offer of securities; and
- those applying to the admission of securities to trading on a regulated market ("Listed Securities").

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

Exemptions for offers of securities

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

- **150-offeree exemption**. Offers of securities addressed to fewer than 150 natural or legal persons in Denmark (even if the offer is being made to more than 150 individuals in a different EU state).
- **Employee exemption**. 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 issuing company, provided that the issuing company has its head office or registered office within the EU/EEA. The exemption is also available for companies established outside the EU/EEA whose securities are listed either on an EU regulated market or on a third-country market. In the latter case the exemption applies provided that the EU Commission has adopted an equivalence decision regarding the relevant third country market.
- **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 €1,000,000.

Elements for listings of securities

The following are the relevant exemptions (for listings of securities on a regulated market) 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**. 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. 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.

  Under the specific employee share plan exemption for both offers of securities and listings of 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. If the employer is established outside the EU/EEA, the document must be made available in a language customary in the sphere of international finance.

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. 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 2013 tax year the highest marginal income tax rate is 51.7% (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 2013 tax year on the amount subject to income tax. No other social security contributions apply.

4.1.3 Favourable tax regime: Tax-favoured share plans have been available in Denmark for many years and have been widely used. However, following a change of Government during 2011, all Danish tax-favoured plans were abolished in November/December 2011. The transitional rules are complicated but, broadly, the abolition of the tax-favoured plans only affects new grants made after the abolition, whereas grants made prior to the abolition are not affected.

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.

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 51.7% for the 2013 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 51.7% for the 2013 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 2013 tax year on the amount subject to income tax.

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.

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 2013) is between 27% and 42% depending on the level of the employee's income from shares etc. and provided the employee is not trading in shares. 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 pages 7-8 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 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 whose employment is terminated as described above is also entitled to receive a share, proportionate to the length of his employment in the accounting year, of the grants of share options to which he would have been entitled, according to agreement or custom, had he still been employed at the end of the accounting year or at the date of grant.

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.

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

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

The Act also provides an exemption from the requirement to publish a prospectus where securities are offered to current or former employees or members of management or of the supervisory board of the issuer (or of an affiliated company) where the headquarters or the registered office of the company issuing the securities is in an EEA member state. Where this is the case, the issuer must produce and make available a document which contains relevant information regarding the securities being offered and the nature of the offer. The sufficiency of the required information set out in the document is determined by the Estonian Financial Supervisory Authority on a case-by-case basis. The exemption also applies to companies established outside the EEA whose securities are admitted to trading on an EEA member state regulated exchange or on a third country market in respect of which the EU Commission has adopted an equivalence decision. The exemption applies provided that adequate information, including the information document referred to above, is available in English.

1.2 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 (other than issues relating to the publication of a prospectus) are unlikely to be an issue in relation to offers of shares to employees in Estonia.

1.3 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

3.1 Estonian Company: The Estonian Commercial Code prohibits a company from making loans for the purchase of its own shares. Similarly, the granting of guarantees or otherwise providing security for such loans is prohibited. No specific exemptions apply in relation to employee share plans.

3.2 Estonian subsidiary of non-Estonian company: An Estonian subsidiary is prohibited from providing financial assistance in the form of loans or guarantees for the acquisition of shares in its parent company. No specific exemptions apply to non-Estonian parent companies or in relation to employee share plans.

4. Taxation of share acquisitions

4.1 Employee tax and social security contributions

4.1.1 Tax: Where an employee acquires shares free of charge or at a discount to market value, the benefit to the employee (being the difference between the market value of the shares at acquisition and the amount, if any, paid for the shares) is taxable as a fringe benefit. Fringe benefits give rise to income tax liabilities for the employer but not for the employee.

4.1.2 Social security contributions: Fringe benefits give rise to social tax liabilities for the employer but not for the employee.

4.2 Employer tax and social security contributions

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

4.2.2 Tax and social security contributions: The employer will be liable to income tax and social tax on the fringe benefit. Fringe benefits are charged to income tax at a rate of 26.58% and charged to social tax at a rate of 33% on the difference between the market value of the shares acquired and the price paid for them by the employee.

5. Taxation of share options

A new law relating to the taxation of options was introduced from 1 January 2011. Where an option is granted by either the employing company or a company in the same group as the employer, then "fringe benefit" taxes are payable at the time of exercise by the option recipient's employer. These new rules generally only apply to options granted from 1 January 2011, but options granted before that date may also be able to benefit from the exemption from fringe benefit tax (to the extent it would otherwise have arisen) as set out in paragraph 5.2.3 below.

5.1 Employee tax and social security

5.1.1 Grant: As a general rule, no income tax or social tax liability arises on the grant of a share option.

5.1.2 Exercise: As a general rule, there is no income tax charge for the employee on the exercise of an option.

5.1.3 Social security contributions: There is no social tax liability for the employee on the exercise of an option. However, the employer is liable to social tax on the fringe benefit at exercise – see further paragraph 5.2.2. below.

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 is taxed on the option as a fringe benefit at exercise i.e. it pays corporate income tax and social tax on the value of the shares at exercise less any amount paid by the employee. Corporate income tax is payable at the rate of 26.58% and social tax at the rate of 33%.

5.2.3 Exemption from fringe benefit tax: The liability to fringe benefit taxes arise at exercise. However, if the option is exercised three years or more after the date of grant then no fringe benefit tax liability arises for the employer.

6. Taxation of share disposal

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 deductible 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 or legislative requirement.

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 amendments to the Prospectus Directive referred to in the first chapter of this Guide have been implemented in Finland. The amended 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 150 individuals in Finland (even if the offer is being made to more than 150 individuals in a different EU state).

Where the total consideration of the offer is less than €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 and the price, if any, paid for the shares. For 2013, the highest rate of tax is 57.90% (based on certain assumptions, including certain social security contributions and certain specific automatic deductions).

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 1.30%, a daily allowance premium of 0.74%, a pension premium of 5.15% and an unemployment security premium of 0.60%) (2013 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 1.47%.

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 2.04% for 2013) 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 2013, the highest rate of tax is 57.90% (based on certain assumptions including certain social security contributions and certain specific automatic deductions).

5.1.3 Social security contributions: No pension or other social security related payments other than the medical care premium at a rate of 1.74% 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 rate of 30% on the sale proceeds less the acquisition cost. Where the aggregate capital income exceeds €50,000 during the calendar year, then the rate is 32% on the excess over €50,000.

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 the actual acquisition cost, the employee may elect to deduct 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 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 do not require the employee's consent and 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 pages 7-8 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 150 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).

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) does not require a prospectus provided that a document is made available by the issuer containing information on the number and nature of the securities as well as the reasons for and details of the offer and provided that:

- the issuer has its head office or registered office in an EU Member State; or
- the issuer, if it is established outside the EU, has its financial securities admitted to trading on either an EU regulated market or on the market of a third country. In the latter case, the exemption will apply provided that adequate information (including the information document referred to above) is made available in at least one language customary in the sphere of finance and provided that the European Commission has adopted an "equivalence decision" in relation to the third country market in question.

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 directors 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 director'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 director until the termination of his position. Information regarding this decision should be communicated to the shareholders of the company on an annual basis.

In accordance with the AFEP- MEDEF Governance Code for listed companies (as amended in June 2013), the management board of a French listed company must disclose to shareholders, on an annual basis, information relating to the compensation (of all types) for executive directors of the company, including stock options and free shares. This disclosure is followed by an advisory vote ("say on pay") on the individual compensation of each executive director. If the general shareholders' meeting issues a negative vote, the board is required, following proposals made by the remuneration committee, to deliberate on the issue and immediately thereafter publish a notice on the company's website, stating how it intends to deal with the shareholders' expectations as expressed at the shareholders' meeting.

Listed companies adhering to the AFEP-MEDEF Governance Code must provide details on the implementation of these measures in the annual report (or some other shareholder document) setting out any areas of non-compliance and giving reasons therefore ("comply or explain").

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 Employee tax and social security contributions

4.1.1 Taxation of share acquisitions

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 2013, the rate of income tax varies from 0% to 42.7% (after a 5.1% deduction of social contributions from the taxable base). Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

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.

4.1.2 Taxation of share options

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 2013 tax year, the income tax rates range from 0% to 42.7% (after a 5.1% deduction of social contributions from the taxable base). Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution. 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.

4.1.3 Taxation of share disposals (options and shares)

An employee may be liable to capital gains tax on the disposal of shares. The disposal gain (i.e. the difference between the sale price and the market value of the shares at the time the employee acquired the shares) is subject to income tax at progressive rates that vary for 2013 from 0% to 42.7% (after a 5.1% deduction of social contributions from the taxable base). A proportional rebate may apply, at a rate dependent upon the holding period for the shares:

- 20% of the gains are exempt for holding periods of at least two years but less than four years;
- 30% of the gains are exempt for holding periods of at least four years but less than six years;
- 40% of the gains are exempt for holding periods of six years or more.

The holding period is calculated from the acquisition of the shares or the exercise of the option (as appropriate).

The disposal gain is also subject to social contributions at a rate of 15.5% (with no rebate regardless of any holding period).

Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution, which applies to both the acquisition gain and the disposal gain.

4.2 Employer tax and social security contributions

4.2.1 Taxation of share acquisitions

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 security contributions at an approximate rate of 45-50% subject to earnings caps. The applicable rates and earnings caps depend on the nature of the employment.

4.2.2 Taxation of share options

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.

4.2.3 Tax withholding

The employee is responsible for paying any income tax due but the employer is responsible for withholding employee social security contributions. See also paragraph 6 for the tax treatment of internationally mobile employees.

5. Tax favoured employee share plans

5.1 Employee tax and social security contributions

5.1.1 Favourable tax regime for options

Conditions:
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 ("FCC"). 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 FCC. However, the French tax authorities have confirmed that only the "essential" French law requirements need to be met for the favourable tax regime to apply to a foreign parent company. A non-exhaustive list of such requirements has been published in the tax authorities' official guidelines. The scope of these guidelines is not clearly defined but further guidance in particular cases could be sought from the tax authorities if required.

Tax regime:
The tax-favoured regime for options was modified by the Finance Act 2013. In particular, for options granted from 28 September 2012, the acquisition gain (i.e. the difference between the market value of the shares on exercise and the exercise price, less any gain taxed on exercise) is subject to income tax at progressive rates (see further below). In addition, for options granted as from 28 September 2012, it is no longer necessary to comply with a minimum lock-in period (although a minimum lock-in period of 4 years from the grant date is still required for tax- favoured options granted before 28 September 2012).

Grant: the grant of the options triggers no taxation or social security contributions for the employee (although an employer social security contribution liability does arise, see paragraph 5.2.1).

Exercise: Where an approved option relates to shares quoted on a stock exchange, no tax or social security contributions arise on exercise unless 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 2013 tax year, varies from

0% to 42.7%. (after a 5.1% deduction of social contributions from the taxable base). Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

In addition, employee social security contributions at a rate of approximately 20%-30% are due.

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. Under rules introduced by the Finance Act 2013, the regime governing the taxation of the acquisition gain depends on the date on which the options were granted.

- *Options granted before 28 September 2012*
  The tax treatment of the acquisition gain depends upon the length of time 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) with income tax rates of 18%, 30% or 41% plus 15.5% of additional contributions upon disposal of the shares. The employee can elect to be taxed on the acquisition gain at the progressive taxation rate of employment income. The acquisition gain is also subject to a 10% employee social security contribution, payable by the employee. Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

- *Options granted as from 28 September 2012*
  The acquisition gain is taxed at progressive income tax rates of up to 42.7% for 2013 (after a 5.1% deduction of social contributions from the taxable base). The acquisition gain is also subject to social contributions at an aggregate rate of 8% and to a 10% employee social security contribution, payable by the employee. Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

Taxes and employee's social contributions on the acquisition gain are levied upon disposal of the shares.

The disposal gain is the difference between the sale proceeds and the market value of the shares on exercise. Irrespective of the date the options were granted (i.e., regardless of whether the grant was before or after 28 September 2012), the disposal gain is subject to income tax at progressive rates that vary for 2013 from 0% to 42.7% (after a 5.1% deduction of social contributions from the taxable base). A proportional rebate that depends on the length of the holding period may be applicable (see paragraph 4.1.3).

The disposal gain is also subject to 15.5% social contributions (with no rebate regardless of any holding period).

Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution, which applies to both the acquisition gain and the disposal gain.

5.1.2 Favourable tax regime for free shares

Conditions

A 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 FCC. These include, in particular, a minimum four-year lock-in period (in addition, for the tax favoured free share grants made before 28 September 2012, the four year lock-in must include a mandatory holding period of at least two years following the vesting of the free shares). Where the free shares are granted by a foreign company, the French tax authorities have confirmed that only the "essential" requirements of the FCC need be met.

Tax regime

The tax-favoured regime for free shares was modified by the Finance Act 2013. In particular, for free shares granted from 28 September 2012, the acquisition gain (i.e. the market value of the shares upon acquisition) is subject to income tax at progressive rates (see further below).

Grant: Under the favourable tax regime for free shares, no tax is triggered upon the grant of the shares (although a liability to social security contributions arises for the employer, see paragraph 5.2.2).

Vesting: The vesting of the shares does not trigger a tax charge.

Disposal: Tax is charged at disposal on both the acquisition gain and the disposal gain.

The acquisition gain is equal to the market value of the shares upon acquisition. Under the rules introduced by the Finance Act 2013, the tax regime governing the acquisition gain depends on the date of grant of the free shares.

- *Free shares granted before 28 September 2012*
  The acquisition gain is subject to income tax at a flat rate of 30% plus 15.5% of additional contributions upon disposal of the shares. The employee can elect to be taxed on the acquisition gain at the progressive taxation rate for employment income (this election is favourable if the employee's global income tax rate is lower than 30%). The acquisition gain is also subject to a 10% employee social security contribution, payable by the employee. Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

- *Free shares granted as from 28 September 2012*
  The acquisition gain is taxed at progressive income tax rates up to 42.7% (after a 5.1% deduction of social contributions from the taxable base). The acquisition gain is also subject to social contributions at an aggregate rate of 8% and to a 10% employee social security contribution, payable by the employee. Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution.

Taxes and employee's social contributions are levied on the acquisition gain upon disposal of the shares.

The disposal gain is equal to the difference between the sales price and the market value of the shares at the time of vesting. Irrespective of the date the free shares were granted (i.e., grant before or after 28 September 2012), the disposal gain is subject to income tax at progressive rates that vary for 2013 from 0% to 42.7% (after a 5.1% deduction of social contributions from the taxable base). A proportional rebate which depends on the length of the holding period may be applicable (see paragraph 4.1.3).

The disposal gain is also subject to 15.5% social contributions (with no rebate regardless of any holding period) of which 5.1% are deductable.

Taxpayers whose income exceeds a certain amount are also subject to an exceptional contribution which applies to both the acquisition gain and the disposal gain.

5.2 Employer tax and social security contributions

5.2.1 Favourable tax regime for options

Grant: French employers are subject to a 30% employer social security contribution payable on the grant date of qualified stock options.

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.

Exercise: The part of the discount which exceeds 5% (if any) is subject, at the time of exercise, to employer social security contributions at a rate of approximately 45%-50%.

The costs incurred in relation to the exercise of the options are deductible from the employer's 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.

5.2.2 Favourable tax regime for free shares

Grant: French employers are subject to a 30% employer social security contribution. This contribution is payable on the grant date.

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.

Vesting: 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 Filing requirements

To benefit from the favourable tax regime, it is necessary to comply with certain filing requirements. Companies offering options or shares to their employees are required to issue, on or before 1 March in each year, individual statements in respect of each employee who, during the course of the preceding calendar year:

- in the case of options: (i) has exercised options and/or (ii) has sold, exchanged, 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;
- in the case of shares: (i) has acquired shares (i.e. at the end of the vesting period) and/or (ii) has sold, exchanged or lent the shares before the end of the lock-in period.

6. Internationally mobile employees

The Amending Finance law for 2010 introduced a withholding tax on certain French source gains deriving from options and free shares granted to internationally mobile employees. This withholding tax applies to gains realised as from 1st April 2011. The French tax authorities issued guidelines clarifying the treatment of this withholding tax. (Official Guidelines B0I-RSA-ES-20-10-20-60 and B0I-RSA-ES-20-20-20 dated 12 September 2012)

6.1 Scope of the withholding tax

The withholding tax applies, broadly speaking, to:

- Any discount exceeding 5% of the value of the shares in case of qualifying share options; and
- Acquisition gains (i.e. broadly, the difference between the value of the shares at the date of acquisition and the amount paid by the employee (if any).

This withholding tax applies to gains realised by persons who are not French resident when the taxable event occurs. It applies to both tax favoured and non-qualified plans.

The withholding tax is assessed only on the fraction of the gain which is considered "French source income" i.e. broadly speaking, gains relating to an employment in France in accordance with OECD guidelines.

In order to assess the part of the gain which is from a French source, it is necessary to determine whether the grant of the options or of the shares is definitive or subject to conditions to be fulfilled during a vesting period.

If there is no vesting period, the gain is deemed to have its source in the country of employment at the moment of the grant. If there is a vesting period, the gains relating to the shares or the options will have their source in the country or the countries where the employee exercise his/her employment activity during this vesting period, *pro rata* to the time spent in each country.

6.2 Taxation regime

6.2.1 Taxation of non-qualifying plans

In case of non-qualifying plans, the withholding tax is due on the acquisition gain at the time of the acquisition of the shares (e.g. exercise of an option or delivery of free shares).

Withholding tax applies at progressive rates (0%, 12% and 20%).

The person liable for operating the withholding tax is the entity that grants the shares or the options (generally the employer).

6.2.2 Taxation of tax favoured plans

(a) Taxation of any discount which exceeds 5% of the value of the shares

Any discount exceeding 5% of the value of the shares is taxed upon exercise of the options. The taxation regime of this discount is similar to the one applicable to gains relating to non-qualifying plans.

The person liable for operating the withholding tax is generally the employer.

(b) Taxation of acquisition gains
The taxation regime which applies, in particular the taxable base and the applicable rates, follow the rules which would have applied had the relevant individual been a French resident (i.e. for options or shares granted as from 28 September 2012, tax is levied at progressive withholding tax rates, for options or shares granted before 28 September 2012, tax is levied at a flat rate (of either 41%, 30% or 18%) although the beneficiary can elect to be taxed pursuant to the rules applying to non-qualifying plans (see 6.2.1 above).

The person liable for the operating the withholding tax is the entity in charge of transferring the proceeds of the sale of shares to the beneficiary. In practice, it is usually the employer, the plan administrator, or in certain cases the buyer of the shares.

7. 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), either 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.

7.1 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 additional contributions at the combined rate of 15.5% (2013 income) as part of the capital gain when the employee disposes of his investment (see paragraph 7.3 below).

French companies may, under certain circumstances, 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.

7.2 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, the employer contribution is subject to CSG (7.5%) and CRDS (0.5%). The full amount of the employer contribution is subject to a 20% social security contribution (*forfait social*).

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

7.3 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 additional contributions payable at 15.5% by the employee.

7.4 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 5.4% 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.

8. Employee benefit trusts

8.1 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 security contributions (employee social security contributions at an approximate rate of 20%-30% and employer social security contributions at an approximate rate of 45%-50%, subject to earnings caps in each case).

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

8.3 Specific reporting requirements

Under Article 1649 AB of the French tax code, specific reporting requirements apply to foreign trusts if (i) the trustee is French resident (ii) one of the beneficiaries is French resident, or (iii) any assets placed in the trust are located in France. If an employee benefit trust does fall within the above rules, the following reporting obligations would apply:

- Declaration of the setting-up, modification or liquidation of the trust and the terms of the trust (for trusts existing as of 31 July 2011, the trustee has to inform the tax authorities of the existence of the trust and of its terms). If the trustee does not comply with this obligation, it will be liable to a penalty equal to 5% of the assets placed in the trust. The settlor and the beneficiaries would be jointly liable with the trustee for the payment of this penalty.
- Declaration of the value of French assets placed into the trust as of 1st January of each year. The value of these assets is taxed at a rate of 0.5% and is payable by the beneficiaries or the settlor, unless the assets have been included in the French wealth tax return of (i) the beneficiaries or (ii) the settlor.

The new guidelines from the French tax authorities state that trusts created by a company or a group of companies for their own account whose settlor is not an individual (or a professional or entity acting for an individual) do not qualify as a trust for French tax/reporting purposes. The guidelines further provide that "trusts created by companies and dedicated to the management of employee savings plans or employee shareholding schemes" are an example of a trust that has been created by a company or a group of companies for their own account.

On the basis of these new guidelines, many standard EBTs should not qualify as trusts for French tax/reporting purposes and are therefore exempt from both the reporting requirements and the specific wealth tax charge at a flat rate of 0.5%.

However, some specific trust arrangements may not be covered by this exemption and, in some cases, a case-by-case analysis should be carried out to determine whether or not a trust would be subject to the above-mentioned requirements.

9. Data protection

9.1 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, as well as their right to object, on legitimate grounds, to the processing of their personal data before or after such processing, 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 Union. The employees must be informed of the above at the time of collection, unless they have already been provided with such information.

9.2 All employers must register 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. The form of the registration will depend on the nature of the processing that is envisaged. The requirement is that one registration per purpose must be submitted. Accordingly, unless the employer has already registered the processing of personal data for the purposes of implementing a share plan, it will be required to register the processing that is envisaged before such share plan is put in place. In addition, existing registrations may need to be amended/updated in case of changes affecting the characteristics of the processing (e.g., changes related to the purposes of the processing, the nature of the data processed, the categories of recipients, data transfers, security measures, etc.).

9.3 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 has not been recognised by the European Commission as ensuring an adequate level of data protection. 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 data exporter and the recipient situated outside the EEA) which is then submitted to the CNIL for approval. The prior approval of the CNIL is not required 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 and have been certified for the purposes of the envisaged transfer.

9.4 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.

10. Employment law

10.1 Please refer to paragraph 4 on pages 7-8 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.

10.2 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.

10.3 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 in the first chapter of this Guide (including in relation to the amendments made to the Prospectus Directive) will apply. Some possible exceptions to those principles are outlined below:

- The German Federal Financial 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 has indicated that it 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. This aspect of the wording has not been changed by the German legislator when implementing the latest changes to the Prospectus Directive. However, there are strong arguments in favour of interpreting the wording of the legislation more widely.

- The BaFin has, on occasion, been critical of the ESMA guidance relating to the use of a "short form prospectus" (see further paragraph 2.1 of the first chapter of this Guide) to the extent this "waiver" is not set out in law. Guidance should be sought from BaFin on this on a case-by case-basis.

1.2 Regulatory issues: Provided the offer of securities to employees by the employer does not include the provision of banking services to the employees (such as e.g. safe custody or lending), no German banking licence requirements apply. However, under the German Banking Act, the administration of an employee share plan involving safe custody functions may be subject to licencing requirements. Furthermore, brokerage activities and providing investment advice may separately require a licence under the Banking Act.

As the latter activities are generally considered to be financial services, an exemption from the licence requirements is available if the services are provided by a company for the sole purpose of administering a participation scheme for the benefit of its employees and/or the employees of affiliated companies. This exemption does not cover any banking business.

When offering securities to employees under an employee share plan, general rules under German civil law regarding the way in which securities are offered should be considered. 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). Under this concept of civil law-based liability, the offeror of securities may be held liable for misleading and incomplete marketing material on the basis of which it offers such products to investors.

In response to the Financial Stability Board's "Principles for Sound Compensation Practices" and the related "Implementation Standards", the German legislator has implemented legal restrictions on the structure (in particular the transparency and appropriateness) of remuneration schemes for regulated entities in the German finance sector (including insurance companies). These restrictions must be taken into account when offering employee plans as part of the remuneration package.

In addition, certain restrictions apply in relation to remuneration schemes for members of the management board of a German stock corporation (*Vorstandsmitglieder*).

1.3 Disclosure: Disclosure and publication requirements in relation to insider information and directors' dealings 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). 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.

In addition, certain disclosure and publication requirements apply in relation to the remuneration of management, supervisory and advisory board members.

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 2013 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 €250,731 or €501,462 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 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 2013 are: 18.9% for retirement benefit insurance, 3% for unemployment insurance, 2.05% (plus an additional charge of 0.25% for childless employees born after 1 January 1940 and older than 23) for nursing insurance and 15.5% for statutory health insurance. Social security contributions are, in principle, borne 50/50 by the employer and the employee. (However, in Saxony, the employer bears the nursing insurance at a rate of 0.525% and the employee bears it at a rate of 1.525%. In relation to statutory health insurance, the employee's contribution is 8.2% (and the employer's contribution is 7.3%).

For any income in excess of specific salary thresholds, no further social security contributions have to be paid. The applicable annual salary thresholds in 2013 are: €69,600 for retirement benefits insurance, €69,600 for unemployment insurance, €47,250 for statutory health insurance and €47,250 for nursing insurance. The thresholds for retirement benefits insurance and unemployment insurance only apply to the West German federal states and the thresholds for the East German federal states are considerably lower (€58,500).

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.

5.1.2 Exercise: Wage tax and solidarity surcharge (and church-tax if any) arise, in principle, 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 2013 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 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 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 for at least 12 months (*Privatvermögen*).

6.2 Shares acquired from 1 January 2009

In relation to shares acquired from 1 January 2009, 100% of any capital gains will qualify as savings income (*Einkünfte aus Kapitalvermögen*). Savings income is, in general, subject to income tax at a flat tax rate (25%), together with a solidarity surcharge and church-tax, if any. Such tax will be withheld in certain circumstances and no expenses are deductible (except for a lump sum of €801, or €1,602 in the case of jointly assessed couples, for all savings income in one calendar year).

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 pages 7-8 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 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. Additional rules must be complied with in certain regulated industries (e.g. financial services).

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 14 days. 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 or its head office or registered office 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. 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 150 natural or legal persons per EU member state, other than qualified investors.

The amendments to the Prospectus Directive as referred to in the first chapter of this Guide have now been implemented in Greece.

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 in 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. A progressive tax scale applies as follows:

- for income up to €25,000 the applicable tax rate is 22%;
- for income from €25,000 up to €42,000 the applicable tax rate is 32%; and
- for income exceeding €42,001, the applicable tax rate is 42%.

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 16.50% for the 2013 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 27.46% for the 2013 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).

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 16.50% for the 2013 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 27.46% for the 2013 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

Where shares acquired on or before 30 June 2013 are subsequently sold there is no income tax on any capital gain. On sale of the shares a transaction tax of 0.2% on the sale value of the shares applies. The payment of the transaction tax to the competent tax office must be made by the seller within 15 days of the end of the month following the month in which the shares were sold.

If shares acquired on or after 1 July 2013 are subsequently sold and give rise to a capital gain (being the difference between the sale value of the shares and the stock exchange value of the shares at the time of acquisition), the gain is subject to 20% income tax. The 0.2% transaction tax does not apply. In the case of an individual the 20% tax is exhaustive. This means that the gain is not aggregated with income from other sources. The gain may be off-set only with losses derived from the sale of other shares.

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 pages 7-8 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.

Hong Kong[1]

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 the prospectus requirement for an offer by a company of shares to a "qualifying person" of that company or another company which is a member of the same group of companies. A "qualifying person" includes a director or former director and an employee or former employee, plus their dependents. A "group" for these purposes means a holding company and the subsidiaries which it controls.

To rely on this exemption, all documents provided to employees containing share plan information must include the following wording in a prominent position:

"WARNING
The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in doubt about any of the contents of this document, you should obtain independent professional advice."

1.2 Regulatory issues: There are no other regulatory issues which affect the offering of shares to employees when relying on the "qualifying person" prospectus exemption.

1.3 Disclosure: There a There are no applicable disclosure requirements when relying on the "qualifying person" prospectus exemption.

2. Exchange controls

There are no applicable exchange controls.

3. Financial assistance

3.1 A Hong Kong company is generally prohibited from giving financial assistance in connection with the purchase of its own shares or of shares in its parent company, unless a specific exemption applies. An exemption applies where financial assistance is provided to employees to acquire shares in its foreign holding company.

3.2 There are no restrictions on the local company providing funding to its foreign parent company in relation to the costs of an employee share plan.

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 salaries 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 2013 tax year, tax is payable at the employee's progressive rates of up to 17%, or at a flat rate of 15%, whichever is lower.

4.1.2 Social security contributions: No employee social security is payable on the acquisition of shares.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction: The expenses and costs incurred by a company in the setting up of an employee share plan will be deductible. Following a recent change in Hong Kong law, a deduction may also be available where the local employer provides funds to its parent company in relation to the plan for newly issued shares and/or existing shares purchased in the market. For these payments to be deductible, a number of conditions need to be met including:

- the amount of the deduction claimed must not be excessive; and
- there is an unconditional legal obligation on the local employer to make a payment to the parent company. (It is not sufficient for the recharge to be done by way of book/accounting entries with no actual transfer of funds).

The deduction is only allowed at the time of acquisition.

4.2.2 Social security contributions: No employer social security is payable on the acquisition of shares by the employee.

4.3 Tax withholding

There are no tax withholding obligations and an employee is responsible for paying any tax due to the tax authorities.

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 a salaries 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

[1] The comments made in this chapter of the Guide on Hong Kong apply to companies other than those listed in Hong Kong. There are a number of complex requirements relating to companies listed in Hong Kong which are outside the scope of this Guide.

exercise price. For the 2013 tax year, tax is payable at the employee's progressive rates of up to 17% or a flat rate of 15%, whichever is lower.

5.1.3 Social security contributions: No employee social security is payable on the exercise of an option if it is share-settled. If the option is settled in cash, then mandatory provident fund contributions are payable by the employee. For the employee contributions, a 5% contribution each month is charged on the employee's monthly salary up to a ceiling of HK$25,000 of salary per month.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction: The expenses and costs incurred by a company in the setting up of an employee share plan will be deductible. Following a recent change in Hong Kong law, a deduction may also be available where the local employer provides money to its parent company in relation to the plan for newly issued shares and/or existing shares purchased in the market. For these payments to be deductible, a number of conditions need to be met including:

- the amount of the deduction claimed must not be excessive; and
- there is an unconditional legal obligation on the local employer to make a payment to the parent company. (It is not sufficient for the recharge to be done by way of book/accounting entries with no actual transfer of funds).

The deduction is only allowed at the time of exercise.

5.2.2 Social security contributions: No employer social security is payable on the exercise of an option if it is share-settled. If the award is settled in cash, then mandatory provident fund contributions are payable by the employer. For the employer contributions, a 5% contribution each month is charged on the employee's monthly salary up to a ceiling of HK$25,000 of salary per month.

5.3 Tax withholding

There are no tax withholding obligations and the employee is responsible for paying any tax due to the tax authorities.

6. Taxation of share disposals

The employee is not subject to tax on any gain realised on the sale of shares.

7. Employee benefit trusts

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

7.2 The receipt of benefits from an employee benefit trust will generally constitute taxable income in the hands of the employee, which will be subject to income tax.

7.3 The Hong Kong employing company should be able to claim a corporation tax deduction at the time when a payment is made from an employee benefit trust to the employee if the employee is subject to salaries tax on this payment.

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, employees should be informed that they have a right to access and correct their personal data.

9. Employment law

Please refer to paragraph 4 on pages 7-8 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.

The amendments to the Prospectus Directive were implemented in Hungary as from 1 January 2013. These amendments do not impact on the Hungarian Regulator's view, referred to above, that offers under employee share plans do not usually constitute transferable securities.

1.2 Regulatory issues: In 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 before their dates of maturity 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.

3.3 Under a new civil code which is expected to come into force in March 2014, private unlisted companies limited by shares will be exempt from prohibitions set out in paragraph 3.1 above. Listed companies limited by shares will be permitted to provide financial assistance subject to certain conditions.

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 an effective tax rate of 16%.

4.1.2 Social security contributions: Social security charges are payable by the employee at a rate of 18.5% on employment income.

4.1.3 Approved employee share plan: Share-based income (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 is 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 calendar years. Under such approved share plans, any capital gain arising on the sale of the shares is still taxed (see paragraph 6.1).

4.2 Employer tax

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 Other social taxes: The employer is subject to social tax at a rate of 27% and a training fund tax at a rate of 1.5% of the taxable share- ased employment income earned. Note that if the awards are granted by a foreign tax resident parent company then the employee is responsible for payment of the social tax due from the employer.

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 rate). 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 rate).

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 4.1.3 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 and the option is not exercised for at least 2 calendar years. Under such approved share plans, any capital gain arising on the sale of shares remains taxable (see paragraph 6.1).

5.2 Employer tax

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 Other social taxes: The employer is subject to social tax at a rate of 27% and a training fund tax at a rate of 1.5% of the taxable share-based employment income earned. Note that if the awards are granted by a foreign tax resident parent company then the employee is responsible for payment of the social tax due from the employer.

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 (under which the employee does not incur an income tax liability in respect of the acquisition of the shares), 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 16%.

6.3 The taxable capital gain arising on a sale of shares may be subject to 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 Data protection laws restrict the processing of an employee's personal data. This restriction also applies to the employer's, or any of the employer's group companies', collection and processing of an employee's personal data for the purposes of the share plan. Pursuant to the applicable Hungarian laws on data protection, such data processing is permitted only if the data subject's (i.e. the employee's) express consent (recommended in written form) is obtained and if the employee is fully informed (i.e. they are put into a position which enables them to deliver informed consent) about the processing of their personal information in connection with the share plan. In practice this consent is generally included in the application form in relation to participation in the share plan. In this declaration the employees should state that they were informed of: (i) the scope of data, (ii) the purpose of the data processing, (iii) the term of the data processing and (iv) the recipient of the data / place of data processing. 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 and/or any of the employer's group companies processing the employee's data must maintain filings describing the data processing with the national data protection authority. If an employee's personal data may be transferred to jurisdictions outside the EEA then this must also be reflected in the relevant registration with the national data protection authority.

8.3 As of 1 January 2012 a new data protection authority was established in Hungary. The data protection authority has been granted broader investigative powers and is authorised to conduct administrative proceedings if, on the basis of an investigation or otherwise, it could be assumed that personal data is being processed unlawfully and it affects a wider group of persons or may cause a serious infringement of personal interests or damages.

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 (at least 15 days before the employer intends to implement the offer) on the basis that it provides an employment-related benefit that is an incentive.

A new Labour Code came into force in Hungary as from 1 July 2012 but this does not impact on the general requirements referred to above.

India

1. Securities law

1.1 Offer of securities: The offer of securities in a company to the public in India generally requires the publication of a prospectus. There is an exemption from the prospectus requirement for offers of securities to fewer than 50 persons in India. Where an offer is made to 50 or more persons in India, a prospectus is in principle required. However, in practice, no such prospectus has been lodged by a foreign parent company offering shares under an employee share plan to employees of an Indian subsidiary. Companies are recommended to obtain specific advice for offers to 50 or more employees in India.

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

1.3 Disclosure: There are no specific disclosure requirements for employee share plans.

2. Exchange controls

2.1 Any funds transferred out of or into India for the purchase or subscription of shares or grants under a share plan must be made through an authorised dealer (a designated bank that is permitted to receive, remit and generally deal in foreign exchange), as India is an exchange controlled economy.

2.2 A person resident in India who is an employee or director of an Indian subsidiary, or a branch / Indian office of a foreign company or an Indian company in which a foreign company holds equity, may be offered the parent company's securities without the prior approval of the Reserve Bank of India ("RBI") (the Indian regulator that regulates foreign exchange transactions), provided certain conditions are satisfied. These conditions are that: (i) the foreign securities are offered by the issuing foreign company globally on a uniform basis. (This requirement will be satisfied if the Indian employees participate in the share plan on terms that are no less favorable than for participants in other countries. This does not mean that Indian employees have to receive the same value of awards as participants in other countries but that the basis for determining the value of awards for Indian employees must be no less favourable than for participants in other countries); and (ii) an annual return is submitted by the local employer to the RBI through the authorised dealer.

The annual return should be made for the Indian financial year which ends on 31 March and should be in a prescribed form and contain the following details:

- number of shares allotted;
- number of participants in India;
- amount of funds transferred; and
- the effective holding (direct or indirect) of the foreign company in the Indian company, as at the end of that particular financial year.

3. Financial assistance

3.1 Indian Public Company: An Indian public company is prohibited from giving financial assistance for the acquisition of shares in itself or its parent company (which includes both an Indian and foreign parent company). Financial assistance by way of a loan can be provided to employees (who are not directors or managers) for the purchase or subscription of fully paid shares in the Indian public company or its parent company. (Loans cannot exceed six months' salary).

3.2 Indian Private Company: There are no restrictions on private companies providing financial assistance (including the provision of a loan, guarantee or security) to their employees or directors to acquire shares in a parent company (which includes both an Indian and foreign parent company). An Indian private company may also provide funding to its parent company in relation to an employee share plan, but it would need to seek RBI approval to do so, see paragraph 3.3 below.

3.3 Recharge: For financial assistance purposes, a general permission has been issued by the RBI in relation to a transfer made by an Indian subsidiary to its foreign parent company, to reimburse the foreign parent company for the cost of any "concession" or discount given to employees of the Indian subsidiary under an employee share plan. However, this permission does not specifically cover the situation where an employee is awarded shares in its foreign parent company for free. If an employee will acquire shares free of charge, it would be advisable to seek RBI clarification on whether the recharge of costs would be permitted and obtain approval of the RBI. In addition, specific RBI approval would also need to be sought where the local employer reimburses the parent company for any other costs.

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 2013 tax year income tax rates range from 0% to 30%. Where the employee earns over INR

10 million in the relevant tax year, he will be subject to an additional surcharge at a rate of 10% of the rate of income tax to which he is subject (i.e. a 30% tax rate becomes 33%).

4.1.2 Social security contributions: No employee social security contributions are due. However, all employees will be subject to an "education cess" (an additional tax) at a rate of 3% of the rate of income tax and surcharge (if the surcharge is applicable).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction: The employer may obtain a corporation tax deduction for any employee share plan costs it incurs, provided that the parent company invoices the local employer and the local employer accounts for these amounts and complies with tax withholding obligations.

4.2.2 Social security contributions: No employer social security contributions are due.

4.3 Tax withholding

The employer must withhold any income tax due.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant: No tax is due on the grant of the 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 shares at the date of allotment or transfer and the option exercise price. For the 2013 tax year income tax rates range from 0% to 30%. Where the employee earns over INR 10 million in the relevant tax year, he will be subject to an additional surcharge at a rate of 10% of the rate of income tax he is subject to.

5.1.3 Social security contributions: No employee social security contributions are due. However, all employees will be subject to an "education cess" at a rate of 3% of the rate of income tax and surcharge (if the surcharge is applicable).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction: The employer may obtain a corporation tax deduction for any employee share plan costs it incurs provided that the parent company invoices the local employer and the local employer accounts for these amounts and complies with tax withholding provisions.

5.2.2 Social security contributions: No employer social security contributions are due.

5.3 Tax withholding

The employer must withhold any income tax due.

6. Taxation of share disposals

If the employee sells shares within one year of acquiring them, any difference between the sale proceeds and the market value of the shares on the date of acquisition will be subject to income tax at the employee's marginal income tax rate, increased by the surcharge and education cess applicable to the employee. If the employee disposes of shares more than one year after acquiring them, any gain on sale will be treated as a long-term capital gain and taxed at a flat rate of 20%, increased by the surcharge and education cess.

7. Employee benefit trusts

Share plans involving the shares of a foreign parent company may be administered through an employee benefit trust which is set up offshore and is not governed by Indian law as a result.

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

9.1 Please refer to paragraph 4 on pages 7-8 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 For employees who are not mainly employed in a managerial or administrative capacity (which covers employees doing manual work, unskilled work, skilled work, clerical work or technical or operational work and who do not hold a management position), the Indian courts may consider the share plan to be a condition of service if it is offered to employees on a regular basis. "Regular basis" would generally include incentives which are paid on a uniform basis to employees (see paragraph 2.2 above) and which creates an expectation that awards will be granted regularly. If the share plan is considered a condition of service, employees should be given 21 or 42 days' notice of any changes to the terms of the plan or if the plan is to be withdrawn, depending upon the state in which the establishment is located.

9.3 For employees in a managerial or administrative capacity, there is a risk that employees may claim a right to continued participation in an employee share plan and the company could not unilaterally amend or withdraw the plan. To mitigate this risk, plan documentation should be drafted to contain statements that directly address these issues.

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 of the first chapter of this Guide will apply.

In addition to the employee share plans exemption referred to in paragraph 2 of the first chapter 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 150 people in Ireland (other than those registered as sophisticated investors) (even if the offer is being made to more than 150 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 Investment Funds, Companies and Miscellaneous Provisions Act 2005 (the "2005 Act") sets out certain requirements for local offers. The 2005 Act 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 Procedure"). The Local Offer Procedure 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 2005 Act.

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 the Universal Social Charge ("USC"). The income tax charge and USC arise 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 2013 tax year, the income tax rates are either 20% or 41% depending on the level of the employee's income. The amount of the USC also depends on the level of the employee's income. For the 2013 tax year, the USC rates are 2% on annual income up to and including €10,036, 4% for annual income in excess of €10,036 but less than €16,016 and 7% on income exceeding €16,016 per annum.

4.1.2 Social security contributions: A charge to employee Pay Related Social Insurance ("PRSI") at a rate of 4% applies to all share-based remuneration that arises from 1 January 2012 regardless of when agreements were entered into (with the exception of shares already held in an Employee Share Ownership Trust before 1 January 2011).

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.

A tax deduction in respect of employee benefit contributions (e.g. contributions into an employee benefit trust) is only available in a particular accounting period where the employees have been taxed on the benefit (or would be taxed if resident and domiciled in Ireland), or the expenses of a third party incurred in relation to the operation of the employee scheme (and which would be tax deductible if incurred by the Irish employer) are paid out of those contributions, in that accounting period or within nine months of its end. Any amount disallowed (i.e. where there is a mismatch between the timing of the employer's contribution and the time at which the employees are taxed) can be carried forward and deducted in a future tax period to the extent that benefits are paid out to employees in that later period. 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: There is no charge to employer PRSI on share-based remuneration.

4.3 Tax withholding

The income tax, USC and employee PRSI due should be collected at source by the employer as part of the normal payroll withholding tax system. Where the employee has insufficient cash earnings in a particular pay period to settle such income tax, USC and employee PRSI liabilities, any shortfall may be recouped by the employer in subsequent pay periods. The employer has until 31 March of the following tax year to recoup any shortfall arising. Otherwise, the employee will be treated as having received a further benefit on the relevant 31 March equivalent to the amount of un-recouped income tax, USC and employee PRSI liabilities and the employer will be required to operate PAYE/PRSI on this further amount.

Details of the income tax, USC and PRSI collected at source will be included in the employee's P60 for the relevant tax year.

The employer must report the grant of share awards to the Irish Revenue Commissioners on a Form RSS1 by 31 March in the year following the year of grant. The employee is required to report the benefit of the shares received on his or her annual income tax return (Form 11) by 31 October in the year following the tax year when the shares are received.

4.4 Favourable tax regime

Where shares are provided under a tax approved profit sharing scheme ("APSS"), 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. However, with effect from 1 January 2011, USC at rates of up to 7% and employee PRSI at a rate of 4% are now chargeable on the initial market value ("IMV") of the allocated shares. The employer is liable in the first instance for the deduction and payment of USC and employee PRSI. This should be done when funds are being given to the trustees to purchase shares. The Irish Revenue Commissioners have confirmed that where employees have entered into a salary sacrifice arrangement to fund the purchase of shares, the USC and employee PRSI may be deducted from earnings when the salary is sacrificed. Shares cannot be allocated in advance of salary being sacrificed to fund the purchase of those shares. 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.

With effect from 1 January 2011, the scheme which provided for a single lifetime income tax deduction of up to €6,350 for an employee who purchased shares in his or her employer company, where those shares were retained for a period of three years without being sold, was terminated in respect of shares acquired on or after 8 December 2010.

5. Taxation of share options

5.1 Employee tax and social security contributions

5.1.1 Grant: There is no income tax charge (or USC) 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: Income tax and the USC are payable on the exercise of a share option on an amount equal to 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 USC paid on grant is credited against the income tax/USC charged on exercise. Income tax and the USC must be paid within 30 days after the date of exercise of the option. For the 2013 tax year, the income tax rates are either 20% or 41% depending on the level of the employee's income. The amount of the USC also depends on the level of the employee's income. For the 2013 tax year, the USC rates are 2% on annual income up to and including €10,036, 4% for annual income in excess of €10,036 but less than €16,016 and 7% on income exceeding €16,016.

5.1.3 Social security contributions: A charge to employee PRSI at a rate of 4% applies to all share based remuneration that arises from 1 January 2012, regardless of when agreements were entered into, with the exception of shares already held in an Employee Share Ownership Trust before 1 January 2011.

With effect from 1 July 2012, the employer has no withholding obligation in respect of employee PRSI on gains arising on the exercise of share options. Instead, the employee is obliged to pay the employee PRSI liability arising on share option gains directly to the Department of Social Protection's Special Collections Unit in Ireland. This applies regardless of whether the individual is an employee or a former employee at the time of exercise.

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.

As noted in paragraph 4.2, special rules apply in the case of employee benefit contributions.

5.2.2 Social security contributions: There is no charge to employer PRSI on share-based remuneration.

5.3 Favourable tax regime

There is now one tax favoured share option plan in Ireland: the Revenue approved savings related (or "Save As You Earn") share option plan (SAYE Plan). The favourable tax treatment for broad-based Approved Share Option Plans (ASOPs) was abolished by the Finance Act 2011 in relation to options granted or exercised on or after 24 November 2010. (ASOP options granted prior to 24 November 2010 but exercised on or after 1 January 2011 are subject to income tax, the USC and employee PRSI.)

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. 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. However, while gains arising on SAYE options are still exempt from income tax, they are now liable to the USC and employee PRSI.

Any bonus or interest earned in respect of an employee's savings is not chargeable to the USC or PRSI, even where the savings are not used to purchase shares.

5.4 Tax withholding

In respect of gains arising on the exercise of share options (not approved by the Irish Revenue Commissioners), no employer PAYE or USC withholding is required. The employee is required to pay income tax and the USC on the option gain within 30 days of exercise via the Relevant Tax on Share Options (RTSO) procedure. A Form RTSO1 reporting details of the gain arising and the resulting income tax charge and USC liability must accompany the payment. In relation to the employee PRSI liability, with effect from 1 July 2012 the employer has no withholding obligation in respect of employee PRSI on gains arising on the exercise of share options. The employee is required to pay the employee PRSI liability direct to the Department of Social Protection's Special Collections Unit in Ireland. This applies regardless of whether the individual is an employee or former employee at the time of exercise. The grant and exercise of options must be reported by the employer to the Irish Revenue Commissioners on a Form RSS1 by 31 March of the year following the year of grant of options or acquisition of shares (as appropriate).

In respect of gains arising on the exercise of SAYE options, the employer is required to deduct the USC arising through the normal payroll withholding tax system when the options are exercised. In relation to the employee PRSI liability, where the option is exercised whilst the individual remains an employee, then the employer is obliged to deduct the employee PRSI from the gains arising on exercise and remit the relevant amount to the Department of Social Protection. In the case of a former employee then it is the former employee's responsibility to pay the relevant employee PRSI liability direct to the Department of Social Protection's Special Collections Unit.

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, 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 33% on disposals made on or after 7 December 2011. There is an annual exemption from capital gains tax on the first €1,270 of gains made by an individual in the 2013 tax year.

6.4 Where the employee sells shares between 1 January and 30 November, he or she must report and pay any applicable capital gains tax by 15 December of the same tax year. Where the employee sells shares during December, he or she must report and pay any applicable capital gains tax by 31 January of the following year.

6.5 In the event that the employee is resident in Ireland, but not Irish domiciled, he or she will only be liable to pay capital gains tax on the gain realised on the disposal of shares, to the extent that the proceeds of the disposal are remitted to Ireland (assuming the shares do not constitute Irish property).

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 pages 7-8 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 and integrated (and which mirrors the amendments introduced by European Directive 2010/73/EC (the "Amending Directive") to article 4(1)(e) of the Prospectus Directive), offers of financial instruments directed or to be directed to directors or ex-directors or employees or ex-employees or financial promoters by their employer or parent company of a subsidiary, associate company or company under joint control, are exempt from the prospectus requirements where the company has its main headquarters or registered office in an EU Member State and provided a document is made available containing information on the number and nature of the financial instruments and the reasons for and details of the offer.

According to art. 34-*ter*, paragraph 1, lett, (m-bis) of CONSOB Regulation No. 11971, as subsequently amended and integrated, offers of financial instruments, directed or to be directed to directors of ex-directors or employees or ex-employees or financial promoters by their employer or parent company of a subsidiary, associate company or company under joint control, which does not have its main headquarters or registered office in an EU Member State are exempt from the prospectus requirements provided it has financial instruments admitted to trading on an EU regulated market.

Finally, under art. 34-*ter*, paragraph 1, let. (m-ter) of CONSOB Regulation No. 11971, as subsequently amended and integrated, offers of financial instruments, directed or to be directed to directors or ex-directors or employees or ex-employees or financial promoters by their employer or parent company of a subsidiary, associate company or company under joint control, which has its main headquarters or registered office in a third party country and which has financial instruments admitted to trading on the market of a third party country, are exempted from the prospectus requirement as long as: (i) suitable information and the document pursuant to art. 34-534 let. (m) is made available, at least in a language commonly used in international finance circles, and (ii) the market of the third party country has been approve by the EU Commission, in accordance with art. 4, para 1, subsections 3, 4 and 5 of the Prospectus Directive, as amended by the Amending Directive.

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 (*Segnalazioni Consuntive*).

2. Exchange controls

2.1 There are no applicable exchange controls.

2.2 Transfers of cash or securities which are in excess of €15,000 must be recorded (and those records must be retained for 10 years). Italian money laundering legislation provides that all payments with a value in excess of €1,000 must be made through an authorised intermediary (e.g. a bank). Transfers of cash (in the form of bank notes), cheques, promissory notes and similar instruments into or out of Italy must be notified to the Italian Customs Agency if in excess of €10,000.

2.3 In addition, 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 (as defined under Italian tax legislation) at the time of acquisition and the amount, if any, paid for the shares. For the 2013 tax year personal income tax rates apply at progressive rates ranging 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 (for the tax year 2013, the regional surtax rates vary from 0% to 1.73% and municipal surtax rates vary from 0% to 0.8%).

However, where share plans are "general" i.e. 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.

Law Decree no. 179/2012 (as subsequently amended by law no. 221/2012) (the "Start-Up Law"), provides that any income derived from the grant of options, shares, or other financial instruments to directors or employees (amongst others) is exempt from personal income tax and related surtaxes without the application of any threshold. The exemption is granted if (1) the options, shares, or other financial instruments are issued by the employer which is an innovative start-up company (as defined under the Start-Up Law) or by a company under its control and (2) the innovative start-up company, the issuing company, the parent company of the innovative start-up company or its subsidiaries do not repurchase, at any time, the options, shares or other financial instruments. If this repurchase condition is breached then income taxes will apply in the tax year(s) of repurchase.

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 2013 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 is relevant 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 (i.e. shares are acquired) on or after 25 June 2008. This exception applies to "stock option" plans which have certain performance and/or vesting conditions attached to the exercise of the options.

Moreover, the Italian Social Security Agency has provided its interpretation of, 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 "non-general" share plans (i.e. those plans which are not broad-based but which are instead offered to a selected category/group of employees or selected employees) that provide for free awards of shares. For these purposes, awards under such share plans must be in shares and not cash (i.e. the exemption will not apply to payments in a cash equivalent to the share value) and must incorporate certain performance and/or vesting conditions (for example, the employee being employed by the grantor company at vesting, and/or for a period following vesting, or performance conditions applying or a condition applying whereby the employee must retain the shares for a certain period post-acquisition before being allowed to sell them etc).

Furthermore, the Start-Up Law also provides that social security contributions are not due on employment income earned by employees or directors (amongst others) arising from *inter alia* the exercise of options and from the award of shares or any other financial instrument, on or after 19 December 2012. This exemption is currently subject to two conditions: (1) awards under share option plans and other share plans must be issued by the innovative start-up company, acting as the beneficiaries' employing entity, or as the parent company of the beneficiaries' employing entity; (2) the innovative start-up company, the issuing company, the parent company of the innovative start-up company or its subsidiaries does not re-purchase the options, shares and / or other financial instruments awarded.

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 29% to 45% of the employee's gross remuneration (the exact thresholds vary depending on the employer's industry and on the number and category of employees).

Law no. 92/2012 provides that, as from 1 January 2013, employers are obliged to pay a further social security contribution (which has the purpose of financing the state unemployment allowance). The further contribution is equal to 1.61% of employee's gross remuneration. Furthermore, depending on the circumstances, in the case of fixed-term employment relationships, employers are also obliged to pay an additional contribution equal to 1.40% of the fixed-term employee's gross remuneration (under specific terms and conditions, such additional 1.40% contribution may be fully or partially recovered by the employer upon transformation of the employment relationship from fixed-term to open-term).

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: 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 2013 tax year personal income tax rates apply at progressive rates ranging 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 (for the tax year 2013, the regional surtax rates vary from 0% to 1.73% and municipal surtax rates vary from 0% to 0.8%).

Social security contributions regime

5.1.3 In accordance with legislation introduced in 2008, 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).

The Italian Social Security Agency has provided its interpretation of the social security contributions exception. According to this interpretation, the only requirement that needs to be met for the option to qualify is that certain performance and/or vesting conditions apply (e.g. a requirement that the employee must still be employed by the grantor company at vesting, performance conditions etc).

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- smonth period are a "non-qualified shareholding", any capital gains are subject to a flat 20% capital gains tax charge for the 2013 tax year.

7. Stamp duties and wealth tax

7.1 Stamp duties

In accordance with legislation introduced in 2011, as of 1 January 2012 any communication (e.g. periodic reports) referring to financial instruments (including shares and stock options) held through an Italian intermediary is subject to stamp duty at (0.15% from 2013 tax year). The stamp duty is generally applied to the market value of the relevant financial instruments at the end of the period being reported upon (or, in the absence of any market value, on their nominal or refund value). The minimum amount of stamp duty payable is €34.20 based on the aggregate amount of financial instruments deposited with the same Italian financial intermediary.

7.2 Wealth tax

In accordance with legislation introduced in 2011, financial investments (including shares and transferrable stock options) held abroad by Italian tax-resident individuals without the involvement of an Italian intermediary are subject to a 0.15% wealth tax. The wealth tax is generally determined based on the market value of the relevant financial investments at the end of the relevant tax year (or, in the absence of any market value, on their nominal or refund value). Where foreign wealth taxes are also payable in the country where the financial investments are held then it may be possible to claim a credit against the Italian wealth tax. Wealth tax must be declared and paid by the relevant employee in his/her tax return.

8. 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.

9. 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.

10. Employment law

Please refer to paragraph 4 on pages 7-8 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) and where the company issuing the securities is registered or headquartered in the EU, 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.

Companies which are established outside the EU also qualify for the exemption if they are listed on an EU regulated market, 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.

There is also an exemption for an offer to fewer than 150 individuals or legal entities that are not qualified investors in Latvia (provided that the offer is also made to fewer than 150 persons in every other EU member state in which the offer is being made).

A separate exclusion applies where the consideration for the offer over a period of 12 months is less than €5 million (across the EU).

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 2013 tax year, the personal income tax rate for Latvian residents is 25%.

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) 11% (which is part of a total rate of 35.09% which is allocated between the employer (24.09%) and the employee (11%)) for the 2013 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 35.09% which is allocated between the employer (24.09%) and the employee (11%)) for the 2013 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 2013 tax year, the personal income tax rate for Latvian residents is 25%.

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) 11% for the 2013 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 2013 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 revised capital gains tax regime was introduced in Latvia from the start of the 2010 tax year. This revised 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 2013 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 pages 7-8 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, item 5 of section 4 of Article 5 provides 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.

The amendments to the Prospectus Directive were implemented in Lithuania with effect from 30 January 2013. There are therefore also other exemptions from the prospectus requirements, for example, where securities are offered only to professional investors, or the offer is made to fewer than 150 individuals or legal entities in each EU and EEA member state or where the consideration under the offer over a period of 12 months is less than €5 million (across the EU).

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 Bank of Lithuania ("BoL") and the company of the total number of voting shares which the employee owns.

1.3 Disclosure: Under Lithuanian legislation, the management of an issuer (e.g. which includes members of the board and certain other employees having access to non-public information) must provide a notice to BoL and the issuer in relation to the execution of transactions in the issuer's securities at the management'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 and the associated costs are not recharged to the Lithuanian company, 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 or associated cost are recharged to the employing company.

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 but associated costs are recharged to the Lithuania employer, then the latter must withhold employee social security/health insurance contributions.

If the share awards are granted by a group company established outside Lithuania and associated costs are not recharged to the Lithuanian employer, then there is no obligation on the employing company to withhold 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 or associated costs are recharged to 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, or associated costs are recharged to 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 but associated costs are recharged to the Lithuanian employer, then the latter must withhold employee social security/health insurance contributions.

If the share options are granted by a group company established outside Lithuania and associated costs are recharged to the Lithuanian employer, then there is no obligation on the employing company to withhold social security/health insurance contributions.

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 held for more than 366 days prior to sale and (ii) the individual was not the owner of more than 10% (or not more than 20% if the ownership of the shares is classified as being held as joint conjugal ownership) 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 the market value of the shares at the time of acquisition) are subject to Lithuanian personal income tax at a rate of 15%. (Any income taxes computed and paid upon the acquisition of the shares are not deductible for capital gains tax purposes as part of the acquisition costs when those shares are sold).

6.4 The tax relief described above only applies until 31 December 2013. From 1 January 2014 the total amount of gains received during the calendar year in excess of LTL 10,000 (approx. €2,896) will be subject to personal income tax at a rate of 15%.

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 amendments referred to in the first chapter of this Guide, have been implemented into Dutch law. Therefore, in general, the principles referred to in paragraph 2.1 in the first chapter of this Guide will apply. The exception to this is in relation to the exclusion which applies where the consideration for the offer over a period of 12 months is less than €5 million (across the EU). The relevant exclusion in Dutch law still refers to the €2.5 million limit (across the EU) and it is currently unclear whether the amount will be increased to €5 million.

Where an offer of securities is made in the Netherlands which relies on an exemption or exclusion from the prospectus requirements, notably, those of Article 1(2)(h) or 3(2) of the Prospectus Directive (other than offers solely to qualified investors), a "health warning" (also called the "exemption warning") must in principle be included on any offer and marketing materials, including prescribed wording and a logo, to the effect that the offer falls outside the supervision of the Netherlands Authority for the Financial Markets ("AFM"). This may affect, for example, offers which rely on the exemption where the offer is made to fewer than 150 persons in the Netherlands, or where the total consideration under the offer is less than €2.5 million (across the EU). Please note, however, that the health warning requirement only applies where the AFM would have been competent to approve the prospectus, had the prospectus requirement applied (i.e. if, hypothetically, the Netherlands could have been (chosen as) the issuer's Home Member State within the meaning of the Prospectus Directive). In addition, the health warning requirement is not triggered when relying on the employee share plans exemption in Article 4(1)(e) of the Prospectus Directive.

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 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 (*besloten kring*), as defined in Dutch law. 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. Reporting requirements relating to cross-border transactions, payments or investments are imposed by the Dutch Central Bank (DCB) on persons designated by the DCB for that purpose pursuant to the External Financial Relations Act (*Wet financiële betrekkingen buitenland*). These reporting requirements serve the purpose of, amongst other things, computing the national balance of payments of the Netherlands (*betalingsbalans).* These reporting requirements are not, however, specifically triggered by employee participation plans or transactions carried out under such plans.

3. Financial assistance

3.1 Dutch company: A Dutch public company (NV) may not provide financial assistance to enable third parties to purchase or to subscribe for shares in its capital. However, 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.

The financial assistance prohibition for private companies (BVs) was abolished with effect from 1 October 2012. Only usual limitations requiring BV directors to act within the company's corporate interests restricts actions for BVs in relation to financial assistance.

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 2013 tax year the progressive rates of income and social security charges range from 37% 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 €33,363 for 2013). 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 €50,853 (i.e. such contributions are capped on income at this level). The rate of employer social security contributions is approximately 12.24% for 2013.

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 2013 tax year the progressive rates of income and social security charges range from 37% to 52%.

Social security contributions:

5.1.3 An employee will be subject to general social security contributions as part of the income tax due (these contributions are capped on income at €33,363 for 2013). 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 €50,853 (i.e. such contributions are capped on income at this level). The rate of employer social security contributions is approximately 12.24%.

5.3 Favourable tax regime

A favourable tax savings scheme using employee cash/share contributions, which previously applied in the Netherlands, was abolished with effect from 1 January 2012.

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 generally 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 a 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 using a model contract and standard contractual clauses in accordance with Article 26(4) of the EU Data Protection Directive (95/46/EC), 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 pages 7-8 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 Pursuant to the Dutch Works Council Act, 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: The amendments to the Prospectus Directive outlined in the first chapter of this Guide have generally been implemented in Poland. However, the exclusion for offers where the consideration is less than €2.5 million has not been increased to €5 million (i.e. the €2.5 million figure has been retained). In addition, under Polish law, reliance on this exclusion requires the publication of a formal offering document.

In the case of the employee share plans exemption, the Polish regulatory framework specifically requires that an information memorandum (a short form of an offering document based on a specimen provided in secondary legislation) in the Polish language is drawn up and made available to employees. If the offering concerns securities of third-country issuer, whose securities are listed on a market covered by an EU Commission equivalence decision then the information memorandum may be drawn up in English).

The information memorandum does not require approval from the Polish Financial Supervision Authority (the "PFSA"). However, at least 14 business days prior to the commencement of any promotional activities relating to the share plan offering, the PFSA must receive a notification of the offering containing the timetable of promotional activities relating to the offering and the entities taking part in such activities. The notification must be supplemented with the materials containing the content which is to be disseminated to employees.

The PFSA is entitled to object to the content and demand that the relevant documents are amended or supplemented with additional information, by no later than 5 business days before the commencement of the promotional activities. Any objections raised by the PFSA must then be dalt with within a maximum of 2 business days (the PFSA may specify a short deadline). The promotional activities may commence only after the PFSA's demands are met.

Please note that these requirements were introduced only recently and it is not yet clear how the PFSA will apply them in practice.

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 provide financial assistance, directly or indirectly, for the purchase or subscription of their own shares. This includes 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 and authorisation has been given at a shareholder meeting.

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- olish 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 acquisition of shares by employees at a discount or free of charge provided the acquisition has been approved by a resolution of the shareholders of the grantor company. Where this is not the case then the acquisition of shares is subject to tax at progressive rates of 18%-32% (the 32% rate starts from approximately €20,500) 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 unless the local subsidiary is recharged the costs of the share plan. However, recharge arrangements may trigger a tax charge and give rise to social security contributions on acquisition of shares/exercise of share options.

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 shares by employees provided the acquisition of the shares has been approved by a resolution of the shareholders of the grantor company. Where this is not the case then the exercise of a share option to acquire shares is subject to tax at standard progressive rates of 18%-32% (the 32% rate starts from approximately €20,500) 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 pages 7-8 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: The amendments to the Prospectus Directive were implemented in Portugal in February 2013. 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 by an affiliated company) whose head office or registered office is in the EU, or, if established outside the EU, has securities admitted to trading on (i) 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 or (ii) on a third country market recognised by the EU Commission as being governed by a regulatory regime equivalent to the EU regulatory regime provided that the company provides adequate information including the above mentioned document.

There is also an exclusion from the prospectus requirements for an offer to fewer than 150 non-qualified investors residing or established in Portugal (as this is not treated as a public offer), even if the offer is being made to more than 150 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 150 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 2013 tax year the income tax rates range from 14.50% to 48%. In addition there is:

- an extraordinary surtax of 3.5% which applies to annual taxable income in excess of the annual national minimum wage (currently €6,790); and
- a solidarity tax which applies to annual taxable income in excess of €80,000 at a rate of 2.5% and at a rate of 5% for income in excess of €250,000.

4.1.2 Social security contributions: In accordance with legislation (the “Contributive Code”) which came into force on 1 January 2011, where an employee acquires shares in his employing company or in a group company, any discount to market value is exempt from social security contributions (for both the employee and the employer).

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: See paragraph 4.1.2 above – any discount is exempt from employer social security contributions.

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.

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 2013 tax year income tax rates range from 14.50% to 48%. In addition there is:

- an extraordinary surtax of 3.5% which applies to annual taxable income in excess of the annual national minimum wage (currently €6,790); and
- a solidarity tax which applies to annual taxable income in excess of €80,000 at a rate of 2.5% and at a rate of 5% for income in excess of €250,000.

5.1.3 Social security contributions:. Under the Contributive Code, the exercise of an employee option is exempt from social security contributions (for both the employee and the employer).

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: See paragraph 5.1.3 above.

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

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 income tax at a flat rate of 28% for the 2013 tax year.

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 pages 7-8 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

1.1 Offer of securities: Employee share plans are not explicitly regulated under Russian law and, therefore, general rules in respect of offering foreign securities apply. However, there are certain exemptions from the general rules that, may, in certain cases, facilitate the implementation of employee share plans in Russia. However, these exemptions have only very recently been introduced and have not been tested in practice.

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:

(a) the shares are assigned with both an International Securities Identification Number (ISIN) and a Classification of Financial Instruments Code (CFI);

(b) 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

(c) such shares are admitted to public placement and/or public circulation in Russia.

The general rule is that if the shares fail to satisfy any of the above criteria, they may only be offered to employees who are qualified investors (i.e. employees "recognised" as qualified investors by Russian brokers and asset management companies). Furthermore, qualified investors "by recognition" may only acquire foreign securities via the broker that has recognised them as qualified investors.

However, the FSFM is entitled to provide exemptions from the general rules in respect of the circulation of shares in foreign companies which are not admitted to public placement and/or public circulation in Russia. Pursuant to an Order of the FSFM dated 5 April 2011, which came into force on 19 June 2011 (the "FSFM Order"), foreign shares not admitted to public placement and/or public circulation in Russia may be acquired by certain categories of Russian citizens who are not recognised as qualified investors and without engaging a broker. These categories include, amongst others, individuals acquiring foreign shares (i) under the terms of their employment contract; or (ii) in connection with the performance of their employment; or (iii) in connection with their membership of the board of directors (supervisory board) ("employee acquisition").

Options relating to shares in a foreign company may in certain circumstances be treated as "foreign financial instruments" which do not fall under the exemption referred to above and as such may only be offered in Russia to qualified investors.

There is considerable ambiguity regarding the new rules governing the offering of foreign financial instruments and securities in Russia and in relation to any sanctions for non-compliance. The application of these provisions will depend, in particular, on their interpretation by the FSFM. 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). (From 1 September 2013 the FSFM's functions in relation to financial markets and securities regulation will be performed by the Central Bank of the Russian Federation).

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.

1.2 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 employees not recognised as qualified investors in Russia under provisions of the employment contract or in connection with employment. Furthermore, where shares provided to employees are newly issued shares such transfer may require the registration of 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.

1.3 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 2013 tax year the tax rate is 13% for (i) Russian tax residents (individuals who have spent more than 182 days during 12 consecutive months in the Russian Federation) and (ii) foreign "highly qualified specialists", provided that such income relates to their employment in Russia, and 30% for other 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) and are calculated for 2013 as follows:

- 30% of the annual payroll up to a specific cap which is subject to an annual revision by the Government of the Russian Federation. In 2013 the cap is set at RUB 568,000 (approximately USD 17,264 per employee); plus

- 10% of the payroll in excess of the aforementioned cap.

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 end of the relevant tax period (i.e. after the end of the tax year in question). 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. (However, in certain circumstances share options may qualify as financial instruments and, as such, may be subject to income tax. Tax advice in respect of share options should therefore be sought on a case-by-case basis).

5.1.2 Exercise: There is an income tax charge on the exercise of a share option, at a rate of 13% for (i) Russian tax residents and (ii) to foreign "highly qualified specialists" provided that such income relates to their employment in Russia, and 30% for other non-residents. As referred to 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 (other than foreign "highly qualified" individuals) 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 2013 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 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.

6.3 In accordance with a new exemption, income derived from the disposal of shares in Russian private companies or public companies in an "innovative" sector of the economy which have been held by the individual for more than five years are exempt from income tax provided the shares were acquired after 1 January 2011.

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.

Slovak Republic

1. Securities law

1.1 Offer of securities: The Slovak Republic has implemented the changes to the Prospectus Directive referred to in the first chapter of this Guide. Although the offer of securities to the public generally requires the publication of a prospectus, there are certain exemptions from that requirement. These exemptions include:

a) offers of securities to existing or former members of statutory bodies, supervisory bodies, management bodies or employees by their employer or by an affiliated undertaking with its registered office or head office in the EU, provided that a document containing information on the number and nature of the securities and the reasons for and details of the offer has been made available to the addressees of the offer; and

b) offers made to fewer than 150 natural or legal persons in the Slovak Republic who are not considered to be qualified investors under Slovak law.

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 Slovak 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

In principle an employee is required to notify the National Bank of Slovakia of the existence of his/her shareholdings in foreign companies and the value of his/her assets resulting from such participation.

However, in practice the likelihood of this reporting requirement applying is low as this reporting requirement will only apply to an employee if (1) he is also an "entrepreneur" as defined (which would not normally be the case for an employee) and (2) the value of the relevant assets (i.e. shareholdings in foreign companies) exceeds €2 million.

3. Financial assistance

3.1 Slovak company: A Slovak joint stock company is prohibited from providing financial assistance (including the provision of security or a guarantee) to acquire its own shares or shares in its parent company. There is an exemption from this prohibition in relation to employee share plans. There are no restrictions on a Slovak limited liability company providing financial assistance.

3.2 Slovak subsidiary of non-Slovak company: A Slovak subsidiary which is a joint stock company is prohibited from providing financial assistance (including the provision of security or a guarantee) to acquire its own shares or shares in its parent company. There is an exemption from this prohibition in relation to employee share plans. There are no restrictions on a Slovak limited liability company providing financial assistance.

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 or other economically-related company free of charge or at a discount to market value will normally be liable to pay personal income tax. The tax charge is on the difference between the market value of the shares at the time of the acquisition (delivery date) and the amount, if any, paid for the shares. This benefit in-kind is taxed as employment income.

For the 2013 tax year, annual income up to €34,401.74 is subject to a 19% income tax rate and income over this amount is taxed at a tax rate of 25%. (Annual income includes all kind of income earned by the individual, including employment income, entrepreneurial income, capital income and other income (capital gains, etc)).

4.1.2 Social security contributions: Social security contributions are triggered upon delivery of the shares. Employees are subject to social security contributions at a rate of 9.4% for 2013. There is a monthly cap of €3,930 on the maximum assessment basis for social security contributions in 2013. There is no annual settlement of social security contributions (in contrast to health insurance contributions – see further section 4.1.3 below).

4.1.3 Health insurance contributions: Employees are subject to health insurance contributions at a rate of 4% for the 2013 tax year. Health insurance contributions are capped on a monthly basis at €3,930 in 2013. Any income above this level is not subject to health insurance contributions in the respective calendar month. However, an annual settlement of health insurance contributions is made in certain cases with an annual cap on the assessment basis of

€47,160 for 2013. (If an employee's income fluctuates on a monthly basis such that the monthly cap is sometimes but not always met or exceeded then the liability is re-assessed on an annual basis taking into account annual income subject to the annual cap).

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction: A corporation tax deduction may be available for a Slovak employer who bears the cost of an employee share plan if the benefit is included in the employment contract. This area is complex and the availability of a corporation tax deduction should be considered on a case-by-case basis.

4.2.2 Social security contributions: The employer is subject to social security contributions. There is a monthly cap of €3,930 on the maximum assessment basis for employer's social security contributions in 2013. For 2013 the rate of employer's social security contributions is 25.2%.

4.2.3 Health insurance contributions: The employer is subject to health insurance contributions at a rate of 10% for 2013. The health insurance contributions are capped on a monthly basis at €3,930 in 2013. Any income above this level is not subject to health insurance contributions in the respective calendar month. However, an annual settlement of health insurance contributions is made in certain cases with the annual cap on the assessment basis of €47,160 for 2013 (see further section 4.1.3).

4.3 Tax withholding

The Slovak employer must withhold any income tax and report on behalf of the employee. The Slovak employer must also withhold the social security due and health insurance contributions on behalf of the employee. This is the case even if the shares are provided by some other entity, e.g. a foreign parent company. If the withholding obligation is not met by the Slovak employer or the parent company, then the benefit derived from the share acquisition must be reported by the employee to the tax authorities through a Slovak personal income return.

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: For options granted after 31 December 2009, the employer is required to withhold personal income tax on the employee income upon the exercise of the option. This benefit-in-kind (the difference between the market value of the shares and the exercise price (increased by the amount, if any, paid by the employee for the option) is taxed as employment income. (For options granted on or before 31 December 2009, the employer is required to withhold personal income tax on the first day on which the share option becomes exercisable, i.e. on the first day of vesting.)

For the 2013 tax year annual income up to €34,401.74 is subject to a 19% income tax rate and income over this amount will be taxed at a tax rate of 25%.

5.1.3 Social security contributions: Social security contributions arise on the exercise of an option. Employees are subject to social security contributions at a rate of 9.4% for 2013. There is a monthly cap of €3,930 on the maximum assessment basis for social security contributions for 2013. There is no annual settlement of social security contributions.

5.1.4 Health insurance contributions: Employees are subject to health insurance contributions at a rate of 4% for the 2013 tax year. The health insurance contributions are capped on a monthly basis at €3,930 in 2013. Any income above this level is not subject to health insurance contributions in the respective calendar month. However, an annual settlement of health insurance contributions is made in certain cases with an annual cap on the assessment basis of €47,160 for 2013 (see further section 4.1.3).

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction: A corporation tax deduction may be available for a Slovak employer for any costs which it bears in relation to an employee share option plan if the benefit is included in the employment contract. This area is complex and the availability of a corporation tax deduction should be considered on a case-by-case basis.

5.2.2 Social security contributions: On exercise of an option, the employer is subject to social security contributions. There is a monthly cap of €3,930 on the maximum assessment basis for employer's social security contributions in 2013. For the 2013 year the rate of employers' social security contributions is 25.2%.

5.2.3 Health insurance contributions: The employer is subject to health insurance contributions at a rate of 10% for 2013. The health insurance contributions are capped on a monthly basis at €3,930 in 2013. Any income above this level is not subject to health insurance contributions in the respective calendar month. However, an annual settlement of health insurance contributions is made in certain cases with the annual cap on the assessment basis of €47,160 for 2013 (see further section 4.1.3).

5.3 Tax withholding
The Slovak employer must withhold any income tax and report on behalf of the employee. The Slovak employer must also withhold social security and health insurance contributions (also on behalf of the employee). This is the case even if the shares are provided by some other entity e.g. a foreign parent company. If the withholding obligation is not met by the Slovak employer or the parent company, the benefit derived from the share acquisition must be reported by the employee to the tax authorities through a Slovak personal income return.

6. Taxation of share disposals

Any capital gain realised from a sale of shares is subject to personal income tax and must be declared by the individual in his personal income tax return. In 2013 the annual income of individuals up to €34,401.74 is subject to a 19% income tax rate and annual income exceeding this amount will be taxed at a rate of 25%.

The capital gain is equal to the difference between the sale price of the shares and the costs incurred in their acquisition, including the purchase price of the shares and fees paid in relation to the acquisition and sale of shares. In the case of shares acquired under a share option plan, the law explicitly states that the amount subject to tax on the acquisition of the shares can be included in the base cost. However, this is only explicit in the case of share option plans (as defined) and the position for other types of share plan is unclear. The better view is that this treatment should extend to other share plans (to avoid double taxation), but this is not free from doubt and is based on general principles only. A loss from the sale of shares is not tax deductible for an individual.

Capital gains made by an individual on the sale of shares acquired on or after 1 January 2004 can, in general, benefit from a tax exemption of up to €500.

A sale of shares acquired before 1 January 2003 is exempt from tax.

The income from the sale of shares is also subject to health insurance contributions at a rate of 14%. This is paid through an annual settlement of health insurance contributions. There is a cap of €47,160 for health insurance contributions relating to annual taxable income of the individual, including employment income, entrepreneurial income, capital gains and other income. As from 1 January 2013, capital gains may be reduced by such health insurance contributions paid.

7. Employee benefit trusts

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

7.2 Under Slovak tax law, it is currently unclear whether an employee who is a beneficiary of a discretionary employee benefit trust should be taxable at the time a contribution is made into the trust. In general, the employee should be taxed when he actually receives benefits from the trust, as if he had received those benefits directly from his employing company. It is necessary to analyse the particular employee benefit trust programme to see whether the employee is or is not able to use the funds in the employee benefit trust in some way from the moment of the contribution or only after he receives the funds from the employee benefit trust.

8. Data protection

Generally, employee consent must be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan, subject to certain statutory exemptions. If a company processes subscription forms, it should obtain an equivalent consent from each employee to permit it to process his/her personal data. Registration or approval by the data protection office is needed in certain cases, depending on the type of personal data processed and the processing system used. In addition, the processing of employees' birth numbers for the purposes of their identification is only allowed in cases where it is essential for achieving the purpose for which their personal data is processed. However, birth numbers are normally used by Slovak businesses as the key identifier in databases as they provide unambiguous identification of all Slovak citizens.

9. Employment law

Please refer to paragraph 4 on pages 7-8 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.

South Africa

1. Securities law

1.1 Offer of securities: The offer of securities to the public generally requires the publication of a prospectus and/or the filing of other documents. There is an exemption from the public offer requirements for employee share plans if the following requirements are met by the company in question (including a foreign company):

- the plan must fall within the definition in the relevant legislation of "an employee share scheme, which is a plan established by a company (including a foreign company) for employees, officers and other persons closely involved in the business of the company or a subsidiary of the company, for the offer of shares or the grant of options over shares in the company;
- the company must nominate someone to be a compliance officer who is responsible for the administration of the employee share plan and is accountable to the directors of the company;
- the company must state in its annual financial statements the number of shares that it has allotted during that financial year under the employee share plan;
- the compliance officer must provide a written statement to any employee who is offered shares under the employee share plan, setting out: (i) full details of the plan, including the risks associated with it (e.g. tax risks, exposure in the event of a fall in the share price and exposure on insolvency); (ii) information relating to the company, including its latest annual financial statements, the general nature of its business and its profit history over the last three years; and (iii) full particulars of any material changes that occur in respect of any information provided under (i) and (ii) above;
- the compliance officer must ensure that copies of the documents referred to above are filed with the South African authorities within 20 business days of the employee share plan being established; and
- the compliance officer must file with the South African authorities a certificate within 60 business days after the end of each financial year certifying that he has complied with his obligations during the past financial year.

As an alternative to relying on the employee share plan exemption, it may be possible for companies to argue that the offer under their employee share plan should not be viewed as a public offer on the basis that the employee share plan cannot be offered to individuals who are not employees, the purpose of the plan is to incentivise employees and not to raise capital and the nature of the offer is more akin to a private offer than a publicly advertised offer. Although the position is not without doubt and the South African regulator has the power to intervene, many foreign companies take this view in practice. (If the South African regulator intervened, the company would be given an opportunity to comply with the regulator's notice and rectify any filing (or other) errors before sanctions would be imposed).

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

1.3 Disclosure: Aside from the notifications mentioned in the exchange controls section below, there are no disclosure requirements in South Africa.

2. Exchange controls

2.1 Notifications: Notification of the employee share plan to the South African Reserve Bank (SARB) needs to be made before each new offer to employees resident in South Africa (i.e. employees who have taken up permanent residence in or are domiciled in South Africa).

The notification to the SARB should include the following information: (i) the plan rules; (ii) the number of shares to be offered; (iii) the market value of the shares; (iv) the method of payment (if any is due); and (v) details of any recharge arrangement (where the costs of the plan are to be recharged to the local entity).

2.1.1 Options: For options with an exercise price, each employee must obtain approval from the SARB for the transfer of any funds to pay the option exercise price. Approval is granted on the basis that the option exercise price is applied against the employee's annual single discretionary allowance of ZAR1 million or annual foreign investment allowance of ZAR4 million. The approval is sought through Authorised Dealers in Foreign Exchange (commercial and merchant banks). To transfer funds against the annual single discretionary allowance, the employee must contact his Authorised Dealer. For transfers against an employee's annual foreign investment allowance, the procedure takes about four to eight weeks and an employee will need to complete an application form and obtain a tax clearance certificate from the South African Revenue Service (SARS). A tax clearance certificate is valid for a 12-month period.

2.1.2 Free awards: Where an employee acquires shares for free (and the South African employer is not recharged for the costs of the plans), no additional SARB approval is needed but the employee must notify the SARB within 30 days after the vesting of awards or acquisition of shares.

3. Financial assistance

3.1 South African company: A South African company may only provide financial assistance in relation to a purchase of or subscription for its or any related company's shares if the following requirements are met:

- the provision of financial assistance is pursuant to an employee share plan that complies with the exemption requirements listed in section 1.1 above, or pursuant to a special shareholder resolution passed within the previous two years;
- the directors are satisfied that the company is solvent and liquid, the assistance is fair and reasonable and any applicable terms of the governing documents have been met; and
- the company must notify the shareholders and trade unions of the assistance (if the assistance is given to related companies, or to directors or prescribed officers of the company or its related companies).

3.2 South African subsidiary of a non-South African company: A South African company is permitted to give financial assistance to its South African employees to enable them to acquire shares in a non-South African parent company. Subject to complying with the requirements in 3.1 above, the South African company is also permitted to give financial assistance to its non- outh African parent in relation to the costs of the plan (subject to group tax considerations).

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 when the shares "vest". Vesting for tax purposes occurs on the date on which the shares are acquired, or, if certain restrictions are imposed on the shares, broadly, on the earlier of the date on which all restrictions lift or the shares are disposed of. Income tax will be payable on the difference between the market value of the shares at the time of vesting and the amount, if any, paid for the shares. Income tax is payable at the employee's marginal income tax rate up to a maximum of 40%.

4.1.2 Social security contributions: There is no employee social security payable in South Africa. There is however an Unemployment Insurance Fund (UIF) contribution of 2%, of which 1% is payable by the employee and 1% by the employer. This is calculated on the basis of an employee's remuneration, including gains made in respect of share plans and will be withheld by the employer from the employee's salary.

4.2 Employer tax and social security contributions

4.2.1 Corporation tax deduction: A deduction may be available to a South African employing company if it actually incurs expenditure in respect of an employee share plan, which generally requires a recharge arrangement. However, any recharge arrangement is subject to approval from the SARB. In a recent change in policy, the SARB has indicated that it is unlikely to grant approval for a recharge arrangement, but each arrangement will be looked at on a case-by-case basis.

4.2.2 Social security contributions: There is no employer social security payable in South Africa. There is however a Skills Development Levy of 1% and a UIF contribution of 2%, of which 1% is payable by the employee and 1% by the employer. Each of these is calculated on the basis of an employee's remuneration, including gains made in respect of share plans, and must be paid over to the SARS.

4.3 Tax withholding

A South African employer has a duty to withhold an employee's tax and UIF from cash remuneration payable to the employee, if the employer grants the share award directly. If the shares are granted to the employee by the employer's parent company or a third party, such grantor may also have a withholding obligation. In certain instances the South African employer will be jointly and severally liable together with any such grantor to withhold the employees' tax and UIF. In such a case, in practice the employer will generally withhold the income tax and UIF due. A directive must be obtained from the SARS to determine the appropriate amount of income tax and UIF to withhold. SARS should also be notified should the grantor and/or the employer not be able to withhold employees' tax and UIF as no or insufficient cash consideration is payable to the employee.

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 option "vests" for tax purposes. Assuming the option does not vest on grant, there is no tax or social security charge on the grant of a share option.

5.1.2 Exercise: As noted above, a tax charge arises at the time an option "vests" for tax purposes. Broadly, vesting for tax purposes should occur on the date on which the shares under option are acquired, or, if certain restrictions are imposed on the shares to be acquired by exercising the option, on the earlier of the date on which all restrictions lift or the shares are disposed of. Income tax will be payable on the difference between the exercise price and the market value of the shares at the time of vesting for tax purposes, payable at the employee's marginal income tax rate (a maximum of 40%).

5.1.3 Social security contributions: There is no employee social security payable. There is however an Unemployment Insurance Fund (UIF) contribution of 2%, of which 1% is payable by the employee and 1% by the employer. This is calculated on the basis of an employee's remuneration, including gains made in respect of share plans, and will be withheld by the employer from the employee's salary.

5.2 Employer tax and social security contributions

5.2.1 Corporation tax deduction: A deduction may be available to a South African employing company if it actually incurs expenditure in respect of options granted to its employees, which generally requires a recharge arrangement. However, any recharge arrangement is subject to approval from the SARB. In a recent change in policy, the SARB has indicated that it is unlikely to grant approval but each arrangement will be looked at on a case-by-case basis.

5.2.2 Social security contributions: There is no employer social security payable. There is however a Skills Development Levy of 1% and a UIF contribution of 2%, of which 1% is payable by the employee and 1% by the employer. Each of these is calculated on the basis of an employee's remuneration, including gains made in respect of share plans, and must be paid over to the SARS.

5.3 Favourable tax regime

Favourable tax structuring for "broad-based" employee share plans (as described below) can be achieved in limited circumstances. These circumstances are narrowly defined and include circumstances where:

- at least 80% of the permanent employees who have worked on a full-time basis for at least one year (who do not participate in any other scheme) are entitled to participate in the plan; and
- the fair market value of the shares acquired by a single employee in any given year and in the preceding four years, does not exceed ZAR50,000.

If the plan qualifies:

- the employee is not subject to income tax on the acquisition or vesting of the options or shares;
- the employer may be entitled to a deduction for corporate tax purposes of the market value of the shares granted to the employees, limited to an annual deduction of ZAR10,000 per employee; and
- if the employee disposes of the shares within five years of acquisition (except in certain circumstances such as death or insolvency), the gain is taxed as employment income at the employee's marginal income tax rate.

5.4 Tax withholding

A South African employer has a duty to withhold an employee's tax and UIF from cash remuneration payable to the employee, if the employer grants the share option directly. If the option is granted to the employee by the employer's parent company or a third party, such grantor may also have a withholding obligation. In certain instances the South African employer will be jointly and severally liable together with any such grantor to withhold the employees' tax and UIF. In such a case, in practice the employer will generally withhold the income tax and UIF due. A directive must be obtained from the SARS to determine the appropriate amount of income tax and UIF to withhold. SARS should also be notified should the grantor and/or the employer not be able to withhold employees' tax and UIF as no or insufficient cash consideration is payable to the employee.

6. Taxation of share disposals

6.1 The tax implications of share disposals will depend on whether the shares are acquired and held by the employee as capital assets (simplistically speaking, assets acquired as long term investments and not for the purposes of a trade) or as revenue assets (i.e. assets acquired for the purposes of a trade, e.g. short term resale). In relation to shares held in a non-South African company, there are no statutory rules defining the shares as a capital asset or a revenue asset. This is judged on a case-by-case basis depending on the reasons the shares were acquired and how the shares are being held. If the shares are held as capital assets, 33.3% of the gain will be taxed at the employee's marginal tax rate. The gain will, broadly speaking, be the difference between the sale price and the market value of the shares at the time of vesting. If the shares are held as revenue assets, the full gain will be taxed at the employee's marginal income tax rate.

6.2 A South African tax resident is not subject to capital gains tax on the first ZAR30,000 of gains each tax year.

7. Employee benefit trusts

7.1 Employees can participate in an employee share plan through a trust. The tax implications where trusts are utilised are complex and depend on the circumstances.

7.2 Financial assistance can be provided to the trust by the local employer. Any funding arrangement may give rise to a number of South African tax considerations, which will depend on the particular funding arrangement in place for the trust.

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

Please refer to paragraph 4 on pages 7-8 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 and the company may not unilaterally amend an employee share plan. Companies should seek specific advice on these issues and other employment law issues which may be applicable.

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 150 natural or legal persons per Member State, other than qualified investors;
- if the total amount of the offer in the EU is below €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 by a group company provided that the company has its head office or registered office in the EU and a document is available containing information on the number and nature of the securities and the reasons for and details of the offer.

This exemption also applies to a company established outside the EU whose securities are admitted to trading on an EU regulated market or a third-country market. In the latter case, for the exemption to apply it is necessary to meet the following requirements:

- the company makes available "adequate information", including the document referred to above, in a language customary in the sphere of international finance; and
- the European Commission has adopted an "equivalence decision" regarding the legislation and supervision governing the third country market in accordance with Directive 2003/71/EU.

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 public 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 2013 tax year income tax rates range from 24.75% to 56%.

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 2013 tax year. The maximum earnings threshold for the 2013 tax year is €3,425.70 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 2013 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 7.15%, depending on the type of activity carried out). The maximum earnings threshold for the 2013 tax year is €3,425.70 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 neither transferable nor assignable.

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 2013 tax year income tax rates range from 24.75% to 56%.

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 2013 tax year. The maximum earnings threshold for the 2013 tax year is €3,425.70 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 2013 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 7.15%, depending on the type of activity carried out). The maximum earnings threshold for 2013 is €3,425.70 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

Generally, 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 flat rate of 21% for the first €6,000 of gain, at 25% for gains between €6,000 and €24,000 and at 27% for any excess, regardless of how long the shares have been held.

However, under new tax rules which apply from 1 January 2013, where assets (including shares) are held for less than 12 months prior to their disposal (whether acquired before or after 1 January 2013) then any capital gains arising on disposal are instead taxed at the Spanish personal income tax rates described in section 4.1.1 above (i.e. at rates ranging from 24.75% to 56%).

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 pages 7-8 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 to be paid to the former employee in the event of dismissal.

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 to existing or former directors or employees (of the company or a group company). The exemption applies to companies whose head office or registered office is located in the EEA (regardless of whether or not the company's securities are listed) as well as by companies established outside the EEA if they have securities listed on a regulated market within the EEA or on a market outside the EEA which is recognised by the EU Commission as being equivalent to a regulated market within the EEA. In order to rely on the exemption, a document including information on the securities and the reasons for and details of the offer must be prepared and made available. In addition to the ESMA (formerly CESR) Recommendations for such a document, the document should, 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 offers to fewer than 150 individuals (other than qualified investors) per state within the EEA as well as an exclusion where the consideration for offers over a period of 12 months is less than €2.5 million (across the EU). The grant and exercise of non-transferable options generally falls outside the Prospectus Directive on the basis referred to in paragraph 2.1 of the first chapter 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 Swedish Tax Agency.

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 2013 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 SEK456,762 for the 2013 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 2013 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 2013 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 2013 income year on income up to SEK 456,762. 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 2013 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 2013 income year. Capital gains on unlisted shares are, under certain circumstances, taxed at an effective 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. Data protection.

8. Data protection

The general rule under the Swedish Personal Data Act (the PDA) is that employee consent should be obtained for the collection, processing and worldwide transfer of personal data in connection with an employee share plan unless a statutory exemption to the consent requirement applies. Personal data may be processed without consent if the processing is necessary for certain purposes listed in the PDA. These include, for example, the performance of a contract with the data subject or compliance with legal obligations. In addition, personal data may be processed without consent provided that the legitimate interest of the data processor is more important than the data subject's interest in being protected against a violation of his/her personal integrity. Personal data may not be transferred to a country outside the EU/EEA, unless an exception to the prohibition applies, for example if the data subject has given his or her consent to the transfer, if there are EU model clauses or if the transferee is safe harbor certified. In order to avoid any uncertainty (particularly if the share plan involves transfer of personal data to a third country), it is recommended that the consent of employees to the processing of personal data is obtained.

9. Employment law

Please refer to paragraph 4 on pages 7-8 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. In some circumstances it may be necessary to inform and/or consult with any relevant trade unions before implementing a new plan (or amending an existing plan). 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: 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. The UK has implemented the amendments which have been made to the Prospectus Directive exclusions/exemptions as referred to 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: 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) financial assistance is 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 2013-2014 (6 April - 5 April), tax rates range from 20% to 45%.

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 12% for the tax year 2013-2014. Employee social security contributions are capped at this rate at £797 per week, and apply at a rate of 2% 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. However, 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 13.8% for the tax year 2013-2014. No earnings cap applies in the case of employer contributions (i.e. the rate of 13.8% applies to the entire amount that is subject to income tax).

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.

During 2013 the Government introduced a number of reforms aimed at simplifying and aligning the tax rules applying to approved share plans. In the case of SIP, the most significant changes include:

- removing the statutory limit (formerly £1,500 per year) on the value of dividends that may be re-invested in SIP shares;
- providing for tax relief on the early withdrawal of shares from a SIP in the event of certain cash takeovers; and
- removing the prohibition on shares with restrictions being used (and extending the circumstances in which forfeiture may apply to free and matching shares).

Most of the changes to SIP came into effect from 17 July 2013 (the date of Royal Assent to the Finance Act 2013), although the removal of the SIP dividend reinvestment limit applies from 6 April 2013. In most cases the legislation provides that, in the case of plans approved prior to 17 July 2013, the rules of the plan are deemed to be amended so as to include the new provisions. However, it is recommended that SIPs are amended for future ease of reference. In addition, employee documentation will need to be amended to reflect the changes.

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 2013-2014, tax rates range from 20% to 45%.

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 12% for the tax year 2013-2014. Employee social security contributions are capped at this rate at £797 per week, and apply at a rate of 2% 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 13.8% for the tax year 2012-2013 and no earnings caps apply (i.e. the rate of 13.8% applies to the entire amount that is subject to income tax).

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.

As noted earlier, during 2013 the Government introduced a number of reforms aimed at simplifying and aligning the tax rules applying to approved share plans. In the case of CSOP, the most significant changes include:

- extending the circumstances in which the early exercise of an approved option by a "good leaver" attracts tax relief;
- providing for tax relief on the early exercise of an approved option in the event of certain cash takeovers; and
- removing the prohibition on shares with restrictions being used.

The changes to CSOP came into effect from 17 July 2013 (the date of Royal Assent to the Finance Act 2013). In most (but not all) cases the legislation provides that, in the case of plans approved prior to 17 July 2013, the rules of the plan are deemed to be amended so as to include the new provisions. However, it is recommended that CSOP plans are amended for future ease of reference. In addition, employee documentation will need to be amended to reflect the changes.

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.

As noted earlier, during 2013 the Government introduced a number of reforms aimed at simplifying and aligning the tax rules applying to approved share plans. In the case of Sharesave, the most significant changes include:

- extending the circumstances in which the early exercise of an approved option by a "good leaver" attracts tax relief;
- providing for tax relief on the early exercise of an approved option in the event of certain cash takeovers; and
- removing the prohibition on shares with restrictions being used.

The changes to Sharesave came into effect from 17 July 2013 (the date of Royal Assent to the Finance Act 2013). In most cases the legislation provides that, in the case of plans approved prior to 17 July 2013, the rules of the plan are deemed to be amended so as to include the new provisions. However, it is recommended that Sharesave plans are amended for future ease of reference. In addition, employee documentation will need to be amended to reflect the changes.

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, 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 £250,000.

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 (and other assets) made from 23 June 2010 onwards, a CGT rate of 28% applies in addition to the existing rate of 18%. For individuals, the rate of CGT is 18% where their total taxable gains and income do not exceed the higher rate of income tax threshold of £32,010 (for 2013-2014). The 28% CGT rate applies to gains (or any part of gains) above that threshold.

6.4 A UK tax resident is not subject to capital gains tax on the first £10,900 (2013-2014 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. (There is an exception to this is if the "disguised remuneration" legislation applies in certain circumstances – see further paragraph 7.3 below.) 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.

7.3 Tax legislation known as the disguised remuneration (DR) legislation was introduced in 2011. DR is a wide-ranging anti-avoidance regime which has been introduced by the UK Government to prevent the use of employee benefit trusts and other third party vehicles to benefit employees in a way that avoids or defers income tax and social security. DR generally applies from 6 April 2011 (although there were some anti-forestalling measures which applied from 9 December 2010 to 5 April 2011). DR is not primarily targeted at standard employee share plans and there are a number of exclusions from DR for, amongst other things, tax-approved share plans and unapproved share plans taxed under normal tax rules.

However, despite these exclusions, DR remains very widely drawn and may still, therefore, inadvertently catch some innocent arrangements, in particular, where employee benefit trusts are used to provide shares under employee share plans. That said, in many cases there should be a relatively straightforward “fix” to ensure that arrangements using an employee benefit trust are not caught. Companies operating share plans in the UK should therefore review their arrangements to ensure they do not inadvertently trigger tax charges under DR.

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 pages 7-8 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 ("Rule 701"), 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, up to 39.6% in 2013, 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, up to 39.6% in 2013, 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 $113,700 for 2013). (The actual full rates (including both employee and employer portions) for Medicare taxes and social security taxes in 2013 are 2.9% and 12.4% respectively.

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 $113,700 for 2013). (The actual full rates (including both the employee and employer portions) for Medicare and social security taxes are 2.9% and 12.4% respectively.

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, up to 39.6% in 2013, 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 $113,700 for 2013). (The actual full rates (including both the employee and employer portions) for Medicare and social security taxes are 2.9% and 12.4% respectively in 2013.

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 $113,700 for 2013). (The actual full rates (including both employee and employer portions) for Medicare and social security taxes in 2013 are 2.9% and 12.4% respectively.

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.

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 up to a maximum rate of 15% (2013 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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