Ireland

Employment

Labor Concerns

Employee entitlement claims are becoming increasingly common. The risk of an employee making a claim for additional benefits under an option plan may be reduced by having the employee agree to standard waiver and consent provisions. Companies should also be aware of Irish anti-discrimination laws and not exclude certain classes of employees, such as part time employees and fixed term contract workers. Retirement provisions may be problematic from an age discrimination perspective.

Communications

There are no legal requirements specific to employee communications.

Generally, electronically executed award agreements are acceptable (the law governing the award will be relevant). Consideration may need to be given to the form of electronic execution adopted.

Regulatory

Securities Compliance

Neither the grant nor the exercise of employee options in Ireland is likely to trigger any requirement for securities filings, provided the options are non-transferable. Additional restrictions and notification requirements apply to directors under the provisions of Irish company law. Financial assistance issues under company law should also be considered.

Foreign Exchange

There are no foreign exchange restrictions applicable to option plans.

Data Protection

Employee consent to the processing and transfer of personal data is a recommended method of compliance with existing data privacy requirements, although the Irish Data Protection Commissioner discourages the use of consent to legitimise transfers as the employment relationship raises doubt over whether such consent may be freely given. Additional requirements may apply for transfers of personal data outside the EEA. Certain categories of data controllers and data processors must register with the Data Protection Commissioner before processing personal data.

Tax

Employee Tax Treatment

Employees are generally subject to income tax, the Universal Social Charge (USC) and employees' PRSI on the spread at the time the option is exercised. A charge to income tax, USC and employees' PRSI will arise on the grant of the option if the price payable is less than market value and the life of the option exceeds 7 years. Capital gains tax may apply upon the subsequent sale of the underlying Stock, subject to certain exemptions.

Social Insurance Contributions

Benefits received from option plans are subject to employees' social insurance (employees' PRSI). Employer's PRSI does not apply to share based remuneration.

Tax-Favored Program

Tax qualification is available for certain option plans (SAYE), subject to various conditions, resulting in an income tax exemption for employees.

Withholding and Reporting

The employer may be responsible for tax withholding on the grant of an option. From 1 July 2012, there is no longer any obligation on the employer to withhold employee PRSI on the gain at exercise; rather employees (and former employees) are liable to pay this, together with the income tax and USC due on exercise, via the RTSO system. The Issuer or the Subsidiary is required to report to the Irish Revenue Commissioners any benefit granted to or exercised by employees under an option plan by 31 March after the end of the relevant tax year.

Employer Tax Treatment

In certain circumstances, a deduction, for the actual costs incurred by the Irish company in connection with the option, may be allowed provided the cost is incurred wholly and exclusively for the purposes of the trade. The deduction is generally allowed only to the extent that a taxable award has been made to an employee.