

# Japan

## Employment

### Labor Concerns

Employee entitlement claims are becoming more common. The risk of employee claims for additional benefits can be reduced by having the employee acknowledge in writing the plan's discretionary nature and by preparing plan documents separately from the employment contract and work rules.

### Communications

Translation of plan documents for employees is recommended but is not required. Government filings must be in Japanese.

## Regulatory

### Securities Compliance

Offers of options to employees of local subsidiaries that are directly and wholly owned by the parent company and non-transferable, are not subject to notification and registration requirements. Otherwise, the necessity for disclosure and registration filings is determined based upon the aggregate price of securities offered and the number of offerees. A securities notification (Form 6) is required for grants exceeding ¥10,000,000 but less than ¥100,000,000 and offered to 50 or more employees. For grants that are in excess of ¥100,000,000, delivery of the prospectus is required, and depending on whether the company is a reporting company and the number of employees, a securities registration statement (Form 7) is required. In addition, annual and semi-annual (and in case of listed company, quarterly) filings are required once a Form 7 has been filed.

### Foreign Exchange

When an employee pays ¥30,000,000 or more to exercise options under the plan, he/she must send a Payment Report to banks or money lending/transferring companies (within 10 days of payment) when the payment was through such banks or money transferring companies, and such banks or money lending/transferring companies must file the Payment Report to Ministry of Finance (MOFO) via Bank of Japan within 10 business days of the receipt of the Payment Report. Alternatively, the employee must file a Payment Report to MOFO via the Bank of Japan by the 20<sup>th</sup> day of the month following the month the payment made, where the payment was not through banks or money transferring companies. If the payment (value of the securities acquired) exceeds ¥100,000,000, he/she must file an additional report (Report concerning Acquisition or Transfer of Securities) with MOFO via Bank of Japan within 20 days from acquisition or payment, whichever is later.

### Data Protection

Employee consent for the processing and transfer of personal data is required, subject to certain statutory exemptions for "joint use".

## Tax

### Employee Tax Treatment

Employees will recognize income equal to the difference (or spread) between the option exercise price and the fair market value of the shares on the date of exercise, provided that stock options are considered to be non-transferable stock options or subject to other special conditions for Japanese tax purposes. The income will be subject to tax as "remuneration income." Capital gains tax generally is due on the gain from the sale of Stock.

### Social Insurance Contributions

Social insurance charges should not be imposed provided that the plan benefits are not treated as a salary for labor performed by the employee for this purpose.

### Tax-Favored Program

According to the 2011 tax reform, a stock option to be issued by certain foreign parent corporation by company resolution under foreign statute is eligible to be a "tax-qualified stock option".

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

**Withholding and Reporting**

Withholding and reporting requirements generally do not apply if the Subsidiary/other local office remains uninvolved in the payment of plan benefits and the Issuer is not reimbursed for the cost of plan benefits. However, if an employee of a Japanese corporation which is over 50% owned by a foreign corporation or an employee of a Japanese office of a foreign corporation receives economic benefits from the foreign corporation according to a right granted by the foreign corporation, the Japanese corporation/head of the Japanese office is required to submit a report concerning the provision of economic benefit. This requirement applies to a report to be submitted on or after 1 January 2013.

According to 2013 tax reform, a certain assets including company shares located outside of Japan is subject to a reporting obligation. This rule applies to a report to be submitted on or after 1 January 2014.

**Employer Tax Treatment**

Although the law is vague, a deduction may be allowed if the Subsidiary bears the cost for plan benefit, subject to prescribed requirements for deduction.

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