Germany

Stock Option Plans

Employment

Labor Concerns	There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated. Works council consultation and approval may be required to implement or terminate a Plan. There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion.
Communications	A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan and that termination of employment will result in the loss of unvested rights. Although there is no legal requirement to do so, it is recommended that the Plan documents be translated into German. Government filings must be in German. Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance	Neither the grant nor the exercise of Options is likely to trigger any prospectus requirement.
Foreign Exchange	Minor reporting may be required (for example, for transactions over €12,500).
Data Protection	Processing of employee data for purposes directly connected to the employment relationship can generally be justified on the basis that the processing is necessary to fulfill the contract of employment. Purposes outside that category need to be assessed on a case-by-case basis, and opt–in consent may be required in some cases.

Tax

Employee Tax Treatment	An employee is generally subject to income tax on the gain on exercise (i.e., the excess of the market value of the Stock acquired over the aggregate exercise price). A "flat tax" may be payable on sale of the Stock, plus a solidarity surcharge and, if applicable, church tax. The flat tax regime will, however, not apply if the employee at any point during the five years preceding the sale held (whether directly or indirectly) a stake representing at least 1 percent of the share capital of the Issuer.
Social Security Contributions	Social insurance contributions are due from both the Subsidiary and the employee on all income received up to a threshold (which is subject to change on an annual basis). If employees exceed this threshold, social security contributions will not be due on the exercise of the Options.
Tax-Favored Program	Any gain up to an annual limit of €360 is exempt from tax, provided that all current employees of the group are eligible to participate in the Plan on the same terms and conditions.
Withholding and Reporting	The Subsidiary has an obligation to withhold the income tax and social security contributions (if the threshold has not been met) due on the excess of the market value of the Stock acquired over the exercise price. Reporting requirements apply to both the Subsidiary and the employee.
Employer Tax Treatment	A deduction is available if the Subsidiary reimburses the Issuer for the costs of the Plan. A written reimbursement agreement is required (setting out the criteria used to establish the amount to be paid by the Subsidiary).

Germany

Restricted Stock and RSUs

Employment

Labor Concerns	There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated. Works council consultation and approval may be required to implement or terminate a Plan. There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion
Communications	A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan and that termination of employment will result in the loss of unvested rights. Although there is no legal requirement to do so, it is recommended that the Plan documents be translated into German. Government filings must be in German. Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance	Neither the grant nor the vesting of Restricted Stock or RSUs is likely to trigger any prospectus requirement.
Foreign Exchange	Minor reporting may be required (for example, for transactions over €12,500).
Data Protection	Processing of employee data for purposes directly connected to the employment relationship can generally be justified on the basis that the processing is necessary to fulfill the contract of employment. Purposes outside that category need to be assessed on a case-by-case basis, and opt-in consent may be required in some cases.

Tax

Employee Tax Treatment	For Restricted Stock, an employee is generally subject to income tax on the value of the Restricted Stock when it is granted. For RSUs, an employee is generally subject to income tax on the value of the Stock received on vesting. A “flat tax” may be payable on any gain upon the net proceeds of the sale of Restricted Stock and Stock, plus a solidarity surcharge and, if applicable, church tax. The flat tax regime will, however, not apply if the employee at any point during the five years preceding the sale held (whether directly or indirectly) a stake representing 1 percent of the share capital of the Issuer.
Social Security Contributions	Social security contributions are due from both the Subsidiary and the employee on all income received up to a threshold (which is subject to change on an annual basis). If employees exceed this threshold, social security contributions will not be due on income from the Restricted Stock or Stock (as applicable).
Tax-Favored Program	Any gain up to an annual limit of €360 is exempt from tax, provided that all current employees of the group are eligible to participate in the Plan on the same terms and conditions.
Withholding and Reporting	The Subsidiary has an obligation to withhold the income tax and social security contributions (if the threshold has not been met) due. Reporting requirements apply to both the Subsidiary and the employee.
Employer Tax Treatment	A deduction is available if the Subsidiary reimburses the Issuer for the costs of the Plan. A written reimbursement agreement is required (setting out the criteria used to establish the amount to be paid by the Subsidiary).

Germany

Employee Stock Purchase Plans

Employment

Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

Works council consultation and approval may be required to implement or terminate a Plan.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan and the exercise of any discretion.

Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan and that termination of employment will result in the loss of unvested rights.

Although there is no legal requirement to do so, it is recommended that the Plan documents be translated into German.

Government filings must be in German.

Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance

It is possible that a prospectus will be required for participation in the Plan to be offered to employees in Germany. However, certain exemptions, exclusions and interpretations may be applicable and, in practice, a prospectus is rarely required. For example, offers made to no more than 150 persons in any one Member State are exempt and certain Issuers (including those incorporated or listed in a Member State) are required only to publish summary information about the Plan and the Stock in substitution for a prospectus. Where a prospectus is required, the Issuer may be able to take advantage of a short form regime under which certain requirements for the prospectus' contents are waived. Any prospectus must be approved by the relevant regulatory authority in the Issuer's Home Member State and filed under the passporting system with the relevant regulatory authority of each Member State in which participation in the Plan is being offered.

Foreign Exchange	Minor reporting may be required (for example, for transactions over €12,500).
Data Protection	Processing of employee data for purposes directly connected to the employment relationship can generally be justified on the basis that the processing is necessary to fulfill the contract of employment. Purposes outside that category need to be assessed on a case–by–case basis, and opt–in consent may be required in some cases.

Tax

Employee Tax Treatment	An employee is generally subject to income tax on the value of any discount when the Stock is purchased. A “flat tax” may be payable on sale of the Stock plus a solidarity surcharge and, if applicable, church tax. The flat tax regime will, however, not apply if the employee at any point during the five years preceding the sale held (whether directly or indirectly) a stake representing 1 percent of the share capital of the Issuer.
Social Security Contributions	Social security contributions are due from both the Subsidiary and the employee on all income received up to a threshold (which is subject to change on an annual basis). If employees exceed this threshold, social security contributions will not be due on income from the purchase of Stock under the Plan.
Tax-Favored Program	Any gain up to an annual limit of €360 is exempt from tax, provided that all current employees of the group are eligible to participate in the Plan on the same terms and conditions.
Withholding and Reporting	The Subsidiary has an obligation to withhold the income tax and social security contributions (if the threshold has not been met) due on the excess of the market value of the Stock acquired over the exercise price. Reporting requirements apply to both the Subsidiary and the employee.
Employer Tax Treatment	A deduction is available if the Subsidiary reimburses the Issuer for the costs of the Plan. A written reimbursement agreement is required (setting out the criteria used to establish the amount to be paid by the Subsidiary).