
China

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.

Employers are only permitted to remunerate employees in cash and not in “negotiable securities” (i.e., benefits in kind). Therefore awards of Options should be clearly designated as discretionary and additional to salary, to prevent them being deemed an illegal payment.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including 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 confirms that termination of employment will result in the loss of unvested rights.

Plan documents must be translated into Mandarin and submitted for approvals and Government filings.

Regulatory

Securities Compliance

If Options are issued to more than 200 employees or officers of the Subsidiary, this may constitute a “public offering.” A “public offering” is subject to approval from the China Securities Regulatory Commission (the “**CSRC Approval**”). In practice, there is currently no formal process in place to obtain CSRC Approval for the grant of Options by a foreign company to Chinese resident employees.

Foreign Exchange

The approval of the State Administration of Foreign Exchange (“**SAFE**”) is likely to be required to operate the Plan. The Subsidiary will also be required to establish a special onshore account through which all Plan-related payments must be made. Obtaining approval for the Plan may be time-consuming and costly. Following the initial approval, quarterly reports are required to be provided to SAFE on the status of the Plan.

SAFE must be notified within three months in the event of any material amendment to the Plan.

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 recommended 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 fair market value of the Stock acquired over the aggregate exercise price).

Capital gains tax is also payable on the gain upon the net proceeds of sale of Stock.

Social Security Contributions

Social security contributions, including the Unified Pension Fund, may be payable depending on the practice and position taken by the local labor and social insurance bureau.

Tax-Favored Program

Provided certain filing requirements are met, income on exercise will be taxed separately from the employee's monthly salary income and therefore a lower marginal tax may apply to this income. If the Subsidiary fails to comply with these filing requirements, any income on exercise will be taxed together with the salary income for that month, so that a higher marginal tax rate may apply to the total proceeds.

Withholding and Reporting

The Subsidiary has an obligation to withhold income tax and file individual income tax returns with the tax authorities. Failure to file and pay the amount of tax due is subject to penalties, ranging from 50 percent to three times the tax due. The same obligation is unlikely to apply to social security contributions.

Depending on the requirements of the relevant local tax bureau, the Issuer may be required to translate into Mandarin and submit the rules of the Plan and related grant documents to the local tax bureau.

Employer Tax Treatment

A deduction is available if the Subsidiary reimburses the Issuer for costs of the Plan.

China

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.

Employers are only permitted to remunerate employees in cash and not in “negotiable securities” (i.e., benefits in kind). Therefore awards of Restricted Stock and RSUs should be clearly designated as discretionary and additional to salary, to prevent this being deemed an illegal payment.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including 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 confirms that termination of employment will result in the loss of unvested rights.

Plan documents must be translated into Mandarin and submitted for approvals and Government filings.

Regulatory

Securities Compliance

If Restricted Stock or RSUs are issued to more than 200 employees or officers of the Subsidiary, this may constitute a “public offering.” A “public offering” is subject to approval from the China Securities Regulatory Commission (the “**CSRC Approval**”). In practice, there is currently no formal process in place to obtain CSRC Approval for the issuance of stock-based equity awards issued by a foreign company to Chinese resident employees.

Foreign Exchange

The approval of the State Administration of Foreign Exchange (“**SAFE**”) is likely to be required to operate the Plan. The Subsidiary will also be required to establish a special onshore account through which all Plan-related payments must be made. Obtaining approval for the Plan may be time-consuming and costly, as many documents are required to be translated. Following the initial approval, quarterly reports are required to be provided to SAFE on the status of the Plan.

SAFE must be notified within three months in the event of any material amendment to the Plan.

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 recommended in some cases.

Tax

Employee Tax Treatment

For both Restricted Stock and RSUs, employees will be subject to income tax on the fair market value of the Stock on vesting.

Capital gains tax is also payable on the net proceeds of sale of the Stock.

Social Security Contributions

Social security contributions, including the Unified Pension Fund, may be payable depending on the practice and position taken by the local labor and social insurance bureau.

Tax-Favored Program

Provided certain filing requirements are met, income on vesting will be taxed separately from the employee's monthly salary income and therefore a lower marginal tax may apply to this income. If the Subsidiary fails to comply with these filing requirements, any income on vesting will be taxed together with the salary income for that month, so that a higher marginal tax rate may apply to the total proceeds.

Withholding and Reporting

The Subsidiary has obligations to withhold income tax and report with respect to employment income arising, but such obligations are unlikely to apply for social security contributions.

Upon the implementation of the Plan, the Subsidiary may also be required to submit the Plan to the local tax bureau.

Employer Tax Treatment

A deduction is available if the Subsidiary reimburses the Issuer for costs of the Plan.

China

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.

Employers are only permitted to remunerate employees in cash and not in “negotiable securities” (i.e., benefits in kind). Therefore purchase rights should be clearly designated as discretionary and additional to salary, to prevent them being deemed an illegal payment.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including 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 confirms that termination of employment will result in the loss of unvested rights.

Plan documents must be translated into Mandarin and submitted for approvals and government filings.

Regulatory

Securities Compliance

If Stock is issued to more than 200 employees or officers of the Subsidiary, this may constitute a “public offering.” A “public offering” is subject to approval from the China Securities Regulatory Commission (the “**CSRC Approval**”). In practice, there is currently no formal process in place to obtain CSRC Approval for the issuance of Stock by a foreign company to Chinese resident employees.

Foreign Exchange

The approval of the State Administration of Foreign Exchange (“**SAFE**”) is likely to be required to operate the Plan. The Subsidiary will also be required to establish a special onshore account through which all Plan-related payments must be made. Obtaining approval for the Plan may be time-consuming and costly. Following the initial approval, quarterly reports are required to be provided to SAFE on the status of the Plan.

SAFE must be notified within three months in the event of any material amendment to the Plan.

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 recommended 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.

Capital gains tax is also payable on the gain upon the net proceeds of sale of Stock.

Social Security Contributions

Social security contributions, including the Unified Pension Fund, may be payable depending on the practice and position taken by the local labor and social insurance bureau.

Tax-Favored Program

Subject to approval from the local tax authorities, employees may be able to split their taxable income over a period of up to six months, allowing them to pay tax over a period of time rather than in a single lump sum.

Withholding and Reporting

The Subsidiary has obligations to withhold income tax and report with respect to employment income arising, but such obligations are unlikely to apply for social security contributions.

Employer Tax Treatment

A deduction is available if the Subsidiary reimburses the Issuer for the costs of the Plan.