



TAPESTRY

**INTERNATIONAL SHARE PLANS
TRAINING MANUAL**

Module 6 – Approaches to Global Compliance

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Approaches to Global Compliance

In this module we will look at:

- Whether it is necessary to obtain local legal and tax advice.
- How databases are used.
- What are you looking for in the advice or database reports?

We hope it is clear from our training modules, that when operating a global plan companies will need to seek legal and tax advice in relation to all jurisdictions where it is intended that the plan will operate. It is essential that this process is managed in a way which delivers the information in a user-friendly format and at the required time. There are various ways of doing this which we will summarise below. There are various factors which will affect which route you use including budget; available time; manpower at your disposal and approach to risk. In different circumstances and for different companies each alternative (or a combination of all three) can be the right approach. This has to be considered on a case-by-case basis. We are always happy to discuss with our clients the best and most cost effective approach to compliance.

1 Tailored reports

The best way to obtain robust legal and tax advice is to get that advice on a bespoke or tailored basis from legal and tax advisers in each relevant country. The way this is done is that once the plan terms have been fixed then either the complete rules or a summary of the plan is sent to the local legal and tax advisers. At the same time a series of questions or a matrix of information is sent to those advisers and they are asked to complete that matrix or answer those questions for their particular jurisdiction. This approach means that your particular company and your particular plan are carefully considered by the relevant advisers. It is important to realise that although many companies are similar and many plans are similar in fact there are often crucial differences between companies and between plans which can affect the legal or tax treatment. This approach ensures that the advice you receive is specifically tailored to the right set of facts.

Lawyers in different jurisdictions would, if left to their own devices, produce advice in a wide range of formats and a wide range of detail. That is why it is very important this process is managed so that the advice you receive back is consistent on a global basis and covers all the points which are important to you. We maintain databases containing legal and tax reports for all countries in the world. Therefore, what we do is that we produce draft legal and tax reports in an absolutely regular format and send this to each jurisdiction asking them to correct or confirm those reports but instructing them to stay within the structure we have created. This ensures that those reports are consistent and comparable.

This approach is the most legally robust but does require the most resource.

2 Feasibility reports

We have assisted companies in implementing their plans in virtually every jurisdiction in the world in relation to a wide variety of plan types. This means that we have received a lot of legal and tax advice from all those jurisdictions in relation to many plan types. We maintain databases which hold that advice. This means that we can produce feasibility reports in relation to any particular jurisdiction and any particular kind of plan. These reports are much shorter than the tailored legal reports and are based on our previous experience rather than on specific legal or tax advice in relation to your plan. This kind of feasibility report is therefore offered on a no liability basis. These reports are however much cheaper to obtain than full tailored reports.

It may be that in certain countries where, for example, you have only a limited number of participants, that the cost benefit analysis will not justify a full tailored report and you will be prepared to rely on a feasibility report. Sometimes it makes sense to have a feasibility report prepared in relation to all the countries where you intend to offer the plan and then to arrange tailored reports for those countries where the feasibility report indicates that there are significant issues.

3 Databases

Some clients prefer to receive reports in the form of word documents and some clients prefer to have access to an online tool. We operate a database which covers most countries in the world for the most common types of plan. On this database you can access various different kinds of report including feasibility reports: full legal reports: tax rate tables: tax reports: action lists et cetera. The database is available 24/7 and for those clients who like a self-service approach it can be very useful. The database is populated with information we receive from advisers around the world but is given on a generic basis and is therefore given without liability. The costs of the database are similar to the costs of obtaining feasibility reports.

4 What is the purpose?

It is important to always keep in mind what you are going to do with the information contained in any such advice. The main things you are going to do include the following:

- conclude that the plan can operate without any necessary changes in that jurisdiction
- conclude that the plan cannot operate in that jurisdiction
- conclude that the plan can operate in an amended form in that jurisdiction
- you may learn that certain actions (such as filings) are required in that jurisdiction
- you need to understand (and perhaps tell management) about any risks you are taking. Sometimes the law is unclear or changing and it is not possible to get a “clear” opinion or you have decided not to follow through on some actions.
- you will see how the tax treatment works in that jurisdiction and you may instruct your payroll accordingly.

All the different sorts of information which you receive – whether from a tailored report or from the database – will therefore lead to a list of actions and decisions which you must take. Whichever way you source the information we would discuss these actions and decisions with you. Some of those actions you would be able to take yourself (for example withholding tax at 20% in country X) and some of those actions would require our assistance (for example making a securities filing in Japan).

The danger to be avoided is receiving too much information and not knowing what to do with it.

It is essential therefore that this process is managed in a way which delivers the information on time and in a way which can lead to appropriate decisions and actions.

Whichever approach is taken it should be clear who is responsible for legal compliance. Some companies devolve it to local operating subsidiaries. More usually compliance, and approaches to compliance are kept in a central function because it is such an important area and because of the potential for risk.

5 Action!

- How does your company deal with local legal advice?
- Who is responsible if some filing has not been done? (is that responsibility clearly understood?)
- Where do you store your filings for future reference?