

Employee Benefits

Representative Transactions

Due to the sensitive nature of the arrangements administered by the Ogier Employee Benefits Team, client details must remain confidential; however the following are representative of the work taken on in the last 12 months.

Corporate Restructuring

The recent economic downturn has prompted many organisations to reconsider their exposure to debt. Our team has recently established several trusts as integral parts of new group structures where banks and other financial institutions have agreed to swap their large debt exposure for equity in the entities they were supporting.

The trust in many instances owns between 30% and 60% of group equity, setting a large proportion of the ordinary share capital aside for the benefit of senior management.

The banks' interest in preferential share classes ensures a first option on shareholder returns before benefit accrues to the ordinary shareholders.

Partnership incentives

The continuing growth in the fund and private equity industry has resulted in a very competitive employment market. Many new incentive compensation arrangements are centred on meeting this need.

We currently manage several schemes of varying complexity, where management incentives are delivered in such a way as to motivate and retain partners in a partnership. These incentives are delivered through trust, company and partnership arrangements and can

be tailored to meet each client's needs. Each arrangement mitigates or defers normal income taxes and assists in retaining key members of the team.

These arrangements can also be structured to reinvest the deferred element into the funds being managed to further align the interests of the management team with those of the partnership as a whole.

Bonus deferral plans

Bonus deferral plans are increasing in popularity in the United Kingdom, Europe and Ireland as income tax rates rise and the regulatory bodies call for an ability to defer bonuses and for claw back conditions to be implemented. Bonus deferral plans allow for various levels of performance criteria and vesting periods to be built into the plans and claw back of bonuses is possible where performance conditions are not met.

In addition to meeting EU and UK regulatory requirements bonus deferral plans provide very strong retention and incentive tools for employers and allow employees the ability to recommend investment strategies to the trustee. Investment is very tax efficient in the trust if managed correctly and employees are able to benefit from the tax free roll-up of both capital and income gains within the trust.

We have been increasingly involved in establishing trusts and other entities where the employer is able to define the investment choice for deferred bonuses prior to vesting over a three or five year period.

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Pension plans

The pension plans Ogier administer include international pensions for employees across a number of jurisdictions, including South America, Europe and the Middle East.

Middle Eastern pension arrangements are becoming an important tool in an employers' remuneration package. Certain states in the region require that an end of service gratuity be paid to staff leaving employment and more and more employers are implementing incentive plans that meet this legal requirement whilst at the same time delivering a competitive incentive to employees.

Ogier is well placed to provide trustee and administration services to plans of this nature, leveraging off our bespoke online system to effectively deliver these incentive arrangements across jurisdictions with expert assistance from both our Jersey and Bahrain teams.

Our team is currently administering UK unapproved pension arrangements, including Employer Funded Retirement Benefit Schemes ("EFRBS") and variations of these that deliver pension planning with flexible investment options.

Bahrain OSS

Bahrain Occupational Savings Schemes have become an increasingly popular way for companies to assist staff in saving for either short or long term requirements.

Although not required by law, they do add a valuable incentive to the overall remuneration package and when coupled with employer matching contributions, make a sought after benefit in the region.

Ogier has the ability to perform the roles of trustee and administrator to the plans either in Bahrain or from our Jersey office. Our bespoke online portal is designed to facilitate the cost effective administration of these plans, affording participants and the employer access to view investment holdings and where appropriate, amend investment preferences attaching to each contribution or switch existing investment exposure.

Joint Ownership of Shares

Share ownership schemes assist companies in attracting and retaining key executives with relevant industry experience by affording them

the opportunity to participate in the growth of the company's share price. Companies may be unable or unwilling to pay large cash incentives and surplus cash is productively re-invested in the business rather than paid to employees in traditional discretionary bonuses. The recent focus on reducing cash bonuses in preference for share incentives is also a strong influence in setting current remuneration strategies across the EU and the UK.

These structures afford joint participation in the company's equity for the employee and the employee benefit trust. The employee participates in the growth in share value, whilst being bound by certain trigger events that are designed to retain, motivate and stretch the company's management team. The growth attributed to the employee is taxed as a capital gain rather than as income.

The structure meets the company's need to achieve aggressive growth targets, whilst retaining key executives and provides a tax efficient incentive mechanism for delivering equity participation as part of a competitive remuneration package.

Market maker

Private companies often have the problem of an illiquid market for trading shares. An employee benefit trust can assist in creating a market for a company's shares as part of a share incentive scheme.

The trust fulfils a dual role in addition to the share incentive arrangement. The trust can both create a market in the illiquid shares as well as hedge the company's exposure to its own share price prior to awards vesting, by warehousing shares in the trust.

The delivery of value to participants is therefore capped at the cost of the initial shares contributed to the trust and those shares can be "traded" between employees within the trust should an employee leave the company's employ and the articles forbid the holding of shares by ex-employees.

Corporate nominee

Due to increasing demand from our share plan clients, we have developed a Corporate Nominee arrangement to compliment the overall share plan service that we offer. This enhanced service is designed to facilitate the continued holding of shares outside of the share plan rules, post vesting, on behalf of the employees or ex-



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employees in a nominee capacity. Participants therefore need not have their own brokerage account in order to continue benefiting from the uplift in share price where the decision to sell shares is delayed for any period of time.

Ogier have partnered with a custodian and brokerage service for this purpose and we offer the administrative services of tracking share holdings and instructing share sales to the brokers. It is also possible for individuals to contact the brokers directly to discuss the manner in which shares are to be sold.

This is a value added service that works well for share plans where there is no immediate requirement for shares to be sold on vesting or where the company may have ongoing sale restrictions for shares held by senior executives.

About Ogier

Ogier is an award winning world leader in the provision of offshore legal and fiduciary services. Our integrated legal and fiduciary approach has proved a winning combination which enables us to secure awards for the quality of our services and our people.

The Group employs over 850 people and provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and fiduciary services through our international spread of offices that cover all time zones and key financial markets. Our network includes Bahrain, BVI, Cayman, Guernsey, Hong Kong, Ireland, Jersey, London, Shanghai and Tokyo.

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Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.

Please check with the relevant contact listed above for specific details regarding the legal services we offer from each office as we do not always practice the law of the jurisdiction where our offices are located. Please note that the named contact may not be qualified to advise on all the laws practiced from that office.