

**From PLI's Online Program**

***Compensation and Benefits Go Global: Expatriates, Tax Section 409A,  
and Cross-Border Plans***

**#15990**

FOREIGN PLANS QUESTIONNAIRE<sup>1</sup>

Recent changes in the U.S. federal tax code adopted complex and far-reaching rules that apply to “nonqualified deferred compensation plans.” The relevant section of the tax code, together with the applicable rules and regulations, is referred to as “Section 409A.” Section 409A applies to a very wide variety of compensatory plans and arrangements (including ones that may not usually be thought of as “deferred compensation”). Potentially covered plans include bonus plans, severance arrangements, retirement savings plans, pensions and individual employment agreements or offer letters. Plans and arrangements provided by employers outside the U.S. are not automatically exempt. Section 409A can result in adverse tax consequences for employees, including a 20% penalty tax.

The following employees currently work in your market and have relocated to work in the U.S. or will do so in the near future:

[List]

Because they are moving to the U.S., these employees will become U.S. taxpayers and Section 409A will apply to them. We would like to be aware in advance of any plans or arrangements covering these employees that could be subject to Section 409A, so that any potential problems can be corrected in a timely manner.

Please complete the following survey and return it to [contact] at [contact information] as soon as possible, but not later than [date]. If you have any questions about the survey or need help or advice on completing it, please contact [contact] at [contact information]. We may need to contact you to ask some follow-up questions after you return your answers to us.

**1. How are annual bonuses paid in your country?**

- a. Are annual bonuses paid on or around the same date each year?  
.....Yes/No

If so, on what date? \_\_\_\_\_

- b. Do you have any written guidelines or other documents that you give to employees to explain how annual bonuses work? .....Yes/No

If “Yes,” please attach a copy of any such guidelines or documents (with an English translation, if one exists) to this questionnaire when you return it.

---

<sup>1</sup> We note that many US corporations with subsidiaries and/or business units overseas grant equity-based compensation solely under global equity compensation plans that are maintained administered in the US. If all equity-based compensation is granted under such plans, we assume that Section 409A issues will be addressed in the documentation and operation of the global plan, and there is no need to obtain additional information from overseas HR professionals regarding equity-based compensation. If this is the case, we suggest including the following note in the questionnaire: “When you answer these questions you do not need to consider stock options, restricted stock or any other awards based on [company] shares, because these awards are all granted under centrally administered plans and should comply with Section 409A.” If equity-based compensation awards can be granted under local plans, we recommend including additional questions to elicit information about such plans and awards.

**2. Do you have any of the following employee benefit plans or arrangements (whether or not in writing) that cover the employees listed on page 1? Please circle “Yes” or “No.”**

*When deciding whether to circle “Yes” or “No,” please consider all arrangements under which employees have been promised payments or benefits, whether they are formal or informal and whether or not they are in writing. If you are not sure, please answer “Yes.”*

Long-term incentive or bonus plans under which employees can earn a bonus over more than one year?

*For example, (i) an employee is eligible to earn a bonus based on growth in comparable store sales over the next three years, paid at the end of three years, or (ii) a new employee is eligible to earn a retention bonus after 18 months of employment.*

.....Yes/No

Severance plans that provide payments if the employee is terminated? *(You do not have to include contributions to the government-administered social system in your country at the minimum required rate. However, if you have any arrangements where you pay additional contributions above the required rate, please answer “Yes.”)*

.....Yes/No

Retirement savings plans or pension plans designed to help employees save for retirement or provide money after employees have stopped working?

.....Yes/No

**3. Do you have any individual employment contracts, arrangements or promises with any of the employees listed on page 1 (whether or not written) that are different from your arrangements with employees generally under which you have promised to provide any payments or benefits to the employee in the future? Please circle “Yes” or “No.”** *(If you have any contracts or other arrangements, including unwritten, that add to or otherwise modify the benefits the employee is entitled to under any of your general plans, please circle “Yes.”)*

.....Yes/No

**4. Do you have any other plans, contracts, arrangements or promises under which you owe money or other benefits to any of the employees listed on page 1?**

.....Yes/No

If you circled “Yes,” please list the plans, arrangements, contracts or promises:

---

---

---

**SUPPLEMENTAL QUESTIONNAIRE A: LONG-TERM BONUS PLANS**

A “long-term bonus plan” means a bonus or incentive plan under which employees can earn a bonus over more than one year – for example, (i) an employee is eligible to earn a bonus based on growth in comparable store sales over the next three years, paid at the end of three years, or (ii) a new employee is eligible to earn a retention bonus after 18 months of employment.

Please complete one questionnaire for each long-term bonus plan.

**1. What is the normal payment schedule for the bonus?** (check the appropriate one and fill in the blanks as appropriate)

- In a single payment \_\_\_ years after the award
  
- In installments beginning \_\_\_\_\_ years after the award  
Installment schedule is
  - annual
  - quarterly
  - monthly
  - other (please specify) \_\_\_\_\_

**2. Can either the employee or the Company choose between the payment schedules above?**

- Employee ..... Yes/No
  - Company ..... Yes/No
- If “Yes,” when does the employee / the Company have to make this choice?

\_\_\_\_\_

\_\_\_\_\_

**3. Could all or part of the bonus be paid before the normal payment date or dates if any of the following happens?**

- a. Employee stops working for the Company (for any reason, including reduction in force, employee decides to leave, or redundancy) ..... Yes/No
- b. Employee retires?..... Yes/No
- c. Employee dies or becomes disabled?..... Yes/No
- d. Employee purchases a home ..... Yes/No
- e. Employee experiences financial hardship..... Yes/No
- f. Employee asks the Company for an early payment ..... Yes/No
- g. Company decides it wants to pay out the bonuses early..... Yes/No
- h. Other? \_\_\_\_\_

**4. Can the employee choose to receive the bonus later than the normal payment date or dates?.....Yes/No**

If “Yes,” when does the employee have to make this decision? \_\_\_\_\_

**5. Can the Company choose to pay the bonus later than the normal payment date or dates? .....Yes/No**

If “Yes,” when does the Company have to make this decision? \_\_\_\_\_

**6. Can the employee choose to give up the bonus in exchange for something else (a different payment or benefit)? .....Yes/No**

If “Yes,” when does the employee have to make this decision? \_\_\_\_\_

**6. Can the Company choose not to pay the bonus and to give the employee something else instead (a different payment or benefit)? .....Yes/No**

If “Yes,” when does the employee have to make this decision? \_\_\_\_\_

**7. Is the bonus plan in writing, or are there any written documents explaining how the plan works?.....Yes/No**

If “Yes,” please attach a copy of each such document (with an English translation, if one exists) to this questionnaire when you return it.

**SUPPLEMENTAL QUESTIONNAIRE B: SEVERANCE PLANS**

*Please complete one questionnaire for each severance plan.*

**1. Do employees have a legal right to demand severance when their employment ends?**

.....Yes/No

**2. Does the Company pay severance benefits in excess of the legally required minimum?**

.....Yes/No

**3. In which circumstances does the employee receive payments or benefits under the plan?**

a. Employee is made redundant or loses his/her job as a result of a reduction in force by the Company .....Yes/No

b. Employee is terminated.....Yes/No

c. Employee voluntarily leaves the Company .....Yes/No  
-If “Yes,” are there any conditions the employee must meet to get benefits (e.g., age, length of service, or having justification for quitting)? .....Yes/No

If “Yes,” please describe those conditions: \_\_\_\_\_

\_\_\_\_\_

d. Employee dies.....Yes/No

e. Employee becomes sick or disabled ..... Yes/No

f. Other (please specify): \_\_\_\_\_

**4. What is the normal payment schedule for the severance benefits? (check the appropriate one and fill in the blanks as appropriate)**

\_\_\_\_\_ In a single payment when the employee’s employment ends

\_\_\_\_\_ In a single payment \_\_\_ years/months after the employee’s employment ends

\_\_\_\_\_ In installments beginning \_\_\_\_\_ years/months after the employee’s employment ends

Installment schedule is

\_\_\_ annual

\_\_\_ quarterly

\_\_\_ monthly

\_\_\_ other (please specify) \_\_\_\_\_

**5. Can either the employee or the Company choose between the payment schedules above?**

- Employee ..... Yes/No
- Company ..... Yes/No

If “Yes,” when does the employee / the Company have to make this choice?

---

---

**6. Can either the Company or the employee choose to change the timing of payments or benefits under the plan, e.g. by delaying the payments until some time after the employee leaves or accelerating the payments to an earlier date?..... Yes/No**

**7. Is the employee required to provide the Company with any documentation or meet any conditions (e.g., executing a release of claims or an agreement not to compete, returning Company property or repaying outstanding loans to the Company) before receiving payments or benefits under the plan? ..... Yes/No**

**8. Can either the Company or the employee choose to cancel the employee’s potential benefits under the plan and provide different payments or benefits as a substitute? ..... Yes/No**

**9. Is the severance plan in writing, or are there any written documents explaining how the plan works? ..... Yes/No**

-If “Yes,” please attach a copy of each such document (with an English translation, if one exists) to this questionnaire when you return it.

**SUPPLEMENTAL QUESTIONNAIRE C: RETIREMENT SAVINGS AND PENSION PLANS**

*Please complete one questionnaire for each retirement savings or pension plan.*

**1. Are the retirement assets protected from Company creditors in the event that the Company becomes insolvent? .....Yes/No**

**2. Is the Company required by law to provide benefits or payments under this plan to employees who retire from their service with the Company? .....Yes/No**

- If "Yes," does the Company provide more than the legal minimum benefits? ...Yes/No

**4. Who is covered by the plan? (Please check as appropriate)**

- Executives
- Non-executive management
- Support staff
- Rank-and-file employees]<sup>2</sup>
- Other (please specify) \_\_\_\_\_

**5. Can employees choose whether to make contributions and/or set aside part of their compensation under the plan? .....Yes/No**

-If "Yes," when does the employee have to make the decision? \_\_\_\_\_

**6. How is the amount of an employee's benefit under the plan determined? (Check the appropriate one)**

- Based on a percentage of the employee's compensation before retirement
- Based on the employee's account balance under the plan
- Other (please specify) \_\_\_\_\_

**7. Under what conditions are employees normally eligible to receive benefits under the plan? (Check all that apply)**

- Retirement at or after age \_\_\_\_ (please specify)
- Retirement at or after \_\_\_\_ years of service (please specify)
- Retirement at or after age \_\_\_\_ with \_\_\_\_ years of service (please specify)

<sup>2</sup> Or insert other specific categories used within the company.



\_\_ Before retirement?

- If employees can receive benefits (including reduced benefits) under the plan before retirement, under what circumstances can they receive the benefits? *(Please circle yes or no)*

- Financial hardship ..... Yes/No
- Educational purposes ..... Yes/No
- Purchase of a home ..... Yes/No
- Other (please specify) \_\_\_\_\_

- If an employee can leave the Company before retirement and still receive benefits under the plan, are the benefits different from those available if the employee keeps working until employment age? *(Please circle the appropriate answer)* Yes/No/Not Applicable

- If "Yes," please specify how the benefits are different:

---

---

**8. What is the normal payment schedule for the retirement benefits?** *(check the appropriate one and fill in the blanks as appropriate)*

- \_\_\_\_\_ In a single payment when the employee retires
- \_\_\_\_\_ In a single payment \_\_\_ years/months after the employee retires
- \_\_\_\_\_ In installments beginning \_\_\_\_\_ years after the employee retires  
Installment schedule is
  - \_\_ annual
  - \_\_ quarterly
  - \_\_ monthly
  - \_\_ other (please specify) \_\_\_\_\_

**9. Can either the employee or the Company choose between the payment schedules above?**

- Employee ..... Yes/No
- Company ..... Yes/No

If "Yes," when does the employee / the Company have to make this choice?

---

---

**10. Can either the Company or the employee choose to change the timing of payments or benefits under the plan, e.g. by delaying the payments until some time after the employee leaves or accelerating the payments to an earlier date?..... Yes/No**

**11. Is the employee required to provide the Company with any documentation or meet any conditions (e.g., executing a release of claims or an agreement not to compete, returning Company property or repaying outstanding loans to the Company) before receiving payments or benefits under the plan? .....Yes/No**

**12. Can either the Company or the employee choose to cancel the employee's potential benefits under the plan and provide different payments or benefits as a substitute? .....Yes/No**

**13. Is the plan in writing, or are there any written documents explaining how the plan works? .....Yes/No**

-If "Yes," please attach a copy of each such document (with an English translation, if one exists) to this questionnaire when you return it.