International Human Resource Management and International Labour Law

A Human Resource Management Accouting Approach

by

Prof. Dr. habil. Wilhelm Schmeisser,

Univ.-Prof. Dr. Dieter Krimphove

and

Dipl.Kffr. (Univ.) Rebecca Popp

with the collaboration of

Kristin Kirchhoff, Martin Schuster, Edith Teschner,

Susan Burghardt, Lydia Clausen, Alexa Hellweg,

Daniela Liersch, David Luwisch, Bettina Pape,

Cornelia Pape, Karin Peters, Katja Schneider,

Anja Seifert, Daniela Woitok

Oldenbourg Verlag Munchen

Contents

Autho	rs list	V
Prefac	e	IX
List of	Abbreviations	XIII
1	Finance oriented Human Resource Management for the support	
	of globalization strategies of international enterprises	1
1	Introduction	1
2	Differentiation of international and national human resource management	2
3	Problems and aims of international HR management	3
4	Options of personnel policy in international personnel management	4
4.1	National model	5
4.2	Multinational model	5
4.3	Global model	6
4.4	Transnational model	6
5	Internationalization strategies in personnel management	6
5.1	Basic strategies	7
5.1.1	Ethnocentric strategy	7
5.1.2 5.1.3	Polycentric strategy	7
	Geocentric strategy	8
5.2	Culture strategies (Monoculture, multiculture, mixed culture)	8
5.3	Decision strategies (central, local, federal)	10
5.4	Nine strategies of internationalization	11
6	Conclusion	12
Litera	ture	13

XII Contents

II	International remuneration system	15
7	International delegation of executive managers – exemplified by BASF	16
7.1	Importance of international deployment of staff	17
7.2	Structural and contractual aspects	18
7.3 7.3.1 7.3.2	Salary system : Reference salaiy and other payments Delegation and mobility bonus	19 19 21
7.3.3	Share of rent	24
Literat	ure	25
Anne\		28
<u>TIT</u>	Stock-option programs as part of the remuneration management system	43
8	Basic considerations on economic philosophy and ethics	43
8.1	Shareholder-Value-Approach	43
8.2	Principal-agent theory	46
8.3	Goals of stock-option programs	48
8.3.1 8.3.2 8.3.3	Minimization of the principal-agent problem Personnel commitment and recruitment of top managers Improvement of the company's liquidity	48 49 49
8.4 8.4.1 8.4.2	Criticism of the use of stock-options Manipulation of stock quotation Changes in the capital structure of the company	50 50 51
8.5	Stock-option programs in the context of modern remuneration systems	51
9	Changes in the remuneration structure in Germany	52
9.1	Demands for performance-oriented remuneration systems	54
9.2 9.2.1 9.2.2	Company law aspects of remuneration The German Corporate Governance Codex VorstOG – Executive Board Compensation Disclosure Act	57 57 63
9.3 9.3.1 9.3.2	Remuneration aspects under stock corporation law Regulations in accordance with sec. 87 Companies Act (AktG) Appropriateness of Executive Board Remuneration Act (VorstAG)	64 64 65
10	Categorization of Stock-option Programs	67
10.1 10.1.1	Overview Convertible bonds and warrant bonds	67 68

Conten	ts	XIII
10.1.2 10.1.3	Naked warrants Stock Appreciation Rights	70 72
10.2 10.2.1 10.2.2 10.2.3 10.2.4	Excursion: incentive programs Phantom shares Restricted Stocks/Restricted Stock Units Performance Shares/Units Performance Cash-Plan	72 72 73 73 74
11	Criteria for the arrangement of stock-options programs	75
11.1	Circle of beneficiaries	75
11.2	Determination of the base price	76
11.3	Performance targets	77
11.4	Time components	83
11.4.1	Chronology of a stock-option program	83
11.5	Personal investment and cap	86
11.6	Dividend policy	87
11.7	Dilution effect	88
12	Possibilities of financing stock-option programs	88
12.1	Overview	89
12.2	Conditional increase in capital	90
12.3	Authorized capital increase	92
12.4	Ordinary capital increase	94
12.5 12.5.1	Purchase of own shares Repurchase in accordance with sec. 71 subs. 1 n° 2 AktG	95 95
12.5.2	Repurchase in accordance with sec. 7 subs. 1 n° 8 AktG	96
12.6	Cooperation with third parties	99
12.7	Stock Appreciation Rights	100
13	Execution of a stock-option program in the company	101
13.1	Decision on the introduction of a stock-option program	101
13.2	Preparation of the decisions of the general assembly	102
13.3	Grant of stock-options	103
13.4	Assignment of shares	104

XIV Contents

14	Accountancy of stock-option programs	105
14.1 14.1.1 14.1.2 14.1.3	Accounting under IFRS Field of application Real equity settlement Virtual own capital instruments	105 105 107 111
14.1.4 14.1.5	Combination models Disclosures	112 113
14.2	Balancing in accordance with US-GAAP	115
14.3	Regulations under SFAS 123(R)	115
Literat	ure	119
IV	Delegations and their consequences for labor, tax and social security law aspects	127
15	Aspects concerning labor contracts	127
15.1	Contents of labor contracts	127
15.2 15.2.1 15.2.2	Possibilities to design contracts in the case of delegations abroad Supplementary contract as addition to the labor contract Dislocation agreement and local labor contract	129 129 130
16	Tax law aspects	132
16.1	Income tax liability	132
16.2	International tax law	133
16.3 16.3.1 16.3.2 16.3.3	Double tax agreement General explanations General allocation criterion: residency Domestic tax law	134 134 134 136
17	Social security aspects	137
17.1 17.1.1 17.1.2	Employment abroad Territory principle Existence of a so-called "Ausstrahlung" (transmission)	138 138 138
17.2	Domestic labor relation	140
17.3	Limitation in time of delegations	141
17.4	Trans- and international agreements with Germany	142
17.5	Bilateral social security agreements	144
17.6	Payment of contributions during the assignment abroad	146

I

Content	S	XV
17.7 17.7.1 17.7.2 17.7.3 17.7.4 17.7.5	Pension insurance	148 148 149 149 149
17.8	Termination of transmission	150
18	Conclusion	151
Literati	ure	152
V Literati	International remuneration systems for companies listed on stock exchange in flux ure	153 158
VI	Application of the Berlin Human Capital Assessment Model	
	in an international bank for the control of its branches	159
19	Bank internal controlling data as basis	159
20	Selected key figures and their weighting	160
21	On the calculability of the bank human capital assessment model	165
22	Results of the bank human capital assessment	167
23	Bank-Human Capital Assessment Model in the context of remuneration management	172
VII	Development of a human resource information system of international personnel controlling	175
24	About the description and definition of international personnel controlling	176
25	Targets of international personnel controlling	177
26	Use of personnel information systems	178
27	Obtaining personnel information	180
28	Design of personnel information systems	187
28.1	Targets of an international personnel information system	187

XVI		Contents
28.2	Functional design of an international personnel controlling system	189
28.3	Process supporting tasks of international personnel controlling	190
Literati	ure	191
VIII	Design, functionality and application fields of information systems in HF	R 193
29	International personnel information systems	193
29.1	Definition of information systems	193
29.2	Tasks	194
29.3	Reasons for introduction of personnel information systems	194
29.4	Personnel information systems as condition for process optimization	195
30	Basics	196
30.1 30.1.1 30.1.2 30.1.3 30.1.4 30.2 30.3 30.3.1 30.3.2 30.3.3 30.3.3	Architectonic basics Architecture System architecture Layer model Implementation Organizational basics Legal basics Data protection Co-determination Equal treatment Data transfer	196 196 197 197 198 199 200 200 200 200 201
30.3.5	Remuneration accounting	201
31	Structure, functionality and application area	201
31.1	Structure	201
31.2	Functionality	202
31.3 31.3.1 31.3.2	Area of application Users Examples for application areas	203 203 203
31.4 31.4.1 31.4.2 31.4.3	Structure, functionality and application of the model with four layers Data management layer Application layer Presentation and Integration Systems	204 204 205 207

Conten	ıts	XVII
32	Conclusion	208
32.1	Opportunities	208
32.2	Risks	208
Literat	ture	209
IX	International external personnel recruitment and staff selection	211
33	Internet as medium of international personnel recruitment	211
34	Instruments of Electronic Recruitment	212
34.1.1 34.1.2 34.1.3	Internet job boards Advantages and disadvantages of internet job boards Providers of electronic job boards Arrangement and structure of internet job offers	213 213 214 215
34.2	Human-Resources-Websites	215
34.3	Virtual recruiting fairs	217
34.4 34.4.1 34.4.2 34.4.3	Online recruiting games Definition Siemens – "Challenge Unlimited" Possible limitations to online games	218 218 218 219
34.5	Newsgroups	219
34.6 34.6.1 34.6.2	Risks and opportunities of e-recruiting Opportunities Risks	220 220 221
35	Scouting	222
35.1.1 35.1.1 35.1.2 35.1.3	Scouting through university presence Concentration on selected disciplines and universities Personalization and differentiation of offers Use of multi-step programs	222 222 222 223
35.2 35.2.1 35.2.2 35.2.3	Scouting via graduate-oriented measures Graduate fairs Graduate Workshops On-Campus-Recruiting	224 224 225 225
35.3	Future perspectives of Scouting	226
36	Personnel leasing	226

XVIII		Contents
37	Personnel selection process	229
37.1	Selection process in form of a personnel selection chain	229
37.2	Selection procedures in internal and external applications	231
37.3	Process of external selection of personnel	233
38	External procedures of selection of personnel and instruments	235
38.1	Electronic applicant data administration – workflow management	235
38.2 38.2.1	Online application Possibilities of online application	236 236
38.2.2	Default in online applications	237
38.3	Telephone interview	238
38.4	Digital interview	238
Literat	ure	239
X	Company culture and country culture	243
39	Factors in the company environment	244
39.1	Economic factors	244
39.2	Socio-cultural values	244
40	Company-internal factors	245
41	Cultural values	245
41.1	Types of cultural values	245
41.2	Functions of cultural values	246
41.3	International aspect	247
42	Communication of culture	248
42.1	Communication of culture via socialization	248
42.2	Communication of culture via stories, rituals and company language	250
42.3	Communication of culture via other means of communication	251
43	Formation of company culture	251
43.1	Employee characteristics	252
43.2	Ethics within the organization	252

nts	XIX
Disposition rights	252
Organizational structure	253
ture	254
Country research at the example of South Africa:	
history, population and culture	255
Early history	255
Arrival of the Europeans and development of the partitioning of the land	256
Population groups	258
Whites	259
Coloureds	259
Indians/Asians	259
Blacks	260
Religion	260
Culture	261
Socio-political aspects	262
Concept of Apartheid	263
Reservation- and Homeland Policy	263
Democratization	264
Demographic and social aspects	265
Population growth	266
Development of the population under the influence of AIDS	266
Birth control and decline in the rate of birth	267
Age pyramid and future growth	267
Education deficit	268
Economic aspects and employment policy	270
Unemployment	270
Work relationships and Black Economic Empowerment	272
Reasons for the discrimination against women	272
	Disposition rights Organizational structure Ture Country research at the example of South Africa: history, population and culture Early history Arrival of the Europeans and development of the partitioning of the land Population groups Whites Coloureds Indians/Asians Blacks Religion Culture Socio-political aspects Concept of Apartheid Reservation- and Homeland Policy Democratization Demographic and social aspects Population growth Development of the population under the influence of AIDS Birth control and decline in the rate of birth Age pyramid and future growth Education deficit Economic aspects and employment policy Unemployment Work relationships and Black Economic Empowerment

XX		Contents
52	South Africa: automotive industry	273
52.1	International automotive manufacturers in South Africa	274
52.2	Motor Industry Development Program	274
52.3	Influence of the unions on the automotive manufacturers	275
52.4	Future of the automotive industry	276
Liter	ature	277
XII	The AGG and Diversity Management – a managerial and European-national legal response to the internationalization of labor markets in Europe and worldwide	281
53	Changes in the company environment	282
53.1	Internationalization of labor markets	282
53.2	Technological advance	284
53.3	Demographic development	285
53.4	EU-antidiscrimination directives	286
54	General Equal Treatment Act	287
54.1	Objective and content of AGG (Sec. 1 AGG)	287
54.2	Elements of unequal treatment	288
54.2.		288
54.2.2	e	288
54.2 54.2.	•	288 289
54.2.	· · · · · · · · · · · · · · · · · · ·	289
54.2.0		289
54.2.7	_	289
54.3	Scope of Application	290
54.3.	3 1 11 (290
54.3.2	Personal scope of application (sec. 6 AGG)	292
54.4	Elements of discrimination (sec. 3 AGG)	294
54.4.		294
54.4.2		295
54.4.í 54.4.		295 296
54.4.		296
в 54.5	Permissible differences of treatment	297
54.5.		297

j

XXI

54.5.2	Permissible differences of treatment because of occupational requirements	297
54.5.3	Admissible differences of treatment on grounds of religion or belief	298
54.5.4	Admissible differences in treatment on the grounds of age	299
54.6	Organizational obligations of the employer	301
54.6.1	Preventive measures	302
54.6.2	Reactive measures	303
54.6.3	Information obligations	303
54.7	Legal consequences of violations of the AGG	303
54.7.1	Right of appeal	304
54.7.2	Right to refuse performance	304
54.7.3	Right to compensation	305
54.7.4	Right to claim damages	306
54.7.5	Prohibition of victimization	307
54.8	Court enforcement of claims under the AGG	307
54.8.1	Terms	307
54.8.2	Statement of facts and burden of proof	308
Literat	ure	308
XIII	International/European Labor Law	313
55	On a personnel resource management approach in international, European and national labor law	313
56	On the terminology "labor law"	314
57	International labor law	315
57.1	International labor law as public international law	315
57.2	International special regulations	317
57.3	Regulations of international private law	317
58	European Labor Law	318
58.1	Application of European Labor Law in the labor law systems of the member states	. 319
58.2	Free movement of workers (Art. 39 EC) in labor relations	321
58.3	Equal treatment of men and women in labor relations	323
58.3.1	Equal treatment regarding formation of the labor contract	324
58.3.2	Equal treatment in the determination of salary	326
58.3.3	Equal treatment in the context of termination of labor relations	327
58.3.4	Equal treatment in disability law as ground for dismissal protection	328
EO 2 E		
58.3.5	Excursion: Dismissal protection under European Labor Law	329

XXII		Contents
58.5	Operational impacts of European "social" work protection	357
58.6	Collective European Labor Law	359
58.6.1	European law on collective contracts	361
58.6.2	European Works Constitution Law	361
58.6.3	Labor Law and company size	363
59	Conclusion	369
XIV	Conclusion	371
Literature		375
Subject Index		377