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## STOCK OPTION PLAN AS A PART OF REMUNERATION

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The grant of stock option plan<sup>1</sup> has been increasingly common in compensation of Brazilian executives. Usually related to the achievement of company goals or to certain permanence with the company, such options have proven to be an important incentive mechanism for executives, facilitating the alignment of their interests with those of the shareholders.

Some companies use these incentives as a way to retain talent, others as a method of engaging and stimulating their employees after mergers or acquisitions.

These compensation policies are usually offered to administrators, including statutory and non-statutory members of the Board of Directors. The compensation usually comprises a portion of the remuneration of salaried executives, observing the maximum fixed by the General Assembly of Shareholders and established by the Board of Directors, plus the amounts arising from the stock option plan, which may be related to individual performance assessments and

achievement of goals, as mentioned above.

It is quite common for companies to establish a maximum number of shares that may be subjected to option plan. There is also the possibility that these options be personal and non-transferable, excepting only the mature options that may be exercised by heirs in case of the holder's death.

Although this is an old discussion, the understanding of whether the stock option plan may be instituted as remuneration for labor is not yet definitive. We note only a slight inclination of the Brazilian labor judges toward the understanding that the stock options may not be considered as salary, which would be a matter restricted to corporate law.

However, in order to have this understanding applicable in practice, it is necessary for the plan to be well structured, removing from it those characteristics that may constitute labor remuneration, such as the monthly perception of values resulting from stock options.

In other words, the stock option plan offers advantages in terms of labor charges, when properly structured and applied to the reality of the company.

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<sup>1</sup> The stock option plan agreement grants to the holder the right to purchase stocks of a company by a contractual predetermined price, regardless the fluctuation of the stock value in the market. Thus, the option value, that is, the price of the agreement, is tied to the stock value itself.

Another benefit of the stock option plan to the companies is that, in most cases, the financial gains accrue to those with the greatest impact on corporate results, relating the variable component of remuneration to the individual performance and to the evolution of the organization outcomes.

Nevertheless, before deploying this model, it is also important for the company to evaluate the risks that it can offer.

As happened in the U.S., the policy increases the chances of results manipulation for the benefit of options holders. It is also necessary to consider that the exercise of the option necessarily represents dilution of equity, given the change of ownership of shares.

Still, the company's directors, as well as all other participants of the plan, benefit from the increasing value of the company's stocks, which may encourage them to take decisions aimed at short-term results, possibly conflicting with intentions for long-term gains for other shareholders or investors.

Despite the points above that merit consideration by the shareholders, the stock option plan is a good way to align the interests of the company's employees, motivating them to add value to the company.

Almeida Advogados has a team specialized in corporate law and remains at your entire disposal to assist you if necessary.