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**“STOCK OPTION PLAN” –  
AN INTERESTING OPTION FOR COMPANIES AND EMPLOYEES**

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Stock Option Plan can be defined as a long-term program which allows employees to purchase shares of the company they work at a price under the market. It is a privileged option in which the company pledges to sell in the future and keep the value of shares frozen, ensuring the right of the employee to not make the purchase in the future, in case of stock price decrease.

The Stock Option Plan is not a recent institution. It was developed in the 20's and had its climax in the 90's, when employees of companies who chose to open the capital have become millionaires suddenly, due to the exorbitant appreciation of the shares of the companies they worked for. Good examples to be mentioned are Microsoft and Google.

The main objective of Stock Option Plan is the strategic alignment between employee and employer so that employee - when investing in the company - has at least interest in the appreciation of his shares and, subsequently, has financial return on the invested capital. This means that both employer and employees have positive results.

For the implementation of Stock Option Plan is necessary that certain requirements are observed:  
i) company should be a closely held or publicly

held corporation<sup>1</sup>, ii) there must exist authorized capital, iii) express decision of its institution, in the company by-laws; iv) the option plan must be approved in the company Shareholders Meeting; v) the purchase of shares must be intermediated by a professional of the Securities and Exchange Commission, as established by its rules.

The legal nature of the Stock Option Plan is an agreement on commercial basis, remunerated, which is subject to stock market fluctuations that causes mere expectation of rights to the employee who adhere to the plan and is independent from the employment contract.

In this sense and according to the labor law, it is discussed whether the purchase option could be classified or not as a benefit of salary nature. Unfortunately there is not a consensus, but most of Brazilian jurists understand that the risk of a Labor Court consider the option plans as salary benefit is minimal.

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<sup>1</sup> In case of closely held corporation, the implementation of the plan is restricted because the shares issuance will be available only to the employees of the company. In addition, employees will not have high expectations about the capital gain, if compared to the shares with more liquidity, which is typical of publicly held corporation.

From a legal perspective, the Stock Option Plan cannot be confused with the employment contract, since the purchase option is a relationship of corporate nature, even if practiced in the course of employment. It is clear that when agreed, the employee will earn - or not - incomes of non-salary nature, according to the Corporations Law (Law No. 6.404/76)<sup>2</sup>.

Some problems related to the implementation of Stock Option Plans - already disclosed by press media and TV and therefore well-known by most of people – is a consequence of lack of transparency, manipulation of results, digression from the focus based on the excessive concern about the share quotation, putting the company management into the background, among others.

However, such problems do not disqualify the Stock Option Plan as an excellent manner for the employer to get talents and mainly to motivate the employees to produce more and better, as they will also gain from their efforts.

Corporate and Labor Sectors of Almeida Advogados have a team with wide experience in development, assistance and implementation of stock option plans. We remain at your disposal for any additional information deemed necessary regarding this matter.

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<sup>2</sup> Art 168. By-laws may have authorization to increase the capital, regardless of the amendment to the by-laws. Paragraph 3: By-laws can determine that company - within the authorized capital limit and according to the plan approved by the General Meeting – may grant purchase option to its directors or employees, or to persons who provides services to the company or to the company under its control.