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Compensation systems: Stock Options, Long-term Incentive or Phantom shares



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There are currently different mechanisms available for companies to implement in terms of compensation for qualified staff in order to involve these employees in the creation of value and growth of a Company. These systems help achieve a series of objectives such as staff commitment and motivation and identification with the project. At the same time, it is a system of attraction and retention of talent. Thus, companies should opt for the most adequate system depending on their maturity level and other strategic factors. In any case, the development and implementation of this type of variable remuneration plans requires a previous analysis to adapt it to specific needs and to identify the legal, fiscal and labour obligations derived from them.

We will describe below the most common and widely used mechanisms and/or variable remuneration systems:

a) Stock Options

Stock Option Plans are a remuneration system offered by the company to its employees, normally to senior managers, with the aim of improving performance or increasing their loyalty; they are granted the possibility of purchasing shares or stocks provided that they meet a series of predefined milestones or requirements. These Stock Option plans grant not only economic rights to participate company's earnings, but also the so-called political rights.

This plan basically consists of offering employees a limited number of shares at a fixed price which will remain constant for a period of time, usually three to five years. At the end of this period, the holder has the right to buy the number of shares that they specified at the pre-fixed price. Thus, depending on how the value of the company's shares evolves during the established period, the employee will choose whether or not to exercise their right to purchase.

b) Long-term incentive

Long-term incentive plans are a deferred compensation strategy aimed at retaining valuable employee talent by rewarding staff for achieving specific performance objectives. These objectives, determined by the company to be key to the success of the organization, may or may not be linked to the company's share price or value, or may simply be linked to the achievement of KPIs (Key Performance Indicators) identified by

the company. A long-term incentive offers incentives and bonuses for fixed long-term periods, usually over two years.

This incentive system is what is usually known as a Multi-Year Bonus; the objectives for its accrual and settlement are conditioned to the fulfilment of the objectives described in the Bonus Plan.

c) Phantom Shares or Phantom Equity Plan

Phantom Shares can be defined as variable remuneration consisting of the attribution, in favour of its beneficiaries, of certain economic rights with the underlying objective of serving as an appropriate instrument to retain and attract talented individuals and entities, as well as to motivate and build loyalty among certain employees of the Company.

In no case shall the status of Beneficiary of the Plan grant employees the status of partner or shareholder of the Company or any right, or similar recognition of any kind, other than those expressly established in the Plan through which the Phantom Equity Plan is instrumented.

The amounts received by a company executive as a result of the Phantom Shares will generally be considered employment income, not income from movable capital. Therefore, they will be subject to personal

income tax (IRPF) and will accrue the corresponding social security contributions.

Phantom Shares do not have specific legal regulation in Spain, but there is jurisprudence in this regard stating that "The stock option right constitutes a remuneration concept included in Article 26 of the Workers' Statute, even when it is not specifically provided for by labour legislation".

Therefore, the company and the employee or executive are free to regulate the terms to be applied to this compensation system. In other words, the parties will establish in the corresponding Phantom Shares Plan the covenants and clauses they deem appropriate, with no other limitations than the general ones that apply to all types of obligations.

As mentioned above, a good definition of the Plan is essential for the success of the remuneration systems, and it is highly important to determine, among other aspects, the group of Beneficiaries, the Total and/or Partial Liquidation Events, and on the same line, how the term of the Plan and the economic rights are affected by the termination of the employment contracts with the beneficiary staff (Bad Leaver or Good Leaver).

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The emergence of the metaverse and its legal implications



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Following Facebook's announcement of the change of name of its parent company to "Meta" (from "metaverse"), "metaverse" is the new word on everyone's lips, promising new business opportunities, not only in the sale of digital products, but also in advertising, with the introduction of virtual brands, virtual stores, and even proprietary cryptocurrencies.

In this article we will analyse the intellectual property, industrial and privacy implications of the existence of the metaverse, a new virtual "dimension" that replicates the real world. It would not simply be a virtual environment, as in a video game, but rather the idea is to create an environment where the physical and digital worlds merge to allow the user to interact with others. The implications for intellectual property would be relevant both in terms of determining authorship and detecting infringement. In the case of industrial property, should virtual trademarks and patents be registered? If so, under what system? Furthermore, privacy implications should be taken into account given the amount and types of data processed, particularly biometric data; clear rules in this regard are required. However, before going into the legal implications of the

metaverse, it is necessary to define what metaverse means.

1) What is "metaverse"?

The "metaverse" is currently under development. However, it is possible to describe some of its expected characteristics. The metaverse is a virtual world to interact with in real time using devices such as sensors and augmented reality glasses. In contrast with what current technology allows in video games, for example, the main idea of the metaverse is that it should be a fully immersive and sensory experience in which we can interact with others, consume content, buy and sell and even work.

2) Intellectual and industrial property implications

The metaverse will constitute a virtual world, so that, for example, current brands will need to be replicated in the metaverse universe. A number of companies have been early adopters and have filed a number of trademark applications around the world for virtual products and services, such as "downloadable virtual products" and "retail store services with virtual products".

However, their use in a hypothetical metaverse presents unresolved questions such as where virtual trademarks should be registered, applicable laws, and most crucially, the courts or tribunals that would be competent in case of virtual trademark disputes.

Further, we will interact with the metaverse through avatars, and this could make it very

difficult to detect intellectual property infringements. If copyright over user generated works created in, for instance, video games, currently raises legal questions as to their ownership and authorship, the existence of a completely new virtual environment devoid of rules would only aggravate these questions of ownership and authorship.

Moreover, the Spanish intellectual property law currently in force only recognizes work created by humans as a protectable work. Therefore, would it be legally possible to understand the virtual avatars of users as authors?

In view of all these questions, it is worth considering whether it would be necessary to create a completely new legal framework to ensure an adequate functioning of the metaverse.

3) Privacy implications

The use of the metaverse would allow companies to collect massive amounts of personal data. Due to its fully immersive nature, more data would be recorded in the metaverse than is currently collected by websites, such as facial expressions, vocal inflections or vital signs, and the interaction with the metaverse would allow companies to continuously monitor the user.

The goal of the metaverse is for people to interact freely in a virtual world. Therefore, any metaverse should be accessible using all

types of devices, which means that users' personal data could be accessed on all these devices.

All this will increase the importance of protecting users' privacy, improving the ways to obtain consent and providing all the necessary information for such consent to be informed.

4) Conclusions

Although the technology for creating metaverses does not yet exist, many predict the irruption of metaverses in the economy, social interactions, and work. In a fully virtual world, it would be necessary, among other things, to register virtual trademarks or patents in order to protect them, and the registration system and the competent jurisdiction for settling disputes arising in practice would have to be determined.

Furthermore, the use of avatars for the creation of copyrighted work would imply a fundamental change in intellectual property law: the creation of work by humans. Finally, in the area of privacy and personal data protection, it will be necessary to update mechanisms and procedures so as to control the use and massive collection of user data.

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MEXICO DESK

Spain is the third largest destination for Mexican emigration, after the United States and Canada



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It is no coincidence that Mexicans have been choosing Spain as a destination for emigration in recent years; the country has a reputation as a recipient of immigrants at the international level. This is reflected in the annual survey of expatriates conducted by HSBC bank. In 2021, Spain appears among the three favourite destinations for expatriates in the quality-of-life category.

According to data from the National Statistics Institute (INE), in 2018 there were around 55,000 people born in Mexico living in Spain, 55% of whom have dual nationality. This number is almost equal to the number of Americans living in Spain.

Still, the number of Mexican immigrants is very small compared to immigrants of other nationalities: Morocco (775,000), Romania (660,000) and the United Kingdom (315,000).

The number of Mexicans living in Spain is also significantly lower in relation to immigration from other Latin American countries such as Colombia (300,000), Argentina (100,000) with approximately another 150,000 who have

dual Italian and Argentine nationality, giving a total of about 250,000. Then there is Venezuela (210,000), Ecuador and Honduras (125,000 each), Peru (110,000) and Paraguay, Bolivia, and Nicaragua with over 65,000 each.

In terms of the profile of Mexican immigrants:

- 60% are women and 40% are men
- The average age is 38 years old

In relation to academic education:

- 70% have a bachelor's degree
- And 15% have a postgraduate degree

Many Mexicans are employed by Mexican multinational companies or have their own business in Spain, often subsidiaries of their own Mexican companies.

Mexicans living in Spain are mainly concentrated in four Autonomous Communities: Madrid, Catalonia, Andalusia, and Valencia.

During the year 2020, around 6,250 Mexicans (including those with dual nationality) immigrated to Spain, again very similar to the number of Americans migrating to Spain.

Among the reasons for the increase of Mexicans in Spain (and that which we believe will occur in the coming years) are, first, the search for both personal and security. The convenience of safeguarding part of their wealth by diversifying their geographical position, as well as economic and social stability, including the strength of the Euro.

This, in addition to the traditional attractions of Spain for Latin Americans, such as the confluence of culture, language, and climate, as well as food, interpersonal relations and the nature of the Spanish society, which is very familiar for those arriving from there.

For this reason, a substantial number of Mexicans in Spain buy a home, taking advantage of both the access to very competitive mortgage rates (1.4% vs. 9.9% in Mexico) and their interest in settling down for a longer period of time. In some cases, this investment in a property is used to obtain temporary residency, colloquially known as the Golden Visa.

Another aspect that reinforces the presence of Mexicans in Spain is that of family relationships. In many cases there is a branch of the family (the one that did not emigrate to Mexico) that remains in Spain and these ties are re-established and facilitate the decision to move and a quicker integration into society.

Another reason that influences the decision to move to Spain refers to the tax incentives granted by the so-called Beckham Law, a special tax regime for expatriates which adds an extra attraction to changing residence to Spain.

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