



# CEO & CFO Forum Joint Webinar

March 2020  
KPMG in Vietnam



# CEO Forum Agenda

14:40 – 15:00

Registration

15:00 – 16:00

Introduction

Welcome

Richard Stapley-Oh

Presentation 1

Commercial Impacts Of Corona Virus

Richard Stapley-Oh

Presentation 2

Employment issues in the spotlight during turbulent times

Andrea Godfrey  
Minh Tran

# Host and Speakers



**Richard Stapley-Oh**

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Director  
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# Commercial Impacts of Coronavirus

**Richard Stapley-Oh**

Partner  
KPMG Legal Limited

[date] March 2020



# Contracts of MNCs affected by Coronavirus

**Commercial Contracts**



**Lease Contracts**



**Financing Contracts**



**Labor Contracts**







01

Can contractual  
performance be  
excused?



# Can contractual performance be excused?



**Whether Coronavirus is deemed as a “Force Majeure” event?**



**Whether there is causation between “Force Majeure” and the failed performance?**



**Whether there is effective notice of “Force Majeure” and how to prove “Force Majeure”?**



**Whether there are efforts to mitigate losses?**

# 02

Whether Coronavirus  
is deemed as a  
"Force Majeure" event?





# What constitutes a “Force Majeure” event?



**What is the definition in the contract?**



**General contractual principles**



**Vietnam-governed laws**



**Legal consequence - exclusion from liability**

# What constitutes a “Force Majeure” event? – Vietnam laws

## Definitions under Vietnam laws



**Occurs in an objective manner**



**Is unforeseeable**



**Is impossible to remedy, despite the application of all possible alleviating measures**



# Whether Coronavirus constitutes a “Force Majeure” event



**Definitions in specific contracts**



**Interpretation under Vietnam laws**



**Effectively drafted clauses**



**Epidemics – a force majeure event?**

# 03

Is it possible not to  
perform contracts?





# Causation between Coronavirus and the failed performance



**Lease : government shutdown**



**Commercial Contracts: transportation shutdown**



**Labor Contracts: government ordered quarantine**

# Notice and burden of proof



**Specific contractual provisions**



**Interpretation under Vietnam contract law**



**Notice requirements**



**Burden of proof rests with the breaching party**



# Mitigation obligations



**Specific contractual provisions**



**Interpretation under Vietnam contract law**



**Alternative methods of contractual performance**

# 04

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Possible impacts on  
ongoing transactions





# Possible impacts on ongoing transactions – Before closing



**Delay in due diligence / physical attendance**



**Delay in closing / long stop date**



**Break-up fees / reverse break-up fees**



**Breach of pre-completion covenants, representations, warranties and indemnities**

# Possible impacts on ongoing transactions – After closing



**Force Majeure / Material Adverse Change**



**Valuation adjustment mechanism**



**IPO requirements**



**Put option / tag along right**



Q&A





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# Employment issues in the spotlight during turbulent times

**Andrea Godfrey**

Partner  
KPMG Tax & Advisory

**Tran Thi Thanh Minh**

Director  
KPMG Legal Limited

[date] March 2020

# So what are companies faced with?



**DISRUPTIONS**  
to business operations



**PANICKING**  
staff concerned with their health



**UNCERTAINTY**  
on the economic outlook



# Top Enquiries we received with respect of HR issues



## REMOTE WORK ARRANGEMENT

- Should remote working arrangements be implemented?
- Is it suitable for our company and are there alternatives to remote working?
- What does the company need to do to monitor productivity?



## UNPAID OR PART PAID LEAVE

- Can we put employees on unpaid or part paid leave?
- Can we make employees use their annual leave to cover periods of absences?



## DEFERRAL OF WAGE PAYMENTS

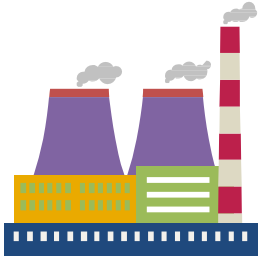
- If we must cease our operation, can we defer the payments of salary to our employees to a later date?
- What is the longest permissible period for deferral of wage payments by law?



## TERMINATION OF EMPLOYMENT

- If the business cannot come back to normal operation soon, can we permanently terminate the employment?
- How can we eliminate the legal risks when unilaterally terminating the employees?

# Challenges on remote working across APAC



## Suitability

- Some work just cannot be done remotely
- The company has to have the technology to allow remote access
- Alternative arrangements to remote are available such as shift work or flexible work hours



## Responsibility

- Employers are required to maintain work safety environments regardless of location
- Employers remain liable to the professional wrong-doings of its employees



## Overtime

- Overtime is a big regulatory issue which is often overlooked by employers
- Remote working makes it even more difficult for employers to control overtime



## Confidentiality

- Confidentiality of clients and trade secrets need to be at the forefront of an employer's mind
- A proper confidentiality policy should be in place, but technology should also be implemented to prevent leakage

# Considerations when initiating unpaid or part paid leave



Encouraging the employees to use annual leave is prioritized.

Part paid or unpaid leave should only be considered if annual paid leave is used up.

## Utilization of Leave Type



Negotiation is a crucial aspect in the selection, duration and terms of unpaid or part paid leave.

Employers need to have a clear plan and have contingencies when selected employees do not agree.

## Negotiation



Documentation refers not only to the agreement, but also internal communications.

Bear in mind employee relations at this time is as important as ever.

## Documentation



Work suspension is a viable choice subject to an agreement with the employees.

Receiving the employees back to work after suspension period is mandatory.

## Temporary Work Suspension



# Deferral of wage payments

**Late payment of wages must comply with laws.**



**Interest accrued on the deferred wage must also be paid.**



**Employees' agreement to deferred payment of wages is not entirely risk-free.**



**Employees are entitled to terminate the employment due to late payment of wage.**



# Termination of employment

**Termination should always be considered as a last resort.**

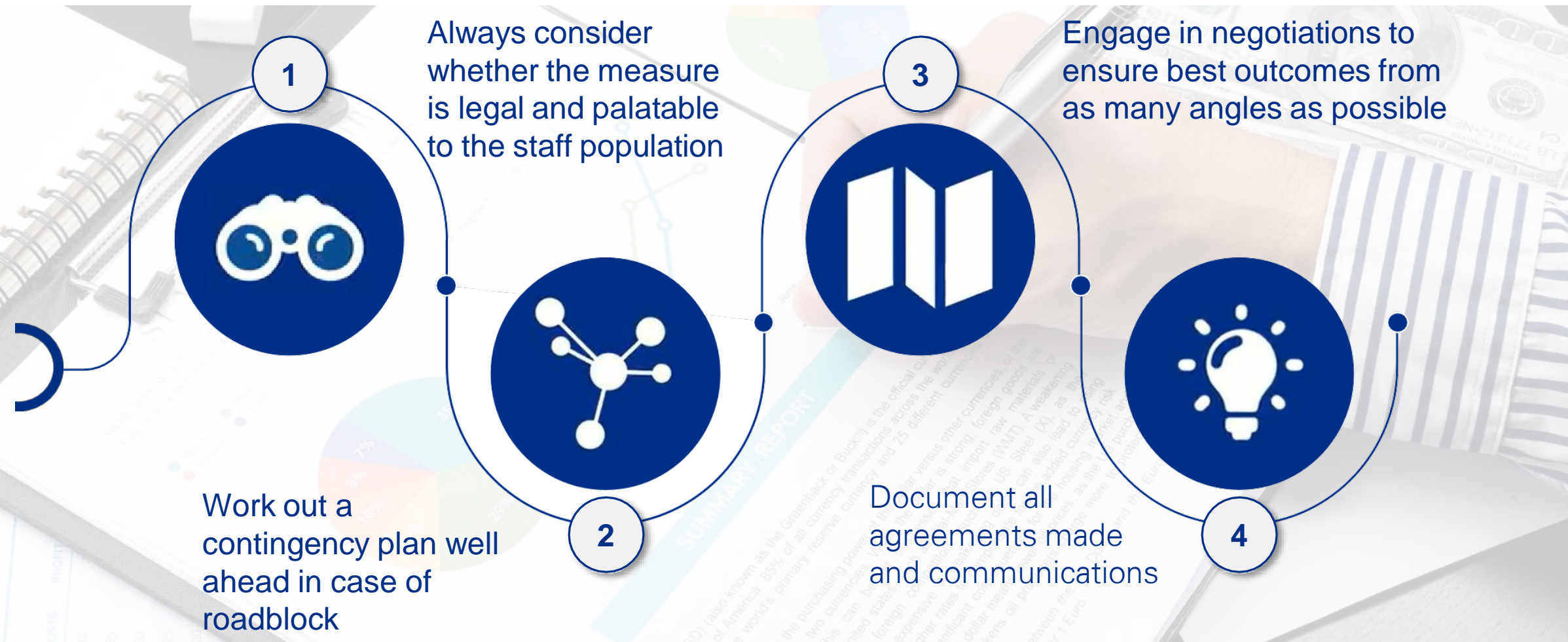
**Valid Internal Labour Regulation must be maintained properly.**

**Unlawful termination may cause employers to severe legal liabilities.**

**Documentation is vital for a valid termination.**



# Steps when taking measures on employment matters





# Tax and Immigration consideration

## Managing cross-border workers

This could be an issue where either your employees are unable or opt not to return to Vietnam or you have employees that prefer to leave Vietnam and work elsewhere

## Changes to employment or remuneration terms

### Questions to consider



#### Immigration

- Does the person have the right to work in the location?
- Do they have/need the necessary work permits/visas?



#### Personal and employer taxes

- Will the individual be liable to pay personal tax in the location?
- Does the employer have registration, reporting or withholding obligations?
- Could social security apply?



#### Corporate tax

- Could the individual be creating sufficient presence (E.G. permanent establishment) for business registration, corporate income tax or VAT

### Questions to consider



#### Immigration

- Does the person have the right to work in the location?
- Do they have/need the necessary work permits/visas?



#### Tax

- How will any benefits provided or one-off payments be taxed, in which locations?
- In the event of workforce capacity reduction, are termination payments or payments to incentivize part-time work, taxable for the employee/deductible for the corporate?
- Could social security apply to the above?
- Is deferral of employment payment effective for tax?

Q&A





# Thank you



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