



# Employment issues in the Spotlight during turbulent times

Vietnam Legal Considerations





# Company's Greatest Assets - its People

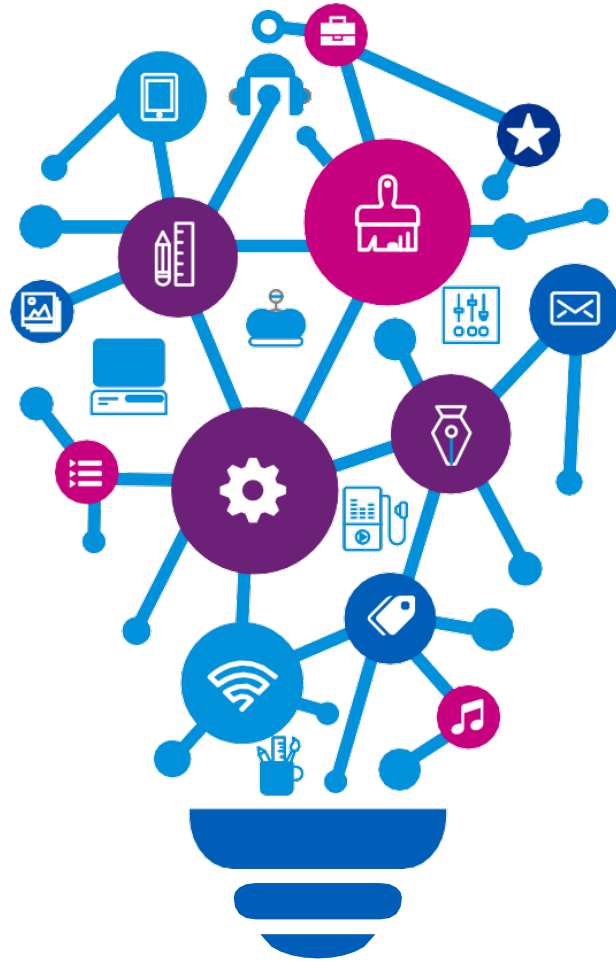
No matter the business model, geographical location or type of service/product on offer, one of the greatest assets of any business are its people. People are the core of innovations, culture, solutions and reputation. Businesses must therefore be vigilant in handling employment matters when they are dealing with a crisis event and/or business slowdown.

This memorandum is designed to set out some of the legal issues that Vietnam businesses should bear in mind when considering the most common measures in handling employees during turbulent times.

Please bear in mind that employment solutions should always be on “ad-hoc” basis as there is “no one size fits all” solution. The designing of each solution would have to take into consideration all relevant legal, employee relations, tax and immigration issues to ensure an optimal and compliant outcome. Above all, businesses are reminded to always seek professional assistance and not to make any rush decisions to avoid unnecessary dispute and/or legal consequences. Our teams are experts in employment law and have extensive experience in assisting businesses in Vietnam and will be happy to assist you.



# Common options considered by Employers in difficult times



- Remote and Alternative Working Arrangements
  - Paid/Partly Paid/Unpaid Leave or Work Suspension
  - Changes to Part-time Employment
  - Deferral of Employment and/or Payments
  - Termination of Employment



# Remote and Alternative Working Arrangements

## Facts

*Remote working arrangements are suitable during times such as an epidemic. During these times, it may not be considered safe for employees to travel to and from the office. Technologies such as email, Virtual Private Networks and cloud computing enable employees to continue servicing the businesses' clients.*

*For industries where remote working arrangements are inappropriate or impossible, alternative working arrangements may be put in place, such as flexible working hours and shift work, to protect the employees.*

## Considerations

1. Employers (and the persons in charge) remain liable for workplace safety. Employers should ensure that relevant policies are in place. Special care must be taken to ensure confidentiality of information while employees work remotely. Robust confidentiality policies and guidelines should be in place.
2. Employees continue to be entitled to overtime pay if they prudently work overtime under any arrangement. Also be mindful of the maximum overtime hours employees may lawfully be required to work.
3. Employers continue to be liable for any professional wrong-doing committed by its employees during their performance of works.
4. In the event an employee is injured while on a remote or alternative arrangement, the employer may remain liable.
5. These arrangements may trigger the application of the provisions on temporarily assigning the employee to do work at a workplace different from the setting in labor contract under the Labor Code, which will restrict the maximum term of "assignment" to 60 days unless otherwise agreed by the employee.





# Paid/Partly Paid/Unpaid Leave or Temporary Work Suspension

## Facts

*One possible way of reducing costs during turbulent times is to place staff on leave (either paid, partly paid or unpaid) or work suspension. If used appropriately, employers can reduce costs while eliminating the need for termination and sourcing for talent once the market normalizes again.*

## Considerations

1. Full use of paid leave should be taken priority.
2. Partly paid/Unpaid leave may only be implemented upon agreement with employee. Unilateral enforcement of partly paid/unpaid leave on employees may be sanctioned by the applicable laws.
3. In the event an employee agrees to take part in Partly paid/Unpaid leave, all correspondences should be documented and the parties should enter into an agreement to avoid disputes. Otherwise, coercing employees into Partly paid/Unpaid leave may expose the employer to breach of employment contract and/or constructive dismissal.
4. Similarly to entry into an Partly paid/Unpaid leave arrangement, the employer must obtain consent from the employee for a valid temporary work suspension. The total suspension duration, even if agreed by the employees, should be reasonably correspondent to the time length of the crisis.
5. The employer must commit to receive the employee back to work upon the expiry of the suspension term.





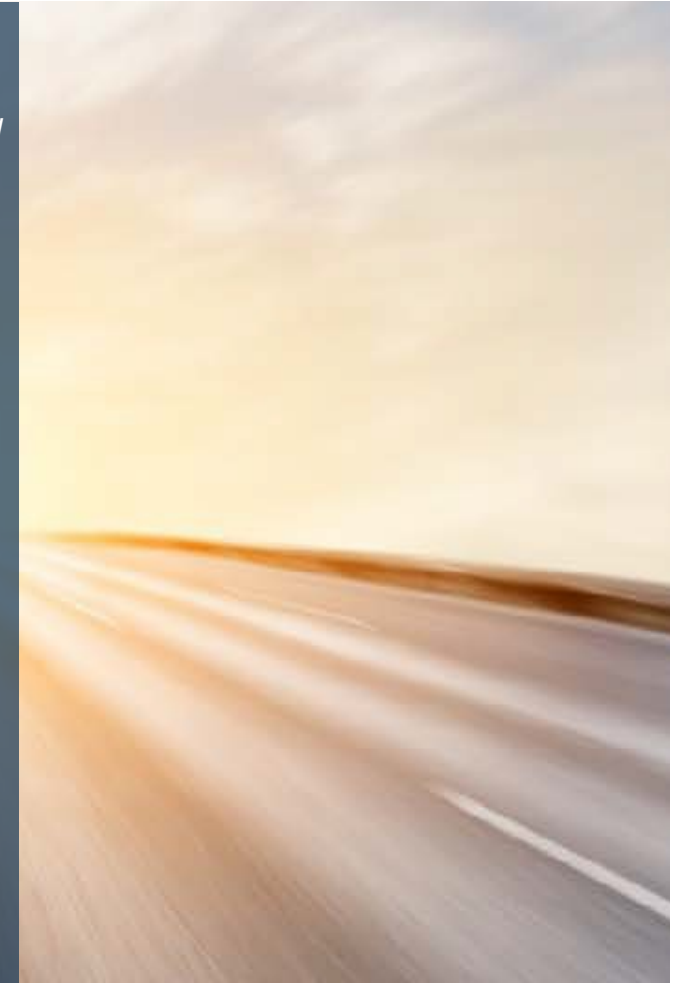
# Changes to Part-time Employment

## Facts

*During turbulent times when production output and sales would be reduced significantly, employer may need to reduce labor costs in proportion with the decreased production capacity, and may consider changing labor contract of employee from full-time to part-time and reducing employee's working time.*

## Considerations

1. Changes to part-time employment may be implemented upon agreement with employee. Otherwise, coercing employees into part-time employment may expose employer to breach of employment contract.
2. Employer to consider negotiating with employee to apply this change rather than making the employment be terminated due to economic reasons in a force majeure event.







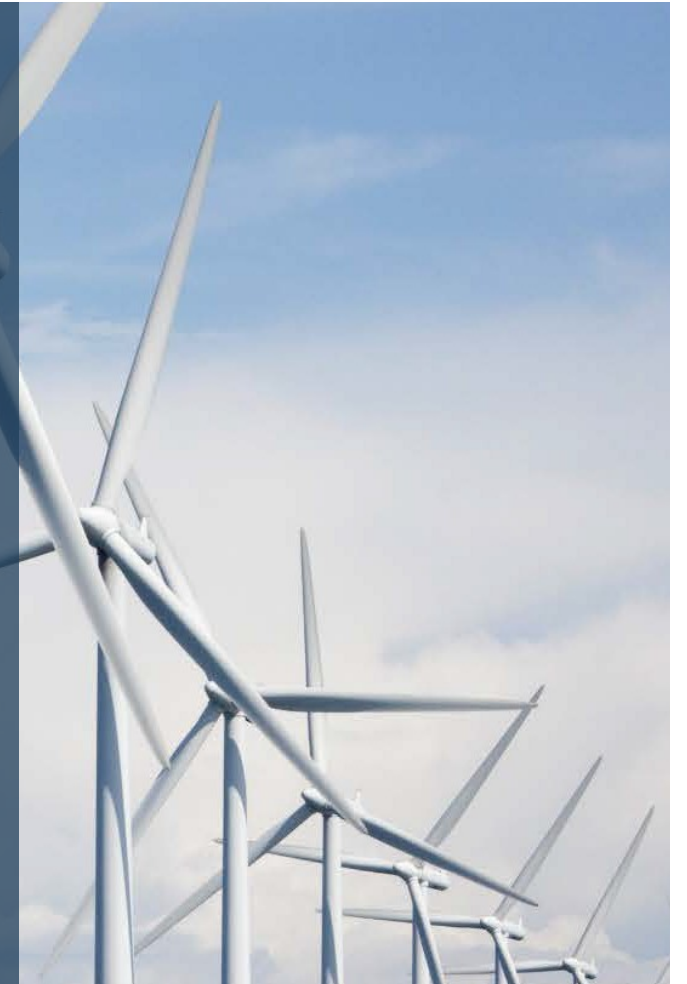
# Deferral of Employment and/or Payments

## Facts

*During turbulent times, employers generally stop expanding the workforce. However, in cases where an offer or contract has already been made, the employer may have no choice but to defer the start of employment for the new joiners. For employers who are in challenging situations, it may have no choice but to defer making payment of wages. However, deferral of employment/payment is not straightforward and carries risk.*

## Considerations

1. Deferral of employment is not applied for cases of existing employees.
2. Most offer letters contain a commencement date. Once such offer letter is signed by both parties, it will be difficult for the employer to defer the commencement of employment. Unilaterally imposing a deferral may result in a claim by the offered party.
3. Late payment of wages must comply with the provisions of the Labor Code, including interest from late payment. Employees may be entitled to unilaterally terminate the employment contract on late payment of wages.
4. Agreement on late payment of wages is not a risk-free vehicle and uncommonly seen in practice. The employees are thus free and likely to reject the request for deferral. This vehicle is unlikely possible in the context of businesses having many employees.
5. Even if the employees agree to late payment of wages, it will not absolve the liability of the employer from legal perspective.





# Termination of Employees

## Facts

*As a last resort, employers may consider termination of employment contracts. This is generally not a recommended option due to the implications it may have on the rest of the business. From an employee relations perspective, it also hurts morale and creates uncertainties for those who remain. Above that, this option exposes the employers to legal risk from employment law perspective, as can be seen below.*

## Considerations

1. In principle, the employer should at all time maintain a valid internal labour regulation to avoid legal consequences upon imposing unilateral termination of an employment.
2. Unilateral termination must comply with the provisions of the Labor Code. Wrongful termination of employment may result in the employee being reinstated or severance payments to be made by the employer.
3. Without a well-prepared case at hand, the employers will likely be more vulnerable before the courts if the termination is challenged by the employees.





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# Thank you



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