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WEBINAR

VIETNAM'S NEW LABOUR AND SOCIAL INSURANCE REGULATIONS: COMPLIANCE, COST AND RISK MANAGEMENT



[VIAC x AUSCHAM WEBINAR SERIES 2026]

**Topic 04 – “Vietnam’s New Labour and Social Insurance Regulations:
Compliance, Cost, and Risk Management”**

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Timeframe	Content
9.15 – 9.30 AM	Welcoming
9.30 – 9.40 AM	Opening Remarks and Introduction Mr. Edwin Law – Executive Director, Australian Chamber of Commerce in Vietnam (AusCham)
9.40 – 10.10 AM	Session 1: New Legal Framework on Labor Management and Social Insurance Mr. Lok Kah Seng – Associate Director of Group Commercial at Ascentium ▪ <i>Key labour and social insurance updates</i> ▪ <i>Employment contracts and workforce arrangements</i> ▪ <i>Worker classification risks (legal and financial exposure arising from the incorrect classification of employees as contractors, consultants, or service providers)</i> ▪ <i>Payroll and contribution compliance</i>
10.10 – 10.40 AM	Session 2: Impact of the New Legal Framework on Corporate Labor Management Mr. Tran Anh Hien – Partner at VILAF, Listed Arbitrator at VIAC ▪ <i>Impact on employment costs and workforce planning</i> ▪ <i>Review of contracts, policies, and remuneration structures</i> ▪ <i>Workforce restructuring and termination risks</i> ▪ <i>Employment disputes and liability exposure</i> ▪ <i>Immediate risk-management actions for employers</i>
10.40 – 11.30 AM	Panel Discussion: From Regulatory Change to Workplace Practice: Compliance, Cost and Employment Risk Management <u>Moderated by:</u> Ms. Nguyen Thi Hai Chi – Partner at CDR Counsels, Listed Arbitrator at VIAC ▪ <i>Employer compliance priorities</i> ▪ <i>Labour cost and social insurance management</i> ▪ <i>Workforce restructuring and termination</i> ▪ <i>Employment dispute prevention and resolution</i> ▪ <i>Practical actions for HR, legal, and management teams</i>
	Q&A
11.30 AM	Closing

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Labor & Social Insurance 2026

New rules on labour management and social insurance

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About Myself

Associate Director, Group Commercial | Ascentium Group



Lok Kah Seng

- Over 9 years in regional professional services groups across Tricor, Vistra, and now Ascentium.
- Facilitated international investors from APAC, Europe, North America entering and doing business in Asia.
- International Business degree and LLB, University of London.
- Fluent in English, Mandarin, and Cantonese; working Bahasa Malaysia and Vietnamese.
- Executive Committee of Malaysia Business Chamber Vietnam (Term 2023-2025, 2026 – present)



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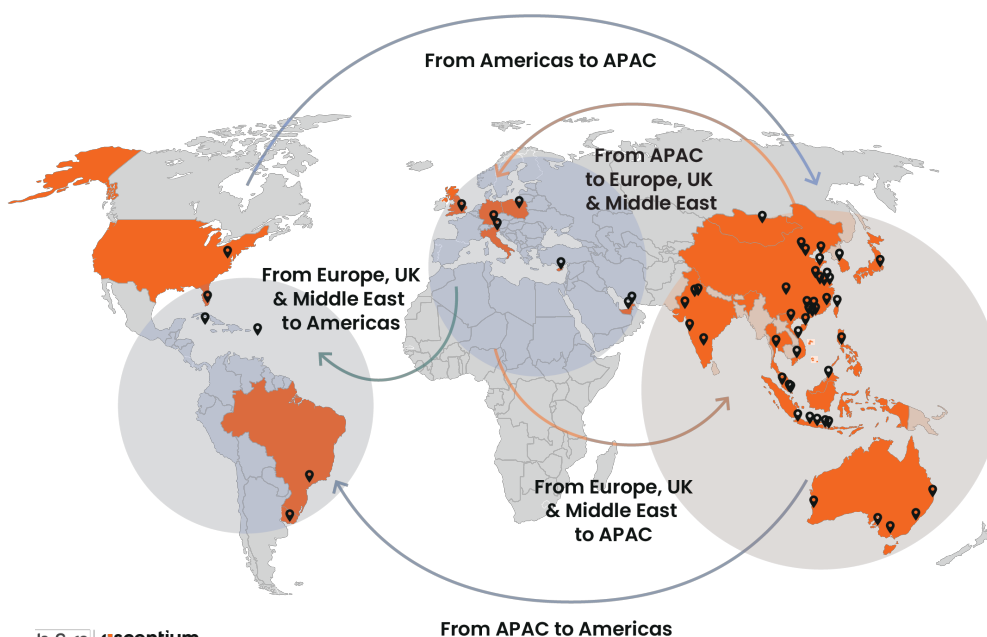
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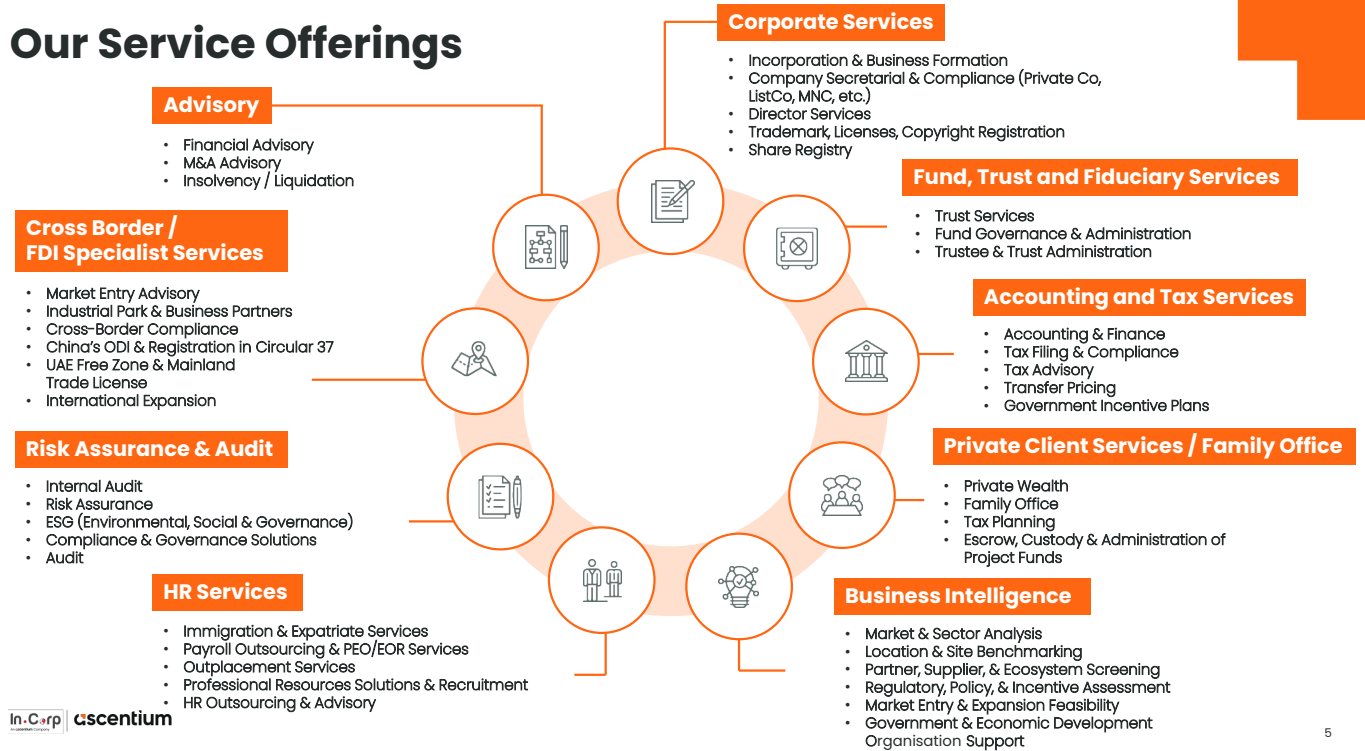
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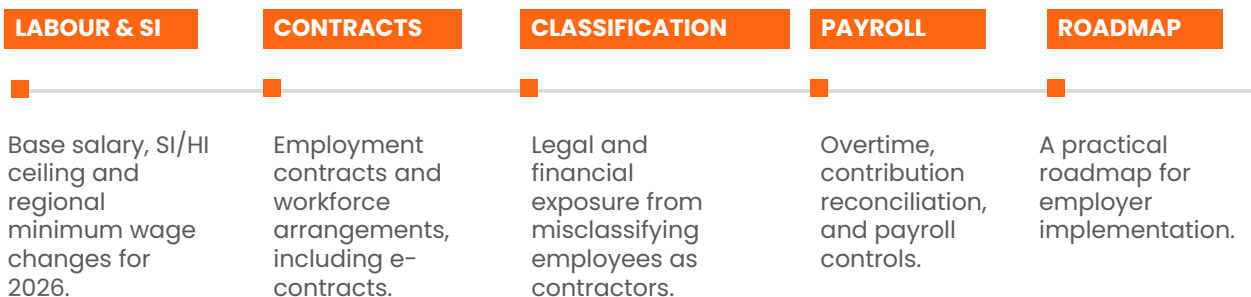
Our Service Offerings



5

LABOUR & SI RULES 2026

Five areas shaping employer compliance in 2026



Session 1 covers what is changing and what employers should do about it before the new rules take effect.

6

Five legal instruments drive the 2026 changes

1	Labor Code (amended)	Law No. 45/2019/QH14 remains the base framework; 2025-2026 changes add requirements, not replacements.
2	Social Insurance Law 2024	Law No. 41/2024/QH15 expands mandatory SI coverage and tightens enforcement from 1 July 2025.
3	Employment Law 2025	Effective 1 January 2026; updates employment services, unemployment insurance, and labour market reporting.
4	Base salary decree	Decree No. 161/2026/NĐ-CP raises the base salary and SI/HI ceiling from 1 July 2026.
5	Minimum wage decree	Decree No. 293/2025/NĐ-CP, effective from 1 January 2026, setting the wage floor for overtime and SI.

Key salary and SI benchmarks rise in 2026

Base salary & SI/HI ceiling

Monthly amount	Before	From 1 Jul 2026
Statutory base salary	VND 2.34m	VND 2.53m
SI / HI ceiling (20x base)	VND 46.8m	VND 50.6m
Multiplier	20x base salary	20x base salary

Regional minimum wage (VND/month)

Region I	VND 5.31m
Region II	VND 4.73m
Region III	VND 4.14m
Region IV	VND 3.70m
National avg	+7.2%

Minimum wage rose nationwide from 1 January 2026 and directly sets the wage floor used in overtime and social insurance calculations.

Employer impact | Payroll costs rise for higher earners and across all four wage regions; review contracts and pay scales that still reference 2025 figures.

Employment contracts and workforce arrangements

- 01**
Equal legal validity
 E-labor contracts carry the same legal validity as paper contracts, available from 1 July 2026.
- 02**
National platform
 Contracts are created, signed, and managed via the National Electronic Labor Contract Platform or a licensed connected provider.
- 03**
24-hour submission
 Signed e-contracts must reach the Platform within 24 hours; each contract receives a unique 13-character ID.
- 04**
Paper stays valid
 Paper contracts remain valid. Converting existing contracts to electronic form is optional, not required.

Employer action: confirm e-contract vendor licensing, and review part-time, fixed-term, and secondment arrangements for gaps.

Misclassifying employees creates real legal exposure

- | | | |
|----------|-----------------------------------|--|
| 1 | Labor contract | Terms and job title must reflect the real employment relationship, not a contractor label. |
| 2 | Job description | Actual duties and level of control determine whether a role is genuinely independent. |
| 3 | Timesheet & attendance | Recorded hours and work patterns should match how the person is actually managed. |
| 4 | SI declaration | Filings must align with the contract and the real working arrangement, not the label. |

Overtime pay follows strict rate and consent rules

150%**Weekday overtime**

Paid at 150% of normal hourly pay for overtime worked on an ordinary working day.

200%**Weekly rest day**

Paid at 200% of normal hourly pay for overtime worked on the weekly rest day.

300%**Public holiday or paid leave**

Paid at 300% of normal hourly pay for overtime on a public holiday or a paid leave day.

Overtime needs the employee's clear consent, in writing or a verifiable system record, kept with schedules and attendance data as evidence.

Payroll and social insurance records must reconcile

ALIGNMENT**Four records must match every month**

- Labor contract terms and actual pay
- Attendance and timesheet data
- Payroll register and payslips
- Social insurance declaration and base

COMMON VIOLATIONS**What triggers enforcement risk**

- Late, interrupted, or underreported SI
- Overtime paid without documented consent
- Missing SI registration for part-time staff
- Mismatched pay figures across systems

SI coverage now extends to part-time staff, with stricter penalties for evasion.

A practical roadmap for employer implementation

PHASE 1

Diagnose

Review labor contracts, internal labor rules, payroll logic, and overtime approval records.

PHASE 2

Remediate

Update contract templates, correct SI contribution bases, and address SI coverage gaps, including eligible part-time employees.

PHASE 3

Formalize

Strengthen overtime consent and recordkeeping, address classification issues, and maintain appropriate supporting documentation.

PHASE 4

Govern

Assign owners, run monthly payroll-SI reconciliation, and hold quarterly compliance reviews.

Minimum control set

Contract register • payroll-SI reconciliation • overtime log
• quarterly review

Compliance in 2026 is an ongoing controls exercise

1.

Labour & SI updates

Review 2026 payroll and SI costs against the new base salary, contribution ceilings, and regional minimum wages.

2.

Contracts & classification

Align contracts, actual practice, and platform requirements; test how contractor roles are classified.

3.

Payroll governance

Perform regular payroll-SI reconciliation and maintain supporting documentation for compliance review before authorities ask for it.

Thank You

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Impact of the New Legal Framework on Corporate Labor Management

VIAC x AusCham Webinar Series 2026

27 August 2026

Agenda



1. Overview

2. Impact of the New Legal Framework
on Corporate Labor Management

3. Immediate risk-management actions
for employers

4. Q&A

What's changed in the Labor Legal Framework?

New Legal Framework

Law on Social Insurance 2024 (effective from 1 July 2025)

Law on Employment 2025 (effective from 1 January 2026)

Implementing decrees on labor related matters, such as:

- Decree 337/2025/ND-CP dated 24 December 2025 providing detailed guidance on electronic labor contracts (effective from 1 January 2026)
- Decree 219/2025/ND-CP dated 7 August 2025 on foreign workers (effective from 7 August 2025)
- Decree No. 330/2026/ND-CP dated 19 August 2026 providing administrative penalties for violations in the fields of cybersecurity and personal data protection (effective from 19 August 2026)
- Decree No. 283/2026/ND-CP dated 15 July 2026 providing administrative penalties for violations in the fields of labor, social insurance and Vietnamese workers working abroad (effective from 10 September 2026)

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What are the practical impacts?

01

Impact on employment costs and workforce planning

02

Review of contracts and internal policies

03

Workforce restructuring and termination risks

04

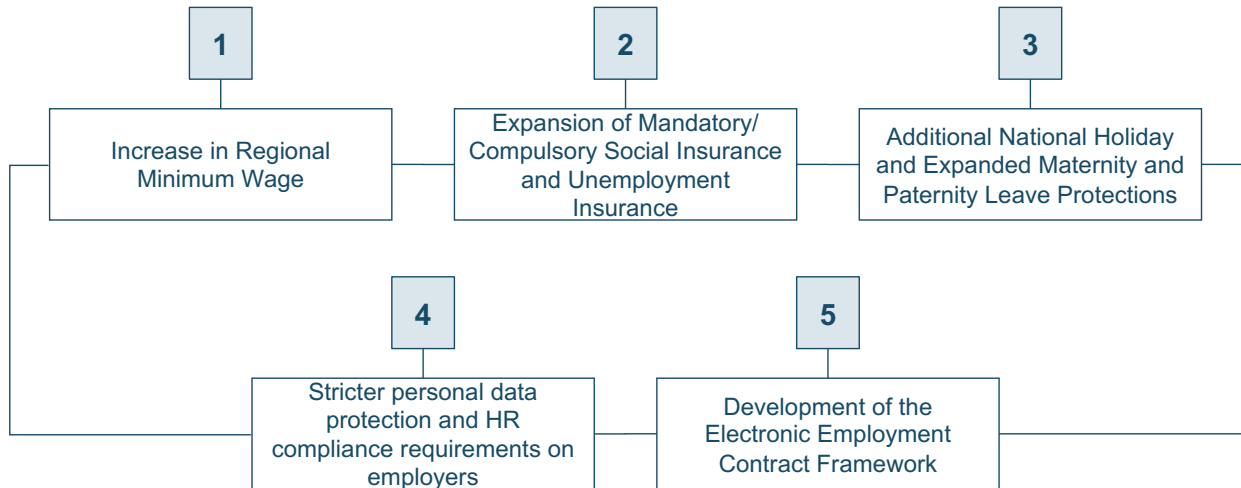
Employment disputes and liability exposure

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1. Impact on employment costs and workforce planning

Key legal changes affecting employment costs and workforce planning, including:



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1.1. Increase in Regional Minimum Wage (Currently up to VND 5,310,000)

What does the increase in Regional Minimum Wage mean for Employers?

Impact		Remarks
1	Review and adjustment of employee salaries	For employees who are currently paid at, or close to, the applicable regional minimum wage
2	Increase in salary base for compulsory social insurance, health insurance, unemployment insurance and trade union contributions	

Increase in overall statutory employment costs

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1.2. Expansion of Mandatory/ Compulsory Social Insurance and Unemployment Insurance

What has changed?

New groups subject to Compulsory Unemployment Insurance

Employees under labor contracts of at least 1 month, including similar paid arrangements subject to the management and supervision of one party.

Part-time employees whose monthly salary equals or exceeds the minimum monthly salary used as the basis for compulsory social insurance contribution.

Business managers, controllers, representatives of the capital of enterprises, Board of Management's members, General Directors/ Directors, and other elected management positions of cooperatives and cooperative unions who receive salaries.

1.2. Expansion of Mandatory/ Compulsory Social Insurance and Unemployment Insurance (cont'd)

What has changed?

New groups subject to Compulsory Social Insurance

Additional groups covered by Compulsory Unemployment Insurance:

Business managers, controllers, representatives of the capital of enterprises, Board of Management's members, General Directors/ Directors, and other elected management positions of cooperatives and cooperative unions who **do not** receive salaries.

1.2. Expansion of Mandatory/ Compulsory Social Insurance and Unemployment Insurance (cont'd)

What does this mean for employers?

01

Increase of the statutory employment costs

Additional employees subject to compulsory social insurance and unemployment insurance contributions may increase employers' statutory employment costs.

02

Payroll, budgeting and employment documentation adjustments

Particularly for part-time employees or individuals under service, consultancy, collaboration or similar working arrangements that may be recharacterized as employment relationships.

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1.3. Additional National Holiday and Expanded Maternity and Paternity Leave Protections

Additional National Holiday

From 1 July 2026, employees are entitled to an additional paid day off on **24 November**, designated as Vietnamese Cultural Day.

Expanded Maternity and Paternity Leave Protections

For parents welcoming a second child:

- Female employees: **7 months'** maternity leave
- Male employees: **10 working days'** paternity leave

What impacts may arise?

May impact workforce availability, shift planning and staffing budgets, requiring temporary replacements, work schedule adjustments or workforce budget revisions.

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1.4. Stricter personal data protection and HR compliance requirements on employers

What happens when stricter requirements apply under the Law on Personal Data Protection and Decree No. 356/2025/NĐ-CP?

Impact		What should employers do?
1	Review of HR data practices	Review the collection, processing, use, storage, retention, transfer and deletion of employee and candidate data throughout the employment lifecycle.
2	Allocation of the additional compliance resources	Appoint a person or department in charge of personal data protection (or engaging an external service provider to perform such duties): having completed training in both legal knowledge and professional skills relating to personal data protection.
3	Reporting obligations	Breach notification, personal data processing impact assessments ("DPIA"), cross-border data transfer impact assessments ("DTIA"), periodic reports and updates to the competent authority

1.5. Development of the Electronic Employment Contract Framework

Electronic employment contracts remain **optional**. Employers may continue using paper employment contracts.

What happens if employers choose to adopt electronic employment contracts?



2. Review of employment contracts, and internal policies

How should employers update their employment contracts and internal policies?

01

Update employment contracts and internal labor regulations

To reflect the new statutory holiday and enhanced maternity/ paternity leave entitlements, “serious damage” or “extremely serious damage”.

02

Review and update HR practices and data-related documents

Review recruitment procedures, privacy notices, employee-consent forms, HR databases, data retention, employee monitoring, third-party data sharing and cross-border data transfers.

03

Establish processes for data subjects’ rights

Establish clear procedures and standardized forms to enable employees to exercise their personal data rights and ensure they are properly informed.

Are Non-Disclosure and Non-Compete Agreements (“NDCA”) enforceable?

Case Law No. 69/2023/AL adopted by the Supreme People's Court

- NDCA dispute → VIAC arbitral award → HCMC People's Court upheld award (Decision No. 755/2018/QĐ-PQTT) → Adopted as Case Law No. 69/2023/AL by the Supreme People's Court.
- NDCA may be documented as a **stand-alone agreement**, separate from the employment contract, and VIAC can be dispute resolution forum.
- Case Law No. 69/2023/AL **should not** be viewed as confirming that all NDCAs are automatically valid or enforceable under Vietnamese law.

Enforceability depends on the specific facts, the scope of the restriction, and the manner in which the agreement is drafted and implemented.

How to enhance the enforceability of an NDCA?

01

Clearly define the confidential information and legitimate business interests being protected.

02

Clearly specify the scope and duration of the confidentiality and non-compete obligations.

03

Set out post-termination obligations and consequences of breach.

04

Include an appropriate dispute-resolution mechanism, including arbitration where appropriate.

05

Ensure the restrictions are reasonable, proportionate and clearly linked to legitimate business interests.

Another dynamic issue: abolition of forced labor

What may constitute forced labor?

Exploiting apprenticeship or on-the-job training for personal gain, labor exploitation, or coercing trainees into unlawful activities.

Deceptive or coercive recruitment through false promises, advertisements or other means for human trafficking, exploitation or forced labor, or to facilitate unlawful activities.

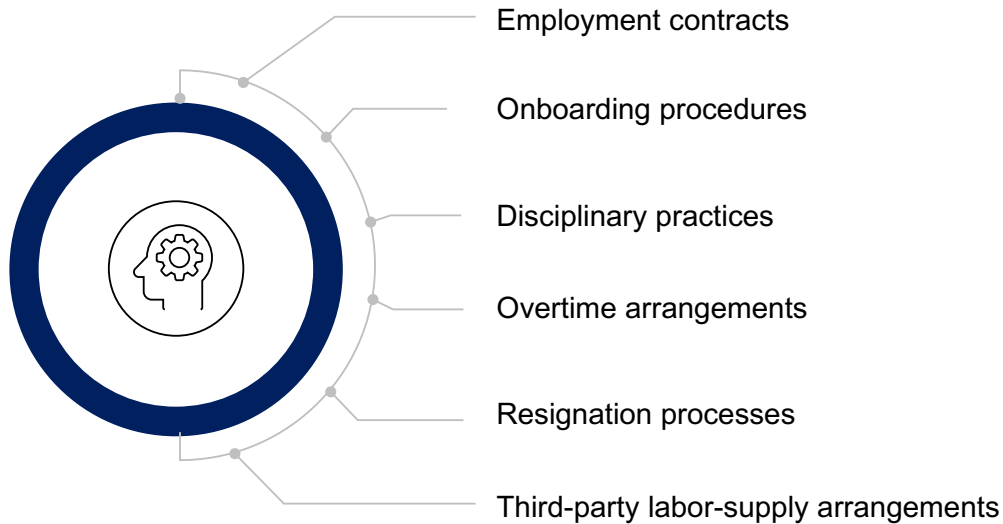
Retention of employees' original identification papers, diplomas or certificates.

Requiring cash or asset deposits as security for employment contracts.

Compelling employees to work to repay debts owed to the employer

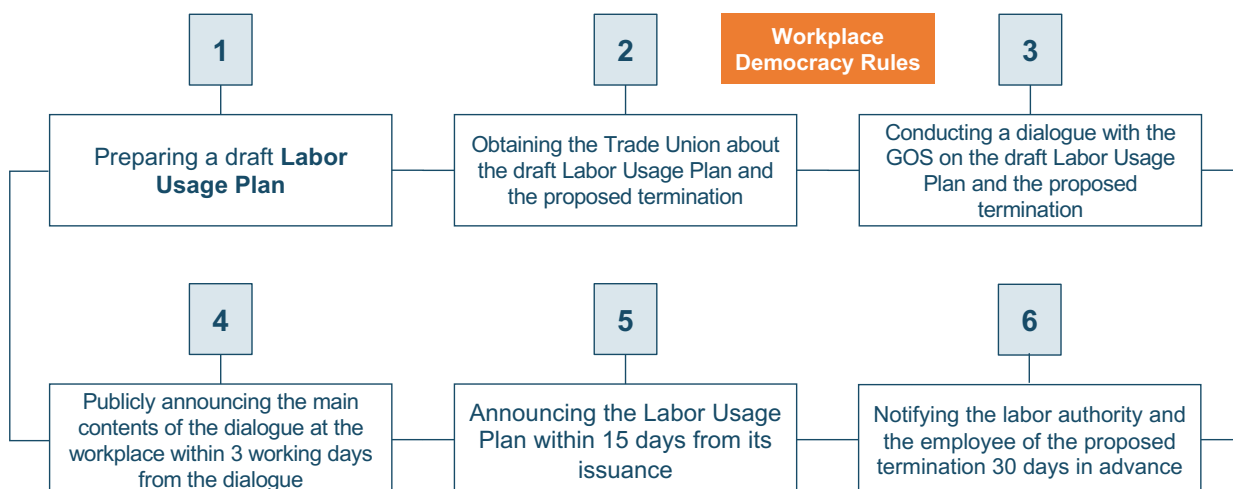
How can employers prevent forced-labor risks?

To prevent and address forced-labor risks, employers should review:



3. Workforce restructuring, and termination risks

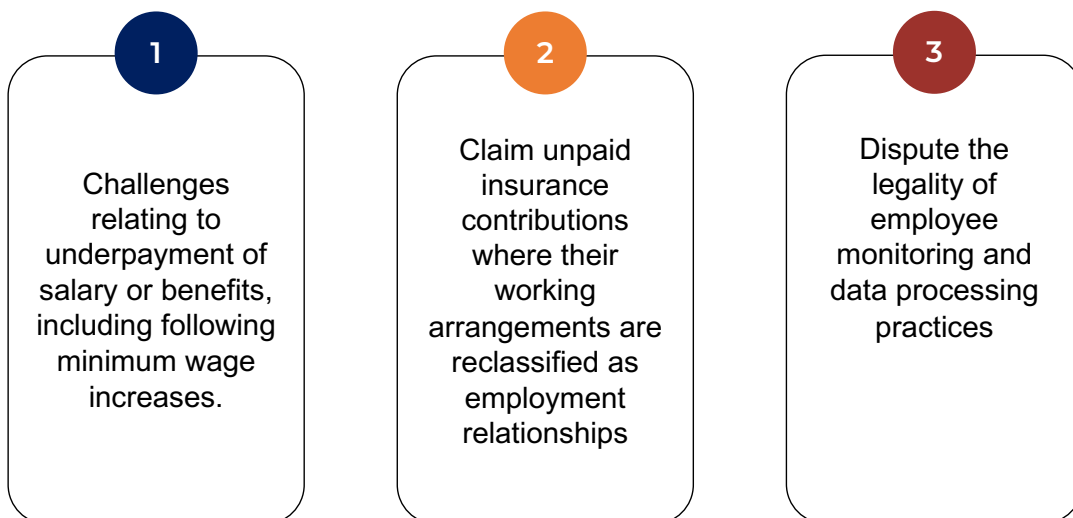
What are the key requirements for restructuring due to organizational, technological or economic reasons?



What may happen if the employer fails to comply?

Wrongful Termination	Reinstate the employee.
	Pay salary and compulsory social insurance, health insurance and unemployment insurance contributions for the non-working period.
	Pay compensation equal to at least 02 months' salary under the employment contract.
	Pay salary in lieu of the prior notice period if the employer does not comply with such prior notice period.
	Pay an additional 2 months' salary and severance allowance if the employer does not wish to reinstate the employee and the employee agrees not to continue working for the employer.

4. Employment disputes and liability exposure



What should employers do now?

Action		Remarks
1	Assessing employment costs and insurance obligations	Assess the impact of minimum wage increases and expanded compulsory social insurance/ unemployment insurance coverage on employment costs and payroll budgets.
2	Reviewing and Updating (if necessary) Existing Employment Documents and Internal Policies	Review and update employment contracts, internal labor regulations, remuneration and leave policies, work rules and HR procedures; review NDCA / restrictive covenants for key employees.
3	Completing Required Registrations, Consultations and Filings	Ensure required registrations, consultations and filings are completed, including Internal Labor Regulations, Performance Assessment Regulations/poor performance, Workplace Democracy Rules and Labor Usage Plans, where applicable.
4	Strengthening personal-data protection compliance	Review recruitment data, employee records, monitoring tools, data retention, third-party sharing, cross-border transfers, DPIA / DTIA and breach notification requirements.
5	Training Managers and HR Personnel	Provide targeted training on labor, employment, social insurance and personal data protection requirements, including restructuring, disciplinary and termination procedures.
6	Improving record management and evidence retention	Maintain sufficient records and evidence to substantiate employment decisions, disciplinary actions, restructuring and termination decisions in case of audits, complaints or disputes.

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Thank you



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Our Profile

VILAF
2026

A Legacy of Excellence, A Future of Innovation

Established in 1993, VILAF – Vietnam International Law Firm – has been at the forefront of Vietnam's legal landscape for over three decades. From our inception, we've been committed to providing top-tier legal services, primarily advising foreign investors and institutions on their ventures in Vietnam.

With a team of over 100 lawyers, including 16 partners, our expertise enables us to serve clients across a broad spectrum of practice areas, including banking and finance, corporate and M&A, dispute resolution, energy and infrastructure, real estate, and more. Our lawyers, many of whom have been educated or trained in renowned law schools in the U.S., UK, The Netherlands, Australia, South Korea, and Singapore blend international perspective with local insight, ensuring our clients receive unparalleled legal counsel.

As we look to the future, VILAF continues to evolve alongside our clients, and we remain steadfast in delivering practical legal solutions that address today's challenges and anticipate tomorrow's opportunities.



Why VILAF?

We deliver excellence.

→ Consistent Top Tier Recognition

For nearly **20 years**, VILAF has been consistently recognized as a **top-tier** law firm in Vietnam by prestigious international law firm editorials such as **Legal500**, **Chambers**, **IFLR1000**, **ALB**, **AsiaLaw**, and **In-House Community** in numerous practice areas.

→ Expertise in Complex, High Stakes Matters

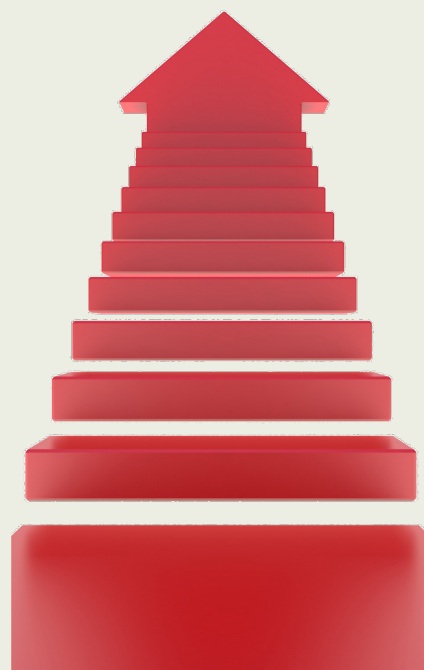
VILAF is **best known** for **handling complex matters** and seeing clients through **large and complex transactions** with **high demands** for timeline and legal resources.

→ Largest Team of English-Speaking Lawyers

VILAF boasts of the **largest team of English-speaking lawyers** experienced in **cross-border M&A and Corporate in Vietnam**. Our team is comprised of 16 partners, 6 counsels, 18 senior associates, and a total of 100 lawyers with a deep understanding of a wide range of business sectors.

→ Recognized Legal Experts

Eleven of our partners are recognized as **Leading Lawyers in Vietnam**, and **15 of our partners** are ranked by **international legal editorials**, a testament to our team's expertise and commitment to delivering high-quality legal services to our clients.



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- Resorts
- Casinos
- Residential Projects
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- Design/Construction

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24
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14
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60
LAWYERS

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- Acquisitions
- Divestitures
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- Merger Clearance

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28
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- Metro Line Project
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- Financial Services
- Product Liability
- Personal Injury
- Employment litigation
- Antitrust/Competition issues
- Account Receivables
- Land Disputes

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Professional Summary

- Hien has distinguished himself in the legal field, contributing his expertise to VILAF, supporting its first-tier status in Vietnam by international legal editorials including AsiaLaw, Benchmark Litigation, Chambers, Legal 500, and In-House Community. With over 20 years of extensive experience, Hien specializes in litigation and arbitration across various forums such as the Vietnamese courts, the Vietnam International Arbitration Centre (VIAC), and the Singapore International Arbitration Centre (SIAC).
- Hien is highly regarded by peers and clients for delivering practical, sophisticated solutions tailored to navigating crisis situations effectively. His approach is not only strategic but also highly attuned to the unique challenges and opportunities presented in each case, ensuring that clients receive the most suitable and effective legal advice.

International Recognition

- Benchmark Litigation Asia-Pacific Litigation Star in Commercial and Transactions since 2023
- Ranking in Dispute Resolution by Chambers Asia Pacific since 2023
- The Legal 500 Next Generation Partner in Dispute Resolution since 2023
- The Legal 500 Private Practice Arbitration Powerlist - South East Asia Region 2022 & 2023
- Top 10 Dispute Resolution Lawyers Reshaping Vietnam's Legal Landscape – Business Today Lawyer Awards 2023

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**Topic 04 – “Vietnam’s New Labour and Social Insurance Regulations:
Compliance, Cost, and Risk Management”**

PANEL DISCUSSION AND Q&A SESSION

**From Regulatory Change to Workplace Practice:
Compliance, Cost and Employment Risk Management**

SPEAKERS

Moderator: Ms. Nguyen Thi Hai Chi – *Partner at CDR Counsels, VIAC’s Listed Arbitrator*

Speakers:

Mr. Lok Kah Seng – *Associate Director of Group Commercial at Ascentium*

Mr. Tran Anh Hien – *Partner at VILAF, VIAC’s Listed Arbitrator*

CONTENT

PART I: Decree 283/2026/NĐ-CP on Penalties for Administrative violations against regulations on labour, social insurance, and Vietnamese guest workers, in force on 10 September 2026

Question 1.1: *Decree 283/2026/NĐ-CP replaces the entire administrative penalty regime for labour and social insurance on 10 September. For a company that suspects it has a coverage gap – part-time staff never registered, for example – is it better to self-correct before that date, or does coming forward create its own exposure?*

Mr. Lok Kah Seng: Once an employer identifies a genuine gap in social insurance coverage, voluntary remediation should generally be prioritised. However, corrective action does not automatically eliminate the employer’s exposure in respect of past non-compliance.

The employer should first verify whether the affected workers are in fact subject to compulsory social insurance and quantify the extent of the coverage gap. It should then proceed with the necessary registrations and make up any missed contributions as soon as reasonably practicable.

As the remediation process may take several payroll cycles to complete, an early compliance review is particularly important. Employers should also maintain a clear and documented remediation plan, with the objective of completing the corrective measures before 10 September 2026.

Mr. Tran Anh Hien: In my view, employers should review their current arrangements and, where necessary, take corrective action as soon as possible before 10 September 2026, when Decree No. 283/2026/ND-CP takes effect.

The reason is that the Decree contains transitional provisions. Where a violation occurred and was fully remedied before the effective date, the previous regulatory framework would generally continue to apply. Depending on the circumstances, this may result in no administrative penalty or a less severe consequence than would apply under the new regime.

By contrast, where a violation commenced before 10 September 2026 but continues beyond that date, Decree No. 283/2026/ND-CP may become the applicable legal basis for imposing administrative penalties and related remedial measures.

This is particularly relevant in light of the newer requirements concerning the reclassification of certain service or collaboration arrangements. Employers therefore still have an important window of time to review potentially non-compliant arrangements, identify historical gaps, and make the necessary corrections before the new regime takes effect.

Accordingly, I would recommend that companies prioritise an immediate internal review and complete any feasible self-correction before 10 September 2026, in order to reduce the risk of more serious regulatory consequences.

Ms. Nguyen Thi Hai Chi: From the discussion, three key points emerge. *First*, self-correction should generally be prioritised once an employer identifies a genuine social insurance compliance gap, although remediation does not automatically eliminate historical exposure. *Second*, the process should follow a clear sequence: employers should first confirm which workers are actually subject to compulsory social insurance, then quantify the extent of any gap, proceed with the necessary registrations, and make up the outstanding contributions. *Third*, remediation may take several payroll cycles to complete. For that reason, an early diagnostic review and a documented remediation plan are more important than simply focusing on whether every corrective step can be completed before 10 September.

Question 1.2: *If a finance director watching this morning has one working day — not one quarter, one day – what is the single reconciliation you would have them run?*

Mr. Lok Kah Seng: If a finance director has only one working day, the quickest and most practical reconciliation would be to compare the active payroll headcount against the list of employees registered for compulsory social insurance for the same month.

The first step is to identify any discrepancies – for example, employees who appear on the payroll but are not included in the social insurance declaration, or individuals who remain registered for social insurance even though they are no longer on the payroll. Some of these differences may be legitimate, but each exception should be clearly explained and supported by appropriate documentation.

Given the increasing regulatory emphasis on governance and record-keeping, the key point from a payroll perspective is not simply to identify differences, but to ensure that every discrepancy can be properly reconciled and evidenced with adequate supporting records.

PART II: Labour cost and social insurance

Question 2.1: *Most companies in this audience have people on service, consultancy or collaborator agreements. What is the practical test — which two or three features most reliably tip a genuine independent contractor into being an employee in the eyes of an inspector?*

Mr. Lok Kah Seng: This can also be linked to the principle of substance over form mentioned earlier in the presentation. In practice, there are two features that may create particular classification risks for businesses.

First, an individual may receive a fixed monthly payment regardless of specific deliverables. In substance, this may resemble a regular salary rather than remuneration under a genuinely independent service arrangement.

Second, the individual may use the company's email account, internal IT systems, or attendance-tracking tools in the same way as employees. These indicators can be particularly significant because they are often clearly reflected in payroll, HR, and IT administration records long before anyone reviews the wording of the underlying contract.

These indicators are often readily visible in payroll and IT administration records even before the wording of the contract is examined.

Mr. Tran Anh Hien: In my view, a tribunal would begin with the legal test, which focuses on whether one party exercises management, direction, and supervision over the other. In practice, several indicators would be relevant.

The first is the degree of control exercised by the company. This may include working hours, attendance requirements, reporting lines, internal rules and approval procedures, as well as performance assessments. A tribunal may also examine whether the individual receives day-to-day instructions and is required to follow the company's schedules and internal procedures.

The second indicator is the remuneration structure. As Mr. Lok noted, a fixed monthly payment linked to time worked is generally more indicative of an employment relationship, whereas payment tied to specific deliverables or completed services is more consistent with an independent contractor arrangement.

The third factor is the individual's level of independence and integration into the business. An independent contractor would typically retain greater autonomy over how the services are performed. Relevant considerations may include whether the individual works primarily or exclusively for one company, uses the company's office, equipment, or other resources, and is integrated into its day-to-day operations.

The greater the individual's dependence on and integration into the business, the greater the risk that the relationship may be characterised as employment. Recent court practice has also shown that, where the actual cooperation between the parties reflects the characteristics of an employment relationship, the court may treat it as such despite the agreement being labelled as a service or collaboration arrangement.

Employers should therefore carefully review any existing practice of structuring what is substantively an employment relationship as a service or collaboration agreement.

Question 2.2: *There is an obvious temptation to shift fixed allowances into variable, performance-linked pay. Kah Seng: where is the line between legitimate remuneration design and under-declaration?*

Mr. Lok Kah Seng: From a payroll perspective, the key question is whether the variable component is genuinely linked to documented performance criteria and applied consistently in practice.

If an amount is described as variable remuneration but is paid at the same or a substantially similar level each month regardless of actual performance, there is a risk that the substance of the payment does not reflect its stated performance-based nature.

Accordingly, when determining the applicable social insurance contribution base, the employment contract, remuneration policy, and actual payroll practice should be reviewed together rather than considered in isolation.

**Follow-up question: (Ms. Nguyen Thi Hai Chi) So, in practical terms, what is an inspector more likely to examine first: the written policy on file, or the actual payroll records over the previous 12 months?*

Mr. Lok Kah Seng: An inspector would typically review both. The written policy and the actual payroll records would be cross-checked against each other to determine whether the company's documented remuneration structure is consistent with how payments are made in practice.

Question 2.3: A discrepancy between the salary declared for social insurance and the salary declared for personal income tax is now, in writing, one of the criteria used to select employers for inspection. How common is that mismatch in practice – and is it usually deliberate, or has nobody ever run the comparison?

Mr. Lok Kah Seng: A difference between the amounts declared for social insurance and personal income tax does not necessarily indicate a compliance issue, as the two bases may legitimately include different remuneration components.

In practice, discrepancies can arise because social insurance and personal income tax are calculated under different rules and may also be processed by different internal teams or systems without regular reconciliation.

Where a difference is identified, the key is to reconcile the two data sets, determine the material reasons for the discrepancy, and ensure that those differences can be clearly explained and supported by the underlying payroll and remuneration records, including relevant internal policies.

Ms. Nguyen Thi Hai Chi: So, as I understand it, a difference between the social insurance and personal income tax bases does not automatically indicate a breach, since the two may legitimately include different remuneration components. The real concern is where that difference cannot be properly explained.

In practice, these discrepancies often arise because social insurance and personal income tax are handled by different teams or systems without regular reconciliation. This makes periodic cross-checking particularly important.

**Question from audience: How common is it in Vietnam for employers to declare different salary amounts for social insurance and personal income tax purposes?*

Mr. Tran Anh Hien: Historically, discrepancies between the salary declared for social insurance purposes and the amount reported for personal income tax have not been uncommon in Vietnam. In some cases, companies structured their payroll in this way in an effort to reduce employment-related costs.

However, enforcement has become significantly stricter. A recent high-profile inspection resulted in substantial consequences for an employer where such discrepancies were identified. While I cannot disclose the company involved, the case indicates that the authorities are now paying much closer attention to this issue and are prepared to take enforcement action where the differences cannot be properly justified.

It is important, however, to distinguish between legitimate differences and discrepancies created to reduce statutory obligations. As discussed earlier, the social insurance contribution base and the personal income tax base may lawfully differ in certain circumstances – for example, where the social insurance contribution reaches the applicable statutory ceiling. In such cases, a difference between the two declared amounts is entirely expected.

The concern arises where an employer intentionally reports a lower salary to the social insurance authority than the remuneration actually paid or declared for tax purposes, without a lawful basis for doing so. Such practices may expose the employer to significant regulatory consequences.

In practice, foreign-invested enterprises have generally become much more cautious about allowing unexplained discrepancies of this kind, while the issue may still arise more frequently among domestic companies. Given the current enforcement environment, employers should ensure that any difference between the social insurance and tax bases is legally justified, properly documented, and capable of being clearly explained to the authorities.

Question 2.4: *The test for a foreign employee's compulsory social insurance moved from holding a work permit to the length of the contract. What does the new test catch that the old one did not – and how well documented is the intra-corporate transferee exclusion in the companies you see?*

Mr. Lok Kah Seng: The new requirement effectively shifts the trigger from immigration documentation, which is typically monitored by HR, to payroll and contracting data points that may not be visible to the immigration team.

In practice, the exclusion for intra-corporate transferees is often documented primarily from a work permit or immigration perspective, rather than from a payroll or social insurance registration perspective. This creates a potential gap between the HR/immigration function and the payroll function.

Accordingly, where a company has intra-corporate transferees, it is important to ensure that the immigration status, employment or assignment documentation, and payroll treatment are reviewed together and remain as consistent as possible.

Question 2.5: *A year after Decree 219, has the work permit process actually become easier on the ground, or has the administrative burden simply moved somewhere else? And what should companies know about the new notification duties?*

Mr. Lok Kah Seng: From my perspective, the key issue is not so much the approval process itself. Rather, the new requirement creates an ongoing notification obligation that sits with payroll and HR administration, rather than a one-off filing requirement.

In practical terms, the administrative burden shifts from completing a single application to continuously tracking relevant changes and ensuring that the necessary notifications are made on an ongoing basis. This may require additional coordination and resources, which many companies may not yet have fully built into their existing HR and payroll processes.

Mr. Tran Anh Hien: My observation is that the process may initially feel more difficult, but it should become easier over time.

Those who have dealt with work permit applications in Vietnam will have seen that the labour authorities changed their administrative practice several times over the past one to two years, which at times made the process more difficult and less predictable. More recently, however, the procedure has been simplified. The previous two-step process—first obtaining approval for the need

to employ a foreign worker and then applying for the work permit—has now been combined into a single application.

The filing process has also moved from a partly paper-based system to a fully online process. In principle, this should make things easier for employers. However, there are still a number of technical issues that can create practical difficulties.

For example, when applying for a work permit for a specific position, the employer must select the correct occupational code by reference to Decision No. 34/2020/QĐ-TTg. If the wrong code is used, the application may be rejected. Another practical issue concerns the electronic identification of the company's legal representative. For foreign legal representatives, obtaining the required electronic identification has not always been straightforward, although a new mechanism has recently been introduced.

There can also still be technical problems with the online filing system itself. In my view, these are largely transitional issues. As employers become more familiar with the system and the technical requirements are further refined, the process should become faster and more manageable.

PART III: Restructuring and termination

Question 3.1: *In the restructuring cases you actually see, where does the employer usually fail — on the substantive ground, or on the procedure?*

Mr. Tran Anh Hien: In my experience, in most restructuring or redundancy cases, the employer usually has a genuine business need to reduce its workforce. This may arise from economic conditions, operational difficulties, or the company's inability to maintain its existing headcount. Accordingly, the substantive basis for restructuring is often reasonable and can generally be supported once the company's actual circumstances are properly documented.

The greater concern, however, is usually procedural compliance. Many restructuring cases that ultimately develop into wrongful termination disputes do so not because the employer lacks a legitimate business reason, but because the required procedures have not been properly followed.

One important issue is whether the company has the necessary internal framework in place before commencing the restructuring process. This includes the applicable workplace democracy regulations and the required dialogue with employee representatives. If these mechanisms have not yet been established, the employer may need to put them in place before proceeding with a labour utilisation plan or implementing redundancies.

Employers should also pay close attention to the applicable notification requirements. Under the newer framework, the process may require not only prior notification to the labour authority, but also advance notice to affected employees, including the applicable 30-day notice period.

Therefore, from a practical perspective, employers considering workforce restructuring should focus closely on the procedural roadmap from the outset. A genuine economic or operational justification alone is not sufficient; the restructuring must also be supported by the required internal regulations, consultation process, documentation, and notifications in order to reduce the risk of the termination being challenged as unlawful.

Question 3.2: *Let us take a different scenario: an employee is consistently underperforming, but there is no misconduct involved. In practice, how many companies actually have a legally compliant*

performance assessment regulation in place, and what should such a regulation contain in order to provide a defensible basis for performance-related action?

Mr. Tran Anh Hien: In poor-performance cases, the first point employers should consider is whether they have a legally compliant **performance assessment regulation** in place. In practice, many companies are familiar with internal labour regulations and codes of conduct but may not realise that a separate performance assessment framework is required if they intend to take action on the basis of poor performance.

Where such a regulation has already been properly issued, the employer may rely on it when conducting performance assessments. However, under the more recent requirements concerning workplace democracy and employee dialogue, the process of issuing or updating a performance assessment regulation may also require the relevant internal dialogue procedures to be completed beforehand.

The regulation itself must also be sufficiently clear and workable in practice. It should contain objective and measurable performance criteria. For certain positions, such as sales roles, this may be relatively straightforward because performance can be measured against sales targets or other clearly defined KPIs. For back-office or support functions, however, setting appropriate performance criteria may be more difficult and often requires closer consideration of the actual responsibilities of the role.

Recent court practice also illustrates that merely having a performance assessment regulation may not, by itself, be sufficient. In one recent first-instance case involving termination for poor performance, the court reportedly found the termination to be unlawful despite the existence of such a regulation. As the judgment has not yet been made public, it is not yet clear whether the issue arose from defects in the regulation itself, the KPIs applied, or the employer's implementation of the assessment process.

Accordingly, employers should not only ensure that a performance assessment regulation exists, but also that it has been properly adopted, contains clear and appropriate criteria, and is consistently applied in practice.

**Follow-up question: (Ms. Nguyen Thi Hai Chi): If someone in the audience were drafting a performance assessment regulation today, what would you consider the essential elements that should be included to ensure it is both legally compliant and workable in practice?*

The most important element is to establish clear KPIs so that, in practice, the employer can determine whether the employee has met or failed to meet specific performance requirements and assess the extent of satisfactory or unsatisfactory performance.

The second key element is the assessment mechanism. Poor performance should generally reflect repeated failure to perform, rather than a single unsuccessful assessment. The employee should therefore be given an opportunity to improve. In practice, the employer may conduct two or three assessments over a period of one or two months to determine whether the underperformance continues and whether the employee has had a chance to rectify it.

Another important point is documentation. The employer should keep proper evidence of the assessment process and the employee's acknowledgement of any failure to meet the relevant KPIs or assigned tasks. This may be recorded in meeting minutes, follow-up emails, or other written records.

Question 3.3: *Expanding unemployment insurance coverage raises monthly cost but, over time, reduces severance liability. Is that a real effect on the numbers, or is it marginal?*

Mr. Lok Kah Seng: This needs to be assessed through an actual calculation. The increase in unemployment insurance contributions represents an immediate monthly cost, whereas any reduction in severance liability is realised over a longer period and will depend on the circumstances of each employee. Accordingly, the company should first review its actual headcount and employee profiles, and then model the financial impact to determine whether the overall net effect is significant or merely marginal.

PART IV: Dispute prevention and resolution

Question 4.1: *On Precedent 69 of 2023: you noted on your slide that it should not be read as confirming that all such agreements are valid. Several of people here today are not lawyers but HR experts, can you please provide more background of the Precedent and how it would be apply in practice?*

Mr. Tran Anh Hien: Regarding Precedent No. 69/2023/AL, the underlying dispute concerned post-employment non-compete and confidentiality obligations. The employer commenced arbitration proceedings before VIAC against a former employee and sought compensation for the alleged breach of those obligations. The arbitral tribunal rendered an award in favour of the employer. The former employee subsequently applied to the Ho Chi Minh City Court to set aside the award, but the application was dismissed. The case was later adopted by the Supreme People's Court as Precedent No. 69/2023/AL.

Importantly, the precedent principally addresses the jurisdictional question, rather than conclusively determining the substantive validity of non-compete obligations. It recognises that where an employer and employee enter into a confidentiality or non-compete agreement that is legally distinct from the employment contract and contains a valid arbitration agreement, disputes arising from that agreement may fall within arbitral jurisdiction.

This is significant because employment disputes have traditionally been understood as falling within the jurisdiction of the courts, creating uncertainty as to whether disputes relating to non-compete, confidentiality, or non-solicitation obligations could validly be referred to arbitration. Precedent No. 69/2023/AL provides greater clarity that arbitration may constitute an effective forum for resolving such disputes. VIAC has also handled several cases involving non-compete and confidentiality obligations.

However, the precedent should not be understood as confirming the substantive enforceability of every non-compete agreement. The validity and enforceability of each agreement must still be assessed by reference to its specific terms and circumstances. Restrictions that are excessively broad, onerous, or disproportionate, including disproportionate compensation for breach, may remain subject to challenge. In assessing enforceability, courts and arbitral tribunals may therefore consider the reasonableness and fairness of the restrictions imposed.

**Question from audience: Based on Precedent No. 69/2023/AL and your experience as a VIAC arbitrator, where should the boundary be drawn between employment disputes that fall within the jurisdiction of the courts and disputes in respect of which the parties remain free to agree on arbitration or other forms of alternative dispute resolution?*

Mr. Tran Anh Hien: In my view, there are two principal considerations: **timing and the substantive nature of the obligation in dispute.**

First, from a timing perspective, matters arising during the subsistence of the employment relationship are generally treated as employment-related matters, subject to certain exceptions such as those discussed earlier. Following termination of the employment contract, the employment relationship itself has ended, although certain obligations may expressly survive termination.

Second, the nature of the obligation must be considered. Matters such as salary, social insurance contributions, and other payments governed directly by labour law would generally remain within the jurisdiction of the Vietnamese courts. By contrast, obligations of a more commercial nature—such as confidentiality, non-compete, and non-solicitation obligations—may be capable of being referred to arbitration.

In practice, a single agreement, such as a settlement agreement or mutual termination agreement, may contain both employment-related obligations and post-termination obligations of a commercial nature. In such cases, the dispute resolution provisions may distinguish between the two categories. For example, disputes concerning non-compete or confidentiality obligations may be referred to VIAC, while other employment-related matters not covered by the arbitration clause would remain subject to the jurisdiction of the courts.

This is, of course, a general approach. Specific arrangements should be assessed on the basis of their particular terms and circumstances.

Question 4.2: *Can a company simply put an arbitration clause in its Vietnamese labour contracts? And if not, what is the right architecture — which agreements with a key employee should sit outside the labour contract, and with what dispute clause on each?*

Mr. Tran Anh Hien: In most cases, an employment contract primarily deals with labour-related matters rather than the commercial obligations discussed earlier. Accordingly, disputes arising under the employment contract would generally fall within the jurisdiction of the courts.

In practice, there are two common approaches to dealing with non-compete and confidentiality obligations. One approach is to incorporate those obligations directly into the employment contract. The other is to place them in a separate agreement.

Where the obligations are set out in a separate agreement, the position is relatively straightforward: disputes concerning the non-compete or confidentiality obligations may be referred to VIAC arbitration, while disputes arising from the employment contract itself would remain subject to court proceedings.

The position becomes more complex where non-compete and confidentiality obligations are incorporated into the employment contract. In that case, the dispute resolution clause may distinguish between different categories of disputes – for example, providing that disputes concerning non-compete and confidentiality obligations are referred to VIAC arbitration, while the remaining employment-related disputes are resolved by the courts.

Question 4.3: *For a company running a group HR system hosted outside Vietnam — which is most of this audience – is a cross-border transfer impact assessment required for routine employee data? How are your clients handling it in practice?*

Mr. Lok Kah Seng: Most regional or global HR platforms are, by design, hosted outside Vietnam. In practice, only a limited number of companies have completed—or even commenced – a transfer impact assessment for the routine cross-border processing of employee payroll data.

In my view, this issue is often treated primarily as an IT or information-security matter rather than as part of labour compliance. However, from a personal data protection perspective, companies should still undertake the relevant internal assessments and review whether their current arrangements are sufficient, with a view to strengthening or enhancing those measures where necessary.

GENERAL QUESTION: For a company with only limited HR and labour-compliance resources, and with just two weeks before the new penalty regime takes effect, what is the single most important action it should prioritise now, and why should that take precedence over other compliance measures?

Mr. Lok Kah Seng: My immediate recommendation would be to reconcile the payroll records against the social insurance declarations. This is a relatively quick exercise that does not require any new system, but it can immediately identify two of the most common compliance gaps: employees who are on the payroll but have not been registered for social insurance, and discrepancies between payroll data and the amounts declared for social insurance purposes. Given the limited time before the new penalty regime takes effect, this is a practical first step because it allows the company to identify and address the most obvious exposure areas quickly.

Mr. Tran Anh Hien: I agree with Mr. Lok. The immediate priority should be to review workforce classification and ensure that the appropriate social insurance coverage is in place. The most significant and immediate financial exposure typically arises from under-declaration of social insurance contributions, failure to register eligible employees, and misclassification of workers. These issues should therefore be addressed first. Other compliance measures, such as updating internal policies, training managers, or revising employment contracts, can follow once the more immediate social insurance and classification risks have been identified and corrected.

PART V: Audience Questions & Answers

Question 5.1: *For legal representatives who hold managerial positions in several companies but enter into an employment contract with only one company, how should social insurance obligations be handled?*

Mr. Tran Anh Hien: Under the current framework, managers who do not receive a salary may have flexibility in how they make their social insurance declarations and contributions. Depending on the applicable arrangement, they may make the declaration themselves or make the contribution through the relevant company, and contributions may be made on a monthly or quarterly basis. For managers who do not receive a salary, the contribution base may also be selected within the statutory minimum and maximum limits.

Where an individual is an employee of one company while simultaneously holding a managerial or board position in another company, the social insurance obligation would generally follow the company with which the individual has the employment relationship. Where the individual is not employed by any company but holds managerial positions in multiple companies, the applicable declaration may generally be associated with the company in which the individual was first appointed to the relevant managerial position.

Question 5.2: *What is an organisation's social insurance obligations when engaging an individual under an internship agreement?*

Mr. Lok Kah Seng: Where the arrangement is a genuine internship or training arrangement and its principal purpose is educational rather than employment, it would generally not trigger compulsory social insurance, as compulsory social insurance is linked to individuals working under an employment relationship.

However, the actual substance of the arrangement should still be reviewed. Relevant factors may include whether the intern works fixed hours, is subject to direct supervision, receives a fixed monthly stipend or allowance, or is required to produce work outputs in a manner similar to an employee.

Accordingly, where an internship allowance or stipend is paid outside the normal payroll and social insurance system, the company should review the individual's actual working arrangement before assuming that the internship falls outside compulsory social insurance coverage.

***Question 5.3:** From an employer's perspective, what are the most challenging aspects of implementing the new labour and social insurance regulations in practice, and how can businesses minimise the risk of non-compliance?*

Mr. Tran Anh Hien: In my view, the new requirements relating to personal data protection are among the most challenging for employers. Changes concerning social insurance, unemployment insurance, and salary levels build on systems and practices that employers and service providers have been dealing with for many years. Personal data protection requirements, by contrast, are relatively new and may create substantial additional compliance obligations.

For example, employers may need to appoint a Data Protection Officer or designate a department responsible for personal data protection, satisfy qualification and training requirements, prepare and update required assessments and reports, and comply with ongoing reporting obligations. Relevant training may also need to be provided by appropriately licensed service providers.

The potential legal consequences are significant. For certain violations, penalties may be linked to the company's revenue rather than being limited to a fixed monetary amount. Given that the regulatory framework and implementation mechanisms are still developing, employers should pay particular attention to personal data protection compliance and continue monitoring how these requirements are implemented in practice.

***Question 5.4.** What are the consequences if a company deducts social insurance contributions from employees' salaries but does not remit those amounts to the authorities?*

Mr. Lok Kah Seng: This should be treated as a serious compliance issue rather than a simple administrative oversight. Social insurance, health insurance, and unemployment insurance contributions deducted from employees are amounts that should be remitted to the State social insurance fund on the employees' behalf.

Where contributions are deducted but not paid, the employer may be exposed to liability for the outstanding contributions, late-payment interest, and, depending on the circumstances, potentially more serious legal consequences, including criminal liability under Vietnamese law.

The issue may also adversely affect employees where their social insurance records indicate contributions but the corresponding amounts have not actually been paid. For this reason, payroll teams should reconcile deductions and actual remittances on a monthly basis rather than waiting until the end of the year to identify discrepancies.

Question 5.5: *Under Article 168.3 of the Labour Code, is an employer required to make the additional payment equivalent to compulsory social insurance, health insurance, and unemployment insurance contributions during an employee's probationary period? Does the answer differ depending on whether probation is included in the employment contract or governed by a separate probation agreement?*

Mr. Tran Anh Hien: In my understanding, the position may differ depending on how the probationary arrangement is structured.

Where the probationary period is incorporated into the employment contract, the employee would be covered by the applicable compulsory insurance regime. In that case, the employer would not be required to make the additional payment contemplated under Article 168.3 because the relevant insurance contributions are already being made.

Where probation is governed by a separate probation agreement, the employer would not be required to participate in compulsory social insurance and unemployment insurance for that period. In that situation, Article 168.3 may require the employer to pay the employee an additional amount equivalent to the employer's compulsory insurance contributions, calculated by reference to the probationary salary.

Failure to make the required additional payment may also give rise to administrative penalties under the new penalty regime. However, given the rapid development of the regulatory framework, specific cases should be checked against the latest applicable provisions before a definitive conclusion is reached.

Question 5.6: *In the case of a foreign employee working in Vietnam under an intra-corporate transfer arrangement, the company has adopted separate internal regulations based on the parent company's policies and the Letter of Assignment agreed with the employee. Would there be an issue if the overtime rate under those regulations differs from the statutory overtime rate under Vietnamese labour law?*

Mr. Lok Kah Seng: Where internal company regulations based on a parent company's global policies prescribe overtime rates below the statutory rates applicable in Vietnam, those provisions would not be enforceable to the extent that they are inconsistent with Vietnamese law.

The employer would remain responsible for paying overtime in accordance with the statutory rates applicable under Vietnamese labour law, regardless of the provisions contained in the company's internal regulations or the Letter of Assignment.

Question 5.7: *What type of documented performance criteria would be sufficiently robust to support the treatment of an allowance as genuinely variable remuneration?*

Mr. Lok Kah Seng: There is no single codified checklist applied by social insurance inspectors or auditors. The assessment is generally made on a case-by-case basis, having regard to the underlying substance-over-form principle – in particular, whether the amount genuinely varies according to an actual and consistently applied condition, or whether substantially the same amount is paid regardless of performance.

In practice, documentation supporting a variable allowance would generally be stronger where it contains three elements:

- (1) *A written formula or performance target established in advance, rather than criteria created retrospectively to justify payments already made.*

- (2) *Evidence that the amount actually varies in practice, such as payroll records showing different payment levels across different periods, including periods where the allowance is reduced or no payment is made.*
- (3) *Records linking each payment to an actual measurement, such as sales figures, KPI scorecards, attendance data, or business results, rather than performance criteria that exist only on paper but are not applied in practice.*

Question 5.8: *A company enters into a separate probation agreement with an employee from 25 June to 21 August. After the employee successfully completes probation, the parties enter into a labour contract effective from 22 August. Should compulsory social insurance contributions commence from August or September?*

Mr. Lok Kah Seng: As a general position, social insurance registration should commence from August, being the month in which the labour contract takes effect on 22 August. The relevant contribution obligation is triggered by the effective date of the labour contract.

During the period covered by a separate probation agreement, compulsory social insurance would generally not apply, as compulsory social insurance attaches once a qualifying labour contract comes into effect.

However, for the probationary period, the employer should also confirm whether the additional payment required under the Labour Code—equivalent to the employer’s applicable social insurance, health insurance, and unemployment insurance contributions—has been properly paid to the employee.

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