



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

Navigating Vietnam business operations during Covid-19

Filippo Bortoletti –Manager – International Business Advisory

March 25, 2020



Table of Contents

1. **Outbreak Status & Impact**
2. **HR Issues**
3. **Managing Commercial Operations**
4. **Key Considerations**

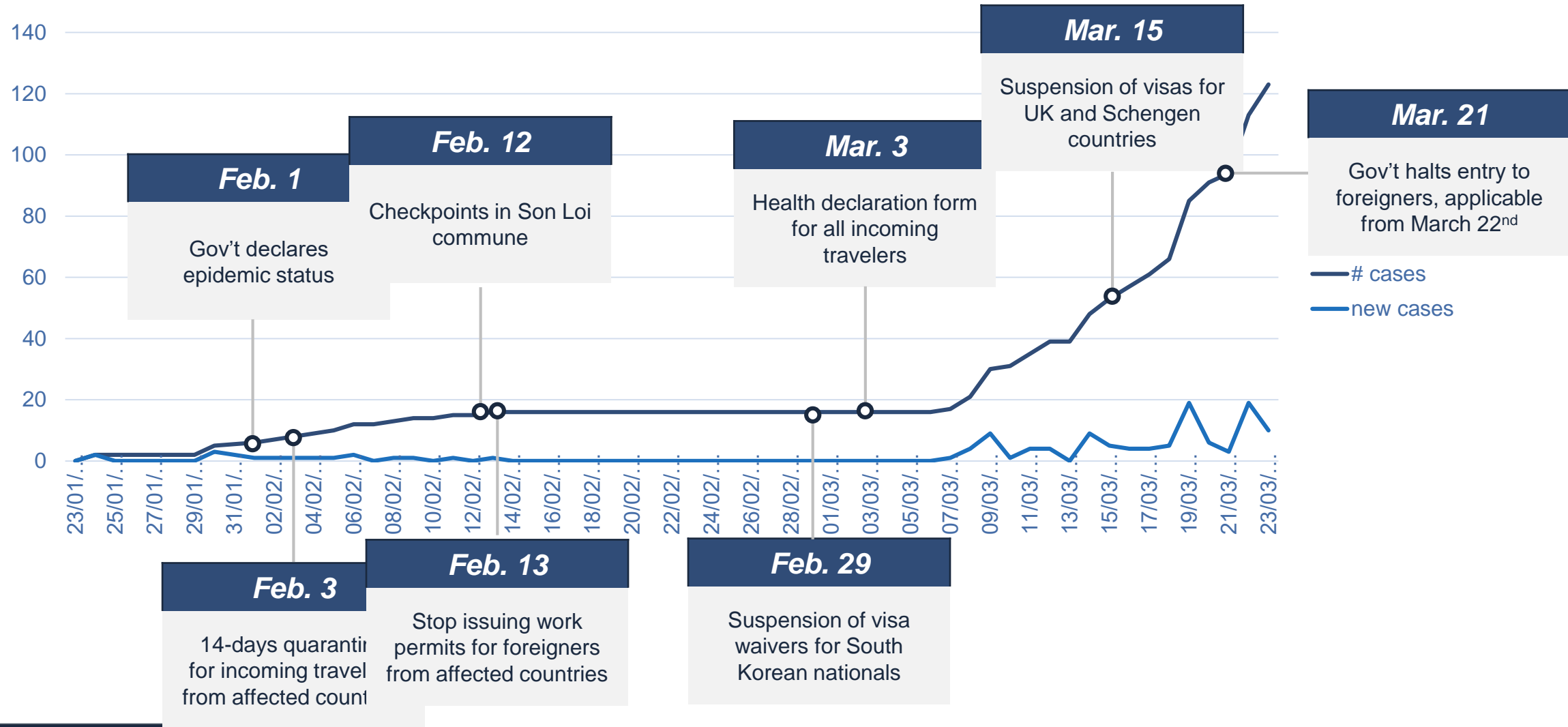


Filippo Bortoletti



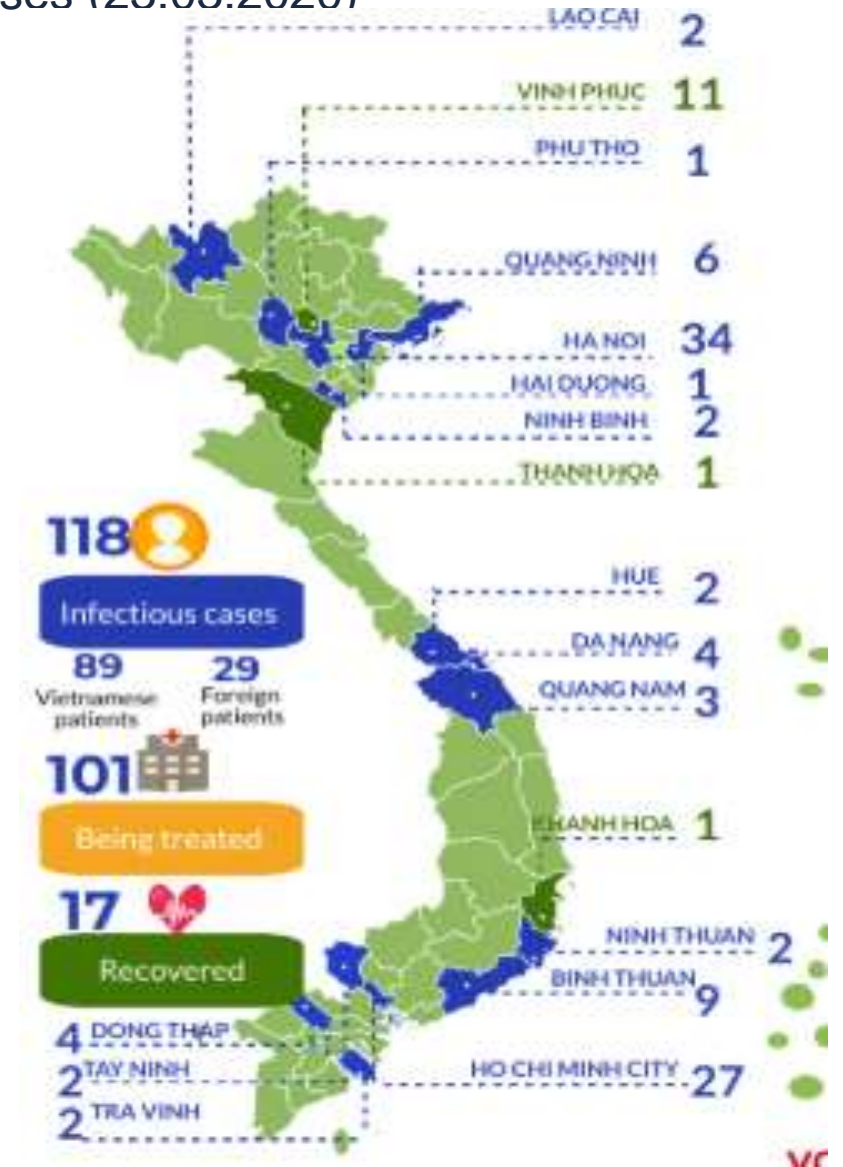
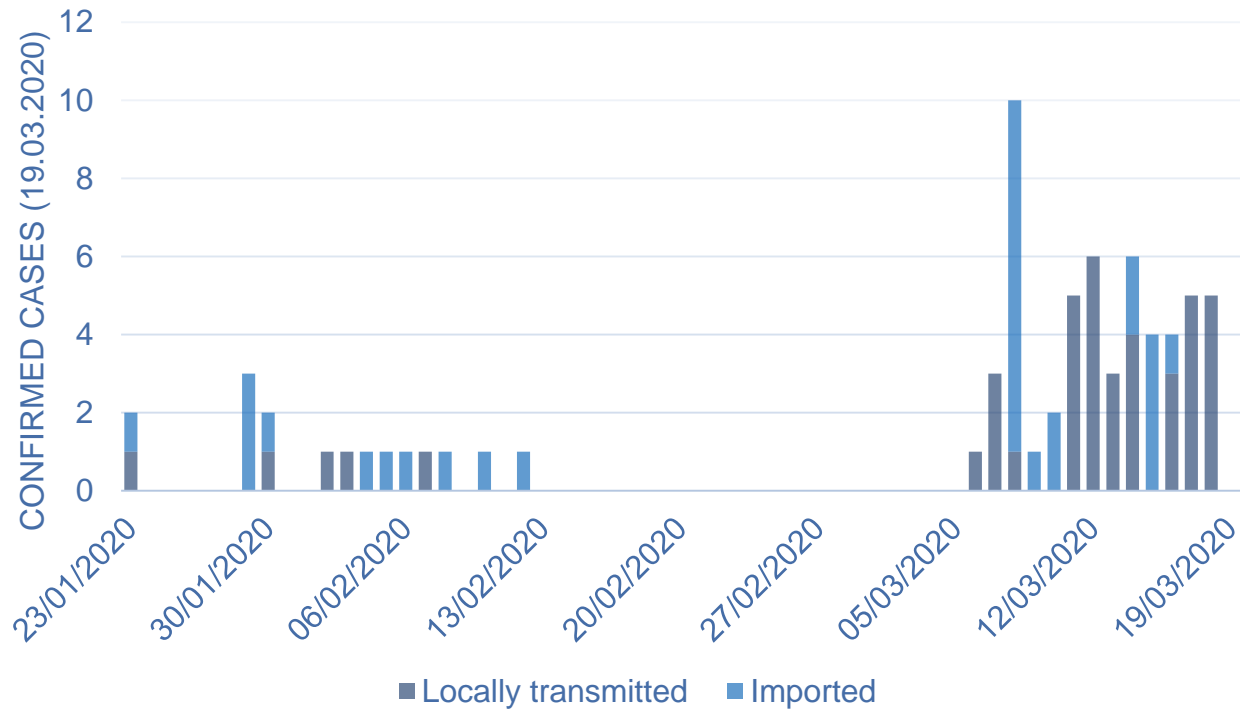
Section 1
**Outbreak Status
& Impact**

Coronavirus Outbreak Registered cases in Vietnam (23.03.2020)



Coronavirus Outbreak Geographical Distribution of Cases (23.03.2020)

118 Confirmed Cases **101 Being Treated** **17 Recovered Cases** **40,000+ Contacts Followed-up**



Coronavirus Outbreak Cumulatively Confirmed Cases



Coronavirus Outbreak Active Cases



Global cases – updated March 24, 2020 2:00pm GMT+7

| Confirmed cases | | Death cases | | Recovered cases | |
|-----------------------|----------------|-------------------|---------------|-----------------------|----------------|
| China | 81,553 | Italy | 6,077 | Hubei (China) | 60,323 |
| Italy | 63,927 | Hubei (China) | 3,160 | Iran | 8,376 |
| US | 46,442 | Spain | 2,311 | Italy | 7,432 |
| Spain | 35,136 | Iran | 1,812 | South Korea | 3,507 |
| Germany | 29,056 | France | 860 | Spain | 3,355 |
| Iran | 23,049 | UK | 335 | France | 2,200 |
| France | 20,128 | Netherlands | 213 | Guangdong (China) | 1,333 |
| South Korea | 9,037 | New York (US) | 125 | Henan (China) | 1,250 |
| Switzerland | 8,795 | Germany | 123 | Zhejiang (China) | 1,214 |
| UK | 6,726 | South Korea | 120 | Hunan (China) | 1,014 |
| Netherlands | 4,767 | Switzerland | 120 | Anhui (China) | 984 |
| Austria | 4,474 | Belgium | 88 | Jiangxi (China) | 934 |
| Belgium | 3,743 | Washington (US) | 87 | Shandong (China) | 752 |
| Norway | 2,625 | Indonesia | 49 | Jiangsu (China) | 631 |
| Canada | 2,088 | Japan | 42 | Chongqing (China) | 570 |
| Portugal | 2,060 | Turkey | 37 | Diamond Princess | 567 |
| Total confirmed cases | 381,621 | Total death cases | 16,563 | Total recovered cases | 101,806 |

Global Impact

Macro conditions

Contingency plan

| | | |
|----|---|---|
| 10 | Severe global recessionary conditions | Third-level contingency procedures activated |
| 9 | Synchronized global recession imminent or ongoing | |
| 8 | Large-scale social disruption imminent | Second-level contingency procedures activated |
| 7 | Severe economic impact in multiple key markets | |
| 6 | Markets and public in multiple major nations reacting strongly | First-level contingency procedures activated |
| 5 | Sustained transmission likely in multiple nations | |
| 4 | Sustained transmission occurring in multiple areas in country of origin | Daily situational monitoring |
| 3 | Sporadic cases appearing outside of region of origin | |
| 2 | Large-scale epidemic in single region | |
| 1 | Identified contagion, local origin, little information known | Fully normal operations |
| 0 | Threat is negligible or has passed | |

ALL CLEAR

Impact on Vietnamese Consumers

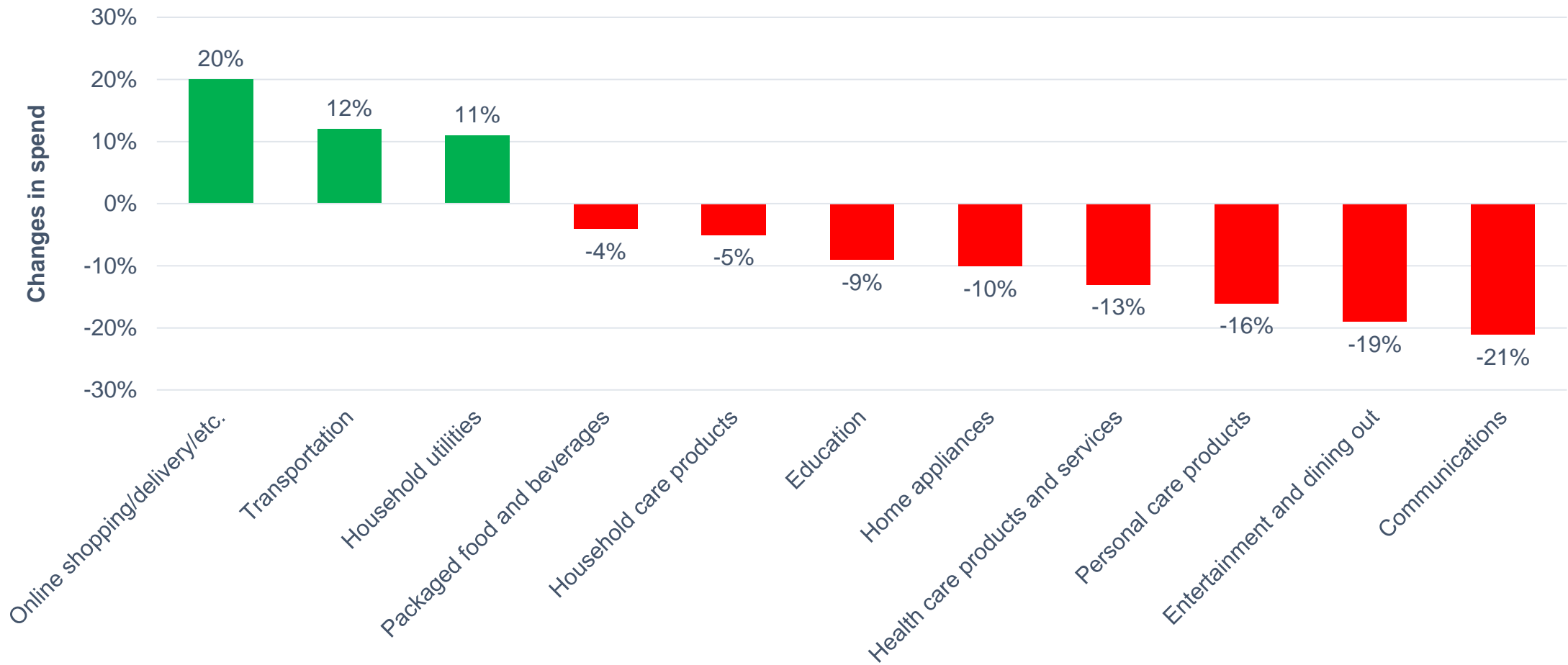
Reaction to Covid-19

- **95%** feel afraid but **don't** think that the risk of spreading is high in Vietnam
- **60%** changed **their entertainment/fun** activities
- **70%** had to **re-evaluate** their travel plans\
- **2-3** months is the time people think it will **last**
- **44%** felt their **income** has been impacted
- **47%** changed their **eating habits**
- **40%** spent more time watching TV
- **35%** spent more time watching online content

Impact on shopping & out-of-home activities

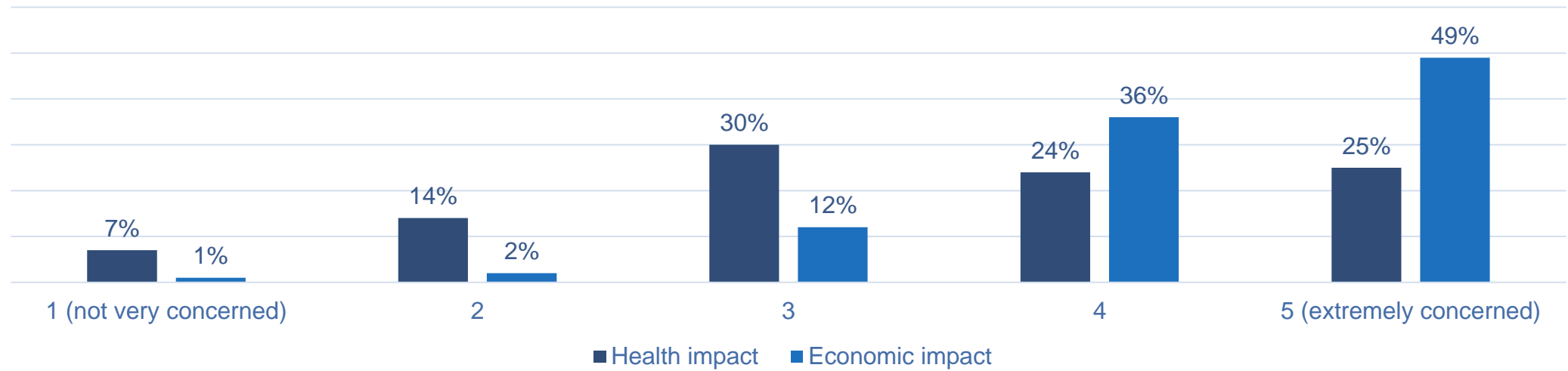
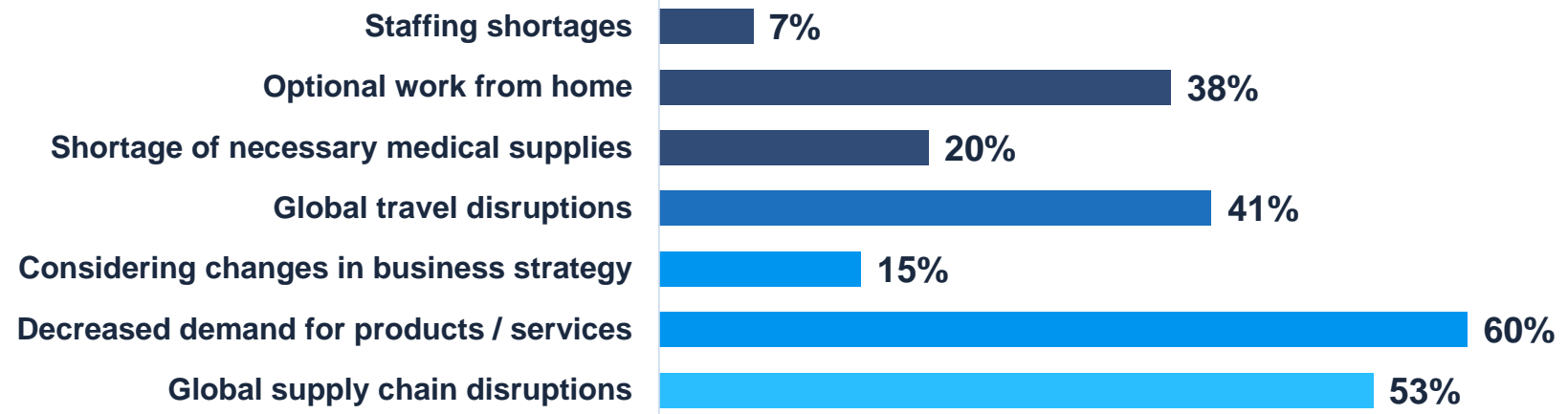
- **45%** stocked more food at home
- **50%+** reduced their frequency of visiting supermarkets/grocery stores/wet markets
- **25%** increased their online shopping activities
- **25%** reduced their out of home consumption occasions

Impact on Vietnamese Consumers



Impact on Vietnam-based Businesses

- Human Resources
- Travel
- Economic
- Supply Chain & Logistics



Impact on Vietnam-based Businesses



Human Resources

*Reduced staff
Remote working conditions*



Travel

Cross-border travel restrictions



Economic

*Difficulties in meeting contractual obligations
Reduced sales and / or production*



Supply Chain & Logistics

*Capacity
Pricing*

Government's Support Applicability

On 10 March, the Ministry of Finance released a draft decree to defer the deadline for payments of value added tax (VAT), personal income tax (PIT) and land rental fee, which is expected to be submitted to the Government soon.

New Decree will be applicable to enterprises, individuals and business households engaging in the following business activities:

- **Agriculture, forestry and fishery**
- Food **production** and processing; weaving; producing clothes; producing footwear; producing products from rubber; producing electronic products, computers; manufacturing and assembling automobiles (except for manufacturing and assembling cars with 09 seats or less);
- Rail **transportation**; land transportation; water transportation; air transportation; warehousing and support activities for transportation;
- **Accommodation** services, catering services;
- Activities of travel agents, tour operators and support services, related to advertising and organizing tours; and
- **Small and micro enterprises.**

Government's Support Incentives

➤ **Extended VAT deadline**

Deadline for March, April, May and June 2020 (for companies declaring VAT monthly) and Q1-Q2 2020 (for companies declaring VAT quarterly) will be extended to 5 months from statutory deadline

Companies are still required to submit periodic VAT returns within the statutory deadline

➤ **Extended VAT and PIT deadlines for individuals and business households**

Deadline for VAT and PIT payments will be extended to 15 December 2020

➤ **Extended annual land rental fees deadline**

A 5-months extension for the first payment of 2020 will be granted to those who directly lease land from the State, pay land rental fee on an annual basis and use such land for the mentioned business activities.

The initial draft of the Decree provides that companies, individuals and business households shall request the above deadline extensions in a prescribed form.



Section 2
HR Issues

Key Issues

Epidemic Status

**Temporary
Assignment of
Duties**

Work from Home

**Work Suspension
Wages**

**Working Hours and
Overtime**

Annual Leave

**Unilateral
Termination of
Labor Contract**

**Enterprise
Suspension**

Legal Provisions

Announcement of epidemic status (Art. 151, 2012 Labor Code)

- The 2012 Labour Code imposes obligations on employers to keep employees updated on the status of occupational safety and hygiene at the workplace and to propose solutions to eliminate or mitigate relevant health and safety risks at the workplace

Temporary assignment of duties (Art. 31, 2012 Labor Code)

- Companies might deal with a temporary shortage of labor force due to Covid-19. In such event, the 2012 Labour Code allows an employer to temporarily assign an employee to another position to fill in vacancies. The assignment cannot exceed 60 working days within a period of 12 consecutive months, unless otherwise agreed by the employee.

Legal Provisions

Work suspension wages (Art. 98, 2012 Labor Code)

- If an employee must temporarily stop working due to an objective reason (e.g. due to Covid-19 epidemic), the employer can negotiate a work suspension wage
- In such case, according to Article 98.3 of 2012 Labour Code, both parties can agree on a salary during the work stoppage, but the salary paid must not be lower than the applicable regional minimum wage
- Upon the expiry period of work suspension, the employer must receive the employee back to work

Work from home (Art. 185, 2012 Labor Code)

- Employees may negotiate with employers to regularly perform home-based work
- In practice many companies already adopted home-based work

Working Hours and Overtime

Defined (Art. 107, 2012 Labor Code)

- An employer may request an employee to work overtime in any days and the employee may not refuse in the following cases: (...)
 - Implementing the tasks to protect human lives and assets of agencies, organizations or individuals in the prevention and remediation of consequences of a natural calamity, fire, epidemic or disaster.
- Other working hour system: comprehensively calculated working hour system and flexible working hour system
 - Employees can constantly work for a certain period and rest for another certain period
 - Only applicable to **certain industries** that require employees to work constantly or can be impacted by seasons
 - Subject to the **approval** of competent labor administration authority

Annual Leave

Defined (2012 Labor Code)

- 12-16 days annual leave based on employees' working conditions
 - In most of the foreign invested companies, employees enjoy more annual leave than the statutory minimum
- Companies may decide on a timetable for annual leaves of employees after consulting employees and shall notify it in advance to them

Regulations During Epidemic

- Annual leave in accordance with Article 111 or unpaid leave in accordance with Article 116.3 of the 2012 Labour Code may also be applicable if an employee takes the initiative to apply for a leave to avoid the transmission of Covid-19
- Should an employee take a long leave due to Covid-19 epidemic, the employer can recruit a temporary employee under a labor contract of less than 12 months to fill in the vacancy

Unilateral Termination of the Labour Contract by the employer

Defined (2012 Labor Code)

- The 2012 Labour Code allows an employer to unilaterally terminate the labor contract with an employee by a 3-working days advance notice when an employee being sick for:
 - 12 consecutive months (indefinite labour contract)
 - 6 consecutive months (definite labour contract)
 - More than half of the contract term (labour contract of less than 12 months)

And remains unable to work after having received medical treatment.

- *Employers can apply this provision when an employee is infected by Covid-19 and unable to resume work after a long period of time*

Unilateral Termination of the Labour Contract by the employee

Defined (2012 Labor Code)

- According to the 2012 Labour Code, also employees have faculty to unilaterally terminate the labor contract by a 3-working days advance notice if an employee is infected with Covid-19 and remains unable to work after receiving medical treatment for:
 - 90 consecutive days (in case of definite term labor contract)
 - A quarter of the contract term (in case of labor contract of less than 12 months)
- If the employee is currently working under an indefinite term labor contract, the advance notice period is 45 days.


Enterprise Suspension

Defined (Art. 200 Law 68/2014/QH13 on Enterprises)

- A company may suspend its business and, during the suspension period, shall pay outstanding tax, keep paying its debts, executing contracts with customers and employees, unless otherwise agreed between the parties.

Regulation during epidemic (Art. 16, Decree 115/2015/NĐ-CP)

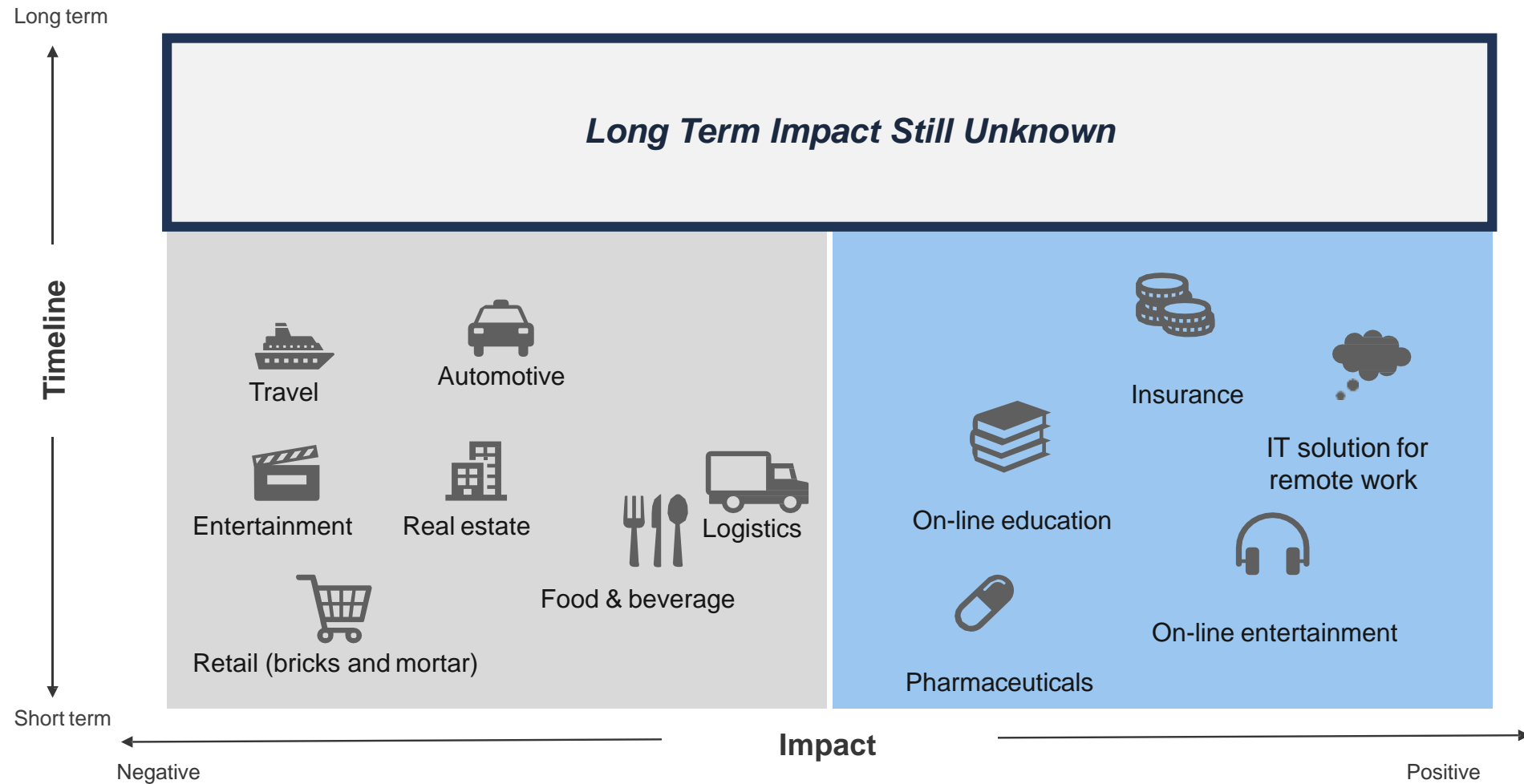
- Where an employer suspends business operation in 1 month or longer because the employer meets difficulties due to natural disasters, conflagration, epidemic diseases, or bad harvest, payments of compulsory social insurance prescribed in Law 58/2014/QH13 on Social Insurance are suspended if:
 - At least 50% of employees participating in social insurance are not working, or
 - The employer suffers damage of 50% of total assets (excluding land value).
- On March 16, the General Director of Vietnam Social Insurance requested local social insurance authorities to set up dossiers for the suspension of payment of compulsory social insurance for enterprises in areas affected by Covid-19 causing 50% of employees temporarily off work



Section 3

Managing Commercial Operations

Estimated Economic Impact Covid-19 – By Industry



Key Contractual Clauses



Force Majeure



**Material Adverse
Change**



Insurance Exposure

Force Majeure Definition

Principles of International Commercial Contracts (Article 7.1.7)

- Non-performance by a party is excused if that party proves **non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken impediment into account at time of conclusion of contract or to have avoided or overcome it or its consequences**
- When impediment is only temporary, excuse shall have effect for such period as is reasonable having regard to effect of impediment on performance of contract
- Party who fails to perform **MUST give notice to other party** of impediment and its effect on its ability to perform – if notice is not received by other party within a reasonable time after the party who fails to perform knew or ought to have known of impediment, it is liable for damages resulting from such non receipt
- A party from exercising a right to terminate the contract or to withhold performance or request interest on money due

NOTE: Based on international practice, force majeure usually includes natural disasters (fire, earthquake, flood, hurricane, drought) and contrived events (wars, terrorism, strikes, riots, government orders) - contracting parties can agree on and detail the situations and events of force majeure in the contracts

Force Majeure Vietnam Law



Law 91/2015/QH13 – Civil Code

Article 156, 351

- Force majeure means an event which is **objective**, **unforeseeable** and **irremediable** although all permissible and necessary actions have been taken.
- Where an obligor is not able to perform a civil obligation due to an event of force majeure, **no civil liability shall be borne** unless otherwise provided by law.



Law 36/2005/QH11 – Commercial Law

Article 294, 295, 296

- A party breaching a contract shall be **exempted from liability** in case a force majeure event occurs
- The contract-breaching party shall bear the **burden of proof for liability exemption** and must promptly **notify** in writing the other party of force majeure cases and possible consequences thereof, as well as when the force majeure event terminates
- The **time limit** for performing contractual obligations **is extended**

Force Majeure Extension of time to perform

Parties agree to extend the time limit

- Parties to a commercial contract may agree to extend the time to perform their contractual obligations, except for sales and purchase contracts or service contracts with fixed time for performance

Automatic extension

- If the parties cannot agree to extend, then the time to perform is automatically extended for the duration of the force majeure event plus a reasonable amount of time to remedy the consequences, but not exceeding:
 - 5 months for contracts with a performance period of less than 12 months
 - 8 months for contracts with a performance period for delivery goods or services more than 12 months from the execution date

Either party refuse to perform the contract

- After time limits expire, either party may refuse to perform the contract without consequences
- The party refusing to perform the contract must notify the other party of its refusal before the other party begins to perform its part of the contract, and within 10 days of the expiry of time limits

Force Majeure Burden of proof

The breaching party bears the burden of proving the existence of an event of force majeure in order to qualify for defense under the Commercial Law.

In addition to listing certain qualifying events, contractual force majeure clauses may specify standards of proof necessary as well as notice procedures and timing.

- Companies whose operations have been disrupted by recent events should review the force majeure provisions in all relevant contracts to ensure compliance with notice requirements and other provisions
- Affected companies should collect all available evidence should it be needed to support their claim that the disruption was indeed an event of force majeure that directly caused the delay or non-performance

Force Majeure Actions To Be Taken

Actions To Be Taken By Seller

- Assess impact on contract performance
- Determine whether provisions in terms of force majeure are applicable
- Take immediate and effective measures to prevent increase in losses
- Send written **notices** to buyers / service receivers as soon as possible to confirm facts and propose appropriate solutions
- Proactively negotiate with buyers / service receivers and both parties can decide to amend the contract or terminate the contract
- Prepare for potential litigation

Actions To Be Taken By Purchaser

- Check with suppliers whether their production and operation have been affected by coronavirus outbreak and whether the contract performance will be affected – **be prepared in case that buyers need to purchase from other channels or slow down their own production and operation accordingly**
- If the situation results in buyers / service receivers' difficulties in receiving goods or services, or making payment, buyers / service receivers **should send notices to suppliers** as soon as possible
- In event that buyers / service receivers have foreseen that it is impossible to fulfill the contracts due to the coronavirus outbreak, buyers / service receivers can also **take initiative to send notices on contract amendment or termination to suppliers**


Other Key Contractual Clauses

Material Adverse Change

- Many contracts contain a clause allowing termination or adjustment of obligations in the event of a “material adverse change” (MAC) or a “material adverse effect” (MAE) on the value of performance
- Used to create parameters whereby a buyer may terminate a transaction because of an event that negatively impacts the nature or value of the target product, company or business
- Materiality will need to be demonstrated clearly and objectively
- Invoking a MAC clause due to Covid-19 issues may be difficult in most circumstances because the long-term effects of Covid-19 on financial and operational aspects are unknown and there are a lot of factors affecting market performance, such that proving a MAC or MAE attributable to Covid-19 alone, as opposed to general market or business conditions, may be difficult

Insurance Exposure

- Covid-19 pandemic could trigger the business interruption clause under an insurance policy, which is defined as a loss of gross profit as a result of interruption to the insured’s business caused by certain perils
- *Companies should check their insurance policies to assess the possible business interruption claims being filed*



Section 4
Key
Considerations

Key Considerations



Human Resources



Supply Chain &
Logistics



Market Conditions



Financial Management



Disaster Recovery &
Business Continuity
Plan

Key Considerations

Human Resources

- **Invest in staff and talent**
 - Make safety and well-being of staff a priority
 - Invest in and retain key staff
- **Ensure any changes in staff policy are compliant** (e.g. suspension of operations, etc.)
 - *Labor Law* and local regulations
 - Payroll
 - Social insurance and special programs
- **Prepare for future HR needs**
 - Difficult times can cause talent to become available – plan now and look to acquire new talent as becomes available

Supply Chain & Logistics

- **Monitor your supply chain closely**
 - End-to-end supply chain review and alternative sourcing options
 - Supplier shutdowns
 - Traffic / logistics delays and suspensions
 - Delivery challenges
 - Be in touch and – where possible – visit your suppliers to encourage and reassure them and get first-hand information and mood
- **Stock up where possible**
 - Raw materials
 - Inventory

Key Considerations

Market Conditions

- **Realign business operations, as needed, to respond to changing conditions**
 - Product offerings
 - Commercial organization and structure
 - Partners
 - Marketing
- **Proactively update M&A and partnership plans and carefully consider valuations / due diligence in a changing market**
 - Acquisitions
 - Divestitures
 - Partnerships

Financial Management

- **Incorporate changes in market conditions into 2020 budget**
 - Revise revenue forecasts
 - Rebalance or cut costs (e.g. procurement or HR cost savings, etc.)

Key Considerations

Disaster Recovery & Business Continuity

- **Organizational**
 - Team setup and communication
 - Physical safety rules
 - Alertness practices and drills

- **Infrastructural**
 - IT physical backup
 - Cloud-based backup and software readiness
 - Ability to allow seamless online work
 - Ensure enough licenses
 - Maintain active IT team remotely and locally
 - Ensure VPN stability and other connectivity issues

Thank You!

Got any questions?

Please contact:



Filippo Bortoletti

Manager

filippo.bortoletti@dezshira.com

+84 4 3942 0443 ext. 105

Resources for the Asia Investor



www.asiabriefing.com

Asia Briefing, a subsidiary of Dezan Shira & Associates, publishes business magazines and guides for China, India, Vietnam, Singapore and other key nations in emerging Asia.



www.dezshira.com/library

Asiapedia is a collection of these resources based on the experiences we made on the ground.

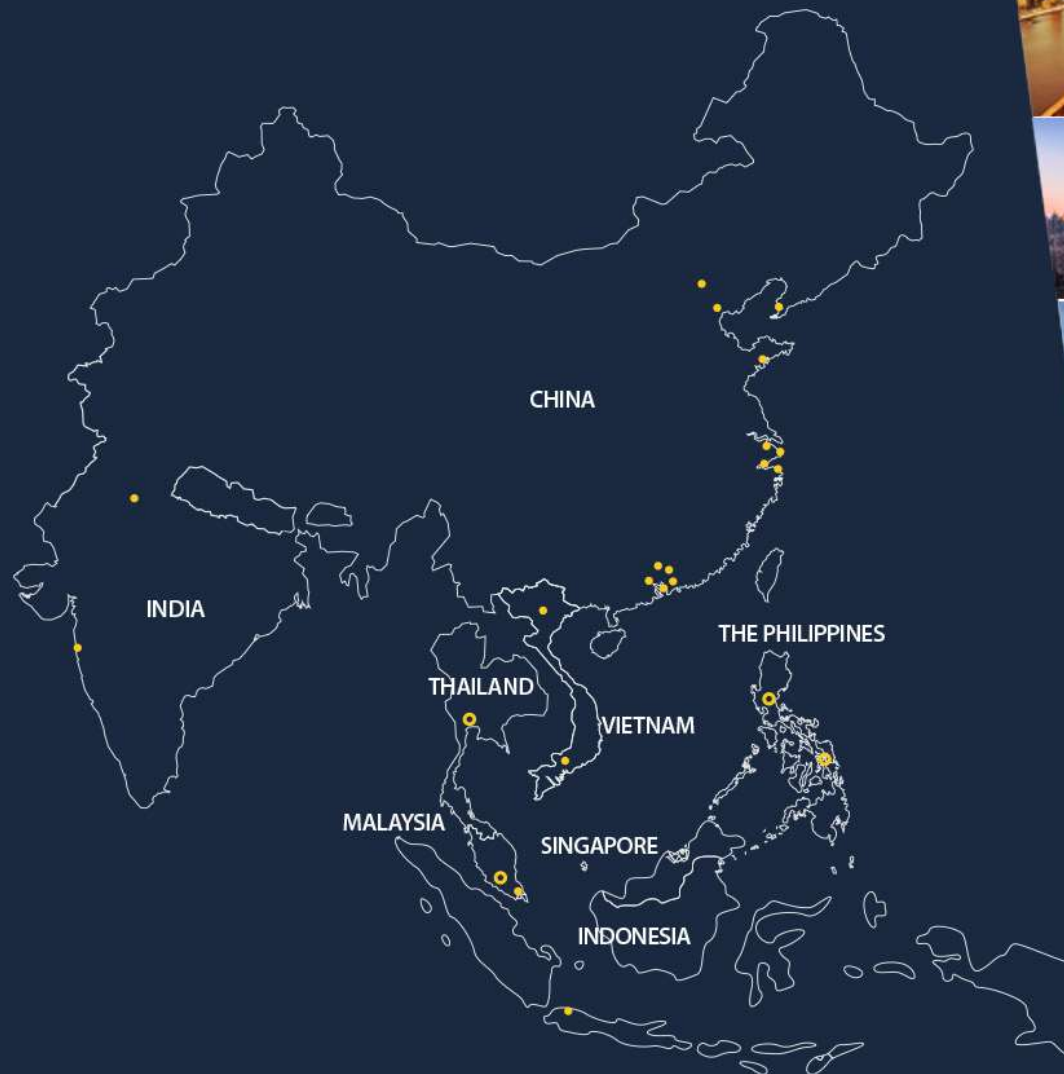


All publications are available at DSA's online bookstore at www.asiabriefing.com/store



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



- Dezan Shira & Associates Offices
- Dezan Shira Asian Alliance Members

Global Offices

CHINA

Beijing
beijing@dezshira.com

Hangzhou
hangzhou@dezshira.com

Shenzhen
shenzhen@dezshira.com

Dalian
dalian@dezshira.com

Ningbo
ningbo@dezshira.com

Suzhou
suzhou@dezshira.com

Dongguan
dongguan@dezshira.com

Qingdao
qingdao@dezshira.com

Tianjin
tianjin@dezshira.com

Guangzhou
guangzhou@dezshira.com

Shanghai
shanghai@dezshira.com

Zhongshan
zhongshan@dezshira.com

HONG KONG

hongkong@dezshira.com

INDONESIA

indonesia@dezshira.com

SINGAPORE

singapore@dezshira.com

INDIA

Delhi
delhi@dezshira.com

Mumbai
mumbai@dezshira.com

VIETNAM

Hanoi
hanoi@dezshira.com

Ho Chi Minh City
hcmc@dezshira.com

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Malaysia
malaysia@dezshira.com

The Philippines
philippines@dezshira.com

Thailand
thailand@dezshira.com

DEZAN SHIRA LIAISON OFFICES

Germany
germandesk@dezshira.com

Italy
italiandesk@dezshira.com

United States
usa@dezshira.com

For more information, please visit www.dezshira.com



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



Scan this QR code

Visit our mobile page and get the latest updates on investor news and resources with us