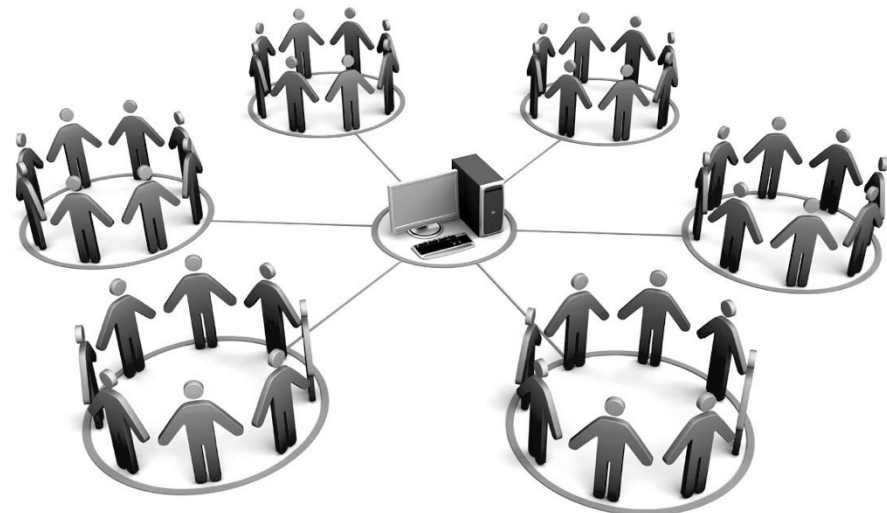


# HR Committee Event

## Social Media: New opportunities and challenges for HR practices – Data Privacy

29 November 2013

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# Outline

- Vietnam's Legal Framework on Data Privacy
- Definitions of Protected Information
- Consent Requirement
- Exceptions
- Social Media – Privacy and Monitoring
- Social Media – Risks for Businesses

# Vietnam's Legal Framework on Data Privacy

- No single law on individual privacy rights:
  - Civil Code
  - Information Technology Law
  - Consumer Protection Law
  - Telecommunications Law
  - Penal Code
  - Decree 72/2013/ND-CP on management, provision and use of Internet services and online information
  - Decree 52/2013/ND-CP on e-commerce
  - Decree 64/2007/ND-CP on information technology application in state agencies' operations

# Vietnam's Legal Framework on Data Privacy

- Vietnam has no single comprehensive law addressing individual/organizational privacy rights.
  - General principle: protecting information pertaining or belonging to individuals/organizations that is personal or private in nature is protected by laws.
- No consistent definition of Personal Information which is protected by Vietnamese Data Privacy law.
  - General principle: Information that would enable the identification of an individual/organization should be considered Protected Information

# Definition of Protected Information

	Protected Information	
	<i>Personal Information</i>	<i>Private Information</i>
Civil Code	Information and materials on the private life of an individual	
Consumer Protection Law	Information about consumers	
Penal Code	Privacy of an individual's communications made by letter, telegram, telex, facsimile, telecoms or computers	
IT Law	No definition	
Telecom Law		Name, address, caller number, call number, position of caller, position of call recipient, call duration, etc.

# Definition of Protected Information

	Protected Information	
	<i>Personal Information</i>	<i>Private Information</i>
Decree 72	<i>Information associated with the identifications of individuals (e.g., names, ages, addresses, ID numbers, phone numbers, email addresses)</i>	The online information of an organization or individual not publicized by that organization or individual, or only provided to a group of identified recipients
Decree 52	<i>Information contributing to identify a specific individual, including his/her name, age, home address, phone number, medical information, account number, information on personal payment transactions, and other information that the individual would like to keep confidential</i>	
Decree 64	<i>Information which is adequate to accurately identify the identity of an individual, covering at least one of the following types of information: full name, date of birth, profession, title, contact address, email address, telephone number, I.D. number, passport number</i>	

# Protecting Information of Organizations

- Unclear as to what extent organizational information is considered Protected Information.
- Implicit protection of organizational information:
  - Decree 72: Private information protected by laws includes *online information of an organization (not publicized to unknown recipients by the data subject)*
  - E-Transaction Law: Prohibiting the use of *private information of an organization* without consent.
  - Enterprise Law and Accounting Law: several types of organizational information are required to be disclosed by law.

# Consent Requirement

## – Expressed Consent:

- Individuals and organizations must grant their prior informed consent to the collection, use and transfer of their Protected Information.

## – Implied Consent:

- Data subject is deemed to have provided prior consent under certain cases.

## – In practice: Vietnamese authorities and courts would consider the balance between:

- the comprehensiveness of the consent, and
- the sensitivity of the information, the manner of its use, and the extent of its publication.



# Statutory Exceptions

- The collection, use or transfer of Protected Information without informed consent is permitted in special cases such as:
  - pursuant to a decision of an authorized State Agency;
  - the information has been publicized on e-commerce websites by the data subject;
  - the information is used for:
    - signing, modifying or performing contracts for use of information, products or services in the network environment;
    - pricing or calculating charges for use of information, products or services in the network environment;
    - performing other obligations in accordance with the law.

# Possible Implied Exceptions

- Where a Data Subject himself/herself publishes otherwise Protected Information to unknown third parties.
- Decree 52:
  - Article 3.13: “other information that *the individual would like to keep confidential*”
  - Article 70.4:
    - Personal information publicized on e-commerce websites may be collected without consent
    - As needed to sign or perform contracts
    - As needed to calculate the price for online products and services

# Social Media – Privacy and Monitoring

- Are employers permitted to monitor?
  - Based on expressed or Implied Consent
- What is being monitored?
  - Work related or personal?



# Social Media – Risks for Businesses

- Blurred lines between personal and professional behaviours on social networks
- Controlling and monitoring of work devices
- Potential lawsuits for violations of laws (on data privacy, IPRs, advertising, etc.)



