

The logo for Vilasia Law Firm, featuring a red diagonal line followed by the text 'Vilasia Law Firm' in a white sans-serif font.

# Navigating Legal Issues for Vietnam-based Startups

Ngu Truong

*Saigon, October 19, 2024*





## ABOUT VILASIA

Vilasia commits to provide excellent legal services at reasonable costs for all key sectors of the Vietnamese economy, including domestic businesses, startups, and foreign investors. With the goal of contributing to a level playing field, Vilasia offers professional and dedicated support, with the direct involvement of veteran lawyers at transparent and flexible fees.

By fostering a culture of close collaboration with clients, Vilasia supports a broader mission to encourage equitable economic growth and innovation throughout Vietnam. We engage in every case with a full heart and a sharp mind, ensuring that the legal support we offer is not just effective but also deeply empathetic and aligned with your real needs.

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## Vilasia embodies a unique blend of:



Youthful Zeal and  
Seasoned Expertise



Theoretical Knowledge  
and Practical Application



Traditional Values with  
Modern Technologies



Profit Seeking with Social  
Contribution



Global Professional  
Standards and Deep Local  
Insights



Adaptive Flexibility with  
Structured Governance

# \ Core Legal Services Offered

## **M&A and Joint Ventures**

Our law firm specializes in M&A and Joint Ventures, offering comprehensive services from deal structuring and due diligence to negotiation and regulatory compliance. We guide clients through complex transactions, ensuring alignment with strategic goals and legal requirements. Our expertise extends to forming and managing joint ventures, including cross-border challenges, dispute resolution, and crafting exit strategies to protect investments and facilitate successful partnerships.

## **Project Financing**

Our law firm offers specialized services in Project Financing, providing comprehensive support from project conception through to funding completion. We assist clients in structuring finance agreements, conducting in-depth due diligence, and navigating complex regulatory requirements. Our expertise extends to negotiating favorable terms, securing financing, and ensuring compliance with legal standards. We focus on enabling the successful implementation of projects, while also safeguarding long-term viability and financial security.

## **Startup Fundraising**

Our law firm provides expert support for Startup Fundraising, guiding clients from initial strategy development through successful capital acquisition. We assist with legal structuring, due diligence, and negotiation, ensuring compliance and investor confidence. Our tailored services help startups optimize their investment appeal and navigate the complexities of fundraising, ultimately securing the capital needed for growth.

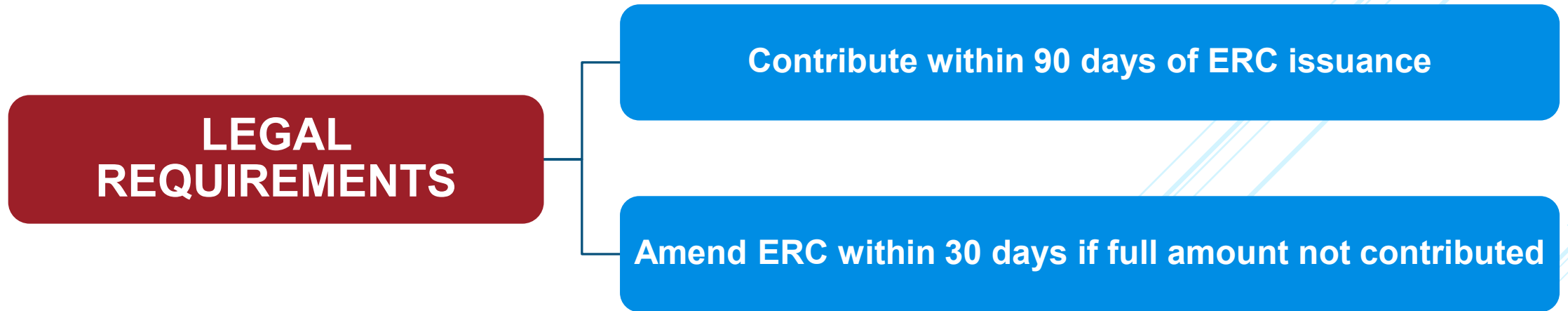
## **Corporate Restructuring**

Whether operating startups, managing family-owned businesses, or leading large corporations, we provide expert guidance on restructuring corporate entities, optimizing group organization, and refining both equity and debt structures. Our strategic approach ensures that assets are protected, business continuity is maintained, and your organization is optimally positioned for significant transactions. We also focus on facilitating seamless business transitions, whether through mergers, acquisitions, or internal restructuring, to support long-term growth and stability.

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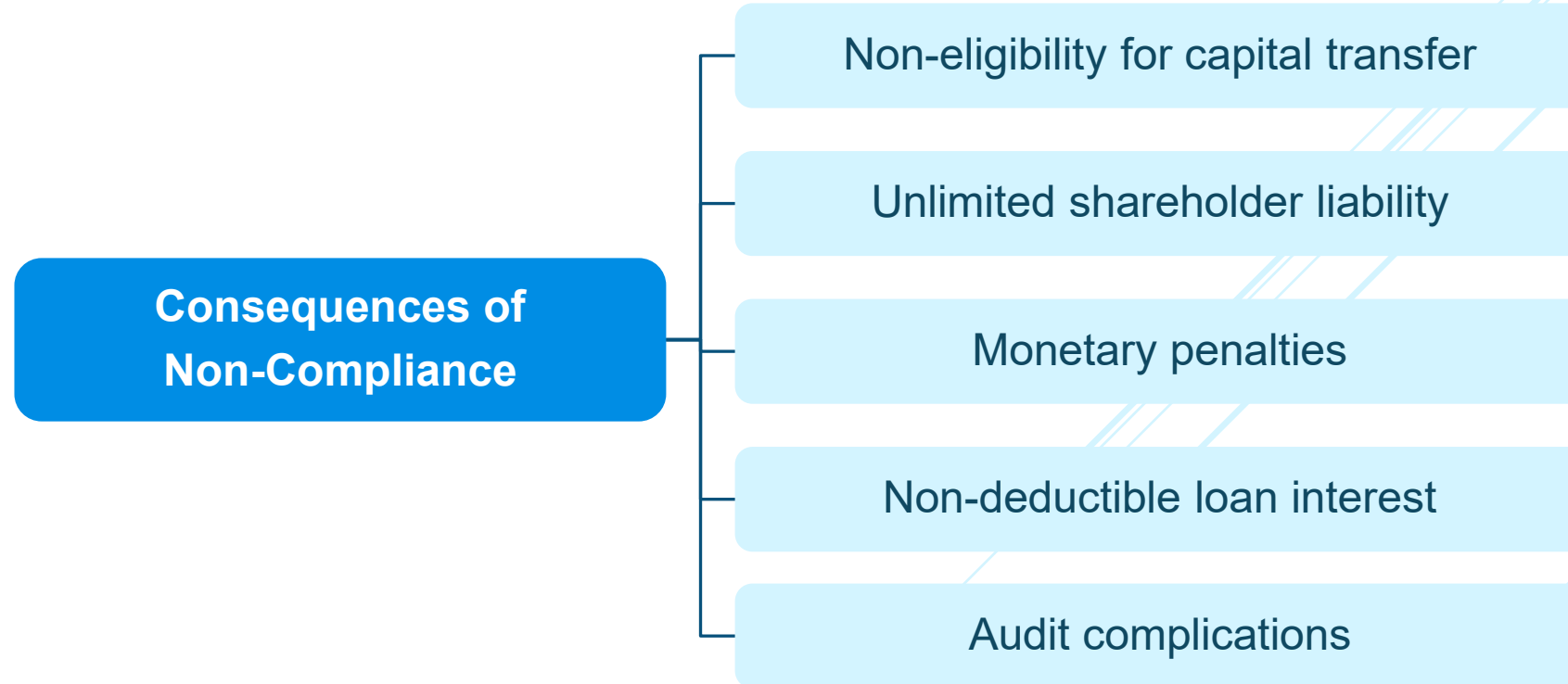
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| <b>3</b> | Foreign Investment Regulations | <b>7</b> | ESOPs                        |
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# Topic 1: Initial Capitalization

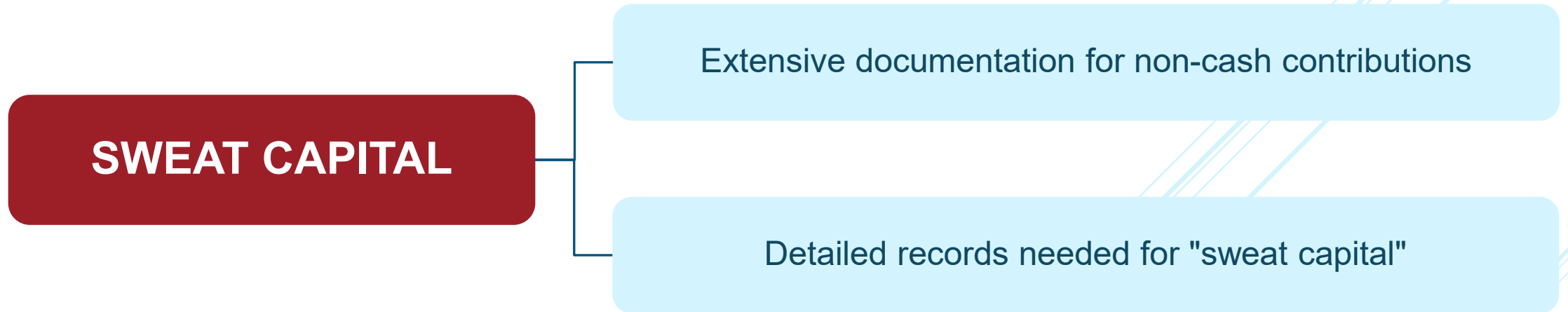


# Topic 1: Initial Capitalization

## LEGAL REQUIREMENTS

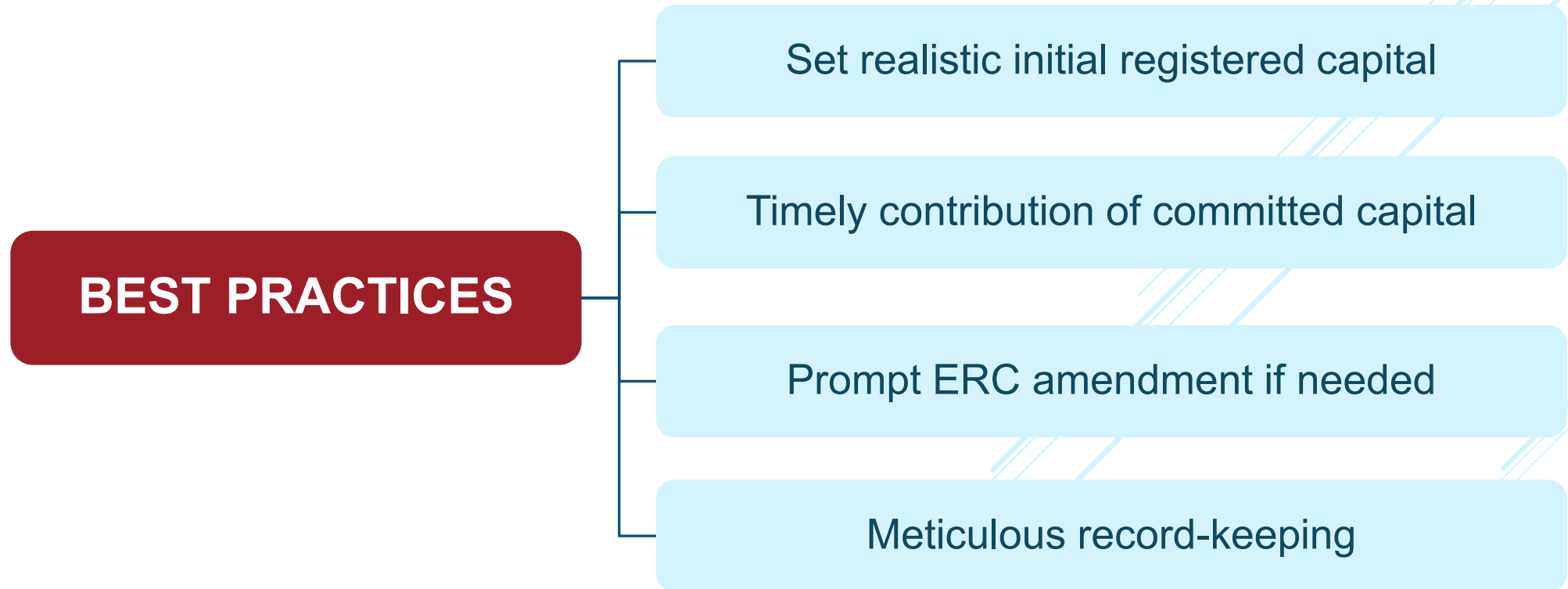


# Topic 1: Initial Capitalization





# Topic 1: Initial Capitalization



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## Topic 2: Holdco Issues

### OWNERSHIP DISCONNECTION

- No legal ownership link between offshore HoldCo and Vietnam OpCo
- Risks of non-compliance with foreign investment regulations

## Topic 2: Holdco Issues

### COMPLIANCE NEGLIGENCE FOR ONSHORE HOLDCO

- Failure to maintain proper compliance for Vietnam HoldCo
- Overlooking tax return filing requirements

## Topic 2: Holdco Issues

### IMPLICATIONS

- Difficulty in proving ownership structure to investors or authorities
- Challenges in profit repatriation and fund transfers

## Topic 2: Holdco Issues

### **BEST PRACTICES**

Establish clear legal ownership links between HoldCo and OpCo

Maintain meticulous compliance for all entities, onshore and offshore

Regular review and update of group structure

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# Topic 3: Foreign Investment Regulations

## FOREIGN OWNERSHIP LIMITS

- Varies by industry sector
- Some sectors fully open, others restricted or prohibited
- Gradual relaxation of limits in recent years



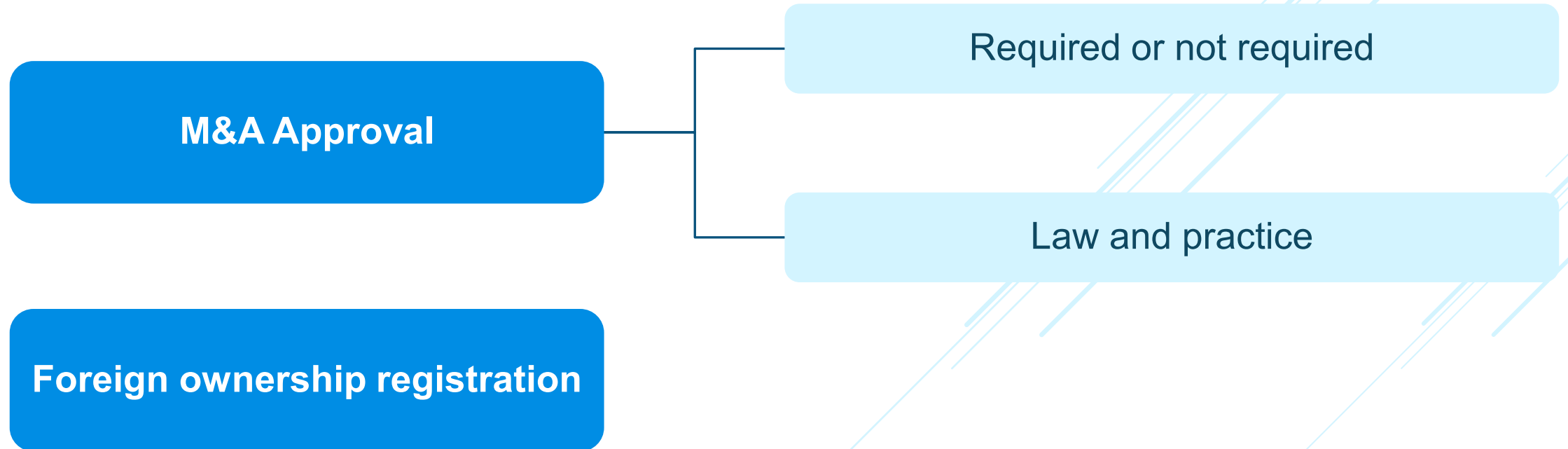
# Topic 3: Foreign Investment Regulations

## FOREIGN-INVESTED COMPANY RESTRICTIONS

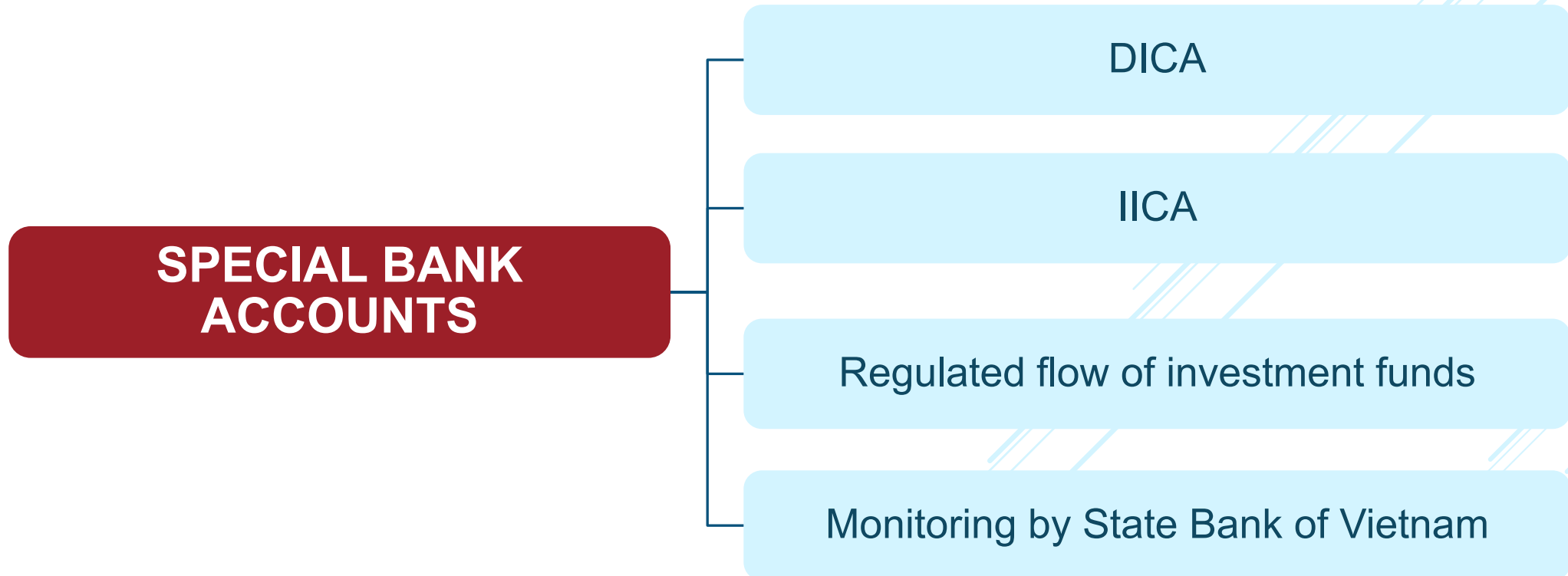
- Restricted business scope
- Special licenses
- Land use rights limitations
- Annual audit of financial statements

# Topic 3: Foreign Investment Regulations

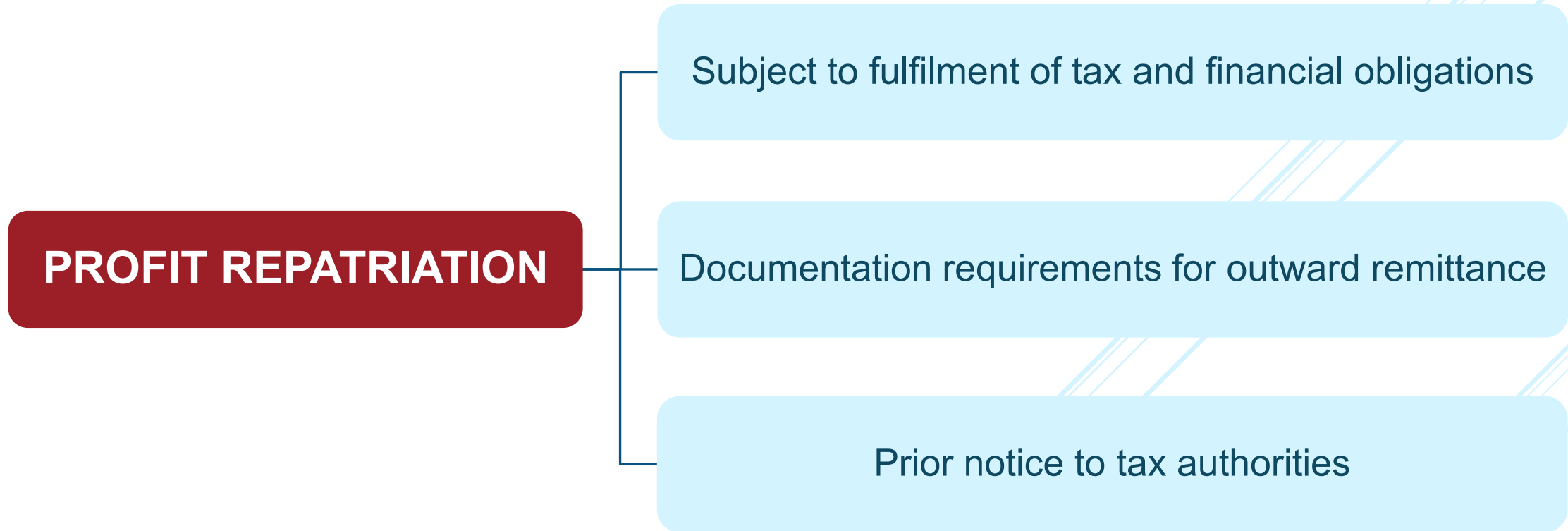
## PROCEDURES FOR FOREIGN ACQUISITION



# Topic 3: Foreign Investment Regulations



# Topic 3: Foreign Investment Regulations



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# Topic 4: Corporate Governance

## DIRECTORS' DUTIES

### Duty of Care

- Act in good faith and in the company's best interests
- Make informed decisions based on adequate information
- Exercise reasonable care, skill, and diligence

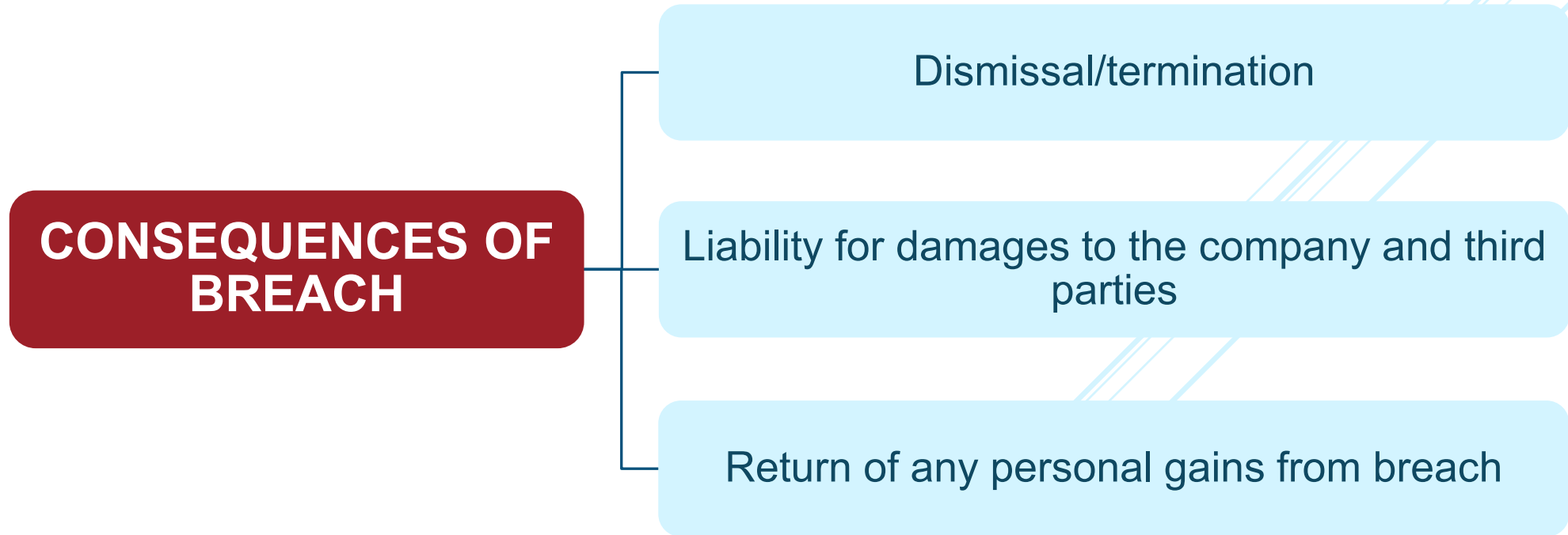
### Duty of Loyalty

- Avoid conflicts of interest
- Not use position for personal gain
- Maintain confidentiality of company information

### Duty of Compliance

- Ensure company complies with laws and regulations
- Adhere to company charter and internal policies
- Fulfill statutory reporting obligations

# Topic 4: Corporate Governance



# Topic 4: Corporate Governance

## SHAREHOLDER RIGHTS

Shareholders with 1% or more of shares can sue directors for breaches

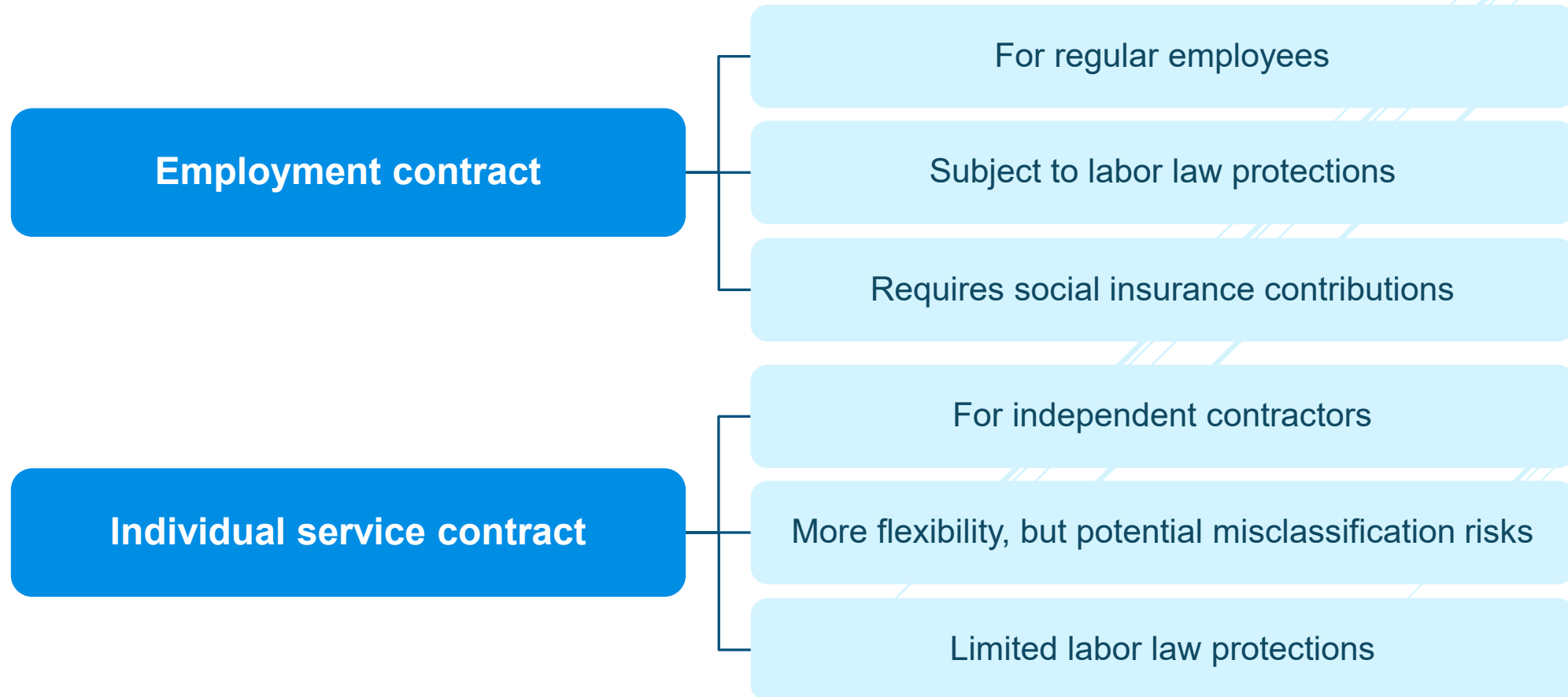


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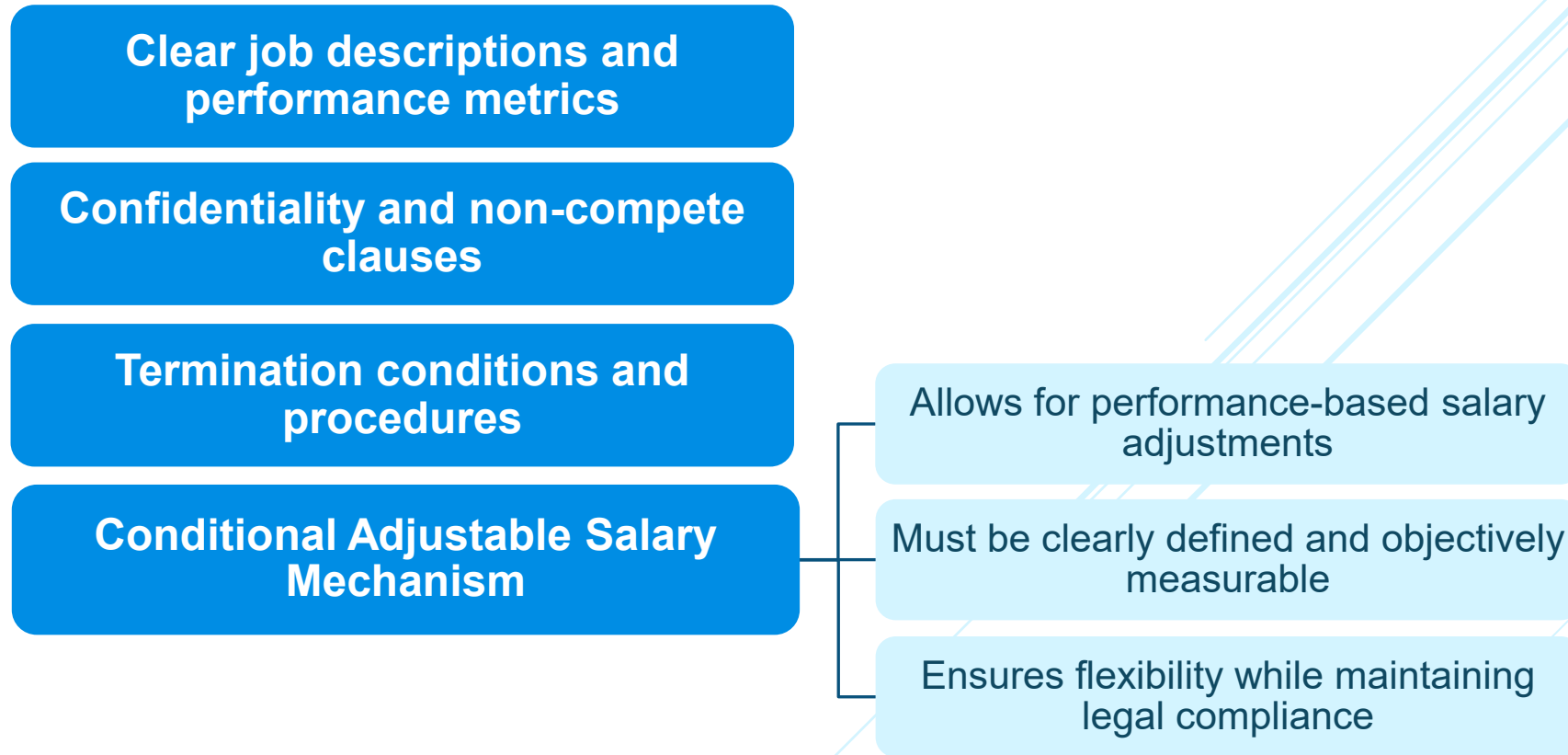
# Topic 5: Managing Employment Disputes

## Employment Contract vs. Individual Service Contract



# Topic 5: Managing Employment Disputes

## KEY CONTRACT PROVISIONS



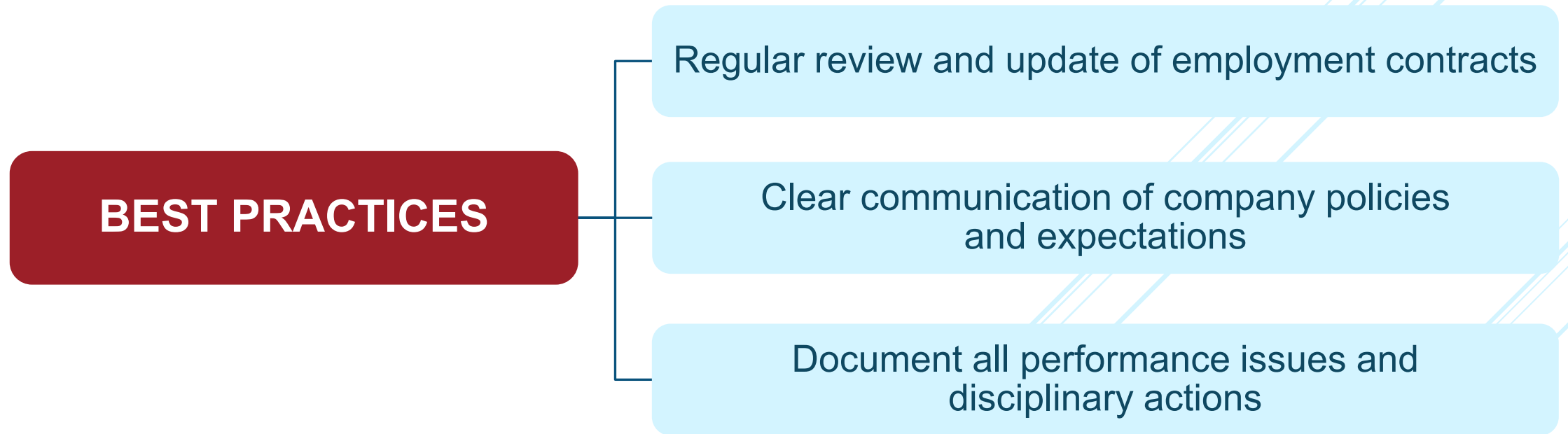
# Topic 5: Managing Employment Disputes

## Handling labor contract disputes

Well-drafted contracts as first line of defense

Follow proper legal procedures when disputes arise

# Topic 5: Managing Employment Disputes



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# Topic 6: Managing Co-Founder Issues

**Well-drafted founder agreement as key protection**

**Prepare for smooth transitions**

Predetermined buy-out provisions

Agreed valuation methods

Ensure business continuity

**IP protection**

Ensure all IP is assigned to the company, not individuals

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# Topic 7: ESOPs

## Key Regulatory Changes (Circular 23, effective Aug 12, 2024)

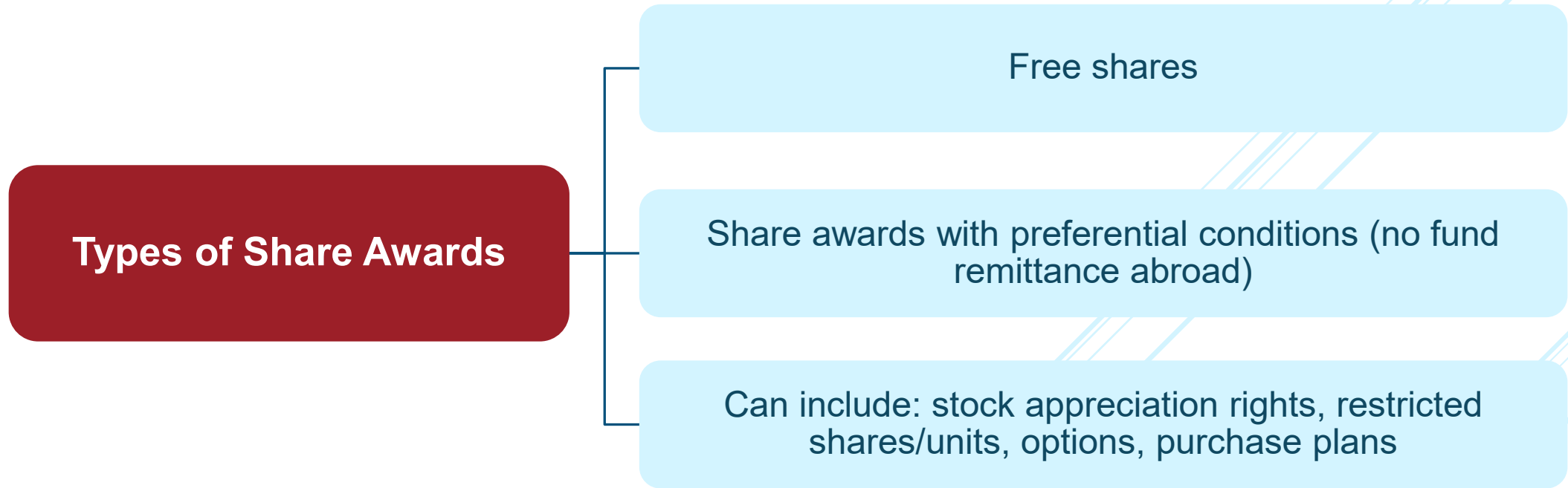
No SBV registration required

Bank documentation still needed

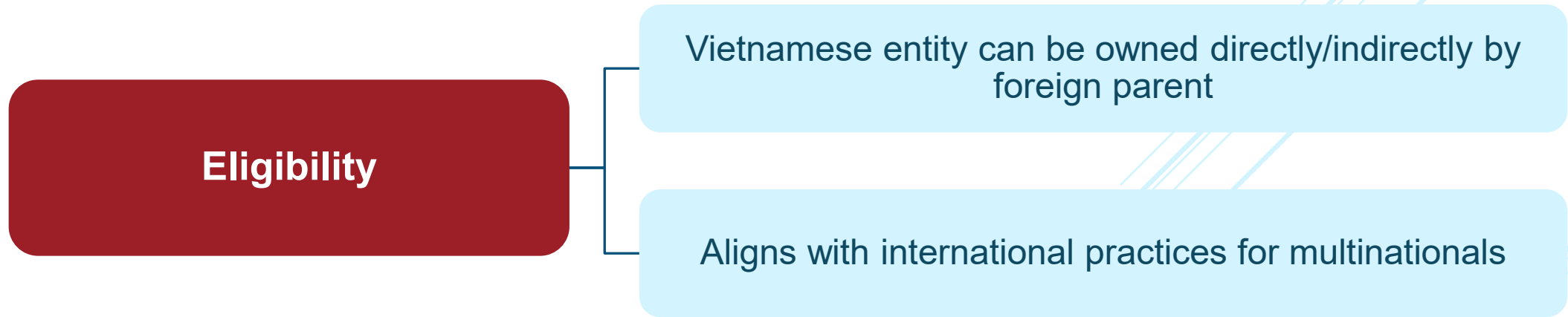
Prohibition on outbound cash remittance for ESOP participation

Monthly reporting of ESOP activities (by 12th of following month)

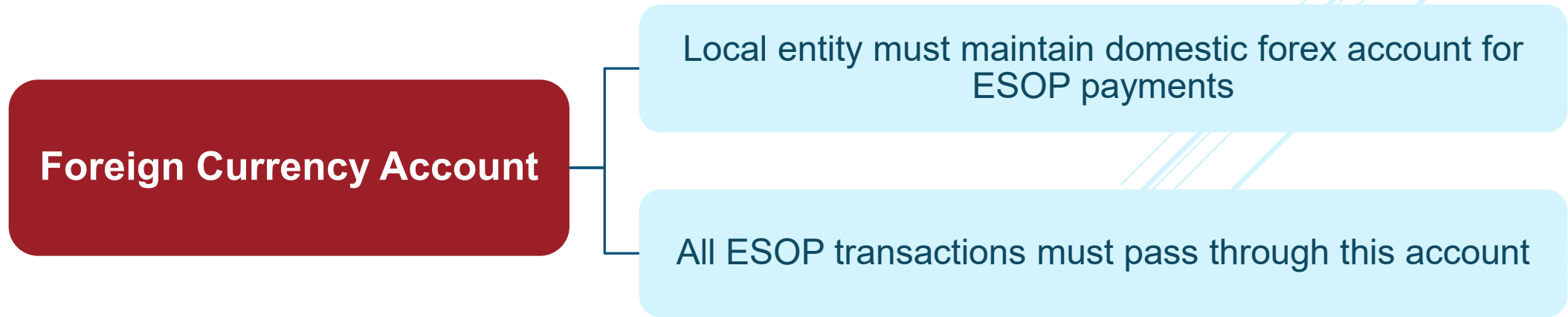
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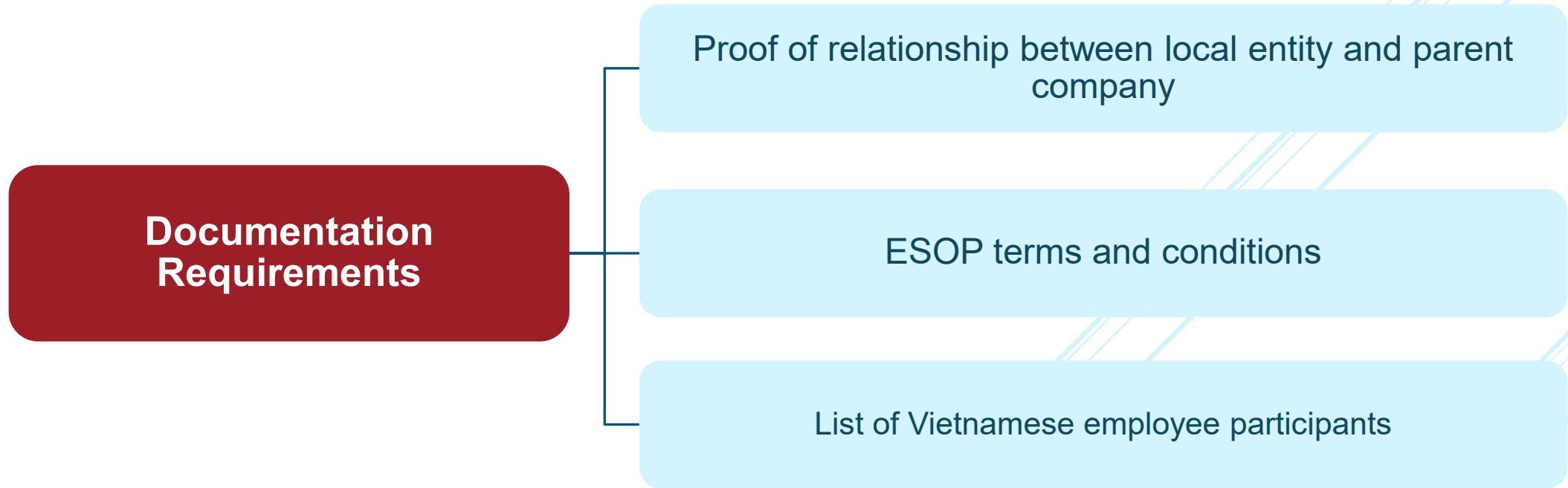
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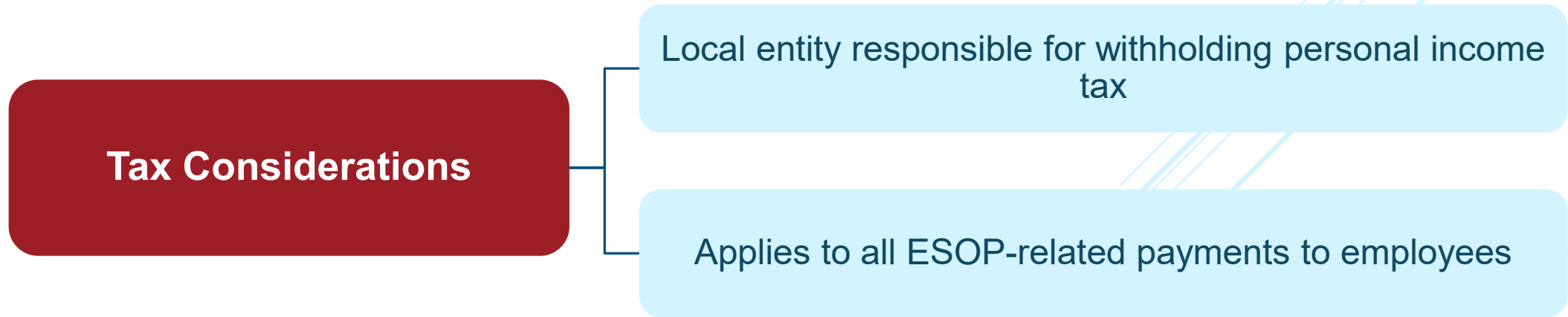
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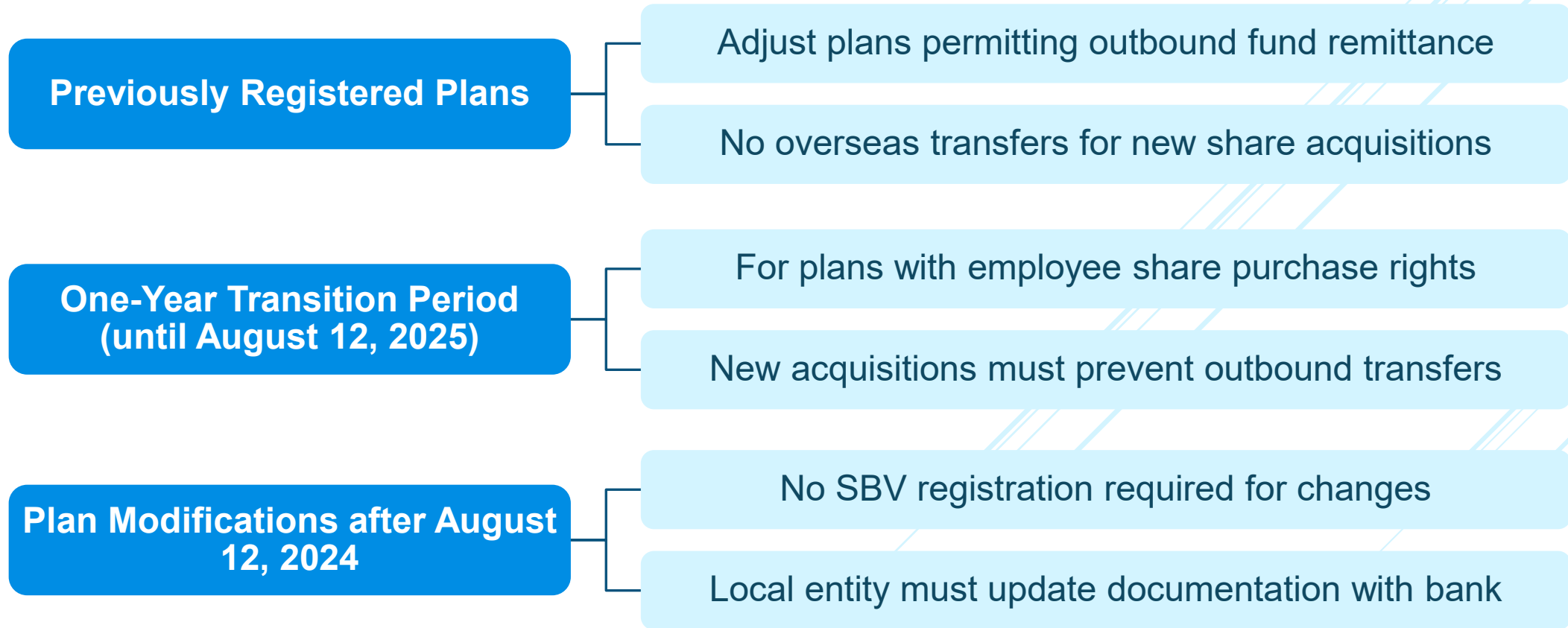


# Topic 7: ESOPs



# Topic 7: ESOPs

## Transitioning Existing Plans



# Topic 7: ESOPs

## Best Practices for Startups

Design clear and comprehensive ESOP policies

Educate employees on ESOP benefits and restrictions

Implement robust tracking systems for grants and vesting

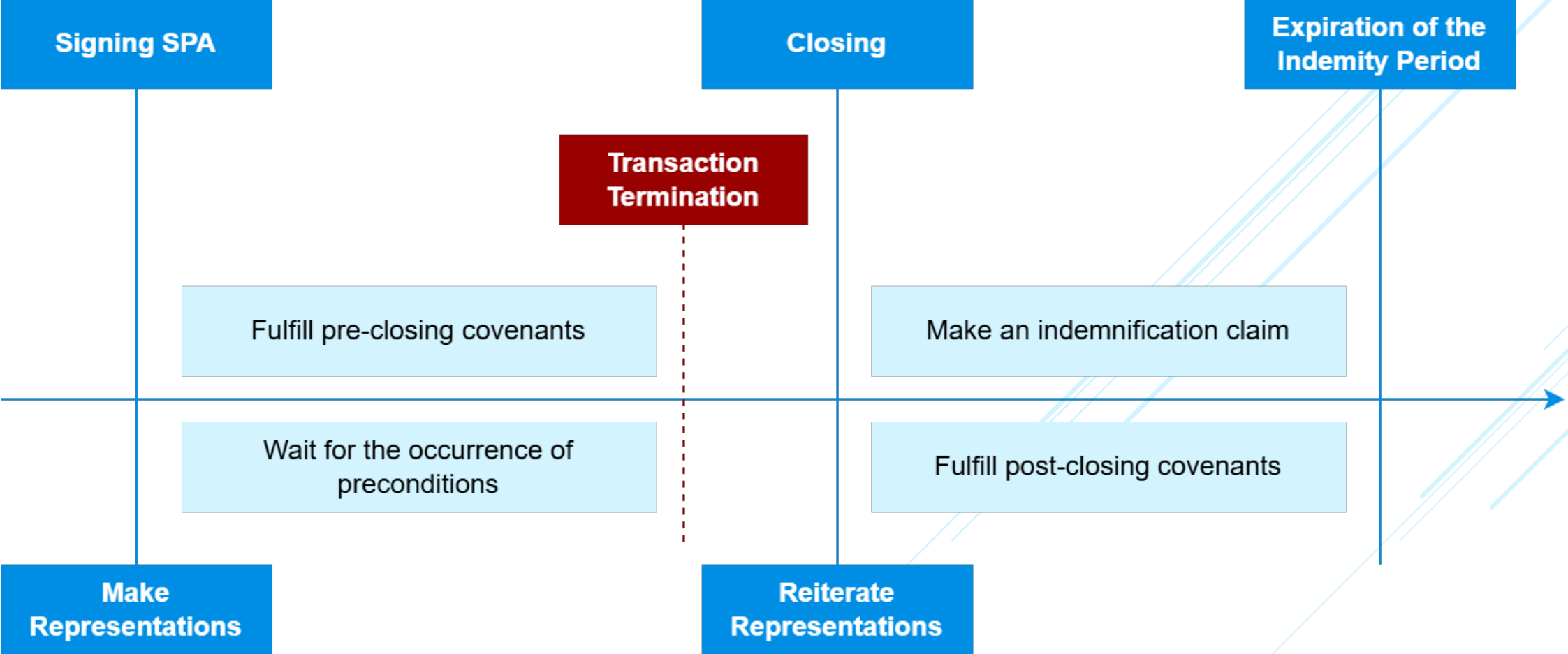
Conduct regular reviews of ESOP structure for compliance



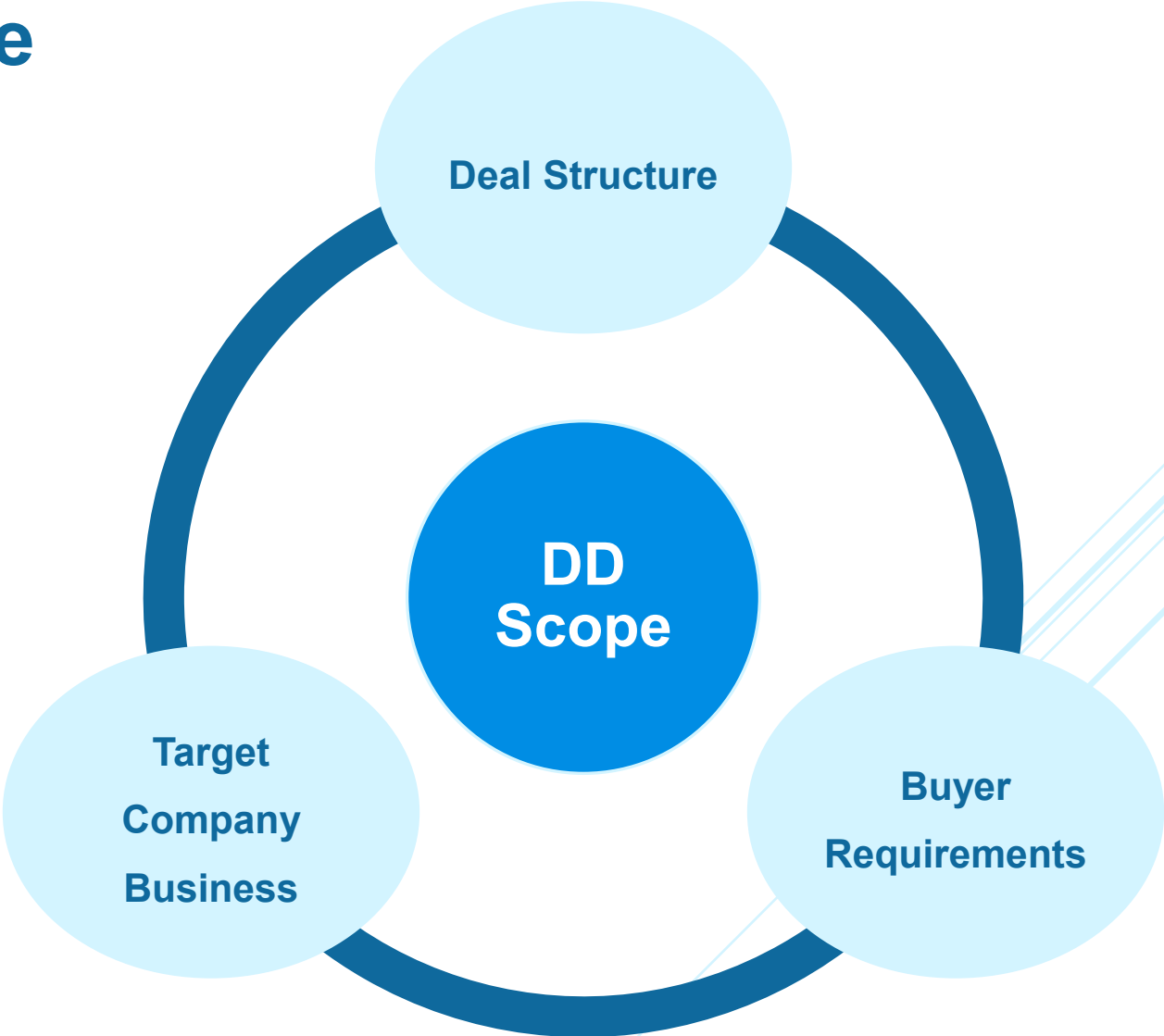
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# Overview of Share Purchase Agreement (SPA)

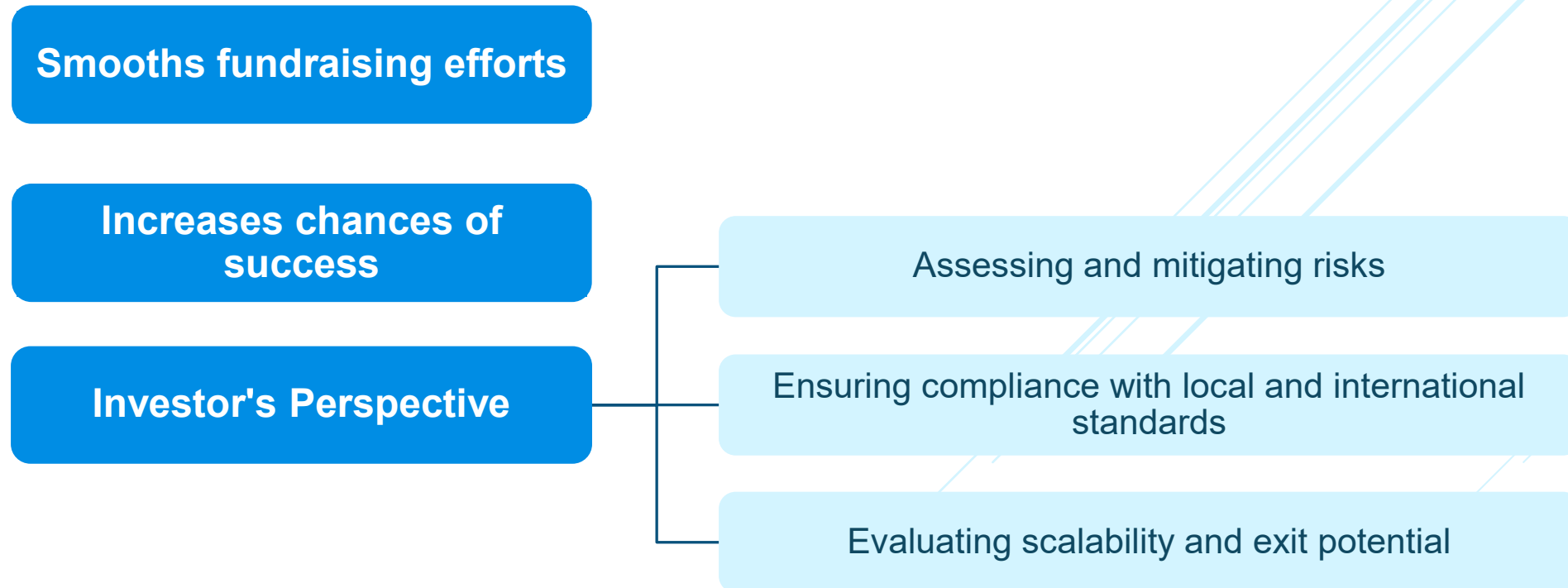


# Due Diligence



# Topic 8: Investor Legal Due Diligence

## IMPORTANCE OF PREPARATION



# Topic 8: Investor Legal Due Diligence

## KEY COMPONENTS OF LEGAL DUE DILIGENCE

Corporate structure and  
governance documents

Regulatory compliance and  
licenses

Intellectual property rights and  
protection

Employment and labor matters

Material contracts and  
agreements

Litigation and dispute history

# Topic 8: Investor Legal Due Diligence

## STRATEGIES TO BECOME "FUNDRAISING-READY"

Implement robust document management system

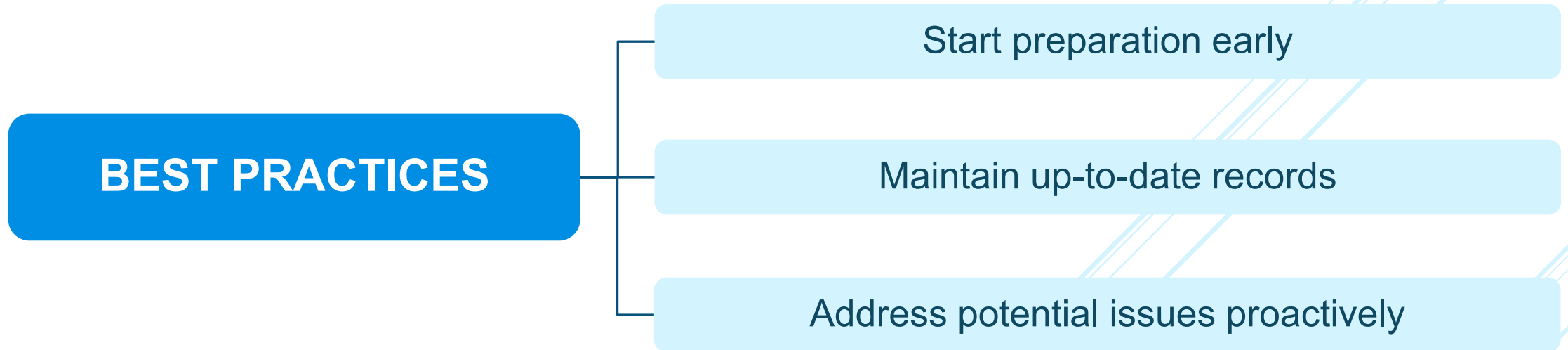
Conduct regular internal legal audits

Prepare comprehensive data room in advance

Key Objective

- Well-organized
- Complete
- Anticipate potential investor questions/concerns
- Not just passing due diligence
- Impressing investors with organization and foresight

# Topic 8: Investor Legal Due Diligence





Vilasia: Full Hearts & Sharp Minds

**Q&A Session**