

# LPA ASIA NEWSLETTER

Tokyo | Shanghai | Hong Kong | Singapore

JULY 2020

## COVID-19: Working from Home during Covid-19: employment related issues across Asia

The practice of working from home has become increasingly commonplace in the wake of the Covid-19 outbreak. Many companies in Japan, Mainland China, Hong Kong and Singapore have implemented working from home arrangements during the outbreak

### JAPAN

According to a survey from the Tokyo Metropolitan Government, more than 63% of the companies in Tokyo had their employees working from home in April 2020 as compared to 24% in March 2020.

This trend continues under the second peak of coronavirus in Japan and Japanese companies seek to roll out this new system and adopt it durably.

#### → How to implement work from home system?

The place of work is one of the important working conditions for both the employer and the employees. Hence, the implementation of work from home ("WFH") shall be stipulated in the employment agreement. The simplest way to revise the content of the agreement is to implement internal rules for WFH ("Internal Rules for WFH") which shall apply to all employees in the company.

To implement such Internal Rules for WFH, the employer shall disclose the rules to the representative of the employees, obtain its opinion and submit the Internal Rules for WFH to the Labor Office together with the opinion letter from the representative of the employees.

#### → What shall be included in the rules for work from home?

There is no legal requirement about the content of the Internal Rules for WFH. However, (i) the conditions to start WFH; (ii) the calculation method of the working hours of the employees working under WFH; and (iii) the rules about who shall bear the costs relating to WFH are necessary to create clear Internal Rules for WFH.

Some companies require employees having a certain level of seniority or autonomy in their job to start WFH. Such adaptation is important to make the most of the employee's abilities and productivities under WFH system. It is highly recommended to consult with your legal counsel to prepare the rules suitable for your company.

and are considering long-term implementation of such arrangements for their employees.

### CHINA [mainland]

In view of the rapid spread of COVID-19 around the world, the Ministry of Foreign Affairs of China and the National Immigration Administration of China jointly issued an official notice on the temporary suspension of the entry of foreigners to China as of March 28, 2020, even though these foreigners hold current valid business visa and residence permit. Until now, China government has yet lifted its ban on foreigners entering the country.

Nonetheless, if a foreigner leads an important role in a new or ongoing business project with a promising prospect in China, the project organizer, acting as an inviting unit can apply to the authorities for a specific invitation letter for such foreigner to access to China for 3 months. As this shortcut is not widely opened to the general public, the authorities have their discretionary power and internal control to grant such invitation letter to the foreigners on a case-by-case basis. Therefore, the authorities have not promulgated any written policy indicating the detailed requirements and administrative process for such application.

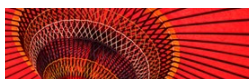
#### → Requirements

We have moved cautiously and successfully assisted our foreign clients in applying for and obtaining the invitation letters from the local authorities and summarized the main requirements based on our practical experience :

- The inviting unit shall be an independent legal person registered in China. Any representative office, liaison office or branch office is not qualified as an inviting unit. The inviting unit with state-owned background is preferable;
- The inviting unit shall provide sufficient supporting documents to evidence the necessity and importance of inviting a foreigner into China, including but not limited to the detailed description of the involving project and the function and role of such invited foreigner;
- The inviting unit undertake that all information and/or documents submitted to the authorities are true, accurate and valid and agree to take any and all legal liabilities in connection with such application.

#### → Administrative process

- The inviting unit shall submit the application documents to the local commercial commission for its preliminary check;
- The local commercial commission may, at its sole discretion, visit the inviting unit on site to verify the authenticity of the said project;
- If the business project itself meets with the internal standard, the local commercial commission issues an internal approval and then forward it to the local office of the Ministry of Foreign Affairs;
- The local office of the Ministry of Foreign Affairs has its final decision right to grant the invitation letter, depending on the quota, policy orientation and actual epidemic situation.



**TOKYO**  
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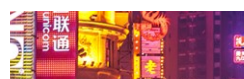
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#### OUR INVOLVEMENT

- Ayano Kanazuka was appointed as President of the International Commission of the Tokyo Daini Bar.
- Mina Ishikawa, the President of the Young Professional Committee of the French Chamber of Commerce in Japan organized an event on 20 July 2020. [\[Article in French\]](#)



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#### OUR INVOLVEMENT

- Fanny Nguyen and Hubert Bazin shared their analysis of France's steady attractiveness to Chinese investors in the special issue of International Financial Law Review [\[Article in English\]](#)
- Fanny Nguyen reflected on the suitability of foreign law and jurisdiction to govern commercial contracts entered with Chinese parties [\[Article in French\]](#)

## HONG KONG

The practice of working from home has become increasingly commonplace in the wake of the Covid-19 (coronavirus) outbreak. Many companies in Hong Kong are now considering long-term implementation of "work from home" (WFH) policies.

Hong Kong does not have any specific rules applicable to WFH arrangements. We set out below some considerations and advise to employers.

### → 1. Making clear that WFH arrangements are temporary

Employers should make clear that WFH does not create a permanent variation to the employee's terms of employment. They should consider reserving the right to direct the employee to come into work as and when the employer decides.

### → 2. Adopting a comprehensive WFH policy

While there is no statutory requirement to put in place a formal WFH policy, it is recommended to adopt a written policy addressing key issues such as: (a) notification of place of work; (b) working day and working hours; (c) safety procedures to set up when working from home; (d) IT security and use of company equipment; (e) data protection and privacy and (f) confidentiality of employer and client information.

### → 3. Ensuring that existing insurance covers work injuries when employees work from home

Employers have a legal duty to provide a safe place of work for their employees. To minimise their liability risk for workplace injuries, employers should consider putting in place training and procedures specific to employees working from home. Employers should also check with their existing insurance provider to ensure that their existing work injury insurance covers injuries arising out of or in the course of employment when an employee is working from home.

## SINGAPORE

### → End of "Circuit Breaker" – Phase Two in Singapore

As announced by the Singapore government (the "Government") on 15 June 2020, Singapore has entered into Phase Two of its three-phased approach to resume activities safely after a set of "circuit breaker" preventive measures in light of the COVID-19 pandemic.

### → Overview of the work-from-home measures in Phase Two

In Phase Two, more activities have resumed. A large part of the economy has now re-opened, subject to safe management measures being in place. Notwithstanding that most companies are now allowed to resume operations, the Government has stated that the default mode of working for all companies should be telecommuting, and employers should ensure that employees whose functions can be done remotely continue to do so.

Employees whose roles require them to work on-site (e.g. employees that need to use a device located at the employer's offices) may do so.

If telecommuting is not possible, employers should enforce safe distancing, support contract tracing requirements, require employees to wear masks and observe good personal hygiene, ensure the cleanliness of workplace premises and implement health checks and protocols to manage potential cases. Employers must also split their employees into teams. There should be no cross-deployment/interaction between employees in different teams or worksites, even outside of work.

We have noted that many employers have chosen a very strict approach and have advised their employees that the workplace will remain closed and that employees should reduce all work-related socializing to the strict minimum.

Strict checks will be conducted by the authorities, and businesses that do not provide a safe workplace for workers will be asked to close their workplace.

### → Business trips

Business trips from and to Singapore are still suspended as the Government has advised Singapore travellers to defer all travel abroad and short-term visitors are not allowed to enter or transit through Singapore.

Based on the latest situation, the Government has put in place border restrictions measures and all travellers (including Singapore citizens, permanent residents and long-term pass holders) entering Singapore are issued a 14-day Stay-Home Notice in Government-designated facilities.

### → What's next?

The Government has stated that Phase Two will likely continue for months before the transition to Phase Three (where social, cultural, religious and business gatherings or events are intended to be resumed, although sizes of gatherings will still be limited) will occur.



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#### OUR INVOLVEMENT

- Please see our last newsletters at <https://www.lpalaw.com/en/office/hong-kong/>



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#### OUR INVOLVEMENT

- For the second consecutive year, LPA Singapore will sponsor the Trophées des Français de l'Etranger in the category "Innovation". Due to the current Covid-19 restrictions, the award ceremony initially scheduled in December will likely take place in January or February 2021.