

Taking on the fascinating, complex world of Asia immigration

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Organisations today face a spectrum of challenges and each company approaches these challenges through an independent prism. The fixes needed today range from minor, country specific changes to systemic global problems. But whatever challenges an organisation faces, everyone agrees with absolute certainty that Asia immigration is not exactly a “walk in the park”.

As companies seek to face these challenges, all while being increasingly pressured to reduce lead times – how often do we hear: “the assignment start date was yesterday!” – and reduce international assignment costs, there are specific big-picture issues that most companies must consider and work through to help strike the right balance in meeting urgent business needs, complying with legal requirements, solving short-term problems and building programme-wide changes for long-term solutions.

Nature of activities and industry

In certain countries, for example, a manufacturing entity may find the immigration process easier than, say, a pure trading company. This could be so because the government is seeking to industrialise the nation by encouraging the set-up of manufacturing plants. Reasons for this may be to create local job opportunities, transfer technical knowledge to local professionals or to improve the economic environment. The trading company on the other hand may be faced with more scrutiny and stringent immigration requirements, perhaps the government’s way of protecting the local traders. For example, in certain Asian countries, large foreign multinational traders are usually required to partner with local shareholders to protect the smaller and medium size operations. Requirements like this can be a challenge to a completely foreign owned organisation and identifying the appropriate local partners is another matter altogether.

Shareholding structure and capital investment

The capital investment and shareholding make-up of an organisation may also be a challenge when applying for work permits. The authorities may impose a minimum requirement condition for the paid-up capital of the local sponsoring company. For example, in **Thailand**, every 2 Million Thai baht of capital investment (approx. USD\$60,000) allows one work permit application. If the business is under the Board of Investment Authority (BOI), this will not be applicable. Likewise, the authorities may require a certain percentage of the company's shareholders to be held by locals for certain industries. In **Malaysia**, certain import/export industries must have a minimum of 30% local shareholding.

Employee structure

An organisation may also be faced with a challenge with its existing employee structure if the need for foreign employees increases. When applying for work permits and/or visas, certain immigration authorities may require a certain ratio of local employees to foreign applicants, for example, one foreign applicant to ten local employees. In **Myanmar**, for example, local employees must make up at least 25% in the first 2 years of operations and at least 50% in the subsequent years. In the **Philippines**, the number of expatriates is limited to 5% of the total employee population.

Establishment of legal entity

Organisations wanting to send their employees to new markets and have yet to set-up a local company will certainly face major challenges as most countries in Asia will require a locally established company to act as a sponsor to the work permit applications. There are, of course, alternatives where a client entity may sponsor on their behalf but this usually raises a host of other issues regarding taxation and the client being deemed an employer to the foreigner, which in reality is not the case. For example, "ABC Ltd" is sending an employee to **Singapore** for factory maintenance at one of their supplier sites. ABC does not have a locally established company in Singapore. In this situation, the employee will not be able to obtain a work permit in Singapore as there is no sponsoring entity. The alternative would be for the supplier to act as the deemed employer and sponsor the work permit application on their behalf. The challenge here would then be in the eyes of the authorities, the supplier is the deemed employer and may have to fulfill certain statutory obligations.

Quotas

In some jurisdictions, the immigration authorities may impose quotas on a company allowing them to have only a certain number of foreign employees at any one time. Increasing the quota may entail tedious applications and likely more conditions like injection of capital or increased local hires. In **Singapore**, the quotas are specifically indicated for S Pass holders, i.e., work permit holders earning salaries of below SGD2,200, where the quantity is determined by various factors and calculated via a system by the authorities. In **South Korea**, the quota restrictions are not so clear. It can be interpreted subjectively and depends on a

variety of factors like the company's corporate tax status, number of local employees and the share capital amount.

Host city

Immigration rules and regulations differ from city to city including within China, Japan, India, Korea, and Malaysia and immigration processes in mature cities like Hong Kong, Singapore and Shanghai are arguably more streamlined and transparent than immigration processes in emerging cities and the non "hot-spots", like Yantai in China, or Teluk Karang in Malaysia. The reasons for this are, more often than not, due to lack of experience, capacity and exposure, for example:

- Immigration officers may only be exposed to work permit application processing for nationals from developed countries. They will likely be familiar with say, documentation from the US or UK, but less experienced with other countries. Nationals from uncommon countries may experience difficulties simply because equivalent documentation is simply different. Some marriage certificates, academic diplomas and even birth certificates may be challenged on authenticity. While this may seem minor in the entire scheme of a relocation process, it can very well be the main source of delay in assignment start dates, which have been known to sometimes stretch up to 6-8 months. This will no doubt be a costly affair for an organisation in addition to creating potential risk on compliance issues in that host country from both an employer and employee perspective. The challenge is then balancing dire business needs and legal requirements.
- Relationship/dependent statuses. Whilst common-law spouses are conventional in EU countries and also recognised in most commonwealth nations, it can be somewhat unheard of in certain emerging markets or simply not recognised. Obtaining immigration services from a consulate or embassy may even prove to be a challenge in developing markets simply because of the lack of a physical office. This is something most often taken for granted. Similarly, there are often issues surrounding same-sex couples, although this also applies to some more developed countries.

Applicant

Of course, the applicant is a factor. Most immigration authorities scrutinise the capabilities and needs of a local company to employ foreign hires. Conditions and requirements are considered including:

- Academic qualifications and work experience: Do they match the job in question? Does the applicant qualify for the role? For example, if the applicant has a degree in Marketing but the position is in the capacity of a technical engineer, the authorities may require further justification.

- **Age of applicant:** In some conservative locations, immigration regulations may also include a minimum age of an applicant to justify that a recent foreign graduate would be no different than a recent local graduate as both individuals would arguably have no prior work experience and thus not be able to benefit the local industry. In that scenario, why not just hire the local? In **Indonesia**, the minimum age is 21 and in **South Korea** it is 20. On the flipside, certain countries would also impose the maximum age limit like in **China**, **India** and **Indonesia** with limits ranging from 55 to 65 years of age.
- **Pay/salary:** In recent years, more and more countries are increasing the minimum salary requirement for a foreign applicant and in some instances the immigration authorities would expect the foreign individual to be paid in accordance to market rates of the position in question or rates that are not discriminatory to locals of the same qualifications and experience. In Asia, more than 60% of countries have a minimum wage criteria ranging from the lowest of USD\$60 per month in **Myanmar** to USD\$2,600 in **Singapore**.
- **Local effort:** Was a sufficient effort made to find a local hire for the position? Often this means the company must justify and sometimes even show physical documentary evidence of the need to hire the foreign individual and why no suitable local candidates were chosen. Stringent requirements like these are very likely employed by certain governments to protect the local job market, specifically in non-specialised industries. Recently in **Hong Kong**, for example, where a position for a personal assistant for a high level CEO was filled by a foreign national, the authorities questioned if the job could have been filled locally, as they were of the opinion that it did not require highly technical or specialised skills.

Finding the balance

Organisations today are constantly faced with myriad immigration challenges both from an internal business perspective in trying to balance business needs and legal compliance and also from external factors subject to prevailing rules and regulations of immigration authorities and the political and economic environment of the host country. Indeed, balancing the needs of the assignees, the business and the rules of immigration in Asia is no walk in the park.