



An Overview of Business Travel to India

India now attracts foreign nationals in large numbers. The purpose of their visit goes beyond tourism and spiritual pursuits, which were the most common attractions in the past. As India's economy continues to grow, foreign investments into the country are on the rise. Individuals are also seeking out employment opportunities in India. This, along with rampant misuse of tourist visas has resulted in stricter visa controls. Earlier business and employment visas were easily granted even when little supporting evidence was provided. This is not the case any more.

Business Visas

Business visas are generally granted to individuals who wish to establish, or explore business opportunities, attend business meetings, examine the possibility of establishing, an industrial or business venture in India or wish to purchase or sell industrial products in India. It cannot be granted to an individual who wishes to come to India in connection with money lending or petty trading or to undertake full-time employment in India.

The applicant's financial background and expertise in the field of intended business are checked prior to granting a business visa. The Consular Post considering the application will also check the documentary proof regarding company registration or registration with an institute like the State Industries Department or the Export Promotional Council.

Set out below is representative list of situations in which applicants may be granted a business visa:

1. Foreign nationals coming to set up or explore the possibility of setting up a business or industrial venture in India.
2. Foreign nationals coming to India for technical meetings, or attending board meetings or other general meetings for business services support.
3. Foreign experts/specialists coming on a short duration in connection with an ongoing project with the objective of monitoring progress, conducting meetings, or providing high-level technical guidance.

4. Foreign national trainees of multinational companies or corporate houses who wish to attend in-house training conducted at the regional hub of the company located in India.
5. Foreign nationals coming to India to purchase/sell industrial products or commercial products or consumer durables.
6. Foreign nationals coming to India to recruit manpower.
7. Foreign nationals who are partners in a business or are on the Board of Directors of an Indian company.
8. Foreign nationals who wish to participate in, or render consulting services with regard to, events such as exhibitions, trade fairs, or business fairs.
9. Foreign buyers who come to transact business with suppliers or potential suppliers, or to evaluate or monitor quality, provide specifications, place orders, or negotiate further supplies in connection with goods or services procured from India.
10. Foreign nationals coming to India for pre-sales or post-sales activity not amounting to actual execution of any contract or project
11. Foreign students sponsored by AIESEC for internship on project based work in companies/industries.
12. Foreign nationals coming as tour conductors and travel agents and / or conducting business tours of foreigners or business relating to it, etc.

If a business trip, even if very brief, will involve activities other than those described above, it usually requires an employment visa. Also, if the foreign national will generate profit for the host entity, receive compensation from the host entity, and/or take direction from the host entity, an employment visa may be required.

Business visas include endorsements that clearly identify the visa holders' applicable terms of stay, including whether or not they must register with local authorities upon arrival. Business visas will be endorsed with either «each stay not to exceed 6 months and registration not required» or «registration required within 14 days.»

Business visas may be issued to nationals of most countries for a total validity period of up to five years. U.S. nationals may be issued business visas with a validity of 10 years. Business visas may be extended in India for a total period of up to five years from the visa's initial date of issuance. However, such extensions are granted only if the gross sales or turnover from the foreign national's activities in India equal or exceed an annual amount of approximately US \$220,000 per year.

Employment Visas

Indian immigration law does not specify the activities for which one requires an employment visa. Employment visas are generally issued to highly skilled specialists, managers and executives and are not granted to fill jobs for which qualified Indians are available. They are also not granted to fill "routine, ordinary or secretarial/clerical jobs." Consular and immigration officials consider an applicant's academic and professional qualifications to fill the proposed position in India, and the availability of Indian workers to fill the position. There is neither formal list of occupations for which no Indian workers are available, nor a list of "highly skilled" jobs.

All employment visa applications must be sponsored by a duly registered Indian entity. A foreign company that does not have a base in India, in the form of a project or branch office, a subsidiary, or a joint venture, cannot sponsor an applicant's employment visa. However, Indian companies that have awarded a contract to a foreign company may sponsor an applicant's employment visa. In such instance the Indian sponsor is not necessarily the legal "employer" of the foreign national but supporting the visa application as an "employer" in a limited manner.

Employers are required to pay foreign national employees an annual salary no less than US\$ 25,000. Any perquisites such as housing, telephone, transport, entertainment etc., which are received in kind, should not be included when computing the salary of the individual. Sponsoring employers are also required to certify that the employee will comply with all applicable tax requirements,

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including the timely filing of tax returns in India.

Employment visas are generally employer and location specific, which prevents foreigners from seeking new jobs on the same visa. Furthermore, the visa is dependent on the employment contract and it follows that if the contract is terminated the visa is no longer valid, and the foreign national is required to leave the country.

Processing Time

The foreign national can only apply for a visa at the Indian diplomatic post in his or her country of citizenship or country of residence. If the applicant wishes to apply in the country of residence he or she needs to have resided in that country as a permanent resident for at least two years. Filing in a country that is not the country of citizenship may result in delays as the application may be sent to the country of citizenship for further action.

Special procedures and lengthy processing times apply to nationals of Afghanistan, Pakistan, Sri Lanka, Bangladesh and China. Applications from Pakistani nationals and from persons with a Pakistani background are subject to additional checks and usually result in a delay of at least thirty days. Additionally, such individuals are currently being issued visas permitting a single entry.

Visa Validity and Extensions

Employment visas may be granted for an initial period of two years. However, since visas are processed on a case-by-case basis they are generally granted for one year. Employment visas to work with IT, software, or IT enabled service companies may be granted with a validity of up to three years. Employment visas may be extended within India for an additional 12-month period enabling the individual to remain in India on the employment visa for up to a total of five years from the date of initial issue of the visa. The extension procedure and processing time differs in every jurisdiction within India and requires compliance with income tax laws and employer support.

Social Security Payments

Under current laws, most establishments in India that employ more than 20 individuals are governed by the Employees Provident and Miscellaneous Provisions Act, 1952 (the EPF Act) and its Scheme. All foreign nationals (except those nationals of a country with which India has a Social Security Agreement) working with such entities are required to make contributions to the EPF Scheme amounting to 12% of their basic salary and the employer has to make an equal contribution to the Employees Provident Fund Office.

Income Tax Compliance

Foreign nationals working in India by way of direct employment or secondment are generally subject to Indian income tax. They could also be subject to wealth tax and capital gains tax on assets disposed in India. Taxation in India is based on the residential status of a person and not on citizenship. Residential status is determined on the basis of his or her physical presence in India regardless of the purpose of stay.

Salary income is taxable in India if the services are rendered in India, irrespective of whether the salary is paid in India or not. Other income is subject to tax if received or deemed to be received in India, or accrues or arises, or is deemed to accrue or arise in India. In addition, a foreign national who is resident and ordinarily resident in India is taxed on his or her worldwide income.

Employers of foreign nationals are required to withhold tax at the applicable rate, on the salary paid to the foreign national employees no matter whether the individual is paid his salary in India or abroad. This amount has to be paid to the Government's treasury within seven days from the end of the month during which the salary was paid. This is applicable even if the employer is not a resident of India.

In-Country Registration

Employment visa holders are required to register with their local FRRO/FRO only if their visa is valid for 180 days or more. If registration is required, it must take place within 14

days of the foreign national's arrival in India. Individuals with employment visas issued for a period of less than 180 days are not required to register with local authorities unless their visa contains an endorsement to the contrary.

Registration of Foreign Nationals Staying at Hotels

All foreign nationals need to be registered on Form-C under the Registration of Foreigners Rules when they stay in any hotel or commercial premises. Even at the time of checking-out of the hotel, the foreign national has to provide information with regard to date and time of departure and the address to which he or she is proceeding. It is the responsibility of the hotel owner to ensure that the foreign national complies with these requirements. This register has to be made available for inspection on demand by designated officials. Proof of registration on check-in may also be required at the time of FRO registration.

Penalties for Non-compliance

Foreign national employees who have not paid the appropriate taxes or otherwise complied with Indian tax laws may be required to depart the country at short notice. In addition, foreign nationals who have violated Indian laws may be subject to deportation and possible imprisonment, although this is rare.

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