

# Immigration and Employment Issues for Indian Companies



Business immigration issues are often a priority for any Indian business looking to set-up, invest in, acquire or successfully manage a UK operation. The ability to transfer highly skilled staff from India to the UK to help grow or oversee the UK requires proper planning at the outset, to avoid unnecessary delays.

The Coalition Government is committed to impose a cap on the number of UK working visas issued from 1 April 2011. While there are some interim restrictions in place until that date, they are unlikely to be as restrictive as the full cap. Crucially, the interim restrictions do not apply to intra-company transfers, meaning there is still an opportunity for Indian companies to freely transfer highly skilled staff to the UK until 1 April 2011.

Once employees arrive in the UK, they are subject to mandatory UK employment law, which provides valuable rights and protections for employees in certain circumstances.

## The importance of specialist business immigration advice

Since the introduction of the Points Based System (PBS) in 2008, the UK's immigration rules have tightened up considerably. Post PBS, it generally takes longer and is more difficult to get a working visa.

Another consequence of PBS is that discretion and flexibility have been eliminated. This means that an application will fail if it does not meet the strict requirements of the rules, regardless of the importance of the application or the candidate. There are limited rights of appeal - it is essential to get it right first time.

We are ideally placed to help Indian businesses with their immigration work. Many large "full service" UK law firms cannot give business immigration advice, as it is considered too specialist. At the other end of the spectrum, many boutique immigration advisers are unable to provide core legal services in other essential areas.

## Types of working visas

Under current rules, dependants will be granted a UK visa if the main applicant qualifies. The main types of working visas that will be of interest to Indian companies are:

### Sole representatives

Only available where an Indian company has no UK branch or subsidiary

- 3 year visa, which can be extended by a further 2 years – sole rep must set up UK legal entity on arrival to UK
- Must be senior and established employee of Indian company
- Cannot own more than 30% of shares in Indian company
- Sole rep must be based in the UK – 9 months per year
- Settlement (permanent residency) after five years continuous stay.

### Tier 1

For highly skilled and highly paid individuals:

- No link to Indian/UK company – it is a personal visa
- Two year visa: can be extended by further three years
- Applicant must score sufficient points for age, qualifications, previous earnings (in past 12 months) and UK experience – high earnings required (but a multiplier is applied to Indian currency)
- English language and strict maintenance (personal funds) test
- Settlement (permanent residency) after five years continuous stay
- There are separate rules for recent graduates from the UK universities and entrepreneurs/investors who are willing to invest at least £200,000 into the UK economy

## Tier 2

Replaced work permit scheme

- UK company sponsors applicant in a particular job
- UK company must have a sponsorship licence from the UK Border Agency before intra-company transfer (ICT) visas can be issued
- Job must be sufficiently skilled and be paid at market rate or above
- Tier 2 ICT - up to three years, can be extended by two years, but will NOT lead to permanent residency
- Tier 2 General is for recruitment of non-EU nationals from outside the group structure – advertising required, but scheme effectively frozen under current restrictions

## The future

- It is likely that stronger restrictions will be in place from 1 April 2011
- Tier 1, Tier 2 (ICT) and possibly dependants visas will be affected
- If considering staff transfers from India, assess whether Indian company should accelerate process to ensure transfers pre 1 April 2011

## Employment Law Issues

For those employees that are transferring to the UK, employment law issues are often interlinked with the immigration issues. The precise structure of the arrangement is often tax driven, as UK accountants may advise on the best way to reduce the application or amount of UK payroll taxes payable, but the principle is that an employee working in the UK will gain mandatory UK employment rights.

The precise requirements of UK law are too numerous to list in this short note, but an Indian company should consider the following basic issues when employing/engaging someone in the UK:

- Is the worker a self-employed consultant or employee? Someone working full time in the UK/Indian business is likely to be an employee. If a “consultant” is in reality an employee, the UK tax authorities can pursue the company for backdated payroll taxes and social security contributions and the individual may have a substantial claim for compensation against the company on termination of the contract.

- An employee will gain valuable protection from dismissal after one year’s service, so consider a probationary period for the first three or six months.
- All UK employees are entitled to a notice period on termination of the employment contract – there are minimum notice periods depending on length of service, or the employer can offer longer notice periods linked to seniority.
- All UK employees are entitled to a minimum of 28 days’ paid holiday per year (which can include public holidays).
- Consider basic salary, bonus/commission entitlements and whether other benefits will be offered (insurances/pension/car/stock options).
- Who should own the IP – the UK or Indian company?

One of the most important things for an Indian company to do is to ensure that the UK employment relationship is properly documented. This typically includes:

- Offer letter setting out the basic terms.
- Employment contract setting out the detail of the employment relationship (it is mandatory to provide this written document).
- Confidentiality, IP and post-termination restrictions, which can either be in a separate agreement or in the main employment contract.
- If necessary, document any separate terms and conditions relating to bonus and commission entitlement.

## What to take away

Taylor Wessing has significant experience of advising Indian companies and overseas businesses on employment and immigration issues. We are the leading law firm in the UK in advising emerging growth companies setting up in the UK and we typically work on fixed-fee arrangements for immigration work. We have an experienced and responsive team that can help Indian companies deal with the complex and rapidly changing immigration rules and the hidden dangers of employing staff in the UK.

## Key Contact



**Omeleen Ajimal**  
Head of India group (UK)  
+44 (0)20 7300 4091  
o.ajimal@taylorwessing.com



**James Robertson**  
Corporate  
+44 (0)20 7300 4989  
j.robertson@taylorwessing.com



**Sean Nesbitt**  
Partner, London  
+44 (0)20 7300 4294  
s.nesbitt@taylorwessing.com



**Andrew Granger**  
Partner, London  
+44 (0)20 7300 4256  
a.granger@taylorwessing.com



**Charlie Pring**  
Senior Associate, London  
+44 (0)20 7300 4256  
c.pring@taylorwessing.com



**Vikki Wiberg**  
Senior Associate, London  
+44 (0)20 7300 4738  
v.wiberg@taylorwessing.com