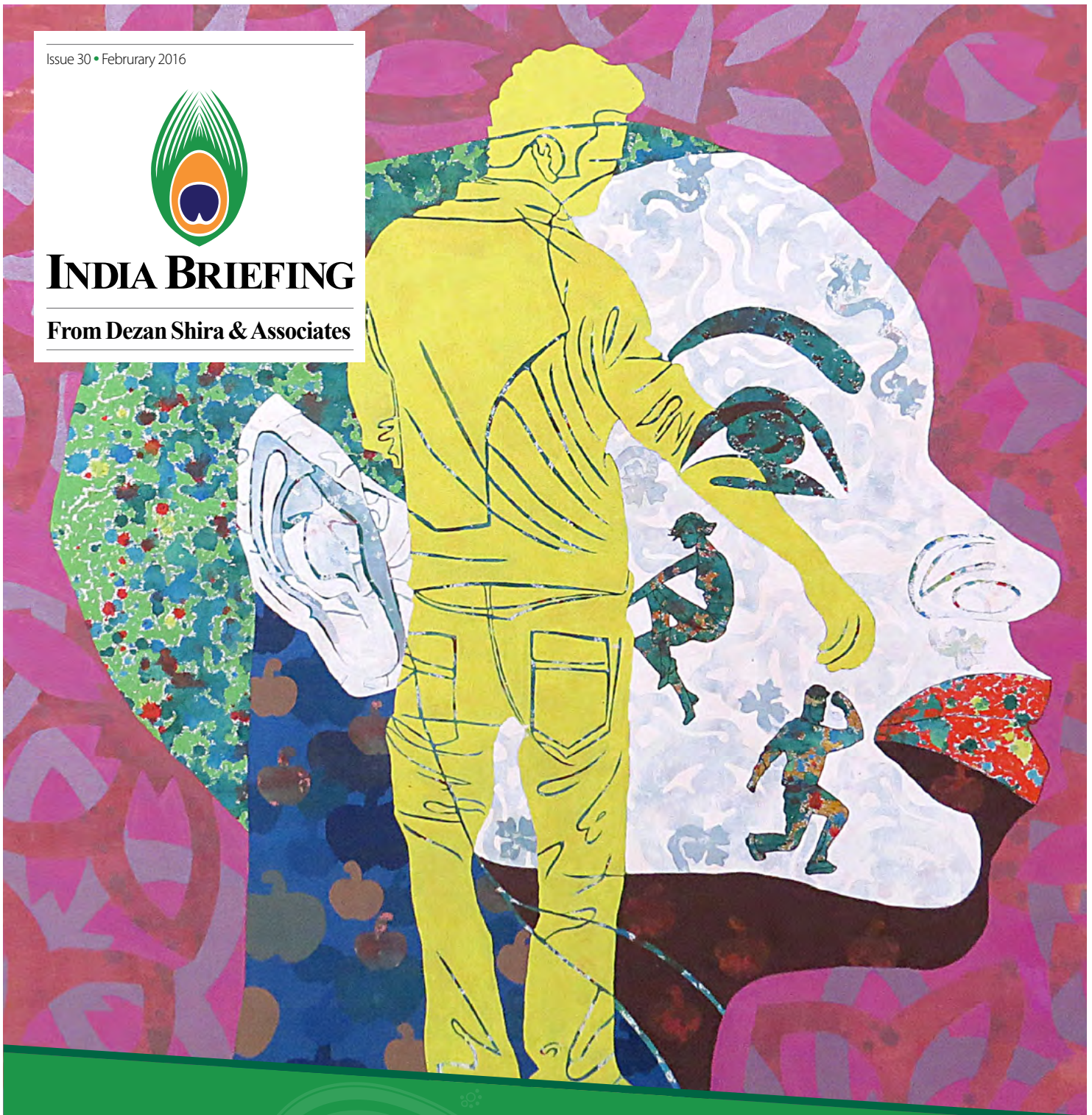


Issue 30 • February 2016



## INDIA BRIEFING

From Dezan Shira & Associates



# Hiring, Terminating and Retaining Employees in India

**P.04** Hiring Employees in India:  
Common Legal Issues

**P.06** Due Process in Terminating  
an Employee in India

**P.10** Expert Commentary:  
Best Practices for Attracting and  
Retaining Employees in India

# Introduction



**Adam Livermore**  
Partner  
Dezan Shira & Associates

Dezan Shira & Associates has assisted small, medium and large sized multinational companies with human resource services in Asia for over two decades.

We primarily help clients consolidate internal processes so that they can focus on core HR roles such as strategy formulation and managing employees. Beyond this, Asia Briefing, our wholly-owned subsidiary, assists many of our clients with business intelligence services designed to assess the availability of labor in local markets as well as local HR standards.

In this issue of India Briefing Magazine, we examine issues related to hiring, firing and retaining employees in India. We highlight the most common legal issues that arise from India's employment process, summarize the procedures for terminating an employee, and detail some of the most important factors for attracting talent. In addition, we outline some cultural considerations for foreign personnel working with Indian employees.

Foreign companies with a firm grasp of HR procedures in their home country will quickly find that their established practices have almost no bearing in India. We hope that this issue of India Briefing serves as a good starting point to understanding India's idiosyncratic HR laws, and look forward to working with companies seeking to navigate those laws and streamline their HR process.

With kind regards,

**Adam Livermore**



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# Hiring Employees in India: Common Legal Issues

By Dezan Shira & Associates

Editor: Pritesh Samuel

Human resource (HR) teams that have not worked in India may find the country's hiring process complicated. Identifying and engaging talent can be a time-consuming and tedious process, while the administrative burdens of hiring employees are also complicated for the uninitiated. HR teams, however, that conduct some basic due diligence can prepare themselves to manage the process quickly and efficiently.

The hiring of workers can depend on numerous factors, such as longevity of service, social insurance, collective agreements, qualifications and experience. While India has a large labor pool, skilled workers and senior management are typically difficult to recruit. Many employers use websites such as Monster.com or Naukri.com to source employees, but the most successful employers generally establish direct relationships with universities for graduate talent and local recruiters for experienced talent. Local consultancies that produce market research can assist foreign employers to gauge local labor markets and establish the relationships needed to source premium talent.

Separately, employers in India are increasingly reporting instances of resume fraud during the application process. This increase is largely a result of incongruence between a candidate's soft skills and their actual experience. Although not all employers are adversely affected by resume fraud, employers in India should adopt a rigorous application review process for technical and senior

personnel, verifying employment, education, criminal records, as well as reference checks. Many local service providers can provide employment screening services for employees at any level, as well as more in depth background investigations for C-Suite candidates.

Beyond these general considerations, employers need to be aware of various federal and state mandated compliances. The vast majority of labor laws that govern employment are found at the national federal level, though employers will also find some sub-national variation at the state level, particularly through the various Shop and Establishment Acts. Employers that are unfamiliar with labor laws in India should engage a law firm or professional services firm to review laws and compliances that impact their business. Although not comprehensive, here we outline some of the key pieces of legislation that impact most employers in India.

## Contracts

Indian labor laws provide a minimum of guarantees and benefits to all employees, and employers should note that these laws supersede the provisions of labor contracts. In general, however, there are three types of employment contracts in India:

- Permanent (direct) contract;
- Fixed contract;
- Temporary contract.

## Important HR Laws in India

### Laws Related to Wages

The Payment of Wages Act, 1936; The Payment of Wages Rules, 1937; the Payment of Wages (Amendment) Act, 2005.	Designed to regulate the payment of wages to employees. Stipulates the wage periods, time and mode of payment of wages.
The Minimum Wages Act, 1948; The Minimum Wages (Central) Rules, 1950	Sets minimum wage levels that must be paid to skilled and unskilled workers.
The Payment of Bonus Act, 1965; The Payment of Bonus Rules, 1970	Governs bonus payments. Seeks to provide employees a share in the profits of a company. Applies to a workplace with 20 or more employees

### Laws Related to Working Hours, Conditions of Service and Employment

The Industrial Employment (Standing Orders) Act, 1946	Provides a standard model of service conditions for employees. Applies to all establishments where 50 or more workmen are employed.
The Factories Act, 1948	Designed to regulate working conditions in factories.
The Contract Labour (Regulations and Abolition) Act, 1970	Designed to regulate the employment of contract laborers. Applies to organizations with 20 or more people.
Shops and Establishment Act	Designed to regulate employee wages, hours of work, leave holidays and terms of service. Each state has its own version of the Act.

### Laws Related to Gender

The Maternity Benefits Act, 1961	Regulates employment of women before and after child birth. Applies to every establishment that has 10 or more employees.
The Equal Remuneration Act, 1976	Provides for the payment of equal wages to men and women employees.
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Maintains that during an inquiry following a written request, an internal committee may recommend to transfer the aggrieved woman to any other workplace/grant leave of up to three months.

### Laws Related to Social Security

The Employees' State Insurance Act, 1948; the Workmen's Compensation Act, 1923	Regulates employee compensation for injury by accident during employment.
The Employees' Provident Fund & Miscellaneous Provisions Act, 1952; The Employees' Provident Fund & Miscellaneous Provisions (Amendment) Act, 1996	Mandate the provision of the provident fund, pension fund and deposit-linked insurance fund. Applies to establishments with 20 or more people.
The Payment of Gratuity Act, 1972	Mandates a gratuity payment to employees in a company with ten or more people and applies to all employees regardless of salary.

## Visa Requirements for Foreign Nationals Working in India



### EMPLOYEE ELIGIBILITY

- At least 18 years old
- In good health
- Filling a position unsuitable for a qualified Indian employee
- Will not be working in a routine, secretarial or clerical job
- Must have an annual salary in excess of US\$ 25,000 (with the exception of language teachers, ethnic cooks, embassy staff and voluntary workers)



### DOCUMENTS REQUIRED FROM EMPLOYEE

- A completed visa application form
- A valid passport
- A passport sized photo
- Proof of address, such as a driver's license or utility bill
- A detailed curriculum vitae



### DOCUMENTS REQUIRED FROM EMPLOYER

- Permission letter that requests approval for the applicant's visa
- Sponsorship letter
- Tax liability letter pledging responsibility for the applicant's income tax in India
- Justification letter confirming that a qualified Indian candidate was unavailable/unsuitable
- Details of the applicant's unique specialization and professional capabilities
- Appointment letter detailing the job role and salary
- Comprehensive employment contract
- Copy of the company's Permanent Account Number (PAN) card
- The company's Incorporation Certificate
- Application form



### APPROXIMATE TIME TO COMPLETE

When drafting contracts, employers should pay special attention to the Industrial Disputes Act, which provides a large number of protections to employees; the Shops and Establishments Act, which governs the hours of work, payment of wages, leave, holidays, terms of service and other conditions; as well as the several wage and remuneration acts, which regulate the payment of wages, bonuses, and equalize pay for men and women. Any termination policy outlined within the contract should be checked against the current law prior to it being carried out. For example, companies that employ more than 100 workers need government permission to conduct layoffs.

Besides company rules and regulations, employers are advised to incorporate the following clauses into contracts:

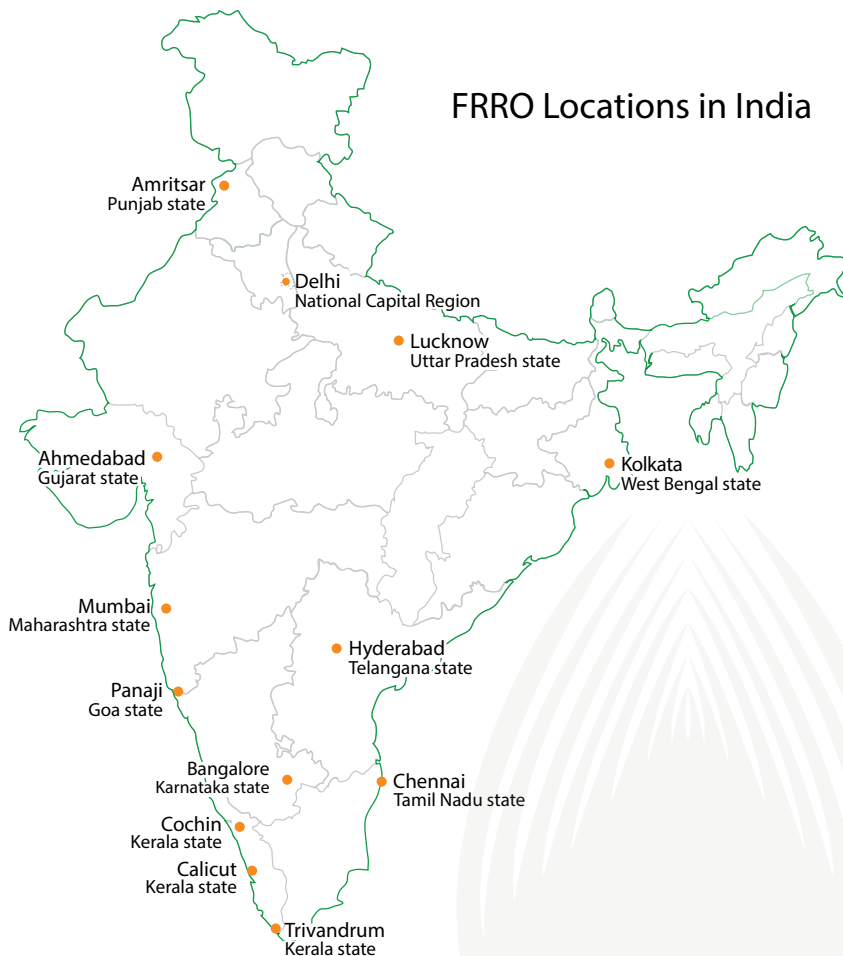
- Non-disclosure;
- Employee poaching;
- Unfair competition;
- Trademarks, patents and trade secrets.

## Employing Foreign Nationals

Indian authorities typically issue one-year multiple entry visas that can be renewed for up to five years. To ensure a quick turn-around time on a successful application, applicants and employers should take a collaborative, hands-on approach.

To obtain an employment visa, Indian authorities require documentation from the applicant and his or her employer. While the necessary documents are dependent on the applicant's nationality, the majority are the same for developed economies in Europe and North America.

With exceptions for the Incorporation Certificate and PAN card, which can be scanned or photocopied, every other document provided by the employer needs to be an original copy. Each of these original copies need to be drafted on company letterhead, signed by a senior manager, and marked with the company's official stamp. Due to these stipulations, overseas applicants need the employer to send original copies by mail.



## Registering an Indian Employment Visa

Expatriates first in-country encounter with Indian bureaucracy often occurs at the Foreign Regional Registration Office (FRRO). After obtaining an Indian visa, registering the visa at an FRRO is often an afterthought for expatriates. Unfortunately, however, registering a visa is a cumbersome process.

If the duration of the visa exceeds six months (180 days), the visa holder must register the visa within 14 days of arrival at an FRRO. The only exception to this is for Pakistan nationals, who must register within 24 hours.

Long-term visa holders should plan to register their visa as soon as possible; failing to register a visa within the specified time period can result in a fine, and in some cases, an investigation, which

can take several weeks. In addition, investigations may complicate any future visa applications or renewals.

### Registration Documents


Before visiting an FRRO to register an employment visa, a visa holder needs to prepare the registration documents required by Indian authorities. Like the visa application, both the visa holder and their employer must provide support documents to register the visa. This process requires coordination between the visa holder and their employer, who should plan to allow 2-3 days to gather and complete these documents.

The visa holder must ordinarily provide:

- A completed visa registration application form
- Six passport size photos of the applicant
- A copy of the photo page within the passport
- A copy of the visa page within the passport
- Proof of address, such as a driver's license or utility bill, from the visa holder's home country
- A notarized copy of a lease deed/agreement or a C-Form from a hotel of residence
- Visa registration fees

The employer must ordinarily provide:

- Two copies of a permission letter that requests approval for the applicant's visa registration
- Two copies of a sponsorship letter that pledges responsibility for the applicant's activity in India and promises to repatriate the applicant at company cost if any adverse conduct comes to notice
- Two copies of a letter confirming the visa holder's residential address in India
- Two copies of an employment contract that specifically states the monthly salary, designation, tenure of employment, etc.
- The company's Incorporation Certificate

All documents, with an exception for the Incorporation Certificate, must be original copies, drafted on company letterhead, signed by a senior manager, and marked with the company's official stamp. 

# Due Process in Terminating an Employee in India

By Dezan Shira & Associates  
Editor: Siddhartha Thyagarajan

Employers are exposed to a number of legal and reputational risks resulting from wrongful termination, or not following due process. Employers should, therefore, plan to construct contracts and human resource (HR) materials to ensure that senior management, HR personnel and employees are fully apprised of their rights and responsibilities.

There is no standard process to terminate an employee in India. An employee may be terminated according to the individual labor contract signed between the employee and the employer, if the contract defines a process for termination. Employers should be aware, however, that labor laws supersede the provisions of labor contracts – any termination policy or clause outlined within a contract should be checked against the law by a professional.

In the case that there is no labor contract, or the labor contract does not define a method of termination, then the employer has to follow the state law. In this scenario, an employer needs to abide by India's distinct, state-specific labor legislations in order to terminate the employee.

## Pre-defined Termination

In most cases, employment contracts are very specific about the process for terminating employment. This is mostly the case when termination is by mutual agreement, and in particular in cases where contractual employment is set for a fixed period. For instance, consultants with

international organizations, or interns at private organizations, often have defined employment periods.

An employee is considered terminated at the conclusion of such a contract, unless a new contract is offered or the clauses in the initial contract are amended. As in most countries, employees that are terminated by employers are often given one month notice or payment of one month of wages in lieu thereof.

## Termination by Law

As previously mentioned, any termination needs to comply with federal and state law because these laws supersede contract provisions. However, state law becomes particularly important when no defined procedure for termination exists. In such scenarios, state law becomes the rule of thumb for terminating an employee. State law itself is dependent on the area of operations of the employer.

In the below section, we examine state laws for termination in several prominent investment destinations, including the Delhi Union Territory, Maharashtra, Karnataka and Tamil Nadu.

### *The Delhi Shops & Establishments Act, 1954*

An employer cannot terminate an employee who has been with the corporation for more than three months without giving the employee at least 30 days of notice or a salary in lieu of such notice. An employer need not give notice if misconduct is



the cause for termination. However, an employee should have an opportunity to reasonably explain the charge against them prior to termination.

### *The Maharashtra Shops and Establishments Act, 1948*

An employer cannot terminate an employee who has been with the company for more than a year without giving the employee at least 30 days of notice in writing. If an employee has been with the company for more than three months but less than a year, the employer needs to give at least 14 days of notice. The notice is not necessary if an employee is being terminated for misconduct.

### *The Karnataka Shops and Establishments Act, 1961; the Tamil Nadu Shops and Establishments Act, 1947*

An employer cannot terminate an employee that has been with the enterprise for more than six months, except for a 'reasonable cause'. In addition, an employer must provide a one month notice. If misconduct is the cause for termination, no notice or associated payoff is required.

### *The Industrial Disputes Act, 1947*

This Act applies to workers who are not working in a managerial or administrative capacity. The Act states that any such employee who has been employed for greater than a year can only be terminated after permission is granted by a suitable government office. Additionally, an employer must provide valid reason for termination and pay a severance amount, which is equivalent to 15

days' average salary for each year of uninterrupted employment.

## Protections for Employees

Laws in India offer employees a great degree of protection, and both the judiciary and the government tend to have a pro-worker stance in employment-termination disputes. It is therefore not unusual for employees who have been dismissed from employment to exercise their right of appeal. In these cases, employees often challenge their dismissal on the ground that there was no reasonable cause for dismissal or that they had not been guilty of misconduct as held by the employer.

### *Impact on Employers*

Wrongful termination, or not following due process as defined by the various state laws, could result in legal consequences for the employer. In addition, courts may order the employer to pay fines and award additional compensation to an employee that was terminated.

Employers that review labor laws and explicitly state procedures for terminating employees in the contracts significantly reduce the potential for labor disputes related to the termination of an employee. Beyond this, however, employers must ensure that management teams and HR professionals are fully briefed on termination procedures. Contracts can protect employers; however, management teams and HR professionals must comply with these procedures to ensure their effectiveness. 🇮🇳

## Termination Procedures in India



### Termination for Cause

- Willful insubordination or disobedience
- Theft, fraud or dishonesty
- Willful damage to or loss of employer's goods
- Taking or giving bribes or any illegal gratification
- Absence without leave for more than 10 days
- Habitual late attendance
- Disorderly behavior during working hours
- Habitual negligence of work



### Ordinary Termination (30 Days' Notice)

- No legislated reasons. However, the employer will have to notify the relevant government authority of a termination event, and courts may demand a fair hearing for the employee. As a result, these types of terminations can be very protracted



### Severance Payment Due

- Owed in ordinary terminations. Only owed in terminations upon expiry if the employee has been with the company for at least 2 years and the reason for termination is redundancy
- Calculated on a case-by-case basis on duration of employment, performance and salary

 EXPERT COMMENTARY

# Best Practices for Attracting and Retaining Employees in India



**Rohit Kapur**

Country Manager

Dezan Shira & Associates India

India is a leader in labor cost competitiveness. Although still behind Vietnam, where labor costs average US \$0.83 per hour, India's US \$0.92 per hour is competitive, and compares favorably to the \$3.52 for the same hour in China. India's labor rates also compare favorably to Indonesia, where labor costs US \$1.70 an hour. India has become a favored destination for employers due to these low wages.

India is also one of the largest producers of human capital in the world. India has an estimated workforce strength of 450 million – with an average age of 23. Although graduation rates are difficult to obtain, government accredited universities reported over 23 million students enrolled in 2014. More generally, the country hosts the second highest number of English speakers in the world, as well as a large multi-cultural and aspirational workforce enabling flexibility for employers and customers.

Despite the low cost of labor and large labor pool, the competition for talent is becoming increasingly more competitive. Senior executives in the information technology (IT) and business process outsourcing (BPO) industry, for example, assess competition for graduates as 'high' in many Tier 1 cities – turnover rates can surpass 25 percent in these cities, while the national average for the industry currently hovers between 15 and 20 percent. Manufacturers, on the other hand, often struggle to source experienced management teams and skilled workers. In some less-developed areas of the country, local power brokers seek to exert influence over blue-collar labor markets.

## Best Practices

Given this diverse, rapidly developing and competitive labor market, employers need to place an increased level of importance on working conditions to attract and retain employees. Labor experts have identified the following factors as prominent considerations for Indian professionals.

### *Career Growth Prospects*

Graduates and professionals are drawn to companies that give year-on-year promotions and don't have mandatory minimum experience requirements before awarding promotions. This low-ceiling for promotions is partly a reflection of the competitiveness of the labor market – most competent professionals are able to leverage their experience to engineer promotions with competitors. Beyond annual promotions, many professionals in India prefer workplaces where merit is rewarded as frequently as possible and long-term growth prospects are strong.

### *Financial Compensation*

HR professionals often note that compensation packages are a significant factor after career growth prospects. Many Indian professionals consider their compensation package as a key factor influencing their decision to join a company, remain in their position or change careers. In order to attract and retain the best talent, companies should plan to offer salaries that are at least 10 percent higher than competitors in the locality.

Employers that cannot compete financially with others in their industry should consider locating their business in Tier II or III cities, where salaries are generally lower. Alternately, employers can seek to offer job candidates and employees a wide variety of career growth and learning opportunities, which are highly valuable to graduates and professionals in India. While money is important, it is not the sole factor that determines if an application will benefit the firm.

### *Work-Life Balance*

Employees in India typically view employer's policies for overtime, work-from-home as well as medical and vacation leave as part of their work-life balance. Companies that are fairly liberal with such policies are typically viewed in more favorable terms by Indian professionals. Foreign employers in India should recognize that families take priority over work and adopt a family-friendly approach to support better work-life integration. This can be achieved by allowing leave at short notice for family emergencies or a flexible holiday schedule that respects different ethnic and religious groups' traditions.

### *Job Stability*

Job security and stability are vital factors for graduates and professionals making career decisions. Labor experts note that it is not uncommon for Indian candidates to accept a lower compensation package for a more stable role and company over a higher-paying, less stable job. While this mindset is changing, and young professionals don't mind taking less stable jobs as much as older generations, there is still a clear-cut preference for more stable jobs in India.

### *Working with Indians*

Business etiquette in India is informed by a complicated mix of Eastern and Western traditions. For foreign investors doing business in India, it is vital to cultivate a basic understanding of local customs to remain effective in meeting business goals.

Honor and shame play a more important role in India than they do in the West. In the workplace, these cultural influences can affect everything from management to sales. In the event of unconstructive management feedback, an Indian employee is more likely to feel dishonored and shamed – with little

opportunity for recourse or redemption – than the average Western employee. During the sales process, a Western executive that suggests that an Indian client should improve a business process may inadvertently dishonor or shame the client.

In India, it is important to appeal to a person's honor. In fact, 'namaste', a traditional greeting, loosely translates to "I bow to the divine in you". While this may appear irrelevant, this demonstrates the importance of beginning a discussion with a focus on honoring a business colleague or associate, which can make a difference on whether a consensus is reached with an Indian counterpart.

### *Linear and Non-linear Work Styles*

After establishing a relationship based on cultural respect, it is important for foreign businesspeople to consider how to achieve their business goals. Western businesspeople often use a linear approach to business strategy and processes. Under a linear approach, a businessperson may follow a step-by-step process to achieve goals by a certain date. Western personnel may employ a direct and reductionist method to achieve goals. A linear approach prioritizes getting the job done.

In India, however, some local personnel may prefer a more indirect and holistic method for their work. This can be understood as a non-linear approach to work. In a non-linear approach, personnel explore their relationship with a web of factors that impact a process or goal. A non-linear approach prioritizes personal and professional development.

Foreign managers or salespeople in India that work in a linear fashion may sometimes feel that locals are unresponsive or disinterested in their business goals. However, rather than passivity or disinterest, locals are likely exploring their personal relationship with the business process or goal before committing to the best possible way to achieve that goal.

Foreign businesspeople that create voice opportunities for locals – through business meetings or social events – accommodate non-linear work styles without compromising linear business objectives. 🇮🇳



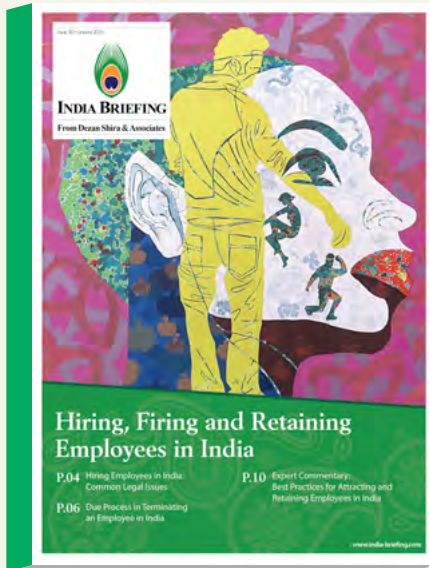
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*SMEs in India may find that they need to outsource heavy HR functions such as contract drafting and review, payroll, staff manuals and visa support services. Dezan Shira & Associate can assist with all of these functions. For more information, please contact us at [india@dezshira.com](mailto:india@dezshira.com)*

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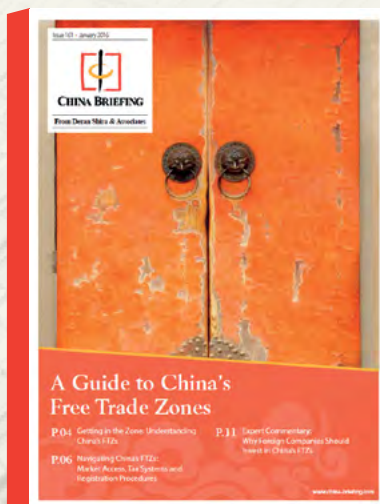
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