

Media Hotline

October 22, 2019

FILMING IN INDIA: A WORLD OF OPPORTUNITIES

This article was first published by the AMEC (Association of Media & Entertainment Counsel) at the following link <https://theamec.org/filming-in-india-a-world-of-opportunities/>

Slumdog Millionaire, Mission Impossible 4, Eat Pray Love and The Dark Knight Rises - what do these movies have in common? Apart from being great entertainers, all have scenes shot in India.

Films like these showcase the wonderful diversity of India to the world, promote tourism and boost the economy. Recognizing this potential, India has taken further steps to open its doors (and film sets!) to foreign productions.

Through this article, we discuss some key considerations for filming in India.

PERMISSIONS

Filming of foreign films in India requires permissions from the central and the state governments. The Ministry of Information and Broadcasting (MIB), Government of India has set up the Film Facilitation Office (FFO). Foreign productions or their line producers (appointed for facilitating filming in India) can apply for filming permissions on FFO's online portal. The portal is easy to navigate, and the FFO officers are very helpful in case of any hiccups. Along with the application, the script (of the film, or of the episodes (for series) that are to be shot in India), a synopsis/concept note, details of the personnel entering the country, and the equipment being imported have to be submitted.

The submitted script is reviewed, mainly to ensure that there is no content of political, religious or socio cultural sensitivity, or content that is derogatory to the India. Barring such content, permissions are granted easily (generally within three weeks). At times, the permission letter states that a liaison officer will be attached to the filming, in order to ensure that the filming is done as per the terms of the permission letter.

Production houses / line producers (depending on the applicant) are required to submit an undertaking to the FFO with respect to compliance of the permission letter. The template of this undertaking is available at www.ffo.gov.in, which can be customized as per the terms of the permission letter.

FILMING AND CONTRACTING

As such, foreign productions may apply for permits themselves, as well as enter into contracts with Indian cast and crew, and film in India managing by themselves. However, for practical and tax reasons, foreign productions prefer to appoint local line production entities.

Line Producers take care of the on-ground considerations of filming, such as coordinating with the FFO, hiring local talent, service providers and vendors; engaging with the police and municipal authorities, and organising the shoots.

The line production agreement would outline the services of the line producer, the estimate of local budget and service fee. Typically, this is a "works for hire" contract where the foreign production is the first owner of intellectual property. However, it is important that the agreements that line producer enters into with cast and crew have appropriate IP and waiver clauses. Sometimes foreign productions prefer to give their template agreements / clauses to the line producer, for such production contacts. Further, post the #metoo controversy, foreign productions sometimes mandate the line producer to make sure that their global policies and best practices are followed by all those involved in filming process in India. FCPA clauses are also a norm.

Location clearance: Depending on the location of filming, apart from FFO norms, other location clearances may also get triggered. Filming in sensitive areas of Jammu & Kashmir, or North Eastern India require specific approval from the Ministry of Home Affairs, which can be processed by the FFO as a part of the application to film. Further, state laws require additional permits to be taken from the police, municipal authorities or authorized bodies for filming is to be done in public spaces, prisons, national parks, or in protected monuments and archaeological sites, ports, etc.

Filming with police, military official uniforms etc.: Special permits may be required for use of current police or military uniforms, their vehicles etc.

Filming animals: Filming any live animals/birds requires permission from the Animal Welfare Board of India (AWBI). The AWBI further bans the filming of certain animals, such as bears and leopards.

Filming with drones: India very recently introduced a policy to regulate the use of drones in India. This policy introduces stringent rules for the importation and the use of drones. Different permissions are required depending on the size of drones. Filmmakers should be sure to keep the policy in mind when picking the specifications of the drones to be used and the locations in which drone filming is contemplated.

Visa and Immigration: Any personnel entering the country / imported equipment would need the correct visas in

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place, along with the required permissions and custom duties. The FFO will help with this process.

TAX CONSIDERATIONS

As money flows across borders in international film productions, tax considerations form a key part of film budget. A few aspects to note as:

- i. Payments made by foreign production house to line producer may be subject to withholding tax. Credit can be claimed against such withholding by the line producer.
- ii. The foreign production house should also evaluate the risk of permanent establishment in India due to presence of certain crew members.
- iii. The members of foreign cast and crew may also get liable to get taxed in India in some cases. Hence, the country from which they are generally resident, number of days likely to be spent in India etc. should be examined. At times, the payment that production house makes to the cast and crew may get subject to withholding tax in India.
- iv. The goods and service tax (GST) which has been a fairly recent tax levy is required to be paid by local entities such as line production companies. Line producer may be able to claim refund of this GST (or some part of it) from the tax authorities at a future date as export of services are not taxable in India. However, line producers may insist that such payments be paid to them so they don't go out of pocket. In such cases, structuring the payments to line producer including GST refunds also become important.

On a separate and futuristic note, to further attract foreign productions, the Government is also reportedly working towards granting tax refunds and subsidies to foreign productions for filming in India.¹

OTHER CONSIDERATIONS

In addition, India has in place a number of co-production treaties with countries such as the United Kingdom, Spain, Italy, France, Germany, China, Korea and New Zealand. These co-production treaties grant certain benefits to the film makers in both countries, and vary depending on the specific treaty in force. These benefits include exemptions from import duty and taxes, permission for those employed in the production to enter and remain in the country through the making or promotion of the film, and other fiscal benefits.

Separately, India has exchange control regulations which govern the manner in which funds are transferred across borders. It is important to keep this in mind while transferring funds across borders

To conclude, while filming in a foreign country may seem daunting, India's push to ease the filming process is a welcome move for foreign production houses. This step by step guide issued by the FFO is an excellent starting point for anyone considering taking the plunge²!

– Inika Charles, Aarushi Jain & Gowree Gokhale
You can direct your queries or comments to the authors

¹ https://www.business-standard.com/article/news-ians/india-poised-to-create-film-production-incentives-119051600505_1.htmlhttps://www.business-standard.com/article/news-ians/india-poised-to-create-film-production-incentives-119051600505_1.html (last accessed October 1, 2019).

²<https://www.ffa.gov.in/en/permissions/step-by-step-guide>.

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