

Foreign entities setting up presence in India

Current Registration Requirements Direct Tax and GST

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Backdrop

- » Is doing business in India easy?
- » Are our registration processes really rigid and time consuming?
- » Where is the gap?
- » Can we as professionals bridge the gap?
- » If yes, how do we bridge the gap?



Direct Tax Registrations

Direct Tax Registrations

Indian Company

Foreign Company

Individuals

Direct Tax Registrations

From an Indian
Company's Standpoint

Foreign Shareholders
/ Related Parties

Foreign Directors

Expatriates

Direct Tax Registrations

From a Foreign
Company's Standpoint

Entity Registration (PE
Scenario vs. Non-PE Scenario)

Authorised Signatory /
Foreign Directors

206AA / Lower TDS
perspective

Equalisation Levy

Foreign Nationals working in
India

Direct Tax Registrations

Individuals

Directors in an
Indian company

Authorised
Signatories

Expatriates

Requirements for PAN

- » Form foreign entities / individuals – Form 49AA
 - » Application Form
 - › Online vs. Physical Form
 - › Details in the application form
 - › Signing Instructions
- » Practical Issues faced
 - » Online form – easing out the process?
 - » Non-availability of certain data / details
 - » Signature not in prescribed manner

Requirements for PAN

» Supporting Documents - Individuals

» Proof of Identity

- › Passport or
- › OCI card or
- › Citizenship identification or Tax identification number (Apostilled)

» Proof of Address

- › Any one of the above, or
- › Bank account statement in the country of residence, or
- › Non-resident External (NRE) bank account statement in India, or
- › Certificate of Residence in India or Residential permit issued by the State Police Authorities, or
- › Registration certificate issued by the Foreigner's Registration Office showing Indian address, or
- › Visa granted & Copy of appointment letter or contract from Indian Company & Certificate (in original) of Indian address issued by the employer.

Requirements for PAN

- » Supporting Documents - Other persons
 - » Copy of Certificate of Registration issued in the country
 - » Registration certificate issued in India or of approval granted to set up office in India by Indian Authorities

Sounds fairly simple?
Think Again

Practical issues

» Availability of documents

» Individuals

- › Passport allowed as proof of residence, but many passports do not have residential address. Thus, can't be used
- › The officers at TIN Facilitation centres refuse to accept citizenship card in some cases
- › Insistence on bank statements for proof of address

» Companies

- › Authorities insist on document similar to certificate of incorporation
- › Some countries issue business license which have expiration dates
- › Not accepted by some Tin Facilitation Centres

» Translation & getting the documents attested

» Notarisation vs. Attestation vs. Apostille

» High Cost vs. Lead Time

OTP for generating e-PAN card only received on Indian numbers

Tax Account Number (TAN)

- » When is TAN required by a Foreign entity?
 - » Entities making payment of income which is taxable in India. For instance:
 - › Payment of salary in India by Foreign entity
 - › Payment of professional fees
- » Online application
- » Offline application in Form 49B
- » Supporting Documents
 - » need not be accompanied by any documents
 - » If online application – Signed acknowledgement to be sent to NSDL
- » Simpler process compared to PAN



Indian address
mandatory!

Instructions state that TAN application should not be made with a foreign address

Tax Filing Requirements – Foreign company

- » Liable to file tax return in India
 - » Exemption – Categories of income taxed on gross basis
 - › Provided tax deductible at source has been deducted **and** the rate of such deduction is not less than the rate specified under the Act for taxability
- » Transfer Pricing compliances?

Case specific analysis and advisory critical

Tax Return of Foreign companies

Who can be the Signing Authority for Foreign companies filing tax returns in India?

A non-resident director, who does not have a PAN



Any Authorized person having PAN - Execution of Power of Attorney

What are the requirements for Digital Signature while filing tax return of a foreign company?

In case of a non-resident director - DSC without PAN encryption will suffice

In case of authorized person - DSC should be PAN encrypted





GST Registration

Non-Resident Taxable Person

- » Any person who occasionally undertakes transactions involving the supply of goods or services (as principal or agent or otherwise), but who has no fixed place of business or residence in India.
- » No minimum threshold for registration
- » Assign Indian Authorized signatory - person resident in India having a valid Permanent Account Number
- » Apply using the form GST REG-09
- » To be applied at least five days prior to the commencement of business
- » Estimated Tax liability to be paid in advance
- » Registration valid for 90 days (can be extended for further 90 days)
- » ITC of only imported goods available

Mandatory to appoint an Indian authorised signatory and the contact details like the mobile number and email ID will be of the authorised person. The Non-Resident Person is dependent on Indian authorised person for GST

Documents required

- » PAN equivalent number of home country
- » Photo of authorized signatory
- » Letter of authorization
- » An address / place of business in India (although the registration is for entities who do not have place of business in India and undertake occasional supply in India)

Normal taxpayer

- » Indian companies & foreign entities having fixed place of business in India
- » Rule 8 of CGST Rules 2017
- » Part A of FORM GST REG-01 declaration of –
 - » Permanent Account Number,
 - » mobile number,
 - » e-mail address,
- » Generation of Temporary reference number
- » Application in Part B of FORM GST REG-01 after quoting reference number

Only Indian mobile numbers are allowed in the form

Documents required

- » Certificate of Incorporation/establishment
- » Photos of promoters/partners
- » Photo of authorized signatory
- » Letter of Authorisation or Copy of Resolution passed by BoD/ Managing Committee and Acceptance letter
- » Legal ownership document for principal place of business
- » Either Aadhar verification of authorized signatory or physical verification of premises

To change the authorized person in the future, DSC of the existing authorized person is required. May create an issue if authorized person leaves with immediate effect. No alternative available for this process

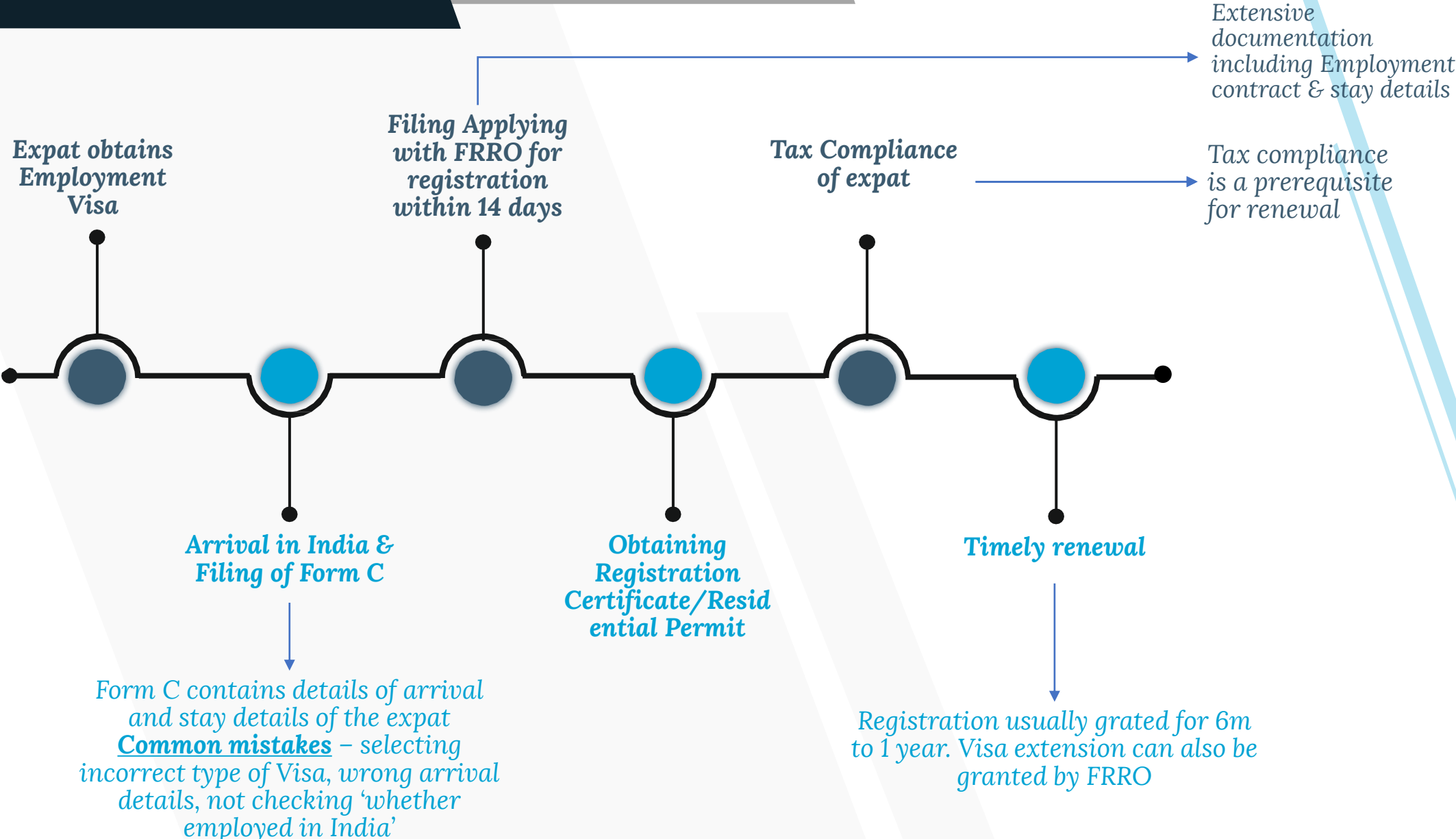


Other registrations for foreign individuals

Foreign Regional Registration Office (FRRO)

- » Visa Regulations issued by Ministry of Home Affairs
- » Applicable to all foreigners visiting India on long term visa (more than 180 days) are required to get registered within 14 days of Arrival:
 - » Student Visa (provisional registration – 14 days, final registration – 90 days on submitting stay details)
 - » Medical Visa
 - » Project Visa
 - » Employment Visa
 - » Business Visa (registration required only if stay exceeds 180 days during a calendar year)
- » Application for registration on e-FRRO Portal
- » Other applications: Visa Extension, Visa Conversion, Exit Permit

Employment Visa - Process of obtaining registration

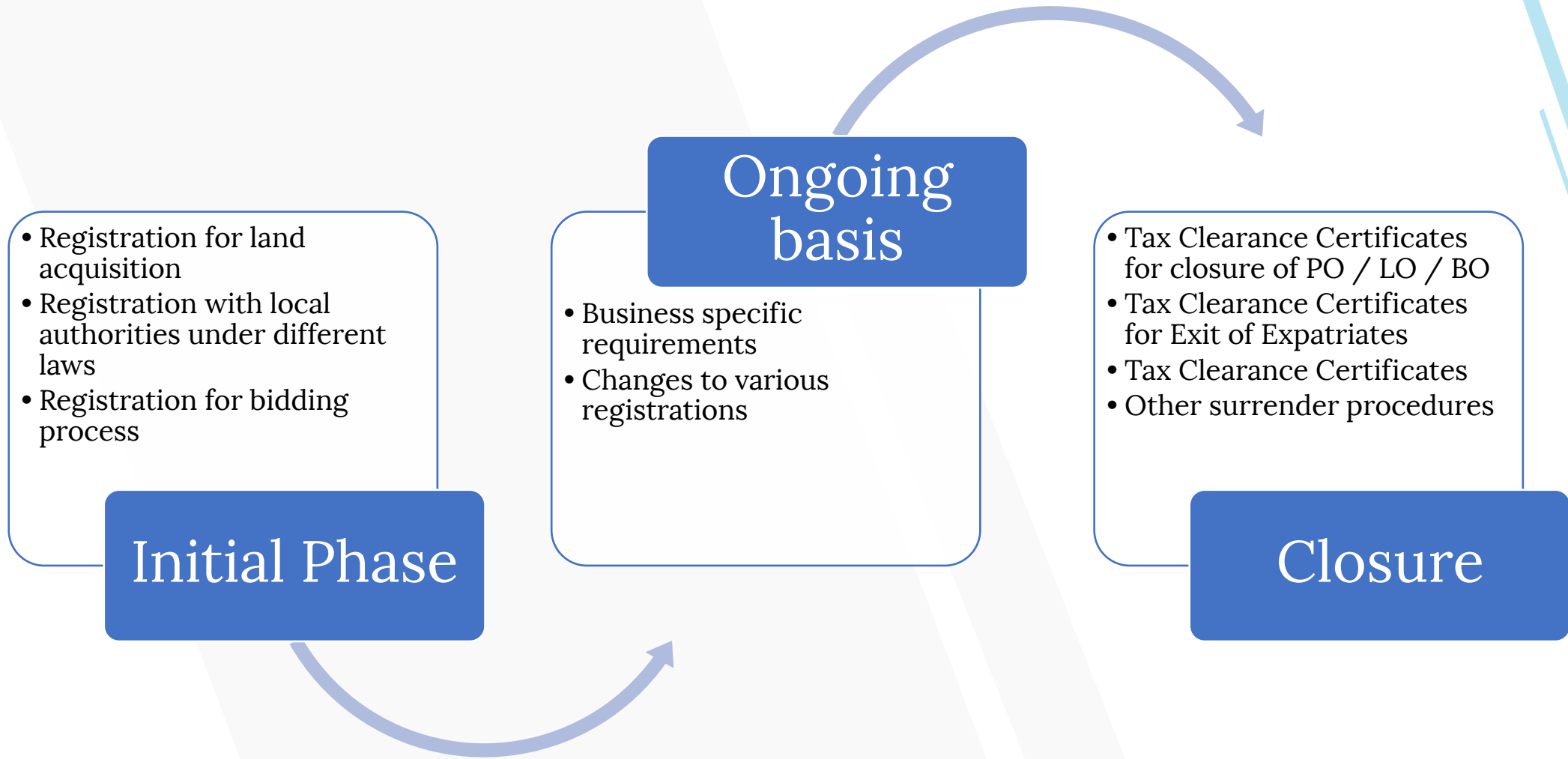


Documents required

- » Documents require change as per the type of Application made
- » Common documents include:
 - » Application form
 - » Forwarding letters
 - » Photo
 - » Proof of Residential address in India – Form C, rented premises
 - » Copy of Passport and India Visa
 - » Undertaking from Local person
 - » Copy of agreement / employment contract etc.
 - » Copy of PAN Card, Income tax compliance

Communication with FRRO officials

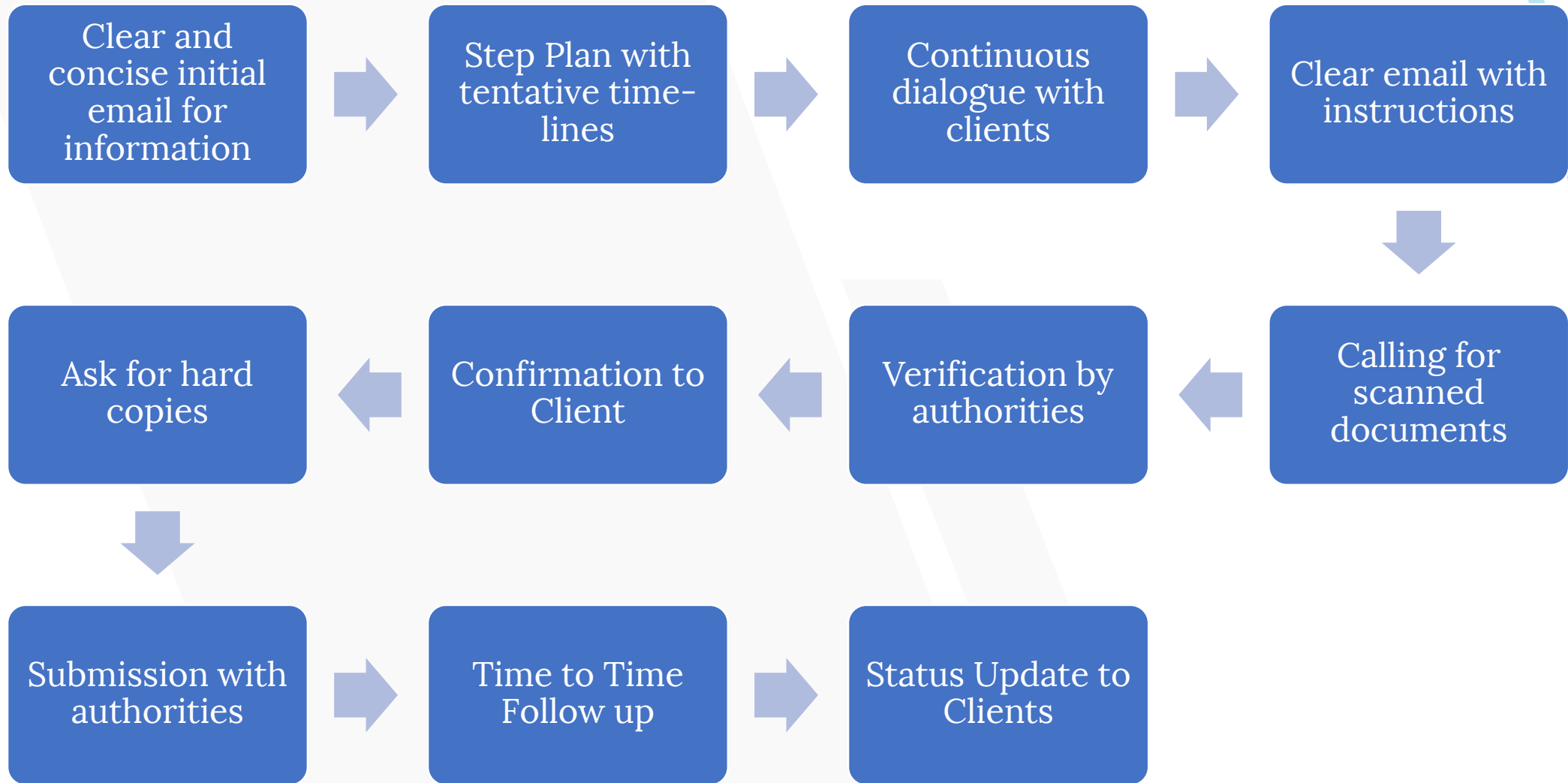
Certain other areas



What should we do?

- » Plan in advance
- » Communication is the key
 - » Explaining the Government's requirements
- » Strict Review Process
- » Draw a process in consensus with the client
- » Added advantages
 - » Understanding of the business
 - » Understanding of overseas law

Get our basics right - Illustrative plan of action



Thank you
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