

Study Circle

CS EXECUTIVE

NEW SYLLABUS

SETTING UP OF BUSINESS

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SETTING UP OF BUSINESS

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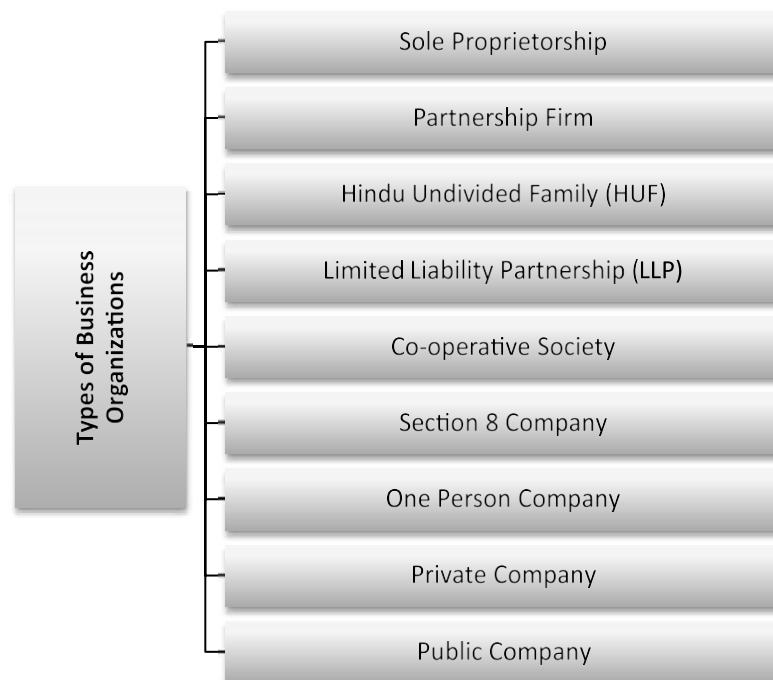
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1. TYPES OF BUSINESS ORGANISATION

Business organization refers to all necessary arrangements required to conduct a business in an **optimized manner**. It refers to all those steps that need to be undertaken for establishing and maintaining relationship between **men, material, and machinery** to carry on the business efficiently for earning profits. This may be called the process of **planning and organizing** which are the integral part of the business management.

The arrangement which follows this process of organizing the factors required for commencing and carrying on the business is called a business undertaking or organization.



SOLE PROPRIETORSHIP

Sole proprietorship is a form of business, wherein one person owns all the assets of the

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business, no legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship. The owner reports income/loss from this business along with his personal income tax return.

FEATURES OF SOLE PROPRIETORSHIP

Unlimited Liability:

Easy to Start:

PARTNERSHIP FIRM

When two or more people come together and pool funds to start a business, it is known as a partnership firm. The primary aim of partnership firms is to earn profit. Partnership firms are created by drafting a partnership deed among the partners. Partnership firms in India are, governed by the Indian Partnership Act, 1932.

FEATURES OF PARTNERSHIP FIRM

Unlimited Liability:

Easy to Start:

Relatively Inexpensive:

HINDU UNDIVIDED FAMILY(HUF)

A Hindu family can come together and form a HUF. HUF is taxed separately from its members. One can save taxes by creating a family unit and pooling in assets to form a HUF. HUF has its own PAN and files tax returns independent of its members.

FEATURES OF HINDU UNDIVIDED FAMILY(HUF)

There should be **at least two male members** in the family to form a HUF. They should inherit the ancestral property. All of the members enjoy this property and have an equal share in that property. Thus, any child taking birth in that family becomes a member of the HUF. There is no requirement for an agreement to become a member

LIMITED LIABILITY PARTNERSHIP

Limited Liability Partnership is an alternate corporate business entity that provides the

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benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm, introduced in India by way of Limited Liability Partnership Act, 2008.

FEATURES OF LIMITED LIABILITY PARTNERSHIP

Suitable for Non-Scalable Businesses:	Fewer Compliances:	Number of Partners:
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CO-OPERATIVE SOCIETY

A cooperative organization is an association of persons, usually of limited means, who have voluntarily joined together to achieve a common economic end through the formation of a democratically controlled organization, making equitable distributions to the capital required, and accepting a fair share of risk and benefits of the undertaking.

FEATURES OF CO-OPERATIVE SOCIETY

A society is an association of persons united together by **mutual consent** to deliberate, determine and act jointly for some common purpose. Societies are usually registered for promotion of charitable activities like education, art, religion, culture, music, sports, etc.

SECTION 8 COMPANY

Section 8 company is a company established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members. Section 8 Companies are registered under the Companies Act, 2013.

ONE PERSON COMPANY

An OPC means a company with only 1 (one) person as a member. Share holder can make only 1 nominee, he shall become a shareholder in case of death / incapacity of original

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stakeholder. The constitution of a One Person Company (OPC) is a strong improvement over sole proprietorship. It gives a single promoter full control over the company while limiting his/her liability to contributions to the business.

FEATURES OF ONE PERSON COMPANY

For Solo Entrepreneurs: A big improvement over the sole proprietorship firm, given that the liability is limited, the OPC is meant for solo entrepreneurs. Furthermore, given that there must be a nominee, it enabled perpetual existence of the OPC.

Low Compliance Requirements: Various exemptions has been given by the Central Government to OPC such as: exemption from holding the Annual General Meeting of the company, financial statement and Board's report can be signed only by one director, it does not need to include Cash Flow Statement as part of its financial statement etc

Minimal Tax Advantages: The OPC, like the private limited company, has some industry-specific advantages. But taxes are to be paid at a flat rate on profits.

PRIVATE COMPANY

Private company is a company which has the following characteristics:

- Shareholders right to transfer shares is **restricted**
- Minimum number of **2 members** in company
- Number of shareholders is limited to **200**
- An invitation to the public to subscribe to any shares or debentures or any type of security is **prohibited**.

PUBLIC COMPANY

A public company is a company which has the following characteristics:

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- Shareholders right to transfer share is **not restricted**
- Minimum **7 members**
- An **invitation to the public** to subscribe to any shares or debentures or any type of security is **permitted**.

2. SELECTION OF BUSINESS ORGANIZATION

A business enterprise can be owned and organized in several forms. Each form of organization has its own merits and demerits. The ultimate choice of the form of business depends upon the balancing of the advantages and disadvantages of the various forms of business. The right choice of the form of the business is very crucial because it determines the power, control, risk and responsibility of the entrepreneur as well as the division of profits and losses. Being a long-term commitment, the choice of the form of business should be made after considerable thought and deliberation. The selection of a suitable form of business organization is an important entrepreneurial decision because it influences the success and growth of a business - e.g., it determines the division or distribution of profits, the risk associated with business, and so on.

3. FACTORS GOVERNING THE DECISIONS FOR SUITABLE FORM OF ORGANIZATION

1. Nature of Business Activity- This is an important factor having a direct bearing on the choice of a form of ownership.

2. Scale of Operations

Scale of Operations		
Small	Medium	Large
Sole Proprietor or	Partnership or LLP	Company

OPC

3. Capital Requirement-

4. Managerial Ability

5. Degree of Control and Management

6. Degree of Risk And Liability

7. Stability of Business

8. Flexibility of Administration

9. Division of Profit

10. Managerial Need

Notification Dated 26th June, 2020. After this Notification an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely-



Micro Enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;

A small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;

A medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees;

11. Secrecy

12. Costs, Procedure and government regulation

13. Tax Implication

14. Geographical Mobility

15. Transfer of ownership

16. Independence

4. SYNOPSIS FOR CONSIDERATION OF FORM OF ORGANIZATION

The consideration of the various factors listed above clearly shows that:

These factors do not exist in **isolation, but are interdependent**, and all these factors are important in their own right.

The various factors listed above are only **major factors, and in no case, they constitute an exhaustive list**. Depending upon the requirements of the business, the demands of the situation and sometimes even the personal preference of the owner, the choice of a form of ownership is made.

The problem in choosing the best form of business organization is one of the analyzing and weighing relative advantages and disadvantages to find the one that will yield the highest net advantage and for that, weights may be assigned to different factors depending upon their importance in each form of organization, and the type of organization that obtains the maximum weights may be ultimately selected.

5. COMPANY AS A CHOICE OF BUSINESS ORGANIZATION FOR START-UPS.

Start-ups prefer company as a business structure because it allows outside funding to be raised easily, limits the liabilities of its shareholders and enables them to offer employee stock options to attract top talent. As these entities must hold board meetings and file annual returns with the Ministry of Corporate Affairs (MCA), they tend to be viewed with more credibility than an LLP or General Partnership.

1. INTRODUCTION

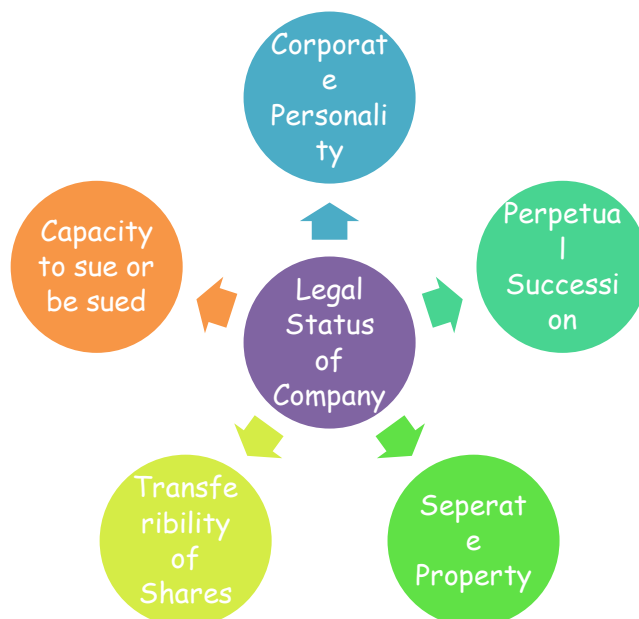
The word "Company" is combination of the Latin word 'Cum' meaning "with or together" and "Panis" meaning "bread." Originally, it referred to a group of persons who took their meals together. A company is a group of persons who have come together or who have contributed money for some common purpose and who have incorporated themselves as a separate legal entity in the form of a company for that purpose.



CAN A COMPANY HAVE STATUS OF CITIZEN UNDER THE CONSTITUTION OF INDIA

Supreme Court of India has held in the case of ***State Trading Corporation of India vs. CTO*** that a company cannot have the status of a citizen under the Constitution of India.

2. FEATURES OF COMPANY



3. KINDS OF COMPANIES

The Companies Act, 2013 provides for the kinds of companies that can be registered under the Act. The three basic types of companies which may be registered under the Act are:

(a) Private Companies;	two or more persons, where the company to be formed is a private company; or
(b) Public Companies; and	7 or more persons, where the company to be formed is a public company;
(c) One Person Company (to be formed as a Private Limited Company).	one person, where the company to be formed is a One Person Company that is to say, a private company

Section 3 of the Companies Act 2013 read with the Companies (Incorporation) Rules, 2014, states that:

- 1) A company may be formed for any lawful purpose by-
 - (a) **seven or more persons**, where the company to be formed is a public company;
 - (b) **two or more persons**, where the company to be formed is a private company; or
 - (c) **one person**, where the company to be formed is a One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of the Act in respect of registration.

- 2) A company formed under sub-section (1) may be either-
 - (a) a company limited by shares; or
 - (b) a company limited by guarantee; or
 - (c) an unlimited company.

4. CLASSIFICATION OF COMPANIES

1. Classification on the basis of Incorporation: Companies may be incorporated under the following categories:

(a) **Statutory Companies:** Statutory Companies are constituted by a **special Act of Parliament or State Legislature**. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are **Reserve Bank of India, Life Insurance Corporation of India, etc.**

(b) **Registered Companies:** The companies which are incorporated under the **Companies Act, 2013** or under any previous company law and registered with the Registrar of Companies fall under the category of Registered Companies.

2. Classification on the basis of Liability: Companies can be classified into following three categories on the basis of Liability: -

(a) **Unlimited Companies:** The liability of members of this type of company is unlimited. Section 2(92) of the Companies Act, 2013 provides that unlimited company means a **company not having any limit on the liability of its members**. Such companies may or may not have share capital. They may be either a public company or a private company. The members are liable to the company and to any other person.

(b) **Companies limited by guarantee:** Section 2(21) of the Companies Act, 2013 provides that a company that has the liability of its members limited to such amount as the members may undertake respectively, by the Memorandum of Association, to contribute to the assets of the company in the event of its **being wound-up**, is known as a company limited by guarantee.

(c) **Companies limited by shares:** In this type of company, the liability of its members is limited by the liability clause in the Memorandum of Association to the amount, if any, unpaid on the shares respectively held by them. Section 2(22) of the Companies Act, 2013 provides that "company limited by shares"

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means a company having the liability of its members limited by the memorandum to the amount, if any, **unpaid on the shares** respectively held by them.

3. Other Forms of Companies:

(a) **Section 8 Companies:**

(b) **Foreign Companies:**

(c) **Producer Companies:**

(d) **Nidhi:**

(e) **Listed Company:** "Listed company" means a company which has any of its securities listed on any recognized stock exchange.

(f) **"Small company"** means a company, other than a public company,—

1. paid-up share capital of which does not exceed four crore rupees, or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
2. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Provided that nothing in this clause shall apply to -

- (a) a holding company or a subsidiary company;
- (b) a company registered under section 8; or
- (c) a company or body corporate governed by any special Act.

As per [Section 2\(68\)](#) of the Companies Act, 2013, "Private Company" means a company, which by its articles—

- i. restricts the right to transfer its shares;
- ii. except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company [jointly](#), they shall, for the purposes of this clause, be treated as a [single member](#):

Provided further that—

- (A) persons who are in the [employment of the company](#); and
- (B) persons who, having been [formerly in the employment of the company](#), were members of the company while in that employment and [have continued to be members after the employment ceased](#), shall not be included in the number of members; and
- iii. prohibits any invitation to the public to subscribe for any securities of the company.

By virtue of [Section 2\(71\)](#), a public company means a company which is not a private company.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

OPC is a one shareholder corporate entity, where legal and financial liability is limited to the company only. In India, in the year 2005, the J.J. Irani Expert Committee recommended the formation of OPC. It had suggested that such an entity may be provided

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with a simpler legal regime through exemptions so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances.

NIDHI COMPANY

- ✚ The primary objective of Nidhi is to carry on the business of **accepting deposits and lending money to member-borrowers only against jewels, etc., and mortgage of property**. The principle of mutual benefit has been incorporated to pool the savings from members and lend only to members and they are **prohibited from having dealing with non-members**.
- ✚ Nidhis are not permitted to engage themselves in the business of chit fund, hire-purchase, insurance or in any other business including investments in shares or debentures.
- ✚ These Nidhis do their business only with members. **Such members are only individuals**. Bodies Corporate or Trusts are not to be admitted as members in these companies
- ✚ Nidhi means a company which has been incorporated as a Nidhi with the object of cultivating the habit of **thrift and saving** amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.

1. Characteristics of Nidhi Company

- Every Nidhi shall be incorporated as a **public company** and shall have the last words **"Nidhi Limited"** as part of its name. It shall have a minimum paid up share capital of **ten lakh rupees**.
- Every Nidhi shall, within a period of **120 days** from the date of its incorporation, file an application in form **NDH-4** ensure that it has-
 - i. **not less than two hundred members;**
 - ii. **Net Owned Funds of twenty lakh rupees or more.**
- Share capital and allotment:
 - (a) Every Nidhi shall issue **fully paid up equity shares** of the nominal value of not **less than ten rupees each**
 - (b) **No service charge** shall be levied for issue of shares.
 - (c) Every Nidhi shall allot to each deposit holder at least a minimum of **ten equity shares or shares equivalent to one hundred rupees**.

It may be noted that a savings account holder and a recurring deposit account holder shall hold at **least one equity share of rupees ten**.

2. Membership of Nidhi

A Nidhi shall not admit a body corporate or trust as a member	Every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.	A minor shall not be admitted as a member of Nidhi.
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It may be noted that deposits may be accepted in the name of a **minor**, if they are made by the natural or legal guardian who is a member of Nidhi

3. Branches of Nidhi

- (a) A Nidhi may open branches, only if it has earned net profits after tax

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continuously during the preceding 3 financial years. A Nidhi may open up to 3 branches within the district.

- (b) If a Nidhi proposes to open more than 3 branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director in Form NDH-2 with fee and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.
- (c) Nidhi shall not open branches outside the State where its registered office is situated.
- (d) Nidhi shall not open branches unless financial statement and annual return (up to date) are filed with the Registrar.
- (e) A Nidhi shall not close any branch unless -

the proposal to close the branch along with the plan as to how the existing deposits have been or shall be paid off and how the existing loan shall be recovered is duly approved by the board at its meeting;

it has obtained the approval of the Regional Director for such closure by applying in Form NDH-2 with fee at least sixty days prior to such closure.

- (f) After obtaining the approval of the Regional Director, publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure.
- (g) Fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published.
- (h) Gives an intimation to the Registrar within thirty days of such closure

4. Acceptance of deposits:

Rule 13 of the Nidhi Rules, 2014 provides that-

- (a) Fixed deposits accepted by a Nidhi shall be for a minimum period of 6 months and a maximum period of 60 months.
- (b) Recurring deposits shall be accepted for a minimum period of 12 months and a maximum period of 60 months.
- (c) The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed 2% above the rate of interest payable on savings bank account by nationalised banks.

5. Un- encumbered term deposit by Nidhi

Under Rule 14 of the Nidhi Rules, 2014, every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a Scheduled commercial bank (other than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than 10% of the deposits outstanding at the close of business on the last working day of the second preceding month.

6. Loans by Nidhi

According to Rule 15 a Nidhi shall provide loans only to its members. In the case of joint holders, loans shall be provided to the member whose name appears first in the register of members. The loans given by a Nidhi to a member shall be within the prescribed limits.

7. Rate of Interest on Loan given by a Nidhi

The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rate of interest of all classes of loans shall be prominently displayed on

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the notice board at the registered office and each branch office of Nidhi.

8. Directors in a Nidhi

The Director shall be a member of the Nidhi. The Director of a Nidhi shall hold office for a term up to **10 consecutive years** on the Board of the Nidhi.

The Director shall be **eligible for re-appointment** only after the expiration of **two years** of ceasing to be a Director. Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.

9. Dividend

A Nidhi shall **not declare dividend exceeding 25%** in a financial year.

SECTION 8 COMPANY

Section 8 company is a company established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members. Section 8 Companies are registered under the Companies Act, 2013.

Section 8 of the Companies Act, 2013 reads as under:

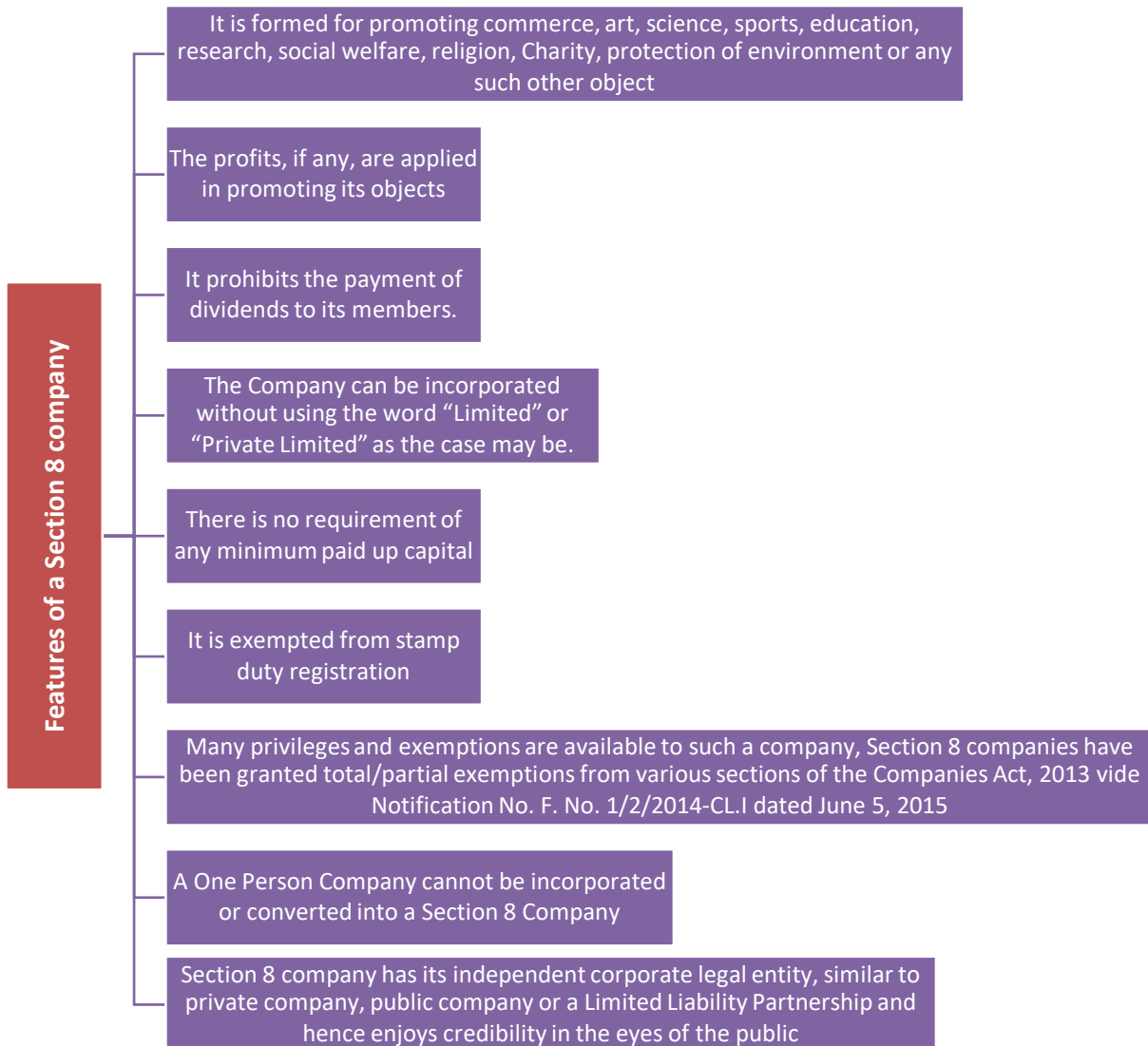
- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the **promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;**

- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.
- (3) A firm may be a member of the company registered under this section.
- (4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- (5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

1. Characteristic Of Section 8 Company



PRODUCER COMPANY

A producer company is a body corporate having objects or activities specified in Section 378B of Companies Act, 2013 and which is registered as such under the provisions of this Act or the Companies Act, 1956. The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

1. Objects of Producer Company

In terms of Section 378B of the Companies Act, 2013, the objects of a producer company registered under this Act may be all or any of the following matters:

production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit: Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

providing education on the mutual assistance principles to its Members and others;

rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce

insurance of producers or their primary produce;

promoting techniques of mutuality and mutual assistance;

welfare measures or facilities for the benefit of Members as may be decided by the Board;

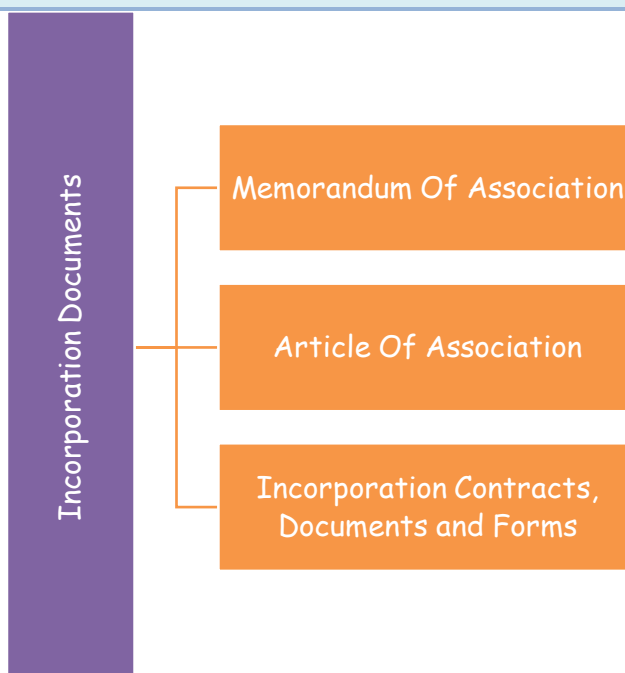
any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

Financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

As per **section 2(42)**, "foreign company" means any company or body corporate incorporated outside India which -

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode ; and
- (b) Conducts any business activity in India in any other manner.

1. DRAFTING OF INCORPORATION DOCUMENTS

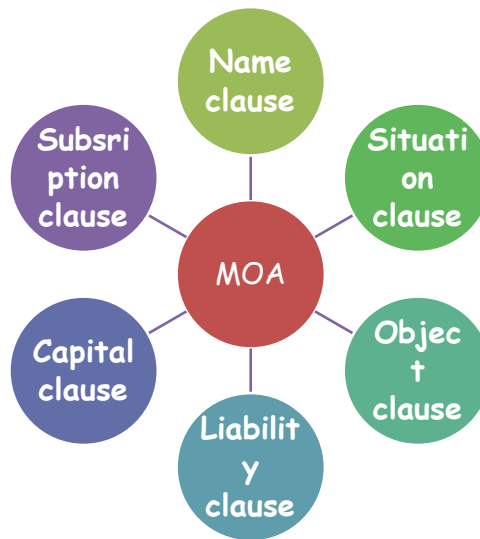


1. MEMORANDUM OF ASSOCIATION

Meaning:

The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world.

The first step in the formation of a company is to prepare a document called the memorandum of association. In fact, memorandum is one of the most essential pre-requisites for incorporating any form of company under the Companies Act, 2013



1. Name Clause

- The name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company. This shall not apply in case of companies registered under section 8.

Reservation of Name

As per section 4(4) a person may make an application, in web-based service SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) and for change of name by web service RUN (Reserve Unique Name) form in prescribed manner and accompanied by prescribed fee to the Registrar for the reservation of a name set out in the application as -

- The name of the proposed company; or
- The name to which the company proposes to change its name.

Reservation of Name for 20 days

Section 4(5) (i) lays down that upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of **20 days** from the date of approval. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of **sixty days** from the date of approval.

2. Situation Clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum.

3. Object Clause

The third compulsory clause in the memorandum sets out the objects for which the company has been formed.

The objects are divided into two sub-categories:

1. Main Objects;
2. Any matter considered necessary in furtherance thereof.

4. Liability Clause

The Liability Clause illustrates the kind of liabilities one may have if he became a member of a company. Here are some essential categories of the Liability clause:

1. Limited by Shares;
2. Limited by Guarantee;
3. Unlimited Liability;

5. Capital Clause

In the case of a company having a share capital, the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount.

6. Subscription Clause

- (i) the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
- (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

In the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

2. ARTICLES OF ASSOCIATION

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According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company. In case of a private company, the provisions of Table A may be altered to suit the specific requirements of the company, provided that any such alteration should not be contrary to the provisions of the Companies Act, 2013.

3. FORMATION AND REGISTRATION OF CORPORATE ENTITIES

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has notified & deployed a new Web Form 'SPICE+' (pronounced 'SPICE Plus') replacing the existing SPICE form. SPICE+ offer 11 services by 3 Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and three State Govt. (Maharashtra, Karnataka and West Bengal), thereby saving as many procedures, time and cost for Starting a Business in India and would be applicable for all new company incorporations [w.e.f 23rd February, 2020](#).

Features of SPICE+:

SPICE+ is an integrated web form replacing the earlier version of the e-forms, the form is divided in to two parts viz.:

Part A - for Name reservation for new company and

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Part B - offering a bouquet of services viz.

- ❖ Incorporation
- ❖ DIN allotment
- ❖ Mandatory issue of PAN
- ❖ Mandatory issue of TAN
- ❖ Mandatory issue of EPFO registration
- ❖ Mandatory issue of ESIC registration
- ❖ Mandatory issue of Profession Tax registration (Maharashtra, Karnataka and West Bengal)
- ❖ Mandatory Opening of Bank Account for the Company and
- ❖ Allotment of GSTIN (if so applied for)
- ❖ Allotment of Shops and Establishment Registration Number (only for Delhi location).

Declaration by all Subscribers and first Directors in **INC-9** is auto-generated in pdf format and would have to be submitted only in electronic form in all cases, except where:

- (i) Total number of subscribers and/or directors is greater than **20** and/or
- (ii) Any such subscribers and/or directors has neither **DIN** nor **PAN**.

STEP-1: APPLY FOR NAME APPROVAL

Login on MCA Website	Details required to be mentioned in online form	Choose File:
Applicant has to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)	New fields introduced in Part A of SPICe+ are: (i) Type of company (ii) Class of company (iii) Category of company	This option is available to upload the PDF documents. If applicant want to attach any file, it can be uploaded at this option

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<p>After Login, user has to click on the icon SPICe+ in MCA Service. An online form shall be opened. Applicants have to fill the information online. (This form cannot be downloaded)</p>	<p>(iv) Sub-Category of company</p> <p>(v) Main division of industrial activity of the company</p> <p>(vi) Description of the main division</p>	
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Submission of Form on MCA Website:	Validity of Reserved Name:
<p>After completion of above steps user shall submit the Form with MCA website.</p>	<p>Reserved name shall be valid for 20 days from the date of approval of name, whereas for change of name of existing company, the validity period of new name would be 60 days from the date of approval.</p>

STEP-2: PREPARATION OF DOCUMENTS FOR INCORPORATION OF COMPANY

After approval of name or for Incorporation of Company, applicant has to prepare the below mentioned documents:

- ❖ **INC-9** - Declaration by Subscriber(s) and director(s).
- ❖ **DIR-2**- Declaration from the proposed Directors along with Copy of Proof of Identity and residential address.
- ❖ **Form MBP-1**-Disclosure of interest in other entities.
- ❖ **NOC** from the owner of the property, where the registered office of the company will be located.
- ❖ **Proof of Office address** (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts).
- ❖ **Copy of the utility bills** which should not be older than two months.
- ❖ **Copy of PAN** from the subscribers along with Proof of Identity and residential address.

STEP-3: FILL IN THE INFORMATION IN FORM

Once all the above mentioned documents/ information are available, applicant has to fill the information in the-form "Spice+ Part -B.

Features of SPICe+ (Inc-32) form:

- ❖ Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attached to the Form.
- ❖ In case of a company having share capital, minimum authorized and subscribed share capital required for an OPC is Rupee one , for a private company having share capital is Rupees two and in case of a public company, Rupees seven. (as per Instruction Kit)
- ❖ Maximum details of directors are TWENTY (20).
- ❖ Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company, other than a Producer Company.
- ❖ Person can apply for the name also in this form. (In SPICe+ Part A)
- ❖ By affixation of DSC of the subscriber on the **INC-33 (MOA)** date of signing will appear automatically in the form.
- ❖ Applying for **PAN / TAN** will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.
- ❖ Company can apply for Application for Goods and services tax Identification number, Employees State Insurance Corporation registration (ESIC), Employees Provident Fund Organization (EPFO) registration, and Professional tax Registration (in Maharashtra, Karnataka and West Bengal) and Opening of bank account through AGILE-PRO form.

STEP-4: PREPARATION OF MOA OR AOA(ELECTRONIC OR PHYSICAL)

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- ❖ After proper filing of SPICE+ Pat B form, applicant has to download [the e-form INC-33 \(e-MOA\) and INC- 34 \(e-AOA\)](#) form the MCA site. After downloading of form as per requirement of Table A to J of Schedule I, fill in the form(it's a web form), convert to pdf and affix the DSC.
- ❖ After completely filling up of the form, affix DSC of all the subscribers, witness and professional on subscriber sheet of the MOA & AOA.

STEP 5: FILL DETAILS OF PAN & TAN

It is mandatory to mention the details of PAN & TAN in the SPICE+ Form INC-32. Link to find out Area Code to file PAN & TAN are given in Help Kit of SPICE+ Form.

STEP 6: FILL DETAILS OF GST, IEC IN AGILE PRO

If Company wants to apply for GST ESIC, EPFO, Professional Tax registration (State of Maharashtra, Karnataka and West Bengal), Opening Bank Account and Shops Establishment Registration or Import Export Code (IEC), it has to select YES in the form and fill the information in the form

STEP 7: SUBMISSION OF INC-32,33,34,AGILE-PRO-S ON MCA

Once all the 4 forms are ready with the applicant, upload all four document as Linked form on MCA website and make the payment for the same. Where the Registrar on examining SPICE+ finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give mark the application for resubmission. [Only 2 \(Two\) resubmissions are allowed for SPICE+ forms.](#) Each resubmission has to be replied within 15 (fifteen) days from the date of intimation given by the Registrar failing which the form will be liable for rejection.

STEP 8: CERTIFICATE OF INCORPORATION

Incorporation certificate shall be generated with CIN, PAN & TAN in [Form INC-11](#)

COMMENCEMENT OF BUSINESS

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Under Section 10A, every company incorporated having a share capital shall not commence any business or exercise any borrowing powers unless

- (a) a declaration in form **INC-20A** is filed by a director within a period of one hundred and eighty day of the date of incorporation of the company in such form and verified by a Company Secretary or a Chartered Accountant or a Cost Accountant in practice with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) The company has filed with the Registrar a verification of its registered office in form **INC-22** as provided in sub-section (2) of section 12

PRECAUTION TO BE TAKEN BY PROFESSIONALS

<p>Obtain engagement letter from subscriber: - As per certification in e-form DIR-12 & INC-22, a professional declares that he has been engaged for the purpose of certification. Therefore, the professional should take engagement letter from the promoters</p>	<p>Verification of original records pertaining to registered office: - As per certification in e-form INC-22, a professional declares that he has verified all the particulars (including attachments) from original records</p>	<p>Ensure all attachments are clear enough to read: - As per certification in e-form DIR-12 & INC-22, a professional declares that all attachments are completely and legibly attached</p>
<p>Ensure registered office of the company is functioning for the business purposes of the company: As per certification in e-form INC-22, a professional declares that he has personally visited the registered office</p>	<p>Take a declaration to the effect that all the original documents have been handed over after incorporation.</p>	<p>MCA Circular 10/2014: - According to this circular ROC/RD in case of omission of material fact or submission of false/incomplete/misleading information, the Ministry can after giving</p>

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opportunity of being heard,
refer the matter to the e-
governance division of MCA,
which in turn may initiate
proceedings under section
447 and/ or ask the
respective professional
institute to take requisite
disciplinary action

LIMITED LIABILITY PARTNERSHIP

1. MEANING

LLP is a hybrid between a company and a partnership firm. The LLP is a separate legal entity, where no partner is liable for the unauthorized action of other partners, and whose liability is restricted to his own stake in the liability.

Every partner would be agent of LLP, but the LLP would not be bound by anything done by Partner

LLP- ADMINISTRATION

Ministry of corporate Affairs, New Delhi is the administrative ministry for the LLP Act with a Central Registrar at New Delhi and the Registrars of LLP's at State Level.

Origin

In India LLP became effective from 31st March, 2009 after passing the Limited Liability Partnership, Act, 2008.

Following the changes that happened in the global business and economic environment, a need was felt to modify many of the existing provisions and hence an amendment to the principal Act was made in 2021. LLP (Amendment) Act, 2021 came into force on 1, April, 2022.

Key changes include reduction of additional fees and penalties for offences of technical nature, recognition of Start-up LLPs & Small LLPs, de-criminalization of offences, compounding of offences by RD and setting up of Special Courts for speedy disposal of cases. This is to encourage and promote ease of doing business so that more entrepreneurs may shift to LLP form of business organization

2. FEATURES OF LLP

- LLP is a body corporate incorporated and formed under the Limited Liability Partnership Act, 2008.
- LLP is a legal entity on its own and separate from its partners.
- Every LLP has its own name, can sue and be sued in its own name and has perpetual succession.
- Every LLP shall have atleast 2 partners at all points of time.
- Every LLP shall have atleast 2 "designated partners". This means where the LLP has only 2 partners both of them shall be "designated partners".
- Any individual or body corporate can be a partner in LLP. [Body corporates are represented by individual nominees on their behalf]
- The name of every LLP shall end with the words "LLP" or "Limited Liability Partnership"
- Every LLP shall have a registered office to which all communications shall be addressed and received.
- Liability of partner is limited except in case of fraud and negligence.
- The LLP agreement shall prescribe the duties and rights of the LLP *vis-à-vis* the partners and partners inter se.

3. ADVANTAGES OF LLP

- 1) **Easy formation:** Unlike a company, formation of LLP involves lesser formalities and shorter time.
- 2) **Liability of partners:** Liability of partner is limited except in case of fraud and negligence
- 3) **Lower cost of compliance:** There are fewer compliance requirements when compared to a company and the compliances are not complex.
- 4) **Startup LLPs & Small LLPs:** These LLPs enjoy various concessions and are more flexible.
- 5) **Entry and exit of partners:** Partners can be admitted and can move out easily without any rigidity, in accordance with the LLP agreement.
- 6) **Separate legal entity:** LLPs have a separate legal entity, perpetual succession and are not affected by change in the constitution of partners.
- 7) **Easy to close down:** The procedure to wind up an LLP is easier and quicker compared to a company
- 8) **Maximum Partners:** There is no restriction to the number of partners in an LLP.
- 9) **Flexibility in management**

4. DISADVANTAGES OF LLP

- 1) **Registration:**
- 2) **Penalties:**
- 3) **Right of Partners:** LLP agreement can be drafted to give more rights and powers to some partners than others. So, it isn't a one vote per share system. So, some lesser partners may feel compromised if higher shareholders choose to move the business in a direction that affects their interests.
- 4) **Restricted capital access:** LLPs cannot resort to External Commercial Borrowings like companies. To that extent there is a restriction on their borrowing.
- 5) **Public Disclosure:** LLPs have to mandatorily file Annual Returns, Statement of

Accounts and Solvency every year. This means that these become public documents which can be accessed by others including competitors.

- 6) **Limitations in Formation of LLP:** LLP cannot be formed by a single person. A non-resident Indian and a Foreign National willing to form a LLP in India must have one person resident in India to act as Designated Partner.
- 7) **Exit Options are Not Easy for LLPs in default of Filings:** A LLP who has defaulted in filings its statement of accounts and annual return with the Registrar of LLPs, willing to shut down its operations and wind up, will have to make its default good first by filing necessary e-forms with late filing fee. This provision is making LLP an unattractive form of business as in India there are many businesses that are ignorant about compliances.
- 8) **Limitation in External Commercial Borrowings (ECB):** ECB means raising loan from outside India to do business in India. Limited Liability Partnerships are not allowed to raise ECB.

1. IMPORTANT DEFINITIONS



What does small LLP means?

Small LLP means a limited liability partnership having:

- (i) the contribution of which, does not exceed **twenty-five lakh rupees** or such higher amount, **not exceeding five crore rupees**, as may be prescribed; and
 - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, **does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees**, as may be prescribed;
- or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed. [Section 2(ta)]

Start-up LLPs: These are LLPs registered with DPIIT, Ministry of Commerce and Industries as "Start-ups" and enjoy the privileges of the Start-up India Scheme of the Central Government during the first ten years of their registration.

2. PARTNERS IN LLP

- Every LLP shall have not less than 2 designated partners out of which at least one shall be a resident in India. "Resident in India" means stay in India for a period not less than 120 days during the immediately preceding financial year.
- Where all the partners in the LLP are body corporates at least 2 of the nominees of such body corporates shall act as "designated partners".
- No person can continue as a partner of LLP in the following circumstances:
 - Upon his death
 - Upon the dissolution of the LLP
 - If he is declared as an insolvent or if has applied to be adjudged as an insolvent
 - If he is declared to be of unsound mind by a competent court.
- Every partner is an agent of the LLP and not of other partners.

Who can be Partner in LLP?

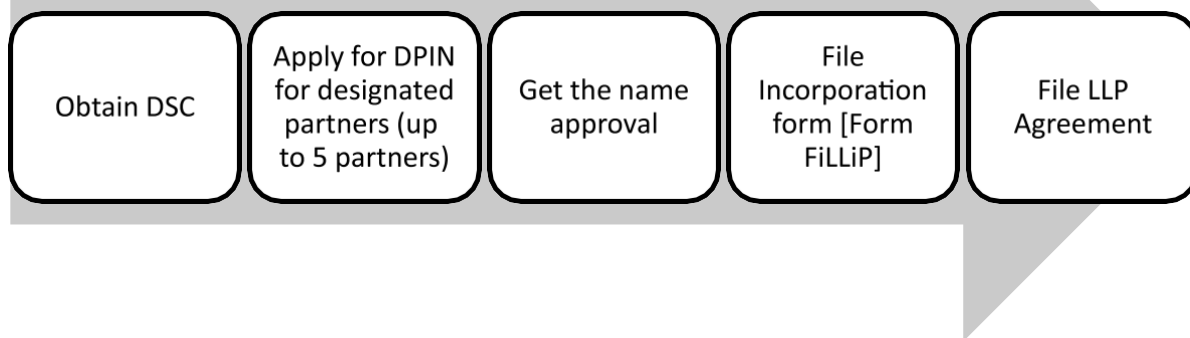
- ❖ An Individual (other than one who has been found to be of unsound mind by court, an undischarged insolvent, has applied to be adjudicated insolvent and application is pending)

Who cannot be Partner in LLP?

- ❖ A corporate sole
- ❖ A co-operative society

- ❖ Indian Private and/or Public Company
- ❖ Foreign Company
- ❖ Any other LLP
- ❖ LLP registered outside India

3. FORMATION AND REGISTRATION OF LLP



- 1) **Obtain DSC**: For obtaining DIN for the Partners/ Designated Partners of the LLP, a Digital Signature Certificate (DSC) is required. Therefore, the proposed Partner must obtain a Digital Signature Certificate.
- 2) **Apply for DPIN for designated partners**: After obtaining Digital Signatures for the Partners, application for Director Identification Number (DIN) can be made. DIN registration usually happens immediately. DIN and DPIN are synonymous and can be used interchangeably.
- 3) **Obtaining Name Approval**: Once DIN is available, application for reservation of name "RUN LLP"(Reserve Unique Name LLP) can be made to the **MCA**.
- 4) **Filing for Incorporation**: After receiving name approval from ROC , E-Form FiLLiP (Form for incorporation of LLP) (web-based) shall be filed with the Registrar having jurisdiction over the State in which the registered office is situated.

The form must be digitally signed by a person named in incorporation document as

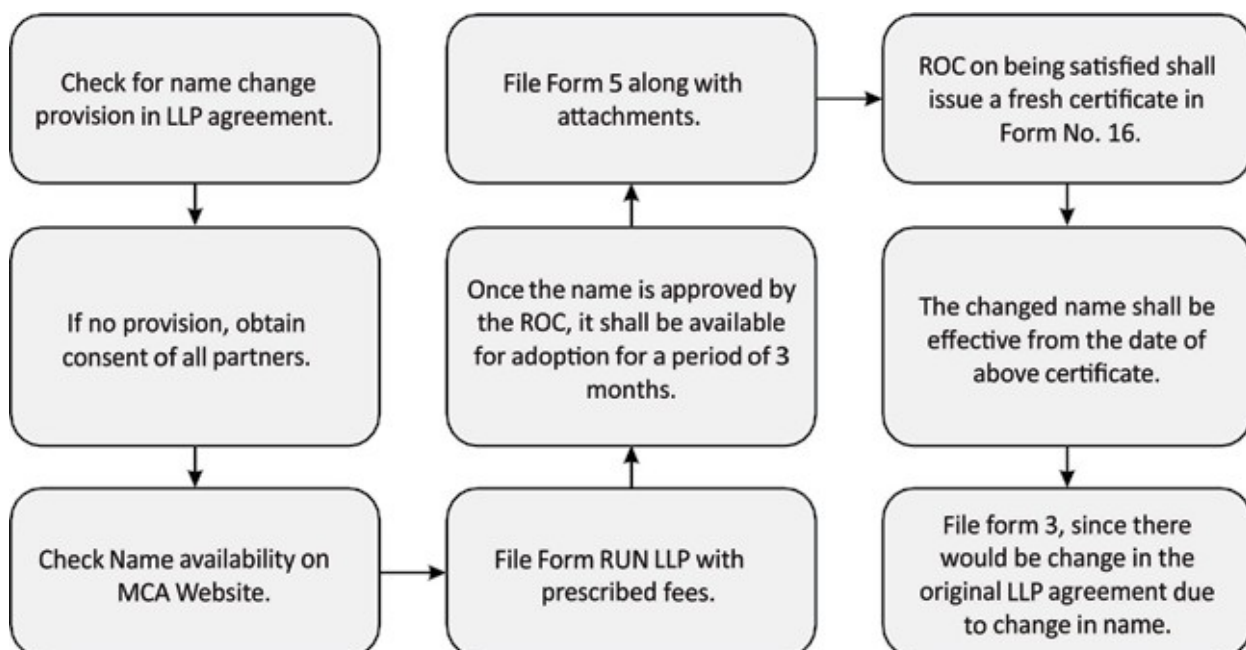
a designated partner having DIN. Also, it has to be digitally signed by an advocate/Company Secretary/ Chartered Accountant/ Cost Accountant in practice.

Following are the documents to be attached with eform FiLLiP:

- i) Consent of partners. [Designated partners also to give their consent]
- ii) Subscribers' sheet
- iii) Details of LLPs/companies in which partner is a partner/director respectively [including Designated partner]
- iv) Identity and address proof of individuals acting as partner(including Designated Partner]
- v) Proof of address of registered office [Rental/lease agreement or ownership document
- vi) List of main objects of LLP
- vii) NOC from trade mark owner/ foreign body corporate [where the proposed name is similar or the same as such entity

5) **Drafting and Filing of LLP Agreement:** After incorporation of LLP, LLP Agreement has to be drafted and in consonance with LLP Act. LLP agreement is to be filed within 30 days of incorporation of LLP in Form-3.

4. PROCEDURE FOR CHANGE OF NAME LLP



5. PROCEDURE FOR SHIFTING THE REGISTERED OFFICE OF LLP

Where the partners wish to change the registered office of the company from one place to another, the same can be done by following the procedure stated in Rule 17 of the LLP Rules, 2009.

Form 15 is to be filed within 30 days of change of registered office. The procedure for the change in registered office of LLP is given below:

File Form 15 within 30 days of the change in registered office.	Procedure - Rule 17 of LLP Rules, 2009.	<p>Documents to be attached with Form 15</p> <ul style="list-style-type: none"> • Proof of changed address of registered office is a mandatory attachment. • Either 'Copy of the minutes of decision/ resolution/ consent of partners' or ' • In case of 'change of place of the registered office from one State to another State', it is mandatory to enclose copies of public notice and consent of secured creditors. • Any other information can be provided as an optional attachment.
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Notice of change of Registered Office

Checklist for shifting of Registered Office

<i>Action to be taken</i>	<i>Change of Registered office within the same State and within jurisdiction of same Registrar</i>	<i>Change of Registered Office within the same State from the jurisdiction of one Registrar to another</i>	<i>Change of registered office from one state to another</i>
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Registrar			
<i>Resolution for Change of Address</i>	Consent of all partners shall be required	Consent of all partners shall be required	Consent of all partners shall be required
<i>Secured Creditors</i>	No Consent Required	No Consent Required	Consent Required
<i>Form to be filed</i>	Form- 15 along with the prescribed fees.	Form- 15 along with the prescribed fees.	Form- 15 along with the prescribed fees.
<i>Public Notice</i>	No public notice required.	No public notice required.	Give public notice of change of registered office in an English daily newspaper and vernacular daily where the registered office is situated.
<i>Time limit for filing</i>	Within 30 days of passing of resolution.	Within 30 days of passing of resolution.	Within 30 days of passing of resolution.

6. LLP AGREEMENT

The LLP agreement is the most important document of an LLP. It is akin to the partnership deed of a partnership firm.

The LLP agreement specifies the rights, duties, powers and other terms and conditions of the LLP.

The partners have total freedom to decide about the various terms and conditions to be set out in the LLP agreement.

What are the objective of LLP Agreement?

- LLP agreement defines the roles, responsibilities, rights, and powers of the partners to LLP and to each other. Hence, it creates the foundation for the smooth running of LLP.
- LLP agreement clarifies the managerial, operational as well administrative responsibilities and sets clear methodologies for decision making, adding a new partner and disassociation of existing partner
- It defines the outlook and gives a clear idea as to decision making, adding a new partner, removal of existing partner, etc.
- Well drafted LLP agreement works like a backbone of the LLP.

How to prepare LLP Agreement

Draft the agreement and print it on the stamp paper of requisite value

All partners should sign the agreement

Two witness should sign the agreement on the last page

Each partner should be provided with the copy of agreement

Essential Clauses of LLP Agreement

- | | |
|--|---|
| 1) <u>Interpretation / Definitions:</u> | 9) <u>Admission of Partner, Retirement</u> |
| 2) <u>Designated Partners:</u> | <u>Resignation and Expulsion of Partners:</u> |
| 3) <u>Name of the LLP and Changes to it:</u> | 10) <u>Remuneration & Interest to be paid</u> |
| 4) <u>Registered office of the LLP:</u> | <u>to Partners:</u> |

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5) Business of the LLP:

6) Capital Contribution:

7) Profit Sharing Ratio:

8) Rights and Duties of Designated Partners:

11) Bank Account:

12) Books of Accounts and Accounting Year:

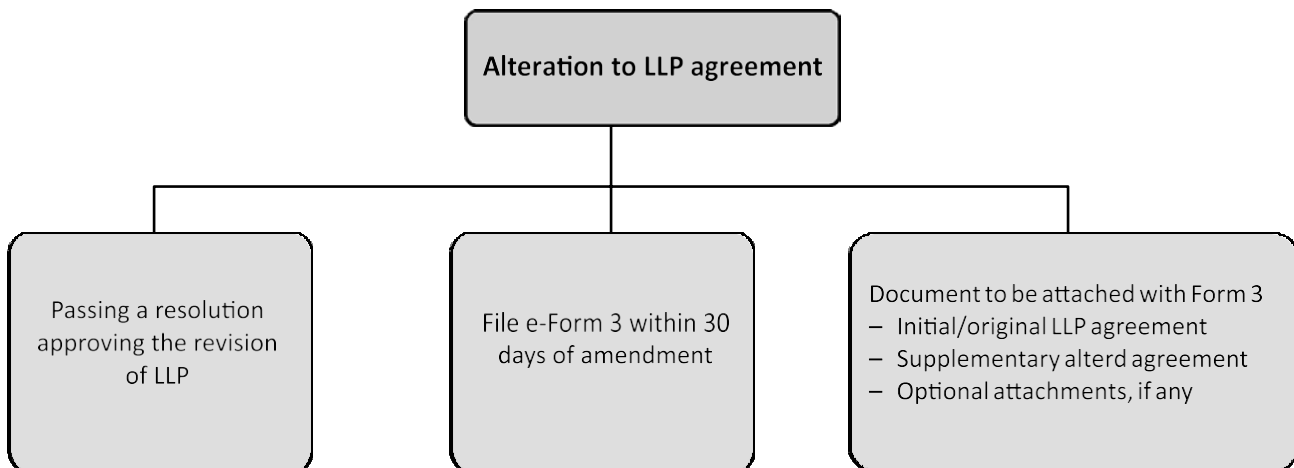
13) Meetings:

14) Indemnity:

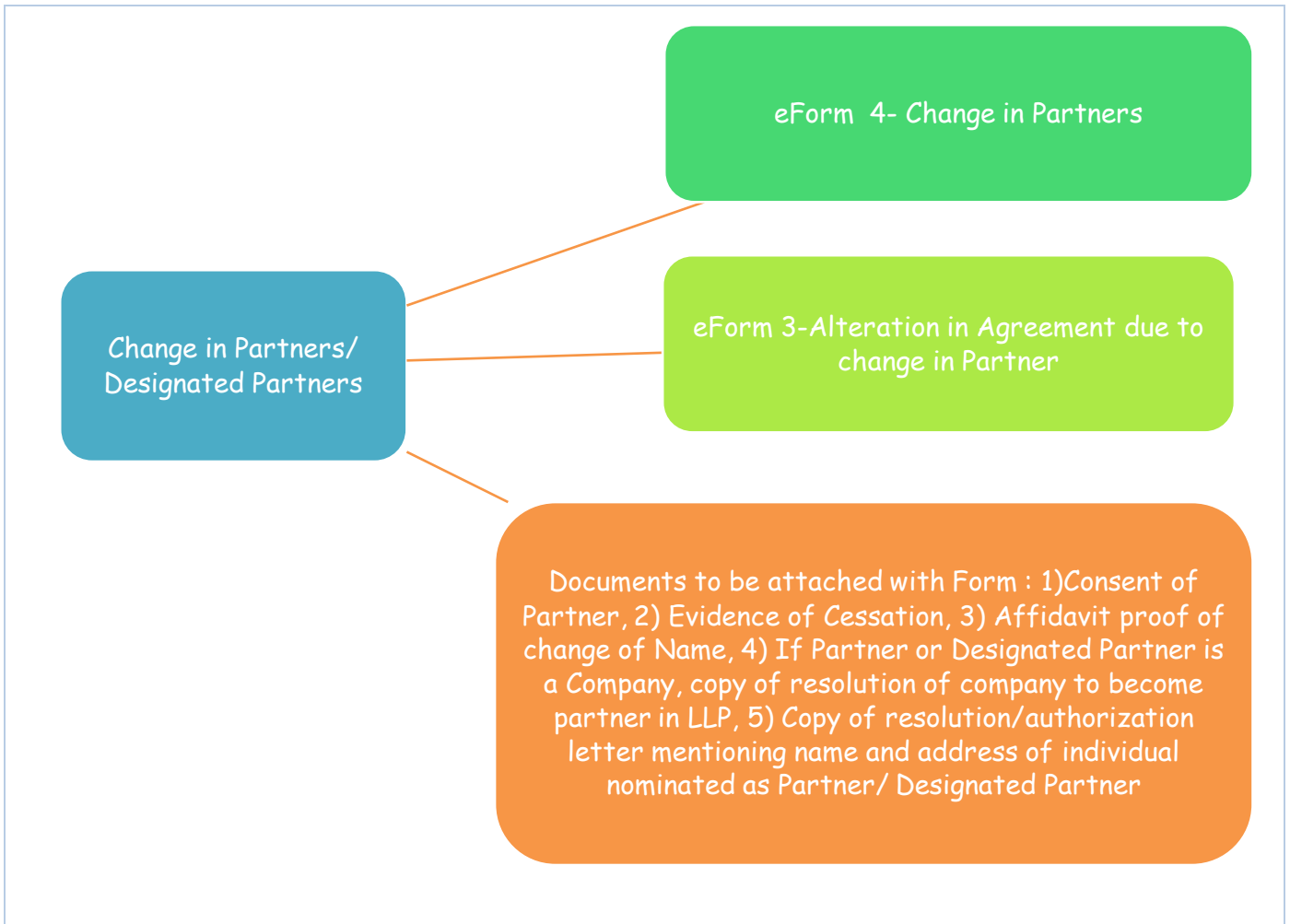
15) Dispute Resolution:

16) Duration & Winding Up: General Provisions:

Alteration of LLP Agreement



Procedure for change in Partners or Designated Partners



7. ANNUAL COMPLIANCES OF LLP

Following are certain annual compliances which needs to be complied by LLP form time to time basis:

No	Compliance	When to file	Objective
1.	Annual Return (form 11)	<p>Within 60 days of closure of its Financial year</p> <p>Hence this Annual Return should be filed on or before 30th May every year by the LLP.</p> <p>In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a</p>	Summary of management affairs of the LLP in the previous year

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Certificate from Practicing Company Secretary.			
2.	Statement of Accounts & Solvency (Form 8)	<p>Within 30 days from the end of the 6 months of the Financial year to which such Statement of accounts & Solvency relates to</p> <p>For this purpose, LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year.</p> <p>It should be noted that LLPs whose annual turnover exceeds Rs. 40 lakh or whose contribution exceeds Rs. 25 lakh are required to get their accounts audited by a qualified Chartered Accountant mandatorily.</p>	The statement that the LLP is in a position to discharge its debts
The penalty for non-filing of these forms with the ROC is Rs. 100 per day per form			
3.	Income Tax Return	July 31st of the Assessment year**	Statutory requirement.

** September 30th of the Assessment year- For LLPs that are required to get their accounts audited under any law

**November 30th of the Assessment year- For LLPs those are required to furnish a report in Form No.3CEB under Sec.92E of the Income Tax Act. [Applicability of Transfer Pricing provisions]

8. EVENT BASED COMPLIANCES FOR LLP

Following are certain event based compliances applicable on the LLP which needs to be complied by the LLP on happening of certain event:

Section No.	Nature of event	Compliance requirement
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7(3)&(4)	Consent & Particulars of Partner/ Designated	Filing of consent of Partner/ Designated Partner to act as such with the Registrar of Companies in E Form- 4 within 30 days of the appointment as the designated partner.
9	Vacancy of Designated Partner	Filing of vacancy in Designated Partner within 30 days of vacancy and intimation of same to Registrar in E Form- 4 and in case if no designated partner being appointed or if any time there is only one designated partner, then each partner shall be deemed to be the designated partner.
13(3)	Change of Registered office	File the notice of any change in registered office with the Registrar of Companies in E Form - 15 within 30 days of shifting and any such change shall take effect only upon such filing.
19	Change of Name	LLP may change its name registered with the Registrar by filing with the Registrar notice of such change in E Form- 5 within 30 days of such change.
23	LLP agreement & Changes in LLP agreement	LLP Agreement and any changes made therein shall be filed with the Registrar in E Form-3 within 30 days of incorporation of LLP or such alteration of LLP agreement.
25(2)	Change in Designated Partners	Where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, notice of the same signed by the designated partner and to be filed within 30 days to the Registrar in E Form - 4 .

9. COMPOUNDING OF OFFENCES

As per section 39(1) of LLP Act, the Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government may compound any

offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

Compounding shall not be allowed within 3 years from the date on which a similar offence was committed and compounded.

10. WINDING UP OF LLP

An LLP can be wound up either voluntarily or by a Tribunal. If a LLP is to initiate winding up voluntarily, then the LLP must pass a resolution to wind up the LLP with approval of at least three-fourths of the total number of Partners. If the LLP has lenders, secured or unsecured, then the approval of the lenders would also be required for winding up of the LLP. LLP may be wound up by the Tribunal under the following circumstances:

- a) The LLP decides that it shall be wound up by the tribunal;
- b) There are less than two Partners in the LLP for a period of more than 6 months;
- c) The LLP has acted against the interest of the nation or State security or public order;
- d) Default is made in the filing of Annual return or Statement of accounts & Solvency for any five consecutive financial years;

The Tribunal is of the opinion that it is just and equitable to wind up the LLP under Section 64 of the Act.

STARTUPS AND ITS REGISTRATION

1. INTRODUCTION



Definition of Startup

An entity shall be considered as a Startup:

Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.

Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs 100 crore.

Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'

Funding Support and Incentives

1. Fund of Funds

For providing fund support for Startups, Government has created a Funds for Startups (FFS) at Small Industries Development Bank of India (SIDBI) with a corpus of **Rs 10,000 crore**.

2. Startup India Seed Fund

Government has launched a Startup India Seed Fund worth **INR 1000 crore** to help startups and support ideas from aspiring entrepreneurs.

3. Credit Guarantee Fund for Startups

Since debt funding for Startups is perceived as high-risk activity, a Credit Guarantee Fund for Startups is being setup with a budgetary corpus of **Rs.500 crore per year**, over the next **four years**, to provide credit guarantee cover to banks and lending institutions providing loans to Startups.

4. Relaxed Norms in Public Procurement for Startups

Department of expenditure has issued a notification for relaxing public procurement norms in respect all startups including Medium Enterprises.

5. Tax Incentives

The Inter-Ministerial Board of Certification is a Board set up by **Department for Promotion of Industry and Internal Trade (DPIIT)** which validates Startups for granting tax related benefits. Exemption from tax on long term capital gain if such long term capital gain is invested in a fund notified by Central Government. The maximum amount that can be invested is **Rs 50 lakhs**

6. Legal Support and Fast-tracking Patent Examination at Lower Costs

A scheme for Startups IPR Protection (SIPP) for facilitating fast track filing of Patents, Trademarks and Designs by Startups has been introduced. The scheme provides for

expedited examination of patents filed by Startups. This will reduce the time taken in getting patents.

7. Self-Certification based Compliance Regime:

Compliance norms relating to Environmental and Labour laws have been eased in order to reduce the regulatory burden on Startups thereby allowing them to focus on their core business and keep compliance costs low.

8. Setting up Incubators

Incubators are organisations set-up with the specific goal of assisting entrepreneurs with building and launching their startups. Not only do incubators offer a high number of value added services (office space, utilities, admin & legal assistance, etc.), they often also make grants/ debt/ equity investments

9. Setting up of Startup Centres and Technology Business Incubators (TBIs)

Startup Centres and 15 Technology Business incubators are to be set up collaboratively by Ministry of Human Resource Development (MHRD) and the Department of Science and Technology (DST). Out of the 14 Startup Centres, 10 have been approved.

10. Research Parks

7 Research Parks will be set up as per the Startup India Action Plan. Out of these 7 IIT Kharagpur already has a functional Research Park.

Recognition as Start-ups

The process of recognition of an eligible entity as startup shall be as under:

- A. A Startup shall make an online application over the mobile app or portal set up by the DPIIT. (*Department for promotion of industry and internal trade*)
- B. The application shall be accompanied by -
 - a. a copy of Certificate of Incorporation or Registration, as the case may be, and

b. a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.

c. The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit,-

a. recognise the eligible entity as Startup; or

b. reject the application by providing reasons

2. EXEMPTIONS FOR STARTUPS

To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing start-ups

1. Simple process

Government of India has launched a **mobile app and a website** for easy registration for startups. Anyone interested in setting up a startup can fill up a simple form on the website and upload certain documents. The entire process is completely online.

2. Reduction in cost

The government also provides lists of facilitators of patents and trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startup will bear only the statutory fees. They will **enjoy 80% reduction in cost** of filing patents.

3. Easy access to Funds

A **10,000 crore rupees** fund is set-up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.

4. Tax holiday for 3 Years

Startups will be exempted from **income tax for 3 years** provided they get a certification from Inter- Ministerial Board (IMB).

5. Apply for tenders

Startups can apply for **government tenders**. They are exempted from the "prior experience/turnover" criteria applicable for normal companies answering to government tenders.

6. R&D facilities

Seven new Research Parks will be set up to provide facilities to startups in the R&D sector.

7. No time-consuming compliances

Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with **9 labour and 3 environment laws**.

8. Tax saving for investors

People investing their capital gains in the venture funds setup by government will get exemption from capital gains. This will help startups to attract more investors.

9. Choose your investor

The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.

10. Easy exit

In case of exit, a startup can close its business **within 90 days** from the date of application of winding up

11. Meet other entrepreneurs

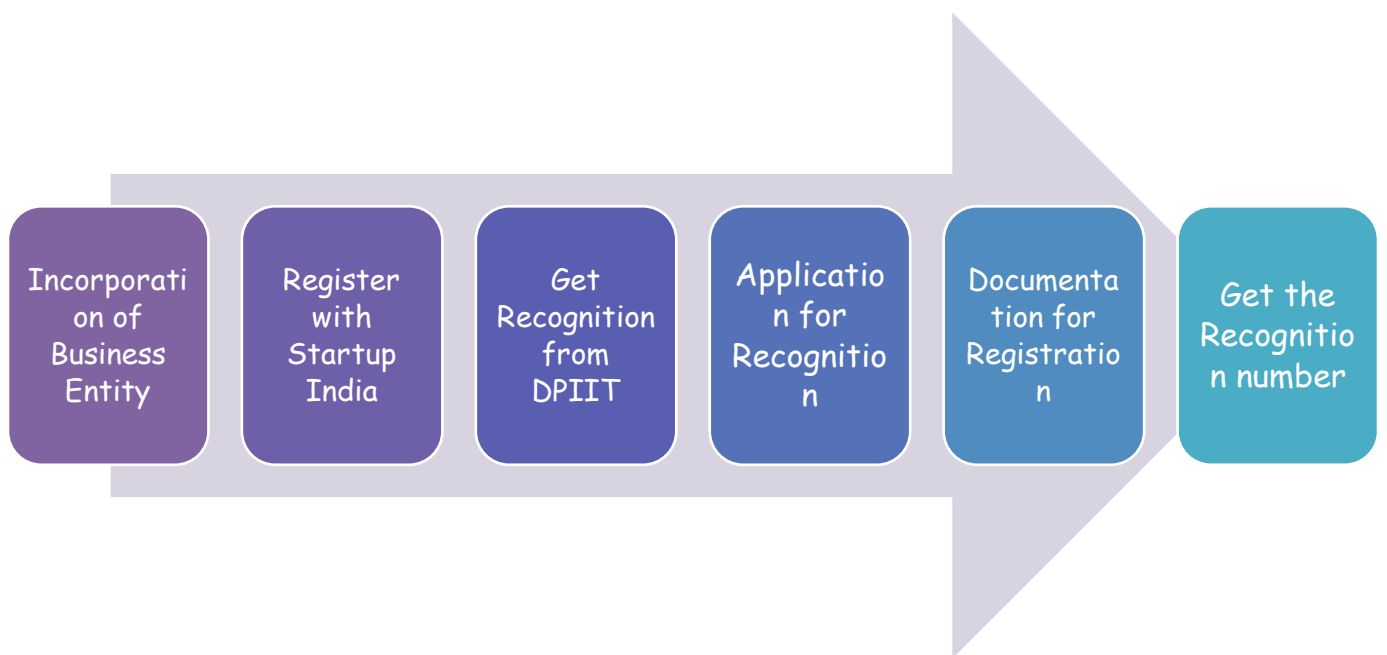
Government has proposed to hold **2 startup fests annually both nationally and internationally** to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities

3. BENEFITS OR EXEMPTIONS TO STARTUPS UNDER COMPANIES ACT, 2013

Section	Description
Section 2(40) Definition of financial statement.	The financial statement in relation to a private company (if such private company is a start-up) may not include the cash flow statement
Section 54- Issue of sweat equity shares.	A start-up company may issue sweat equity shares not exceeding 50% of its paid up capital up to ten years from the date of its incorporation or registration
Section 73- Prohibition on acceptance of deposit from public	"Deposit" does not include an amount of twenty five lakh rupees or more received by a start-up company , by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person
Section 73- Prohibition on acceptance of deposit	The maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a start-up, for ten years from the date of its incorporation
Section 73- Prohibition on acceptance of deposit from public	Clauses (a) to, (e) of sub-section (2) of section 73 shall not apply to a private company which is a start-up, for five years from the date of its incorporation
Section 92- Annual Return.	In relation to a private company, which is a start-up, the annual return shall be signed by the company secretary , or where there is no company secretary, by the director of the company
Sections 173 - Meetings of Board	A private company, which is a start-up, shall be deemed to have complied with the provisions of section 173, if at least one

	meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meeting is not less than ninety days
Section 446B- Lesser penalties for One Person Companies or Small Companies.	If a start-up company fails to comply with any of the provisions of the Companies Act, 2013, where penalty is payable. Such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one half of the penalty specified in such provisions subject to a maximum of Rs. 2 lakh in case of a company and Rs. 1 lakh in a case of an officer who is in default or any other person, as the case may be.

4. REGISTRATION STEPS FOR STARTUPS



- A. **Incorporation of Business Entity:** Before getting registered as Start-up one must need to incorporate his business either as a **Private Limited Company** or a **Partnership firm** or a **Limited Liability Partnership**.
- B. **Register with Start-up India:** Once the entity is incorporated, the business can be registered as a startup. The registration process is completely online and simple

for the users. One needs to visit the Startup India website and click on the 'Register' button. After that one needs to enter his/her name, email id, mobile number, password and after that click on "Register" button. OTP will be sent to the email and other details like, the type of user, name and stage of the startup, etc. should be mentioned. After entering these details, the Startup India profile will be created.

C. **Get recognition from DPIIT:** The recognition helps the startups to avail various benefits like access to high-quality intellectual property services and resources, relaxation in public procurement norms, self-certification under labour and environment laws, easy winding of company, access to Fund of Funds, tax exemption for **3 consecutive years** and tax exemption on investment above fair market value.

D. **Application for Recognition:** On the 'Startup Recognition Form', the details has to be filled such as the entity details, full address (office), authorized representative details, directors/partner details, information required, startup activities and self-certification.

E. **Documentation required for Registration:** Following documents should be kept ready for getting the registration completed on the Startup India Portal:

- Incorporation/Registration Certificate of your startup
- PAN Number
- Proof of funding, if any
- Authorization letter of the authorized representative of the company, LLP or partnership firm
- Proof of concept like pitch deck/website link/video
- Patent and trademark details, if any
- List of awards or certificates of recognition, if any.

F. **Getting the Recognition Number:** Once the application is made a recognition number

will be generated for the startup. The certificate of recognition will be issued after the examination of all the documents which is usually done within 2 days after submitting the details online.

5. LIFE CYCLE OF START-UP

STAGE 1: IDEATION AND DEVELOPMENT

The first stage of the startup lifecycle is ideation. In this stage products and services are tested, potential of business is tested, potential of business is tested or how much business can help the public

STAGE 2: VALIDATION

Once an entrepreneur has confidence on his idea, he setups the goals, takes consumer feedback & make necessary changes. Here modifications are done.

STAGE 3: EARLY TRACTION

It is at the Early Traction stage that a set of target customers may test efficiency of the product/ confirms the early traction of the company and its product.

Pivoting: Pivoting in startup usually occur when a company shifts its business strategy to accommodate changes in its industry, customer preferences. Most successful companies go through several pivots to find product-market fit.

STAGE 4: GROWTH/EXIT

In the fourth stage of the startup lifecycle, the company has attained true economic health. At this stage, the company may choose to scale up or expand its market through mergers and acquisitions or preparing for an Initial Public Offering (IPO). Depending upon the strategy followed, some of the companies are successfully able to sustain the growth stage, rapidly scaling up their business to achieve valuation of **more than \$1 billion** and become unicorns.

6. IMPORTANT POINTS FOR STARTUPS

1. Choose the right legal structure for your startup:

2. Registrations and business licenses:

3. Intellectual Property Protection:

4. Founder Equity - Split and Vesting: Founder equity should be split amongst founders based on the nature of role played by each founder along with their time, effort and capital contribution to the startup. Founder shares should be always subject to vesting schedule - typically over a period of three to four years

5. Founder agreements: The founder's agreement is the most valuable tool to establish the relationship between the founders of a startup. The agreement should represent a clear understanding between the founders on all key issues related to the startup. Founder agreements should clearly mention the roles and responsibilities of the founders and have clauses detailing the decision making and operating structure of the startup

6. Employment contracts: While employment contracts are certainly valuable to the employees as it details terms regarding description of job profile, compensation and other associated benefits, a number of clauses may be inserted to safeguard and protect the interest of the startup.

7. Third Party Agreements:

It is advisable to execute a non-disclosure agreement. If creation/development of intellectual property is a component of such a third-party agreement, it must clearly state that all rights to the intellectual property rights shall vest and be owned by the startup and the third-party shall not stake any claim on the same and will do all acts to ensure the protection of the intellectual property.

8. Investment structuring:

It is imperative for startups to seek proper legal advice while negotiating the deal

terms for investment and the rights of the investors.

9. Compliance management: It is extremely critical for the sustainable growth of any business that the startup is in compliance with legal, secretarial, accounting, taxation, employee related and other associated compliances. The consequences of non-compliance can be levy of punitive fines on the startup

7. FINANCING OPTIONS AVAILABLE FOR STARTUPS COMPANIES

Depending on the stage of a startup, major sources of financing entrepreneurs may include:



Source: www.startupindia.gov.in

8. SEED CAPITAL

Startup business needs the nurturing of finance to explore and grow. The funding done at the nascent stage is called seed funding and the capital is known as a seed capital.

Technically, seed capital is the initial capital used at the time of starting the

seed capital



business. This capital can come from the founders, families or friends

Financing is generally of two types i.e. (a) equity financing; or (b) debt-financing

EQUITY FINANCING

Startups are usually equity financed/funded by way of a venture capital/ private equity investors and/or angel investors.

Venture Capitalist/Private Equity

Venture capital ("VC") / Private Equity ("PE") is often the first large investment a startup can expect to receive. Convertible instruments are usually the preferred option and most commonly used securities for VC/PE investment which includes compulsory convertible preference shares and compulsory convertible debentures.

Angel Investors

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake.

- (1) Angel funds shall invest in startups which:
 - (a) are not promoted or sponsored by or related to an industrial group whose group **turnover exceeds Rs.300 crore**; and
 - (b) are not companies with **family connection** with any of the angel investors who are investing in the company.
- (2) Investment by an angel fund in any venture capital undertaking shall not be **less than Rs.25 Lakhs and shall not exceed Rs.10 Crores**.
- (3) Investment by an angel fund in the venture capital undertaking shall be **locked-in for a period of one year**.

Bridge Round

Bridge round is a sort of financing option that helps startups "bridge" the gap between larger funding rounds. Bridge rounds can be termed as interim financing rounds raised

between larger funding rounds. Bridge rounds are often structured as convertible debt. When a startup needs additional capital between two rounds of funding, they might raise a "bridge round". Bridge rounds also provide an interim cash infusion to capitalize the rapid growth or prepare for an IPO of start-ups

Series Funding

After Seed Funding Round or Angel Funding Round and Bridge Funding Round, Series Funding Round will start like Series A to Z. Series preferred stock is the first round of stock offered during the seed or early stage round by a portfolio company to the venture capital investor. Series preferred stock is often convertible into common stock in certain cases such as an Initial public offering (IPO) or the sale of the company

Things to Know When Raising a 'Series A Round':

1. Be Series A Ready

If you are looking to raise a Series A, it might be a good idea to get familiar with what venture funds look for to ascertain if your company is Series A ready. Promising unit economics, revenue, proof of business model, systems ready to support efficient scaling, product/market fit, customer acquisition strategy and success, quality of team are some key factors that are generally taken into consideration and it is wise to evaluate where your company stands against these metrics to figure if you are ready for Series A.

2. Start Early

Fundraising in the current environment is a time-consuming process - be realistic about the timeframe. Make sure you start the process at least 7-8 months prior to when you want to raise a Series A financing.

3. Leverage Your Network

Seed funding is more plentiful and easier to raise as compared to Series A. Leveraging your network and building genuine relationships before you start your Series A fundraising will make it easier for you to get potential meetings with investors.

4. Practice your "Pitch"

The key is to take as many meetings as possible. Speak to other founders who have successfully raised Series-A and take their inputs for your pitch. Meet the low priority investors on your list first - they will ask you relevant question and provide you valuable feedback which you should incorporate in your pitch before meeting the top priority investors on your list. Treat the pitch a product - iterate on it until it is great.

5. Create a Fundraise Momentum

Approaching multiple venture funds at the same time is a good idea to get a competitive dynamic into the process. Try keeping your conversations with interested investors moving along at as close to the same pace as possible. T

6. Know the "standard market practice"

Keep yourself up to date with the commonly offered deal terms for a Series A. It is highly possible that the first version of your term sheet you receive is not exactly "founder-friendly".

7. Get the deal terms right

The Series A terms will play as a foundation for all future rounds - many of those same terms that you have signed up for in your Series A are likely to carry through to future rounds i.e. Series B or Series C - hence important to get them the right the first time itself.

8. Engage a Professional

If you're raising venture capital - you need a professional who specializes in structuring venture capital financing.

9. Paperwork in place

Shorten your transaction closing time by having all paper work in place for due diligence.

10. Raise 10-15% more than budgeted for

Within reason, if you have access to capital and the deal terms including dilution are decent, raise 10-15% more than budgeted as the business initiatives/operations don't always materialise as planned.

DEBT FINANCING

i. Loan from Banks & NBFCs

Loans from banks and NBFCs help finance the purchase of inventory and equipment, besides securing operating capital and funds for expansion. They require substantial collateral and a good track record, besides the fulfilment of other terms and conditions and a lot of documentation as follows:

- Application for loan sanction by borrowers;
- Issue of sanction letter by the Bank;
- Agreement of Loan;
- Security/collateral documentation, such as (i) Deed of Mortgage; (ii) Deed of Hypothecation; (iii) Deed of guarantee; (iv) Share pledge agreement; (v) Memorandum of Entry; etc

External Commercial borrowing (ECB) for Start-ups: An easy funding



ii. External Commercial Borrowings (ECB)

External Commercial Borrowings (ECB) in form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. non-convertible, optionally convertible or partially convertible preference shares, floating rate notes and fixed rate bonds) can also be availed from **non-resident lenders** to fund the business requirement of a company. ECB can be accessed under two routes, viz., **(i) Automatic Route**; and **(ii) Approval Route** depending upon the category of eligible borrower and recognized lender, amount of ECB availed, average maturity period and other applicable factors.

CGTMSECredit Guarantee Trust
for Micro & Small
Enterprisesiii. CgTMSE Loans

Under the Credit Guarantee Trust for Micro and Small Enterprises scheme launched by Ministry of Micro, Small & Medium Enterprises (MSME), Government of India to encourage entrepreneurs, one can get loans of up to 1 crore without collateral or surety. Any new and existing micro and small enterprise can take the loan under the scheme from all scheduled commercial banks and specified Regional Rural Banks, NSIC, NEDFi, and SIDBI, which have signed an agreement with the Credit Guarantee Trust

INITIAL PUBLIC OFFER (IPO) TO RAISE THE FUNDS OR INCREASE THE MAGNITUDE OF THE BUSINESS OPERATIONS

During the IPO, the Company raises funds by offering and issuing equity shares to the public. An IPO allows a company to tap a wide pool of stock market investors to provide it with large volumes of capital for future growth. The existing shareholding will get diluted as a proportion of the company's shares. However, existing capital investment will make the existing shareholdings more valuable in absolute terms.

UNCONVENTIONAL MODES OF FINANCING OPTIONS WHICH ARE NOW BECOMING POPULAR IN INDIA

Crowd Funding

This is recent phenomena being practiced for getting seed funding through **small amounts collected from a large number of people (crowd), usually through the Internet**. Now we have companies existing in India which are specializing in "Crowd Funding".

The entrepreneur can get money for his

Incubators

These set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an equity stake ranging from 2-10%. **Incubators offer office space, administrative support, legal compliances, management training, mentoring and access to industry experts as well as to**

venture by showcasing his idea before a large group of people and trying to convince people of its utility and success.

funding through angel investors or VCs.

9. ENTREPRENEURSHIP

Entrepreneurship is defined as the process of making money, earning profits and increasing the wealth while posing characteristics such as risk taking, management, leadership and innovation. The term Entrepreneurship is a complicated term and gives various meaning depending on the situation.

Four Key Elements of Entrepreneurship-

Innovation	Risk taking	Vision	Organising skills.
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Characteristics of an Entrepreneur

Mental Ability:	Business Secrecy:	Clear Objectives:
Human Relation:	Communication Ability:	

How Entrepreneurship is different from a Startup?

The primary distinction between the startup and entrepreneurship is that an entrepreneur refers to all business ventures, new or old. It includes small businesses, partnerships, firms, sole-proprietorship and corporations which can be based on a new idea or on an existing idea. On the other hand, a startup is a newly emerged business venture started by individual founders to meet a market gap. Startups mostly mean new businesses that are solving market's problems with unique ideas.

UNICORN

CS EXECUTIVE

A unicorn is a term used to indicate a privately held startup company with a valuation of **over \$1 billion**

For a unicorn, the journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem

The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators

However, in the past decade. There has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

In 2021 itself, India witnessed the **birth of 44 unicorns** with a total valuation of **\$ 93 Bn.**

MICRO, SMALL AND MEDIUM ENTERPRISES

1. INTRODUCTION

Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. MSMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country.

2. MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

The Micro, Small and Medium Enterprises Development Act, 2006 came into force on 02nd October, 2006.

The Central Government shall establish a board under section 3 of MSME Act, 2006 known as National Board for Micro, Small and Medium Enterprises. Its head office shall be in New Delhi.

3. IMPORTANT DEFINITIONS

Some of the important definitions as provided in the Act is mentioned below:

Advisory Committee:

Section 2 (a) states that Advisory Committee means the committee constituted by the Central Government under sub-section (2) of section 7.

Appointed Day:

Section 2(b) of the Act defines the term appointed day as to mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Enterprise:

Section 2(e) of the Act defines the term Enterprise as an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (IDRA) or engaged in providing or rendering of any service or services.

4. ESTABLISHMENT OF NATIONAL BOARD FOR MICRO, SMALL & MEDIUM ENTERPRISES

The Central Government shall establish a board under section 3 of MSME Act, 2006 known as National Board for Micro, Small and Medium Enterprises. Its head office shall be in New Delhi.

Constitution of Board: The board shall consist of following members:

- (a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;
- (b) the Minister of State or a Deputy Minister,
- (c) 6 Ministers of the State Governments
- (d) 3 Members of Parliament of whom 2 shall be elected by the House of the People and one by the Council of States;
- (e) the Administrator of a Union territory to be appointed by the Central Government, ex officio;

CS EXECUTIVE

- (f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government
- (g) 4 Secretaries to the Government of India,
- (h) the Chairman of the Board of Directors of the National Bank, ex officio;
- (i) the Chairman and Managing Director of the Board of Directors of the Small Industries Bank, ex officio;
- (j) the Chairman, Indian Banks Association, ex officio;
- (k) 1 officer of the Reserve Bank
- (l) 20 persons to represent the associations of micro, small and medium enterprises, including not less than 3 persons representing associations of women's enterprises and not less than 3 persons representing associations of micro enterprises, to be appointed by the Central Government;
- (m) 3 persons of eminence, one each from the fields of economics, industry and science and technology, not less than 1 of whom shall be a woman, to be appointed by the Central Government;
- (n) 2 representatives of Central Trade Union Organizations, to be appointed by the Central Government; and
- (o) 1 officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.

The Board shall meet at least once in every three months in a year.

Functions of Board

Section 5 of MSMED Act, 2006 states about the main functions of the board which are as follows:

To examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and

To make recommendations on matters relating to promotion and development of micro, small and medium enterprises or on any other matter referred to it by the Central Government which, in

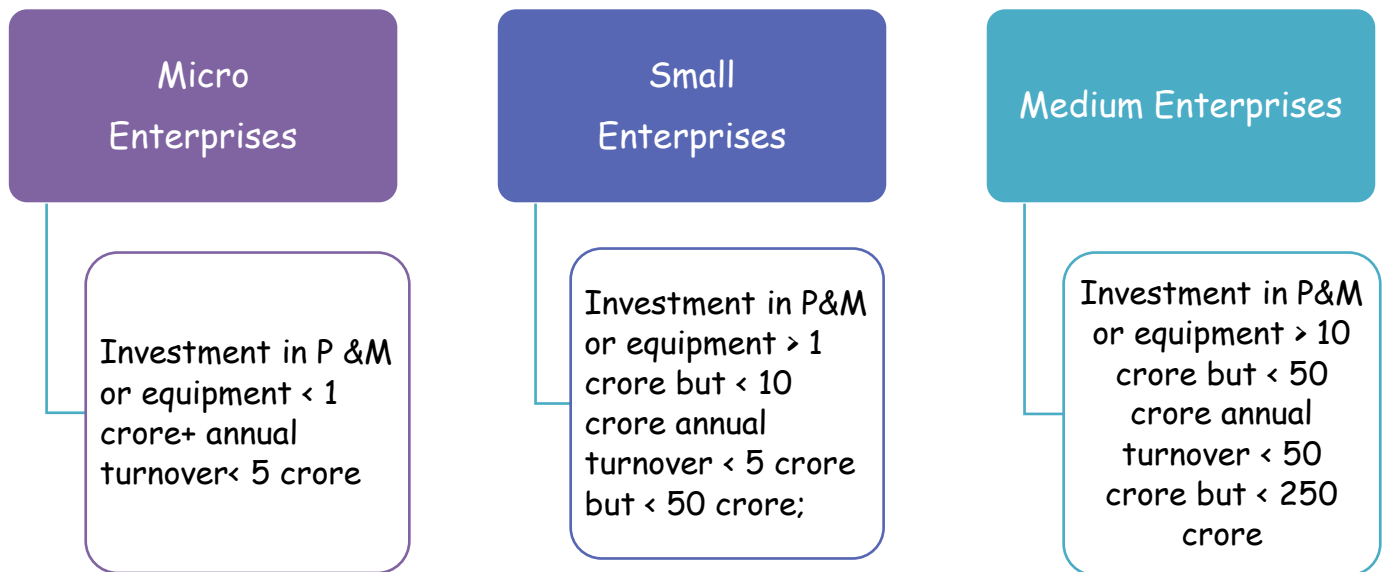
To advise the Central Government on the use of the Fund or Funds constituted under section 12 of

programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises.

the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises.

MSMED Act, 2006.

5. CLASSIFICATION OF ENTERPRISES



6. REGISTRATION PROCESS

- (1) The form for registration shall be as provided in the **Udyam Registration portal**.
- (2) There will be **no fee** for filing Udyam Registration
- (3) **Aadhaar number** shall be required for Udyam Registration.
- (4) The **Aadhaar number shall be of the proprietor** in the case of a proprietorship firm, of the **managing partner** in the case of a partnership firm and of a **karta** in

the case of a Hindu Undivided Family (HUF).

- (5) In case of a Company or a Limited Liability Partnership or a Co-operative Society or a Society or a Trust, the organisation or its **authorised signatory** shall provide its GSTIN and PAN along with its Aadhaar number
- (6) No enterprise shall file more than one Udyam Registration: Provided that any number of activities including manufacturing or service or both may be specified or added in one Udyam Registration.
- (7) Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

Benefits of taking Udyam Registration

- It will be a **permanent registration** and basic identification number for an enterprise.
- MSME Registration is **paperless and based on self-declaration**.
- There will be **no need for renewal** of Registration.
- Any number of activities including manufacturing or service or both may be **specified or added** in one Registration.
- The Udyam Registration may also help MSMEs in availing the **benefits of Schemes of Ministry of MSMEs**.
- Becomes **eligible for priority sector lending** from Banks.

7. MSME SCHEMES

MSMEs are amongst the strongest drivers of economic development, innovation and employment. Constant efforts are being made towards up-liftment of MSMEs under "Self Reliant India" through various schemes of MSMEs. Following are the major MSME

schemes implemented by the Government of India:

A. Prime minister's employment generation programme(PMEgP)

The scheme aims to provide financial assistance to set up self-employment ventures and generate sustainable employment opportunities in rural as well as urban areas. And to generate sustainable and continuous employment opportunities to rural and unemployed youth as well as prospective traditional artisans and thereby halt occupational migration. The scheme is applicable to all individuals above the age of 18 years.

B. 2ND LOAN FOR UP-GRADATION OF THE EXISTING pmegp/MUDRA UNITS

The scheme caters to the need of the entrepreneurs for bringing new technology/ automation so as to modernize the existing unit. With an objective to assist existing units for expansion and upgradation, the scheme provides financial assistance to successful/well performing units. The scheme is applicable to all the existing well performing PMEGP/MUDRA units.

C. Credit guarantee scheme for micro & small enterprise (CgTMSE)

The main objective of this scheme is to encourage the first generation entrepreneurs to venture into self-employment opportunities by facilitating credit guarantee support for collateral free / third-party guarantee-free loans to the Micro and Small enterprises (MSEs), especially in the absence of collateral. The scheme is applicable to all the existing entrepreneurs and aspiring entrepreneurs.

D. Micro & Small Enterprises Cluster Development Programme (MSE-CDP) Scheme

This scheme is formulated to support the sustainability and growth of MSEs by addressing common issues such as improvement of technology, skills; quality, market access, etc and to create/upgrade infrastructural facilities in the new/ existing Industrial Areas/Clusters of MSEs. Its main objective is:

- To set up Common Facility Centers (for testing, training, raw material depot, effluent treatment, complementing production processes, etc).
- Promotion of green & sustainable manufacturing technology for the clusters.

E. Scheme Of Fund For Regeneration Of Traditional Industries (SFURTI)

The main objective of SFURTI is to organize traditional industries and artisans into collectives by increasing production and value addition to make products competitive and to promote traditional sectors and increase income of artisans providing sustainable employment. The scheme is applicable to existing artisans from traditional industries, Cluster of Artisans in sectors such as Handicraft, Textile, Agro-Processing, Bamboo, Honey, Coir, Khadi etc.

F. **Entrepreneurship And Skill Development Programme (ESDP) Scheme**

ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country. It is applicable to all the aspiring and existing entrepreneurs. It facilitates entrepreneurship/ self-employment awareness and motivation to different sections of the society including SC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options.

Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/ Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/ Fabrication/ Sheet metal work, Basic/ Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme.

G. **Assistance To Training Institutions (ATI) Scheme**

The scheme targets to create and strengthen infrastructure and assistance for entrepreneurship and skill development training programmes. Providing proper support for infrastructure and capacity building of training institutions of Ministry of MSME and existing State level EDIs. The scheme also aims in supporting the skill development programmes by training institutions of the Ministry of MSME.

H. **Coir Vikas Yojana - Umbrella Scheme (Skill Upgradation and Mahila Coir Yojana)**

The main objective of this scheme is to impart training in processing of coir and value addition to potential workers, coir artisans/entrepreneurs through field training centers and training institution of Coir Board. The scheme aims to provide self-employment opportunities to rural artisans including women artisans in regions processing coconut

husk. It is applicable to all the aspiring and existing entrepreneurs. The main benefits of the scheme are:

- Training to personnel in the cadres of supervisors/ instructors/artisans in coir industry.
- EDPs/Workshops/Seminars/Awareness programmes on development of coir industry.
- Conducting Exposure tours to the rural artisans for familiarizing with the newly incorporated technologies in the coir sector.

I. Procurement And Marketing Support (PMS) Scheme

The scheme aims to promote new market access initiatives like organizing / participation in National / International Trade Fairs / Exhibitions / MSME Expo, etc. held across the country and to create awareness and educate the MSMEs about the importance / methods/ process of packaging in marketing, latest packaging technology, import-export policy and procedure, GeM portal, MSME Conclave, latest developments in international / national trade and other subjects / topics relevant for market access developments.

J. International Cooperation (IC) Scheme

The scheme aims to Capacity build MSMEs for entering export market by facilitating their participation in international exhibitions/fairs/conferences/seminar/ buyer-seller meets abroad as well as providing them with actionable market-intelligence and reimbursement of various costs involved in export of goods and services. The Scheme provides opportunities to MSMEs to continuously update themselves to meet the challenges emerging out of changes in technology, changes in demand, emergence of new markets, etc

K. National SC-ST Hub Scheme

The main objective of this scheme is to provide professional support to Scheduled Caste and Scheduled Tribe Entrepreneurs to fulfill the obligations under the Central Government Public Procurement Policy for Micro and Small Enterprises Order 2012, adopt applicable business practices and leverage the Stand-Up India initiatives. The scheme is applicable to aspiring and Existing SC/ST Entrepreneurs

L. A Scheme for Promotion of Innovation, Rural Industries and Entrepreneurship (ASPIRE)

The main objective of this scheme is to set up a network of **Livelihood Business Incubation centers predominantly in the rural and underserved areas, to promote innovation and accelerate entrepreneurship** by empowering the beneficiaries in creation of formal micro-enterprises and imparting skill development programs for creating wage/self-employment opportunities in the agro rural sector.

M. **Credit guarantee Scheme for Subordinate Debt (CgSSD) for Stressed MSMEs**

The main objective of this scheme is to provide Subordinate debt. Subordinate debt will provide a substantial help in sustaining and reviving the MSMEs which have either become NPA or are on the brink of becoming NPA. Promoter(s) may infuse this amount in MSME unit as equity and thereby enhance the liquidity and maintain debt-equity ratio. In a situation, where an outright loan is difficult, sub-debt with guarantee will provide the requisite financing to the MSME Units. This Scheme seeks to extend support to the promoter(s) of the operational MSMEs which are stressed and have become NPA as on 30th April, 2020.

N. **Self reliant India (SRI) Fund**

This scheme is yet to be launched. India has embarked upon the path of self-reliant economic growth for achieving its aspiration of becoming an economic superpower. Towards this end, one of the initiatives taken by the Government of India is the launch of the Self Reliant India (SRI) Fund. The Fund structure is designed in a manner that it will leverage the strength of the private sector in providing growth capital to viable MSMEs having a definite growth plan.

SRI Fund will contribute towards achieving India's \$5 trillion GDP target by creating a vibrant MSME ecosystem, and making an Aatmanirbhar Bharat.

O. **MSME Sambandh**

MSME Sambandh Portal is launched as the Public Procurement Portal, whose main objective is to monitor the implementation of the Public Procurement from MSEs by Central Public Sector Enterprises. The Public Procurement Policy for Micro and Small Enterprises

(MSME) order 2012 has mandated every Central Ministry/ Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year, with the objective of achieving an overall procurement goal of minimum 25 per cent of the total annual purchases from the products or services produced or rendered by MSEs. Out of 25% target of annual procurement 4% is exclusively reserved for MSEs owned by SC/ST and 3% for MSEs owned by Women entrepreneurs

8. REFERENCE TO MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

Under section 18 of the Act, any party to a dispute may, with regard to any amount due to him make a reference to the Micro and Small Enterprises Facilitation Council. On receipt of such reference the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation.

Where the conciliation initiated is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration. The

Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Every reference made under this section shall be decided within a period of 90 days from the date of making such a reference.

Section 19 of the MSMED Act, 2006 states that no application for setting aside any decree,

Section 20 of the Act states that the State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it 75% of the amount in terms of the decree, award or, as the case may be.

Whereas pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose

Composition of Micro and Small Enterprises Facilitation Council

The Micro and Small Enterprise Facilitation Council shall consist of not less than 3 but not more than 5 members to be appointed from amongst the following categories, namely:

Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

one or more representatives of banks and financial institutions lending to micro or small enterprises; or

one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

C

ONVERSION OF BUSINESS ENTITIES

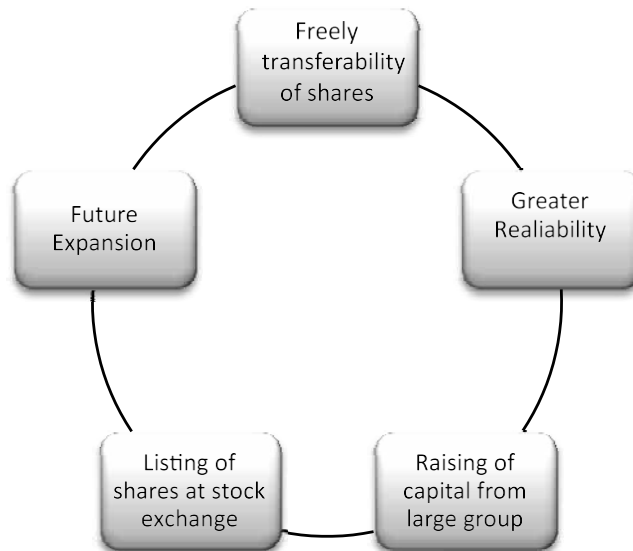
1. INTRODUCTION

The company can convert into following type of companies:

- Conversion of a private company into a public company;
- Conversion of a public company into a private company;
- Conversion of One Person Company to private company/ public company;
- Conversion of private company to One Person Company;
- Conversion of section 8 company into any other kind;
- Conversion of unlimited liability company in to a limited liability company by share or guarantee;
- Conversion of a company limited by guarantee in to a company limited by shares;
- Conversion of Limited Liability Partnership into company;
- Conversion from private company into limited liability partnership;
- Conversion from unlisted public company into limited liability partnership;
- Incorporation of Part XXI companies

2. CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

Benefits of Conversion of Private Company into a Public Company



Procedure for conversion of a Private Company into a Public Company

Holding a Board Meeting and issuance of notice of General Meeting

Holding the General meeting and obtain the shareholders approval for conversion of private company into a public company

Filing of e-form with the ROC eForm MGT-14, eForm-INC 27

Issuance of new Certificate of Incorporation after conversion

Detailed Procedure for Conversion of a Private Limited Company into a Public Company:

1. Holding a Board Meeting: Issue a notice (**not less than 7 days**) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and

Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Private Limited Company into Public Limited Company. The main agenda for this board meeting would be:

- a. To pass a board resolution to get **in-principal approval** of Directors for conversion of private company into a public company.
- b. To **fix date, time and place for holding general meeting** to get approval of shareholders, by way of Special Resolution, for conversion of a Private company into a Public company.
- c. To **approve notice of general meeting along with agenda and explanatory statement** to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the **special resolution** for effecting the conversion of private limited company into public limited company and the **required alteration in the Memorandum of Association and Articles of Association of the Company**.
- d. To authorize the **Director or Company Secretary** to issue notice of the general meeting as approved by the board.
- e. Pass Board resolution for **increase in number of Directors**, if Directors are less than 3 in the company.
- f. To authorize the **Company Secretary** and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
- g. To approve the **draft new set of Memorandum of Association and the Articles of Association** meeting the requirement of a Public Limited Company.

2. Issue of Notice of General Meeting: Issue Notice of the General meeting to all

Members, Directors and the Auditors of the company in accordance with the provisions of [Section 101](#) of the Companies Act, 2013 and [Secretarial Standards -2](#). Notice shall be given [atleast 21 clear days](#) before the actual date of General Meeting. Shorter notice can be issued if the [consent of majority of shareholders holding 95% of paid-up capital has been obtained](#). Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. Holding of General Meeting: Hold the General meeting as scheduled and pass the necessary [Special Resolution](#), to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including the removal of restrictive provisions as applicable to the private limited company and for change of name of the company to delete the word "private".
4. Filing of e-form [MGT-14](#): In case of conversion of Private Company into a Public Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form [MGT-14 within 30 days of passing special resolution](#) in the general meeting. Following documents are required to be attached with [e-form MGT-14](#):
 - a. Notice of general meeting along with copy of explanatory statement under section 102;
 - b. Certified true copy of special resolution;
 - c. Altered memorandum of association;
 - d. Altered articles of association

e. Certified true copy of board resolution may be attached as an optional attachment

5. Filing of e-form INC-27: For giving effect to conversion of Private Company into Public Company, an application in E-Form INC-27 needs to be filed with the Registrar of Companies along with prescribed fees within fifteen days of passing of Special Resolution as per Rule 33 of Companies (Incorporation) Rules, 2014.

Following documents are required to be attached with e-form INC-27:

- (i) It is mandatory to attach minutes of the member's meeting where approval was given for conversion and altered articles of association;
- (ii) Certified True Copy of Special Resolution;
- (iii) Altered articles of association;
- (iv) Certified True Copy of Special Resolution;
- (v) Certified true copy of board resolution may be attached as an optional attachment;
- (vi) Other information if any can be provided as an optional attachment(s).

6. Scrutiny of documents by ROC and issuance of fresh Certificate of Incorporation:

As per Section 18, for conversion of a private company into a public company, the Registrar shall on an application made by the company and on the approval of E-Form MGT-14 and E-Form INC-27, after satisfying himself that the provisions of Chapter II of the Companies Act, 2013 applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

3. CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY

Procedure for conversion of a Public Limited Company into a Private Company

Holding a Board Meeting:

Issue of Notice of General Meeting and Holding of General Meeting

Filing of e-form MGT-14 with ROC

Advertisement in English and Regional vernacular newspapers in form INC 25A

File an application with Regional Director in eForm RD-1 for conversion of Public Company into Private Company

Filing of eform INC 28 with Registrar of Company

Filing of form INC-27 with ROC

Fresh Certificate of Incorporation after conversion

4. CONVERSION OF SECTION 8 COMPANY INTO ANY OTHER KIND

Procedure for conversion of a Section 8 company into any other kind of company

CS EXECUTIVE

Holding a Board Meeting:

Hold General Meeting for approving the conversion

Filing of e-form MGT-14 with ROC attaching special resolution alongwith notice and explanatory statement

File INC-18 with Regional Director for approval

Publication of an Advertisement in eform INC-19

Order of conversion by Regional Director

Fresh Certificate of Incorporation

5. CONVERSION OF COMPANY INTO LLP

Calling of Board Meeting:

Issuance of a notice regarding General Meeting and holding the general meeting

Filing of web based form 'RUN LLP'

Filing of Form FiLLip and Form 18 with the ROC

Fresh Certificate of Incorporation after conversion

6. CONVERSION OF LLP INTO COMPANY

Calling of Meeting of Partners And Approve Name:

Securing DCS & DIN

Filing of form URC-1

Filing of SPICe, SPICe MOA and SPICe AOA

Fresh Certificate of Incorporation after conversion

7. CONVERSION OF ONE PERSON COMPANY INTO A PUBLIC COMPANY OR A PRIVATE COMPANY

Procedure for conversion of One Person Company in to any other Company

Calling of Board Meeting:

Issuance of a notice regarding General Meeting and holding the general meeting

Filing of Form MGT-14 with ROC

Filing of Form INC-6 with ROC

Fresh Certificate of Incorporation after conversion in FORM INC 25

Points to ponder:

- A minor shall not become a member or nominee of the One Person Company.
- A minor can't hold shares with beneficial interest into One Person Company.
- One Person Company can't be incorporated or converted into a Section 8 company.
- One Person Company can't carry out Non-Banking Financial Investment activities including investment in securities of any Body corporates.

8. COMPANIES AUTHORIZED TO REGISTER UNDER THE COMPANIES ACT, 2013

Essential pre-conditions of companies for Registration under Part XXI of the Act

- a) All the secured creditors of the company must either consented to or have given their no objection to company's registration under this Part;
- b) Publish an advertisement in newspaper (one English and one in vernacular language) giving notice about registration under this Part, seeking objections and address them suitably;
- c) file duly notarized affidavit from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

1. INTRODUCTION

One of the first decisions that is faced by an entrepreneur is how the business should be structured. All businesses must adopt some legal configuration that defines the rights and liabilities of participants in the business's ownership, control, personal liability, life span, and financial structure. This decision will have long-term implications, so he has to select the form of ownership that is right for him. In making a choice, he will want to take into account the following:

2. PARTNERSHIP

Definition & meaning of partnership

As per Section 4 of Indian Partnership Act, 1932 "Partnership" is the relation between persons who have agreed to share the profits of a business **CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL.**

Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

Holding out

Section 28

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partner's death, the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death

Dissolution of a firm

Section 39

The dissolution of partnership between all the partners of a firm is called the dissolution of the firm.

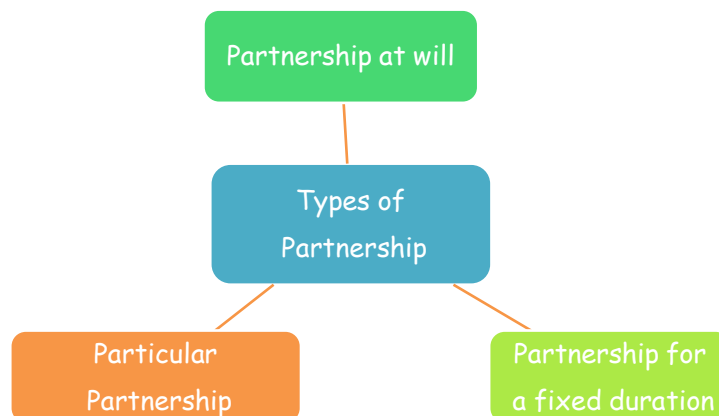
Insolvency and Bankruptcy of Partnership Firm

The Insolvency and Bankruptcy of partnership firms where the amount of default is not less than one thousand rupees shall be governed by Insolvency and Bankruptcy Code, 2016.

Features of partnership

- | | |
|---|--|
| (i) <u>Existence of an agreement:</u> | (v) <u>Common Management:</u> |
| (ii) <u>Engagement in business:</u> | (vi) <u>Restriction on transferability of share:</u> |
| (iii) <u>Sharing of profits and losses:</u> | (vii) <u>Registration:</u> |
| (iv) <u>Unlimited Liability:</u> | (viii) <u>Duration:</u> |

Types of Partnership



Types Of Partners

The various types of partner found in partnership firms are as follows:

- (i) Active Partners:
- (ii) Sleeping or dormant partners:
- (iii) Others:
 - (a) Nominal Partners:
 - (b) Partners by holding out:
 - (c) Minor Partners:

Minor admitted into the benefits of partnership

A minor is a person who has not attained the age of 18 years. Since a minor is not capable of entering into a valid agreement, he cannot become partner of a firm. However, as mentioned earlier, he may be admitted to the benefits of an existing partnership as allowed under Section 30 of the Indian Partnership Act, 1932

Merits of Partnership

- | | |
|---|--|
| (i) <u>Ease in formation:</u> | (iv) <u>Balanced business decisions:</u> |
| (ii) <u>Pooling of financial resources:</u> | (v) <u>Sharing of risks:</u> |
| (iii) <u>Pooling of managerial stalls:</u> | (vi) <u>Privacy:</u> |
| | (vii) <u>Division of work:</u> |

Limitations of Partnership

- | | |
|--|--|
| (i) <u>Uncertainty of existence:</u> | (v) <u>Lack of institutional confidence:</u> |
| (ii) <u>Unlimited Liability:</u> | (vi) <u>Lack of Public Trust:</u> |
| (iii) <u>Risks of disharmony:</u> | (vii) <u>Lack of a Control:</u> |
| (iv) <u>Difficulty in withdrawal or Blocking of Capital:</u> | (viii) <u>Difficulties of expansion:</u> |

Partnership deed

Partnership deed, also known as a partnership agreement, is a document that outlines in detail the rights and responsibilities of all parties to a business operation. It has the force of law and is designed to guide the partners in the conduct of the business. It is helpful in preventing disputes and disagreements over the role of each partner in the business and the benefits which are due to them.

The key ingredients of a Partnership Deed are given below:

- | | |
|--|---|
| 1. <i>Definitions and vital information</i> | 7. <i>Banking and Partnership Funds</i> |
| 2. <i>Partnership duration</i> | 8. <i>Borrowings</i> |
| 3. <i>Investment</i> | 9. <i>Dissolution</i> |
| 4. <i>Accounting</i> | 10. <i>Expulsion</i> |
| 5. <i>Duties, powers and obligations of the partners</i> | 11. <i>Arbitration</i> |
| 6. <i>Profit & loss ratio</i> | 12. <i>Withdrawals</i> |
| | 13. <i>Admission/ Retirement of a partner</i> |

Partnership deed is a written agreement between the partners and is mandatorily registered in the court of law whereas partnership agreement is an agreement between the partners which may or may not be not registered in the court of law.

Benefits of Partnership Deed

- It enables business owners to **file a suit in court** in case of a dispute
- It helps **avoid any misunderstanding or conflict** among the business owners as all the terms and conditions have been decided and mentioned already in the Deed.
- It **clearly outlines the duties** of each partner.
- It **provides details of the profit/loss ratio** and reduces the chances of misunderstanding.

- e. It mentions the **amount invested** by each partner in the business.
- f. It also details the **salary and commission paid to partners**, and if any of the partners withdraw the capital, then what interest they will have to pay

Registration Procedure

A partnership firm can be registered whether at the time of its formation or even subsequently. One needs to file an application with the Registrar of Firms of the area where the business is located.

1. Application for partnership registration should include the following information, namely, name of your firm, name of the place where business is carried on, names of any other place where business is carried on, date of partners joining the firm, full name and permanent address of partners and duration of the firm. The Application should be duly signed by all the partners of the firm or by their duly authorised agents.
2. Every partner needs to verify and sign the application.
3. Ensure that the following documents and prescribed fees are enclosed with the registration application:
 - Application for Registration in the prescribed Form -1
 - Duly filled Affidavit
 - Certified copy of the Partnership deed (The deed so created by the partners should be on a stamp paper in accordance with the Indian Stamp Act/ stamp paper as applicable in the State where the Partnership Deed is executed)
 - Proof of ownership of the place of business or the rental/lease agreement thereof.

As per section 71 of Indian Partnership Act, states are authorized to make their own regulations with respect to prescribe the fee structure for registration or incorporation

of partnership.

It may be also be noted that the name of the partnership firm should not contain any words which may express or imply the approval or patronage of the government except where the government has given its written consent for the use of such words as part of the firm's name.

Once the Registrar of Firms is satisfied that the application procedure has been duly complied with, he shall record an entry of the statement in the Register of Firms and issue a Certificate of Registration.

Consequences of Non-Registration

It is not compulsory to register partnership firm as there are no penalties for non-registration. However, it is advisable since the following rights are denied to an unregistered firm:

- A partner cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act.
- A right arising from a contract cannot be enforced in any Court by or on behalf of your firm against any third party.

Further, the firm or any of its partners cannot claim a set off (i.e. mutual adjustment of debts owned by the disputant parties to one another) or other proceedings in a dispute with a third party.

Registration under Income Tax

It should be noted that registration with the Registrar of Firms is different from registration with the Income Taxation Department. It is mandatory for all firms to apply for registration with the Income Tax Department and have a PAN Card. After obtaining a PAN Card, the partnership firm is required to open a Current Account in the name of the partnership firm and to operate all its operations through this bank account.

3. HINDU UNDIVIDED FAMILY(HUF)

Meaning of Joint Hindu Family Business

The Joint Hindu Family Business is a distinct form of organisation peculiar to India. Joint Hindu Family Firm is created by the operation of law. It does not have any separate and distinct legal entity from that of its members. The laws that govern HUFs are not codified and are read along with the Hindu Succession Act and the Income-tax Act.

The business of Joint Hindu Family is controlled under the Hindu Law instead of Partnership Act. The membership in this form of business organisation can be acquired only by birth or by marriage to a male person who is already a member of Joint Hindu Family.

"When two or more families agree to live and work together, throw their resources and labour with joint stock and share profits and the losses together, then this family is known as composite family."

There are two schools of Hindu Law-one is Dayabhaga which is prevalent in Bengal and Assam and the other is Mitakshara prevalent in the rest of the-country. According to Mitakshara law, there is a son's right by birth in the property of joint family. It means, when a son is born in family, he acquires an interest in the property jointly held by the family.

The business of the Joint Hindu Family is controlled and managed by one person who is called 'Karta' or 'Manager'. The Karta or manager works in consultation with other members of the family but ultimately he has a final say. The liability of Karta is unlimited while the liability of other members is limited to their shares in the business

Characteristics of a Joint Hindu Family Business

1. Governed by Hindu Law:

The business of the Joint Hindu Family is controlled and managed under the Hindu law.

There are two schools of Hindu law:

Dayabhaga: It prevails in West Bengal & Assam and allows both the male & female members to be co-parceners.

Mitakshara: There are four schools of Mitakshara. The application of schools of Mitakshara is regionwise. It allows only male members to be co-parceners.

2. Management:

3. Membership by Birth:

4. Liability:

5. Permanent Existence:

6. Implied Authority of Karta:

7. Minor also a Partner:

8. Dissolution:

Benefits of HUF

1. Easy to Start:

2. Efficient Management & Control:

3. Secrecy:

4. Prompt Decision:

5. Economy:

6. Credit Facilities:

7. Expanded loyalty & cooperation:

8. Freedom regarding Selection of Business:

Limitations of HUF

1. Limited Resources:	4. Limited Managerial Skills:
2. Unlimited Liability of Karta:	5. Misuse of Power:
3. Dominance of Karta:	6. Limited Membership:

4. SOLE PROPRIETORSHIP

The vast majority of small businesses start out as sole proprietorships. The sole proprietorship is a form of business that is owned, managed and controlled by an individual. He has day-to-day responsibility for running the business. He has to arrange capital for the business and he alone is responsible for its management. He is therefore, entitled to the profits and has to bear the loss of business. Sole proprietorships own all the assets of the business. He also assumes complete responsibility for any of its liabilities or debts. In the eyes of the law and the public, the sole proprietor and the business are one and the same.

It is the simplest and most easily formed business organization. This is because not much legal formality is required to establish it. For instance, to start a factory, the permission of the local authorities is sufficient. Similarly, to start a restaurant, it is only necessary to get the permission of local health authorities. Or again, to run a grocery store, the proprietor has only to follow the rules laid down by local administration.

Merits of Sole Proprietorship

A sole proprietary organization has the following advantages:

<ul style="list-style-type: none"> ○ <u>Easy formation</u> ○ <u>Swift Decisions:</u> ○ <u>Sole beneficiary of profits:</u> ○ <u>Benefits of small-scale operations:.</u> 	<ul style="list-style-type: none"> ○ <u>Confidentiality:</u> ○ <u>Lesser paperwork:</u> ○ <u>Simple tax calculations:</u> ○ <u>Lower business fees:</u>
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- o Inexpensive Management:

Limitations of sole Proprietorship

- | | |
|---|---|
| <ul style="list-style-type: none"> (i) Limitation of management skills: (ii) Limitation of Resources: (iii) Unlimited liability: (iv) Lack of continuity: | <ul style="list-style-type: none"> (v) Selling the business is a challenge: (vi) Risk in decision-making: (vii) No economies of scale: |
|---|---|

Procedure for Formation of Sole Proprietorship Firm

Sole Proprietor is formed, managed and controlled by one individual.

Registration may be required under the following enactments as prevailing in the respective States or of the Central Government, such as

- i. Shops and Commercial Establishments Act (State specific)
- ii. Law relating to Professional Tax (State specific)
- iii. Registration under Micro, Small and Medium Enterprises Development Act, 2006.
- iv. Registration as a Small Scale Industry (State specific)
- v. GST registration (with the launch of GST, only GSTIN will be used for Import-Export Code Number)
- vi. Intellectual Property laws

5. MULTI STATE CO-OPERATIVE SOCIETY

The Multi-State Cooperative Societies (MSCS) Act, enacted in 1984, was modified in 2002, in keeping with the spirit of the Model Cooperatives Act. Unlike the State Laws, which remained as a parallel legislation to co-exist with the earlier laws, the MSCS Act, 2002 replaced the earlier Act of 1984.

The Act provides for formation of both primary (with both individual and institutional members) and federal cooperatives (with only institutional membership).

Examples of Multi State Co-operative Society

Multi State Co-operative Society

Farming Co-operative Society

Credit Co-operative Society

Agriculture Co-operative Society

Real Estate Co-operative Society

Dairy Farm Co-operative Society

Transport Co-operative Society and many more

Their main objects shall be serving the interests of members in more than one state and their by-laws shall provide for social and economic betterment of their members through self-help and mutual aid in accordance with co-operative principles (Sec. 7). Otherwise, they are ineligible for registration. Under Section 9 of the said Act, a multi-state co-operative society is a body corporate with limited liability.

Benefits of Multi State Co-Operative Society

1. MSCS provides loans at reasonable rates of interest to the poor. This benefits them, as they do not have to go to financiers who lend at high interest rates.
2. MSCS can function pan India as they can start branches in different districts and states.
3. As regulatory requirements of filing, etc, is minimum, MSCS have low compliance costs.
4. A Multi State Co-operative Credit Society belongs to its members, who are at the

same time the owners and the customers of their Society. This creates a sense of belonging and ownership among the members

6. TRUST

A Trust is a relationship in which a person or entity holds a valid legal title to a certain property which is known as the Trust property. The Trust is bound by a fiduciary duty to exercise that legal title for the benefit of any one or more individuals or group of individuals or organisations, who are known as the Beneficiaries. The Trust shall be governed by the terms of the Written Trust agreement.

Trust is defined in section 3 of the Indian Trust Act, 1882 as

"an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner"

In other words, it is simply a transfer of property by one person (the settlor) to another (the "trustee") who manages that property for the benefit of someone else (the "beneficiary"). The settlor must legally transfer ownership of the assets to the trustee of the trust.

The statutory basis governing Trusts, in general, under Indian law is the Indian Trusts Act, 1882.

Objectives of a Trust

As per Section 4 of the Indian Trusts Act, 1882, a trust may be created for any lawful purpose. The purpose of trust is lawful unless it is:

Forbidden by
Law

Is of such nature that, if
permitted, it would

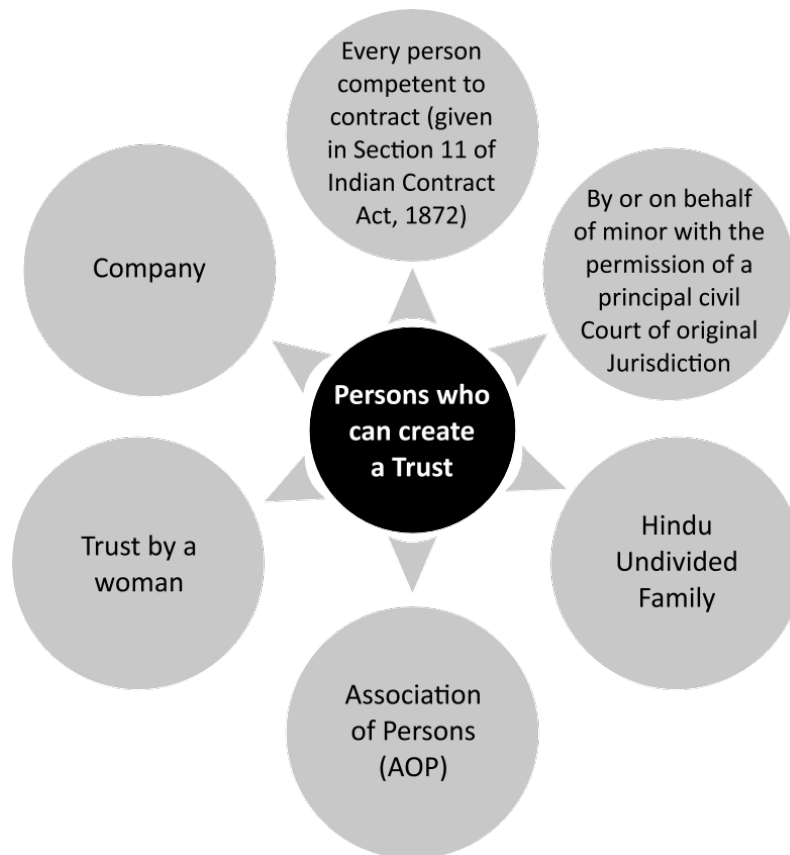
Is fraudulent

CS EXECUTIVE

	defeat the provision of any Law, or	
Involves or implies injury to the person or property of another, or		The Court regards it as immoral or opposed to public policy

Persons who can create a Trust

According to Section 7 of Indian Trusts Act, 1882, a trust may be created by the following persons



Persons who can be a Trustee

As per Section 10 of the Indian Trust Act, 1882, any person who is capable of holding property may be a trustee; except to the condition of discretion of trust, in that case, he cannot execute it unless he is competent to contract

Difference between Public Trust and Private Trust

(a) Identification of the beneficiaries of the Trust is a simple way to differentiate

between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a board of trustee. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.

- (b) in a Public Trust, the interest is vested in an uncertain and fluctuating body . They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals.
- (c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

A trust for the benefit of employees of a company however numerous would not be considered as public charitable. For example, an industrialist who creates a trust for the benefit of his 5,000 people, their spouses and children is considered private because who the beneficiaries are known.

Exemptions available to Trusts

Exemptions available to Trusts are primarily governed by the provisions of the Income Tax Act, 1961. The exemption has to be read keeping in mind whether the Trust is a Public Charitable Trust, Private Trust, Religious Trust, etc.

Certain key exemptions are listed below:

Tax exemption under Section 10 of the Income Tax Act, 1961

Tax exemption under Section 11 of Income Tax Act, 1961

Tax exemption under Section 12 of the Income Tax Act, 1961

Formation of Trust

A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding. Before registration of a trust, the following aspects have to be decided

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Name of the trust

Address of the trust

Objects of the trust (charitable or Religious)

One settler of the trust

Two trustees of the trust

Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

7. SOCIETY

A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose. Societies are usually registered for promotion of charitable activities like education, art, religion, culture, music, sports, etc., In India, The Societies Registration Act, 1860 lays down the procedure for society registration and operation in India. The Act has been adopted by most of the State Governments with/without modifications as considered by the respective State Governments.

According to Section 20 of the Societies Registration Act, 1860, societies can be formed for the following purposes:

- i. Charitable societies;
- ii. the military orphan funds or societies established at the several presidencies of India;
- iii. societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge;
- iv. The diffusion of political education;
- v. the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public;

- vi. public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs

Besides these purposes, the respective State Governments may provide for any other objects by their legislations.

Advantages of Society

- (a) The process of formation and registration is simple.
- (b) Record-keeping requirements are minimum and compliance with regulations is easy.
- (c) Cost of compliance is low.
- (d) Least possibility of interference by the regulator.
- (e) Exemption from tax due to charitable nature of operations.

8. MEGA FIRM

Mega Firm or Multidisciplinary Firm (MDF) can be described as a Partnership firm with more than twenty-five partners. A firm which provides core professional service of a particular profession along with the allied and ancillary service with equal competence under one roof is a multidisciplinary firm. For example, company and corporate law is core knowledge for company secretaries, however, they can acquire expertise in any other area like direct- indirect taxation, labour laws, economic laws, finance, accounting, insurance, international business and IPRs and they may be in position to provide single window business solutions.

MDF is a step towards mega firm. It is paradigm shift from traditional approach of 10X10 offices to a global office. MDF will put the professionals in general and company secretaries in particular on fast track. Large firms will still become larger and one day the global business enterprise will call them a "Mega Firm".

Keeping in view of the present needs of the corporate and multi-dimensional growth of CS profession especially in the areas of practicing in the areas of Corporate Laws, Labour laws, RBI/ FEMA, acting as Secretarial Audit, Resolution Professional Insolvency Bankruptcy Code, GST Practitioner there is a need to structure and build the Multidisciplinary(MDF)/mega firms. There is a huge demand and scope for a multifunctional firm, where several services are provided under one roof. Clients always have a comfort level in dealing with such firms. They are assured of timely and quality service since even if one of the Partners is not available for consultancy they can bank on the others. Unless there are MDF/Mega firms, it may not be possible to cater to the bigger assignments.

Multidisciplinary Firm - According to Regulation 165A of The Company Secretaries Regulations, 1982 inserted by the Company Secretaries (Amendment) Regulations, 2020- A member in practice may form multi- disciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of The Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

Regulation 168 A - Other Professional bodies:

1. For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be member of any of the following, namely:
 - a. The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
 - b. The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
 - c. Bar Council of India established under the Advocates Act, 1961;
 - d. The Indian Institute of Architects established under the Architects Act, 1972;

- e. The Institute of Actuaries of India established under the Actuaries Act, 2006;
 - f. The membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council under Sub-section (2) of Section 38 of the Act.
2. For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:
- a. Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;
 - b. Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
 - c. Actuary within the meaning of the Actuaries Act, 2006;
 - d. Bachelor in Engineering from a University established by law or an institution recognized by law;
 - e. Bachelor in Technology from a University established by law or an institution recognized by law;
 - f. Bachelor in Architecture from a University established by law or an institution recognized by law;
 - g. Bachelor of Law from a University established by law or an institution recognized by law;
 - h. Master in Business Administration from Universities established by Law or Technical Institutions recognized by All India Council for Technical Education.

Regulation 168B of Company Secretaries Regulations, 1982 determines the membership of professional body for partnership, accordingly for the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule

to the Act, a person shall be a member of any of the following professional bodies, namely:

- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
- The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
- Bar Council of India established under the Advocates Act, 1961;
- The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- The Indian Institute of Architects established under the Architects Act, 1972;
- The Institute of Actuaries of India established, under the Actuaries Act, 2006;
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act.

Pre-requisites

MDF is a joint or collaborative venture amongst independent individuals. Therefore, every one wishing to join hands should understand that:

1. All minds should work together and in unison;
2. Say go to ego;
3. Mutual faith and respect lays strong foundation;
4. Unanimity shall be the rule on important policy decisions;
5. Financial discipline is a must;

6. Founder partners shall be given equal status;
7. Income of the firm shall be distributed at short regular intervals;
8. One shall not put undue influence on the others or show that he is king pin of the association. Even the small crack in the above stated pre requisites ruin the things.

Benefits

The nature of a multidisciplinary firm fosters collaboration. The common office space, with professionals working in close proximity to one another, provides each professional with a strong set of resources in the firm.

In addition, this spirit of working together creates greater opportunity for collaboration so the total needs of the client are best met.

a) Working in a team environment:

b) Good Exposure:

c) Cost effective:

d) Exceptional training and on-boarding: MDF provides an opportunity to have a good training facilities whether on job training or off job training to get things started off on the right foot. The goal of on job training or off job training is to set you up for success, so during this training you can expect to receive the resources, knowledge, and tools to do so.

e) Continuous Learning: The partners of MDF having multi-dimensional experience they can impart continuous training by adapting to new trends in the Profession. The great thing about staying on your toes is that clients appreciate it because you'll be able to develop relevant and successful ideas. Though it might sound overwhelming to always be on top of news and trends, it will eventually become habit - and the results are worth it!

f) Better Growth opportunities: With the right work ethic and dedication, MDF can experience professional growth early compared to the other small firms. MDF may

attract big multinationals. They get comfort about availability of at least one of the partners, if they are dealing with a firm rather than an individual. Senior partners can concentrate on critical assignments which obviously are more lucrative.

g) Global scope and reach: The MDF have an international or global scope and reach, offer diversified services and can draw from a large pool of consultants, skills and expertise, and hence become a Mega Firm.

h) Revenue sharing: By appropriate revenue sharing model a PCS who himself may not have subject expertise can get a share from the assignments of that subject being executed by others.

i) Structure & Processes: The structure for execution of works or assignments will be more systematic and the process will be cost effective due to the standard processes and procedure. The hiring and training of people will be more systematic there by productivity of the company will be improved.

j) Corporate or Industry perception: When considering different professional firms, the corporate client may be preferring to one of the familiar, renowned MDF having brand image. The MDF may appear like a known quantity and can draw from a large pool of partners and associates.

k) Reputation & risk-adjusted value: Many of the bigger client's organizations may prefer that "you never go wrong when hiring one of the MDF", since the renowned brands of the MDF are perceived as proxy for high levels of professionalism, quality and reputation. Credibility of the firm and brand gets established in long term.

Process of Constitution

The process of formation of MDF shall be an outcome of conscious and sincere decision and it is essential that the like-minded professional should deliberate and take this decision. It shall be ensured that the proposed constituents have expertise in different disciplines. There could be series of meetings before MOU is reached. It is advisable to

work under MOU for one year. This works as a cooling period and for better understanding each other such trial period help in getting acclimatised. Mutual faith and understanding is sine qua non. Time has to be given to understand the compatibility of the individuals to each other. Once the initial bridge is successfully crossed then formal partnership may be constituted on the agreed terms. It will be in the long term interest of the MDF to have all the founder partners on equal footing. Their intellectual level shall be at par. During the reasonable period individual practice existing if any, shall be introduced in the firm. When it is proposed to add new partner, apart from settling commercial terms, it is suggested that the MDF shall enter into MOU effective at least for one year with the proposed partner and after understanding each other's compatibility he or she may be admitted to the MDF.

Agreement between partners

Partners must enter into a partnership agreement defining inter alia the process of decision making, allocation of duties, responsibilities, delegation of authorities, revenue sharing and exit route

Risk Involved

1. Lack of understanding and multiplicity of directions to the staff could be disastrous.
2. More cost on infrastructure and technology.
3. Dominance of senior partners over the younger partners.
4. Defining exit route is difficult.
5. Lack of transparency may lead to disputes.
6. If crack develops in mutual faith & trust, very difficult to cure.
7. Communication gap between partners.

1. REGULATORY FRAMEWORK

- The Companies Act, 2013
 - Section 406-Nidhi Company
- Nidhi Rules, 2014
- RBI Act, 1934
- National Housing Bank, 1987
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002
- Chit Funds Act, 1982

2. INTRODUCTION

India has a diversified financial sector undergoing rapid expansion, both in terms of strong growth of existing financial services firms and new entities entering the market. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities. The banking regulator has allowed new entities such as payments banks to be created recently thereby adding to the types of entities operating in the sector. However, the financial sector in India is predominantly a banking sector with commercial banks accounting for more than 64 per cent of the total assets held by the financial system.

NBFC is a financial Institution that is into Lending or Investment or collecting monies

under any scheme or arrangement but does not include any institutions which carry on its principal business as agriculture activity, industrial activity, trading and purchase or sale of immovable properties. A company that carries on the business of accepting deposits as its principal business is also a NBFC.

IC - Investment Company

AFC- Asset Finance Company

LC - Loan Company

IFC - Infrastructure Finance Company

CIC - Core Investment Company

MGC - Mortgage Guarantee Company

IDF- Infrastructure Debt Fund

MFI - Micro Finance Institution

NOFHC - Non-Operative Financial Holding Company

3. A NON-BANKING FINANCIAL COMPANY (NBFC)

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 (or any earlier enactments) engaged in the business of loans and advances, acquisition of shares/stocks/bonds/ debentures/ securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire- purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in instalments by way of contributions or in any other manner, is also a non-banking financial company(Residuary non-banking company).

NBFCs lend and make investments and hence their activities are akin to that of banks; however there are a few differences as given below:

Financial activity as principal business is when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income. A company which fulfils both these criteria will be registered as NBFC by RBI. Interestingly, this test is popularly known as 50-50 test and is applied to determine whether or not a company is into financial business.

- i. NBFC cannot accept demand deposits;
- ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;
- iii. deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

1. Systemically important NBFCs

NBFCs whose asset size is of **Rs. 500 cr or more** as per last audited balance sheet are considered as systemically important NBFCs.

address risks wherever they exist,	address regulatory gaps and arbitrage arising from differential regulations, both within the sector as well as <i>vis-a-vis</i> other financial institutions,	harmonise and simplify regulations to facilitate a smoother compliance culture among NBFCs, and
Strengthen governance standards.		

2. Regulatory and Supervisory Framework

The Reserve Bank has also been empowered under the RBI Act, 1934 to take punitive action which includes cancellation of Certificate of Registration, issue of prohibitory orders from accepting deposits, filing criminal cases or winding up petitions under provisions of Companies Act in extreme cases.

3. Scale Based Regulatory Framework for NBFCs

The revised framework envisages a progressive increase in the intensity of regulation and is thus visualized as a four-layer pyramid - a base layer, middle layer, upper layer, and top layer. With each layer, regulations become stricter.

Base Layer: The Base Layer shall comprise of non-deposit taking NBFCs below the asset size of Rs.1000 crore, Peer to Peer Lending Platform, Account Aggregator, Non-Operative Financial Holding Company and NBFCs not availing public funds and not having any customer interface.

Middle Layer: The Middle Layer shall consist of all deposit taking NBFCs, non-deposit taking NBFCs with asset size of Rs.1000 crore and above and NBFCs undertaking the activities of Standalone Primary Dealers, Infrastructure Debt Fund, Core Investment Companies, Housing Finance Companies and Infrastructure Finance Companies.

Upper Layer: The Upper Layer comprise of those NBFCs which require enhanced regulatory supervision. The top ten eligible NBFCs in terms of their asset size shall always reside in the upper layer, irrespective of any other factor.

Top Layer: The Top Layer is empty. This layer can get populated if the Reserve Bank is of the opinion that there is a substantial increase in the potential systemic risk from specific NBFCs in the Upper Layer. Such NBFCs shall move to the Top Layer from the Upper Layer.

4. TYPES/CATEGORIES OF NBFCS

Within this broad categorization the different types of NBFCS are as follows:

I. Asset Finance Company (AFC)

An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

II. Investment Company (IC)

IC means any company which is a financial institution carrying on as its principal business the acquisition of securities.

III. Loan Company (LC)

LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

IV. Infrastructure Finance Company (IFC)

IFC is a non-banking finance company -

- (a) which deploys at least 75 per cent of its total assets in infrastructure loans;
- (b) has a minimum Net Owned Funds of Rs.300 crore;
- (c) has a minimum credit rating of 'A' or equivalent; and
- (d) a CRAR of 15%.

V. Systemically Important Core Investment Company (CIC-ND-SI)

CIC-ND-SI is an NBFC carrying on the business of acquisition of shares and securities which

satisfies the following conditions:-

- (a) it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;
- (b) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
- (c) it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- (d) it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies;
- (e) Its asset size is Rs. 100 crore or above; and
- (f) It accepts public funds

VI. Infrastructure Debt Fund: Non-Banking Financial Company (IDF-NBFC)

IDF-NBFC is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5-year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF NBFCs.

VII. Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI)

"Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI)" means a non-deposit taking NBFC (other than a company formed and registered under section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013) that fulfils the following conditions:

- (a) Reserve Bank of India specifies ten crore rupees as net owned fund (NOF) requirement for NBFC-MFI with effect from October 01, 2022.
- (b) Not less than 85% of its net assets are in the nature of "qualifying assets" which satisfy the following criteria:
- i. Loan which is disbursed to a borrower with household annual income not exceeding Rs.1,25,000 and Rs. 2,00,000 for rural and urban/semi-urban households, respectively;
 - ii. Loan amount does not exceed Rs 75,000 in the first cycle and Rs 1,25,000 in subsequent cycles;
 - iii. Total indebtedness of the borrower does not exceed Rs 1,25,000 (excluding loan for education and medical expenses);
 - iv. Minimum tenure of 24 months for loan amount exceeding Rs 30,000;
 - v. Collateral free loans without any prepayment penalty;
 - vi. Minimum 50 per cent of aggregate amount of loans for income generation activities; and
 - vii. Flexibility of repayment periodicity (weekly, fortnightly or monthly) at borrower's choice.

VIII. Non-Banking Financial Company - Factors (NBFC-Factors)

NBFC-Factor is a non-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 50 percent of its total assets and its income derived from factoring business should not be less than 50 percent of its gross income

IX. Mortgage Guarantee Companies (MGC)

MGC are financial institutions for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage

guarantee business and net owned funds Rs 100 crore.

x. NBFC- Non-Operative Financial Holding Company (NOFHC)

NBFC- Non-Operative Financial Holding Company (NOFHC) is financial institution through which promoter/ promoter groups will be permitted to set up a new bank. It's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which will hold the bank as well as all other financial services companies regulated by RBI or other financial sector regulators, to the extent permissible under the applicable regulatory prescriptions.

xi. Systemically important non-deposit taking non-banking financial company

means a non-banking financial company not accepting / holding public deposits and having total assets of Rs 500 crore and above as shown in the last audited balance sheet;

5. BENEFITS OF INCORPORATING AN NBFC

According to research and studies it is proved that NBFCs are outperforming banks. The continued better performance from NBFCs has given rise to an uptick of 15% customer satisfaction as compared to the banking customers.

1. Competitive Interest Rates

Rate of interest is one of the main aspects of all types of loans. Non-Banking Financial Sectors have started to concentrate on this area in the recent decades and have brought down the interest rates to either equal to bank lending rates or at times even lower to bank rates.

2. Quick Processing

At banks, it is very important that the applicant should fulfil the eligibility criteria but NBFC are lenient in this aspect.

3. Less Rules and Regulations

As NBFC are incorporated under the Companies Act, (though regulated by the Reserve Bank of India), the rules and regulations for lending are not as stringent as banks. This helps borrowers to get loans easily.

4. Last Resort of Borrowing

NBFCs are the largest propellants of ushering finance into the country. They are the last resorts of borrowing. Further, Agility is a key feature for NBFCs as it sets the banks apart. Banks functions slower as compared to the NBFCs.

5. Caters Customer needs

Another major advantage of NBFCs is the ground level understanding of their customer's profile and the need for their credit, which gives them an edge, as their ability to customize their products according to client needs.

6. Loan available for Individuals with Poor Credit Rating

Individuals with poor credit rating generally will not get loans from banks. On the other hand, loans will be offered to individuals with low credit score by NBFCs but most of the time the interest rates for such borrowers will be higher than market rates.

6. INCORPORATION OF NBFCs

The enactment of Companies Act, 2013 impacted many areas including banks and NBFCs. However, there have been no major changes in incorporating the NBFCs under the new act. Accordingly, Non-Banking Financial Companies (NBFCs) are companies incorporated under Companies Act, 2013 or Companies Act, 1956.

The procedure for incorporating a Non-Banking Finance Company (NBFC) is the same as any other company through web form SPICE+. Their principal business, to be stated in

the MOA, while registering under the Companies Act shall be lending credit, making investments in various types of shares and stocks, leasing, hire- purchase, insurance business, chit business, and receiving deposits under any scheme or arrangement.

1. Registration Process with Reserve Bank of India

In terms of Section 45-IA of the RBI Act, 1934, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without-

- (a) obtaining a certificate of registration issued by the Bank; and
- (b) having the net owned fund of **twenty-five lakh rupees** or such other amount, **not exceeding hundred crore rupees**, as the Bank may, by notification in the Official Gazette, specify.

2. Registration process

After incorporation of the company, the NBFC must obtain certificate of registration. Before applying for registration, the company should ensure the following:

- (a) It should have minimum one director from NBFC background or senior Bankers as full-time director in the company
- (b) Clean CIBIL records
- (c) Understanding of NBFC / Finance business.

3. Procedure for filing application with Reserve Bank of India

1. The applicant company is required to apply online and submit a physical copy of the application along with the necessary documents to the Regional Office of the Reserve Bank of India.
2. The application can be submitted online by accessing RBI's secured website <https://cosmos.rbi.org.in>.

3. The company can click on "CLICK" for Company Registration on the login page of the COSMOS Application.
4. The company may note to indicate the correct name of the Regional Office in the field "C-8" of the "Annex- Identification Particulars" in the Excel application form. The company would then get a Company Application Reference Number (CARN) for the CoR application filed on-line.
5. Thereafter, the company has to submit the hard copy of the application form (indicating the online Company Application Reference Number) along with the supporting documents, to the concerned Regional Office.
6. The company can then check the status of the application from the above mentioned secure address, by keying in the acknowledgement number

7. HOUSING FINANCE COMPANIES

Housing Finance Company (HFC) is a type of non-banking financial institution which is primarily engaged in the business of **providing home loans and other related products**. Unlike other Non-Banking Financial Companies which are governed under the regulatory framework of RBI, HFCs are regulated by the **National Housing Bank(NHB)**.

A Housing Finance Company (HFC) is a company registered under the Companies Act, 2013 or any earlier enactment which primarily transacts or has as one of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly.

In addition to it being a company registered under the Companies Act, an HFC also requires registration with National Housing Bank (NHB) for commencing or carrying on the business of housing finance. The National Housing Bank was set up under the National Housing Bank Act, 1987. Housing Finance Companies are governed by the said Act and by Circulars, Guidelines, Notifications and Directions issued by National Housing Bank.

Eligibility Criteria for Obtaining Housing Finance Company Registration

- Must be an NBFC:.
- Net Owned Funds: It shall be noted that the Net owned fund of a Housing Finance Company must be at least Rs 20 Crores.
- Must be registered under the Companies Act 2013
- Housing Finance Activities as Object Clause:

"Housing finance company" shall mean a company incorporated under the Companies Act, 2013 that fulfils the following conditions;

- a. It is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60% of its total assets (netted off by intangible assets).
- b. Out of the total assets (netted off by intangible assets), not less than 50% should be by way of housing financing for individuals.

Benefits of incorporating a Housing Finance Company

1. Among the financial services, housing finance creates employment, both directly and indirectly.
2. Industries such as cement, brick manufacturing, sanitary products, electrical fittings and glass industries experience more demand due to house construction.
3. Rural housing develops not only rural areas but prevents migration of labor to urban areas.
4. Housing finance helps in creation of more houses which results in building up more infrastructure facilities, such as roads, electricity generation, drinking

water facilities, etc.

5. Factories or industrial establishments create townships by providing more housing facilities to their employees. Housing finance thereby reduces congestion in urban areas.
6. Due to housing finance, there is a vertical expansion and re building of dilapidated houses and remodelling of the existing houses.
7. Housing facilities not only improve, they also reflect the culture of the country. Chandigarh city is an example for modern housing which has been built by a French architect.
8. At present, the macro environment is extremely favourable for housing finance companies.

8. ASSET RECONSTRUCTION COMPANY (ARC)

To minimise this loss, asset reconstruction companies come into the picture. When the customer becomes a defaulter, the bank can reduce its loss by giving away such default companies to the asset reconstruction companies (ARCs) at agreed values. It helps in cleaning the balance sheets of banks and financial institutions. Asset Management Companies in other countries perform many of the same functions as ARCs in India. India's first ARC was a company named ARCIL. It has been a pioneer in this field, having established industry standards for the rest of the market to follow.

Asset Reconstruction Company (Securitization Company / Reconstruction Company) is a company registered under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002. It is regulated by Reserve Bank of India as a Non-Banking Financial Company (u/s 45I (f) (iii) of RBI Act, 1934). RBI has exempted ARCs from the compliances under section 45-IA, 45-IB and 45-IC of the Reserve Bank Act, 1934. ARC functions like an AMC within the guidelines issued by RBI.

ARC has been set up to provide a focused approach to Non-Performing Loans resolution issue by:-

CS EXECUTIVE

Isolating Non-Performing Loans (NPLs) from the Financial System (FS),

Freeing the financial system to focus on their core activities, and

Facilitating development of market for distressed assets.

ARC performs the following functions:-

Acquisition of financial assets

Change or takeover of Management / Sale or Lease of Business of the Borrower

Rescheduling of Debt

Enforcement of Security Interest

Settlement of dues payable by the borrower

Asset Reconstruction

Let us understand the meaning of asset reconstruction:

- ❖ When banks grant loans, advances or are involved in lending, the bank has some right or interest in that transaction.
- ❖ When the ARCs take the bad assets, all such rights or interests are also transferred.
- ❖ The asset reconstruction company can then realise all such rights and interests.
- ❖ The financial assistance that can be over by the asset reconstruction companies is loans, advances, bonds, guarantees and other credit facilities.

Securitisation:

When an asset reconstruction company acquires financial assets, a kind of security receipt is issued to the qualified buyers. This security receipt means an undivided interest in the financial assets

Benefits of incorporating an Asset Reconstruction Company (ARC)

- ❖ As the cash realisation activity from defaulting borrowers is a lengthy and cumbersome procedure, relieving banks of the burden of NPAs will allow them to focus better on managing the core business including providing new business opportunities for the ARC.
- ❖ The transfer should help restore depositor and investor confidence by ensuring the lender's financial health. The banks use it as a method to hive off the bad loans from their balance sheet. ARCs can maximize recovery value while minimizing costs.
- ❖ ARCs also helps building industry expertise in loan resolution and restructuring management, besides serving as a catalyst for important legal reforms in bankruptcy procedures and loan collection.
- ❖ ARCs play an important role in developing capital markets through secondary asset instruments

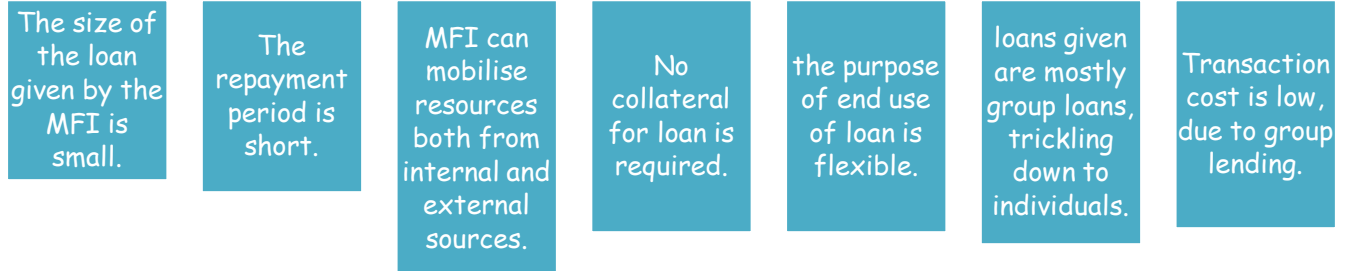
9. MICRO FINANCE INSTITUTIONS (MFI)

A micro finance institution is an organization that offers financial services to low income populations. Almost all give loans to their members, and many offer insurance, deposit and other services. Organisations which finance on a larger scale are regarded as microfinance institutes. They are those that offer credits and other financial services to the representatives of poor strata of population (except for extremely poor strata). An increasing number of microfinance institutions (MFIs) are seeking non-banking finance company (NBFC) status from RBI to get wide access to funding, including bank finance.

NABARD has defined microfinance as "provision of thrift, credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas provided to customers to meet their financial needs; with only qualification that (1) transactions value is small and (2) customers are poor."

Characteristics of a Micro Finance Institution

The characteristics of MFIs may be summarised as under:



Incorporation of MFI

Firstly, a company has to be incorporated under the Companies Act, 2013. The company may be a private company or a public company.

After incorporation, the company has to register itself with the Reserve Bank of India, since a Micro Finance Institution (hereinafter referred to as MFI) is regulated by the Reserve Bank of India

Following list of documents /information to be submitted by the NBFC-MFI applicant:

- (i) Board resolution stating that:
 - (a) the company will be a member of all the Credit Information Companies and will be a member of at least one Self-Regulatory Organisation
 - (b) the company will adhere to the regulations regarding pricing of credit, Fair Practices in lending and non-coercive method of recovery as per RBI Guidelines
 - (c) the company has fixed internal exposure limits to avoid any undesirable

concentration in specific geographical locations

(d) the company is not licensed under Section 25 of the Companies Act, 1956 / Section 8 of the Companies Act, 2013.

(ii) Roadmap for achieving 85% qualifying assets.

10. PAYMENT BANKS

Payment banks is a new model of banks conceptualised by the Reserve Bank of India (RBI). These banks can accept a restricted deposit, which is currently limited to Rupees 2 lakh per customer and may be increased further.

They can pay interest on these deposits just like savings bank account.

Both current account and savings accounts can be operated by such banks. Payments banks can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services.

These banks cannot grant loans or issue credit cards

The main objective of payments bank is to widen the spread of payment and financial services to small business, low-income households, migrant labour workforce in secured technology-driven environment.

To increase the penetration level of financial services to the remote areas of the country the application process of payments bank is made very easy as compared to other banks.

These bank accounts can be opened instantly through their respective mobile apps just by providing details like Aadhar number with KYC verification.

(Dr Nachiket more committee)

Regulations

Payment Banks are regulated by the Reserve Bank of India. It released Guidelines for

Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016.

An application has to be filed with Reserve Bank of India in **Form III** under Section 22 of the Banking Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence banking business.

Key issues which requires compliance by an applicant company are summarized below:

- ✦ To be registered as a **public limited company** under the Companies Act, 2013.
- ✦ The minimum capital requirement is **Rs. 100crore**
- ✦ Payment Banks **cannot form** subsidiaries.
- ✦ For the **first five years**, the promoters stake to **remain at 40% at minimum**.
- ✦ Foreign shareholding will be allowed in these banks as per extant **FDI norms**.
- ✦ The voting rights will be regulated as per provisions of The Banking Regulation Act 1949. [**Voting rights are restricted at 10% for any one share holder. RBI has the discretion to raise this to 26% on merits.**].
- ✦ If there **is any acquisition of more than 5%** shares this will require prior RBI approval.
- ✦ The majority of the bank's board of directors should consist of **independent directors**, appointed according to RBI guidelines.
- ✦ The bank should be fully networked from the beginning. | Initially, the deposits will be capped at **Rs.2,00,000 per customer**, but later it may be raised on the basis of performance of the bank.
- ✦ **No lending activity** is permitted. Bank can accept **utility bills**.
- ✦ **25% of its branches** should be in unbanked rural areas.

11. MUDRA BANKS

Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs.

MUDRA provides refinance support to Banks / Micro Finance Institutions (MFIs) for lending to micro units having loan requirement up to Rs. 10 lakh. MUDRA provides refinance to micro business under the Scheme of PradhanMantri MUDRA Yojana.

The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

Shishu: Allowed loans up to Rs.50,000 (US\$780)

Kishore: Allowed loans up to Rs.5 lakh (US\$7,800)

Tarun: Allowed loans up to Rs.10 lakh (US\$16,000)

Those eligible to borrow from MUDRA bank are:

- ✚ Small manufacturing unit
- ✚ Shopkeepers
- ✚ Fruit and vegetable vendors
- ✚ Artisans.

The basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available if and only if it is for commercial and business purposes and not for personal purposes. At the most, borrower can buy vehicle from mudra loan, given that it is used for commercial purposes. Lastly, this loan is for new business and is only applicable for small business owners.

Following is an illustrative list of the activities that can be covered under MUDRA loans:

- 1) Transport Vehicle
- 2) Community, Social & Personal Service Activities
- 3) Food Products Sector
- 4) Textile Products Sector / Activity
- 5) Business loans for Traders and Shopkeepers
- 6) Equipment Finance Scheme for Micro Units

7) Activities allied to agriculture

MUDRA Card

MUDRA Card is a debit card issued against the MUDRA loan account, for working capital portion of the loan.

The borrower can make use of MUDRA Card in multiple drawals and credits, so as to manage the working capital limit in cost-efficient manner and keep the interest burden minimum.

Types of funding support from MUDRA

1. Micro Credit Scheme:
2. Refinance scheme for Banks:
3. Women Enterprise programme:
4. Securitization of loan portfolio:

12. CHIT FUNDS

It is a rotating savings and credit association system, a popular practice in India. Chit fund schemes may be organized by financial institutions and unorganized money market industries or informally among friends, relatives, or neighbors.

In a chit fund, a specific number of investors invest their money with a promise that their investment will be multiplied within a short span of time with surety and guaranteed return.

A chit fund works in such a manner which comprises a group of members, called subscribers. An organizer, a company or a trusted relative or neighbor, brings the group together and administers the activities of the group. For their efforts, the organizer is

either compensated each month or at withdrawal time. The fee may be omitted in informal situations.

Features of Chit Funds

1. They have a predetermined value and duration.
2. They work like microfinance institutions.
3. They combine both, credits and savings in a single scheme.
4. They cater to the financial needs of low income households.
5. They allow the deposits made by the contributors to be turned into a lump sum. This is done by three mechanisms.
6. **Safe Deposits:** A person can deposit the money in the present and enjoy the lump sum in future.
7. **Loans:** A person can take a loan in the present and continue to make payments in the future.
8. **Insurance:** Allows the depositor to enjoy the lump sum in case of an emergency.
9. They offer loan at a lower interest rate than moneylenders.

Types of Chit Funds

Chit funds are of different kinds. These are:

1. Organized Chit Funds:
2. Special Purpose Funds:
3. Online Chit Funds:
4. Registered Chit Funds: Registered chit funds are those funds which are registered with the state government under the Chit Funds Act,1982.
5. Unregistered Chit Funds:

Restrictions imposed by RBI on chit fund business

- ✦ Chit fund business can be conducted only by a registered company. Running of Chit business by family and partnership firms are restricted.
- ✦ Chit companies must register with the Registrar of Chit Company in every state, furnishing full particulars about their chit company.
- ✦ The maximum discount that could be taken in a bid was restricted to 30% of the total chit amount. However, in 2001, the same has been enhanced to 40% (in the case of a chit for Rs. 1 lakh, not more than Rs. 40,000/- can be the bid amount).
- ✦ Details of each and every chit must be furnished to Reserve Bank of India along with the personal particulars of the subscribers.
- ✦ It is mandatory to keep one month's chit amount of all the subscribers/members with the Reserve Bank of India till the end of a particular chit.

BUSINESS COLLABORATIONS

1. OBJECT AND SCOPE OF THE ACT

Collaboration is when two or more entities work together through idea sharing and thinking to accomplish a common goal is known as Collaboration. Collaboration provides solutions, give a strong sense of purpose and also reinforce the objectives of coming together.

2. TYPES OF BUSINESS COLLABORATION

Horizontal Collaboration: When the businesses in the same set of functional area agree to collaborate in a way to improve their competencies is known as Horizontal Collaboration.

Vertical Collaboration: Vertical Collaboration is a collaboration wherein the business collaborates with companies in its supply chain either upward and/or downwards (its suppliers and/or distributors). Vertical collaboration often allows businesses to minimize risk in the supply chain and obtain lower prices in exchange for long-term commitment.

Intersectional Collaboration: When the Businesses from different functional areas agree to share their special knowledge for the advancement of all partners in collaboration is known as Intersectional Collaboration. For example: Manufacturing and Marketing collaborations, Referral rewards, tie-ups.

Joint Venture: Two or more businesses form a new company. The new company is its own legal entity, and its profits are split according to terms spelled out in a formal contract is a Joint Venture. For example: One party in the joint venture provides technical support and another party provides manufacturing and marketing

arrangements in joint venture.

Equity: A company acquires a minor equity stake in another business in exchange for a monetary investment. Such exchanges can accompany other types of collaboration and, to a certain extent, agreed-upon access to decision making. For example: Funding to start-ups on equity basis, equity partnership in technical know-how

3. FOREIGN COLLABORATION

Meaning of Foreign collaboration

- Foreign collaboration is an alliance incorporated to carry on the agreed task collectively with the participation (role) of resident and non-resident entities. Foreign collaboration is an alliance of domestic (native) and foreign (non-native) entities like individuals, firms, companies, organizations, governments, etc., that come together with an intention to finalize a contract on some tasks or jobs or projects.
- Foreign collaboration is an **alliance (a union or an association)** formed for mutual benefit of collaborating parties.
- Foreign collaboration is a **mutual co-operation** between one or more resident and non-resident entities. In other words, for example, an alliance (a union or an association) between a foreign based company and a domestic company forms a foreign collaboration. It is a strategic alliance between one or more resident and non-resident entities. Only two or more resident (native) entities cannot make a foreign collaboration possible. For its formation and as per above definitions, it is mandatory that one or more non-resident (foreign) entities must always collaborate with one or more resident (domestic) entities.
- Before starting a foreign collaboration, both entities, for example, a resident and

non-resident company must always seek approval (permission) from the Governmental Authority of the domestic country.

- During an ongoing process of seeking permission, the collaborating entities prepare a preliminary agreement.
- According to this preliminary agreement, for example, the non-resident company agrees to provide finance, technology, machinery, know-how, management consultancy, technical experts, and so on. On the other hand, resident company promises to supply cheap labour, low-cost and quality raw-materials, sufficient land for setting factories, etc.
- After obtaining the necessary permission, individual representative of a resident and non-resident entity signs this preliminary agreement. Signing the agreement acts as a written acceptance to each other's expectations, terms and conditions. After acceptance, a contract is executed, and foreign collaboration gets established. Contract is a legally enforceable agreement.
- After establishing foreign collaboration, resident and non-resident entity start business together in the domestic country.
- Collaborating entities share their profits as per the profit-sharing ratio mentioned in their executed contract.
- The tenure (term) of the foreign collaboration is specified in the written contract.

Features of Foreign Collaboration

1. Type of partnership:
2. Requires an Approval of the government: Before initiating foreign collaboration, collaborating entities (domestic and foreign) must seek permission from the government of the domestic country. The government gives approval only when the contract of foreign collaboration is prepared in accordance with the industrial

or foreign policy of its country.

3. Entities are from developed and developing country:
4. Benefits to developed country: The benefits of foreign collaboration to a developed country are as follows:
 - Foreign collaboration helps a developed country earn good returns on its overall investments made in a domestic country.
 - It also aids a developed country earn a good reputation for providing financial and technical assistance (support) to the developing country.
5. Benefits to developing country: The benefits of foreign collaboration to a developing country are as follows:
 - Foreign collaboration helps a developing country to get finance, technology, machinery, know-how, management and technical expertise, etc. from a developed country.
 - It also assists a developing country to achieve a faster economic growth.
6. Establishes business relationships: Foreign collaboration establishes business (trade) relationships among different countries. It removes their economic gaps (hurdles) and brings them closer to each other.
7. Initiation of foreign collaboration:
8. Better utilization of resources:
9. Scope of foreign collaboration:
10. Miscellaneous features: Miscellaneous features of foreign collaboration are listed as follows:
 - Foreign collaboration reduces unemployment in a developing country.
 - It improves infrastructure in a developing country.
 - It helps to increase revenue of the governments in the form of taxes and

duties.

- It also aids to achieve economic growth in developed and developing country.

Objectives of Foreign Collaboration

The main intention/ prime goal or objective of foreign collaboration is to:

- Improve the financial growth of the collaborating entities.
- Occupy a major market share for the collaborating entities.
- Reduce the higher operating cost of a non-resident entity.
- Make an optimum and effective use of resources available in the resident entity's country.
- Generate employment in the resident entity's country

Types of Foreign Collaboration

1. Financial collaboration:
2. Technical collaboration:
3. Marketing collaboration:
4. Management consultancy collaboration:
 - Production management.
 - Marketing management.
 - Personnel management.
 - Financial management.

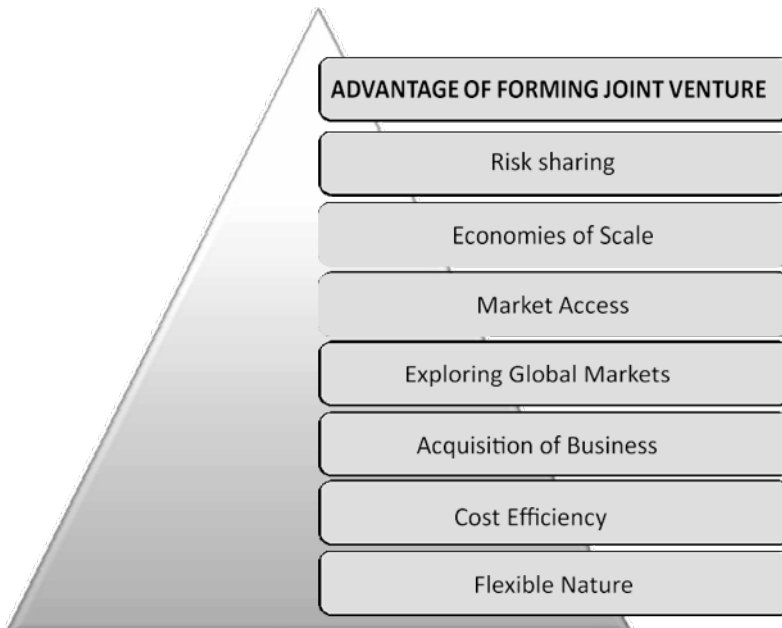
4. JOINT VENTURE

Definition

A Joint-ventures can be defined as "an enterprise in which two or more investors share ownership and control over property rights and operation". The venture can be for one specific project only, or a continuing business relationship. Entering into a joint venture is a major decision. Businesses of any size can use joint ventures to strengthen long-term relationships or to collaborate on short-term projects.

Advantages of Forming Joint Venture

Various advantages of forming Joint Venture are as follows:



Disadvantages of Joint Venture

Disadvantages of forming Joint Venture are as follows:

- (i) Restricted flexibility where full concentration is required for JV Project: Lack of equal involvement
- (ii) Cultural Differences:
- (iii) Extensive Research and planning required:
- (iv) Lack of clear communication:
- (v) Unreliable partners:
- (vi) Creation of competitor:

Strategies of entering into a Joint Venture

Identification of Prospective JV Partners

Reliable Partners

Strong JV Relationship

Written Agreement

Equal Contribution

Limiting Scope of JV

Defined Business Model

Flexibility

Exit Routes

Formation of Joint Ventures

A Joint Venture can be of the following types :

1. An Equity based Joint Venture
2. Contractual Joint Venture

(1) Equity based Joint Venture

The equity joint venture is an arrangement whereby a separate legal entity is created in accordance with the agreement of two or more parties.

The parties undertake to provide money or other resources as their contribution to the assets or other capital of that legal entity. The entity is generally established as a limited liability company and is distinct from either of the parties which participate in its creation.

The newly created company, thus, becomes the owner of the resources contributed by the parties to the joint venture arrangement. Each of the parties in turn becomes the owner of the company having equity in the company.

The parties to a joint venture agreement agree on purposes and functions of the newly created entity, the proportion of capital contribution by each party and the share of each party in the profits of the company and on other matters such as its management, operation, duration and termination.

The key characteristics of equity-based joint ventures are as following:

There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity	Shared Ownership by the parties involved.	Shared management of the jointly owned entity.
Shared responsibilities regarding capital investment and other financing arrangements.	Shared profits and losses according to the JV Agreement.	

(2) Contractual Joint Venture

The contractual joint venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of

one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture.

The contractual joint venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited term or where the laws of the host country do not permit the ownership of property by foreign citizens

For the purposes of contractual joint venture, the relationship between parties is set forth in the contract or agreement concluded between them.

The way joint venture company would carry out its operations is always based on the negotiations between the parties, the results of which reflect in the joint venture agreement entered into between the parties.

The licensing agreement, know-how agreement, technical services or technical assistance agreement, franchise agreement and agreement covering all other commercial matters might even form annexes to the main joint venture agreement. These can be signed once the joint venture company is established.

An example of a contractual joint venture is a franchisee relationship. The key characteristics of such a relationship are:

Two or more parties have a common intention - of running a business venture.	Each party will bring some inputs in the form of money, technology or materials.	Each party exercises certain degree of control on the venture.	The relationship is not a transaction-to-transaction relationship but has a character of relatively longer time duration.
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Restrictions under FDI Policy of the Government of India

Generally speaking, any non-resident entity can set up an equity based joint venture in India. However, some entities face restrictions under FDI Policy of Government of India.

The restrictions are as follows:

1. A Citizen or entity of Pakistan as per can invest only after the approval of the Government of India. They cannot invest in defense, space, atomic energy and sectors prohibited for foreign investment.
2. NRI residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan can invest on repatriation basis subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.
3. A Foreign Institutional Investor (FII) can invest only under the Portfolio Investment Scheme with certain limits.
4. A Foreign Venture Capital Investor (FVCI) duly registered in India may contribute up to 100% of the capital of an Indian Company under the automatic route and may also set up a domestic asset management company to manage the fund. Such investments are subject to the relevant RBI Rules and Regulations and FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies.

Essential components of a Joint Venture Agreement

In India, there is no legally prescribed format of a Joint Venture Agreement. However, in actual practice, the Agreement contains the following components (illustrative and not exhaustive):

- (a) Description (Nature of the Agreement)
- (b) Parties (full description of the parties to the Agreement)
- (c) Recitals (states the situation as it existed prior to the execution of this Agreement; It is also used to convey the intention of the parties)
- (d) Operative Part (defines the rules for the future; typically consists of name and constitution of the new entity being set up, equity investments, rules relating to

loans by either party, activities to be undertaken, role of each party, constitution of the Board, names of the Chairman and Managing Director and their powers, duties, etc. matters to be decided by consensus, managerial remuneration, milestones to be reached and plan of action)

(e) Legal aspects:

- (i) Amendments of the JV Agreement
- (ii) Duration of the JV
- (iii) Termination
- (iv) Dispute resolution by amicable consultation and/or Arbitration mechanism/Alternate form of Dispute Resolution
- (v) Courts of particular State (in India) or Country (where the JV partner is foreign entity) that will have the jurisdiction in the event of dispute
- (vi) Confidentiality and Non-Disclosure Agreement
- (vii) Non-compete clause
- (viii) Indemnification
- (ix) Procedure for execution.

5. SPECIAL PURPOSE VEHICLE (SPV)

Meaning of Special Purpose Vehicle (SPV)

A Special Purpose Vehicle (SPV) or Special Purpose Entity (SPE) are generally formed for a special purpose.

Scope of these kind of companies or entities are limited only to those activities which are required to be performed to attain that specific purpose. These companies/entities close their operations once the purpose is attained.

The operations of these entities are limited to the acquisition and financing of specific assets. SPVs are generally a subsidiary company whose obligations are secured even if the parent company goes bankrupt.

A SPVs/SPEs may be formed through limited partnerships, trusts, corporations, limited liability corporations or other entities.

An SPV/SPE may be designed for independent ownership, management and funding of a company or as protection of a project from operational or insolvency issues.

SPVs help companies securitize assets, create joint ventures, isolate corporate assets or perform other financial transactions.

Benefits of Special Purpose Vehicle (SPV)

- (a) Ownership of Assets - An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
- (b) Minimum Statutory Requirement - Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV
- (c) Clarity of documentation - It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.
- (d) Tax benefits - SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.
- (e) Legal protection - By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.

Purpose of Special Purpose Vehicle

The main purpose of a Special Purpose Vehicle is to allow the parent company to make highly leveraged or speculative investments without endangering the entire company. If

the SPV goes bankrupt, it will not affect the parent company. SPVs are mostly formed to raise funds from the market or when Government Regulations specify creation of a separate vehicle for carrying out any specified activity.

SPVs are created by a parent company to implement large-scale projects and operations of an SPV are legally limited to specific assets.

SPVs are also formed by banks and financial institution for Securitisation. The total assets of banks or financial institution mainly comprise of loans and receivables along with their future cash flow to a separate entity, which may be formed for a specific purpose. The SPV is allowed to raise debt which will be backed by these receivables and their future cash flows. The difference between the incomes received from these receivables and cost of servicing that debt will be profit/earning of the SPV. By securitization through SPV the risk involved in this activity is separated from the general business of the bank.

Indirect acquisition of assets - SPVs can be used for acquiring assets indirectly for the purpose of tax saving. In this method, the sponsor takes the assets on lease from its SPV. Expenses incurred as rent, is allowed as a deduction to sponsor for income tax purpose. On the other hand, the SPV acquires the asset through raising debt, the interest on which is a deductible expense for tax purpose. This way the same asset can be used to claim deduction by both, which results in saving of tax.

Government also forms SPVs for special projects. Purpose behind formation of SPV is to get easy finance and various approvals from State and Central Government at many levels and on completion of projects, it provides easy exit route for Government.

Difference between a Special Purpose Vehicle (SPV) and a Company

SPVs are mostly formed to raise funds from the market. Technically, an SPV is a company. It has to follow the rules of formation of a company laid down in the Companies Act. Like a company, the SPV is an artificial person. It has all the attributes

of a legal person. It is independent of members subscribing to the shares of the SPV. The SPV has an existence of its own in the eyes of law. It can sue and be sued in its name. The SPV has to adhere to all the regulations laid down in the Companies Act. Members of an SPV are mostly the companies and individuals sponsoring the entity. An SPV can also be a partnership firm.

The company, as distinguished from an SPV, may be called a general purpose vehicle. A company may do many things which are mentioned in the memorandum of association (MoA) or permitted by the Companies Act. An SPV may also do the same, but its scope of operation is limited and focused. If it is not so, the SPV had better be called a company. The MoA is quite narrow in the case of an SPV. This is primarily to provide comfort to lenders who are concerned about their investment

How is an SPV established?

Like a company, an SPV must have promoter(s) or sponsor(s). Usually, a sponsoring corporation hives off assets or activities from the rest of the company into an SPV. This isolation of assets is important for providing comfort to investors. The assets or activities are distanced from the parent company, hence the performance of the new entity will not be affected by the ups and downs of the originating entity. The SPV will be subject to fewer risks and thus provide greater comfort to the lenders. What is important here is the distance between the sponsoring company and the SPV. In the absence of adequate distance between the sponsor and the new entity, the latter will not be an SPV but only a subsidiary company.

A good SPV should be able to stand on its feet, independent of the sponsoring company. Unfortunately, this does not happen in practice. One of the reasons for the collapse of the Enron SPV was that it became a vehicle for furthering the ends of the parent company in violation of the prudential norms of corporate financing and accounting.

SPV as preferred vehicle for funds raising by Infrastructure Sector

The funds requirement for Infra structure sector are huge. There are different organisations, like the Infrastructure Development Finance Company (IDFC), Power Finance Corporation (PFC), Indian Rail Finance Corporation (IRFC) etc., which are engaged in raising funds for development of infrastructure sector projects for the sectors they are involved in. The proposed SPV, which is likely to be a government company, will add to the availability of long-term funds for infrastructure sector projects.

Further. The implementation of the Smart Cities Mission at the City level done by a Special Purpose Vehicle (SPV) created for the purpose. The SPV plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects. The execution of projects may be done through joint ventures, subsidiaries, Public-Private Partnership (PPP), turnkey contracts, etc suitably detailed with revenue streams.

6. LLP FIRM AS A SPECIAL PURPOSE VEHICLE

A Limited Liability Partnership (LLP) Firm combines the simplicity of a partnership firm with the advantage of limited liability as available in the case of a company.

Before the passing of The Limited Liability Partnership Act in 2008, a foreign company intending to participate in tender or some other project in consortium with an Indian company had only the option of setting up a company (whether private or public) as a Special Purpose Vehicle (SPV). The disadvantage was that winding up such a company is difficult.

Foreign companies are not permitted to invest in partnership firms.

Moreover, consortium members do not want to be saddled with unlimited liability as is the case in a partnership firm under The Indian Partnership Act, 1932. Till November 2015, foreign companies were not allowed to invest in any form of structure except a company. Foreign Investment in some LLP firms has been allowed now

LLP firm as an SPV between a foreign company and an Indian company has the advantage of being easy to wind up after the purpose is over and the liability of the two partner companies is limited.

Key advantages of using an LLP firm as an SPV as compared to a company are as follows:

- (a) Low cost of incorporation of an LLP;
- (b) Flexibility of rules of management and governance based on Agreement between the contracting Partners;
- (c) Partners can be companies while management is by Designated Partners who are individuals. By this, there is divorce between ownership and management;
- (d) Low annual maintenance cost;
- (e) There may not be any necessity of getting the accounts audited before the project takes off;
- (f) An LLP firm does not have to pay Dividend Distribution Tax (DDT) on share of profits transferred to the Partners, which makes it tax efficient;
- (g) Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;
- (h) Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

SETTING UP OF BRANCH OFFICE/LIAISON

OFFICE /WHOLLY OWNED SUBSIDIARY BY FOREIGN COMPANY

1. INTRODUCTION

There are mainly two types of entry strategy for foreign businesses in India, registration of a company or establishing a branch, liaison and project office:

- Incorporation of a private limited company: It is the easiest and fastest type of India entry strategy for foreign nationals and foreign companies. Foreign direct investment of upto 100% into a private limited company or limited company is under the automatic route, wherein no Central Government permission is required. Hence, incorporation of a private limited company as a wholly-owned subsidiary of a foreign company or joint venture is the cheapest, easiest and fastest entry strategy for foreign companies and foreign nationals into India.
- Registration of Branch Office, Liaison Office or Project Office: It requires RBI and/or Government approval. Therefore, the cost and time taken for registration of branch office, liaison office or project office for a foreign company are higher than the cost and time associated with incorporation of a private limited company. Further, foreign nationals cannot open a branch office, liaison office or project office. Hence, this option is limited to being an India entry strategy only for foreign companies.

Branch Office, Liaison Office or Project Office are unincorporated place of business of foreign company in India and are regulated by the Companies Act as well under FEMA.

2. IMPORTANT TERMS

As per Section 2(42) of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which-

has a place of business in India whether by itself or through an agent, physically or through electronic mode; and	Conducts any business activity in India in any other manner.
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As per Section 2(87) of the Companies Act, 2013, Subsidiary Company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company -

controls the composition of the Board of Directors; or	exercises or controls more than one-half of the [total voting power] either at its own or together with one or more of its subsidiary companies:
--	--

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation. -For the purposes of this clause, -

a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;	the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
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CS EXECUTIVE

Further, as per the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, Branch Office, Liaison Office or Project Office are defined as follows

'Branch Office' in relation to a company, means any establishment described as such by the company.

'Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

'Project Office' means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Section 380 of the Act lays down that every foreign company which establishes a place of business in India must, within 30 days of the establishment of such place of business, file with the Registrar of Companies for registration:

a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English

the full address of the registered or principal office of the company;

a list of the directors and secretary of the company containing such particulars as prescribed;

the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

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language;			
the full address of the office of the company in India which is deemed to be its principal place of business in India;	particulars of opening and closing of a place of business in India on earlier occasion or occasions;	declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and	any other information as prescribed.

Section 376 of the Act provides further that when a foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company under Sections 375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

- (i) The provisions of section 71 relating to Debentures shall apply *mutatis mutandis* to a foreign company.
- (ii) The provisions of Section 92 regarding (filing of annual returns) and Section 135 (Corporate Social Responsibility) shall, subject to such exceptions, modifications or adaptations as may be made therein by the rules made under the Act, apply to a foreign company as they apply to a company incorporated in India.
- (iii) The provisions of Section 128 relating to the (to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India),

Section 209A (inspection of accounts), Section 233A (Special audit), Section 233B (audit of cost accounts), Section 234-246 (investigations), so far as may be, apply only to the Indian business of a foreign company having an established place of business in India as they apply to a company incorporated in India

- (iv) The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
- (v) The provisions of Chapter XIV (Inspection, Inquiry and Investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

In a certain case, it was held that mere holding of property cannot amount to having a place of business.

3. ESTABLISHMENT OF BRANCH OFFICE (BO)/ LIAISON OFFICE (LO)/ PROJECT OFFICE (PO) IN INDIA

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time.

Branch office

A branch office is a suitable business model for foreign companies looking to establish a temporary presence in India.

Branch office in relation to a company, means any establishment described as such by the company. These BOs

The branch office serves as an extension of the head office business and carries on the same business and activity as that of its parent company.

represent the parent company and usually undertake the same activities as the latter. The profits from these are easily remittable from India, subject to the taxes applicable.

Eligibility for setting up a Branch Office

The applicant company must be a body corporate incorporated outside India;

The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);

The net worth of the branch office must not be less than US \$100,000; and

The parent company should have a profit making record in the immediately preceding five financial years in the home country

Permitted Activities

In India, a branch office cannot directly carry out manufacturing activities unless such manufacturing activity is done in a special economic zone (SEZ) with the purpose of exporting products out of India. It may also sub-contract such activity to an Indian manufacturer.

Furthermore, following activities are permitted for a branch office in India of a person resident outside India:

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Export/import of goods	Rendering professional or consultancy services	Carrying out research work in which the parent company is engaged.	Promoting technical or financial collaborations between Indian companies and parent or overseas group company
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Representing the parent company in India and acting as buying/ selling agent in India.	Rendering services in Information Technology and development of software in India.	Rendering technical support to the products supplied by parent/group companies.	Representing a foreign airline/shipping company.
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Registration of a Branch Office in India

Foreign company must apply for approval from the Reserve Bank of India (RBI) under provisions of the Foreign Exchange Management Act (FEMA), 1999 to open a branch office in India.

Foreign entities whose principal business falls under sectors where 100 per cent foreign direct investment (FDI) is permissible under the automatic route must complete the form FNC and submit it to the RBI, along with the associated documents

Funding of the BO by the Foreign Company

- A. *Equity Share Capital:* in the usual way Indian companies are financed.
- B. *Preferred Share Capital:* such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).
- C. *Debentures and Borrowings:* there can be redeemable, convertible or non-convertible. Companies can issue debentures, bonds and other debt securities.

These also, when convertible into equity shares, are treated as FDI.

4. LIAISON OFFICE

Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Eligibility for setting up a Liaison office

The applicant company must be a body corporate incorporated outside India;	The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);	The net worth of the liaison office must not be less than US \$ 50,000; and	The parent company should have a profit making record in the immediately preceding three financial years in the home country
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In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit

Permitted Activities

Representing the parent company / group companies in India.	Promoting export / import from / to India.	Promoting technical/ financial collaborations between parent / group companies and companies in	Acting as a communication channel between the parent company and Indian companies.
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Extension of the validity period for Liaison Office

- 1) A person resident outside India may establish a liaison office for a period of three years.
- 2) The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a period of three years from the date of expiry of the original approval / extension granted, subject to such directions issued by the Reserve Bank in this regard.
- 3) The application for extension of the validity period of the liaison office of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Regulation (DBR), Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively.
- 4) Entities engaged in construction and development sectors and which are Non-Banking Finance Companies are permitted to open a Liaison Office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy

5. PROJECT OFFICE

Project office means a place of business in India to represent the interests of the

foreign company executing a project in India but excludes a Liaison Office

Parameters of project office

A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

the project is funded directly by inward remittance from abroad; or	the project is funded by a bilateral or multilateral International Financing Agency; or	the project has been cleared by an appropriate authority; or	a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project
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Cases in which RBI Approval is required for Setting up BO, PO and LO in India

- ☞ The applicant is a citizen of or is registered/incorporated in Pakistan;
- ☞ The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- ☞ The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting;
- ☞ The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.

Master Direction - Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) in India by foreign entities

A Branch Office can be established by a body incorporated outside India, including a firm

or association of persons, involved in manufacturing or trading activities. The process of setting up is an easy one with minimal compliance requirements.

The Applications are to be made in **form FNC** and are considered by the RBI under two routes determined by the degree of Foreign Direct Investment (FDI):

- **Reserve Bank Route:** If the principal business of the foreign company falls under sectors where 100% FDI is permissible under the automatic route, applications will be processed by RBI.
- **The Government Route:** If the principal business of the foreign parent company does not fall under the 100 sectors where 100% FDI is permissible under the automatic route or the application is from companies that are Non-Profit Organisations/ Non - Government Organisations / Government Bodies/ Departments, such applications will be considered by the RBI in consultation with the Ministry of Finance, Government of India.

Additionally, the RBI will also consider the following criteria while sanctioning the Liaison office/ Branch office of a parent company. The RBI has a few other considerations:

- **Track Record:** For a BO a company will require a profit making track record in the immediately preceding five financial years in the home country.
- **Net Worth:** "a total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement Certified by a Certified Public Accountant or any Registered Accounts Practitioner". The net worth has to be equal to or more than USD 100,000.

Procedure for Establishment of BO/LO/PO

Following steps are followed for establishing the Branch Office/ Liaison Office/ Project Office of Foreign Company:

1. **Submission of Form FNC:** The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC to a designated AD Category - I bank (i.e. an AD Category - I bank identified by the applicant with whom they intend to pursue banking relations) along with the prescribed documents and the LOC, wherever applicable.

Following are the prescribed documents:

- (a) Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.
- (b) Audited Balance sheet of the applicant company for the last three/ five years in case of branchoffice/ liaison office respectively.
- (c) Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.
- (d) Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

The AD Category-I bank shall after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms grant approval to the foreign entity for establishing BO/LO/PO in India.

2. Allotment of Unique Identification Number (UIN): However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/ LO.
3. Issue of Approval letter: After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India. This is in order to enable the Reserve Bank to keep, maintain and upload up-to-date list of all foreign entities which have been

granted permission for establishing BO/LO in India, on its website.

4. Intimation to Designated AD Category I bank: An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly. In case an approval granted by the AD bank has either been surrendered by the applicant or has expired without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly
5. Extension for setting up office: The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/ PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require the prior approval of Reserve Bank of India in this regard.
6. BO/LO by foreign banks and insurance companies: All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India

Checklist for BO/LO/PO

Sl. No.	Particulars	Details
1.	Register with the Registrar of	A BO/LO/PO or any other place of business to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.

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	Companies (ROC)	
2.	Application to an Authorised Dealer Category I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profitmaking track record.
4.	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.
6.	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only.
8.	Annual Activity Certificate (AAC)	The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
10.	Acquisition of property by BO/PO	Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
11.	Carry out permitted/incidental activities from leased property	As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/LOs/POs have general permission to carry out permitted/ incidental activities <u>from leased property subject to lease period not exceeding five years.</u>

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12.	Term Deposit Account	AD Category- I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO/PO of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO/LO/PO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/ airline companies.
13.	LO or BO established in the pre-FEMA period	In case a BO/LO has been established and continues to exist without approval of the Reserve Bank, such BO/LO may approach their AD Category-I bank to regularise their offices under FEMA 1999, even if permission of Reserve Bank was not required as per the regulations existing at the time of setting up of the office. Such cases may be brought to the notice of Reserve Bank immediately for allotment of UIN. The foreign entities who may have established LO or BO with the permission from the Government of India in the pre-FEMA period shall also approach their AD Category-I bank with a copy of the said approval for allotment of a UIN by the Reserve Bank.
14.	Change in the name of the existing LO/BO	Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and if the application to this effect is received with the Board resolution for change of name and documents/certificate from ROC India showing change of name. Where change in name is requested on account of acquisitions or mergers of foreign entities involving change in ownership, the acquired entity or new entity is required to apply afresh by closing the existing entity. Foreign entities should note that the approvals are given by the Reserve Bank/AD Category-I bank after detailed scrutiny as per laid down guidelines and FDI policies and hence the approvals given to one foreign entity is not transferrable to another foreign entity.
15.	Change in the Top Management	Change in the Top Management or CEO/MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.
16.	Closure of the Branch office/ Liaison office	Requests for closure of the branch office/liaison office may be submitted to the Authorised Dealer Category - I bank along with the copy of the Reserve Bank's/ Authorised Dealer Category - I bank's approval for establishing the office; Auditor's certificate; Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance; A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India and any other document/s specified by the Reserve Bank/ Authorised Dealer Category-I bank while

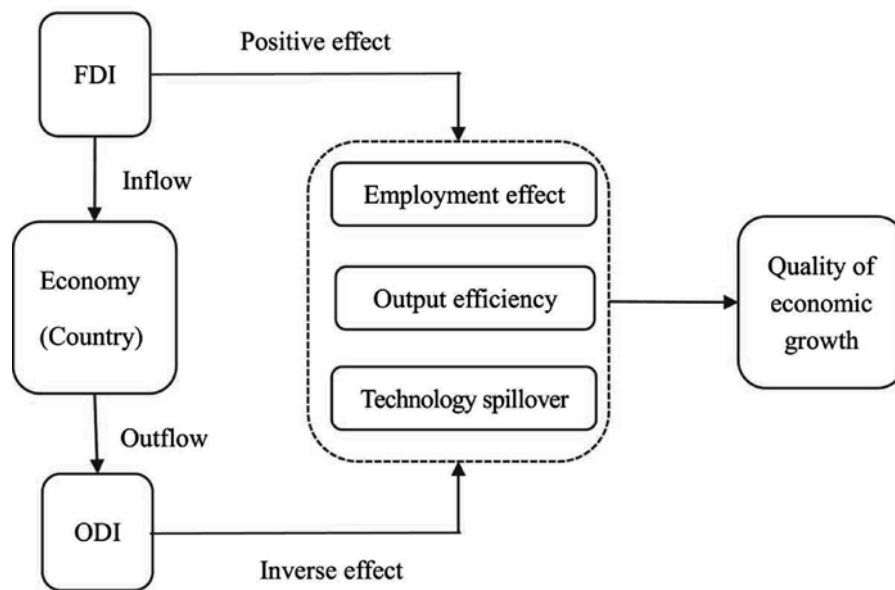
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		granting approval.
17.	Remittance of winding up proceeds	Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

SETTING UP OF BUSINESS OUTSIDE INDIA

AND ISSUES RELATING THERETO

1. EVOLUTION



2. INVESTMENTS & DEVELOPMENTS

India is primarily a domestic demand-driven economy, with consumption and investments contributing to 70% of the economic activity. With an improvement in the economic scenario and the Indian economy recovering from the Covid-19 pandemic shock, India is relatively well placed than the rest of the world. Despite major headwinds that continue to pose risks in the short term, the Indian economy has remained strong owing to robust policy measures in place. This gives Indian businesses an advantage to make investments abroad and broaden their operational footprint in such nations.

The Government has reduced the restrictions on Indian companies investing overseas by

removing the cap on raising funding through the pledge of shares, local assets, and foreign assets in order to encourage international investment. In addition to this, improving social and economic stability in the nation enables RBI to support foreign investments and other international collaborations. One of the key elements of economic progress in every nation is its robust foreign investments.

3. LAWS /AUTHORITY GOVERNING SETTING UP OF BUSINESS OUTSIDE INDIA

Reserve Bank of India

The Reserve Bank of India has started issuing Master Directions on all regulatory matters beginning January 2016. The Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The process of issuing Master Directions involves issuing one Master Direction for each subject matter covering all instructions on that subject.

Overseas Investments are prohibited unless made in accordance with the FEMA Act, OI Rules and OI Regulations. The investments already made in accordance with the erstwhile ODI Regulations will be deemed to have been made under OI Rules and Regulations.

4. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides power to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that

sub-section, by making Regulations.

The changes brought about through the new rules and regulations are summarised below:

- i. enhanced clarity with respect to various definitions;
- ii. introduction of the concept of "strategic sector";
- iii. dispensing with the requirement of approval for:
 - a. deferred payment of consideration;
 - b. investment/ disinvestment by persons resident in India under investigation by any investigative agency/ regulatory body;
 - c. issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);
 - d. write-off on account of disinvestment;
- iv. Introduction of "Late Submission Fee (LSF)" for reporting delays.

"Strategic sector" shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

OI Rules v/s OI Regulation

OI Rules provides the regulatory framework for making of overseas investment covering the permissions, conditions for making overseas investment, restrictions from making Overseas Direct Investment ('ODI'), pricing guidelines, transfer, liquidation and restructuring of ODI. While the OI Rules have been framed by CG, however, the same will be administered by the RBI as per Rule 3(1).

OI Regulations, on the other hand, provides only the operational part covering conditions for undertaking Financial Commitment ('FC'), other than by investment in equity capital, consideration in case of acquisition or transfer of equity capital of a Foreign Entity ('FE'), mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.

Segregation of the regulatory and the operational part in OI rules and regulations respectively.

5. OVERSEAS INVESTMENT

Under the erstwhile ODI regulations, effective till August 21, 2022, there was a concept of direct investment outside India in JV and WOS that excluded portfolio investment and FC.

OI Rules combine the two to define Financial Commitment and separately define the term Overseas Portfolio Investment ('OPI').

"Financial commitment" by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund based facility or facilities extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity, including overseas Step down Subsidiaries of such Indian entity, subject to the following conditions:

- a) the Indian entity is eligible to make ODI;
- b) the Indian entity has made ODI in the foreign entity;
- c) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

"Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

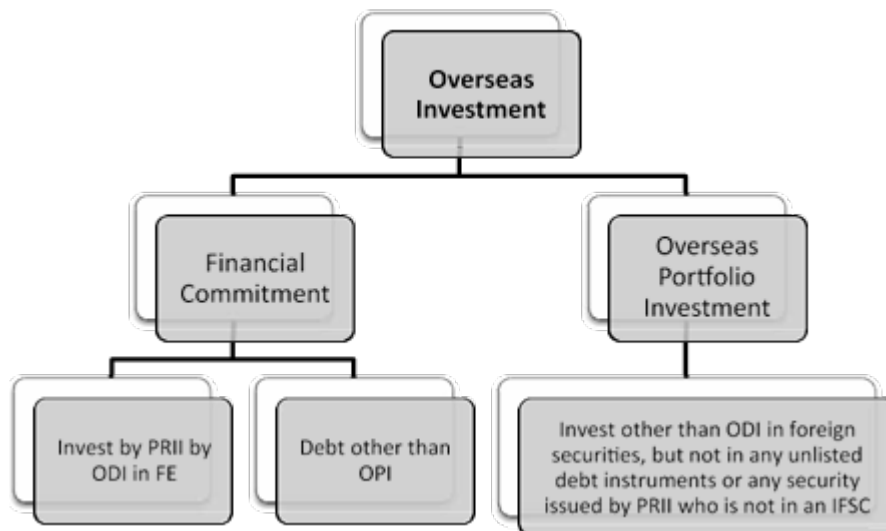
$$\rightarrow \text{OI} = \text{FC} + \text{OPI}$$

Overseas Investment (or financial commitment) can be made under two routes viz.

- (i) Automatic Route and
- (ii) Approval Route subject to the provisions contained in the OI Rules, OI Regulations and OI Directions.



The classification as ODI depends on the nature of instruments in which investment is made, the nature of the entity in which investment is made and whether control has been acquired or not.



6. ELIGIBILITY (ENTITIES ARE REFERRED TO AS "INDIAN ENTITY")

The extant concept of Indian party (IP) where all the investors from India in a foreign entity were together considered as IP, has been substituted under the new regime with the concept of Indian entity where each investor entity shall be separately considered as an Indian entity. Indian entity shall mean:

- a Company defined under the Companies Act, 2013 or
- a Body Corporate incorporated by any law for the time being in force or
- a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or
- a Partnership Firm registered under the Indian Partnership Act, 1932.

7. NON-APPLICABILITY

- Investments made by a financial institution in an IFSC. The OI Rules prescribes the conditions for investment in IFSC vide Schedule V to OI Rules;
- Acquisition or transfer of any investment outside India made out of Resident Foreign Currency Account;
- Acquisition or transfer of any investment outside India made out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
- Acquisition or transfer of any investment outside India made in accordance with Section 6(4) of FEMA Act i.e. where the investment in the foreign security or any immovable property situated outside India was acquired when the person was resident outside India or inherited from a person who was resident outside India.

8. PROHIBITIONS

1. No person resident in India shall make ODI in a foreign entity engaged in -
 - real estate activity;
 - gambling in any form; and
 - dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank

The expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but doesnot include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing

2. Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case maybe, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.
3. No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:

Provided that such restriction shall not apply to the following classes of companies mentioned in Rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely -

- a. a banking company as defined in the Banking Regulation Act, 1949;
- b. a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;
- c. an insurance company being a company which carries on the business of

insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and

- d. a Government company referred to in the Companies Act, 2013.

9. AUTOMATIC ROUTE

Rule 9 of OI Rules, 2022 lays down the general rule for overseas investments under the automatic route. It states that subject to prescribed limits and conditions, any overseas investment by a person resident in India shall be made in a foreign entity engaged in bona-fide business activity, directly or through step-down subsidiary or the special-purpose vehicle.

Step-down subsidiary, in respect of a foreign entity, has been defined as an entity in which the foreign entity has control. It is also provided that for investments made through a step-down subsidiary to qualify as overseas investment and be permissible under OI Rules, the step-down subsidiary shall comply with the structural requirements of a foreign entity, i.e. it shall have limited liability. Earlier, overseas direct investments (ODI) was only allowed in an entity engaged in bona-fide business activity either directly, or through one layer of SPV. In this context, the new Rule seems to be expansive in as much as it allows overseas investment into an entity engaged in bona-fide business, including through multiple layers of step-down subsidiary or special purpose vehicle. In other words, it may now be possible to invest in a foreign holding company (SPV) which has one or more layers of foreign subsidiaries as long as the ultimate foreign subsidiary is engaged in a bona fide business activity.

10. APPROVAL ROUTE

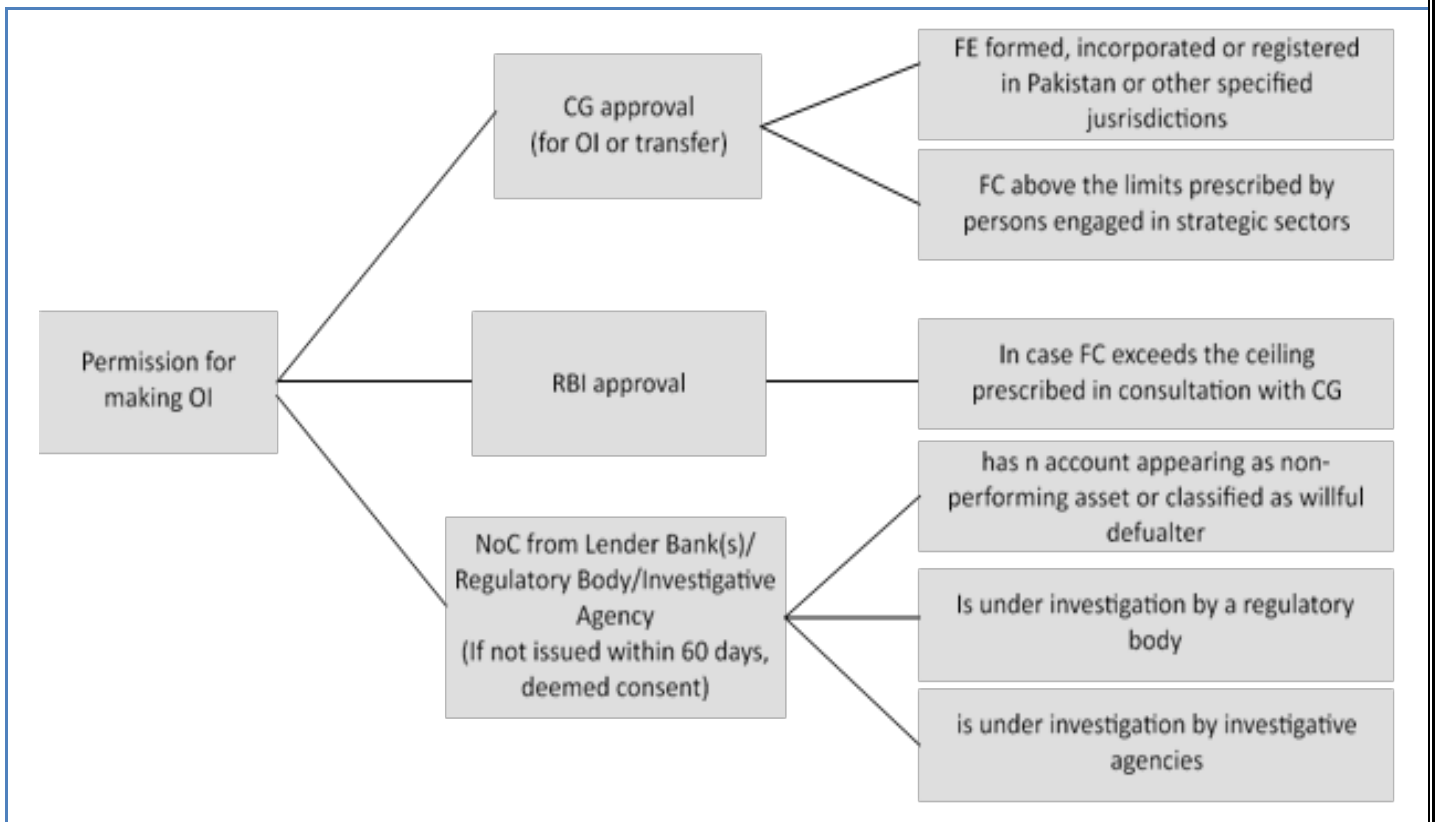
Rule 9 of OI Rules, 2022 also provides that overseas investment under the automatic route, shall not be made into a company incorporated in Pakistan (including by way of swap of securities) or such other country as may be decided by the Central Government, from time to time.

The OI Rules provide for investments that will require prior approval of CG, RBI and NOC from lender banks/ regulatory bodies etc. The Erstwhile ODI Regulations only mandated prior approval of RBI in case eligibility conditions stipulated were not met by the Indian party or resident individual. The OI Rules read with the OI Directions provide that

Approval from Central Government: The applications for overseas investments (including financial commitment) in Pakistan / other countries as may be restricted by the Central Government from time to time or in strategic sectors / specific geographies beyond the prescribed limits, shall be made to the Central Government through the RBI. As such, the applications shall be forwarded by the AD banks to the RBI for onward submission to the Central Government.

Approval from Reserve Bank: As set out under the Erstwhile Regime, the OI Rules also provide that financial commitment by an Indian entity, exceeding USD 1 billion (or its equivalent) in a financial year shall require prior approval from the RBI even when the total financial commitment of the Indian entity is within the eligible limit

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11. METHOD OF FUNDING

The mode of payment by a person resident in India for making overseas investment shall be in accordance with regulation 8 of the OI Regulations. A person resident in India making Overseas Investment may make payment -

- (i) by remittance made through banking channels
- (ii) from funds held in an account maintained in accordance with the provisions of the Act;
- (iii) by swap of securities;
- (iv) by using the proceeds of American Depository Receipts or Global Depository Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

It is further provided in the OI Directions that:

- a. Overseas investment by way of cash is not permitted.
- b. In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015, an Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/ office outside India for making any overseas investment.
- c. A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.
- d. Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

12. FOREIGN DIRECT INVESTMENT POLICY

The Department for Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulation of the policy of the Government on Foreign Direct Investment (FDI). It is also responsible for maintenance and management of data on inward FDI into India, based upon the remittances reported by the Reserve Bank of India.

Reporting requirements

As per the OI Regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the

format provided by the Reserve Bank. A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely -

a. financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;

b. disinvestment within thirty days of receipt of disinvestment proceeds;

c. restructuring within thirty days from the date of such restructuring

13. ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

Choosing business location is depends on the entry barriers in the governing law as some of the countries provide easy access to the businesses such as Property transfer, Reliability of electricity, Labor market regulation, Trade regulation and costs, Court efficiency, Creditors' rights, Credit information, Shareholders' rights, Tax regulation, Foreign direct investment, Overall business regulatory environment. However, the same can be categories as under:

Geographical Location of the business

- Infrastructure (ports, airports, storage, specific storage types - such as cold-storage, secure storage)
- Access (transportation of goods, materials and personnel)
- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce

- Availability of talent pool for productions (labour), services and management
- Risks: The outbreak of COVID-19 highlights the pitfalls of global interdependency and the challenge for global governance. Epidemics and pandemics do not just come and go, they impact the economy and society as well. One should consider threats to the organization due to pandemic and other risks such as earthquake, tsunami etc

Economic Aspects

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability
- Cost of doing business: return on investment computations *vis-à-vis* comparable locations
- Laws relating to labour and Quality of labour force; availability of labour force; unemployment rate; labour unions; attitudes towards work and labour turnover; motivation of workers and work force management
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as FATCA, TRC, etc.

A complete picture of the local, regional, and state tax environment must be obtained in order to make certain that the business can operate profitably. In several areas of the country, states have made changes to their tax structures, and it is important to understand how these changes negatively or positively impact a company's project

- Incentives: Local, regional, and/or state economic development incentives available to help the company lower project costs. Incentives should never drive site selection decisions, but they are important to ensure the economic

feasibility of the project.

Political Aspects

- Friendly country, MFN status
- Long-standing and established legislative precedents with companies going through regulatory recourse
- Their relations with neighboring countries and neighbours and your country
- Regulatory environment: Impact of local, regional, and state governmental regulations on business and project. Critical issues such as building plan approvals, environmental permits, utility connection approvals, and waste disposal permits can have a significant financial and timing impact on a company's project.

Social Aspects

- Trade bodies, interaction between commercial entities of both nations
- Expatriate-friendliness of the nation for relocating key employee personnel.

Technological Aspects

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress.
- Power, communication, telecom - availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and

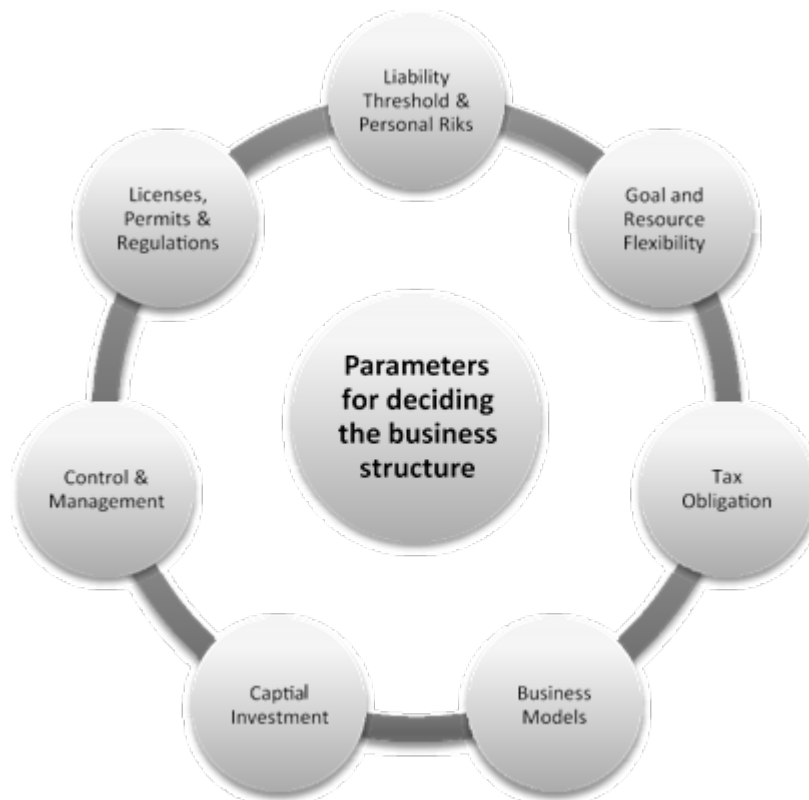
language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent within the framework of law

IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPLIANCES

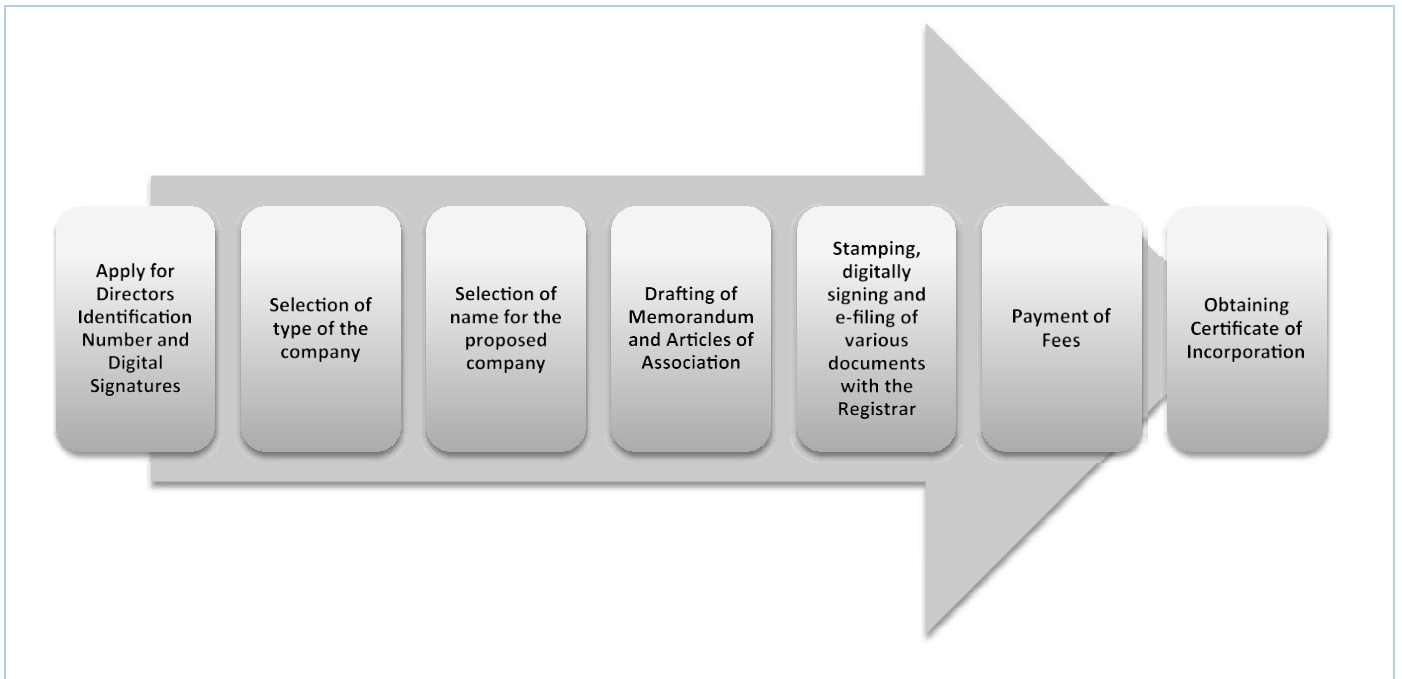
1. INTRODUCTION

India has emerged as one of the most attractive destinations not only for investments but also for doing business. With the aim to improve the ease of living and the ease of doing business in India, more than 25,000 compliances have been reduced by the Government of India. Positive changes have led to this impressive improvement in India's ranking in the EoDB index

2. PARAMETERS FOR DECIDING BUSINESS STRUCTURE



3. FORMATION OF A COMPANY



4. APPLYING FOR BUSINESS LICENCES

Udyam Registration: The Udyam online site handles India's small businesses, there are several advantages to registering, including government credit programmes, subsidies, etc. The requirements for Udyam registration are specified in terms of a composite criteria that takes into account business revenue and investment in machinery and plants.

FSSAI Registration or License (In case of business of edibles): This is the national authority for ensuring the safety and standardization of food items in India. FSSAI stands for Food Safety and Standard Authority of India. All retail establishments, trade outlets, kiosks, eateries, caterers, and cloud kitchens must follow to FSSAI regulations, get licenses, and periodically renew their registrations. Under FSSAI, the license or registration is divided into three categories namely:

- FSSAI Central License
- FSSAI State License
- FSSAI State Registration



Import Export Code: In India, export and import businesses require a special license known as the Import Export Code, which the Directorate General of Foreign Trade (DGFT) issues under the Ministry of Commerce. The registration can be obtained online at the DGFT website by submitting the mandatorily required documents. The necessary documents are a PAN card, identity card with address proof, business residence proof, current bank account proof, etc.

Trade License for Indian Online Businesses: With many easy online business loans available for MSMEs, many small entrepreneurs are looking toward the virtual medium as a preferred business mode. For small businesses, a sole proprietorship is the most convenient way to run a business as fewer compliances are followed. A sole proprietorship can obtain a trading license in the same manner as a traditional shop under the Shop and Establishments Act.

Licenses needed for an Indian Factory: Under the Factories Act of 1948, registration is required to operate a factory in India which is granted by the State Government. According to the type of company and state laws governing safety, welfare, and labor standards, there can be extra permission requirements.

Additional Licensing and Registration: There are many more company categories that are not included in the list above. Wherever it is judged essential, the government requires licenses and permits to guarantee the welfare of the public and the environment. For example, the Insurance Regulatory and Development Authority supervises insurance firms, while the Reserve Bank of India oversees the banking and microfinance industries

Adhering to Labour Law Objective of the Labour Laws

Labour Laws aim to correct the power disbalance between the employees and employers. It provides the employees with security so that they can't be unjustly dismissed. Therefore, they give the employees the power to negotiate and ensure a good working conditions. The most important factors that the Labour Laws aim to work on are:

- Productive Work & Adequate Earning
- Proper Working Hours
- Security to the Employees
- Work-Life Balance Secure Working Environment
- Sickness and Accident benefits to the employees
- Social Security
- Labour Welfare
- Fair Treatment in the Workplace
- Prevention of Children at Work
- Forced Labour.

5. ENSURING EFFECTIVE CONTRACT MANAGEMENT

Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void

Contract management involves overseeing agreements made with suppliers, customers, partners and employees. Effective oversight is critically important because sales can be lost and regulatory penalties can ensue from poor contract management. In the early stage of operations and post operation too, there are various contracts that a company

has to abide by, therefore, the adherence to contract law is one of the most important requirement for the company.

6. LAWS RELATING TO INDUSTRIES SPECIFIC LAWS

Specific Laws and General Laws

Segregation of laws applicable on the Company into the Industry specific and general is essential for Secretarial Audit. After considering the following factors the auditor should make the segregation of the same based on the laws being applicable on the Company:

- Key financial parameters such as turnover, paid-up share capital, net worth, borrowings, etc.
- Geographic location of registered office, units / divisions / plants / branches, etc.
- Status of company such as listed / unlisted.
- Type / class of company such as Private, Public, Holding, Subsidiary, Foreign, Nidhi, Producer, Section 8, etc.
- Registration with various authorities such as SEZ, Sectoral Regulators, etc.
- Segment such as manufacturing / trading / service / e-commerce and industry classification thereof.
- Agreements governing rights, obligations of shareholders such as Joint venture, shareholders' agreements.
- Number, class and category of employees / workers such as women, contractual employees, etc.

Trading & Retail Industry

List of laws that are specifically applicable to trading and retail industries:-

1. The Trade Marks Act, 1999;
2. The Patents Act, 1970;

3. The Indian Copyright Act, 1957;
4. Legal Metrology Act, 2009;
5. Shops and Establishment Act & Rule (State wise);
6. The Food Safety & Standard Act, 2006;
7. Local Municipal Corporation Act & Bye Laws (city-wise);
8. Acts prescribed related to Retail activities;
9. The Consumer Protection Act, 2019 and Rules & Regulations made thereunder;
10. Acts prescribed under prevention and control of Pollution;
11. Acts prescribed under Environmental protection;
12. Acts as prescribed under Direct Tax and Indirect Tax including GST and others;
13. Land Revenue laws of respective States;
14. Labour Welfare Act of respective States;
15. Local laws as applicable to various stores as per the respective Municipal Authority;
16. Whistle Blowers Protection Act, 2014;
17. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

IFSC & Bullion Exchange Industry

List of laws that are specifically applicable to IFSC and bullion exchange companies: - Act and Guidelines

1. SEZ Act, 2005;
2. The Securities and Exchange Board of India Act, 1992;
3. The Insurance Regulatory and Development Authority Act, 1999;
4. The International Financial Services Centres Authority Act, 2019;
5. The Foreign Exchange Management Act, 1999
6. The Pension Fund Regulatory and Development Authority Act, 2013;
7. The Payment and Settlement Systems Act, 2007;
8. The Government Securities Act, 2006;
9. The Credit Information Companies (Regulation) Act, 2005;
10. The Depositories Act, 1996;
11. The General Insurance Business (Nationalisation) Act, 1972

Start-ups

List of laws that are specifically applicable to Startups:-

1. Shop and Establishment Act, (State-wise);
2. Environment and Protection Act, 1986;
3. Competition Act, 2002;
4. The Trade Unit Act, 1926;
5. The Inter-State Migrant Workmen (Regulation of Employment and Service) Act, 1979;
6. Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
7. Foreign Investments - For encouraging foreign investment in the start-up there are regulations for foreign venture capital investors (FVCI). Foreign Exchange Management Act (FEMA), 1999;
8. The Government has provided an exemption from labour inspection for a start-up if they apply all the major 9 labour laws of the country regularly for worker's benefit;
9. Whistle Blower Protection Act, 2014;
10. The Consumer Protection Act, 2019 and rules made thereunder;
11. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Non-Banking Financial Company (NBFC)

List of laws that are specifically applicable to NBFCs:-

1. The Reserve Bank of India Act, 1934 & Rules, Regulations, guidelines, circulars, directions, and notifications made there under
2. Rules, regulations and guidelines issued by the Reserve Bank of India as are applicable to Deposit taking Non-Banking Financial Companies, Non-Deposit taking NBFC; Systematically Important NBFC;
3. Prevention of Money Laundering Act, 2002;
4. The Competition Act, 2002;
5. Labour and Social Security Laws as applicable

Pharma Industry

List of laws that are specifically applicable to Pharma Industries:-

1. The Food Safety and Standards Act, 2006;
2. The Narcotic Drugs and Psychotropic Substances Act, 1985;
3. The Drugs and Cosmetics Act, 1940 and Drugs Rules, 1945;
4. The Drugs and Cosmetics Act, 1940 and The New Drugs and Clinical Trials Rules, 2019;
5. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
6. The Essential Commodities Act, 1955 - Drug Price Control Order, 2013;
7. Pharmacy Act, 1948;
8. Drugs (Price Control) Order, 1995;
9. Uniform Code for Pharmaceutical Marketing Practices, 2014;
10. Bio Medical Waste (Management and Handling) Rules, 1998;
11. The Air (Prevention and Control of Pollution) Act, 1981;
12. The Water (Prevention and Control of Pollution) Act, 1974;
13. The Indian Standard Code of Practice for Selection, Installation and Maintenance of Portable First Aid Fire Extinguishers;
14. The Maharashtra Non-Biodegradable Garbage (Control) Act, 2006;
15. The Water (Prevention and Control of Pollution) Act, 1974;
16. The Environment (Protection) Act, 1986 and allied rules;
17. The Electricity Act, 2003;
18. The Explosives Act, 1884 read with The Gas Cylinder Rules 2016;
19. The Explosives Act, 1884 read with The Static and Mobile Pressure Vessels (Unfired) Rules, 2016;
20. The Petroleum Act, 1934;
21. The Boilers Act, 1923;
22. State Shop and Establishment Act (Respective States where Company has presence);
23. The Cigarette and Other Tobacco Products (Prohibition of Advertisement and the Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
24. The Rights of Persons with Disabilities Act, 2016;
25. The Industries (Development and Regulation) Act 1951
26. The Legal Metrology Act, 2009;

27. Trademarks Act, 1999;
28. The Patents Act, 1970;
29. The Sales Promotion Employees (Conditions of Service) Act, 1976.

Banking Industry

List of laws that are specifically applicable to Banking industries:-

1. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with The Banking Regulation Act, 1949;
2. Banking Regulation Act, 1949, Master Circulars, Notifications and Guidelines issued by the RBI from time to time;
3. The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970;
4. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
5. Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
6. Transfer of Property Act, 1882;
7. Negotiable Instruments Act, 1881;
8. Sale of Goods Act, 1930;
9. Foreign Contribution Regulation Act, 2010;
10. Prevention of Money Laundering Act, 2002;
11. Credit Information Companies (Regulation) Act, 2005;
12. Trade Union Act, 1956;
13. Micro, Small and Medium Enterprises Development Act, 2006;
14. Public Liability Insurance Act, 1991;
15. Insurance Act, 1938 and Insurance Rules, 1939;
16. The Shops and Establishments Act, 1953;
17. Indian Stamp Act, 1899;
18. Indian Contract Act, 1872;
19. The Foreign Trade (Development and Regulation) Act, 1992;
20. The Reserve Bank of India Act, 1934 and Guidelines issued by RBI;

21. National Tax Tribunal Act, 2005;
22. Limitation Act, 1963;
23. Indian Trusts Act. 1882;
24. Society Registration Act, 1860;
25. Information Technology Act, 2000;
26. Energy Conservation Act, 2001;
27. Right to Information Act, 2005;
28. Trade Marks Act, 1999;
29. Copyright Act, 1957;
30. Patents Act, 1970;
31. Labour Laws (Exemptions from furnishing returns and maintaining returns) by certain Establishments Act, 1988;
32. Weekly Holiday Act, 1942;
33. General Clauses Act, 1897.

Insurance Industry

List of laws that are specifically applicable to Insurance industries:-

1. Insurance Act, 1938 and Insurance Rules, 1939;
2. Insurance Regulatory and Development Authority (IRDAI) Act, 1999;
3. Anti-Money Laundering Regulation issued by IRDAI;
4. The State Shop and Establishment Act;
5. Indian Stamp Act, 1899 and the State Stamp Acts;
6. Copyright Act, 1957;
7. Prevention of Money Laundering Act, 2002;
8. Trademarks Act, 1999;
9. Indian Contract Act, 1872;
10. Negotiable Instruments Act, 1881;
11. Registration Act, 1908;
12. Limitation Act, 1963;
13. Information Technology Act, 2000;

14. Employment Standing Orders Act, 1946;
15. Employees' Provident Fund and Miscellaneous Provisions Act, 1952 & the scheme provided thereunder

Housing Finance Companies

List of laws that are specifically applicable to Housing Finance Companies:-

1. National Housing Bank Act, 1987;
2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
5. Guidelines for Asset Liability Management System in Housing Finance Companies;
6. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis(NHB) Directions, 2014
7. Housing Finance Companies - Corporate Governance (National Housing Bank) Directions, 2016;
8. Housing Finance Companies - Auditor's Report (National Housing Bank) Directions, 2016;
9. Guidelines on Fair Practices Code for Housing Finance Companies; 10. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
11. Information Technology Framework for HFCs - Guidelines;
12. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
13. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015;
10. Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank)Directions, 2021

Real Estate Companies

List of laws that are specifically applicable to Real Estate Companies:-

(A) Pre-constructions

1. Real Estates (Regulations & Development) Act, 1916
2. Environment (Protection) Act, 1986;
3. The Air (Prevention and Control of Pollution) Act, 1981;
4. The Water (Prevention and Control of Pollution) Act, 1974;
5. The Aircraft Act, 1934;
6. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service)Act, 1996;

7. The Electricity Act, 2003;
8. The Control of National Highways (Land and Tariff) Act, 2002;
9. The Forest (Conservation) Act, 1980;
10. The Mines and Minerals (Development and Regulation) Act, 1957;
11. The Petroleum Act, 1934;
12. The Railways Act, 1989;
13. The Transfer of Property Act, 1882 and Registration Act, 1908;
14. The Wildlife Protection Act 1972;
15. The Works of Defence Act 1903;
16. The Ancient Monuments and Archaeological Sites and Remains Act, 1958;
17. The Special Economic Zones Act, 2005;
18. Housing Board Act, 1965.

(B) During the constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
3. The Electricity Act, 2003;
4. The Environment (Protection) Act, 1986;
5. The Explosives Act, 1884;
6. The Water (Prevention and Control of Pollution) Act, 1974;
7. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
8. The Emblems and Names (Prevention of Improper Use) Act, 1950;
9. The Food Safety and Standards Act, 2006;
10. The Forest (Conservation) Act, 1980;
11. The Motor Vehicles Act, 1988;
12. The Indian Wireless Telegraphy Act, 1933;
13. The Private Security Agencies (Regulation) Act, 2005;
14. The State municipal Corporation Act; The State Town & Country Planning Act; The State Building Bye-laws; The Development Control Regulations;
15. The Real Estate (Regulation and Development) Act, 2016 including rules & regulations made thereunder;
16. The Equal Remuneration Act, 1976;

17. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
18. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(C) Post constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Electricity Act, 2003;
3. The Emblems and Names (Prevention of Improper Use) Act, 1950;
4. The Environment (Protection) Act, 1986;
5. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
6. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
7. The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017;
8. The Indian Wireless Telegraphy Act, 1933;
9. The Motor Vehicles Act, 1988;
10. The Petroleum Act, 1934;
11. The Public Liability Insurance Act, 1991;
12. The Representation of the People Act, 1951;
13. The Rights of Persons with Disabilities Act, 2016
14. The Water (Prevention and Control of Pollution) Act, 1974;
15. Transgender Persons (Protection of Rights) Act, 2019;
16. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Telecom Industry

List of laws that are specifically applicable to Telecom industries:-

1. The Indian Telegraph Act, 1885;
2. The Telecom Regulatory Authority of India Act, 1997 and Rules and Regulations made thereunder;
3. The Indian Wireless Telegraphy Act, 1933;
4. The Information Technology Act, 2000;

5. *Guidelines on Corporate Governance by Department of Public Enterprises (DPE);*
6. *Department of Telecommunication guidelines and License Agreements.*

Information & Technology Industry

List of laws that are specifically applicable to Information & Technology industries:-

1. *The Information Technology Act, 2000;*
2. *The Special Economic Zones Act, 2005;*
3. *Software Technology Parks of India rules and regulations*
4. *The Copy Rights Act, 1957;*
5. *The Patents Act, 1970;*
6. *The Trade Marks Act, 1999;*
7. *The Registration Act, 1908;*
8. *Indian Stamp Act, 1899 and amendments thereto;*
9. *Limitation Act, 1963;*
10. *Indian Contract Act, 1872;*
11. *Negotiable Instrument Act, 1881 and amendments thereto;*
12. *Sale of Goods Act, 1930;*
13. *Designs Act, 2000;*
14. *Trade Unions Act, 1926;*
15. *Weekly Holidays Act, 1942;*
16. *The Telecom Regulatory Authority of India Act, 1997;*
17. *The Insurance Act, 1938;*
18. *Foreign Trade (Development and Regulation) Act, 1992;*
19. *Bureau of Indian Standards Act, 1986;*
20. *The Information Technology (Certifying Authorities) Rules, 2000;*
21. *The State Acts, rules, guidelines and regulations to the extent applicable to the Company based on the location of its offices across India*

Media and Communication Industry

1. List of laws that are specifically applicable to Media and Communication industries:-
2. The Right to Information Act, 2005;
3. The Information Technology Act, 2000;
4. The Telecom Regulatory Authority of India Act, 1997;
5. Copyright Act, 1957;
6. State Emblem of India (Prohibition of Improper Use) Act, 2005;
7. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007;
8. The Cable Television Networks (Regulation) Act, 1995;
9. The Delivery of Books and Newspapers (Public Libraries) Act, 1954;
10. The Newspaper (Prices and Pages) Act, 1956;
11. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
12. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957;
13. The Working Journalists (Fixation of Rates of Wages) Act, 1958;
14. The Working Journalists and other Newspaper Employees Tribunal Rules, 1979;
15. Registration of Newspapers (Central) Rules, 1956;
16. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
17. The Emblems and Names (Prevention of Improper Use) Act, 1950;
18. The Parliamentary Proceedings (Protection of Publication) Act, 1977;
19. The Young Persons (Harmful Publications) Act, 1956;
20. The Dramatic Performances Act, 1876 (Relevant Provisions);
21. The Cinematograph Act, 1952;
22. The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;
23. The Cine-Workers Welfare Cess Act, 1981;
24. The Cine-Workers Welfare Fund Act, 1981;
25. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990;
26. The Press and Registration of Books Act, 1867;
27. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961;

28. The Press Council Act, 1978
29. The Indian Telegraph Act, 1885 (Relevant Provisions);
30. The Indian Post Office Act, 1898 (Relevant Provisions);
31. The Common Charter of Telecom Services, 2005;
32. The Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services, 2005

Infra Industry

List of laws that are specifically applicable to Infra industries:-

1. Building and other Construction Workers (Regulation of Employment And Conditions of Service) Act,1996;
2. Building and other Construction Workers' Welfare Cess Act, 1996;
3. Contract Labour (Regulation and Abolition) Act, 1970 and the Rules thereunder;
4. Inter State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979.

Environment Laws

India's economic development propelled by rapid industrial growth and urbanization is causing severe environmental problems that have local, regional and global significance. Recognizing the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

Legal Framework India has an elaborate legal framework with number of laws relating to environmental protection. The key national laws include the following:

- a. Water (Prevention and Control of Pollution) Act, 1974;
- b. Water (Prevention and Control of Pollution) Cess Act, 1977;
- c. Air (Prevention and Control of Pollution) Act, 1981;
- d. Environment (Protection) Act, 1986;
- e. The Public Liability Insurance Act, 1991;

- f. The Biodiversity Act, 2002;
- g. The National Green Tribunal Act, 2010;
- h. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules;
- i. Plastic Waste Management Rules;
- j. Bio-Medical Waste Management Rules;
- k. Construction and Demolition Waste Management Rules;
- l. E-waste Management Rules, 2016;
- m. The Batteries (Management and Handling) Rules made under the Act

1. INTRODUCTION

A business entity is required to secure various registration and licenses in order to set up its businesses in India. This chapter deals with the list of mandatory as well as additional initial registration requirements and the licenses along with their detailed procedures. 'Ease of doing business' refers to the regulatory environment in a country to set up and operate a business. Every year, the World Bank compares the business environment in 190 countries in its Ease of Doing Business Report. Among the chosen 190 countries, India ranked **63rd** in Doing Business 2020: World Bank Report. In 2014, the Government of India launched an ambitious program of regulatory reforms aimed at making it easier to do business in India. The program represents a great deal of effort to create a more business-friendly environment.

2. Registration under Shops and Establishments Act

One of the important regulations to which most businesses in India are subject to is the Shop and Establishment Act, enacted by every state in India.

The Shop and Establishment (S&E) Act is applicable on all the commercial establishments; viz, business centres, offices, warehouses, stores, hotels, eateries, amusement parks, theatres, etc., nationwide.

It is one of the most important regulations required to be complied with for any business. The Act is designed to regulate payment of wages, hours of work, leave, holidays, terms of service and other work conditions of people employed in shop and commercial establishments.

Meaning of Shops & Establishments

- Shop": Shop means any premises where
 - (i) goods are sold, either by retail, wholesale, or
 - (ii) services are rendered to customers

It includes an office, a store-room, godown, warehouse, or workplace, whether on the same premises or otherwise, used in connection with such trade/ business. A shop however does not include a factory or a commercial establishment

- "Commercial Establishment": Commercial establishment means
 - (i) a premise where any trade, business, profession or any work is undertaken,
 - (ii) which may include society, charitable or another trust, journalistic and printing establishments, contractors and auditors establishments, educational institutes, premises where the business of banking, insurance stocks, and shares, the brokerage is undertaken, restaurants and eating houses, residential hotels, clubs, theatres and other places of public amusement or entertainment.

Establishments are defined as shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment. Further, establishments as defined by the Act may also include such other establishments as defined by the Government by notification in the Official Gazette. However, factories are not covered by the shops & establishments Act and are regulated by the Factories Act, 1948.

License under shops and establishments Act

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act License within the prescribed time.

The application for license in the prescribed form must contain:

- | | |
|--|--|
| <ul style="list-style-type: none"> • the name of the employer, • address of the establishment, • name of the establishment, | <ul style="list-style-type: none"> • number of employees, and • other relevant details as requested. • category of the establishment, |
|--|--|

On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier. The registration certificate must be prominently displayed at the shop or commercial establishment and renewed periodically, as per the Act.

Registration of Shops and Establishments

As a business owner of a shop or establishment, you are compulsorily required to get the same registered under the Shops and Establishment Act. Here are the specific rules:

1. Submit an application in the prescribed form to the **Inspector of the area within 30 days of starting any work in the shop/establishment**. The application is to be submitted along with the prescribed fees and should contain the following information:
 - a. Name of the employer and the name of a manager, if any;
 - b. The postal address of your establishment;
 - c. The name of establishment;
 - d. Such other particulars as may be prescribed
2. Upon receiving the application for registration and the fees, the Inspector shall **verify the accuracy and correctness** of the application. Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate for the establishment. This certificate will be valid for **5 years** and has to be renewed thereafter.
3. It is important that the registration certificate has to be prominently displayed at the establishment.
4. The Labour Department of each state has the authority for the registration

process. Many States have a 100% online process, while some states are still following the manual procedure for filing.

5. The Registration certificate is required to be renewed periodically as mentioned in the state regulations.

3. ESI REGISTRATION PROCEDURE FOR BOTH EMPLOYER AND EMPLOYEE

Online Registration of Employers

The Ministry of Labour and employment, Central Government has launched Unified **Shram Suvidha Portal** to facilitate reporting of Inspections, and submission of Returns. The Unified Shram Suvidha Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions. **Unique Labour Identification Number (LIN)** is allotted to units to facilitate online registration. A common form for both ESIC and EPFO registration has been introduced under said portal. Registration of employers under ESI and EPF Act is fully online, without requirement of submission of any physical application documents either before the registration or after it.

Registration of Employee

On joining the organization, an employee has to register in ESIC Portal.

- Once signing up with required details, the employee will receive a on his registered mail ID confirming user ID and password provided.
- The employee shall login with user ID and password and fill up the new registration form.
- The employee shall state details of Organisation and employer. Once all the information, the form besubmitted to complete the registration.
- have been provided to fill the **Declaration form i.e., Form-1** along with a copy of the **family photo** which the employer will be submitting at the ESI branch office.
- An employee is registered only after he makes advance payment for the next six months on clicking the payment option.

- Once registered, the employee will receive letter, which is the registered letter containing his unique registration number of 17 digits generated by the ESIC system portal.
- Once registered, the registration can be transferred if the employee switches the organization and takes up employment elsewhere.

4. EMPLOYEE PROVIDENT FUND MEANING AND REGISTRATION PROCEDURE

In order to provide financial stability and security in the form of post-retirement benefits and insurance to the employees engaged in organized sector when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS). A tri-partite Board known as the Central Board of Trustee, Employee's provident Fund consisting of representatives of government (both Central and State), Employers and Employees manages these funds, and employees are required to contribute a part of their salary to it every month during their employment tenure

Compulsory Registration	Voluntary Registration
<p>Registration under Employees Provident Fund, 1952 is mandatory for an establishment</p> <p>(i) which is a factory engaged in any industry having 20 or more persons, and</p>	<p>However, an establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits.</p>
<p>(ii) to any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification specify on this behalf.</p>	

The employer must obtain the registration within 1 month of touching mandatory registration threshold.

As an ease of doing business initiative, the Government of India launched a unified portal labour and employment "Shram Suvidha Portal " to facilitate Establishments, Contractors, Employers or Principal Employers to submit application for Registration/License under

Labour Laws Online i.e.,

- (1) The Employees Provident Funds and Miscellaneous Provision's Act (EPF) Act, 1952.
- (2) Employees' State Insurance Act (ESI) Act, 1948.
- (3) Contract Labour (Regulation and Abolition) Act, 1970.
- (4) Building and Other Construction Workers (BOCW) Act, 1996.
- (5) Inter-State Migrant Workmen (ISMW) Act, 1979.

5. POLLUTION CONTROL

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 39 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Forest and Climate Change, (MoEFCC) Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc

6. COMPLIANCES UNDER ENVIRONMENT LAWS

Compliance under environment laws are:

- EC (Environment Clearances)
- FC (Forest Clearance)
- WC (Wild Life Clearance)
- CTE (Consent to Establish)
- CTO (Consent to Operate)
- Authorization (Waste Management & Hazardous and Other Wastes (Management And Transboundary Movement) Rules
- HSM (Hazardous Substance Management)

7. OTHER REGISTRATION AS PER REQUIREMENT OF SECTOR/ ACTIVITIES

Sector based registrations

Sector	Registration/License	Authority
Import and export for Goods and Services	IE Code	Director General for Foreign Trade
Setting up of Pharmacy Business	Drug License	Central Drugs Standard Control Organization and State Drugs Standard Control Organization
Regulating food Business	FSSAI	Food Safety and Standards Authority of India
For Non Bank Finance Activity	Non-Bank Finance Company Registration	Reserve Bank of India
Banking Activities	Banking Licence	Reserve Bank of India
Insurance Activities	IRDAI Registration	Insurance Regulatory and Development Authority of India
Industrial Activities	Industrial Activities	Department for Promotion of Industry and Internal Trade
Telecom Services	Telecom license	Ministry of Communications and Information Technology

8. IMPORT EXPORT CODE

Import Export Code (IE Code) is a key business identification number which is mandatory for exporting or importing **goods**. It is a **10-digit code** which is issued by the **Directorate General of Foreign Trade (DGFT)**, Ministry of Commerce and Industry. However, for services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

IE code has **lifetime validity**. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.

The IE Code must be quoted by importers while **clearing customs**.

Also, **banks** require the importers IE Code while sending money abroad. For exporters, IE Code must be quoted while sending shipments. And banks require the exporters IE Code while receiving money from abroad.

The nature of the firm obtaining an IEC may be any of the follows- "Proprietorship, Partnership, LLP, Limited Company, Trust, HUF and Society." Consequent upon introduction of GST, IEC number is the same as the PAN of the firm. The IEC would be separately issued by DGFT.

Application for IE Registration

Process to apply for Importer Exporter Code (IEC) on the DGFT portal (<https://dgft.gov.in>)

- a) Valid Login Credentials to DGFT Portal (After Registering on DGFT Portal).
- b) User should have an active Firms Permanent Account Number (PAN) and its details like Name as per Pan, Date of Birth or Incorporation.

Note: These details will be validated with the Income Tax Department site.

- c) Scanned Documents for Upload in the System (PDF Only and Max file size of 5 MB).
 - a. Proof of establishment/incorporation/registration.
 - i. Partnership
 - ii. Registered Society
 - iii. Trust
 - iv. HUF
 - v. Others
 - b. Proof of Address can be any one of the following documents:
 - i. Sale Deed, rent agreement, lease deed, electricity bill, telephone land line bill, mobile, postpaid bill, MoU, Partnership deed;
 - ii. Other acceptable documents (for proprietorship only): Aadhar card, passport, voter id;

- iii. In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the firm premises owner in favor of the firm along with the address proof is to be submitted as a single PDF document.
- c. Proof of Firm's Bank Account
 - i. Cancelled Cheque
 - ii. Bank Certificate
- d) User should have an active DSC or Aadhaar of the firm's member for submission.
- e) Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee

9. DRUG LICENSE

A Drug License is permission to start a **pharmacy business**. Drug comprises of medications and instruments used for diagnosis, treatment and prevention of any disorder or disease in animals and human beings. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license under Drugs and Cosmetics Act, 1940.

Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization. The applicant shall visit respective state website for obtaining such license

Classification of Drug License

Normally, the Drug Control Organization issues two types of licenses for operating a pharmacy business.

- (i) One is the **Retail Drug License (RDL)** issued to run a general chemist shop.
- (ii) The other is the **Wholesale Drug License (WDL)** issued to persons or agencies engaged in drugs and medicines.

In most states, a retail drug license is only issued to persons who possess a degree or

diploma in pharmacy from a recognized institute or university after depositing the requisite fee. But this condition is relaxed in case of procuring a Wholesale Drug license (WDL).

Prerequisites for obtaining Drug License

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

- **Area:** The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required.
- **Storage Facility:** The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.
- **Technical Staff:**

Wholesale - The sale of drug by wholesale shall be made either in the presence of **registered pharmacist** or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4 years experience in dealing in drugs, specially approved by the department of drug control for the purpose.

Retail - The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours

Documents required for obtaining Drug License

The documents required for starting a pharmacy business varies from state to state. However, the following is an indicative list of documents required for obtaining drug license in India:

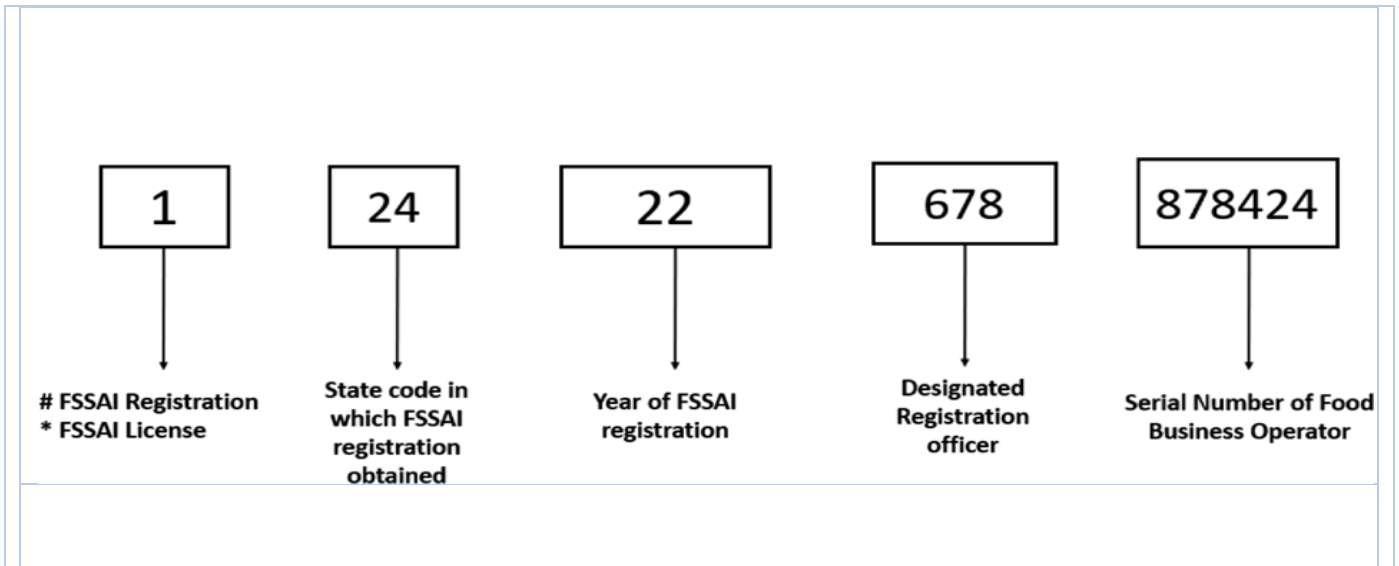
- a. Application form in the prescribed format
- b. Covering Letter with the intent of the application signed with name and designation of the applicant
- c. Challan of fee deposited for obtaining drug license
- d. Declaration form in the format prescribed
- e. Key plan (Blue print) for the premises

- f. Site plan (Blue print) for the premises
- g. Basis of possession of the premises
- h. Proof of ownership of the premises, if rented
- i. Proof of constitution of the business (Incorporation Certificate / MOA / AOA / Partnership Deed)
- j. Affidavit of non-conviction of proprietor / partners/ directors under Drugs and Cosmetics Act, 1940
- k. Affidavit of registered pharmacist or competent person working full time
- l. Appointment letter of registered pharmacist/competent person, if employed person.

10. FSSAI

FSSAI is an acronym for Food Safety and Standards Authority of India. Food Safety and Standards Authority of India (FSSAI), is an autonomous body created at central level to regulate **food-related issues in India**. FSSAI was established, in August 2011, to ensure the **safety and wholesomeness** of articles of food. FSSAI was created under the provisions of the Food Safety and Standards Act, 2006, with guidelines from the **Ministry of Health and Family Welfare**, and the Central government. The purpose is to lay down standards that are backed by science. To regulate the manufacture, storage, distribution, sale, and import. The aim is to protect and promote public health through various regulations and supervision of food processes.

As per section 3(1) of food safety and Standards act,2006, every food business operator in India is required to be licensed under Food Safety & Standards Authority of India. All the manufacturers, traders, restaurants who are involved in food business must obtain a **14-digit registration or a license** number which must be printed on food packages



FSSAI Registration

FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- (a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- (b) Distributes foods including in any religious or social gathering except a caterer; or
- (c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not **exceeding Rs 12 lakhs** and whose:
 - Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - Procurement or handling and collection of milk is up to 500 litres of milk per day or
 - Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

A producer of milk who is a registered member of a dairy Cooperative Society registered under Cooperative Societies Act and supplies or sells the entire milk to the Society shall be exempted from registration.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A or by applying online on the FoSCoS (Food Safety Compliance System) portal. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within **7 days of receipt** of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business

FSSAI License

Any person or entity that is not classified as a petty food business operator is required to obtain a FSSAI license for operating a food business in India. FSSAI license is of two types:

- (i) State FSSAI License: FSSAI State License is needed for small to medium sized Food Companies which has an annual turnover of **Rs 12 Lakhs - Rs 20 Crores**. State FSSAI license is required for medium sized food manufacturers, processor and transporters
- (ii) FSSAI Central License: It is mandated for all Food giants with an annual turnover of **more than Rs 20 Crores**. Based on the size and nature of the business, the licensing authority would change. Large food manufacturer/processors/transporters and importers of food products require central FSSAI license.

11. BANKING

Licensing of Banking Companies is governed by Banking Regulation Act, 1949. To be registered as a banking company, the entity must be a company registered under the Companies Act, 2013 or previous company laws or a foreign company having the prescribed minimum paid up capital.

The minimum paid-up voting equity capital for a bank shall be 500 Crore Rupees for universal banks and 200 Crore Rupees for small finance banks. And any addition to this capital will be based upon the plan presented by the promoters of the bank to the RBI.

According to Section 12 of the Banking Regulation Act, 1949, no banking company is allowed to carry on its business unless it satisfies the following conditions:

1. Its subscribed capital is not less than one-half of its authorized capital;
2. Its paid-up capital is not less than one-half of the subscribed capital;
3. The capital of the company consists of ordinary shares, equity shares and preference shares:

Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued:

4. No person holding shares in a banking company shall have voting rights of above 10% of total voting rights of all the shareholders;
5. Every managing executive of the bank needs to disclose, to the RBI, the extent and the amount of his shareholding in the firm.

Section 22 of the Act details on licensing of Banking Companies which states as below:

1. Save as hereinafter provided, no company shall carry on banking business in India unless it holds a **license issued in that behalf by the Reserve Bank** and any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose.
2. Every company before commencing banking business **shall apply in writing** to the Reserve Bank for a license under this section.
3. Before granting any license under this section, the Reserve Bank may require to be satisfied by an **inspection of the books of the company** or otherwise that the following conditions are fulfilled, namely:-
 - (a) That the company is or will be in a position to **pay its present or future depositors** in full as their claims accrue;
 - (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the **interests of its present or future depositors**;
 - (c) That the general character of the proposed **management of the company** will not be prejudicial to the public interest of its present or future depositors;
 - (d) That the company has adequate **capital structure and earning prospects**;

- (e) That the **public interest** will be served by the grant of a license to the company to carry on banking business in India;
- (f) That having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with **monetary stability and economic growth**
- (g) **any other condition**, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India

12. IRDA (INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY)

Introduction

Till 1999 the insurance sector was controlled by Controller of Insurance as per the provisions of Insurance Act 1938 but after formation of the IRDA it was felt by the Authority that the most of the provisions of this Act were irrelevant in the present scenario of the country. Therefore, the Authority issued various regulations, as deemed fit, to develop the insurance sector in the country. Registration of Insurance company in India is governed by the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000.

Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000

Classes of insurance business for which requisition for registration application may be made:

- (1) The classes of business of insurance for which requisition for registration application may be made are:
 - (i) Life insurance business;
 - (ii) General insurance business;
 - (iii) Health insurance business exclusively;
 - (iv) Reinsurance business.
- (2) An applicant means a public company registered and incorporated under the Companies Act, 2013 or a statutory body established by an Act of Parliament to carry on insurance business and applies to IRDAI for registration as an Indian insurance company.
- (3) An applicant shall make a requisition for registration application under regulation 3 either for Life Insurance or General Insurance Business or Health Insurance Business exclusively or Reinsurance Business.
- (4) Capital Requirement
 - a. The minimum equity capital requirement to set up a **Life, General or Health Insurance Company** is **INR 100 crore**;
 - b. in case of a **Reinsurance company**, the requirement is a minimum of **INR 200 crore**.

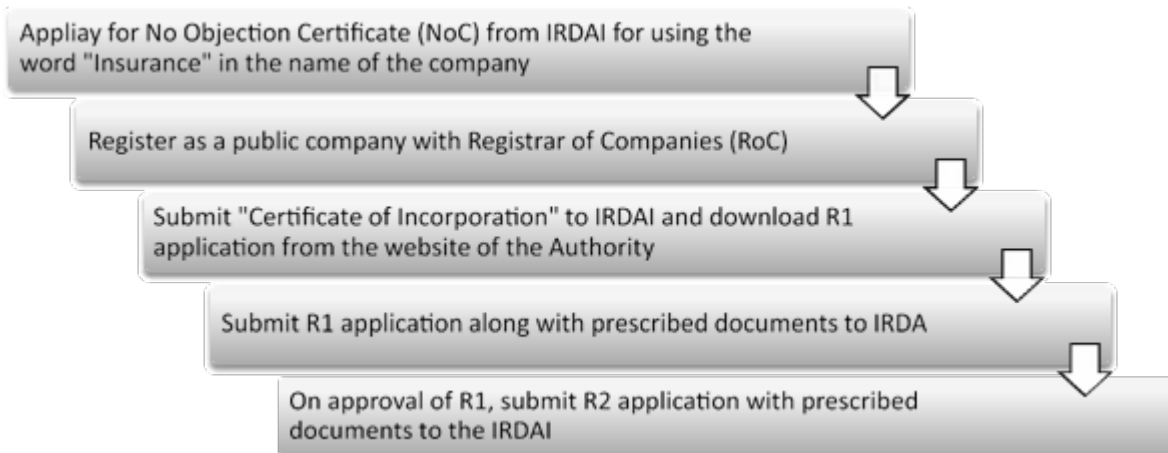
Who cannot apply for Registration under IRDA:

An applicant shall not be eligible to apply for the requisition in the following circumstances:

- a. Where the requisition for registration application has been **rejected** by the Authority or withdrawn; or
- b. where the foreign investors or Indian Promoter of the existing venture have exit for any reason at any time during the preceding **two financial years** from the date of requisition for registration application; or
- c. Where application for registration has been rejected by the Authority or withdrawn by the applicant for any reason **at any time during the preceding two financial years from the date of requisition for registration application**; or
- d. Where Certificate of Registration has been **cancelled** by the Authority; or
- e. Where the name of the applicant does not contain the words '**insurance**' or

'assurance'.

Procedure for Registration of Insurance Company



13. INDUSTRY LICENSING POLICY

Section 11 of the Industries (Development and Regulation) Act, 1951 lays down condition of Licensing of new industrial undertakings as follows—

- (1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a license issued in that behalf by the Central Government:
Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.
- (2) A license or permission under sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made under section 30

At present, industrial license is made compulsory only for the following:

1. Industries retained under compulsory licensing: The following industries require compulsory license:
 - **Alcoholics drinks**
 - **Cigarettes and tobacco products**

- **Electronic aerospace and defense equipment**
 - **Explosives**
 - **Hazardous chemicals such as hydrocyanic acid, phosgene, isocyanates and di-isocyanates of hydro carbon and derivatives**
2. Manufacture of items reserved for small scale sector by larger units large or medium industries undertaking manufacture of items reserved for SSI units. The Government has reserved certain items for exclusive manufacture in the small-scale sector. Non-small-scale units can undertake the manufacture of items reserved for small scale sector, only after obtaining an **industrial license**. In such cases, the non-small-scale unit is required to undertake an obligation to export 50% of the production of SSI reserved items.
 3. When the proposed location attracts locational restriction-

Locational restrictions

Industrial undertakings to be located **within 25 kms** of the standard urban area limit of **23 cities having a population of 1 million** as per 1991 census require an industrial license. Industrial license even in these cases is not required if

- (i) a unit is located in an area designated as an industrial area before 1991; or
- (ii) it is non-polluting industries such as electronics, computer software, printing and other specified industries.

To create a business and Investor friendly environment, DPIIT has **developed G2B Portal** as a Single Window System for receiving application of Industrial Entrepreneurs to file an **Industrial Entrepreneurs Memorandum (IEM)** as well as Industrial License under Industries (Development and Regulation) Act, 1951. Online filing has been made mandatory with effect from 15th May 2014. The online portal has the required authentication mechanisms for submitting IEM and IL applications.

The validity of all Industrial Licenses has been increased to **three years**, whether issued before or after 2nd July 2014. The licensee has to apply for extension of validity after three years, as applicable.

Procedure to apply for Industrial License

1. All applications for Industrial License under IDR Act, 1951 can now be applied online on G2B Portal in Form **FC-IL/FORM FC-IL** - Composite form for Foreign Collaboration and Industrial License.
2. The Applications are scrutinized for their completeness. Information in respect of incomplete applications is sought from the applicants.

3. If the applications for grant of license are complete in all respect with necessary documents, DPIIT circulates them to concerned administrative ministries, Ministry of Home Affairs, Concerned State Government and other concerned agencies for their comments.
4. After receipts of Comments from the concerned Ministries/Agencies, files are processed and submitted to the Licensing committee for consideration.
5. Licensing committee can recommend for grant of license/rejection of proposal/deferment of the proposal, based on the comments received and deliberations in the Committee. After recommendation, the approval of the Minister in charge of DPIIT is obtained for grant of licenses or otherwise.

IEM (Industrial Entrepreneur Memorandum)

All industrial undertakings exempted from the requirements of industrial licensing under the Industries (Development and Regulation) Act (D&R), 1951 and having an **investment in plant and machinery of Rs 50 Crore and above; and turnover of Rs. 250 crore and above**, including Existing Units, New undertaking (NU) and New Article (NA), may file an IEM, i.e., "Form IEM" in the prescribed format 'Part A'. This is filed online by filing details as per 'Part A' of IEM through portal G2B.

Confirmation for receipt of such information by this Department is known as 'IEM

Acknowledgement.:

All on-line applications filed through the portal are scrutinized in 'IEM Section' for verification related to 'Incorporation Certificate'; 'Memorandum of Article'; 'Article of Association', 'Master data', 'PAN' and 'Codes related to NIC & Administrative Ministry/Department etc. Once the above is verified and found correct; the Department electronically issues IEM Ack. to the applicant.

14. TELECOM LICENSE

Business entities which provide internet services or engaged in commercial communications i.e., call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services who are categorised as 'Other Service Providers'(OSP) under New Telecom Policy, 1999, must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications and Information Technology, Government of India. The telecom license entitles the entities to provide telecommunication services in India.

OSP license shall be categorized into two types:

1. Domestic OSP - OSP providing services to clients located within national boundaries of India
2. International OSP - OSP providing services to clients outside India

Process

A company registered under the Companies Act, 2013 or under any other previous law i.e., the Companies Act, 1956 or LLP registered under Limited Liability Act, 2008 or Partnership Firm or organisations registered under Shops and establishment Act are eligible to obtain OSP license.

- To Obtain a OSP license, the Company or LLP shall file an Application in **Form - 1** to the DoT (Department of Telecommunication) through online on DoT portal.
- OSP license is a location specific and can have multiple registrations for each such site.
- An entity shall inform the change, if any in the point of presence.
- Point of presence is a location where OSP places equipment like Private Automatic Branch Exchange, Interactive voice recording System etc. to act as an extension of its OSP centre for collecting, converting, carrying and exchanging the telecom traffic related to its services.

Mandatory documents required for OSP License

- Certificate of Incorporation issued by ROC;
- Memorandum and Articles of Association;
- Copy of LLP Agreement;
- Board resolution Power of Attorney authorizing the Authorized signatory with attested signature;
- Resolution passed by all designated partners or Partners as per provisions of LLP Act;
- A Note on nature of business or activities of the proposed OSP;
- List of present directors of the Company;
- List of present designated partners of LLP;
- Present Shareholding pattern of the Company;
- Present Shareholding pattern of LLP.

All the documents must be certified with seal by company secretary or one of Directors or Statutory Auditors or public notary in case of Company.

All documents must be certified with seal by either designated partner or all partners or statutory Auditors or public notary in case of LLP.

The OSP license is valid for a period of **20 years** and can be extended for further period of **ten years** from the expiry of twenty years.

15. STATE LEVEL APPROVAL FROM THE RESPECTIVE STATE INDUSTRIAL DEPARTMENT

Apart from the registration and licences listed above, one has to seek state level approval (s) wherever it is applicable to one's business from the respective State Industries Department

Various State Government have formulated Industrial Policy to create a conducive environment through an enabling Policy and regulatory framework to drive sustainable industrial growth in the State.

States committed to simplify the processes and procedures and expedite project approvals and clearances. T

The Policy focusses on providing quality industrial infrastructure, creation of a large land bank, financial assistance to the private sector for development of industrial infrastructure and sustainable environmental protection

Our Rankers



Pulak Bansal



Sidra Khan



Albiya Shaikh



Khushi Dubey



Kushal Todi



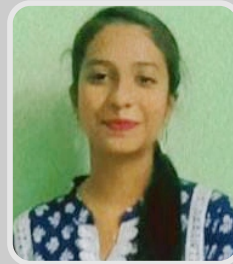
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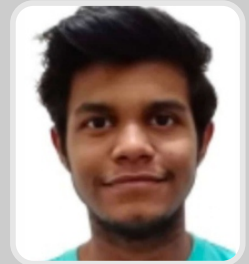
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Kartiki Tulaskar



Mansi Rawat



Deep Patel



Aditya Dakh



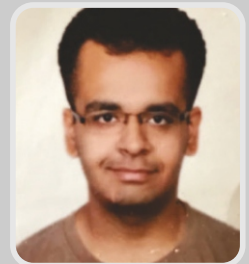
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Femi Jain



Ibrat Khan



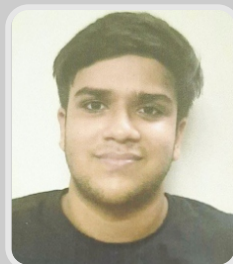
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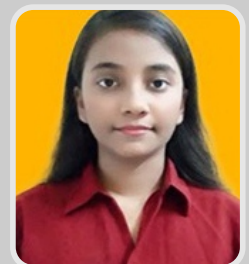
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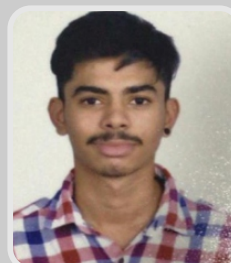
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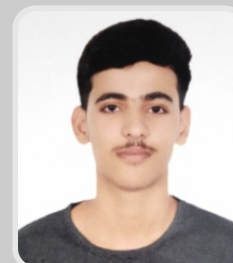
Siddharth Nair



Anjali Vishwakarma



Kedar More



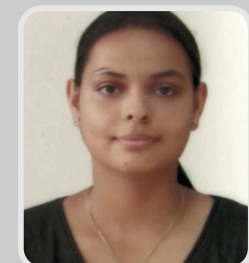
Raj Singh



Dhruvi Patel



Vaibhavi Palkar



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