Setting up of Business Entities and Closure

EXECUTIVE PROGRAMME
Module 1
Paper 3

Part A: Setting up of Business (40 Marks)		
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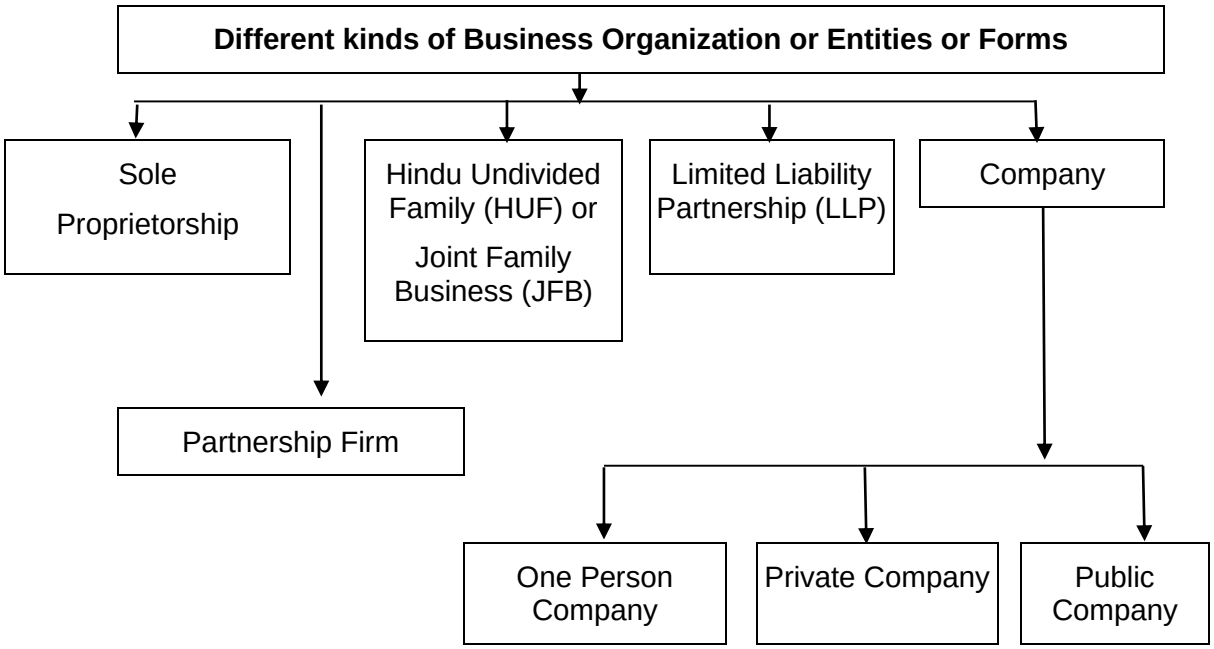
PART A – Setting up of Business

CHAPTER 1
CHOICE OF BUSINESS ORGANIZATION

Introduction: - Choice of Business Organization

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 integral part of the business management.

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



LLP vs. PARTNERSHIP vs. COMPANY

V/s

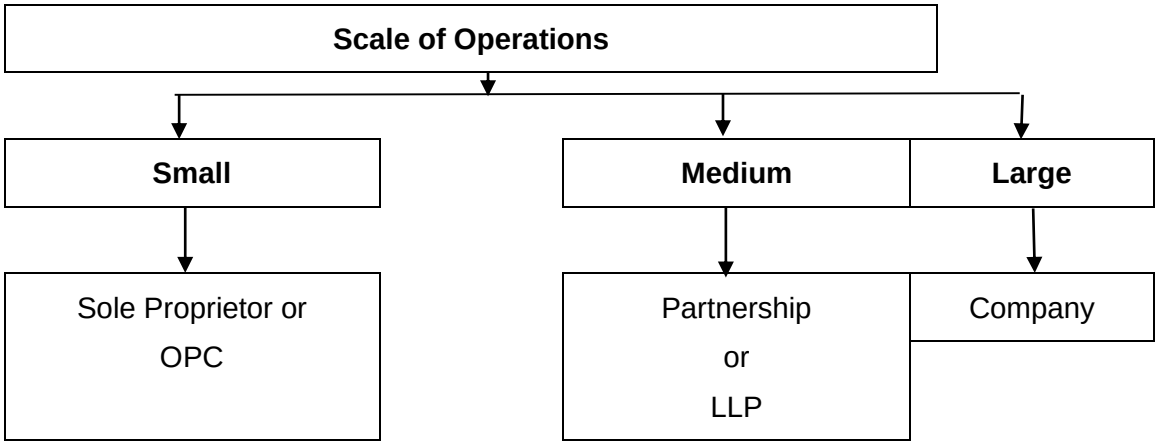
V/s

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

- In small trading businesses, professions, and rendering of personal services, sole- proprietorship is predominant. Examples are Laundromats, beauty parlors, repair shops etc.
- Partnership is also advantageous in case of manufacturing activities on a modest scale. The finance, trading and real estate industries (on a smaller scale) seem to be suited to partnership form of organization
- An alternative form of organization where two or more persons are involved in starting the business organization is the Limited Liability Partnership ('LLP') under the Limited Liability Partnership Act, 2008.
- Where the persons intending to start a business with a legal entity and in corporate form with a feature of having their sole ownership and control thereon, they may decide to form a One-Person Company (OPC).

2. Scale of Operations :-



3. Capital Requirement:-

- Capital is one of the most crucial factors affecting the choice of a particular form of ownership organisation. Requirement of capital is closely related to the type of business and scale of operations.
- Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organised as sole proprietorships or even as Partnerships
- Companies are usually best able to attract capital because investors are assured that their liability will be limited, their operations are in public domain in the transparent manner, easily accessible and the ownership can be transferred to other investors.

4. Marginal Ability:-

- It is difficult for a sole proprietor to have expertise in all functional areas of business. Further, the size of the business may not permit engagement of professional management.
- In other forms of organizations like partnership and company, there is division of work among the partners which allows the partners to specialize in specific areas, leading to better outputs and decision making.
- Company form of organization is a better alternative if the operations are far flung, complex in nature and require professional management at various levels.

5. Degree of Control And Management:-

- The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization
- In sole proprietorship and OPC, ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business
- In partnership, management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed.

- In a company, however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.
- Thus, a person wishing to have complete and direct control of business prefers proprietary organisation rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day to day affairs and there is need for corporate structure and management, he will prefer the company form of organisation.

6. Degree of Risk And Liability:-

- The size of risk and the willingness of owners to bear it, is an important consideration in the selection of a form of business organisation. The amount of risk involved in a business depends, among other factors like, on the nature and size of business **Smaller the size of business, smaller the amount of risk.**
- Thus, a sole proprietary business carries small amount of risk with it as compared to partnership or company. However, the sole proprietor is personally liable for all the debts of the business to the extent of his entire property
- Likewise, in partnership, partners are individually and jointly responsible for the liabilities of the partnership firm.
- Companies and LLPs have a real advantage, as far as the risk is concerned, over the other forms of business organisation.

7. Stability of Business:-

- A stable business is preferred by the owners in so far as it helps him in attracting suppliers of capital who look for safety of investment and regular return, and also helps in getting competent workers and managers who look for security of service and opportunities of advancement.
- From this point of view, sole proprietorships are not stable, although no time limit is placed on them by law. Companies and LLPs have the most business stability due to its feature or perpetuity being an artificial or legal person. The life of the company and LLP is not dependent upon the life of its members/partners.

8. Flexibility of Administration:-

- The flexibility of administration is closely related to the internal organisation of a business, i.e., the manner in which organisational activities are structured into departments, sections, and units with a clear definition of authority and responsibility.
- The internal organisation of a sole proprietary business, for instance, is very simple, and therefore, any change in its administration can be effected with least inconvenience and loss. To the large extent, the case is the same in a partnership business also.

- In case of company, administration is not that flexible because its activities are conducted on a large scale and they are quite rigidly structure.

9. Division of Profit:-

- An entrepreneur desiring to pocket all the profits of business will naturally prefer sole proprietorship.
- In company organisation, however, the profits (whenever the Board of Directors decides) are distributed among shareholders in proportion to their shareholding.
- Companies may also reward shareholders by issue of bonus shares. In case of listed companies, the equity shares are tradeable on the stock exchanges, enabling the shareholders to exit the company at any time as per their own discretion.

10. Managerial Need:-

- When the concern is small and it caters to local needs only then one person will be enough to manage the business. Sole - proprietorship form of organisation will be suitable for such a business.
- If business caters to more areas, then more persons will be needed to look after various business functions in various areas.
- When a business is run on a large — scale basis, it will require the services of specialists to manage various departments. The company form of organisation will be suitable for such concerns.

11. Secrecy

- Secrecy is of supreme importance, particularly in small business concerns. Accordingly, the entrepreneur would select the sole proprietorship for that reason.
- In case, he has partners, he will have to carefully weigh whether other partners will be able to maintain the secrecy. He will have to exercise great care in taking partners.
- In case of a company, secrecy may be restricted to the manufacturing process or the manner in which business is conducted. However, certain aspects of their business such as their board of directors, shareholding, financial statements and other information which are statutorily required to be placed in public domain are accessible to any person.

12. Costs, procedure, and government regulation
13. Tax implication
14. Geographical mobility
15. Transferability of ownership
16. Secrecy
17. Independence

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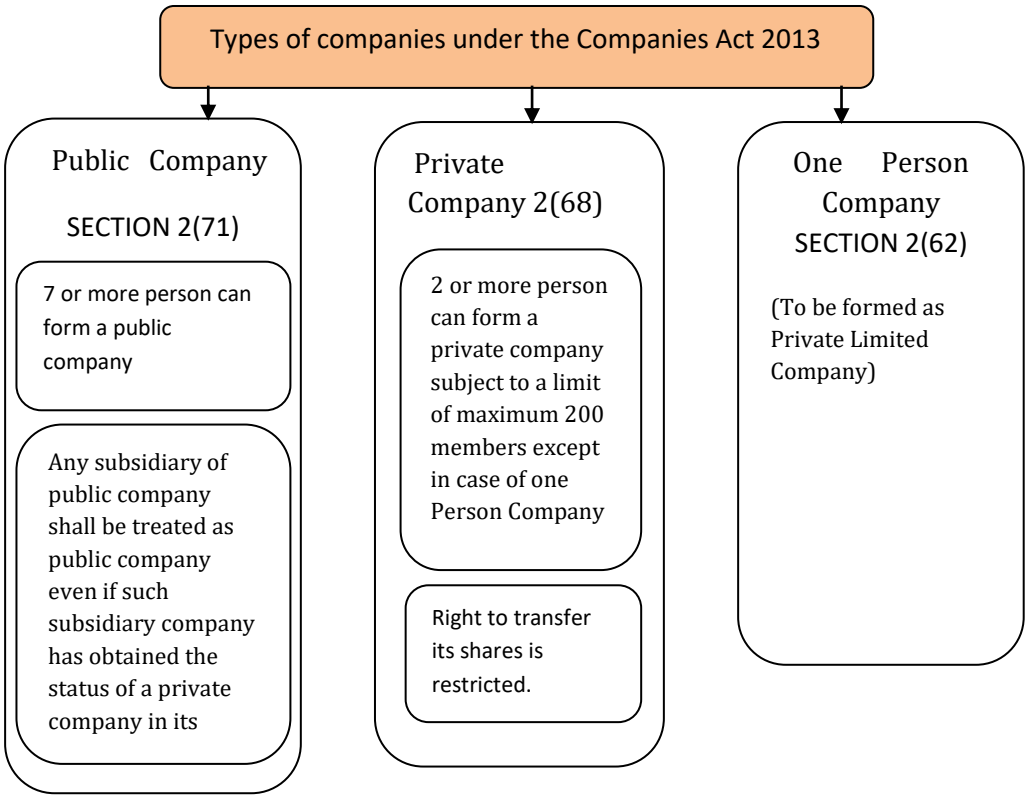
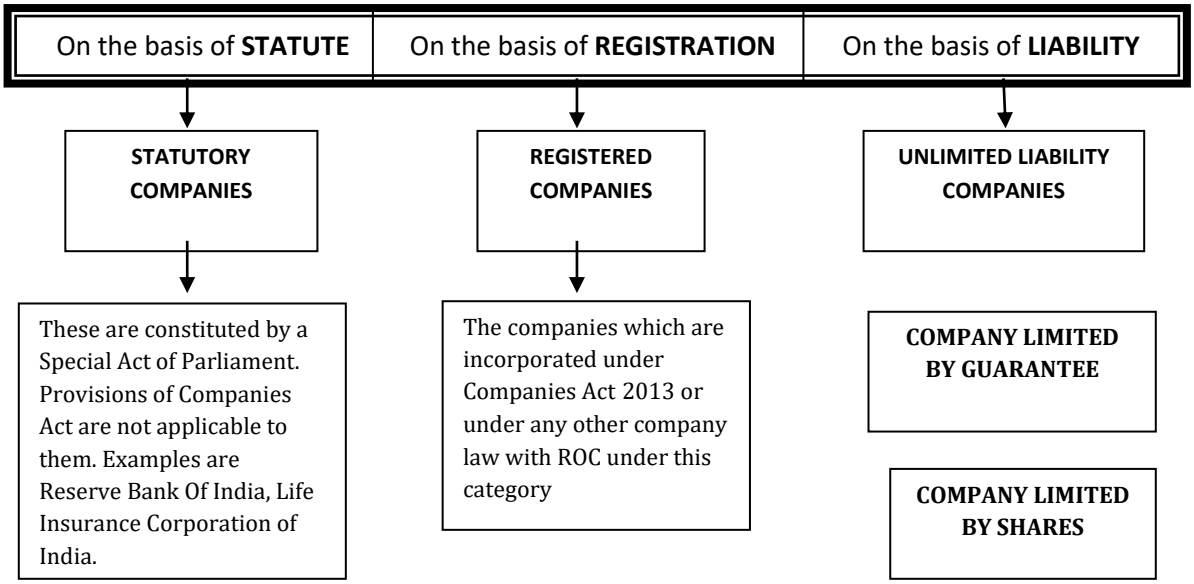
CHAPTER 2
TYPES OF COMPANIES



Various types of companies



- Other forms of Companies
  1. Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law which may be either private or public companies;
  2. Government Companies [section 2 (45)]
  3. Foreign Companies [section 2(42)]
  4. Holding [Section 2 (46)] and Subsidiary [Section 2(87)] Companies;
  5. Joint Venture Companies
  6. Investment Companies[Section 2(10A) of Insurance Act 1938
  7. Producer Companies
  8. Nidhi Companies [section 406]
  9. Dormant Companies
  10. Non-banking Financial Companies etc.
  11. Small Company [section 2 (85)]
  12. Wholly Owned Subsidiary Company [section 187]
  13. Associate Company [section 2(6)]

1] PRIVATE COMPANY: -

As per Section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital as may be prescribed, and 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 the following persons shall not be included in the number of members;—

(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;

Special note: Companies Amendment Act 2015 has omitted the requirement of minimum paid up share capital of Rs. 1 lack.

a) Restriction on the right to transfer its shares: The articles must contain a provision restricting the right of members to transfer its shares freely. The right of transfer may be restricted in the following manner:

- By authorizing the Directors to refuse transfer of shares to persons whom they do not approve.
- By compelling the shareholders to offer his shareholding to the existing shareholders first.

b) Limitation of membership: The Articles must contain a provision whereby the Company limits the number of its members to 200. The following persons are not considered in counting the number of members:

- Joint holders of shares shall be counted as on member only.
- Persons who are in employment of the Company.
- Ex-employees of the Company who have become members while in employment of the Company and have continued to be members even after termination of employment.

NOTE: The above restriction is only on the number of members. However, a private company may issue debentures to **any number** of persons though an invitation to the public to subscribe for debentures cannot be made.

Membership of Private Company

a) At least two persons are required to form a private company. Thus, two or more persons are required to subscribe their names to the Memorandum of Association of the Company.

b) Any person competent to contract can be a member of private company.

c) A Company being a legal person can subscribe but a partnership firm cannot.

d) A HUF is not a person and hence cannot subscribe. A Karta or manager of HUF may sign on its behalf.

As per proviso to Section 14 (1) of the Act, if a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, such company shall, as from the date of such alteration, cease to be a private company.

A private company can only accept deposit from its member's upto a particular limit in accordance with section 73 of the Companies Act, 2013.

The words 'Private Limited' must be added at the end of its name by a private limited company.

As per section 3 (1), a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration. Section 149(1) further lays down that a private company shall have a minimum number of two directors. **The only two members may also be the two directors of the private company.**

CHARACTERISTICS OF PRIVATE LIMITED COMPANY

Limited Liability– The liability of each member or shareholders is limited. It means that if a company faces loss under any circumstances then its shareholders are not liable to sell their own assets for payment. Thus, the personal, individual assets of the shareholders are not at risk.

Perpetual succession– The company keeps on existing in the eyes of law even in the case of death, insolvency, the bankruptcy of any of its members. This leads to perpetual succession of the company. The life of the company keeps on existing forever.

Index of members– A private company has a privilege over the public company as they don't have to keep an index of its members since the number of members is less than 50 generally in these companies whereas the public company is required to maintain an index of its members, as generally such companies have the number of members in hundreds and thousands and so on. In short, the maintenance of index is not necessary where the number of members is less than fifty.

Prospectus– Prospectus is a detailed statement of the company affairs which is issued by a company for its public. However, in the case of private limited company, there is no such need to issue a prospectus because in this type of companies, public is not invited to subscribe for the shares of the company.

Minimum subscription– It is the amount to be received by the company on the shares to be issued within a certain period of time. If the company is not able to receive such amount then they cannot commence further business. In case of private limited company shares can be allotted without receiving the amount of such minimum subscription since such amount is required to be stated in the prospectus which is not applicable and required in the case of private companies.

Name– It is mandatory for all the private companies to use the word private limited after its name.

INCORPORATION OF A COMPANY

STEP – I: Apply for Name Approval:
Applicant have to login into their account on MCA Website and click on the icon "RUN" (Reserve Unique Name)***** in MCA Service. An online form shall be open. Applicants have to fill the information (viz. Entity type, Proposed name etc.) online. (This form can't be downloaded)

****Companies (Incorporation) Second Amendment Rules, 2018.***

Reserved name shall be valid for 20 days from the date of approval of Name.

Note: since 26thJanuary, 2018 e-form INC-1 has been omitted from the Companies Act, 2013.

STEP – II: Preparation of Documents for Incorporation of Company:

After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

- INC-9 - ***Declaration** by first subscriber(s) and first director(s).

****Companies (Incorporation) Third Amendment Rules, 2018. (Word 'Affidavit' Omitted)***

- INC-8 - Declaration by professional;
- DIR-2 declaration from first Directors along with Copy of Proof of Identity and residential address.
- NOC from the owner of the property.
- Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts); Copy of the utility bills (not older than two months)
- In case of subscribers/ Director does not have a DIN, it is mandatory to attach:
    - Proof of identity and residential address of the subscribers.
    - All the Subscribers should have Digital Signature.

STEP – III: Fill the Information in Form:

Once all the above mentioned documents/ information are available, An application for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC-32 (SPICe)*****

**** Companies (Incorporation) Amendment Rules, 2018.***

Features of SPICe (INC-32) form:

▪ Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attaching in the Form.

▪ Maximum details of directors are TWENTY (20).

▪ Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.

▪ Person can apply the Name also in this form.

▪ By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.

▪ Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.

▪ In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable.

STEP – IV: Preparation of MOA & AOA:

After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and INC-34 (AOA) form the MCA site. After downloading of form fill all the information in the forms as per requirement of Table A to J of Schedule I.

After completely filing of the form affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

STEP – V: Fill details of PAN & TAN:

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

STEP – VI: Submission of INC-32,33,34 on MCA-:

Once all the 3 forms ready with the applicant, upload all three documents Linked form on MCA website and make the payment of the same.

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Chennai
Block No. 6 , B' Wing, 2nd Floor , Shastri Bhawan 26 , Haddows Road

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that POKKISHAM CHIT FUND PRIVATE LIMITED is incorporated on this Fourth day of September Two Thousand Fourteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U65992TN2014PTC097200.

Given under my hand at Chennai this Fourth day of September Two Thousand Fourteen.

S MEENAKSHI
Deputy Registrar of Companies
Tamil Nadu

Mailing Address as per record available in Registrar of Companies office:
POKKISHAM CHIT FUND PRIVATE LIMITED
SHOP NO:1/15,RAR BUILDING,2ND FLOOR, D.NAGAR, THIRUVERUMBUR,
TRICHY - 620013,
Tamil Nadu, INDIA

STEP – VII: Certificate of Incorporation-:

Incorporation certificate shall be generating with CIN, PAN & TAN.

***COMMENCEMENT OF BUSINESS (SECTION 10A)**

A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless:

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, 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 as provided in sub-section (2) of section 12.

In case of Default:
Company: Penalty of Rs. 50 Thousand.
Officer in Default: Penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

Where no declaration has been filed with the Registrar within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business operations, he may, without prejudice to the provisions above, initiate action for the removal of the name of the company from the register of companies.

Companies (Amendment) Ordinance, 2018 (effective from November 02, 2018)

2] SMALL COMPANY: -

Small company means a company, other than a public company:

a) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ***10 crore rupees*; AND**

b) Turnover of which ****as per profit and loss account for the immediately preceding financial*** does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than ****100 crore rupees.***

*** The Companies (Amendment) Act, 2017 (Effective From 7th May 2018)**

PROVIDED THAT NOTHING IN THIS CLAUSE SHALL APPLY TO

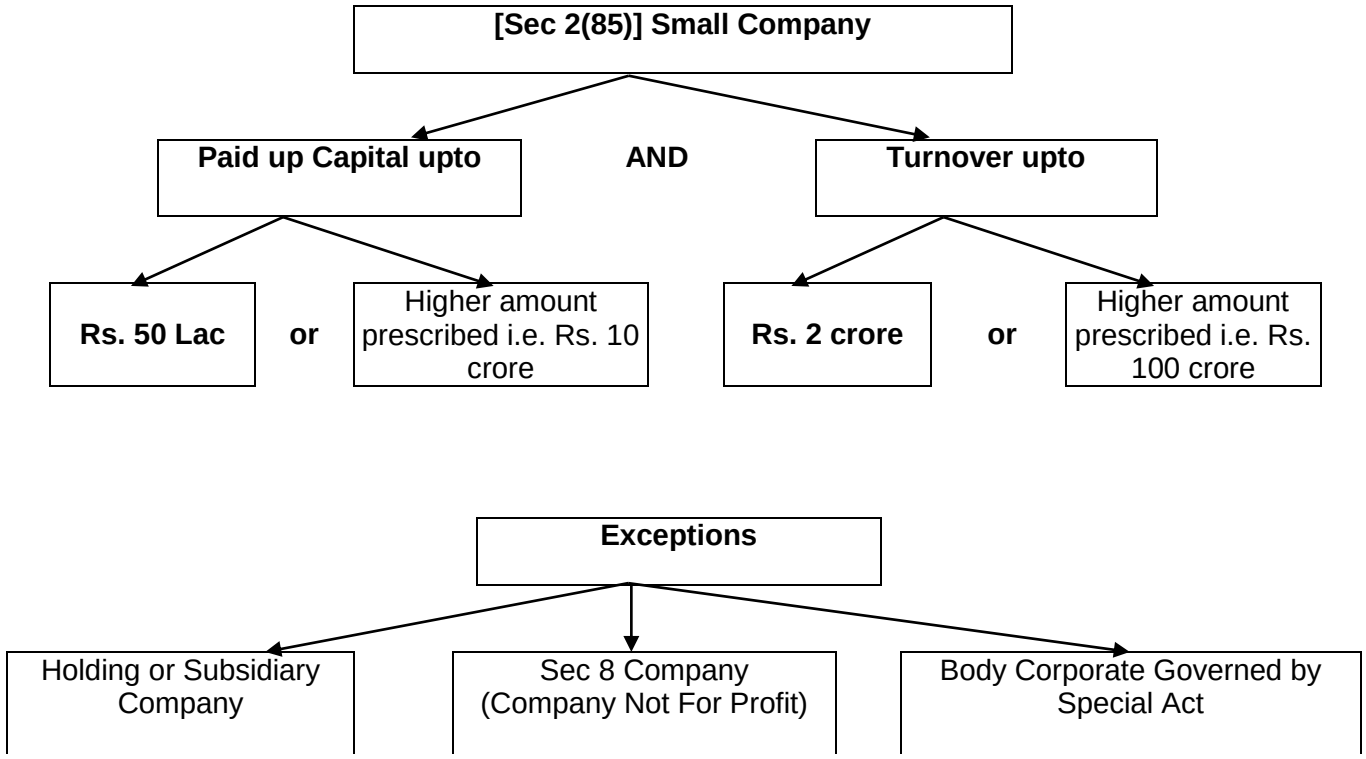
(A) ***A*** holding company or a subsidiary company

(***B)*** ***A*** company registered under section 8 (non-profit organisation)

(***C)*** ***A*** company or body corporate governed by any special Act

NATURE OF SMALL COMPANY AND NUMBER OF MEMBERS

It is clear from the definition that a small company shall be a private company limited by shares and hence it will limit its number of members to 200 as per Section 2(68)(ii).



3] ONE PERSON COMPANY: -

Section 2(62) of the Companies Act, 2013 define "one person company" as a company which has only one person as member. OPC is a type of Private Company as per Section 2(68) and Section 3(1)(c) of the Act.

Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India: -

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

"Resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one calendar year.

Difference between a Sole Proprietorship and an OPC

An one-person company is different from a sole proprietorship because it is a separate legal entity that distinguishes between the promoter and the company.

The promoter's liability is limited in an OPC in the event of a default or legal issues. On the other hand, in sole proprietorships, the liability is not restricted and extends to the individual and his or her entire assets would be liable to repay the debts due by the sole proprietorship business unlike OPC.

Basis	Sole Proprietorship	OPC
1. Governing law	No such governing law	Companies Act, 2013
2. Entity	No separate legal entity	Separate legal entity
3. Liability	Unlimited	Limited liability of member
4. Perpetual Succession	Not applicable	Applicable
5. Empowerment to CG	No empowerment	Inspection and investigation
6. Periodical meeting	No such requirement	Atleast 2 Board meeting if more than 1 director
7. Audit	Not compulsory	Mandatory

Rule 3 of Companies (Incorporation) Rules, 2014 - One Person Company

(1) A natural person shall not be a member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

(2) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.

(3) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

(4) Such Company cannot be incorporated or converted into a company under section 8 of the Act.

(5) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(6) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

4] PUBLIC COMPANY: -

By virtue of Section 2(71), a public company means a company which:

(a) is not a private company;

(b) has a minimum paid-up share capital, as may be prescribed

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.

Special note: Companies Amendment Act 2015 has omitted the requirement of minimum paid up share capital of RS. 5 lack.

A public company may be said to be an association consisting of not less than 7 members, which is registered under the Act. In principle, any member of the public who is willing to pay the price may acquire shares in or debentures of it. The securities of a public company may be quoted on a Stock Exchange. The number of members is not limited to two hundred.

As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. However, any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. The provision contained in the law for the free transferability of shares in a public company is founded on the principle that members of the public must have the freedom to purchase and, every shareholder should have the freedom to transfer.

CHRACTARIES of Public company

Board of Directors

Public limited companies are headed by a board of directors. Composition of the board of directors is set out in the company's articles of association. Normally it comprises of a minimum number of three members and a maximum of 15. These are elected from the shareholders by the shareholders during the annual general meeting. They act as the representatives of the shareholders in the management of the company.

Limited Liability

Shareholder liability for the losses of the company is limited to their share contribution only. This is what makes it a separate legal entity from its shareholders The Company does not belong to any person since one person can own only a part of it.

Life Span

A public limited company is not affected by death of one of its shareholders, but the shares are transferred to the next kin or legal heir of such deceased shareholder and the company continues to run its business as usual. In the case of a director's death, an election is to be held to replace the deceased director.

Financial Privacy

Public limited companies are strictly regulated and are required by law to publish their complete financial statements annually. This ensures that they reveal their true financial position to their owners and to potential investors so that they can determine the true worth of its shares.

Capital

Public limited companies enjoy an increased ability to raise capital since they can issue shares to the public through the stock market. They can also raise additional capital by issuing debentures and bonds through the same market from the public.

5] FOREIGN COMPANY:-

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.

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) 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 language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(d) 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;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

6] GOVERNMENT COMPANY:-

GOVERNMENT COMPANY — **SECTION 2 (45)**

Government company means any company in which not less than **fifty-one per cent** of the ***PAID-UP SHARE*** capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments	A company which is a subsidiary of a Government company as thus defined.

➢ **GOVT. COMPANY-AUDIT SECTION 143 (5) AND 139 *(7)***

The auditor of a Government company shall be appointed or re-appointed by the **Comptroller and Auditor-General of India.**

The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor- General of India who shall have the right to comment upon, or supplement within 60 days from the date of receipt of report, the audit report in such manner as he may think fit.

➢ The Ministry of corporate Affairs has by way of notifications dated **5TH JUNE 2015** released the exemptions for Government Companies

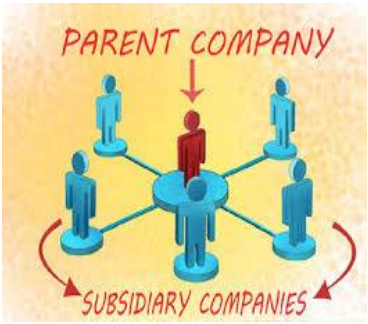
EXEMPTIONS TO GOVERNMENT COMPANIES

1. The name of all Government Companies shall end with the word "Limited", be it Public or Private Company. **SECTION 4(1)**
2. The AGM of a Government Company can either be held at the registered office or at any other place as approved by the Central Government, **sub-section (2) of section 96**
3. As per **Section 149(1) (b)** and first proviso to **Section 149(1),** a government company can have more than 15 directors. Such a company is now no longer required to pass a special resolution for appointing more than 15 directors.

TYPES OF COMPANIES ON THE BASIS OF CONTROL				
ASSOCIATE COMPANY		**SUBSIDIARY COMPANY**		**WHOLLY OWNED SUBSIDIARY COMPANY**

7] HOLDING COMPANY: -

Holding Company in relation to one or more other companies, means a company of which such companies are subsidiary companies.



*Explanation. —For the purposes of this clause, the expression "company" includes any body corporate.

**** The Companies (Amendment) Act, 2017 (Effective From 9th Feb 2018)***

8] SUBSIDIARY COMPANY: -

Subsidiary Company in relation to any other company (that is to say the holding company), means a company in which the holding company

1 Controls the composition of the Board of Directors; or

2 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

* ***The Companies (Amendment) Act, 2017 (****word share 'capital replaced' by* ***'Voting Power') (Effective From 9th Feb 2018)***

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. 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.
b. 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
c. The expression "company" includes any Body Corporate
d. "layer" in relation to a holding company means its subsidiary or subsidiaries

9] ASSOCIATE COMPANY:-

Associate company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

***Explanation For** the purposes of this clause, the expression "significant influence" means control of at least twenty per cent, of total voting power, or control of or participation in business decisions under an agreement.

The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

**** The Companies (Amendment) Act, 2017 (Effective From 7th May 2018)***

10] NIDHI COMPANY :-

Company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. [Section 406 of the Companies Act, 2013]

The primary object of Nidhis is to carry on the business of accepting deposits and lending money to member- borrowers only against jewels, etc., and mortgage of property.

Incorporation of Nidhi

(1) A Nidhi to be incorporated under the Companies Act, 2013 shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.

(2) Nidhi company shall not issue preference shares.

(3) If preference shares had been issued by a Nidhi before the commencement of the Companies Act, 2013, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(4) No Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

(5) Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

Sub-Rule (1) of Rule 5 of the Nidhi Rules, 2014 deals with requirements for minimum number of members, net owned fund etc. It provides that:

Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has—

(a) not less than two hundred members;

(b) Net Owned Funds of ten lakh rupees or more;

(c) unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and

(d) ratio of Net Owned Funds to deposits of not more than 1:20.

Membership of Nidhi

(1) A Nidhi shall not admit a body corporate or trust as a member.

(2) Every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.

(3) A minor shall not be admitted as a member of Nidhi.

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.

COMPANIES (AMENDMENT) ACT 2017

*****(1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Yet to be notified by Central Government

11] PRODUCER COMPANY: -

According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act. 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.

Exceptions, modifications and adaptations for Private Companies vide notification dated 5th June, 2015-

Sr. No.	Section Number/ Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
1.	Section 2(76)(viii)	**Shall not apply with respect to Section 188** **Note**: Section 2(76) defines related party with reference to a company and as per Section 2(76)(viii) the following are Considered to be related party: - A holding, subsidiary or an associate company of such company or; A subsidiary of holding company to which it is also a subsidiary. **Effect**: Section 2(76)(viii) is not applicable to a private company with respect to Section 188 (i.e related party transactions). Accordingly a holding/ subsidiary/ associate company of a private limited company or a subsidiary of holding company of a private limited company will not be considered as related party.
2.	Section 43 & 47	**Share Capital and Debentures** **Shall not apply where memorandum or articles of association of the private company so provides.** **Note**: Section 43 deals with kinds of capital and Section 47 deals with voting rights. **Effects**: Memorandum or Articles of Association of a Private Limited Company can provide for a clause, making sections 43 and section 47 not applicable to that company.
3.	Section 62(1)(a)(i) and Section 62(2)	**Share capital and Debentures** In clause (a), in sub-clause (i), the following proviso shall be inserted, namely;- Provided that notwithstanding anything contained in this sub clause and sub section (2) of this section, in case ninety percent. of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply. **Note**: Section 62 deals with further issue of shares. Section 62(1)(a) deals with conditions for sending letter of offer to the existing holders. Section 62(1)(a)(i) deals with the time within which the letter of offer is to be accepted by the existing shareholders. According to Section 62(1)(a)(i) the offer shall be made by notice specifying the number of shares offered and limiting a time of not being less than fifteen days and not exceeding thirty days from the date of offer within which the offer, if not accepted, shall be deemed to have been declined. **Effects**: In case ninety per cent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub clause or sub-section shall apply. Accordingly, time limit for acceptance of offer by existing shareholders may be less than 15 days if 90% of the members of a private limited company have given their consent either in writing or through electronic mode.

4.	Section 62(1)(b)	In clause (b), for the words "**special resolution**", the words "**ordinary resolution**" shall be substituted. **Note**: Section 62(1)(b) requires passing of Special resolution for offering of further shares to employee's subject to passing of special resolution and other conditions prescribed under the rules. **Effect**: For private limited companies, passing of ordinary resolution is sufficient.
5.	Section 67	**Shall not apply to private companies –** (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid-up share capital or fifty crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section. **Note**: Section 67 deals with restrictions on purchase by a company or giving loans by it for purchase of its shares. **Effects**: Private Companies are exempted from Section 67 subject to the following of above three conditions.
6.	Section 73(2)(a) to Section 73(2)(e)	**Acceptance of Deposits by Companies** **Shall not apply to a private company** which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. **Note**: Section 73(2) deals with conditions for acceptance of deposits from members. **Effects**: Conditions for acceptance of deposits from members is not applicable to a Private Company if the above mentioned condition is satisfied.
7.	Section 101 to Section 107 and Section 109.	**Management and Administration** **Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.** **Note**: Articles of Association of a Private Company can have specific provisions with respect to - notice of the general meeting (Section 101); Statement to be annexed to notice (Section 102); Quorum for meetings (Section 103); Chairman of meetings (Section 104); proxies (Section 105); restriction on voting rights (Section 106); Voting by show of hands (Section 107); Demand for poll (Section 109). **Effects**: Articles of Association of a Private Company may have specific provisions with respect to the above-mentioned sections.

8.	Section 117(3)(g)	**Management and Administration** **Shall not apply** **Note**: Section 117 deals with resolutions and agreements to be filed with registrar. Section 117(3)(g) deals with filing of resolutions passed in pursuance of sub-section (3) of section 179 (i.e. resolutions to be passed only at the meeting of Board of directors). **Effects**: Private companies are not required to file with the registrar the resolutions passed under Section 179(3).
9.	Section 141(3)(g)	**Audit and auditors** Shall apply with the modification that the words "other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the words "twenty companies". **Note**: Section 141(3) deals with conditions for eligibility for appointment as an auditor of a company. Section 141(3)(g) limits the number of audits by an auditor to twenty companies. **Effects**: One person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees are excluded from this limit.
10.	Section 160	**Appointment and qualifications of directors** **Shall not apply** **Note**: Section 160 deal with right of persons other than retiring directors to stand for directorship. **Effect**: Now, for private companies requirement of Deposit of Rupees one lakh is not required.
11.	Section 162	**Appointment and qualifications of directors** **Shall not apply** **Note**: Section 162 deals with appointment of directors to be voted individually. **Effect**: Now, more than one director can be appointed through a single resolution.
12.	Section 180	**Meetings of board and its powers** **Shall not apply** **Note**: Section 180 deals with restrictions on powers of the Board. **Effects**: Special Resolution is not required to exercise such power of board as provided in Section 180.

13.	Section 184(2)	**Meetings of board and its powers** Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest. **Note**: Section 184 deals with disclosure of interest by director. Section 184(2) prohibits interested director from participating in meeting. **Effects**: Interested director of a private company can participate in the meeting after disclosing his interest.
14.	Section 185	**Meetings of board and its powers** **Shall not apply to a private company** – (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this Section. **Note**: Section 185 deals with loans to directors. **Effects**: The Provisions of Section 185 shall not apply to a private company if the following above conditions are fulfilled.
15.	Second proviso to Section 188(1)	**Meetings of board and its powers** **Shall not apply** **Note**: Second proviso to Section 188(1) states that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. **Effects**: In private company, related party to any contract or arrangement can vote on such resolution as a member of the company.
16.	Section 196(4) and (5)	**Appointment and Remuneration of the Managerial Personnel** **Shall not apply** **Note**: Section 196(4) deals with appointment of managing director, whole time director or manager. Section 196(5) deals with validating actions of managing director; whole time Director/manager, if the appointment is not approved by a company in general meeting. **Effects**: Approval of central government on variation of terms of appointment from Schedule V is not required for private companies.

Exceptions, modifications and adaptations for Private Companies vide notification dated 13th June, 2017

Sr. No.	Section number/ Sub section(s)in the Companies Act, 2013	Section	Exceptions/ Modifications /Adaptations
1.	Section 2(40)	**Proviso:** Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;	**The proviso would apply as under:-** Provided that the financial statement, with respect to One Person Company, small company, dormant company and **private company (if such private company is a start-up),** may not include the cash flow statement; **Explanation**. - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of lndustrial Policy and Promotion, Ministry of Commerce and Industry.
2.	Section 73(2) (a) to (e)	Terms and Conditions for acceptance of deposits.	**Shall not apply to a private company-** (A) which accepts from its members monies not exceeding one hundred percent of aggregate of paid up share capital, free reserves and securities premium account; or (B) which is a start-up, for five years from the date of its incorporation; or (C) which fulfills all of the following conditions; namely- (a) which is not an associate or a subsidiary company of any other company (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company has no default in repayment of such borrowings subsisting at the time of accepting deposits under this section. Provided that the company referred to in Clause (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

3.	section 92 (1)(g)	**Annual Return** Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding— (g) remuneration of Directors and key managerial personnel;	Shall apply to private companies which are small companies as under:- (g) aggregate amount of remuneration drawn by directors.
4.	Proviso to section 92 (1)	Provided that in Relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.	The proviso shall apply as under: - Provided that in relation to One Person Company, small company and a private company (if such private company 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.
5.	Section 143(3)(i)	The auditor's report shall also state: whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls	Shall not apply to a private company (i) which is a one person company or a small company; or (ii) which has turnover less than rupees fifty crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty five crore."
6.	Section 173(5)	**Meetings of Board** A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each	For Sub-section (5) of Section 173 the following sub-section shall be substituted, namely: - A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section 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 meetings is not less than ninety days.

		half of a calendar year and the gap between the two meetings is not less than ninety days.	
7.	Section 174(3)	**Quorum for Meetings of Board** Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.	shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

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CHAPTER 3
PART 1
CHARTER DOCUMENTS OF COMPANIES

MEMORANDUM OF ASSOCIATION

STATUTORY DEFINITION

MEANING OF MEMORANDUM SECTION 2(56)

↓

MEMORANDUM MEANS MEMORANDUM OF ASSOCIATION OF A COMPANY

AS ORIGINALLY FRAMED OR AS ALTERED FROM TIME TO TIME

IN PURSUANCE OF ANY PREVIOUS COMPANY LAW OR OF THIS ACT

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 MEMORANDUM OF ASSOCIATION",** as observed by Palmer, "is a document of great importance in relation to the proposed company".

In the celebrated case of ***Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche,*** (1875) L.R. 7 H.L. 653, Lord Cairn observed: "The memorandum of association of a company is its charter and defines the limitations of the powers of the company.

S.NO.	CASE NAME	PROVISONS
1	**Pacific Coast Coal Mines Ltd.** v. **Arbuthnot**	It defines as well as confines the power of company. If anything done beyond the power of MOA it will be void. Any act beyond MOA is ***ultra vires*** and incapable of ratification, even if every member of the company assents to it.
2	**(Cricket Club of India Ltd. v Madhav L. Apte)** Act to over-ride memorandum, articles, etc.	**SECTION** 6 of the Companies Act, 2013 says Any provision of memorandum or articles of association would be void if it is repugnant not only to express provisions of the Companies Act, but also to those provisions which have to be read in the Act by necessary implication.

FORMAT OF MOA SEC. 4(6)

TABLE A	**MOA of Company Limited by Shares**
TABLE B	**MOA of Company limited by guarantee not having share capital**
TABLE C	**MOA of Company limited by guarantee having share capital**
TABLE D	**MOA of unlimited Company not having share capital**
TABLE E	**MOA of unlimited Company having share capital**

CONTENTS OF MEMORANDUM [SEC. 4(1)]

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.

Similarly, in case of government companies the name of the company need not be ended with the words "Limited" or "Private Limited".

2. Registered Office clause:- the State in which the registered office of the company is to be situated; *(Situation Clause)*

3. Objects clause:- the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

4. Liability clause:- (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(a) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company

(b) or to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

5. Capital clause:- the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

6. Declaration/Subscription clause:- the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

7. Nomination clause in case of (One Person Company):- 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.

MEMORANDUM OF ASSOCIATION [SECTION 4 READ WITH SCHEDULE I]

NAME CLAUSE:- According to section 4(*2*), the name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government.

SITUATION CLAUSE: -
This specifies the state in which the registered office is situated. Companies are required to have registered office within 15 days of incorporation. Registrar to be intimated about the details of registered of within 15 days of incorporation or 15 days of change if any as the case may be in FORM INC -22.

OBJECT CLAUSE: -
Memorandum to state the object of the company to be pursued on the incorporation of the company and the matters which are necessary for the furtherance of the objects as state above. The bifurcation of main, ancillary and other objects as required under companies act 1956 has been dispensed with in companies act 2013.

LIABILITY CLAUSE:-

This states that liability of the members is limited or unlimited. In case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any on the shares held by them (including premium if any) as against companies act 1956 where in it was limited to the amount unpaid on the face value of share

CAPITAL CLAUSE: -

This states the amount of the capital with which the company is registered, the shares into which capital is divided and the no. of shares which the subscribers to the memorandum agrees to subscribe , which shall not be less than one share. The capital's variously describe as 'NOMINAL'

SUBSCRIPTION CLAUSE: -

Subscribers agrees to subscribe the prescribed no. of shares stated against their name in the memorandum. The statutory requirements regarding subscription of memorandum are that;

1] Each subscriber must take at least one share

2] Each subscriber must write opposite his name the no. of shares which he agrees to take.

ARTICLES OF ASSOCIATION

MEANING OF ARTICLES OF ASSOCIATION

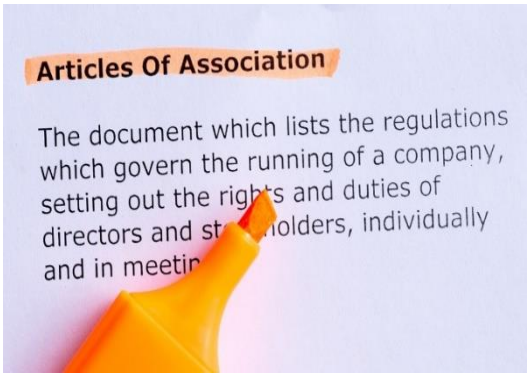
MEANING OF ARTICLE **SECTION 2(5)**

ARTICLE MEANS ARTICLE OF ASSOCIATION OF A COMPANY

AS ORIGINALLY FRAMED OR AS ALTERED FROM TIME TO TIME

IN PURSUANCE OF ANY PREVIOUS COMPANY LAW OR OF THIS ACT

In terms of section 5(1), the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.



REGISTRATION OF ARTICLE

Section 7(1) provides that at the time of incorporation of a company the company shall file with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the memorandum and articles of the company duly signed by all the subscribers to the memorandum in the prescribed manner.

Every type of company whether public or private and whether limited by shares or limited by guarantee having a share capital or not having a share capital or an unlimited liability company must register their articles of association.

CASE LAWS

S.NO.	CASE NAME	PROVISONS
1	***Rangaraj* (KB.) v *Gopalakrishnan***	Articles of association are regulations of the company binding on the company and on its shareholders
2	***Woodv Odessa Waterworks Co***	Articles regulate the rights of members inter se.

FORMAT OF AOA [SEC. 5(6)]

TABLE F	**AOA of Company Limited by Shares (TOTAL 91 REGULATIONS)**
TABLE G	**AOA of Company limited by guarantee having share capital**
TABLE H	**AOA of Company limited by guarantee not having share capital**
TABLE I	**AOA of unlimited Company having share capital**
TABLE J	**AOA of unlimited Company not having share capital**

CONTENTS OF ARTICLES

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

1. Exclusion wholly or in part of Table F.
2. Adoption of preliminary contracts.
3. Share Capital, variation of rights, Number and value of shares.
4. Issue of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. Share certificates.
14. Dematerialisation.

15. Conversion of shares into stock.
16. Voting rights and proxies.
17. Meetings and rules regarding committees of the Board.
18. Directors, their appointment and delegations of powers.

ALTERATION OF ARTICLES [SECTION 14]

Section 5 read with section 14 of the Act provides that subject to the provisions of the Companies Act, 2013 and to the conditions contained in the memorandum of association, a company may by SPECIAL RESOLUTION alter its Articles.

There is no requirement for approval of the Registrar of Companies for alteration of articles of association. A company may simply alter its articles by **passing a special resolution** in the general meeting AND by filing of **Form MGT-14** with the Registrar along with the fee as per the Companies (Registration Offices and Fees) Rules, 2014.

DIFFERENCE BETWEEN MOA AND AOA

Basic of distinction	**MEMORANDUM**	**ARTICLES**
Definition	Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous Companies Law or of this Act Sec. 2(56)1	Articles means the Articles of Association of a Company as originally framed or as altered from time to time in pursuance of any previous Company laws or of this Act. \Sec. 2(5)1
Meaning	The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated.	The Articles are the rules for the management of the internal affairs of the company.
Powers and rules	Memorandum contains the objects and power of the company.	Articles contain the rules and regulation for the internal management of the company.
Scope	The Memorandum lays the objects for which the company is formed .The Memorandum identifies the possible scope of operations of the company, beyond which the company cannot go.	The articles are farmed so as to facilitate the achievement of objects as enshrined in the memorandum .The articles generally define as well as restrict the powers of directors, officers and employees of the company.
Hierarchy	In case of any inconsistency .the memorandum shall prevail over the articles.	The articles subordinate to the memorandum.

ENTRENCHMENT PROVISIONS

MEANING OF ENTRENCHMENT: ENTRENCHMENT means making alteration of AOA more difficult to protect the minority.

Section 5(3) provides that the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a **special resolution,** are met or complied with.

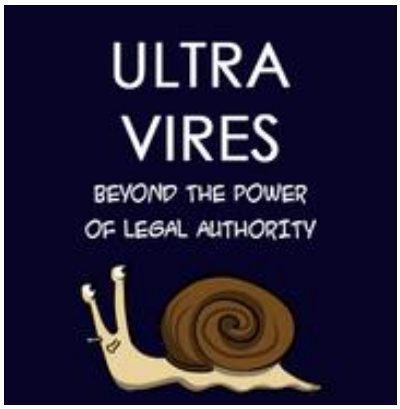
HOW TO MAKE ENTRENCHMENT [SECTION 5(4)]

ARTICLES MAY CONTAIN PROVISIONS FOR ENTRENCHMENT

Either on the formation of the company; or	Subsequently with the unanimous consent of all the members in the case of private company and by special resolution in the case of public company.
The company shall give notice to the Registrar of such provisions in FORM **(INC-32) or Form No.INC.7 (RULE 10)**	File in Form **No.MGT.14** within **thirty days** from the date of entrenchment of the articles. **(RULE 10)**

DOCTRINE OF ULTRA VIRES

- In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires**. As a result, an act which is *ultra vires* is void, and does not bind the company.
- Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.
- The general rule is that an act which is *ultra vires* the company is incapable of ratification. An act which is *intra vires* the company but outside the authority of the directors may be ratified by the company in proper form [*Rajendra Nath Dutta* v. *Shilendra Nath Mukherjee]*



Case Law

The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd.* v. *Riche,* (1878) L.R. 7 H.L. 653.

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants..... to carry on the business of mechanical engineers and general contractors ".

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being *ultra vires*, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was *ultra vires* the company and, therefore, *null* and *void*. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorize the directors to make", still it would be *ultra vires*. The shareholders cannot ratify such a contract, as the contract was *ultra vires* the objects clause, which by Act of Parliament, they were prohibited from doing.

Whether a transaction is ultra vires the company can be decided on the basis of the following:

1) if a transaction entered into by a company falls within the objects, it is not *ultra vires* and hence not void;
2) if a transaction is outside the capacity (objects) of the company, it is *ultra vires*;
3) if a transaction is in excess or abuse of the company's powers, it is ultra vires and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself;

Shareholder's right in respect of ultra vires acts

A shareholder can get back the money paid by him to the company under an ultra vires allotment of shares. A transferee of shares from him would not have been so allowed.

Effects of ultra vires Transactions

(i) Void ab initio: The ultra vires acts are null and void ab initio. The company is not bound by these acts. Even the company cannot sue or be sued upon. [Ashbury Railway Carriage and Iron Company v. Riche]

Ultra vires contracts are void ab initio and hence cannot become intra vires by reason of estoppel or ratification.

(ii) Injunction: The members can get an injunction to restrain a company wherein ultra vires act has been or is about to be undertaken [Attorney General v. Gr. Eastern Rly. Co.]

(iii) Personal liability of Directors: It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it.

(iv) Where a company's money has been used ultra vires to acquire some **property**, the company's right over such property is held secure and the company will be the right party to protect the property. This is because, though the property has been acquired for some ultra vires object, it represents the money of the company.

(v) Ultra vires borrowing does not create the relationship of creditor and debtor [In Re. Madras Native Permanent Fund Ltd., (1931) 1 Com Cases 256 (Mad.)].

DOCTRINE OF INDOOR MANAGEMENT

According to this doctrine persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. *In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is not a part of the duty of an outsider to see that the company carries out its own internal regulations.*

The doctrine of 'constructive notice" seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company.

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT

The above noted 'doctrine of indoor management' is, however, subject to certain exceptions. In other words, relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances:

1) ***Where the outsider had knowledge of irregularity*** — The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company.
2) ***No knowledge of memorandum and articles*** — Again, the rule cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them.
3) ***Forgery*** — The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal *ab initio.* In the case of forgery it is not that there is absence of free consent but there is no consent at all.
4) ***Negligence*** — The 'doctrine of indoor management', in no way, rewards those who behave negligently.
5) Again, the doctrine of indoor management **does not apply where the question is in regard to the very existence of an agency.**
6) This Doctrine is also **not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power**. In other words, the act done is not merely *ultra vires* the directors/officers but *ultra vires* the company itself.

DOCTRINE OF CONSTRUCTIVE NOTICE OF ARTICLES AND MEMORANDUM

Every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning [*Griffith* v. *Paget,* (1877) Ch. D. 517]. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum, or outside the limits set on the authority of the directors, he cannot, as a general rule, acquire any rights under the contract against the company.

The memorandum and articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee. Therefore, every person who is entering into a contract with a company, is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers.

DOCTRINE OF ALTER EGO

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In *Lennards Carying Co. Ltd.* v. *Asiatic Petroleum Co. Ltd.* [1915] AC 705, Viscount Haldane propounded the "alter ego" theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES

We shall examine the extent to which the memorandum and articles bind:

(a) the members to the company;

(b) the company to the members;

(c) the members *inter se;* and

(d) the company to outsiders.

Members Bound to the Company

The memorandum and articles constitute a contract binding on the members of the company. The members, as members, are bound to the company. Each member must, therefore, observe the provisions of the memorandum and articles. Each member is bound by the covenants of the Memorandum as originally made and as altered from time to time.

Company Bound to the Members

Since the articles constitute a contract binding the company to its members in their capacity as members, a member can bring an action against the company for infringement by it of the memorandum or articles.]. Further, the company is bound to individual members in respect of their ordinary rights as members.

Individual or minority members cannot bring such a suit except when it is intended for enforcement of personal rights of members or to prevent the company from doing any ultra vires or illegal act, fraud, or oppression and mismanagement.

Member Bound to Member

As between the members inter se each member is bound by the articles to the other members but that does not mean the memorandum and articles create an express contract among the members of the company. Thus, a member of a company has no right to bring a suit to enforce the articles in his own name against any other member or members.

Company not Bound to Outsiders

The term "outsider" signifies a person who is not a member of the company even if he is a director of or solicitor to the company. Even in regard to members, the articles bind the company to them in their capacity as members.

DOCTRINES BASED ON CASE LAWS

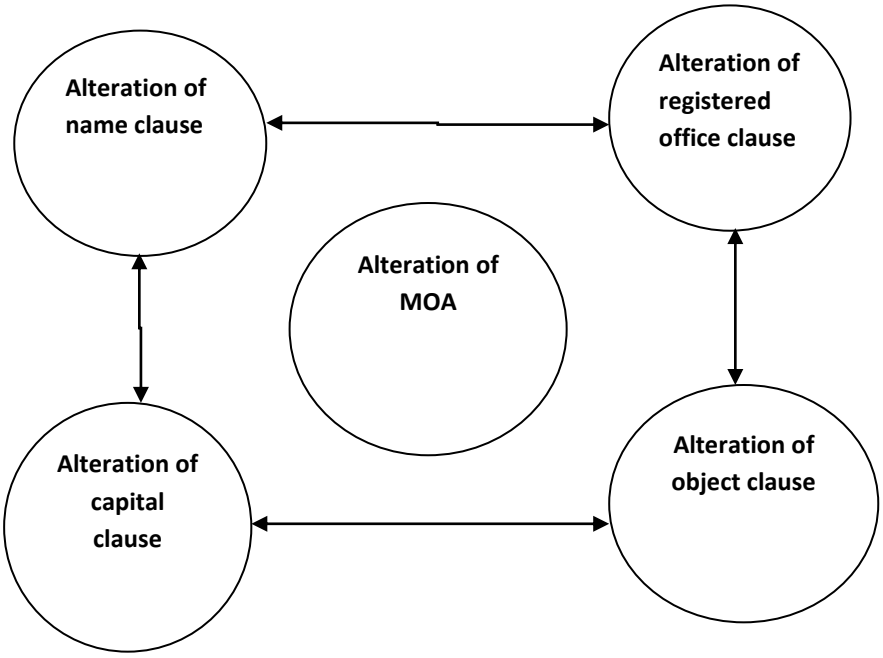
3 TYPES OF DOCTRINES

DOCTRINE OF CONSTRUCTIVE NOTICE	DOCTRINE OF INDOOR	DOCTRINE OF ALTER MANAGEMENT EGO

S.NO.	CASE LAW	DOCTRINES PROVISIONS
1	**GRIFFITH V/S PAGET** The articles of a company required that company can borrow money on bond signed by its 2 directors Company borrows on bond signed by 1 director only. Court held that company is not liable to repay the loan.	**DOCTRINE OF CONSTRUCTIVE NOTICE Applicability of doctrine** The doctrine operates in favor of the company i.e. it creates a presumption in favor of the company. It operates against the persons dealing with the company. **Effect of the doctrine** Once registered the memorandum and articles become public documents Sec. 399. Therefore every person dealing with the company is presumed to have read the memorandum and articles Further it is presumed that he has understood the provisions of memorandum and articles correctly i.e. in the right sense
2	**ROYAL BRITISH V/S TUROUAND** The articles of a company stated that the directors could borrow money on behalf of the company, if they are so authorised by a resolution passed by the shareholders in G.M. The directors borrowed money from T without obtained any authorization from shareholders. T had lent the money to the company assuming that the shareholders had authorised the directors to borrow money as per the requirements of the articles. It was held that borrowing of money by the directors without any authorization from the shareholders amounted to a mere internal irregularity and since T had no knowledge of such irregularity he would not be prejudiced by such internal irregularity.	**DOCTRINE OF INDOOR MANAGEMENT OR** **TUROUAND 'S RULE** The doctrine of indoor management operates in favour of the outsiders i.e. this doctrine creates a presumption in favour of the outsiders **MEANING OF THE DOCTRINE** As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company. Outsiders dealing with the company are entitled to assume that as far as internal proceeding of the company are concerned everything has been done regularly .it is a presumption and therefore rebuttable. Thus the doctrine protects an innocent outsider from any irregularity present in the working of the company (provided he had actual knowledge of the memorandum and articles and he complied with the requirements contained in the memorandum and articles.

		EFFECT OF THE DOCTRINE If a contract is entered into on behalf of the company by any director or officer of the company .it is enforceable against the company, if provisions contained in the memorandum and articles have been complied with even though while entering into such contract, some internal irregularity had arisen of which the outsider was unaware.
3	***In Lennards Carying Co.*** v. ***Asiatic petroleum Co.*** The 'alter ego' theory and distinguished from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.	**DOCTRINE OF ALTER EGO** It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

CHAPTER 3
PART 2
ALTERATION OF CHARTERED DOCUMENTS



Alteration of Name Clause: -

ALTERATION IN NAME CLAUSE

- **ALTERATION IN NAME CLAUSE OF MEMORANDUM**
- **CHANGE OF NAME (SEC. 13 (2)) (Voluntary Change)**
- **RECTIFICATION OF NAME (SECTION 16) (Compulsory Change)**

CHANGE OF NAME (SEC. 13 (2))

ENTIRE NAME CHANGE	**ADDITION/ DELETION OF WORD PRIVATE**
EX. = ABC LTD. TO XYZ LTD.	**EX. = ABC PVT LTD. TO ABC LTD AND VICE VERSA**
Pass Special Resolution and CG approval in form INC 24 and MGT 14 to ROC for SR	Pass Special Resolution and NO CG approval and MGT 14 to ROC for SR

CHANGE IN NAME OF THE LISTED ENTITY

1. The listed entity shall be allowed to change its name subject to compliance with the following conditions:

a. A time period of at least one year has elapsed from the last name change;

b. At least fifty percent, of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name; or

c. The amount invested in the new activity/project is at least fifty percent. Of the assets of the listed entity:

Provided that if any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities in compliance of provisions as applicable to change of name prescribed under Companies Act ,2013.

2. On satisfaction of conditions at sub-regulation (1), the listed entity shall file an application for name availability with Registrar of Companies.

On receipt of confirmation regarding name availability from Registrar of Companies, before filing the request for change of name with the Registrar of Companies in terms of provisions laid down in Companies Act, 2013 and rules made thereunder, the listed entity shall seek approval from Stock Exchange by submitting a certificate from chartered accountant stating compliance with conditions at sub-regulation (1) of Regulation 45.

PROCEDURE FOR CHANGE OF NAME

1. A Board meeting shall be convened to consider a new name for the company.

2. After deciding upon the new name an application is required to be made to the Registrar of companies in RUN along with a fee of Rs. 1000 for ascertaining the availability of new name.

3. On confirmation from Registrar of companies, a Board Meeting is held to:
   > Note down the new name;
   > Decide the day, date, time and venue of general meeting;
   > Approve the notice of the general meeting;
   > Authorize the company secretary or any one director to issue the notice general meeting.

4. Issue the notice of general meeting to all members, auditors and directors at least 21 clear days before the date of general meeting.

5. Hold the meeting and pass the special resolution.

6. Special resolution and explanatory statement thereto, it any, should be filed with the Registrar of companies in **e-Form MGT 14** within 30 days of passing the special resolution.

7. After obtaining approval of the members by way of special resolution Company needs to file an application along with the certified copy of the special resolution, altered copy of the memorandum of association to the Central Government in the prescribed **Form INC- 24** within 60 days from the date of name reserved by the Registrar or 30 days from the date of passing of special resolution whichever is earlier.

8. Application to be made to Registrar of Companies for issue of fresh certificate of incorporation in **(INC 25).**

9. If the company has changed name during the **last 2 years,** it shall affix, outside every office, place of business and print in all letter heads, bill heads etc along with its name the former name or names changed during the said period.

RECTIFICATION OF NAME [SECTION 16 OF COMPANIES ACT 2013]

Powers of the Central Government (R.D. for RECTIFICATION of name of an existing company)

Section 16 provides that in case, if the name of a company on its registration or on registration with changed name,

- It has come to the knowledge of the company OR
- If in the opinion of the Central Government the name of the company;

is identical with or too nearly resembles the name by which a company in existence had been previously registered,

It may direct the company to change its name and the company shall change its name or new name, as the case may be, within **a period of three months** from the issue of such direction, after adopting an ORDINARY RESOLUTION for the purposes. In either case, all the formalities described earlier shall be taken as under

Section 16(1)(6) empowers a registered proprietor of a trade mark to make an application that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, to the Central Government within three years of incorporation or change of name of the company,

AND

If in the opinion of the Central Government name is identical with or too nearly resembles to an existing trade mark.

The Central Government may direct the company to change its name and the company shall change its name or new name, as the case may be, **within a period of six months** from the issue of such direction, after adopting an ORDINARY RESOLUTION for the purpose.

Notice for change of name to the Registrar within 15 days

Where a company changes its name or obtains a new name under **section 16(1),** it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

EFFECTS OF ALTERATION OF NAME

1. The registrar shall enter the new name on the register of companies.
2. The registrar shall issue a fresh certificate of incorporation to the company containing the new name.
3. The registrar shall alter the memorandum which shall contain the new name of the company.
4. The alteration of name shall become effective as soon as fresh certificate of incorporation is issued.
5. The rights of obligations of the company shall not be affected by alteration of name .Thus alteration in name of the company does not mean a change in constitution of the company

ALTERATION OF REGISTERED OFFICE CLAUSE: -

Shifting of Registered Office	**Effect on MOA**
Within the local limits of city, town or village	No alteration required
Outside the local limits of the city, town or village (within the same state) and within the jurisdiction of the same ROC	No alteration required
Outside the local limits of the city, town or village (within the same state) but from the jurisdiction of one ROC to another	No alteration required
From one state to another	MOA to be altered

PROCEDURES FOR CHANGE OF REGISTERED OFFICE

CASE- 1

Shifting of the registered office from one place to another place within same citv/town/village.

(1) Send notice to all directors of company for convening board meeting.

(2) Convene board meeting and pass board resolution for change of registered office.

(3) File notice of change of the situation of the registered office, in the **Form INC-22** with the Registrar within 30 days of the change.

(4) Give intimation of change in the situation of registered office to all the concerned departments, etc. and make necessary corrections in the name board, stationery and records of the company wherever it is required.

CASE- 2

Shifting of the registered office to a place outside the local limits, but within the same State under the jurisdiction of the same Registrar

1.	Seek approval of the Board of directors at a Board meeting and fix the date, venue and time for holding a general meeting to obtain the approval of the members by special resolution and the Board will also approve the notice of general meeting and explanatory statement to be sent to the members
2.	Hold a general meeting and get the approval of the members by way of special resolution.
3.	File certified copy of the special resolution along with the explanatory statement with the Registrar of Companies in the **Form MGT-14** as required under section **117** within **30** days from the date of the meeting;
4.	File notice of change of the situation of the registered office, in the **Form INC-22** verified in the manner prescribed, with the Registrar **within 30** days of the change, who shall record the same.
5.	Give intimation of change in the situation of registered office to all the concerned departments, etc. and make necessary corrections in the name board, stationery and records of the company wherever it is required.

CASE- 3

Shifting of registered office from the jurisdiction of one ROC to another ROC in the same State.

1. Seek approval of the Board of directors at a Board meeting and at the same meeting the Board may consider and fix the date, venue and time for holding a general meeting to obtain the approval of the members by special resolution and the Board will approve the notice of general meeting and explanatory statement to be sent to the members.
2. Hold a general meeting and get the approval of the members by way of special resolution subject to confirmation by the Regional Director. In case if the shares are listed with the stock exchange, the special resolution should be passed by **postal ballot process.**
3. File certified copy of the special resolution along with the explanatory statement with the Registrar of Companies in prescribed **Form MGT-14 under section 117** within 30 days from the date of the meeting;
4. The company shall, not less than one month before filing any application with the Regional Director for the change of registered office:
A. Publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district and serve individual notice on each debenture holder, depositor and creditor of the company.
B. Clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice.
5. File an application in prescribed **Form INC-23** for obtaining confirmation of the Regional Director for change in the situation of registered office of the company within a State from the jurisdiction of one Registrar to the jurisdiction of another Registrar with following documents.

CASE- 4

Shifting of the registered office from 1 state/ union territory' to another State

1. The change of registered office from one State to another State can be effected by a special resolution of the company which must be confirmed by the Central Government on an application made to it.
2. Further, the alteration of the provisions of the memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on an application made to it in the prescribed form and manner.
3. The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that a sufficient provision has been made by the company either for the due discharge of all its debts.
4. A company shall, in relation to any alteration of its memorandum involving change of registered office from one State to another, file with the Registrar the special resolution passed by it in MGT 14.
5. Where an alteration of the memorandum results in the shifting of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within 30 days time from the receipt of the certified copy of the order and in INC-28, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

ALTERATION OF OBJECT CLAUSE: -

- According to section 13(1), a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. It means that a company can change its objects by passing a special resolution.

  As per section 13(9), the Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with section 13(6)(a).

- Further, section 13(8) lays down that a company, which has raised money from public through prospectus and has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

  1) the details, as may be prescribed, in respect of such resolution shall be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;

  2) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

Following companies are required to pass special resolution for alteration of Object clause of Memorandum of Association by means of Postal Ballot only:

- All Companies having more than 200 members.
- Company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised.

ALTERATION OF LIABILITY CLAUSE: -

1) A company can change the liability clause of its memorandum of association by passing a special resolution.

2) A company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

ALTERATION OF CAPITAL CLAUSE: -

Requirements for alteration in capital clause:

1. AOA POWER
2. O/R **(SPECIAL RESOLUTION IF REQUIRED BY AOA)**
3. SH.7 TO ROC (Section 64)

Section 61(1) provides that a company may alter its share capital by passing ordinary resolution and clause by any of the following ways:

a)	Increase in the authorised share capital
b)	Consolidation and division of share capital. **Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner**
c)	Conversion of fully paid-up shares into stock and vice versa
d)	Sub-division of shares or any of them into smaller amount
e)	Cancellation or diminution of share capital

Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal/High Court to be effective.

Notice to the Registrar of Companies for alteration of share capital

Section 64 of the Companies Act, 2013 provides that a company having share capital shall give notice to the Registrar of Companies for alteration in share capital in the **Form SH-7** within a period of 30 days from the date of the resolution passed by the company for alteration in share capital.

PROCEDURE FOR INCREASING SHARE CAPITAL

1. The company has to ensure that its articles of association contain a clause authorising it to increase its authorised share capital
2. Issue notice in accordance with the provisions of Section 173(3) of the Act for convening a Board meeting.
3. Hold the meeting
   - to decide about the increase in the authorised share capital of the company
   - to fix time, date and venue for holding general meeting of the company to pass a special resolution/ ordinary resolution as the case may be for increasing the authorised share capital of the company [Section13(1)]
   - to authorise the company secretary, if any or a Director to issue, on behalf of the Board, notice of the general meeting as approved by the Board.
4. Issue notice of the general meeting to all members, directors and the auditors of the company [Section 102].
5. Hold the general meeting and pass ordinary resolution for increasing the authorised share capital of the company [Section 13(1)]
6. If special resolution is passed then File with the Registrar within thirty days of passing of the resolution, **Form MGT — 14**
7. File with ROC, **Form SH — 7** along with the registration fee on increased authorised capital within 30 days of the passing of the resolution as per Section 64 of the Act.

ALTERATION OF ARTICLE OF ASSOCIATION: -

Section 5 read with section 14 of the Act provides that subject to the provisions of the Companies Act, 2013 and to the conditions contained in the memorandum of association, a company may by SPECIAL RESOLUTION alter its Articles.

There is no requirement for approval of the Registrar of Companies for alteration of articles of association. A company may simply alter its articles by **passing a special resolution** in the general meeting AND by filing of **Form MGT-14** with the Registrar along with the fee as per the Companies (Registration Offices and Fees) Rules, 2014.

PROCEDURE FOR ALTERATION OF AOA

1. Convene and hold a Board Meeting for the following purposes
   - **To consider and approve the proposal of altering the articles of association;**
   - **To decide day, date, time and venue of the general meeting where special resolution is proposed to be passed;**
   - **To approve the notice of general meeting to be issued; and**
   - **To authorise the Company Secretary/ Director to issue the notice of general meeting.**
2. Issue the notice of general meeting to all the members, auditors and directors.
3. Convene and hold the general meeting and pass the necessary special resolution.
4. File a copy of the proceedings of the general meeting to all the Stock Exchanges, where the securities of the company are listed.
5. File Form MGT 14 with the Registrar of Companies within a period of 30 days from the date of passing the special resolution, along with a certified true copy of the resolution and explanatory statement.

First proviso to section 14(1) lays down that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Second proviso to section 14(1) stipulates that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

EFFECT OF ALTERED ARTICLES

Alteration binds members in the same way as original articles. The altered articles shall bind the company and the members to the same extent as if they had been signed by the company and by each member, means the articles as originally framed, or as they may from time to time stand altered are valid under the provisions of the Act. There is clear power to alter the articles, and as altered, they bind members just in the same way as did the original articles.

Section 8 Company cannot alter Articles except with the prior approval of Central Government

Section 8(4)(i) provides that a company registered under section 8 i.e. companies with charitable objects shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

SAMPLE BOARD RESOLUTION FOR CHANGE IN THE NAME OF THE COMPANY

"**RESOLVED THAT** pursuant to the provisions of section 13 and other applicable provisions of the Companies Act, 2013 if any and the rules framed there under, and subject to the approval of the Registrar of Companies, Central Registration Center, Ministry of Corporate Affairs and the approval of the members, the consent of the board be and is hereby accorded to change the name of the company from _____ to _____ or _____ or _____ as may be approved by the Registrar.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. X, Director of the Company be and is hereby authorized, on behalf of the Company, to make an application to the MCA for ascertaining availability of proposed name and to do all acts, deeds, and things as may be necessary, proper or desirable and to sign and execute all necessary documents, applications and returns, e-forms for the purpose of giving effect to the aforesaid resolution.

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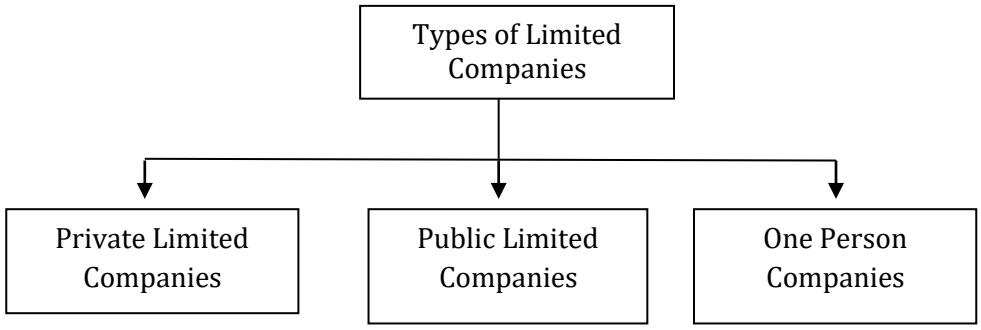
CHAPTER 4
LEGAL STATUS OF REGISTERED COMPANY



Small Company

"small company" means a company, other than a public company —

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ***Ten crore rupees***; and

(ii) turnover of which ***as per profit and loss account for the immediately preceding financial year*** does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than ***one hundred crore rupees***:

**** The Companies (Amendment) Act, 2017 (Effective From 7th May 2018)***

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.

Advantages of Small Company

1. **Filing of annual return**

The annual return of a private limited company classified as a small company, can be signed by a Company Secretary or by a Director of that private limited company.

The annual return of a private limited company not classified as a small company must be signed by a Director and a Company Secretary.

2. **Board Meeting**

It is sufficient for a small company to conduct only two Board Meetings in a calendar year, one in every half calendar year with a gap of not less than 90 days between these two meetings.

3. **Cash Flow Statement**

A private limited company classified as a small company need not prepare cash flow statement as a part of the financial statements.

4. **Rotation of Auditors**

Private limited company classified as a small company are not required to rotate their statutory Auditors.

Holding Company

"holding company" in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Explanation.—For the purposes of this clause, the expression "company" includes any body corporate.*

**** The Companies (Amendment) Act, 2017 (Effective From 9th Feb 2018)***

As per Section 2(87) "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—

(i) controls the composition of the Board of Directors; or

(ii) 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:

* ***The Companies (Amendment) Act, 2017 (****word share 'capital replaced' by* ***'Voting Power') (Effective From 9th Feb 2018)***

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.

Provisions in the Companies Act 2013 relating to Holding Company:

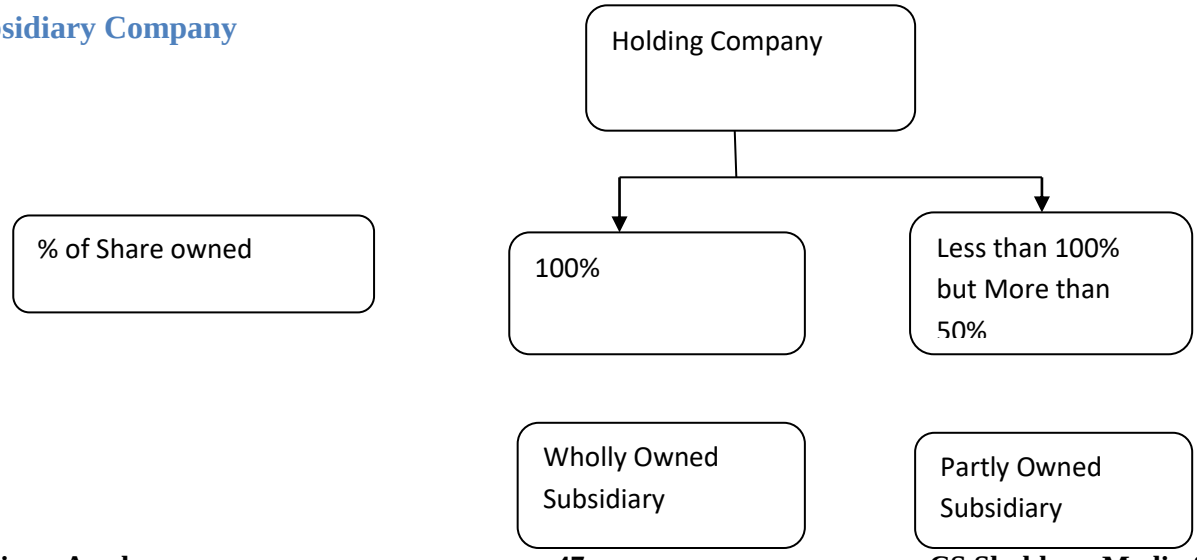
Financial Statement of Holding Company;-
The Consolidated Financial Statement of holding company is required to disclose prescribed details about subsidiary companies, associate companies and Joint Ventures.

If Holding Company has more than one subsidiary:-
If a Company has one or more subsidiaries, associate companies and Joint Ventures, it shall, prepare a consolidated financial statement of the company and of all the subsidiaries, associate companies and joint venture in the same form and manner as that of its own

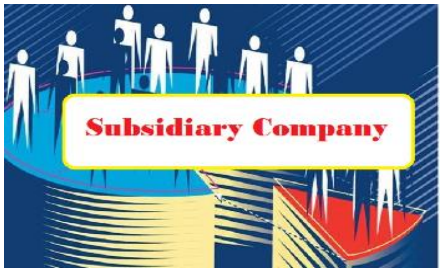
Separate Financial Statements of Holding Company:-
This Statement is in addition to the separate financial statement of the holding company. The consolidated financial statement shall also be placed before the annual general meeting of the holding company along with the laying of its own financial statement.

Disclosure in Profit and Loss Account of Holding Company:-
Profit and Loss account of Holding company shall disclose:
(a) Dividends from subsidiary Companies
(b) Provisions for losses of subsidiary Companies

Subsidiary Company



Provisions relating to Subsidiary Company under Companies Act 2013



1) A subsidiary company cannot be a small company
2) A subsidiary of a government company is treated as government company
3) Company which is subsidiary of a public company, shall be deemed to be a public company.
4) A subsidiary company is treated as related party.
5) Associate company does not include subsidiary company.

Associate Company

Under sub section (6) of section 2 of the Companies Act, 2013, "associate company" ", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

***Explanation For** the purposes of this clause, the expression "significant influence" means control of at least twenty per cent, of total voting power, or control of or participation in business decisions under an agreement.

The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

**** The Companies (Amendment) Act, 2017 (Effective From 7th May 2018)***

Additional compliances if a company has an Associate Company

1) It will be considered as Related Party
2) Consolidated Financial Statements shall also include financial statements of Associate Company.
3) Following persons cannot be appointed as independent director in a company if they are:

a. A promoter or related to promoters or Director of an Associate Company.
b. Has/had or any of his relatives has or had pecuniary relationship with Associate Company.
c. Holding or any of their relative(s) held the position of key managerial personnel or has been employee of an Associate Company.

Inactive Company/Dormant Company

"inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

The words "dormant company" and "inactive company" are synonymous.

The following points relating to dormant companies may be noted:

1. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.

2. The provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

3. The financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

4. A Dormant Company may hold one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days, which will be treated as compliance of section 173 of the Companies Act, 2013.

5. If a company has not obtained the status of a dormant company under section 455 or has not made any application for it and has not been carrying on any business or operation for a period of two immediately preceding financial years, the Registrar may remove the name of the company from the Register of Companies under Section 248 of the Act. [Section 248(1)]

Government Company

"Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

ANNUAL GENERAL MEETING

Every Annual General Meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the Company or at some other place as the Central Government may approve in this behalf:

Declaration of dividends out of accumulated profits of previous year

The second proviso to sub-section (1) of section 123 do not apply.

Deposit of dividend in a scheduled bank within five days from the date of declaration

sub section (4) of section 123 shall not apply.

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CHAPTER 5
LIMITED LIABLITY PARTNERSHIP

LLP-MEANING

An 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 the other partners, and whose liability is restricted to his own stake in the liability. Every partner would be agent of the LLP, but the LLP would not be bound by anything done by a 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 LLPs at the State level.

LLP-FEATURES

Following are the features of a LLP:

(a) LLP is a body corporate with distinct legal entity and perpetual succession.

(b) LLP is applicable to any trade or business.

(c) LLP is created and registered under Limited Liability Partnership Act, 2008.

(d) LLP can be created by minimum 2 partners.

(e) LLP Act is administered by Ministry of Corporate Affairs.

(f) For registration, incorporation document is required to filed to Registrar of Companies.

(g) Every partner is the agent of the LLP.

(h) Liability of partner is limited except in case of fraud and negligence.

(i) Any person can become partner/member by subscribing to the incorporation document or by an agreement with existing partners/members.

(j) Right and duties of partners are governed by an agreement between partners or between LLP and its partners.

LLP-ADVANTAGES

Following are the advantages of forming LLP:

(a) Easy and less expensive formation.

(b) No restrictions on maximum number of persons.

(c) Flexibility in management.

(d) No requirement any of minimum capital contribution by partners.

(e) Low compliance cost.

(f) Liability of partner is limited except in case of fraud and negligence.

(g) Less government intervention.

(h) LLP is a body corporate with distinct legal entity and perpetual succession.

(i) Easy to dissolve or wind-up.

(j) LLP is applicable to any trade or business.

DISADVANTAGES OF LLP

1. **Restricted Access to Capital Markets:** LLPs are small form of business and cannot get its shares listed in any stock exchange through initial public offerings. With this restriction, limited liability partnerships may find it difficult to attract outside investors to buy the shares.

2. **Rights of partners:** An **LLP** can be structured in such a way that one partner has more rights than another. 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.

3. **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. Further FDI in LLP is allowed only through government route only and that too in those sectors only where 100% FDI is allowed under automatic route under the FDI Policy. This limitation makes LLP an unattractive form of business.

4. **Offences and penalties:** Limited Liability Partnership Act, 2008 provides that for non- compliance on procedural matters such as delay in filing of e-forms, one has to pay default fee for every day for which the default continues. Such default fee would be payable at the rate of rupee one hundred per day after the expiry of the date of filing up to a period of three hundred days. The offense can result in either (i) through payment of fine or (ii) through payment of fine as well as imprisonment of the offender.

5. **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.

6. **Limitation in External Commercial Borrowings (ECB):** Limited Liability Partnerships are not allowed to raise ECB. Therefore, a LLP cannot avail commercial loans from its foreign partners, FIIs, Foreign Banks, and any financial institution located outside India.

WHO CAN BE PARTNER IN LLP?

(a) An individual (other than one who has been found to be of unsound mind by court, an undischarged insolvent; has applied to be adjudged insolvent and application is pending)

(b) Indian private and/or Public Company.

(c) Foreign Company.

(d) Any other LLP.

(e) LLP registered outside India.

WHO CAN NOT BE A PARTNER IN LLP

(a) A corporation sole

(b) A co-operative society

(c) Any other person not specified in above para "who can be partner in LLP"

STEP BY STEP PROCEDURE TO REGISTER A LIMITED LIABILITY PARTNERSHIP

STEP 1 – OBTAIN DIRECTORS' IDENTIFICATION NUMBER (DIN): Every applicant who would become the designated partner of the LLP must have a DIN. Application for DIN can be made online by submitting E-form DIR-3 along with following documents:

- Proof- of Identity
- Proof of Residence etc.

STEP 2 – REGISTER DIGITAL SIGNATURE OF DESIGNATED PARTNERS

The DSC has to be registered on the MCA website.

STEP 3 – -FILE 'RUNLLP' FOR NAME AVAILABILITY

Once Two DINS are available, application for reservation of name in ***'*RUN-LLP' *(Reserve Unique Name Limited Liability Partnership)*** can be made to the MCA.

the Limited Liability Partnership (Second Amendment) Rules, 2018. (Effective Date: 2nd October, 2018.) (*Form 1* ***replaced by 'RUNLLP')***

Rule 18 of the Limited Liability Partnership Rules, 2009, prescribed the guidelines to be kept in mind, while deciding for the name of the LLP to ensure a speedy approval.

Once the name approval application is accepted by the MCA, a LLP name approval letter will be issued to the proposed Partners. Name will be reserved for 90 days.

STEP 4 – FILING OF 'FiLLiP' FOR INCORPORATION AND SUBSCRIPTION DOCUMENT

After receiving the Name approval Letter from ROC, the incorporation document (viz. Subscribers' sheet, Proof of address of registered office of LLP etc.) shall be filed in ****Form FiLLiP*** ((Form for incorporation of Limited Liability Partnership) with the Registrar having jurisdiction over the State in which the registered office of the Limited Liability Partnership is to be situated.

The form must be digitally signed by a person named in the 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.

the Limited Liability Partnership (Second Amendment) Rules, 2018. (Effective Date: 2nd October, 2018.) (*Form 2* ***replaced by 'FiLLiP')*** *{(Incorporation document and subscribers statement) combining therein 3 services i.e.,*
a) Name reservation. b) Allotment of Designated Partner Identification Number (DPIN/DIN) c) Incorporation of the LLP.}

(a) After the Registrar is satisfied that all the formalities with respect to the incorporation has been complied, he will issue a Certificate of Incorporation as to formation of the LLP within maximum of 14 days from date of filing of documents.
(b) The Certificate of Incorporation issued shall be the conclusive evidence of formation of the LLP.
(c) On incorporation, Every LLP so registered shall be assigned a LLP identification number (LLPIN) in one consecutive series.

STEP 5 – DRAFTING & FILING OF LLP AGREEMENT

After incorporation of LLP, LLP agreement has to be drafted in consonance with LLP Act. LLP agreement is to be filed **within 30 days of incorporation** of LLP. The Designated Partners has to file the Limited Liability Partnership Agreement in **Form 3.**

LLP AGREEMENT

"Limited liability LLP Agreements mean any written agreement between the partners of the Limited Liability Partnership or between the Limited Liability Partnership and its partners which determines mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership [section 2(1)(0)]."

It is compulsory to make and execute a LLP agreement within 30 days of the incorporation of LLP. The value of stamp paper on which the LLP agreement must be printed or stamp duty to be paid on the LLP agreement is dependent on the state of incorporation and amount of capital contribution from the partners

ESSENTIAL CLAUSES TO BE INCLUDED IN THE LLP AGREEMENT

- ✓ INTERPRETATION / DEFINITIONS
- ✓ DESIGNATED PARTNERS
- ✓ NAME OF THE LLP
- ✓ REGISTERED OFFICE OF THE LLP
- ✓ BUSINESS OF THE LLP
- ✓ CAPITAL CONTRIBUTION
- ✓ PROFIT SHARING RATIO
- ✓ RIGHTS AND DUTIES OF DESIGNATED PARTNERS
- ✓ ADMISSION OF PARTNER, RETIREMENT RESIGNATION AND EXPULSION OF PARTNERS
- ✓ REMUNERATION
- ✓ BANK ACCOUNT
- ✓ DISPUTE RESOLUTION
- ✓ TERM OF LLP /WINDING UP
- ✓ GENERAL PROVISIONS etc.

ALTERATION OF LLP AGREEMENT

The Limited Liability Partnership (LLP) Agreement is the charter of the LLP, similar to the Memorandum of Association and Articles of Association for a private limited company. **It defines the scope and extent of the LLP's operations as well as the rights, duties, obligations of the partners.**

Altering the agreement can be done passing a resolution approving the revision in the LLP Agreement. The second step is to file Form 3 with the Registrar within 30 days of the amendment in the agreement.

The Documents to be attached to the Form 3 shall include the following:

- Initial LLP Agreement
- Supplementary/ Altered agreement
- Optional attachments if any

Change in Partner /Designated Partner

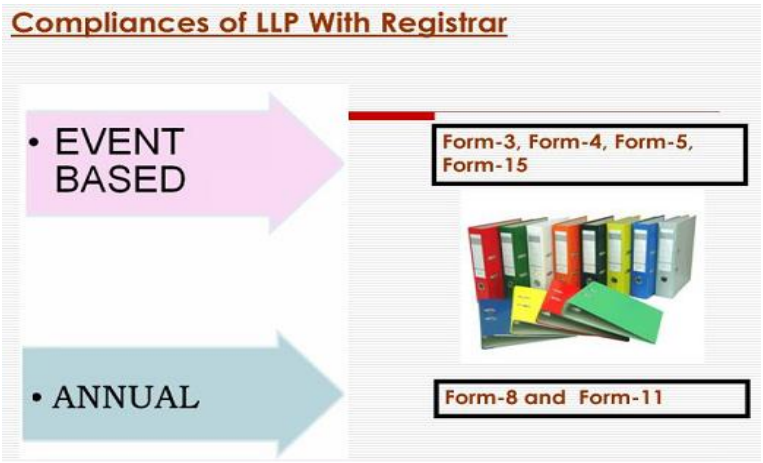
- If the change in LLP agreement is due to change in partner(s)/ designated partner(s), Form 4 is also required to be filed along with Form 3.
- **Documents to be attached with Form 4**
  - Consent of the partner
  - Evidence of cessation
  - Affidavit or any proof of change of name
  - If the partner or a designated partner is a company, copy of resolution of the company to become partner in LLP
  - Copy of resolution/ authorization letter mentioning name and address of individual nominated as representative nominee/ partner.

ANNUAL COMPLIANCE FOR LLP

1. Filling of Annual return with ROC in E-form 11
2. Filing of Statement of the Accounts or Financial Statements with ROC in E-form 8
3. File Income tax Return:
   - LLP whose accounts are not required to be audited under any Law:- 31st July of every year
   - LLP whose accounts are subject to Audit under any Law: - 30th September of every year or such other date as may be notified by the Income Tax authorities.

EVENT BASED COMPLIANCE FOR LLP

1. Change of Registered Office – Form 15
2. File E-Form 4 for any change of Partner and designated Partner
3. Supplementary LLP agreement require to file in E-form 3
4. Intimation of Change of Change – Form 5



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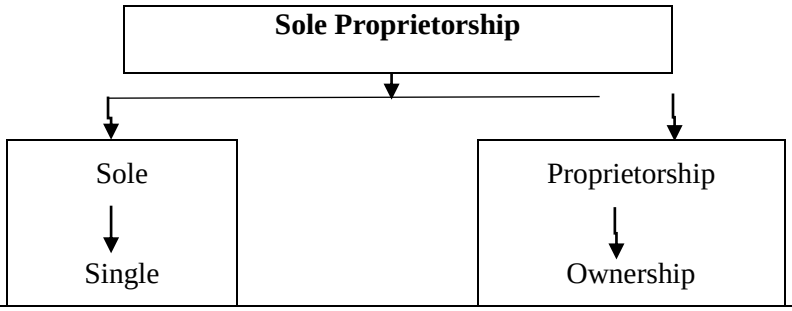
CHAPTER 6
Different Forms Of Business Organisation & It's Registration

One of the first decisions that is faced by an entrepreneur is how the business should be structured. 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:

- ✓ His vision regarding the size and nature of the business.
- ✓ The level of control he wishes to have.
- ✓ The level of "structure" he is willing to deal with.
- ✓ The business's vulnerability to litigation.
- ✓ Tax implications of the different organizational structures.
- ✓ Expected profit (or loss) of the business.
- ✓ Whether or not he will need to re-invest earnings into the business.
- ✓ His need for access to cash out of the business for himself.

1. 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.



Sole Proprietorship

Is a concern in which entire capital, management, decision making profitability & risk is vested in the single person named owner or proprietor

(+)

"Sole proprietor has to report to his boss, the one who is under his own hat''

Merits of Sole Proprietorship

- **Easy formation:** A sole proprietorship business is easy to form where no legal formality involved in setting up this type of organization. It is not governed by any specific law. It is simply required that the business activity should be lawful and should comply with the rules and regulations laid down by local authorities.
- **Better Control:** In sole proprietary organisation, all the decisions relating to business operations are taken by one person, which makes functioning of business simple and easy. The sole proprietor can also bring about changes in the size and nature of activity. This gives better control to business.
- **Sole beneficiary of profits:** The sole proprietor is the only person to whom the profits belong. There is a direct relation between effort and reward. This motivates him to work hard and bear the risks of business.
- **Inexpensive Management:** The sole proprietor does not appoint any specialists for various functions. He personally supervises various activities and can avoid wastage in the business.

Limitations of Sole Proprietorship:

- **Limitation of management skills:** A sole proprietor may not be able to manage the business efficiently as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.
- **Limitation of Resources:** The sole proprietor of a business is generally at a disadvantage in raising sufficient capital. His own capital may be limited and his personal assets may also be insufficient for raising loans against their security. This reduces the scope of business growth.
- **Unlimited liability:** The sole proprietor is personally liable for all business obligations. For payment of business debts, his personal property can also be used if the business assets are insufficient.
- **Lack of continuity:** A sole proprietary organisation suffers from lack of continuity. If the proprietor is ill, this may cause temporary closure of business. If he dies, the business may be permanently closed.

PROCEDURE FOR FORMATION OF SOLE PROPRIETORSHIP

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

- Shops and Commercial Establishments Act (State specific)
- Law relating to Professional Tax (State specific)
- Registration under Micro, Small and Medium Enterprises Development Act, 2006.
- Registration as a Small Scale Industry (State specific)
- GST registration
- Intellectual Property l

Sole Proprietorship = Shop Act + Prof Tax + MSMED + SSI + GST + IPR + Bank A/C

2. PARTNERSHIP

DEFINITION & MEANING OF PARTNERSHIP

Section 4 of the Indian Partnership Act, 1932 defines the term 'partnership'. According to this, "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 individually called "partners" and collectively called "a firm"; and the name under which their business is carried on is called the "firm name".

ESSENTIAL ELEMENTS/FEATURES OF A PARTNERSHIP

S.NO.	PARTICULARS	PROVISIONS
1	**Agreement**	It may be noted that the relation of partnership arises from contract and not from such are not partners in such business because Hindu Undivided Family is created by status and not by contract. The agreement between the partners may be express (oral or written) or implied.
2	**Sharing profit of business**	The sharing of profits of business is an essential agreement of partnership, and there would be no partnership where only one of the partners is entitled to whole of the profits of the business. But it is open to the partners to agree to share the profits in any way they like. Although, sharing of profits is an essential element of partnership, the sharing of losses is not. It is open to one or more partners to bear all the losses of the business.

3	**Mutual agency**	**Business carried on by all or any of them acting for all** The third requirement is that the business must be carried on by all the partners or by anyone or more of the partners acting for all. An act of one partner in the course of the business of the firm is, in fact, an act of all the partners. Each partners carrying on the business is the principal as well as an agent of other partners.
4	**Restriction on transferability of share**	No partner can transfer his share in partnership to any other person. He may, however, do so with the consent of all other partners.
5	**Duration**	The partnership firm continues at the pleasure of the partners. Legally a partnership comes to an end if any partner dies, retires or becomes insolvent. However, if the remaining partners agree to work together under the original firm's name, the firm will not be dissolved and will continue its business after settling the claim of the outgoing partner.
6	**Lawful business**	The term 'business' includes every trade, occupation and profession.

All these elements must co - exist before a partnership can come into existence

Types of Partnership

According to the nature of agreement among partners, there can be three types of partnership as follows:

(i) **Partnership at-will:** Such a partnership exists on the will of the partners. That is, it can be brought to an end whenever any partner gives notice of his intention to do so.

(ii) **Particular partnership**: A particular partnership is formed for undertaking a particular venture. It comes to an end automatically with completion of the venture.

(iii) **Partnership for a fixed duration**: Such partnership is for a fixed period of time say 2 years, 5 years or any other duration.

Types of Partners

Active Partners: Partners who take active part in the conduct of day-to-day business of the firm are called active partners. These partners carry on business on behalf of the other partners.
Sleeping or dormant partners: Sleeping or dormant partners are those who do not take active part in the management of the business. Such partners only contribute capital in the firm and are bound by the activities of other partners. However, they share in the profits and losses of the business.
Nominal Partners: Nominal partners are those who do not have interest in the business but lend their name to the firm. They do not make any capital contribution, and are not entitled to take part in management, but are liable, like other partners, to third parties. Such partners generally have a pecuniary interest (like a share in the profits) in lending their name to a firm. However in certain cases they may not have any pecuniary interest in doing so. For example, a reputed industrialist may, without any profit motive lend his name to a firm run by his family members.
Partners by holding out: If a person by his words or conduct holds out to another that he is a partner, he will be prevented from denying that he is not a partner. The person who thus becomes liable to third parties to pay the debts of the firm is known as a partner by holding out.

Minor Admitted Into The Benefit 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. He may, however, be admitted to the benefits of an existing partnership.

Merits of Partnership

(i) Ease in formation: A partnership is very easy to form. All that is required is an agreement among the partners. Even the expenses to be incurred for registration are-not much.
(ii) Pooling of financial resources: A partnership commands more financial resources compared to sole proprietorship. This helps in expanding business and earning more profits. As and when a firm requires more money, more partners can be admitted.
(iii) Pooling of managerial stalls: A partnership facilitates pooling of managerial skills of all its partners. This leads to greater efficiency in business operations. For instance, in a big partnership firm, one partner can handle production function, another partner can look after all marketing activity, still another can attend to legal and personnel problems, and so on.
(iv) Balanced business decisions: In a partnership firm, decisions are taken unanimously after considering all the major aspects of a problem. This ensures not only balanced business decisions but also removes difficulties in the smooth implementation of those decisions.

Limitations of Partnership

(i) Uncertainty of existence: The existence of a partnership firm is very uncertain. The retirement, death, bankruptcy or lunacy of any partner can put an end to the partnership. Further, the partnership business can come to a close if any partner demands it.
(ii) Risks of implied authority: It is true that like the sole proprietor each partner has unlimited liability. But his liability may arise not only from his own acts but also from the acts and mistakes of co-partners over whom he has no control. This discourages many persons with money and ability, to join a partnership firm as partner.
(iii) Risks of disharmony: In partnership, since decisions are taken unanimously, it is essential that all partners reconcile their views for the common good of the organisation. But there may arise situations when some partners may adopt rigid attitudes and make it impossible to arrive at a commonly agreed decision. Lack of harmony may paralyse the business and cause conflict and mutual bickering.
(iv) Difficulty in withdrawal from the firm: Investment in a partnership can be easily made but cannot be easily withdrawn. This is so because the withdrawal of a partner's share requires the consent of all other partners.

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. Definitions and vital information
The partnership deed normally carries the name of the business, the address of its principal place of business and a short summary of the nature of business the partners intend to operate.
2. Investment
The deed gives important financial details of the partnership, such as the amount of capital to be invested by each partner, the Profit /Loss sharing of each partner , the salaries to be paid to each partner and the method of distributing the business income. The partnership deed also documents the accepted method of raising additional capital, if necessary how loan funds may be raised and rate of interest if any, applicable on the loans.
3. Accounting
The partnership deed provides for the accepted method of accounting for the cash flow, profit and loss, and assets and liabilities of the business; it also defines the fiscal year to be used in accounting statements and how these statements will be distributed among the partners and other shareholders.
4. Duties, Powers and Obligations of the partners
The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed. The Deed may also provide designate a partner as the Managing Partner, who will be responsible for day to day management and conduct of the business.
5. Withdrawals
The document must also provide for actions to be taken in case of the voluntary withdrawal or death of a partner. In such a case, accounts will have to be drawn up to ascertain the assets, liabilities and the entitlement of each partner (including the outgoing partner)

6. Expulsion
If a partner is proving to be a hindrance or detriment to the business, or loses legal rights in a bankruptcy or other court action, the other partners must have a method of modifying the partnership rights of or expelling him.
7. Dissolution
The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts among the partners would be settled at the termination of the business.
8. Arbitration
As in all business contracts, a partnership deed must provide for the means of arbitration of disputes. The main goal of the deed is to avoid expensive litigation over details that have not been fully worked out in the signed agreement.

PROCEDURE FOR FORMATION OF PARTNERSHIP

Partnership firms in India are governed by the Indian Partnership Act, 1932. While it is not compulsory to register your partnership firm as there are no penalties for non-registration, 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 Procedure:

A partnership firm can be registered whether at the time of its formation or even subsequently. You need to file an application with the Registrar of Firms of the area in which your business is located.

(i) 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.

(ii) Every partner needs to verify and sign the application.

(iii) 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.

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.

3. HINDU UNDIVIDED FAMILY (HUF) AN INTRODUCTION

❖ One person cannot form HUF. An HUF is formed by a family.
❖ An HUF is automatically created at the time of marriage.
❖ HUF consists of a common ancestor and all of his lineal descendants, including their wives and unmarried daughters. After 1-9-2005, daughter married or unmarried is a coparcener like a son.
❖ Hindus, Buddhists, Jains and Sikhs can form HUFs.
❖ HUF usually has assets which come as a gift, a will, or ancestral property, or property acquired from the sale of joint family property or property contributed to the common pool by members of HUF.
❖ Once an HUF is formed it must be formally registered in its name. An HUF should have a legal deed. The deed shall contain details of HUF members and the business of the HUF. A PAN number and a bank account should be opened in the name of the HUF.
❖ Under the Income Tax Act, an HUF is a separate entity for the purpose of income tax return.
❖ The same tax slabs are applicable to HUF as to individual assessee.

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: **Davabhaga and Mitakshara.**
2. Management:
All the affairs of a Joint Hindu Family are controlled and managed by one person who is known as 'Karta' or 'Manager'. The Karta is the senior most male member of the family. He works in consultation with other members of the family but ultimately he has a final say.
3. Membership by Birth:
The membership of the family can be acquired only by birth. As soon as a male child is born in family, he becomes a member. Membership requires no consent or agreement.
4. Liability:
Except the Karta, the liability of all other members is limited to their shares in the business. The Karta is not only liable to the extent of his share in the business but his separate property is equally attachable and amount of debt can be recovered from his separate property.

5. Permanent Existence:
The death, lunacy or insolvency of any member of the family does not affect the existence of the business of Joint Hindu Family. The family goes on doing its business.
6. Implied Authority of Karta:
In a joint family firm, only Karta has the implied authority to contract debts and pledge the credit and property of the firm for the ordinary purpose of the businesses of the firm.
7. Minor also a Partner:
In a partnership, minor cannot become co-partner though he may be admitted to the benefit of partnership. Ina Joint Hindu Family firm minor is a partner.
8. Dissolution:
The Joint Hindu Family Business can be dissolved only at the will of all the members of the family. Any single member has no right to get the business dissolved.

BENEFITS OF HUF

1. Easy to Start:
It is very easy to start the Joint Hindu Family Business. No legal formalities are required to be faced, such as registration. It requires no agreement, though in actual practice, it is documented to avoid litigation and for regulatory purposes.
2. Efficient Management:
The management of Joint Hindu Family Business is centralised in the hands of Karta of family. In this business, Karta takes all decisions and gets them implemented with the help of other member. No other member interferes in his management.
3. Secrecy:
In Joint Hindu Family Business, all the decisions are taken by the 'Karta' himself. He is in a position to keep all the affairs to himself and maintains perfect secrecy in all matters.
4. Prompt Decision:
The Karta is the only person who exercises control and direction over the business. He may not consult anyone in taking decisions. This ensures prompt or quick decisions. Being the sole master, he takes prompt decisions and makes advantage of the opportunity.
5. Economy:
For the success of any business, economy is a must. It is well- balanced and maintained in Joint Hindu Family Business. The Karta of family spends money with great caution and economy.
6. Credit Facilities:
In Joint Hindu Family Business the credit facilities are more. One reason for this is that liability of the 'Karta 'is unlimited. Karta is having personal relations with others, which are also helpful in raising credit.

4. 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 and the Rules thereunder facilitates the incorporation of cooperative societies whose objects and functions spread over to several states.

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.

FORMATION OF MULTI STATE CO-OPERATIVE SOCIETY

An application in Form -1 (under sub-rule (1) of rule 3 of the Multi State Cooperative Societies Rules, 2002) should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

➢ A certificate from the bank stating credit balance there in favour of the proposed multistate cooperative society.
➢ A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.
➢ Four copies of bye-laws in original.
➢ Proposed area of operation for registration shall initially be permitted for two contagious states only.
➢ List of at least 50 members from each state. The list has to be submitted in the format annexed with the Multi State Cooperative Societies Act, 2002 (MSCS Act, 2002) along with the copies of ID proofs of the members duly attested by Chief promoter.
➢ Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence under the rules before registration and dispatch or hand over registration documents.
➢ Contact number and e-mail address of the Chief Promoter or Society on cover page.

Additional documents for societies having objects related to thrift and credit and for multi-Purpose societies.

➢ No Objection Certificate from the Registrar of Cooperative Societies of the States/U.T. where the area of operation of the society is proposed to be confined.
➢ A certificate to the effect that the credentials of the Chief Promoter/Promoters have been verified by the Registrar of Co-operative Societies of the state where the head office is proposed to be located.
➢ All documents to be submitted in original with the signatures of the Chief Promoter/Promoters on each page.

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CHAPTER 7
Formation and Registration of NGO'S

Non-profit organizations in India may be registered/ incorporated under any of the following

- The Societies Registration Act, 1860
- The Indian Trusts Act, 1882
- Section 8 of the Act, 2013

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.

REGISTRATION OF SOCIETY

A society can be registered by minimum **seven individuals** which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes, as specified in Section 20 of the main Act as under:-

1) Grant of charitable assistance.
2) Creation of military orphan funds.
3) Societies established at the several Presidencies of India.
4) Promotion of **Science, Literature** or **Fine Arts**
5) **Instructions or diffusion of useful knowledge** or **Diffusion of political education.**

A "charitable purpose" is a purpose which has some element of general public benefit.

PROCEDURE FOR REGISTRATION

The following documents are required to be filed with the Registrar:-

1. A letter requesting registration, signed by founding members. This letter will state the purpose of formation of the society and a requisition indicating that the society is registered under the Act. The signature of all members is mandatory.
2. A certified copy of the MoA, signed by the founding members, with a duplicate.
3. A certified copy of the rules and regulations, signed by the founding members, along with a duplicate copy.
4. A table with the names and address and occupation of all members of the society with their signatures.
5. Minutes of the meeting (general body meeting conducted to set the rules and regulations)
6. Declaration by the president of the society.
7. A sworn affidavit from the President or Secretary, declaring the relationship between the subscribers.
8. Address proof of registered office and no-objection certificate from the landlord.

The Registering authority shall satisfy himself/herself about the compliance of the provisions of the Act and correctness of the documents and only thereafter certify in his/her hand that the Society is registered under the main Act or the corresponding Act of the State.

On registration, the society becomes a legal entity or a judicial person apart from its members (Its Rules & Regulations bound its members. A unregistered society cannot claim benefits under the Income tax Act, 1961.

Advantages Of Societies :-

1	The process of formation and registration is simple.
2	Record-keeping requirements are minimum and compliance with regulations is easy.
3	Cost of compliance is low.
4	Least possibility of interference by the regulator.
5	Exemption from tax due to charitable nature of operations.

Disadvantages Of Societies :-

1	Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable.
2	Since such institutions are of charitable nature, it is an inappropriate form of a commercial venture;
3	The concept of equity investment or ownership is virtually absent; Hence, it is not attractive for commercial investors interested in microfinance;
4	Commercial investors regard the investments in such entities as risky mainly on account of their lack of professionalism and managerial practices and political leanings(in some cases) and are, therefore, reluctant to provide large scale funding to such bodies;
5	In accordance with Section 45S of the RBI Act, 1934, no unincorporated bodies are allowed to accept deposits from the public. Organisations registered under the Societies Registration Act and the Trust Act are considered unincorporated bodies. Hence, legally speaking, they are not allowed to collect savings from their clients; and
6	It is vulnerable to the implication under the Money Lenders Acts s (prevention of usurious interest rates) of various State Governments.

Consequences of Registration/ Non-Registration

The registration gives the society a legal status and is essential for:

- obtaining registration and approvals under Income Tax Act;
- lawful vesting of property in the societies;
- provides authenticity and recognition to the society before all authorities and the world at large; and
- for opening bank accounts and transaction of business.

An unregistered society cannot claim benefits under the Income-tax act.

Accounts and Audits

The societies are in possession of funds and properties provided to them by the members or by other persons (by way of donation etc.). The funds and properties are to be applied in furtherance of its objects, for which the society was formed. The members of the governing body are the trustees who apply the funds.

Therefore, it becomes necessary for societies to maintain proper and regular account books and get them audited and present them to the members at the general meeting and file the same with the Registrar of Societies (of the respective State where it is located) for scrutiny.

Litigation

As every society is a legal entity distinct from its members. It is capable of filing suits against any person or any member. Similarly, suits can also be filed against the society.

A registered society can file a suit anywhere in India and in any State although it may not be registered in that particular state.

TRUST

A 'trust' is 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.

The following are the essential elements of a trust

1. The author or the settler of the trust
2. The trustee
3. The beneficiary
4. The trust property or the subject-matter of trust
5. The object of the trust
6. The instrument of trust.

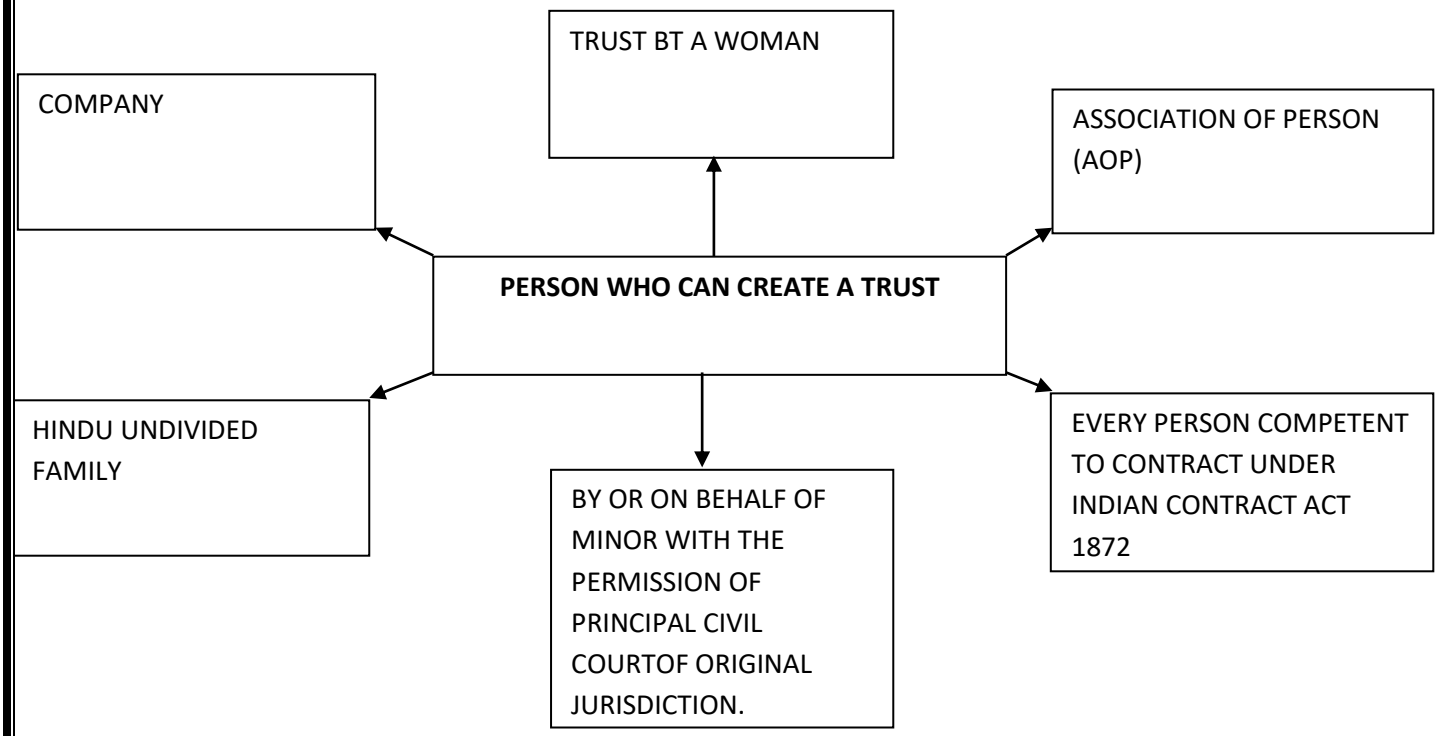
The Act defines the term **'trust'** in Section 3 as

(i) an obligation annexed to the ownership of property and
(ii) arising out of confidence reposed in and
(iii) accepted by the owner or declared and accepted by him,
(iv) for the benefit of another or of another and the owner.

Person Who Can Be The Trustee

As per Section 10, 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.

Person Who Can Create A Trust



Difference between Public Trust and Private Trust

Public Trust	Private Trust
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 the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.
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.
Their domains are different; public trusts have larger and wider domain	private trusts have limited and narrow domain

Exemptions Available to Trust

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.

Tax Exemption for Private Trust

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate.

Doctrine of Cypres (near to it)

Where the object of the charitable trust, specified by the settler, is or subsequently becomes impossible or impracticable or unlawful, the trust will not necessarily fail, but the Court has power to apply the trust to some other charitable object as nearly as possible resembling the intention of the author. This power of the Court is known as "doctrine of cypres". When a particular mode of charity indicated by the author is not capable of being carried out, yet a general intention of charity, is indicated by the author of the trust, the Court would execute it 'cypres' i.e. in a way as nearly as possible to that which testator specified.

SECTION 8 COMPANY

Any Person or Association of Persons (AOP), desirous of incorporating a Company with limited liability and satisfies the condition u/s 8, can obtain a **License u/s 8.**

Basic Conditions for incorporating Sec. 8 Company

a) Has in its objects, the **Promotion** of -

- Commerce
- Art,
- Science
- Sports,
- Charity,
- Education,
- Religion
- Research
- Social Welfare
- Protection of Environment or,
- any such other object,

b) Intends to **apply** its Profits (if any) or other Income in **Promoting its objects** and Intends to **prohibit** the payment of any **dividend** to its members.

RIGHTS OF SEC.8 COMPANY:

a) The words "Limited" or "Private" Limited" need not be added to the name of Sec.8 Company.

b) All the **Privileges** and **obligations** of Limited Companies shall apply for a Sec. 8 Company. **[Sec. 8(2)]**

c) A **firm** may be a Member of such a Company. **[Sec.8(3)]**

RESTRCTIONS:

1. Sec.8 Company can alter the provisions of its MOA or AO A, **only** with the previous approval of the Central Government. (Sec. 8(4)
2. Sec. 8 Company may convert into a Company of another kind, **only after** satisfying specified conditions.
3. Sec. Company shall amalgamate **only** with another sec.8 company having similar objects.

Features of Section 8 Companies

1. It is formed for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2. The profits, if any, are applied in promoting its objects;
3. It prohibits the payment of dividends to its members.
4. The name of the Company can be incorporated without using the word "Limited" or "Private Limited" as the case may be.

5. There is no requirement of any minimum paid up capital.
6. It is exempted from stamp duty registration.
7. Many privileges and exemptions are available to such a company. Section 8 companies have been granted total/partial exemptions from various sections of the Companies Act, 2013 vide Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015.
8. A One Person Company cannot function as a Section 8 Company.

Section 8 company has its independent corporate legal entity, similar to private company, public company or a Limited Liability Partnership and hence enjoys credibility in the eyes of the public

Exemptions Available to Section 8 COMPANIES

(a) Company Secretaries no longer mandatory

Section 8 companies are no longer required to appoint a company secretary to ensure compliance with the provisions of the Companies Act 2013. This exemption will result in cost reduction for the section 8 companies.

(b) No need for minimum share capital

In line with the relaxation announced for private limited companies, section 8 companies too are no longer required to maintain a minimum share capital.

(c) Shorter notice period for AGMs

By amendment to section 101, it is proposed that only 14 days' notice shall be required to convene an annual general meeting of a section 8 company. This is in contrast to the earlier limit of 21 days. Provisions which pertain to sharing of financials and other associated documents before the meetings have also been amended to reflect such new timelines.

(d) No necessity to record minutes of meetings, unless required, etc.

Section 118 which requires recording of minutes of proceedings of general meetings, board meetings and other resolutions including those passed by way of postal ballot, shall now no longer apply to non profit enterprises. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.

(e) Dispatch of financial statements and other documents [Section 136(1)]

Instead of twenty-one days prescribed under the section, Section 8 companies are allowed to dispatch the said documents not less than fourteen days before the date of the meeting.

(f) Only two directors required

Section 149(1) shall no longer apply to section 8 companies; implying that such companies shall not be required to have a minimum number of directors on its board. However quorum for board meetings has been fixed at 2.

(g) Relaxation in formation of certain Committees referred to in Section 178 of the Act

Section 8 companies shall not be required to form the Nomination and Remuneration Committee and the Stakeholders Relationship Committee as provided in Section 178 of the Act, as the section has been exempted from compliance for such companies.

(h) Independent Directors not required

Clauses requiring and governing appointment of independent directors have been waived and section 8 company is not required to appoint independent directors.

(i) Exemption regarding first meeting and board meetings

Further, section 8 companies shall no longer be required to hold the first meeting of the board within 30 days of incorporation of the company. A meeting of the directors shall however still be required once every six months.

(j) Directorship in more than 20 companies

The bar on taking up directorship in more than twenty companies (section 165) has been relaxed in the case of section 8 companies. Therefore an individual, if he is eligible, can be a director in more than 20 section 8 companies.

(k) Meetings of the Board (section 173)

The Board of Directors of a section 8 company may hold at least one meeting within every six calendar months.

PROCEDURE FOR INCORPORATION

The procedure for registration of a Section 8 company is slightly different than incorporation of a private or public company. It involves two steps, namely:

(i) Obtaining of licence under section 8(1) of the Companies Act, 2013; **and**
(ii) Obtaining certificate of incorporation.

STEP 1: Application for reservation of name in **Form RUN**.

Following should be kept in mind: -

- The name of the company should be in consonance with the principal objects of the company as set out in the memorandum of association.
- The proposed name should not fall in the ambit of undesirable names specified in Rule 8 of Companies (Incorporation)Rules, 2014
- Name of Section 8 Company shall include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral trust and the like words. [Rule 8(7) of the Companies (Incorporation) Rules, 2014].
- There is no requirement to add the word Limited or Private Limited to its name

STEP 2: Application for License in **Form INC-12.**

Once name is reserved, an application will be made for obtaining licence Form No. INC12. The application shall be accompanied by the following documents:

(a) The draft memorandum and articles of association of the proposed company **(Form No. INC-13).**

(b) the declaration in **Form No. INC-14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(d) the declaration by each of the persons making the application in **Form No. INC 15.**

STEP 3: Application for incorporation under **SPICe**;

After obtaining the license number, applicant can proceed further to incorporate a company by filing e forms SPICe.

Incorporation application is filed in Form e forms SPICe along with the following attachments:
1. Memorandum of Association;
2. Article of Association;
3. Declaration by professional in Form INC 8;
4. Affidavit by each subscriber of the memorandum in Form INC 9;
5. Address Proof of the subscribers;
6. Identity proof of subscribers; etc.

STEP 4: Certificate of Incorporation

If the Concerned Registrar of Companies is satisfied that all the requirements of the Companies Act, 2013 have been complied with, a Certificate of Incorporation is issued which carries a unique Company Identification Number (CIN).

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CHAPTER 8
Financial Services Organization and Its Registration Process

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, cooperatives, pension funds, mutual funds and other smaller financial entities.

Over the years, Non-Banking Finance Companies (NBFC'S), Housing Finance Companies (HFC's), Asset Reconstruction Companies (ARC's), Micro Finance Institutions(MFI's), and Nidhi Companies have played a dominant role in mobilisation and disbursal of funds.

With the advent of mobile technology and vast strides made by the country in the field of information technology, Payment Banks has emerged as a new model of banks conceptualised by the Reserve Bank of India (RBI).

1 NON BANKING FINANCIAL COMPANY

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.

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

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

TYPES/CATEGORIES OF NBFC'S

a) **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 equipment's, 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.

b) Investment Company (IC): IC means any company which is a financial institution carrying on as its principal business the acquisition of securities.

c) 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.

d) Infrastructure Finance Company (IFC): IFC is a non-banking finance company;
a) which deploys atleast 75 per cent of its total assets in infrastructure loans,
b) has a minimum Net Owned Funds of 300 crore,
c) has a minimum credit rating of 'A 'or equivalent and
d) a CRAR of 15%.

- 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;
- 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;
- it does not carry on any other financial activity referred to in Section 451(c) and 451(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.
- Its asset size is 100 crore or above and It accepts public funds.

e) 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 IDFNBFCs.

f) Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI):

NBFC-MFI is a non-deposit taking NBFC having not less than 85% of its assets in the nature of qualifying assets which satisfy the following criteria:

(i) loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding 1,00,000 or urban and semi-urban household income not exceeding 1,60,000;

(ii) loan amount does not exceed 50,000 in the first cycle and 1,00,000 in subsequent cycles;

(iii) total indebtedness of the borrower does not exceed 1,00,000;

(iv) tenure of the loan not to be less than 24 months for loan amount in excess of 15,000 with prepayment without penalty;

(v) loan to be extended without collateral;

(vi) aggregate amount of loans, given for income generation, is not less than 50 per cent of the total loans given by the MFIs;

(vii) loan is repayable on weekly, fortnightly or monthly installments at the choice of the borrower.

g) 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.

Sale of Receivables at discounting price is called Factoring

&

Buyer of receivables is called Factor

h) 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 fund is 100 crore.

i) 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.

j) Svstemicallv 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:**

- 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.
- 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.**
- 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.
- **It does not carry on any other financial activity** 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.
- Its **asset size is Rs. 100 crore.**
- It **accepts public funds.**

BENEFITS OF INCORPORATING AN NBFC

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. With all the other benefits when rate of interest is also lowered, borrowers found this more easy and affordable. This has also resulted in lower EMI (Equated Monthly Installment) for borrowers. Based on the income, credit scoring and repayment, rate of interest is charged on the borrowers However it is at competitive 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. This makes loan approval easier, smoother process and quicker. Most of the times, people apply for loan when they are in immediate need of money. NBFCs have taken this as an opportunity to meet the demand by quickly processing the loans at competitive rate of interest. At times, borrowers are even ready to compromise on the interest rates if the loan amount is huge and if they could get it approved quickly.

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. In view of less complicated loan processing requirements, borrowers are highly satisfied. Of course, the risk of default is high with NBFC and thus interest rates and other charges will be according priced by the NBFC. Even the loan amount approved will be quite lesser than the collateral value. This is due to the high risk of default. NBFC's do not have statutory reserve ratios and can open branches at will.

4. LOAN AVAILABLE FOR INDIVIDUALS WITH POOR CREDIT RATING

Individuals with poor credit rating generally will not get loans from banks. The reason for this is banks consider borrowers are high-risk individuals if the credit scoring is low. Unless the credit score is above 600 - 650, it is very difficult to get a loan sanctioned 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. Due to these aforementioned advantages, most of the NBFCs are growing.

REGISTRATION PROCESS WITH RESERVE BANK OF INDIA

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 CBIL records

(c) Understanding of NBFC / Finance business

In terms of Section 45-IA of the RBI Act, 1934, a Non-banking Financial company can commence or carry on business of a non-banking financial institution only after

(a) obtaining a certificate of registration from the Reserve Bank of India and

(b) Having a Net Owned Funds of Rs. Two Crore.

2 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.

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.

In terms of Section ***29A*** of the National Housing Bank Act, 1987, No Housing Finance Company shall commence or carry on the business of a housing finance institution without –

- Obtaining a certificate of registration from National Housing Bank issued under Chapter V of the said Act, **and**
- Having the net owned fund of Rs. 10 Crore or such other higher amount, as the National Housing Bank may, by notification, specify.

BENEFITS OF INCORPORATING A HOUSING FINANCE COMPANY

1. The holding period for capital gains tax in case of immovable properties has been reduced from three to two years. Moreover, the Finance Minister has proposed to shift the base year for indexation from 1.4.1981to 1.4.2001 for all classes of assets, including immovable property. This step would allow more realistic calculation of the cost of acquisition of the house while claiming indexation benefits.

2. It is expected that with several associated benefits and the advantage of digital documents, the cost of finance is expected to come down, which may be passed on to the real buyers.

3. In the days to come, supported by growth drivers such as rising disposable income, personal income-tax benefits, increasing urbanisation and economic growth of tier II and tier-II cities, the sector is likely to see immense growth.

3 ASSET RECONSTRUCTION COMPANY

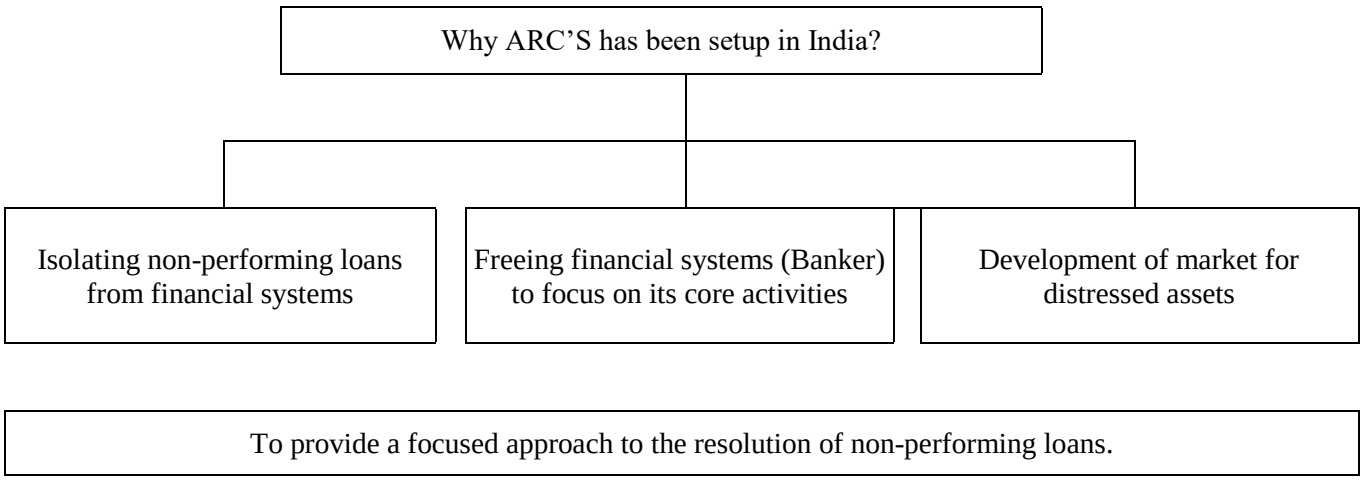
Asset Reconstruction Company" means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both

The main objective of asset reconstruction company (ARC) is to act as agent for any bank or financial institution for the purpose of recovering their dues from the borrowers on payment of fees or charges to act as manager of the borrower's asset taken over by banks, or financial institution and to carry on such ancillary or incidental business with the prior approval of Reserve Bank wherever necessary.

The problem of non-performing loans created due to systematic banking crisis world over has become acute. The buying of impaired assets from banks or financial institutions by ARCs will make their balance sheets cleaner and they will be able to use their time, energy and funds for development of their business.

EXAMPLES

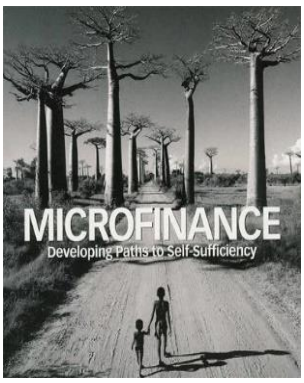
- ARCIL (Asset Reconstruction India Limited) was the first ARC set up in India.
- Reliance Asset Reconstruction Company Limited by Anil Ambani



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 maximise 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.

4 MICRO FINANCE INSTITUTIONS (MFI)



A microfinance 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 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 micro finance 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

1. Microfinance provides financial services to those whose income is small and unstable.
2. Microfinance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self mobilization, by way of saving and sale of assets.
3. The biggest flexibility in the case of microfinance is the lack of any physical collateral, even in case of loan from the bank.

The characteristics of MFI's may be summarised as under:

- The size of the loan given by the MFI is small.
- The repayment period is short.
- MFI can mobilise resources both from internal and external sources.
- No collateral for loan is required.
- The purpose of end use of loan is flexible.
- Loans given are mostly group loans, trickling down to individuals.
- Transaction cost is low, due to group lending.

5 NIDHI COMPANY

INTRODUCTION

The primary object 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.

NIDHI companies are effectively non-banking financial companies and are engaged in the business of accepting deposits and making loans to their members.

The deposit taking activities of NIDHIs are governed by the RBI Act and guidelines made thereunder. The power to give exemptions to the NIDHI companies in the administration of NIDHI i.e. with the Ministry of Company Affairs.

FEATURES OF NIDHI COMPANIES

1.	A Nidhi to be incorporated under the Companies Act, 2013 shall be a public company
2.	Nidhi Company shall not issue preference shares.
3.	If preference shares had been issued by a Nidhi before the commencement of the Companies Act, 2013, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
4.	No Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.
5.	Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

COMPANIES (AMENDMENT) ACT 2017

*****(1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Yet to be notified by Central Government

GENERAL RESTRICTIONS OR PROHIBITIONS

In terms of Rule 6, Nidhi shall not —

• carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by anybody corporate;
• issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
• open any current account with its members;
• acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;
• carry on any business other than the business of borrowing or lending in its own name. Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.
• accept deposits from or lend to any person, other than its members;
• pledge any of the assets lodged by its members as security;
• take deposits from or lend money to any body corporate;
• enter into any partnership arrangement in its borrowing or lending activities;
• pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans.

BENEFITS OF INCORPORATING NIDHI COMPANY

1. A Nidhi mobilises small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy. This is especially useful in case the borrower is in urgent needs of funds.

2. The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.

3. Nidhis offer a higher rate of interest on deposits. This makes it an attractive investment opportunity for people, especially the senior citizens.

4. The Board of Directors of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles. This lends credibility to the institution and instils confidence in the minds of borrowers and depositors.

INCORPORATION OF NIDHI COMPANY

After incorporation as a Nidhi, according to Rule 5 of the Nidhi Rules, 2014, every Nidhi shall within a period of one year from the commencement of these rules, ensure that it has

i. not less than two hundred members;

ii. Net Owned Funds of ten lakh rupees or more;

iii. unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and

iv. ratio of Net Owned Funds to deposits of not more than 1:20.

6 PAYMENT BANKS

Payments 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 Rs. 1 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 penetration level of financial services (+)

Online opening of Accounts = Mobile Application

(+)

Aadhar Card (+)

[KYC Verify]

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;

1. The minimum capital requirement is Rs. 100 crore. For the first five years, the stake of the promoter should remain at least 40%.
2. Foreign share holding will be allowed in these banks as per the rules for FDI in private banks in India.
3. The voting rights will be regulated by the Banking Regulation Act, 1949. The voting right of any shareholder is capped at 10%, which can be raised to 26% by Reserve Bank of India. Any acquisition of more than 5% will require approval of the RBI.
4. The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
5. The bank should be fully networked from the beginning. The banks can acceptutility bills. It cannot form subsidiaries to undertake non-banking activities.
6. Initially, the deposits will be capped at Rs. 100,000 per customer, but it may be raised by the RBI based on the performance of the bank.
7. The bank cannot undertake lending activities. 25% of its branches must be in the unbanked rural area.
8. The banks will be licensed as payments banks under Section 22 of the Banking • Regulation Act, 1949.

CHAPTER 9
Startups and Its Registration

CONCEPT OF STARTUPS

- A startup company (startup or start-up) is an entrepreneurial venture which is typically an emerging, fast-growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, processor a platform.
- A startup is usually a company designed to effectively develop and validate a scalable business model.
- Start-ups may have high rates of failure, but the minority of successes includes companies that have become large and influential.
- Business models for startups are generally found via a "bottom-up" or "top-down" approach. A company may cease to be a startup as it passes various mile stones, such as becoming publicly traded on the stock market in an Initial Public Offering (IPO), or ceasing to exist as an independent entity via a merger or acquisition.
- **Startup India campaign** is based on an action plan aimed at promoting bank financing for start-up ventures to boost entrepreneurship and encourage startups with jobs creation. The campaign was first announced by Prime Minister Narendra Modi in his 15 August 2015 address from the Red Fort.

STARTUP INDIA POLICY

- Start-ups policies;
- Government initiatives
- Exemptions for Start-ups
- Tax benefits
- Cooling period for start ups

To bring uniformity in the identified enterprises, an entity shall be considered as a 'startup'-

(a) Up to five years from the date of its incorporation/registration,

(b) If its turnover (as per companies act 2013) for any of the financial years has not exceeded Rupees 25 crore, and

(c) It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;

Special note:

1. The words “entity” means a private limited company as defined in the Companies Act, 2013, or a registered partnership firm registered under section 59 of the Partnership Act, 1932 or a limited liability partnership under the Limited Liability Partnership Act, 2002.
2. Any such entity formed by splitting up or reconstruction of a business already inexistence shall not be considered a 'startup'.
3. Further, in order to obtain tax benefits a startup so identified under the above definition shall be required to obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification.

An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize:

a) a new product or service or process, or

b) a significantly improved existing product or service or process, that will create or add value for customers or workflow.

Process of Recognition of Startup

The process of recognition as a 'startup' shall be through mobile app/portal of the Department of Industrial Policy and Promotion.

Startups will be required to submit a simple application with any of following documents:

(a) a recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, from any Incubator established in a post- graduate college in India; or

(b) a letter of support by any incubator which is funded (in relation to the project) from Government of India or any State Government as part of any specified scheme to promote innovation; or

(c) a recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, from any Incubator recognized by Government of India; or

(d) a letter of funding of not less than 20 per cent in equity by any Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with Securities and Exchange Board of India that endorses innovative nature of the business, or

(e) a letter of funding by Government of India or any State Government as part of any specified scheme to promote innovation; or

(f) a patent filed and published in the Journal by the Indian Patent Office in areas affiliated with the nature of business being promoted.

Department of Industrial Policy and Promotion may, until such mobile app/portal is launched, make alternative arrangement of recognizing a 'startup'.

Once such application with relevant document is uploaded, a real-time recognition number will be issued to the startup. If on subsequent verification, such recognition is found to be obtained without uploading the document or uploading any other document or a forged document, the concerned applicant shall be liable to a fine which shall be fifty per cent of paid up capital of the startup but shall not be less than Rupees 25,000.

BENEFITS FOR START- UPS

- Single Window Clearance even with the help of a mobile application
- 10,000 crore fund of funds
- reduction in patent registration fee
- Modified and more friendly Bankruptcy Code to ensure 90-day exit window
- Freedom from mystifying inspections for 3 years
- Freedom from Capital Gain Tax for 3 years
- Freedom from tax in profits for 3 years
- Self-certification compliance
- Starting with 5 lakh schools to target 10 lakh children for innovation programme
- new schemes to provide IPR protection to start-ups and new firms
- Encourage entrepreneurship.
- Stand India across the world as a start-up hub.

EXEMPTIONS FOR STARTUPS

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. R&D facilities

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

5. 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).

6. 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.

7. 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.

8. Easy exit

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

9. Benefits or Exemptions to Start-ups under Companies Act, 2013.

1. By Notification dated June 13, 2017 an explanation has been inserted in **Section 2(40)** of the Companies Act, 2013 i.e. **Financial Statement which provides the definition of a "Start up" or "start-up company."**

2. The **Companies (Acceptance of Deposit) Rules, 2014** have been amended to provide that an **amount of twenty-five lakh rupees or more received by a start-up company,** by way of a convertible note in a single tranche, from a person shall not be treated as a deposit.

3. The provisions of **clauses (a) to (e) of Section 73 of the Act shall not apply to a start-up company** for five years from the date of its incorporation.

4. Start-ups are **allowed to issue Employee Stock Options** to promoters working as employees.

Employee stock option → To promoters

5. The limits with regard to **sweat equity** that can be issued by a start-up company **has been increased** from **25% of paid up capital to 50% of paid up capital.**

6. The **annual return** of a start-up company may be **signed by the company secretary, or** where there is no company secretary, **by the director of the company.**

7. For start-ups, **convening at least one meeting of the board of directors in each half of a calendar year** with the **gap between the two meetings of not less than Ninety (90)** days is sufficient to meet the requirement of Section 173 (5) of the Act.

NOTE: The startup company can be registered likewise any other company and the procedure for Incorporation of Company shall be followed to Incorporate Startups also.

REGISTRATION STEPS FOR START-UPS

1. **Choose the right legal structure for your startup:**

   Choosing an appropriate legal structure is one of the most crucial decisions for any startup. The decision should be taken based on individual circumstances and a host of factors such as nature/sector of business operation, business trajectory, regulatory and tax considerations, costs of formation and ongoing administration, external capital requirement and type of funding sought, of legal liability protection required, number of stakeholders, balance required between ownership and management, proposed mechanism for profit sharing or distribution amongst stakeholders, etc. Preferred entity structures for startups in India are limited liability partnership and private limited company.

2. **Registrations and business licenses:**

   Post incorporation of a business entity in India, some necessary registrations are required and mandated by law. Some examples are Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN), VAT registration, service tax registration, et al.

   Business licenses are permits issued by government authority that allow startups to start/continue to operate a particular business within its territorial jurisdiction lawfully. The nature of business activity determines most license requirements.

3. **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. Splitting founder equity equally by default without a through discussion on expectations and contribution generally leads to tension and unhappiness amongst founding teams as the startup matures.

4. **Third Party Agreements:**

   Prior to entering into a third-party agreement and while negotiating the terms, 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. Clauses related to breach, termination and dispute resolution should be well negotiated and captured in all third-party agreements.

5. **Intellectual Property Protection:**

   Intellectual Property Rights are a very important asset class for a startup. Developing and protecting intellectual property with proper registration can help startups gain competitive advantage. It is essential to obtain trademark registration for the business name/trade name under the Trademarks Act. Registration of a company or business in India does not by itself give protection against others who might commence using identical or similar marks.

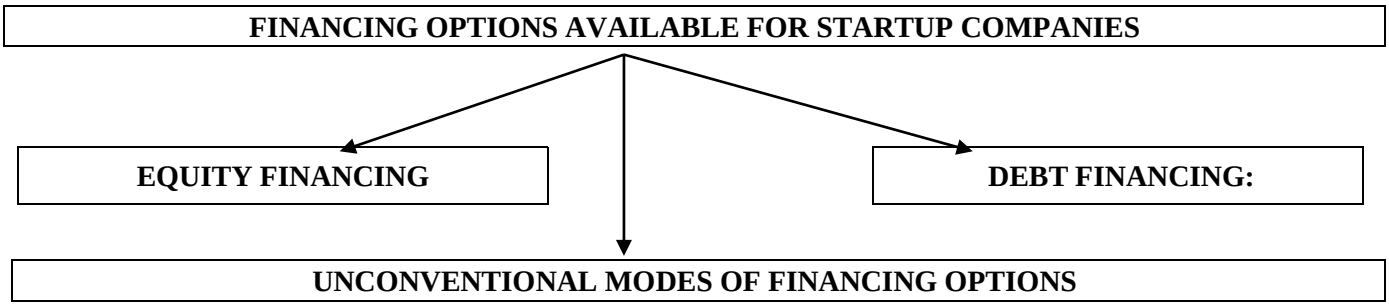
6. **Compliance management:**

   Compliance and its importance is often overlooked by many startups. There are multiple laws applicable to specific entity structures under which separate event based and annual compliance is mandated. 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. Investment structuring:

One of the most challenging and time consuming aspects of operating a startup is to raise capital for working capital requirement and growth. In India, Investors (HNIs/Angels/Funds) invest in early and growth stage companies in different structures and on varied terms. It is imperative for startups to seek proper legal advice while negotiating the deal terms for investment and the rights of the investors.

FINANCING OPTIONS AVAILABLE FOR STARTUP COMPANIES



SEED CAPITAL

Startup business needs the nurturing of finance to explore and grow. The funding done at the nascent (early) 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 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.

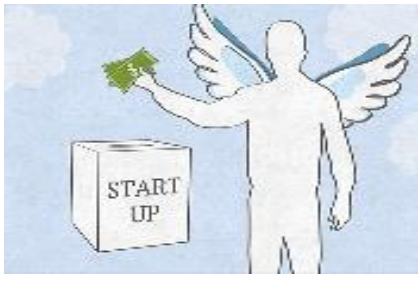
EQUITY FINANCING

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. The investor and startup will normally enter into a non-binding offer based on the preliminary valuation of the startup usually followed with a financial, legal and technical due diligence on the startup as required by the investors.

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. Under the SEBI (Alternative Investment Funds) Regulations, 2012 which was subsequently amended in 2013, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

a) An investee company has to be within 3 years of its incorporation, not listed on the floor of a stock exchange, and should have a turnover of less than INR 250 million and not be promoted by or related to an industrial group (with group turnover exceeding INR 3 billion).

b) The deal size is required to be between INR 5 million and INR 50 million. Separately, it is required that an investment shall be held for a period of at least 3 years.

SERIES FUNDING

After Seed Funding Round or Angel 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 looks 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 taken generally taken into consideration and it is wise to evaluate where you 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. The deal process has two parts, pre-term sheet and post-term sheet. Underestimating the time required inevitably leads to desperation and will often need to alter your funding strategy to include diverting attention to raise a bridge round to sustain the business.

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 fundraise will make it easier for you to get potential meetings with investors. Reach out to your extended network and request them to reach out to their connections. These second degree network have powerful and favourable outcomes. Spreading word about your business through your network or through PR/marketing initiatives is always helpful.

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. This may not be easy but is if you manage to orchestrate well, you may be able to negotiate from a high bargaining power that generally leads to better valuation and deal terms. Nothing accelerates the process and you landing up a term sheet from one VC — you are likely to get few more.

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". The strongest line of defence and the most accepted rationale for negotiating such terms is that they are not standard market practice.

DEBT FINANCING

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. More importantly, unlike a VC or angels, which have an equity stake, banks do not seek ownership in your venture. However, there are several drawbacks of such funding option. Not only do you pay interest on loan but it also has to be done on time irrespective of how your business is faring. They require

substantial collateral and a good track record, besides the fulfillment of other terms and conditions and a lot of documentation as follows:

a) Application for loan sanction by borrowers;

b) Issue of sanction letter by the Bank;

c) Agreement of Loan;

d) Security/collateral documentation, such as Deed of Mortgage, Deed of Hypothecation, Deed of guarantee etc.

EXTERNAL COMMERCIAL BORROWINGS:

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.

CGTMSE LOANS:

CGTMSE
Credit Guarantee Trust for Micro & Small Enterprises

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.

UNCONVENTIONAL MODES OF FINANCING OPTIONS

UNCONVENTIONAL MODES OF FINANCING OPTIONS

CROWD FUNDING	**INCUBATORS**
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 venture by showcasing his idea before a large group of people and trying to convince people of its utility and success. SEBI in 2014, even rolled out a 'Consultation Paper on Crowd funding in India' proposing a framework in the form of Crowd funding to allow startups and SMEs to raise early stage capital in relatively small sums from a broad investor base.	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 funding through angel investors or VCs. These are usually government-supported institutes like the IIMs or IITs, technical institutes or private business incubators run by industry veterans or companies. The incubation period can be 2-3 years and admission is rigorous. Some of the top options in India include IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT-Kanpur, SIIC and the Sriram College of Commerce fSRCCL

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. It was launched by Prime Minister Narendra Modi on 8 April 2015.

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

Shishu: Allowed loans un to Rs.50.000 (US$780)

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

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

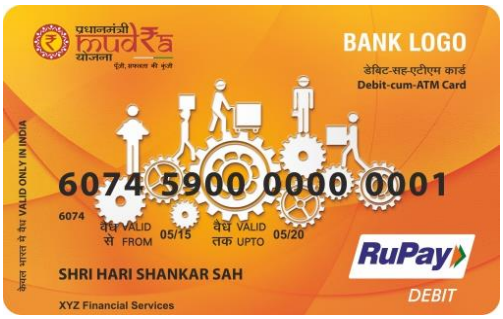
ELIGIBLE BORROWER FROM MUDRA BANK ARE:

- 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.

MUDRA CARD

After the loan has been sanctioned under MUDRA Yojana, the candidate will get a MUDRA Card, a card like the credit card which the candidate can use to buy business raw material, etc. Mudra Card will have a limit of 10% of the business loan (subject to Rs. 10,000 maximum).



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CHAPTER 10
Joint Ventures Collaborations and Special Purpose Vehicles

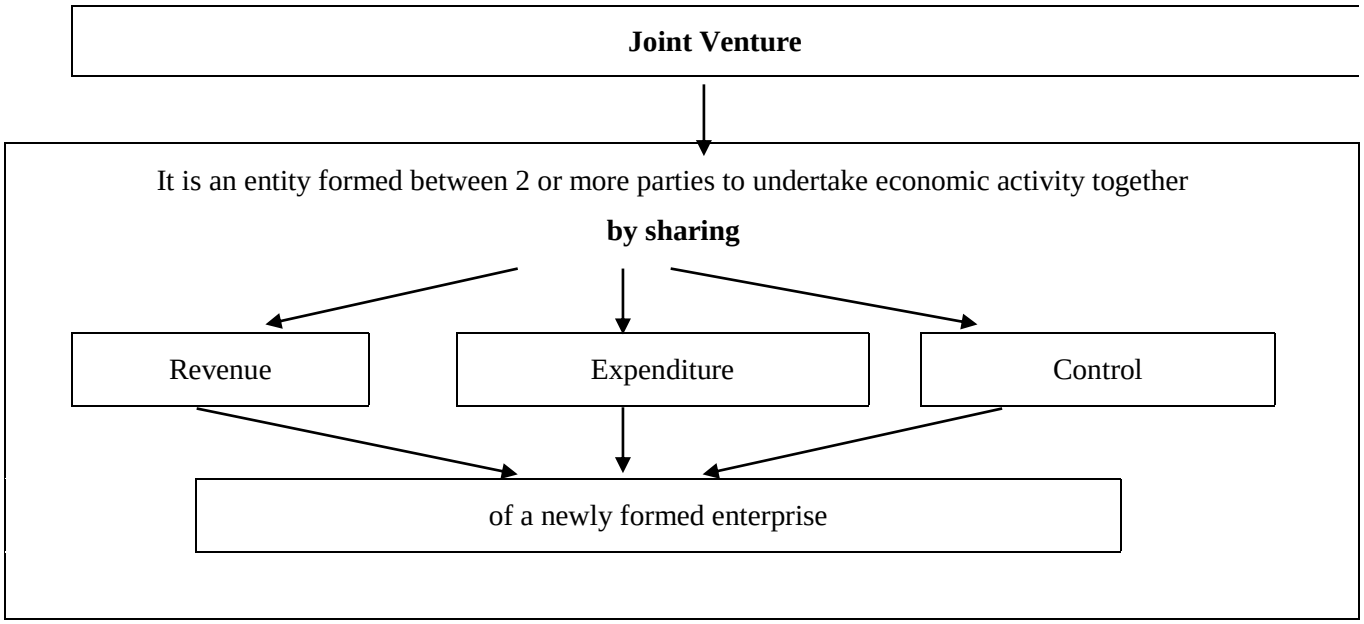
JOINT VENTURE

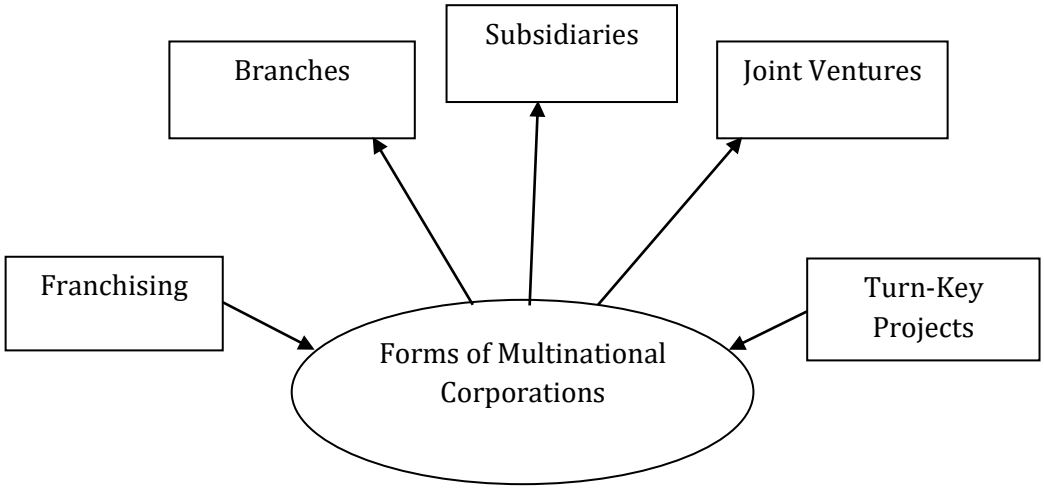
A simply dictionary meaning of the word 'Joint Venture' is a commercial enterprise undertaken jointly by two or more parties which otherwise retain their distinct identities.

DEFINITION

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.

Alternatively, we can define a joint venture is an association of two or more individuals or business entities who combine and pool their respective expertise, financial resources, skills, experience, and knowledge in the furtherance of a particular project or undertaking.





Examples of Joint Venture Companies in India

- ICICI PRUDENTIAL
- HERO HONDA (NOW ITS OVER)
- UNINOR (NOW ITS OVER)
- BIRLA SUN LIFE INSAURANCE

Various advantages of forming Joint Venture are as follows:

- **Risk Sharing:** Risk sharing is one of the biggest advantage of forming a Joint Venture, particularly, in those industries where the cost of product development and likelihood of failure of any particular product is very high.
- **Economies of Scale:** Another advantage of forming JV is for the industries which have high fixed costs, a JV with a larger company can provide the economies of scale necessary to compete locally or globally and can be an effective way by which two companies can pool resources and achieve critical mass.
- **Market Access:** For companies that lack a basic understanding of customers and the relationship/ infrastructure to distribute their products to customers, forming a JV with the right partner can provide instant access to established, efficient and effective distribution channels and receptive customer bases. This is important to a company because creating new distribution channels and identifying new customer bases can be extremely difficult, time consuming and expensive activities.
- **Exploring the Global Market:** Formation of JV can be advantageous to those companies, which are foreseeing an attractive business opportunity in a foreign market. Partnering with foreign company would provide an ease to that Company for penetrating a foreign market, which can otherwise be difficult both because of a lack of experience in such market and local barriers to foreign-owned or foreign-controlled companies.
- **Cost Efficiency:** For a small-scale company/ entity, sometimes it is difficult to set up the infrastructure and the machinery required product development. In the moment of need, joint venture is the perfect solution. For example, if a company has a plan for the perfect product, however, due to financial shortage there is not enough machinery or resources available. At such a time, if another company, which is equipped, lends a hand in the form of joint venture, by way of resource sharing and cost sharing it becomes easier to produce.
- **Flexible nature:** The joint venture enterprises provide flexibility; each participant has the freedom to continue with their individual businesses. The joint venture participants can only interfere within the participated project. Thus, during the term of the contract participants can freely resume their business as long as they fulfil the needs mentioned in the agreement. This is one of the advantage of joint ventures.

Disadvantages of forming Joint Venture are as follows:

- **Lack of equal involvement:** An equal involvement from all the Joint Venture partners may not be possible. It is extremely unlikely for all the companies working together to share the same involvement and responsibilities.
- **Cultural Differences:** Different cultures and management styles may result in poor cooperation and integration. People with different beliefs, tastes, and preferences can get in the way big time if left unchecked.
- **Extensive Research and planning required:** Joint venture can result in a frustrating experience and ltimately a failure if it lacks adequate planning and research.
- **Lack of clear communication:** joint venture involves different companies from different horizons with different goals, there is often a severe lack of communication between partners.
- **Unreliable partners:** Because of the separate nature of a joint venture, it is possible that the partners do not devote 100% of their attention to the project and become unreliable.

STRATEGIES OF JOINT VENTURE

- **Identification of prospective Joint Venture Partner(s):** The prospective partner should be strong in terms of business, technology and resources. One partner must be able to compliment the other partner specially in those areas where it lacks.

  For Example - One entity's strength is economies of scale and another entity's strength is strong marketing and their brand value. Both the entities if formed into JV can compliment each other and they can have a larger market for their products.

- **Equal Contribution:** Joint Venture Partners must make sure that all the partners have equal contribution in the Joint Venture entity in terms of skills, intellectual resources, marketing resources, capital, and so on. Unbalanced or unequal contributions are never healthy for the success of a Joint Venture entity.

- **Written Agreement:** The agreement between two or more parties always be written and must clearly define all the terms, relates to rights and responsibilities of each partner. The language of the agreement must be simple and there should be no ambiguity, also there should be no clashing of interest.

- **Limiting the scope of Joint Venture:** It is essential that limits and scope of the venture should be defined in the beginning itself. At a later stage, once the trust amongst the partners is developed, the scope of Joint Venture can be increased with the mutual consent of all the partners.

- **Flexibility**

  The partners in JV should try to be flexible and favour partners who demonstrate the same level of flexibility.

- **Establishment of Exit Routes:** JV Partners much establish clear protocols in the beginning itself for amending or unwinding the relation if it fails to meet the expectations or in case there arises any dispute.

FORMATION OF JOINT VENTURES

Joint Ventures can be formed via two modes

1. Equity Joint Venture
2. Contractual Joint Venture

EQUITY 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:

(a) There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity

(b) Shared Ownership by the parties involved

(c) Shared management of the jointly owned entity

(d) Shared responsibilities regarding capital investment and other financing arrangements.

(e) Shared profits and losses according to the Agreement.

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. They can be signed once the joint venture company is established. An example of a contractual joint venture is a franchisee relationship.

The kev 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 or materials.
- Both parties exercise some a 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.

RESTRICTIONS UNDER FDI POLICY OF 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. Citizen or entity of Pakistan can invest only after approval of Government of India. They cannot invest in defence, space, atomic energy and sectors prohibited for foreign investment.
2. Citizen or entity of Bangladesh can invest only after approval of Government of India. However, there are no barred areas as in the case of entities from Pakistan.
3. 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.
4. A Foreign Institutional Investor (FII) can invest only under the Portfolio Investment Scheme which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit for FII investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap / statutory ceiling, as applicable, by the Indian Company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to Reserve Bank of India. The aggregate FII investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.
5. 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 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, subject to FDI Policy and other regulations.

EVERY EQUITY BASED JOINT VENTURE CAN BE IN FOLLOWING WAYS:

1. **Company** — A limited liability company is the most preferred structure for joint venture entities in India. Government also encourages investment being in the form of equity capital of a company incorporated in India.
2. **Limited Liability Partnership (LLP) Firm-** LLP Firm structure is regulated in India by The Limited Liability Partnership Act, 2008.
3. **Trusts -** A foreign company is not allowed to use Trust as a form of a joint venture entity in India. Investment Vehicle - SEBI has introduced regulations for some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds. Such funds are now permitted to receive foreign investment from a person resident outside India.
4. **Other Entities** - Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based joint venture entities.

STAGES AND DOCUMENTS FOR JOINT VENTURES

Finalization of a joint venture goes through many stages and at each stage, the documentation is different.

1. MOU at Familiarization Stage

The first may be called the Familiarisation Stage when the two partners generally attempt to know each other. Generally speaking, Indian companies wish to have a Memorandum of Understanding (MOU) to define the relationship at the initial stage.

2. Contractual Joint Venture at Engagement Phase

The second may be called the engagement phase when there is a level of commitment but still it is not very firm or long-term. During the engagement phase, a Contractual Joint Venture may be envisaged. The parties are putting in relatively higher amount of resources at this stage. Finance, it is customary to have **well-drafted legally binding contracts.**

3. JV Agreement (Shareholders Agreement or LLPA) at Familiarization Stage

The final stage is when broad understanding has been reached on the terms of the Joint Venture.

At the concluding stage, the parties have developed higher confidence in each other. So, an equity- based joint venture is considered.

Hence, the Joint Venture Agreement or Shareholders' Agreement or LLP Partnership Deed must be prepared carefully to avoid any confusion.

It is hence, **advisable to devote time and attention to the Articles or LLPA,** as the case may be and not depend on the shelf draft, especially in case of a joint venture company where one of the partners is a foreign national or company.

Essential Features of a Shareholders' Agreement (SHA) /Joint Venture Agreement / LLP Partnership Agreement (PA)

Some of the key issues which must be kept in mind while drafting the SHA/PA are summarised below:

- The business of the new company/LLP
- Manner and extent to which resources (financial, manpower, technology, etc) will be brought in.
- Provisions relating to allotment and transfer of shares
- Constitution of the Board of Directors/ Designated Partners.
- Manner in which decision making will take place (majority vote or consensus?)
- Decision regarding the Chairman and Managing Director of the entity; their rights, duties and responsibilities.
- Persons responsible for managing finances, marketing, production, etc.
- Dividend distribution policy
- Term of office of the nominated directors, the manner of their appointment and changes among them.
- valuation of the company at the time of separation
- Dispute resolution mechanism.

ESSENTIAL COMPONENTS OF 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) Confidentiality and Non-Disclosure Agreement

(vi) Non- compete clause.

(vii) Indemnification

SPECIAL PURPOSE VEHICLE (SPV)

A special Purpose Vehicle (SPV) or Special Purpose Entities (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

(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.

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.

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.

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CHAPTER 11
Setting up of Business outside India

INTRODUCTION

The policy on Indian investments overseas was first liberalised in 1992. Under this policy, an Automatic Route for overseas investments was introduced and cash remittances were allowed for the first time with restrictions on the total value.

The introduction of FEMA (Foreign Exchange Management Act) in the year 2000 changed the entire perspective on foreign exchange particularly those relating to investment abroad. This new change brought in more of management of Foreign Exchange and not "Regulation" unlike the earlier Act.

This Act made sweeping changes in relaxing the norms for most of the policies including the overseas investments. It aimed to facilitate external trade and payments as well as to promote an orderly development and maintenance of foreign exchange market in India.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

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

- Automatic Route and
- Approval Route

ELIGIBILITY (ENTITIES ARE REFERRED TO AS "INDIAN PARTY")

- Company incorporated in India or a body created under an Act of Parliament
- Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008
- Partnership firm registered under the Indian Partnership Act, 1932
- Any other entity in India as may be notified by the Reserve Bank

PROHIBITIONS

a) Indian Parties are prohibited from making investment (or financial commitment) in a foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the Reserve Bank.

b) An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.

AUTOMATIC ROUTE

DIRECT INVESTMENT OUTSIDE INDIA IN J/V / WHOLLY OWNED SUBSIDIARY

With effect from July 03, 2014, any financial commitment (FC) upto USD 1 (one) billion shall only come under the automatic approval. The eligible limit of investment under the automatic route is 400% of the networth of the Indian Party as per the last audited balance sheet.

It has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

AUTOMATIC ROUTE	**An Indian party has been permitted to make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS)subject to following conditions**	**(a)** The total financial commitment of the Indian party should not exceed 400 per cent of the net worth of the Indian party (corporates) as on the date of the last audited balance sheet. **(b)** The Indian Party is required to report such acquisition in form ODI to the AD Bank for report to the Reserve Bank within a period of 30 days from the date of the transaction **(c)** The direct investment is made in overseas JV/WOS engaged in bonafide business activity. **(d)** The Indian party is not on RBI's caution list or under investigation of enforcement directorate. **(e)** The automatic route facility is not available for investment in Pakistan. **(f)** For every joint venture and wholly owned subsidiary **RBI** allots the **unique identification number.**

GENERAL PERMISSION IN CERTAIN CASES	Residents are permitted to acquire a foreign security, if it represents: —
Qualification shares	Qualification shares for becoming a director of a company outside India provided it does not exceed 1 per cent of the paid up capital of the overseas company. If Qualification Shares Are Beyond This Limit RBI Approval Required.
Rights shares	Rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force; Investment Beyond Entitlement RBI Approval Required.
Investment by resident individual in foreign shares	2 lack US dollar per calendar year up to this limit RBI approval not required.
Investment in equity of company registered overseas	Listed Indian co., mutual fund and individuals can invest in equity shares, rated bonds/ fixed income securities of companies listed in foreign stock exchange. Investment of Indian listed co. shall not exceed 50% of its net worth as per last audited balance sheet. All mutual funds can invest up to extent of us $ 5 billion.

INVESTMENT ABROAD BY CERTAIN FIRMS IN INDIA

An Indian firm registered under Indian partnership act 1932 and engaged in providing specified professional services can make investment in foreign concerns engaged in similar activities by way of remittance from India or capitalisation fee or other entitlements due to it from such foreign concern. However such investment should not exceed us $ 1 million or its equivalent in one financial year and also such Indian firm should be a member of respective all India professional organisation. In this regard investing firm is require to submit with RBI a report within 30 days of making such investment

OVERSEAS INVESTMENT BY REGISTERED TRUST / SOCIETY

Registered Trusts and Societies engaged in manufacturing / educational sector are allowed to make investment in the same sector(s) in a Joint Venture or Wholly owned Subsidiary outside India, with the prior approval of the Reserve Bank. Trusts / Societies satisfying the eligibility criteria as given below may submit the application/s in Form ODI — Part I, through their Authorised Dealer.

Eligibility Criteria for Trust	• The Trust should be registered under the Indian Trust Act, 1882; • The Trust deed permits the proposed investment overseas; • The proposed investment should be approved by the trustee/s; • Authorized Dealer Bank is satisfied that the Trust is KYC (Know Your Customer) complaint and is engaged in a bonafide activity; • The Trust has been in existence at least for a period of three years; • The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.
Eligibility Criteria for Society	• The Society should be registered under the Societies Registration Act, 1860. • The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee. • The AD Category — I bank is satisfied that the Society is KYC (Know Your Customer) complaint and is engaged in a bonafide activity; • The Society has been in existence at least for a period of three years; • The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc. In addition to the registration, the activities which require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be, the Authorised Dealer Bank should ensure that such special licence / permission has been obtained by the applicant, sale of securities so acquired.

PLEDGE OF A FOREIGN SECURITY BY A PERSON RESIDENT IN INDIA

The shares acquired by persons resident in India in accordance with the provisions of Foreign Exchange Management Act, 1999 or Rules or Regulations made thereunder are allowed to be pledged for obtaining credit facilities in India from an AD Bank / Public Financial Institution.

METHOD OF FUNDING

1. Investment (or financial commitment) in an overseas JV / WOS may be funded out of one or more of the following sources:

- drawal of foreign exchange from an AD bank in India; capitalisation of exports;
- swap of shares (valuation as mentioned in para B. 1 (e) above;
- proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds(FCCBs);
- in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993,and the guidelines issued thereunder from time to time by the Government of India;
- balances held in EEFC account of the Indian Party and
- Proceeds of foreign currency funds raised through ADR / GDR issues.

2. General permission has been granted to persons resident in India for purchase/ acquisition of securities in the following manner:

(i) out of funds held in RFC account;

(ii) as bonus shares on existing holding of foreign currency shares; and

(iii) when not permanently resident in India, out of their foreign currency resources outside India

INVESTMENTS NOT UNDER AUTOMATIC ROUTE AND THAT REQUIRE APPROVAL OF THE RESERVE BANK

- Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad. For this purpose, application together with necessary documents should be submitted in Form ODI through their Authorised Dealer Category - I banks.
- The designated AD before forwarding the proposal should submit the Form ODI in the on line application under approval route and the transaction number generated by the application should be mentioned in the letter.
- In case the proposal is approved, the AD bank should effect the remittance under advice to Reserve Bank so that the UIN (Unique Identification Number) is allotted.

Some proposals which require prior approval of Reserve Bank of India are:

- ✓ Overseas Investments in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet;
- ✓ Investments in Overseas Unincorporated entities in the oil sector by resident corporates exceeding the prescribed limit of their net worth as on the date of the last audited balance sheet, provided the proposal has been approved by the competent authority and is duly supported by a certified copy of the Board Resolution approving such investment.

  However, Navaratna Public Sector Undertakings, ONGC Videsh Ltd and Oil India Ltd are allowed to invest in overseas unincorporated / incorporated entities in oil sector (i.e. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits, under the automatic route;

- ✓ Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;
- ✓ Investments by Registered Trusts / Societies (satisfying certain eligibility criteria) engaged in the manufacturing / educational / hospital sector in the same sector in a JV / WOS outside India;
- ✓ Corporate guarantee by the Indian Party to second and subsequent level of Step Down Subsidiary (SDS);
- ✓ All other forms of guarantee which is offered by the Indian Party to its first and subsequent level of SDS;
- ✓ Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables in the books of listed/ unlisted Indian Company satisfying certain eligibility criteria mentioned under Regulation 16A of notification bid;
- ✓ Capitalization of export proceeds remaining unrealized beyond the prescribed period of realization will require the prior approval of the Reserve Bank; and
- ✓ Proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route based on the business requirement of the Indian Party and legal requirement of the host country in which JV/WOS is located.

Reserve Bank would, inter alia, take into account the following factors while considering such applications:

a) ***Prima facie*** viability of the JV / WOS outside India
b) Contribution to external trade and other benefits which will accrue to India through such investment(or financial commitment);
c) Financial position and business track record of the Indian Party and the foreign entity; and
d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV /WOS outside India.

ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

Geographical Location of the business

- Infrastructure
- Access (transportation of goods, materials and personnel)
- Relevance to supply-chain : raw material sourcing, processing, despatch of finished produce)

Economic aspects

- Ease of doing business
- Cost of doing business
- Laws relating to taxation

Political Aspects

- Friendly country
- Their relations with nearing countries and neighbor's and your country

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.

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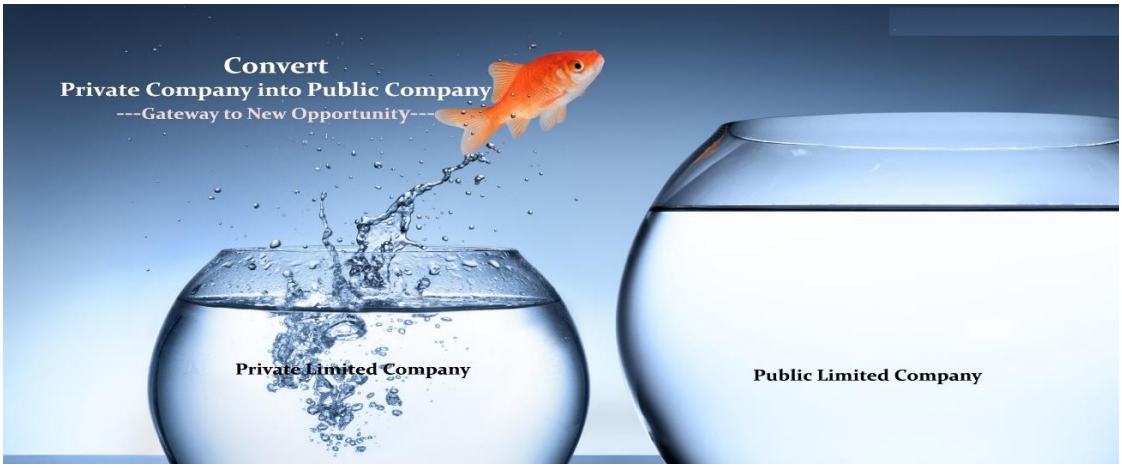
CHAPTER 12
PROCEDURE OF CONVERSION OF BUSINESS ENTITIES

- **CONVERSION OF COMPANIES**
- **CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY**
- **CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY**
- **CONVERSION OF ONE PERSON COMPANY INTO A PUBLIC COMPANY OR A PRIVATE COMPANY**
- **CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY**

PROCEDURE FOR CONVERSION OF PRIVATE LIMITED COMPANY INTO PUBLIC LIMITED COMPANY



1. Convene a **Board meeting**:

✓ For approving proposal for conversion of the company into a public company.

✓ For fixing time, date and venue for holding Extra-Ordinary general meeting of the company for passing the required special resolution.

✓ For approving notice for the Extra-Ordinary general meeting along with the explanatory statement as required.

✓ For authorising the company secretary or any other competent officer to issue notice of the general meeting on behalf of the Board.

2. Issue Notice of the **Extra-Ordinary General Meeting (EOGM)** to all Members, Directors and the Auditors of the company.

3. Hold the **Extra-Ordinary General Meeting** and pass the following **Special Resolutions;**

✓ Special resolutions for alteration of Article for conversion,

✓ Special resolutions for Alteration of Memorandum (name clause)

4. Copy of **Special Resolutions** along with explanatory statements to be filed **within thirty days** with the Registrar in **Form MGT - 14** and copy of altered Memorandum and articles shall be attached therewith.

5. Make **an application in E-form INC 27 to ROC** for conversion of private company in to public company.

6. Obtain from the Registrar of Companies, **fresh Certificate of Incorporation** consequent upon conversion of a private company into public company;

CONVERSION OF A PUBLIC LIMITED COMPANY INTO A PRIVATE LIMITED WITH THE APPROVAL OF THE CENTRAL GOVERNMENT

Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.]

Every alteration of the articles under this section and a copy of the order of the ****Central Government*** approving the alteration shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

**Companies (Amendment) Ordinance, 2018 dated 02.11.2018*

PROCEDURE FOR CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY

Sec 14 read with rule 67 of NCLT rules 2016 and rule 33 of companies incorporation rules 2014:

A public company having a share capital and membership within the limits imposed upon private companies may become a private company by following the procedure given below: -

(1) First Step: Holding of Board Meeting

1. Convene and hold a Board Meeting for the following purposes: -

✓ To consider and approve the proposal of converting the public company into a private company;

✓ To decide day, date, time and venue of the general meeting where special resolution is proposed to be passed;

✓ To approve the notice of general meeting to be issued; and

✓ To authorize the Company Secretary/ Director to issue the notice of general meeting.

2. Issue the notice of general meeting to all the members, auditors and directors.

3. Hold the general meeting and pass the following special resolutions

- ✓ **Special resolutions for alteration of Article for conversion**
- ✓ **Special resolutions for Alteration of Memorandum (name clause)**

4. Copy of Special Resolutions along with explanatory statements to be filed **within thirty days** with the Registrar in **Form MGT - 14** and copy of altered Memorandum and articles shall be attached therewith.

(2) Second Step: Preparation of Petition

A petition under the second provision to sub-section (1) of section 14 of the Act for the conversion of a public company into a private company, shall, not less than **three months** from the date of passing of **special resolution,** be filed to the Tribunal in **Form No. NCLT-1**

Particulars of Petition in NCLT-1

As per Rule 68(2) of National Company Law Tribunal Rules, 2016 every petition filed under NCLT-1 shall set out the following particulars:

(i) The date of the Board meeting at which the proposal for alteration of Articles was approved;

(ii) The date of the general meeting at which the proposed alteration was approved;

(iii) State at which the registered office of the company was situated;

(iv) Number of members in the company, number of members attended the meeting and number of members of voted for and against;

(v) Reason for conversion into a private company, effect of such conversion on shareholders, creditors, debenture holders and other related parties.

(vi) Listed or unlisted public company;

(vii) The nature of the company, that is, a company limited by shares, a company limited by guarantee (having share capital or not having share capital) and unlimited company.

(3) Third Step: Preparation of Documents to be filed with Petition in NCLT-1

Details of Creditors & Debenture Holders

There shall be attached to the application (NCLT-1)

- ❖ List of creditors and
- ❖ List of debenture holders

List of Creditors and debentures holders should not be older than 2 month from the date of filing of application with Tribunal.

The petitioner company shall file an affidavit, signed by the company secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of, or claims against, the company to their knowledge.

A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(4) Fourth Step: Publication and Service of application

The company shall at least fourteen days before the date of hearing; -

(a) advertise the petition in accordance with rule 35; (NCLT 3A)

(b) Serve, by registered post with acknowledgement due, individual notice in **Form NCLT. No.** 3B to the effect set out in sub-rule (a) on each debenture-holder and creditor of the company; and

(c) Serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any other Act.

Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing.

(5) Fifth Step: Hearing by CG

While passing an order, the CG may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow' the conversion with reasons to be recorded in writing.

(6) Sixth Step: Filing of Form with ROC

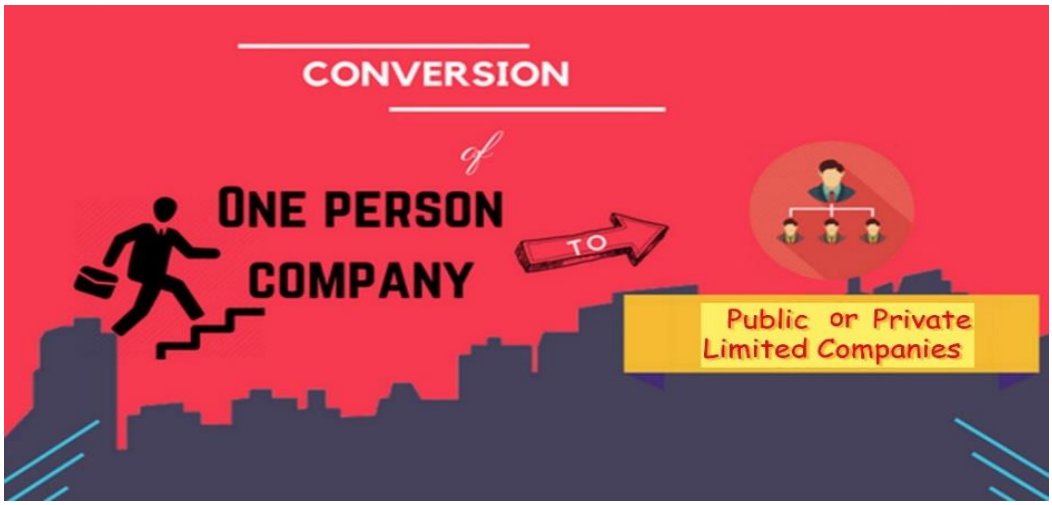
A copy of order of the CG approving the alteration, shall be filed with the Registrar in **Form No.INC-27.**

The change will be incorporated in the memorandum and articles of association of the company. The change in name will also be noted in all bills, letter heads, and common seal (if any).

(7) Seventh Step: New Certificate of Incorporation from ROC

On being satisfied that all the information and documents are submitted and all requirements under the Act are complied with, ROC shall issue a new certificate of incorporation of the Company.

RULE: 6 ONE PERSON COMPANY TO CONVERT ITSELF INTO A PUBLIC COMPANY OR A PRIVATE COMPANY IN CERTAIN CASES.



CONVERSION OF OPC INTO PUBLIC OR PRIVATE COMPANY

COMPULSORY CONVERSION	VOUNTARY CONVERSION
if : (a) Paid up share Capital of an OPC exceeds 50 lakhs; or b) Average Annual Turnover of an OPC during the immediately preceding 3 consecutive financial years [exceeds 2 Crores.] **THEN OPC SHALL** Within 6 months of above situation/event, such OPC shall be required to convert itself into- a) A Private Company with minimum of 2 Members and 2 Directors, or b) A public company with minimum of 7 members and 3 directors. OPC within 60 days shall give notice to ROC in Form INC 5, that it has ceased to be a OPC and is now required to convert itself into Private or Public Company.	**Voluntary Conversion of OPC** (without Paid up Capital or Turnover Condition) into Private or Public Company is possible only after expiry of the 2 years from the date of incorporation of OPC **In case of voluntary conversion of One Person Company to Private company or Public Company, the procedure shall be same but requirement for filing Form INC - 5 shall not be applicable.**

a) On compliance with the above, ROC shall close the former registration as OPC and register the documents submitted as issue a fresh certificate of Incorporation, in the same manner as fresh registration.

b) Conversion shall not affect existing debts, liabilities and obligations of the company.

PROCEDURE

WHERE ONE PERSON COMPANY HAS ONLY ONE DIRECTOR

1. Following resolutions shall be signed and dated by the director;

a. Take note about exceeding the threshold limits if applicable.

b. Authorising giving Notice to the Registrar in Form INC - 5

c. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:

- Alteration of Article for conversion,
- Alteration of Memorandum (name clause)
- Alteration of Memorandum (Capital clause), to increase capital if required
- Alteration of Memorandum to amend the reference of the name of one person and its **nominee**

WHERE ONE PERSON COMPANY HAS MORE THAN ONE DIRECTOR.

1. CONVENE A BOARD MEETING TO

A. Take note about exceeding the threshold limits if applicable.

B. Pass board resolution for giving Notice to the Registrar in Form INC — 5

C. Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:

- Alteration of Article for conversion,
- Alteration of Memorandum (name clause)
- Alteration of Memorandum (Capital clause), to increase capital if required
- Alteration of Memorandum to amend the reference of the name of one person and its nominee

2. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of the one person company into a private company or public company

3. Copy of Special Resolutions along with explanatory statements to be filed within thirty days with the Registrar in Form MGT — 14 and copy of altered Memorandum and articles shall be attached therewith.

4. Arrange for a new Common Seal (if required) and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals (if any) in safe custody under lock and key. (now common seal is optional)

5. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.

RULE 7 CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY

APPLICABILITY

A) A Private Company (other than a Company registered u/s 8 for Charitable Objects, etc.)

B) Paid Up Share Capital of 50 Lakhs or less **AND**

C) Average annual Turnover during the immediately preceding 3 consecutive FY's is 2 Crores or less.

PROCEDURE

a) **No Objection** in writing from Members and creditors.

b) Passing of **Special Resolution** in a General Meeting.

c) Filling a copy of the Special Resolution with ROC in **Form No. MGT.14** within 30 days of its passing

d) File an **application** to ROC in **form no. INC. 6,** for its conversion into OPC.

DOCUMENTS ALONG WITH FORM NO. INC.6

a) Affidavit Declaration by the Directors confirming that (i) all members and creditors of the company have given their consent for conversion, (ii) the paid up share capital of the company is 50 lakhs or less or average annual turnover is 2 crores or less,

b) List of members and list of Creditors

c) Latest audited balance sheet and profit and loss account, and

d) Copy of no. objection letter of secured creditors

e) Altered MOA/AOA.

CERTIFICATE

On being satisfied and complied with above requirements the ROC shall issue the fresh certificate of incorporation.

RULE 7A

7A. Penalty. - If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues.

CONVERSION OF LLP INTO COMPANY

Several businesses started in India as Limited Liability Partnership (LLP), may now wish to convert into a private limited company for more growth in business or for infusing equity capital. An LLP can be converted into a Pvt. Ltd. company as per the provisions contained in Section 366 of the Companies Act, 2013 and Company (Authorised to Registered) Rules, 2014.

PROCEDURE

Approval of Name

(a) Hold a meeting of the partners to take assent of majority of its members summoned for the purpose of registering the LLP under Section 366 of the Companies Act, 2013.

(b) To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the LLP as a Company.

(c) LLP Have to apply for availability of the Name in 'RUN'. One of the major advantages is that the business can be run under the same name as that of the LLP except that in addition to the name of the LLP the words 'limited' or 'private limited' has to be added.

(d) The name once accepted by the authority will be valid for 20 days.

Filing form no. URC – 1

After getting the approval of name from Registrar of Companies, the applicant must prepare & file the form No URC-1 in addition to the following documents;-

- List of the members with various details viz. names, address, shares held by them appropriately, etc.
- List of the first directors of the private company with various details viz. names, address, the DIN, passport number with an expiry date, etc.
- An affidavit from every person proposed as first directors, that he is not banned to be a director under section-164 and all the necessary documents filed with the registrar for the registration of firm must contain information which is complete and correct & true to be best of his belief and knowledge.
- A list including the names & addresses of partners of LLP and a copy of LLP agreement & certificate of registration duly verified by two designated partners of LLP must be enclosed.

- A statement indicating the following specifications;
  - the nominal share capital of firm & the number of shares into which it is separated
  - the number of shares taken & the amount paid for every share
  - the name of the firm, with the addition of word Limited or private limited is required.
  - A written consent or No objection certificate from all creditors.
  - Copy of newspaper advertisement, statement of accounts of the company which must not be 6 days preceding the date of the application and it must be duly certified by the auditor.

Memorandum of Association and Article of Association

Memorandum of Association (MoA) & Articles of Association (AoA) is to be formulated and then filed with RoC after getting the name approval and sanction of form no. URC-1 – from the registrar.

E-form INC-32 (SPICE)

Company required to file e-form INC-32 **(SPICE)** along with URC-1 as linked form with all the attachment as required in normal Incorporation of Company like:

(i) MOA & AOA

(ii) INC-9

(iii) INC8

(iv) DIR-2 etc.

CONVERSION OF COMPANY INTO LLP

Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act. Form 18 needs to be filed with the registrar along with Form 2 for such conversion.

1. Board Meeting

- Call meeting of board of Director.
- Pass Resolution for Conversion of Company into LLP.
- Pass Resolution to authorize any director to Apply for Name of LLP.

2. Application for Name Availability

- File e-form 'RUN LLP' with ROC.
- Attachments: Board Resolution Board resolution passed by the Company approving the conversion into LLP shall be attached with the aforesaid form

3. Obtain name Approval Certificate from ROC

4. Drafting of limited liability partnership agreement:

Contents of Agreement are:

- ❖ Name of LLP
- ❖ Name of Partners & Designated Partners
- ❖ Form of contribution
- ❖ Profit Sharing ratio
- ❖ Rights & Duties of Partners
- ❖ Proposed Business
- ❖ Rules for governing the LLP

It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to field in e-form 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the conversion into LLP.

5. Filling of Incorporation Documents: File E-Form- 2 with ROC along with following **ATTACHMENTS:**

- Proof of Address of Registered office of LLP.
- Subscription sheet signed by the promoters. (Notice of Consent & Appointment of Designated Partners with their personal details).
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner

6. Filling of application for conversion:

File E-FORM- 18 with ROC along with following **Attachments**:

- Statement of shareholders.
- Incorporation Documents & Subscribers Statements in Form 2 filed electronically.
- Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor.
- List of all the Secured creditors along with their consent to the conversion.
- Approval of the governing council (In case of professional private limited companies)
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return.
- Approval from any other body/authority as may be required.
- Particulars of pending proceedings from any court/Tribunal etc.

After all formalities and filings been complied with by the applicants and approved by the Ministry, REGISTRAR TO ISSUE A CERTIFICATE OF REGISTRATION in form no. 19 as to conversion of the LLP.

The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

7. Filling of E-Form-3:

This form provides information in respect to the LLP Agreement entered into between the partners.
ATTACHMENT: LLP Agreement.

CONVERSION OF SECTION 8 COMPANY INTO ANY OTHER KIND

Section 8(4)(ii) of the Companies Act, 2013 provides that a company registered under Section 8 may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

Section 8 company cannot be converted to One Person Company.

Rule 21 of Companies Incorporation Rule 2014;

Conditions for conversion of a company registered under section 8 into a company of any other kind: -

(1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

(2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-

(a) the date of incorporation of the company;

(b) the principal objects of the company as set out in the memorandum of association;

(c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8company;

(d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;

(e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.

(f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(3) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in **Form No.MGT.14** along with the fee

(4) The company shall file an application in **Form No.INC.18** with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in sub-rule (2) of rule 22.

(5) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

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EXECUTIVE PROGRAMME
Module 1
Paper 3

Setting up of Business Entities and Closure

Part B: Registration: Licenses & Compliances (35 Marks)		
Chapter No.	Particulars	Page No.
13.	Various Initial Registration and Licenses	1-39
14.	Maintenance of Registers and Records	40-44
15.	Identifying laws applicable to various Industries and their initial compliances	45-65
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17.	Compliances under Labour Laws (Provisions applicable for Setting up of Business)	75-104
18.	Compliances relating to Environmental laws (Provisions applicable for Setting up of Business)	105-109

CHAPTER 13
VARIOUS INITIAL REGISTRATION AND LICENSES

PART-A REGISTRATION WITH RBI, IRDA AND TELECOME AUTHORITIES

RBI

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act that is engaged in the business of loans and advances, receiving deposits (some NBFC's only), acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business.

Therefore, NBFCs lend and take deposits similar to banks; however there are a few differences;

- ✓ NBFC cannot accept demand deposits,
- ✓ NBFCs cannot issue cheques drawn on itself
- ✓ NBFC depositors are not covered by the Deposit Insurance and Credit Guarantee Corporation.

TYPES OF NBFC LICCENCES

Before applying for NBFC License, the type and category of NBFC license must first be determined. The following are the categories of NBFC Companies:

Asset Finance Company(AFC): An Asset Finance Company is a company which is a financial institution carrying on as its principal business the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment's, moving on own power and general purpose industrial machines.

Investment Company: An Investment Company is any company which is a financial institution carrying on as its principal business the acquisition of securities (shares / stocks / bonds / other financial securities).

Loan Company: Loan Company is 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.

Infrastructure Finance Company: Infrastructure Finance Company is a non-banking finance company that deploys at least 75 per cent of its total assets in infrastructure loans, has a minimum Net Owned Funds of Rs. 300 crore, maintains a minimum credit rating of 'A 'or equivalent with a Capital to Risk Assets Ratio of 15%.

Systemically Important Core Investment Company: Systemically Important Core Investment Company is an NBFC with an asset size of over Rs.100 crores and accepts deposits, involved in the business of acquisition of shares and securities which satisfies certain conditions.

Infrastructure Debt Fund: Infrastructure Debt Fund is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. Infrastructure Debt Funds raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity.

Non-Banking Financial Company – Micro Finance Institution: Micro Finance Institution is a non-deposit taking NBFC that is engaged in micro finance activities.

NBFC Factor: NBFC Factor is a non-deposit taking NBFC engaged in the principal business of factoring.

REQUIREMENT OF NBFC LICENSE WITH RBI

The Reserve Bank of India regulates and supervises Non-Banking Financial Companies which are into the principal business of lending or acquisition of shares, stocks, bonds, etc., or financial leasing or hire purchase or accepting deposits.

Principal business of financial activity 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 percent of the gross income. A company which fulfills both these criteria must have NBFC license. This test for NBFC license is popularly known as the 50-50 test.

FINANCIAL COMPANIES EXEMPT NBFC LICENSE

- **Housing Finance Companies** - Regulated by the National Housing Bank;
- **Insurance Companies** - Regulated by Insurance Regulatory and Development Authority of India(IRDA);
- **Stock Broking** - Regulated by SEBI
- **Merchant Banking Companies** - Regulated by SEBI
- **Venture Capital Companies** - Regulated by SEBI
- **Companies that run Collective Investment Schemes** - Regulated by SEBI
- **Mutual Funds** - Regulated by SEBI
- **Nidhi Companies** - Regulated by the Ministry of Corporate Affairs (MCA);
- **Chit Fund Companies** - Regulated by the respective State Governments.

REQUIREMENT FOR OBTAINING NBFC LICENSE

- A Company Registered in India Private Limited Company or Limited Company
- The company must have minimum Net Owned Fund of Rs.200 lakhs.

CALCULATING NET OWNED FUNDS AS PER RBI DEFINITION

ADD:

1. paid up equity capital,
2. free reserves,
3. balance in share premium account and
4. capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets

LESS:

1. Accumulated loss
2. Book value of intangible assets

Further, investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above will be deducted to arrive at the Net Owned Fund.

APPLYING FOR NBFC LICENSE

The application for NBFC License must be submitted online and offline with the necessary documents to the Regional Office of the Reserve Bank of India.

The following are the documents that need to be submitted for NBFC License:

- Information about the management
- Certified copies of Certificate of Incorporation and Certificate of Commencement of Business in case of public limited companies.
- Certified copies of up-to-date Memorandum and Articles of Association of the company. Details of clauses in the memorandum relating to financial business.
- Copy of PAN/CIN allotted to the company.
- Directors' profile separately filled up and signed by each director.
- Certificate from the respective NBFC/s where the Directors have gained NBFC experience.
- CIBIL Data pertaining to Directors of the company
- Financial Statements of the last 2 years of Unincorporated Bodies, if any, in the group where the directors may be holding directorship with/without substantial interest.
- Board Resolution specifically approving the submission of the application and its contents and authorizing signatory.
- Board Resolution to the effect that the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India in writing.
- Board resolution stating that the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/commence the same before getting registration from RBI.
- Certified copy of Board resolution for formulation of "Fair Practices Code".
- Statutory Auditors Certificate certifying that the company is/does not accept/is not holding Public Deposit.
- Statutory Auditors Certificate certifying that the company is not carrying on any NBFC activity.
- Statutory Auditors Certificate certifying net owned fund as on date of the application.
- Details of Authorized Share Capital and latest shareholding pattern of the company
- Copy of Fixed Deposit receipt & bankers certificate of no lien indicating balances in support of Net Owned Funds.
- Details of the bank balances/bank accounts/complete postal address of the branch/bank, loan/credit facilities etc. availed.
- Last three years Audited balance sheet and Profit & Loss account along with directors & auditors report
- Business plan of the company for the next three years giving details of its (a) thrust of business, (b)market segment and (c) projected balance sheets, cash flow statement, asset/income pattern statement without any element of public deposits.
- Source of the startup capital of the company substantiated with documentary evidence.
- Self attested Bank Statement/IT returns etc.

BANKING

Licensing of Banking Companies is governed by Banking Regulation Act, 1949. Section 22 of the Act details on Licensing of Banking Companies.

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.

Before granting any license under this section, the Reserve Bank may require to be satisfied 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.

CANCELATION OF LICENSE

The Reserve Bank may cancel a license granted to a banking company under this section:

- if the company ceases to carry on banking business in India; or
- if the company at any time fails to comply with any of the conditions of registration

APPEALS

Any banking company aggrieved by the decision of the Reserve Bank cancelling a license under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

The decision of the Central Government where an appeal has been preferred to it under subsection (5) or of the Reserve Bank where no such appeal has been preferred shall be final.

IRDA

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 is 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.

FUNCTIONS AND DUTIES OF IRDA

Section 14 of the IRDA Act, 1999 lays down the duties, powers and functions of IRDA.

- Registering and regulating insurance companies
- Protecting policyholders' interests
- Licensing and establishing norms for insurance intermediaries
- Promoting professional organisations in insurance
- Regulating and overseeing premium rates and terms of non-life insurance covers
- Specifying financial reporting norms of insurance companies
- Regulating investment of policyholders' funds by insurance companies
- Ensuring the maintenance of solvency margin by insurance companies
- Ensuring insurance coverage in rural areas and of vulnerable sections of society

VARIOUS LICENSES BY IRDA

1) Granting of license to companies to start insurance business.
2) Approval of insurance product.
3) Appointment of different insurance intermediary.
4] Investing the insurance premium.
5) Accounting & audit.
6) Miscellaneous important provisions of Insurance Act.

PROCEDURE OF GRANTING OF LICENSE TO COMPANIES TO START INSURANCE BUSINESS

No person can carry on Insurance business unless & until he has obtained a certificate from the Authority for a particular class of Insurance business.

But a life Insurance business cannot be combined with other type of Insurance business. Those who are already in Insurance Business like General Insurance Corporation, National Insurance, New India Assurance, Oriental Insurance and United India Insurance have to obtain afresh certificate within 3 months from the date of commencement of this Act or before such date as fixed by the Govt.

To get the registration certificate the following procedure is to be followed:

Every application in the prescribed form **(IRDA/R1)** for registration shall be made with the following enclosures:

1) A certified copy of Memorandum and Articles of association, if the applicant is a company.
2) The name, address & the occupation of the directors of the company.
3) A statement of the class of insurance business proposed to be carried on.
4) A statement indicating the sources that will contribute the share capital.

On receiving the above documents IRDA will verify the contents and may ask for additional information if any. The Authority may ask the Principal Officer to appear to their office for any information or clarification.

If the Authority is satisfied with the information and documents provide with the application form (IRDA/R1), the Authority may ask for an additional application in the prescribed form **(IRDA/R2)** which should be accompanied with then following documents;

1) Every Insurance shall deposit in cash or in approved securities or partially in cash or partially in approved securities as per details given below

- In case of Life Insurance business, a sum equivalent to 1% of his total gross premium written in India in any financial year commencing after the 31st day of March 2000 not exceeding rupees ten crores (Rs.10 crores).
- In the case of General Insurance business a sum equivalent to 3% of his total gross premium written in India in any financial year commencing after 31/3/ 2000 not exceeding rupees ten crores (Rs.10 crores).
- In case of reinsurance business, a sum of rupees twenty crores (Rs. 20 crores).
- If the business is to be done in marine Insurance only & relates exclusively to country craft or its cargo or both the amount to be deposited Rs. 1,00,000/- (Rs. l lakh) only.
- A certificate from the Reserve Bank of India showing the amount deposited.

2) A declaration verified by an affidavit from the "Principal Officer" that the equity capital of the company has been complied with. The paid up equity excluding preliminary expenses and registration charges should be Rs.100 crores for life or General Insurance business and Rs.200 crores for the Reinsurance business.

3) A certified copy of the published prospects and of the standard policy forms of the insurer.

4) Statement of assured rate, advantages, terms & conditions to be offered in connection with Insurance policies.

5) In the case of the business the certificate from the actuary that such rates are workable & sound.

6) In the case of marine accident & miscellaneous Insurance business other than workmen's compensation &motor car Insurance the available forms, prospects and statements to be submitted.

7) The receipt of deposit of Rs. 50,000/- for each class of business.

8) If there is any foreign partner, a certified copy of Memorandum of understanding between Indian promoter and foreign promoter including details of support comfort letters exchanged between the parties.

9) Any other document as desired by the Authority after scrutiny the application.

If on the receipt of an application for registration and the authority is satisfied that the financial condition & the general character of management of the applicant are sound and the interest of the general public will be served if the certificate of registration is granted to the applicant then the certificate of registration is granted.

IRDAI (REGISTRATION OF INDIAN INSURANCE COMPANIES) (SEVENTH AMENDMENT) REGULATIONS 2016

The Registration Amendment Regulations have introduced a number of key changes to the existing IRDA

1) An applicant whose IRDAI/R1 has been rejected by the IRDAI will now be able appeal to the Securities Appellate Tribunal.

2) A requisition for registration application may now be made for the Life insurance business; General insurance business; Health insurance business (exclusively); or Reinsurance business.

3) An applicant whose requisition has been accepted may make an application in Form IRDAI/R2 for grant of certificate of registration. In cases where the foreign direct investment in the applicant entity is more than 26%, the Form IRDAI/R2 is required to be accompanied by, inter alia, a certified copy of the approval given by the Foreign Investment Promotion Board (FIPB) in accordance with the Indian Insurance Companies (Foreign Investment) Rules 2015.

4) Every Insurer being an Indian insurance company and who has already been granted certificate of registration for carrying on insurance business in India must ensure compliance with norms pertaining to "Indian owned and controlled" as specified in 2(7A) of the Insurance Act 1938, within such period as may be specified by the IRDAI.

5) New formats for Form IRDAI/R1 and IRDAI/R2 have now been introduced.

REFUSAL OF REGISTRATION

- If the Authority refuses the registration the reason of such decision will be intimated to the applicant.
- The Applicant whose application has been rejected can file an appeal before the Central Government within 30 days from the date on which a copy of the decision is received.
- The decision of the Government shall be final and shall not be questioned before any court.

SUSPENSION OF REGISTRATION

The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed or any action that may be taken, for such period as may be specified by the Authority, in the following cases:

- Conducts its business in a manner prejudicial to the interests of the policy-holders;
- Fails to furnish any information as required by the Authority relating to its insurance business;
- Does not submit periodical returns as required under the Act or by the Authority;
- Does not co-operate in any inquiry conducted by the Authority;
- Indulges in manipulating the insurance business;
- Fails to make investment in the infrastructure or social sector as specified under the Insurance Act.

CANCELLATION OF CERTIFICATE OF REGISTRATION

The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed or any action that may be taken, for such period as may be specified by the Authority, in the following cases:

- If the insurer fails to comply with the provisions relating to deposits; or
- If the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities; or
- If the insurer is in liquidation or is adjudged an insolvent: or
- If the business or a class of the business of the insurer has been transferred to any person or has-been transferred to or amalgamated with the business of any other insurer; or
- If the whole of the deposit made in respect of the insurance business has been returned to the insurer;
- If, in the case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of six months, or
- If the Central Government of India so directs.

In addition to the above, the Authority has the discretion to cancel the registration of an insurer

- If the insurer makes default in complying with, or acts in contravention of , any requirement of the Insurance Act or of any rule or any regulation or order made or, any direction issued thereunder, or
- If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or
- If the insurer carries on any business other than insurance business or any prescribed business, or
- If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the IRDA Act, 1999.
- If the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, or the LIC Act, or the GIC Act or the Foreign Exchange Management Act, 2000.

The order of cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer. Thereafter, the insurer would be prohibited from entering into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall continue as if the cancellation had not taken place.

REVIVAL OF REGISTRATION

The Authority has discretion, where the registration of an insurer has been cancelled, to revive the registration, if the insurer within six months from the date on which the cancellation took effect:

- Makes the deposits, or
- Complies with the provisions as to the excess of the value of his assets over the amount of his liabilities, or
- Has his standing contract restored, or
- Has the application accepted, or
- Satisfies the Authority that no claim upon him remains unpaid, or
- Has complied with any requirements of the Insurance Act or the IRDA Act, or any rule or regulation, or any order made thereunder or any direction issued under these Acts, or
- That he has ceased to carry on any business other than insurance business or any prescribed business.

TELECOM

In India, the telecom market and business thereunder are governed and regulated by the Telecom Regulatory Authority of India (TRAI), which is a statutory body set up for regulating the Telecom and Broadcasting Sectors.

TRAIs mission is to create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

TRAI SCOPE AND FUNCTIONS

1. TRAI can recommend conditions for entry of new telecom service providers as well as terms and conditions of license and ensure compliance of the terms and conditions of the license.
2. TRAI can lay down the standards of quality of service and ensure compliance, specify the tariff policy and make recommendations regarding terms and conditions on which Addressable Systems of TV shall be provided to customers and parameters for regulating maximum time for advertisements in pay as well as other TV channels.
3. TRAI's scope of work also includes issues relating to telecom and cable tariff policy, commercial and technical aspects of interconnection, free choice and equal ease of access for the public to different telecom services, resolution of conflicts that may arise due to market developments and diverse network structures for various telecom services.
4. TRAI also facilitates development of forums for interaction amongst service providers and interaction of the Authority with consumer organizations to further the consumer interest.

OSP REGISTRATION IN INDIA

1. As per the New Telecom Policy (NTP) 1999, service providers in India involved in providing services like;

   tele-banking,

   tele-medicine,

   tele-education,

   tele-trading,

   e-commerce,

   call center,

   network operation center and

   other IT Enabled Services, using telecom resources are termed as "Other Service Providers" (OSP).
2. These Other Service Providers or OSP's are required to obtain an OSP Registration from the Department of Telecommunication (DOT). Here we are looking at the process and procedure for obtaining OSP Registration in India.

OVERVIEW

- ✓ As per the Terms and Conditions formulated by the Telecom Commission in February 2000, OSP's can take telecom resources from authorized Telecom Service Providers only and should not provide switched telephony.
- ✓ Further, the Department of Telecommunication must register OSPs using telecom resources for providing an array of services like call center, tele-banking and other IT enabled services.
- ✓ Therefore, the Department of Telecommunication (DOT) now registers OSPs in India and has registered over 2500 cases since inception.

OSP REGISTRATION APPLICABILITY

- ✓ Service providers in India involved in providing services like tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are required to obtain OSP Registration.
- ✓ Telecom Resources are telecom facilities used by an OSP including, but not limited to Public Switched Telecom Network, Public Land Mobile Network, Integrated Services Digital Network (ISDN) and /or the telecom bandwidth provided by authorized telecom service provider.

OSP REGISTRATION REQUIREMENT

- ✓ To obtain an OSP Registration in India, it is mandatory for the entity to be a Private Limited Company.
- ✓ Therefore, Entrepreneurs having plans for starting a call center or BPO or e- commerce or other IT Enabled Services must incorporate a Private Limited Company.
- ✓ The following are the documents necessary for OSP Registration in addition to the application in the prescribed format:

- Certificate of Incorporation of Private Limited Company
- Memorandum of Association (MO A) and Articles of Association (AO A)
- Board of Resolution or Power of Attorney authorizing the authorized signatory
- Name of Business and Activities Proposed
- List of Directors
- Present Shareholding

The above documents must be certified with seal by a **COMPANY SECRETARY** or **Director** of the Company or **Statutory Auditor** or **Public Notary**.

OSP REGISTRATION COMPLIANCE

- ✓ Once an OSP Registration is approved, the license is valid for a period of 20 years unless otherwise expressly mentioned.
- ✓ To maintain compliance, each of the OSPs are required to submit an "Annual Return" to the DOT mentioning the activities undertaken and the present status of the OSP.
- ✓ The annual return for OSP License renewal must be submitted with 6 months of completion of financial year.
- ✓ In addition to the above, OSPs must maintain compliance with the Terms and Conditions prescribed by the Department of Telecommunication for OSPs.

I & B [INFORMATION AND BROADCASTING]

- ✧ The mass communication media such as radio, television, films, press and print publications, advertising and traditional modes of communication plays an important role in helping people to access free flow of information.
- ✧ In India the mass communication media emphasizes on facilitating entertainment needs of various age groups and focus attention of people on issues of national integrity, environmental protection, health care, family welfare, eradication of illiteracy etc.

1. The Ministry of Information and Broadcasting (Ministry of I&B) is a branch of the Government of India which is apex body for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.

2. The Ministry is responsible for the administration of Prasar Bharati - the broadcasting arm of the Indian Government. The Central Board of Film Certification is the other important functionary under this ministry being responsible for the regulation of motion pictures broadcast in India.

MANDATE OF 1 & B

The mandate of the Ministry of Information & Broadcasting are:

- ✧ News Services through All India Radio (AIR) and Doordarshan (DD) for the people.
- ✧ Development of broadcasting and television.
- ✧ Import and export of films.
- ✧ Development and promotion of film industry.
- ✧ Organisation of film festivals and cultural exchanges for the purpose.
- ✧ Directorate of Advertising and visual publicity DA VP.
- ✧ Handling of press relations to present the policies of Government of India and to get feedback on the Government policies.
- ✧ Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.
- ✧ Dissemination of information about India within and outside the country through publications on matters of national importance.
- ✧ Research, Reference and Training to assist the media units of the Ministry to meet their responsibilities.
- ✧ Use of interpersonal communication and traditional folk art forms for information/ publicity campaigns on public interest issues.
- ✧ International co-operation in the field of information & mass media.

REGULATORY REGIME OF I & B

1) The Criminal Law Amendment Act, 1961 - Penal Provisions for publishing wrong Map of India
2) Penal Provision for Publishing Wrong Map of India
3) Press Council Act, 1978
4) Registration of Newspapers (Central) Rules 1956
5) Press & Registration of Books Act 1867
6) The Parliamentary Proceedings (Protection of Publication) Act, 1977

PART-B REGISTRATION UNDER TAXATION LAWS

VARIOUS REGISTRATION REQUIRED FOR BUSINESS ARE AS FOLLOWS:

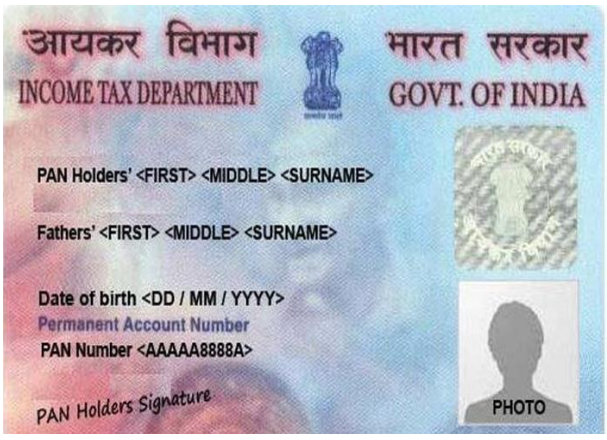
PERMANENT ACCOUNT NUMBER (PAN)

1. A permanent account number (in short called as PAN) is a vital document for any taxpayer. It is a 10-character alphanumeric number consisting of letter and digits. PAN card requirements are detailed in the Income Tax Act of 1961.
2. This number is unique to each cardholder and helps identify the income tax payer. It is required for individuals, partnerships and companies. It also serves as an identity proof from a large number of purposes.
3. Any corporate body doing business in India requires a PAN card whether it is registered in India or abroad. Equally, an individual or entity which is engaged in a business with an Indian firm/entity requires a PAN card.

LIST OF THE PERSONS THAT ARE REQUIRED TO HOLD A PAN CARD IN INDIA

- Body Corporate
- Companies
- Firms other than LLP
- One Person Company
- LLP Firm
- Sole proprietorship
- Trusts
- Corporations
- Limited Liability companies
- Private firms
- Other Associations
- Foreign Institutional Investors
- Hedge funds

SIGNIFICANCE OF PAN FOR SETTING UP OF BUSINESS



- ☆ It was made mandatory by the Government of India under the Income Tax Act, 1961.
- ☆ The Act was subsequently amended and Section 206AA, as inserted in 2009 by the Finance Act, now mandates all foreign parties that provide or generate payment to a counterpart in India to provide their PAN.
- ☆ This includes not only individuals but also incorporations, companies, limited companies and any other form of entity.
- ☆ In the absence of the PAN, the Government will charge withholding tax which can be at the rate of more than 30% of the total invoiced payment.
- ☆ It serves as a reference number of its holder for the Income Tax Department to track the financial transactions carried out by it.
- ☆ Even if one is not required to pay income tax, it is mandatory for him to hold a PAN if he is earning money.

APPLICATION AND REGISTRATION OF PAN

- ⌘ Earlier, to apply for a PAN, an individual had to fill up physical forms specified by the income tax department (i.e., form 49A for resident individual) and provide supporting documents as proof of identity, address and date of birth.
- ⌘ In the present times, the application for allotment of PAN can be made through internet. Further, requests for changes or correction in PAN data or request for reprint of PAN card (for an existing PAN) may also be made through internet.
- ⌘ Online application can be made either through the portal of NSDL (https://tin.tin.nsdl.com/pan/index.html) or the online portal of UTITSL (https://www.utiitsl.com/UTIITSL SITE/pan/index.html).
- ⌘ With effect from July 1, 2017, fees for PAN application (including Goods and Services Tax) for dispatch outside India has changed to 1020/- INR. However, PAN application fees for dispatch within India is 110/- INR.
- ⌘ Once the application and payment is accepted, the applicant is required to send the supporting documents through courier/post to NSDL/UTITSL. Only after the receipt of the documents, PAN application would be processed by NSDL/UTITSL.
- ⌘ Indian citizens will have to submit their 'Application for allotment of new PAN' in revised Form 49A only. Foreign citizens will have to submit their 'Application for allotment of new PAN' in newly notified Form 49AA only.

Revised Rules related to PAN Card, was made to come into effect from *December 5, 2018:

The Income Tax Department has released a new set of rules for PAN (permanent account number) card applicants.

The new PAN card rules, to come into effect from December 5, 2018, require financial entities which make transactions worth Rs. 2.5 lakh or more in a financial year to apply for a PAN card, the Central Board of Direct Taxes (CBDT).

A person other than an individual, who enters into a financial transaction of an amount of Rs. 2.50 lakh or more in a financial year, also needs to apply for a PAN card on or before the May 31, 2019, as per the CBDT notification.

Further, the amended rules provide that furnishing of father's name will not be mandatory for a person whose mother is a single parent. The new rules will become applicable from December 5, 2018 as cited under the CBDT notification.

TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER (TAN)

1. TAN or Tax Deduction and Collection Account Number is again a 10 digit alphanumeric number required to be obtained by all persons who are responsible for deducting or collecting tax. Under Section 203A of the Income Tax Act, 1961, it is mandatory to quote Tax Deduction and Collection Account Number (TAN) allotted by the Income Tax Department (ITD) on all TPS returns.
2. Since last few years ITD has revised the structure of TAN. It is a unique 10 digit alphanumeric code. Accordingly, they have issued TAN in this new format to all existing TAN holders.
3. To facilitate tax deductors find their new TAN, ITD has now introduced a search facility on their website (www.incometaxindia.gov.in).Through this facility, the tax deductors can search their name with their old TAN to find the new TAN. Deductors are advised to find their new TAN from this site before it is incorporated in their e-TDS return file to avoid any inconvenience at the time of furnishing e-TDS return.

TYPES OF TAN APPLICATIONS

There are two types of TAN applications:

- Application for issuance of new TAN (Form 49B): This application form can be used if the deductor/applicant has never applied for a TAN or does not have a TAN.
- Application for Change or Correction in TAN data for TAN Allotted.

PROCEDURE TO APPLY

- A deductor may either make an online application through this website or submit physical TAN Application to any TIN-Facilitation Center (TIN-FC) of NSDL.
- Applicants should go through the instructions and guidelines provided in the application form before filling the form.

WHERE TO GET THE PHYSICAL APPLICATION FORMS

Applicants may obtain the application forms from TIN-FCs, any other vendors providing such forms or can freely download the same from the website.

COMMUNICATION

These applications are digitized by NSDL and forwarded to ITD. ITD will issue the TAN which will be intimated to NSDL online. On the basis of this, NSDL will issue the TAN letter to the applicant.

FEE

The processing fee for both the applications (new TAN and change request) is 65/- INR (including Goods and Services Tax).

GOODS AND SERVICES TAX (GST)

1. Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail Input Tax Credit for the taxes on his inward supplies.
2. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 20 Lacs in the relevant financial year, is liable to be registered under the Act.
3. It must be noted though that for the state of Jammu & Kashmir and North-Eastern states, the threshold is Rs 10 Lacs.
4. The registration under GST is Permanent Account Number (PAN) based and state-specific. GST Identification Number (GSTIN) is a 15-digit number and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

BIFURCATION OF 15-DIGIT NUMBER GST IDENTIFICATION NUMBER (GSTIN)

- The first two digits of this number will represent the state code
- The next ten digits will be the PAN number of the taxpayer
- The thirteenth digit will be assigned based on the number of registrations within a state
- The fourteenth digit will be Z by default
- The last digit will be for check code

COMPULSORY REGISTRATION

In the following cases, registration is made compulsory, irrespective of the aggregate turnover:

- ✧ For a supplier who makes inter-state supplies
- ✧ Casual taxable person
- ✧ Non-resident taxable person
- ✧ E-commerce operators
- ✧ Persons discharging liabilities under reverse charge mechanism

PERSONS NOT LIABLE TO REGISTER

- ▫ Engaged exclusively in the supply of goods / services / both which are not liable to tax
- ▫ Engaged exclusively in the supply of goods / services / both which are wholly exempt from tax
- ▫ Agriculturalist to the extent of supply of produce from land cultivation
- ▫ Specified categories as may be notified by the Government

PROCEDURE FOR REGISTRATION

- ❖ Every person who is liable to register themselves under the CGST Act, 2017 must do so within thirty days from the date when he becomes first liable or five days prior to commencement of business in case of casual/non-resident taxable person.
- ❖ If the proper officer doesn't take any action within three days of submission of application along with necessary details and documents, or within seven days of receiving the clarifications so solicited, the application for grant of registration is deemed to be approved.
- ❖ The effective date of registration is:
  - In case the application is submitted within 30 days of the person becoming liable to register, it shall be the date on which the person becomes liable.
  - And if the application is submitted after 30 days of the person becoming liable to register, it shall be the date on which the registration is granted.

CANCELLATION OF REGISTRATION

- ▪ The proper officer may, either himself or on application filed by a registered person, or his legal heirs in case of a death of a registered person, cancel / revoke the registration of such person. This cancellation could be from a prospective / retrospective date as the officer may deem fit.
- ▪ This cancellation would in no way interfere with the liabilities of the said person. A registered person whose registration is cancelled will have to debit the electronic cash ledger or electronic credit ledger, by an amount equal to Input Tax Credit (ITC) so availed or the output tax liability, whichever is higher.

IE CODE

1. IEC registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT).
2. All businesses which are engaged in Import and Export of goods require registering Import Export Code. IE code has lifetime validity.
3. 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.
4. 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.

REQUIREMENT OF IE CODE

- Now the first thing one require to start Export Import business is Import Export Code (IEC).
- It is same as the PAN, however, it is compulsory to apply for IEC and register the firm with DGFT.
- IEC is issued to any bonafide Individual or Company.
- As a Passport is mandatory for traveling abroad, similarly an IEC Code is mandatory to Export or Import anything from/into India.
- IEC Certificate is issued by Directorate General of Foreign Trade (DGFT) which comes under Ministry of Commerce and Industry, Government of India.
- The main objective of DGFT is regulating and promoting Exports from India. It has a total of 36 branches across India.
- One have to make an application electronically and submit it to that particular DGFT office that falls under your jurisdiction.

APPLICATION FOR IE REGISTRATION

IEC can be obtained from any of the Zonal and Regional offices of Director General of Foreign Trade depending on area/region where the individual/company is located.

An application has to be submitted online at DGFT web site http://dgft.gov.in duly filled in along with required documents and fees.

- First of all we have to prepare an application form in the prescribed format i.e. Aayaat Niryaat form 2A format and filed with the proper DGFT Regional office.
- In the second step we have to prepare the necessary documents related to the applicant identity &address proof and legal entity proof with the bank details & certificate in respect of ANF2A. •
- In the third step once application has been completed, we file with the DGFT through DSC of the applicant and pay the appropriate fee or cost of the IEC Registration.
- Once application has been approved then you will get the IEC Code in the soft copy from the government department.

DOCUMENTS REQUIRED FOR IMPORT EXPORT CODE (IEC) REGISTRATION

- ✓ IEC Code Registration required following things:
- ✓ Individual Person
- ✓ Personal or Company or Firm Pan Card Copy.
- ✓ Personal aadhar card or voter id or passport copy.
- ✓ Personal or company or firm current bank account cancel cheque copy.
- ✓ Electricity Bill Copy or Rent Agreement or Sale deed of the premise copy.

FEATURES OF THE IMPORT EXPORT CODE (IEC) REGISTRATION

International Exposure: IEC Code helps you to grow your business from local market to international market and expand your product or service across the global.

Government Benefits: Government of India always promote the export activity in India so through IEC Code Registration you can avail all the export scheme benefits from DGFT, Customs and Export Promotion Council.

No Renewals : IEC Code issued by the DGFT for the lifetime validity so you have not required renew every year so it's a just one time cost of the registration.

No Annual Compliance: IEC Code have no annual compliance like returns filings etc. Even you have not shown anywhere the transactions.

Individual person: IEC Code can be obtain by the individual person also, they have not required to register the legal entity.

PART-C REGISTRATION UNDER OTHER LAWS

SSI/MSME

- Small Scale and ancillary units should seek registration with the Director of Industries of the concerned State Government.
- All classes of enterprises, whether Proprietorship, Hindu undivided family, Association of persons, Cooperative society, Partnership firm, Company or Undertaking, by whatever name called can apply for the registration and get qualified for the benefits provided under the Act.

OBJECTIVES OF THE REGISTRATION SCHEME

1. To enumerate and maintain a roll of small industries to which the package of incentives and support are targeted.
2. To provide a certificate enabling the units to avail statutory benefits mainly in terms of protection.
3. To serve the purpose of collection of statistics.
4. To create nodal centres at the Centre, State and District levels to promote SSI.

BENEFITS OF SSI/MSME REGISTRATION MICRO AND SMALL ENTERPRISES:

1. Easy finance availability from Banks, without collateral requirement
2. Protection against delay in payment from Buyers and right of interest on delayed payment
3. Preference in procuring Government tenders,
4. Stamp duty and Octroi benefits,
5. Concession in electricity bills
6. Reservation policies to manufacturing / production sector enterprises
7. Time-bound resolution of disputes with Buyers through conciliation and arbitration

MEDIUM ENTERPRISES:

1. Easy finance availability from Banks, without collateral requirement
2. Preference in procuring Government tenders
3. Reservation policies to manufacturing / production sector enterprises
4. Time-bound resolution of disputes with Buyers through conciliation and arbitration

REGISTRATION PROCESS

1. Micro & Small Enterprises shall have to apply either online at the website of NSIC www.nsicspronline.com or on the prescribed application form (in duplicate) along-with requisite fee and documents to the Zonal/Branch/Sub Branch and Sub Office/Extension office of NSIC situated nearest to their location.
2. Duplicate copy of the Registration Application Form submitted by the Micro & Small Enterprise will be forwarded to the concerned Inspecting agency along with copies of required documents and requisite Proofs/Draft/Pay Order of inspection charges in favour of concerned Inspection Agency requesting for carrying out the Technical Inspection of Micro & Small Enterprise and forward their recommendations in this regard.
3. After receiving Inspection Report, NSIC will issue the GP Registration Certificate to Micro & Small Enterprise for items/stores as recommended.

Validity Period of G. P. Registration

The G. P. Registration Certificate granted to the Micro & Small Enterprise under Single Point Registration Scheme (Revised), 2003 is valid for Two Years and will be reviewed and renewed after every two years by verifying continuous Commercial and Technical Competence of the registered Micro & Small Enterprise in manufacturing / producing the stores for which it has been registered by NSIC.

DOCUMENTS TO BE SUBMITTED BY THE MICRO & SMALL ENTERPRISES AT THE TIME OF FRESH REGISTRATION

1. A copy of Acknowledgement of Entrepreneurs Memorandum Part-II;/UAJM
2. Details of Plant & Machinery and Raw Material clearly showing date of purchase & original purchase value (NOT DEPRECIATED)
3. Performance Statement as per format/Performa G of the application form.
4. Self-attested copy of ownership documents of the premises or copy of lease deed.
5. Declaration/Certificate from the Proprietor/Partner/Director whether or not they have any link with large scale unit(s). In case of their links with large scale unit(s), the details thereof to be specified.
6. Two copies of each of Declarations duly signed by the authorized person of the applicant SSI Unit accepting conditions of registration (Format D & E of application form).
7. List of raw materials and finished goods in stock.
8. Copy of Registration Certificate if registered with DGS&D or other Govt. Organizations.
9. List of places where after-sales service facilities (if applicable) are available.
10. List of technical personnel employed in production and services.
11. Item for which registration required with detailed specification(s)
12. Latest Electricity Bill Copy.
13. Audited Balance Sheet, Trading Account and Profit & Loss
14. Account for the last 3 years duly signed by the authorized person under his seal.
15. Statement showing the Results of Operation for the last 3 years duly signed by Chartered Accountant
16. Bankers Report giving details of financial status of the applicant firm as per Performa F of application form.
17. Copy of Permanent Account No. (PAN)

DOCUMENTARY PROOF OF THE STATUS OF THE FIRM

Additional documents to be submitted in case of Partnership Concern

- General Power of Attorney in favour of one of the Partners.
- Partnership Deed.
- Form A from Registrar of Firms showing the names of the partners.

Additional documents to be submitted in case of Pvt./ Limited Companies

- Certificate of Incorporation duly authenticated.
- Memorandum and Articles of Association duly authenticated
- Names of sitting Directors, their addresses and their shareholdings.
- Board Resolution in favour of the Signatory of the application and documents.

Additional documents to be submitted in case of Cooperative Societies

- Certificate of Registration of Societies.
- Society's Bye-Laws/Regulations etc.
- Names of Members, their addresses and shareholding.
- Current Certificate from Registrar of Societies that the Society is still functioning and its working is satisfactory.
- Details of authorized share capital and subscribed share Capital.
- Details of movable as well as immovable property owned by the Society.
- Resolution of Society for seeking registration under Government Purchase Program
- Resolution in favour of Signatory of the application & documents.

NSIC REGISTRATION

- The Government is the single largest buyer of a variety of goods. With a view to increase the share of purchases from the small-scale sector, the Government Stores Purchase Programme was launched in 1955-56.
- NSIC registers Micro & small Enterprises (MSEs) under Single Point Registration scheme (SPRS) for participation in Government Purchases
- NSIC Registration is required to be renewed on every two years
- The National Small Industries Corporation enlists small scale units as competent to undertake supply of various items to the Government.
- The registered units are extended various facilities so as to promote their participation, and consequently enhance the share in Government purchases.
- The rationale of this Scheme is to avoid multiplicity of registration with various Government agencies and to ensure that the units registered with NSIC are considered at par with those registered directly with the purchasing agency.

BENEFITS OF NSIC REGISTRATION

- Issue of the Tender Sets free of cost;
- Exemption from payment of Earnest Money Deposit (EMD),
- Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 20 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 20% procurement from MSEs, ***4%*** is earmarked for units owned by Schedule Caste/Schedule Tribes (as per PPP Order dated 23.03.2012 overall procurement goal shall be mandatory w.e.f. 01/04/2015)
- In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

APPLICATION

Micro & Small Enterprises shall have to apply either online on our website www.nsicspronline.com or on the prescribed application form in Duplicate and to be submitted to the concerned Zonal/Branch Office of NSIC located nearest to the unit.

In case of any difficulty in filling the application form and completing the documentation, please consult any of the Zonal/ Branch office of NSIC. The application form containing Terms & conditions are available free of cost from all offices of the NSIC.

MSME REGISTRATION

ELIGIBILITY APPLY FOR UDYOG AADHAR/MSME REGISTRATION

- MSME registration or Udhyog Aadhaar can be obtained by any type of business entity.
- Proprietorships, Hindu Undivided Family, Partnership Firm, One Person Company, Limited Liability Partnership, Private Limited Company, Limited Company, Producer Company, any association of persons, co-operative societies or any other undertaking can obtain MSME registration in India.

MICRO, SMALL & MEDIUM ENTERPRISES
सूक्ष्म, लघु एवं मध्यम उद्यम

- Small businesses having MSME registration enjoy various benefits under the Micro, Small and Medium Enterprises Development Act, 2006.
- Hence, it is recommended that all small businesses obtain MSME registration or Udyog Aadhaar after starting up.

CRITERIA FOR APPLYING FOR UDYOG AADHAR/MSME REGISTRATION

In case of entities engaged in manufacturing or production of goods:

- Micro enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees twenty five lakhs.
- Small enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees five crores but also more than rupees twenty five lakhs.
- Medium enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees ten crores but also more than rupees five crores.

In case of entities engaged in providing or rendering of services:

- Micro enterprise: Any entity wherein the investment in equipment does not exceed rupees ten lakhs.
- Small enterprise: Any entity wherein the investment in equipment does not exceed rupees two crores but also more than rupees ten lakhs.
- Medium enterprise: Any entity wherein the investment in equipment does not exceed rupees five crores but also more than rupees two crores.

STAGE TO APPLY FOR MSME REGISTRATION

- Obtaining MSME registration or Udyog Aadhaar is not mandatory and is at the sole discretion of the Entrepreneur.
- However, it is recommended that most businesses obtain MSME registration right after registration to enjoy various benefits like protection against delayed payments under the MSMED Act.

UDYOG AADHAR MEMORANDUM

- This is a registration available for entrepreneurs who want to start and operate a small business - micro, small and medium enterprises.
- The eligibility criteria for obtaining Udyog Aadhaar registration is based on the investment in plant & machinery made by a manufacturing concern or investment in equipment made by a service provider.
- Once, Udyog Aadhaar registration is obtained for a business, it can enjoy various subsidies and schemes specially provided by the Government for helping small businesses in India.

INDUSTRIAL LICENSE

The Industrial (Development and Regulations) Act 1951, popularly called as the IDRA, entitles the manufacturing sectors to observe certain formalities. Post-1991, liberalization of the economy led to opening up of various sectors progressively. The government issued a series of notifications from time to time, progressively abolishing the applicability of the licensing regime.

COMPULSORY LICENSING

Industrial Licensing was also abolished for all except short list of 18 industries in New Industrial Policy 1991.This number was further pruned to six industries. As in 2015, only five industries were under compulsory licensing mainly on account of environmental, safety and strategic considerations. They are:

1) Distillation and brewing of alcoholic drinks
2) Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
3) Electronic Aerospace and defense equipment: all types.
4) Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose andmatches.
5) Specified Hazardous chemicals

RECENT AMENDMENT TO INDUSTRIAL LICENSING RULE

- Earlier, large industries that manufactured items that were exclusively reserved for Micro, Small, and Medium Enterprises (MSME) also needed to obtain an industrial license. MSMEs were previously known as Small Scale Industry (SSI). The provision was aimed at protecting indigenous manufacturers from unequal competition with large scale industries.
- However, in April 2015, the government de-reserved these items to encourage greater investment, incorporate better technologies, and enhance competition in the Indian and global market for the products.
- Large industries are now permitted to manufacture items such as — bread, wood, firework, pickles and chutneys, mustard oil, groundnut oil, steel chairs and tables, padlocks, stainless steel and aluminum utensils, without obtaining an industrial license.

INDUSTRIAL ENTREPRENEURS MEMORANDUM (IEM)

MEANING OF IEM

Industrial Entrepreneurs Memorandum (IEM) is an application for acknowledgment of unit.

ELIGIBILITY FOR GETTING IEM

The large scale industry having investment of more than Rs. 10 crore in manufacturing sector and more than Rs. 5 crore in service sector are primarily outside the purview of the licensing provisions and for the items(s)not exclusively reserved for manufacture by SSI sector have to file an application for Industrial Entrepreneurs Memorandum means IEM.

CASES REQUIRING IEM/ LOI

The promoter can file IEM in following categories:

- ✓ To set up a new industrial undertaking,
- ✓ To effect substantial expansion of the industrial undertaking,
- ✓ To manufacture a new article
- ✓ To carry on business of existing SSI units after graduating into large scale industry.

PROCEDURE FOR FILLING OF IEM

The promoter has to make an application to Government, of India in prescribed format along with Demand Draft of Rs. 1000/- in the name of Secretariat for Industrial Assistance (SI A), New Delhi with six copies.

STEPS POST-FILLING IEM

After filling IEM to Govt. of India, Govt. of India gives acknowledgment receipt to the applicant and informs the Directorate of Industries. After receipt of acknowledgment, applicant can take further initiatives step to setup the unit.

ESI REGISTRATION WITH PROCEDURE & BENEFITS

1. Employee's State Insurance (ESI) is a self-financing scheme for Indian workers which covers health insurance and social security.
2. ESI functions as an independent corporation and comes under Ministry of Labor and Employment in India.
3. The ESI Corporation thus manages the funds which regulated by the guidelines and regulations of the ESI Act. 1948.
4. Employees registered under the ESI scheme are entitled to a range of benefits. Employees and their families can avail medical treatment and attendance including not only medical but surgical and obstetric treatment as well.

ESI REGISTRATION PROCEDURE FOR BOTH EMPLOYER & EMPLOYEE

REGISTRATION OF EMPLOYER:

Any employer having more than 10 employees is mandatorily required to take up the ESI Registration. Within 15 days of submission of Employer's registration form (Form-01), the company or firm is expected to obtain an Identification number or Code Number from the Regional office. This figure will be used in correspondence related to the scheme. Form3 accompanies Form 1.

DOCUMENTS REQUIRED:

- Documents about the establishment of the company.
- Evidence supporting date of commencement of production/business.
- List of partners, stakeholders, directors along with necessary information and proof of address.
- Copy of PAN
- Identity proof like voter id/passport
- List of employees

REGISTRATION OF EMPLOYEE:

At joining the Private Limited Company, an employee required 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. Within 3 months a permanent photo ID is provided to the employee and will be provided an insurance number for identification purpose under the scheme. Once registered, the registration can transfer if the employee switches company.

WAGE LIMIT UNDER ESI REGISTRATION:

Employees earning 21,000 INR per month or less are applicable for ESI contribution. Employees with higher wages are exempt.

Wage limit for Employees with 'Disability' is 25000 RS. Per month Employee contribution: 1.75% of total salaries.

Employer Contribution: 4.75% of total wages.

PROVIDENT FUND MEANING AND REGISTRATION PROCEDURE

1. To provide financial stability and security to employees when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS) 1952.
2. The central government trust manages these funds, and employees are require to contribute a part of their salary to it every month during their employment tenure.
3. An establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits. However, Companies with more than 20 employees compulsorily have to register under EPFS.

PF REGISTRATION PROCESS

- ✧ A detailed application form called 'Performa of coverage' and form 5 A with Annexure-1 has to be filed while registering the company online.
- ✧ After that, a temporary PF registration number allotted, and an employer has to submit all concerning documents online.
- ✧ After that, the PF authorities carry out an inspection of the premises and verify the documents submitted online.
- ✧ Once they are satisfied, a PF allotment letter will grant.

DOCUMENTS REQUIRED TO BE SUBMITTED

The documents required to submit with the Performa of coverage for EPF along with list of employees are listed below. It is to be noted that all the required forms are available at the site EPFO & for ESIC

ESSENTIAL DOCUMENT(S) TO BE SUBMITTED (FOR OTHER THAN A PROPRIETARY CONCERN)

1. A copy of Memorandum and Articles of Association and the certificate of incorporation issued by the Registrar of Companies, in the case of Public and Private Ltd. Companies.
2. A copy of partnership deed in the case of partnerships.
3. A copy of Registration certificate issued by the Registrar of Co-operative societies.
4. A copy of Registration certificate issued by Registrar in the case of societies registered under Societies Registration Act along with a copy of the objects and Rules of the Society.
5. Partition deeds creating HUF.
6. Any agreement or other legal documents in the case of Association of persons as defined in the Income Tax Act.

FCRA REGISTRATION

Charitable Trusts, Societies, Section 8 Company that receive foreign contribution or donation from foreign sources are required to obtain registration under Section 6(1) of Foreign Contribution Regulation Act, 2010.

Such a registration under the Foreign Contribution Regulation Act, 2010 is called a FCRA registration.

ELIGIBILITY FOR OBTAINING FCRA REGISTRATION

- Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through "prior permission" route.
- It is preferable for an FCRA applicant to be a Trust or Society or a Section 8 Company.
- The not-for-profit entity must have also been in existence for a minimum of three years while making the FCRA application and should not have received any foreign contribution prior to that without the Government's approval.
- Additionally, the entity seeking registration should have spent at least Rs. 10,00,000/- over the last three years on its aims and objects, excluding administrative expenditure. Statements of Income & Expenditure, duly audited by Chartered Accountant, for last three years are to be submitted to substantiate that it meets the financial parameter.
- In case a newly registered entity would like to receive foreign contributions, then approval for a specific activity, specific purpose and from a specific source can be made to the Ministry of Home Affairs through the Prior Permission (PP) method.

CRITERIA FOR GRANT OF FCRA REGISTRATION

Once, an FCRA application is made in the prescribed format, the following criteria are check before providing registration.

(a) The 'person' or 'entity' making an application for registration or grant of prior permission-

- Is not fictitious or benami;
- Has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
- Has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
- Has not been found guilty of diversion or mis-utilisation of its funds;
- Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- Has not contravened any of the provisions of this Act;
- Has not been prohibited from accepting foreign contribution;
- The person being an individual, such individual has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.
- The person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.

(b) The acceptance of foreign contribution by the entity / person is not likely to affect prejudicially;

- The sovereignty and integrity of India;
- The security, strategic, scientific or economic interest of the State;
- The public interest;
- Freedom or fairness of election to any Legislature;
- Friendly relation with any foreign State;
- Harmony between religious, racial, social, linguistic, regional groups, castes or communities.

(c) The acceptance of foreign contribution

- Shall not lead to incitement of an offence;
- Shall not endanger the life or physical safety of any person.

APPLYING FOR FCRA REGISTRATION

Application for FCRA registration can be made using Form FC-3. Along with the application, the following documents must be submitted:

- ⌘ Self-certified copy of registration certificate/Trust deed etc., of the association
- ⌘ Self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aim and objects of the association.
- ⌘ Activity Report indicating details of activities during the last three years;
- ⌘ Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure

Once FCRA registration is granted, it is valid for a period of five years. An application for renewal of FCRA registration can be made 6 months prior to the date of expiry, to keep the registration valid.

POLLUTION

- ❖ Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 30 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.
- ❖ However, if investment is less than Rs. 1000 million, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries and electroplating industries.
- ❖ Further, any item reserved for the small scale sector with investment of less than Rs 10million is also exempt from obtaining environmental clearance from the Central Government under the Notification. Power shave been delegated to the State Governments for grant of environmental clearance for certain categories of thermal power plants.
- ❖ Setting up industries in certain locations considered ecologically fragile (eg. Aravalli Range, coastal areas, Doon valley, Dahanu, etc.) are guided by separate guidelines issued by the Ministry of Environment of the Government of India.

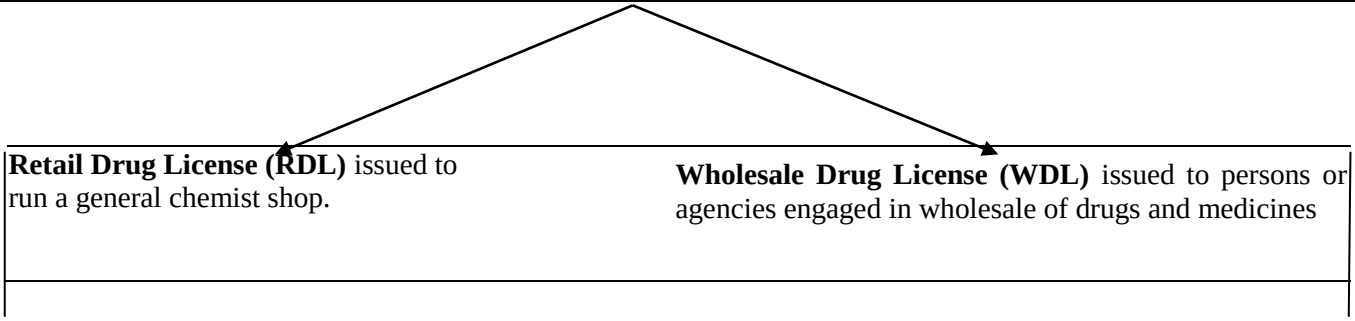
OTHER REGISTRATION AS PER REQUIREMENT OF SECTOR

DRUG LICENSE

- ✓ To start a pharmacy business, a drug license is required.
- ✓ The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license in India.
- ✓ Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization and the list of State Drugs Standard Control Organization.

LIST OF STATE DRUGS CONTROL ORGANIZATION

The Drug Control Organization issues two types of licences for operating a pharmacy business



REQUIREMENT FOR OBTAINING DRUG LICENSE

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 15square 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:

a) **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 4years experience in dealing in drugs, specially approved by the department of drug control for the purpose

b) **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

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 registered pharmacist or competent person working full time
k) Appointment letter of registered pharmacist/competent person, if employed person.

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (FSSAI)

1. FSSAI license is mandatory before starting any food business. 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.
2. This step is taken by government's food licensing & registration system to ensure that food products undergo certain quality checks, thereby reducing the instances of adulteration, substandard products and improve accountability of manufacturers by issuing food service license.

FSSAI FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA
Inspiring Trust, Assuring Safe & Nutritious Food

3. FSSAI Online Registration is done through office website of FSSAI for basic and central level. For state, the FSSAI registration is also done through offline mode.

The registration and licensing of food business in India is governed by the Food safety and Standards (Licensing and Registration of Food businesses) Regulation, 2011.

FSSAI REGISTRATION: FSSAI registration is required for all petty food business operator.

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.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A.

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 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, State FSSAI License and Central FSSAI License. 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; state FSSAI license is required for medium sized food manufacturers, processor and transporters.
- ❖ The fee and procedure for obtaining a FSSAI license is more extensive when compared to a FSSAI registration. FSSAI license application should be made in Form B to the appropriate Licensing Authority along with the necessary self-attested declaration, affidavit and annexures, as applicable.
- ❖ FSSAI license is granted for a period of 1 to 5 years as request by the food business operator. Higher fee would be applicable for obtaining FSSAI license for more years. If registration is obtained for one or two years, then the license can be renewed by making an application, no later than 30 days prior to the expiry date of the FSSAI license.

REGISTRATION UNDER SHOPS & ESTABLISHMENTS

- ✧ One of the important regulation to which most businesses in India are subject to is the Shop and Establishment Act, enacted by every state in India.
- ✧ 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 AN ESTABLISHMENT FOR THE PURPOSE OF THE ACT

- ✧ Establishments included in this Act are commercial establishments, residential hotels, restaurants, eating houses, theaters, or other places of public amusement or entertainment.
- ✧ Additionally, other establishments that the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act would then classify as establishments.

MEANING OF A SHOP FOR THE PURPOSE OF THE ACT

Shop means any premises:

- Where goods are sold, either by retail, wholesale, or
- Where services are rendered to customers.
- It includes an office a store-room, godown, warehouse or work place, whether in the same premises or otherwise, used in connection with such trade/ business.

A shop does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theater or other place of public amusement or entertainment;

Act License

- 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 the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested.
- 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 & ESTABLISHMENTS

1. Submit an application in the prescribed form to the Inspector of the area within 30 days of starting any work in your shop/establishment. The application is to be submitted along with the prescribed fees and should contain the following information:

- Your name as the employer and the name of a manager, if any;
- The postal address of your establishment;
- The name of your establishment;
- 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 of your establishment to you. This certificate will be valid for 5 years and has to be renewed thereafter. It is important that the registration certificate has to be prominently displayed at your establishment.

Communication of Change to the Inspector

- In case of any change with respect to any of the information given during the application for registration, the same has to be notified to the Inspector's office within 15 days after the change has taken place.
- Once again the Inspector will verify the correctness of the details furnished, make the related change in the Register of Establishments, amend the registration certificate or issue a fresh registration certificate, as he may deem fit.

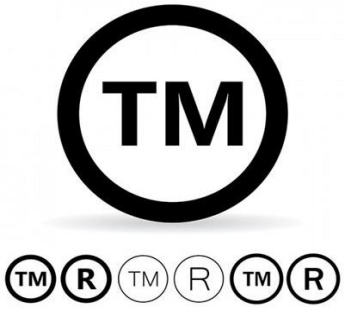
Closing of Establishment to be communicated to Inspector

- In case the shop or establishment would like to close down the business, the occupier should notify the Chief Inspector in writing within fifteen days of the closing.
- The Chief Inspector after reviewing the request for closure can remove the shop or commercial establishment from the register and cancel the registration certificate.

PART-D REGISTRATION UNDER IPR

TRADEMARK

The objective of the Trade Marks Act, 1999 is to register trademarks applied for in the country and to provide for better protection of trade mark for goods and services and also to prevent fraudulent use of the mark. The main function of the Registry is to register trademarks which qualify for registration under the Act and Rules.



Form and Fees

(As per First Schedule of Trade Mark Rules 2017)

Entry No	On what payable	Amount in INR.		Corresponding Form Number
		For Physical filing	For E-filing	
1	Application for registration of a trademark/collective Marks/ Certification Mark/ Series of trademark for specification of goods or services included in one or more than one classes. Where the applicant is an Individual / Start-up/Small Enterprise	5,000	4,500	TM-A
	In all other cases (Note: Fee is for each class and for each mark)	10,000	9,000	
2	On a notice of opposition under section 21(1), 64, 66 or 73 or application for rectification of register under section 47 to 57, 68, 77 or application under rule 99, 103, 135,140 or On application under section 25 of Geographical Indication of Goods (Regulations and Protection) Act, 1999 to invalidate a trademark or counter statement related thereto. (Note: Fee is for each class opposed or counterstatement filed)	3,000	2,700	TM-O

3	For renewal of registration of a trademark under section 25 for each class	10,000	9,000	TM-R
		Application for renewal with surcharge of registration of a Trademarks under section 25 (3) for each class	5,000 Plus renewal fee applicable under entry 3	4,500 Plus renewal fee applicable under entry 3
		Application for renewal with surcharge/ restoration and renewal of a Trademarks under section 25 (3), 25 (4) for each class	10,000 Plus renewal fee applicable under entry 3	9,000 Plus renewal fee applicable under entry 3
4	On application under section 45 to register a subsequent proprietor in case of assignment or transfer for each trademark	10,000	9,000	TM-P
		On application for: Certificate of the Registrar under section 40(2), or For approval of the Registrar under section 41, or Direction of the Registrar for advertisement of Assignment without goodwill under section 42, or Add or alter a registered trademark under section 59(1) for each trademark, or Conversion of specification under Section 60 for each trademark.	3,000	2,700
		On application for: Extension of time for applying for direction under section 42 for advertisement of assignment without goodwill, or Extension of time for registering a company as subsequent proprietor of trademarks under section 46(4), or Consent of Registrar to the assignment or transmission of a certification	2,000	1,800

		trademark under section 43, or Change a name and / or description of a registered proprietor or a registered user of a trademark under section 58 for each trademark.		
		On application for: Dissolution of association between trademark sunder section 16(5), or Change in address or address for service in India of Registered Proprietors under section 58 for each trademark, or Request for cancellation of an entry in the register or part thereof under section 58 for each trademark.	1,000	900
5	Application under section 49 to a registered user of a registered trademark in respect of goods or services Or On application under clause (a) of sub-section (1) of section 50 to vary the entry of a registered user of one trademark where the trademarks are covered by the same registered user in respect of each of them Or On application under clause (b), (c) or (d) of sub-section (1) of section 50 for cancellation of entry of a registered user of one trademark Or On notice under rule 95 (2) of intention to intervene in one proceeding for the variation or cancellation of entries of a registered user of a trademark (Note: applicable fee is for each mark)	5,000	4,500	TM-U
6	Request for search and issue of certificate under rule 22(1)	10,000	9,000	TM-C
		Request for an expedited search and issuance of certificate under rule 22 (3)	Not allowed	30,000

7	On application for: Extension of time, or Certified copy, or Duplicate Registration Certificate, or inspection of document,or Particulars of advertisement to registrar, or seeking grounds of decision of Registrar, or Enter in the register and advertise a note of certificate of validity under rule 127, Amendment in trademark application, or Particulars of advertisement of a trademark to Registrar under rule 41.	1000	900	TM-M
		On application for: Deposition of regulation of collective trademark under section 66 or alteration of regulation of certification trademark under section 74 (2), or Seeking Registrar preliminary advice, or For division of an application.	2,000	1,800
		On application for: Review of Registrar's decision, or Petition (not otherwise charged) for obtaining Registrar's order for any interlocutory matter in a contesting proceeding, or Any other matters not covered in other TM forms.	3,000	2,700
		On request for an expedited certificate of the Registrar (other than a certificate under section 23(2) of the Act) or certified copies of the documents under proviso to rule 122 (Note: for entry in respect of each registered trademark or for each document)	5,000	4,500

		On application under rule 34 for expedited process of an application for the registration of a trademark		
		Where the applicant is an Individual / Startup/Small Enterprise	Not allowed	20,000
		In all other cases (Note: fee is for each class and for each mark)	Not allowed	40,000
		Request to include a trademark in the list of well-known trademark (Note: applicable fee is for one mark only.)	Not allowed	1,00,000
8	On application for registration of a person as a trademark agent under rule 147 & 149.	5,000	4,500	TM-G
		For continuance of the name of a person in the Register of a trademark Agents under rule 150 for every Five year to be paid on or before 1st day of succeeding financial year.	10,000	9,000
		On application for restoration of the name of a person to the Register of trademarks agents under rule 153 within 3 years from the date of removal of registration.	5,000 Plus continuation fee as mentioned in entry number 20	4,500 Plus continuation fee as mentioned in entry number 20
		On application for an alteration of any entry in the Register of trademarks Agent under rule 154	1,000	900
	Handling fee for certification and transmission of international application to International Bureau with MM2(E)	Not allowed	5,000	

COPYRIGHT

Copyright Registration Procedure

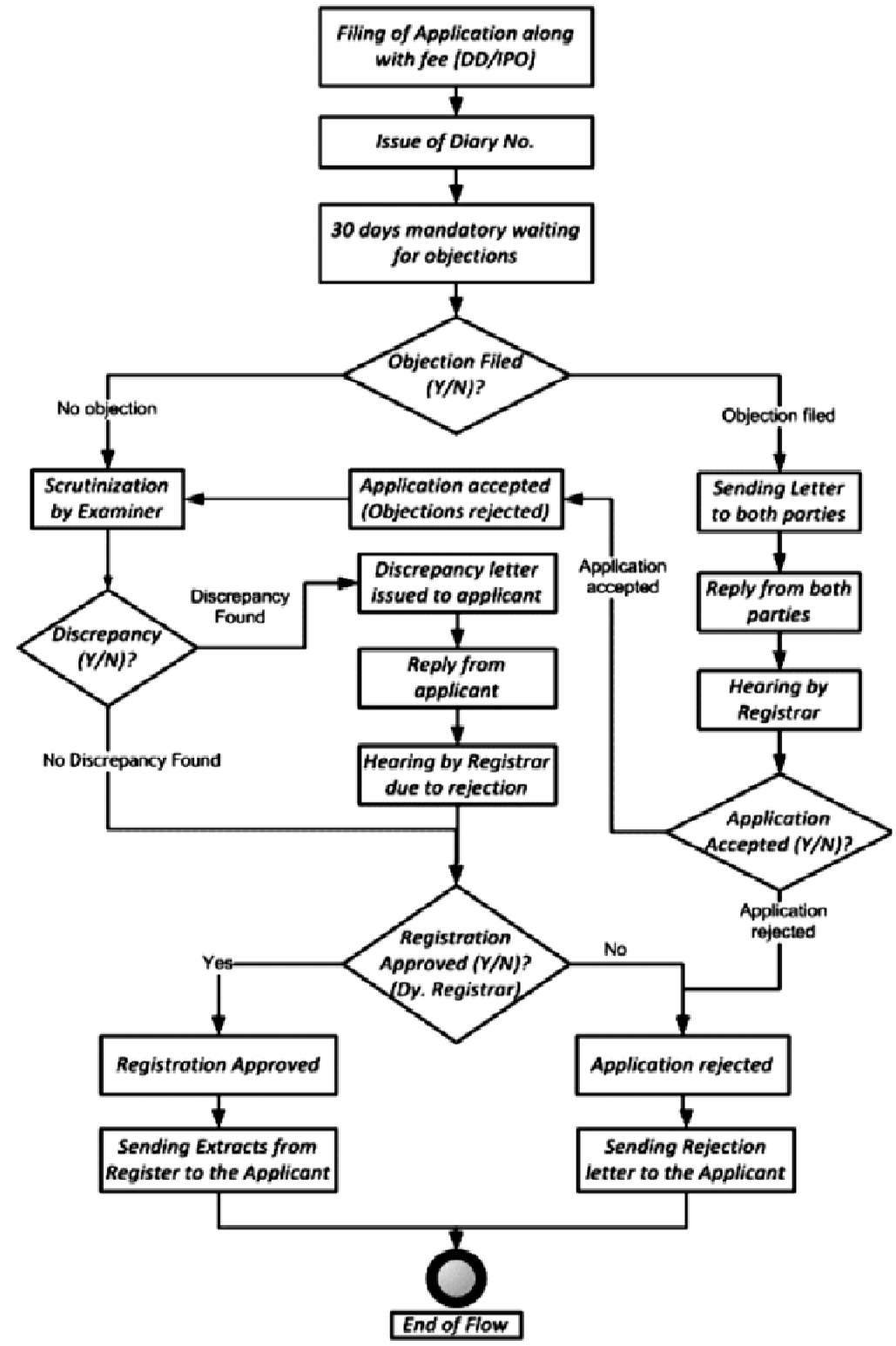
The procedure for registration is as follows:

- Application for registration is to be made on as prescribed in the first schedule to the Rules;
- Separate applications should be made for registration of each work;
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and
- The applications should be signed by the applicant or the advocate in whose favor a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Time for Processing Application

After one files the application and receives diary number, one has to wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against the claim that particular work is created by applicant

Copyright Registration Workflow



Scope and Extent of Copyright Registration

- Both published and unpublished works can be registered.
- All kinds of literary and artistic works can be copyrighted, one can also file a copyright application for the website or other computer program. Computer Software or programme can be registered as a 'literary work'.
- As per Section 2 (o) of the Copyright Act, 1957 "literary work" includes computer programmes, tables and compilations, including computer databases. 'Source Code' has also to be supplied along with the application for registration of copyright for software products. Copyright protection prevents undue proliferation of private products or works, and ensures the individual owner retains significant rights over his creation.

Fees

Fee can be paid by postal order /demand draft/online payment payable to "Registrar of Copyrights, New Delhi":

S.No.	For an application for COMPULSORY LICENSE :	Fee
1.	For a license to republish a Literary, Dramatic, Musical or Artistic work, (Sections 31, 31A,31B* and 32A)	`5,000/- per work
2.	For a license to communicate an any work to the public by Broadcast(Section 31(1)(b))	`40,000/- per applicant/per sataton
3.	For license to republish a Cinematograph Film (Section 31)	`15,000/- per work
4.	For a license to republish a sound recording (Section 31)	`10,000/- per work
5.	For a license to perform any work in public (Section 31)	`5,000/- per work
6.	For a license to publish or communicate to the public the work or translation (Section 31A)	`5,000/- per work
7.	For a license to publish any work in any format useful for person with disability (Section 31 B)	`2,000/- per work
8.	For an application for a license to produce and publish a translation of a Literary or Dramatic work in any Language (Section 32 & 32-A)	` 5,000/- per work

9.	For an application for registration or copyright in a:	
	(a)Literary, Dramatic, Musical or Artistic work	`500/- per work
	(b)Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods (Section 45)	`2,000/- per work
10.	For an application for change in particulars of copyright entered in the Register of Copyrights in respect of a:	
	(a)Literary, Dramatic, Musical or Artistic work	`200/- per work
	(b)Provided that in respect of a literary or Artistic work which is used or is capable of being used in relation to any goods (Section 45)	`1,000/- per work
11.	For an application for registration of Copyright in a Cinematograph Film (Section 45)	`5,000/- per work
12.	For an application for registration of change in particulars of copyright entered in the Register of Copyrights in respect of Cinematograph film (Section 45)	`2,000/- per work
13.	For an application for registration of copyright in a Sound Recording (Section 45)	`2,000/- per work
14.	For an application for registration of changes in particulars of copyright entered in the Register of Copyrights in respect of Sound Recording (Section 45)	`1,000/- per work
15.	For taking extracts from the indexes (Section 47)	`500/- per work
16.	For taking extracts from the Register of Copyrights (Section 47).	`500/- per work
17.	For a certified copy of an extract from the Register of Copyrights of the indexes (Section 47)	`500/- per copy
18.	For a certified copy of any other public document in the custody of the Register of Copyright or Secretary of the Copyright Board	`500/- per Copy
19.	For an application for prevention of importation of infringing copies (Section 53) per place of entry	`1,200/- per work

PATENT

- Patent filing has become increasingly popular in India due to the rising intellectual property rights awareness and Startup India Action Plan.
- In the Startup India Action Plan, eligible startups would receive an 80% rebate in patent filing fee to provide a boost to patent registered by Indian companies.
- Hence, there is tremendous interest amongst startups for obtaining patent registration and in this article, we look at the documents required for patent registration in India.

Filing Patent Application

While filing a patent application, provisional specifications or complete specifications can be filed by the applicant. The following is a list containing all documents that must be filed for obtaining patent registration:

- Patent application in Form-1.
- Proof of right to file application from the inventor. The proof of cite can either be an endorsement at the end of the application or a separate agreement attached with the patent application.
- Provisional specifications, if complete specifications are not available.
- Complete specification in Form-2 within 12 months of filing of provisional specification.
- Statement and undertaking under Section 8 in Form- 3, if applicable. Form 3 can be filed along with the application or within 6 months from the date of application.
- Declaration as to inventorship in Form 5 for applications with complete specification or a convention application or a PCT application designating India. Form-5 or Declaration as to inventorship can be filed within one month from the date of filing of application, if a request is made to the Controller in Form-4.
- Power of authority in Form-26, if patent application is being filed by a Patent Agent. In case a general power of authority, then a self-attested copy of the same can be filed by the Patent Agent or Patent Attorney.
- Priority document must be filed in the following cases:

(i) Convention Application (under Paris Convention).

(ii) PCT National Phase Application wherein requirements of Rule 17.1(a or b) of has not been fulfilled.

(iii) Note: Priority document must be filed along with the application or before the expiry of eighteen months from the date of priority, to enable early publication of the application.

- If the Application pertains to a biological material obtained from India, the applicant is required to submit the permission from the National Biodiversity Authority any time before the grant of the patent. However, it is sufficient if the permission from the National Biodiversity Authority is submitted before the grant of the patent.
- The Application form should also indicate clearly the source of geographical origin of any biological material used in the specification.
- All patent applications must bear the signature of the applicant or authorized person or Patent Attorney along with name and date.
- Provisional or complete specification must be signed by the agent/applicant with date on the last page of the specification. The drawing sheets attached should also contain the signature of an applicant or his agent in the right hand bottom corner.

DESIGN

The objective of The Designs Rules, 2001 is to enable protection of newly created designs applying to particular articles manufactured by the industrial process. It refers in legal definition to:

- Any mode or principle of construction or anything which is in substance merely mechanical device;
- Any trademark which is a registered trade mark indicating connection in course of trade between the goods and some person having the right, either as proprietor or as registered user, to use thde mark;
- Any trademark which denotes the ownership of moveable property belonging to particular person; and
- Any trademark which is a painting, sculpture, drawing, an engraving or photograph or any work of architecture or any other work of artistic craftsmanship.

Design Registration

- An application for the registration of design should be submitted along with four specimen copies of the design.
- A statement of novelty should too be submitted which refers to a statement of how the design is unique.
- Additional copies of the specimen design may be included.
- The design so represented in the 'representation of the design' submitted should be precisely similar to the design or exact copies of the design.
- The reciprocity application submitted in the UK or a convention country or group of countries or an intergovernmental organization means can be made with additional copies of the design according to rule 30.
- The Controller may or may not accept the registration of design. A statement of objections may be made by the controller to the applicant with necessary amendments.
- The date on which the controller's decision is dispatched is deemed as the date of appeal. Any applicant not completely and verifiably filed will be abandoned by the Controller.
- The particulars of the application and the representation of the article may be published in the Official Gazette.

Documents Required for Design Registration

- ✓ A certified copy of the original or certified copies of extracts from disclaimers
- ✓ Affidavits
- ✓ Declarations and
- ✓ Other public documents can be made available on payment of a fee.

The affidavits should be in paragraph form and should contain a declaration of truth and verifiability. The costs involved in the design registration process may be regulated by the Controller according to the Fourth Schedule.

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CHAPTER 14
MAINTAINANCE OF REGISTERS AND RECORDS

The Companies Act, 2013 (the Act) and the rules framed there under ("the Rules") lays down that every Company incorporated under the Act has to maintain Statutory Registers ("the Registers").

With various provisions incorporated in Companies Act, 2013, it is made clear that every company governed under Companies Act, 2013 is required to maintain a statutory register at its registered office until the dissolution of the company. Some important terms of maintaining registers and keeping records are as below:

- The Registers need to maintained and updated eventually and should be kept at the Registered Office of the Company.
- Some of the Registers are required to be kept open for inspection by Directors, Members, Creditors and by other persons.
- A Company is also required to provide the extracts from the Registers, if demanded by Directors, Members, Creditors and by other persons on payment of specified fees.
- Failure of the company to maintain statutory register could result in a fine of not less than Rs.1 lakh, which may extend to Rs.10 lakh. Further, the Officers of the company may also be punishable with imprisonment for a term which may extend to six months or with a fine not less than Rs.25 thousand which may extend to Rs.1 lakh.
- Hence, it is important for all the companies including private limited company or limited company or one person company incorporated in India to maintain statutory register.

List of Registers and Records required to be maintained:

Statutory registers to be maintained under companies act 2013

S.No.	Form	Name of the Register	Relevant Section and Rule
1	MGT-1	Register of members	Section 88 (1) and Rule 3 (1) of the Companies (Management and Administration) Rules, 2014 and Administration) Rules, 2014
2	MGT-2	Register of debenture holders and other security holders of Debenture Holders/ Other Securities Holders	Section 88 (1) and Rule 4 of the Companies (Management and Administration) Rules, 2014 and Administration) Rules, 2014
3	MGT-3	Foreign Register of Members, Debenture holders, other security holders or beneficial owners residing outside India	Section 88(4) and Rule 7 of the Companies (Management Administration) Rules, 2014 Rules, 2014 and Administration) Rules, 2014

S.No.	Form	Name of the Register	Relevant Section and Rule
4	Register	Register of Directors and Key Managerial Personnel and Their Shareholding	Section 170 & Rule 17 Of COS (Appointment & Qualification Of Director) Rules, 2014
5	Register	Index of Members	Section 88 (2) and Rule 6 of the Companies (Management and Administration) Rules, 2014 and Administration) Rules, 2014
6	Register	Index of Debenture Holders	Section 88 (2)
7	Register	Register and Index of Beneficial Owner	Section 88(3)
8	SH-2	Register of Renewed and Duplicate Share Certificate	Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014
9	SH-3	Register of Sweat Equity Shares	Section 54 and Rule 8 (14) of the Companies (Share Capital and Debentures) Rules, 2014
10	SH-6	Register of Employee Stock Option	Section 62 and Rule 12 (10)
11	SH-10	Register of Shares/Other Securities Bought Back	Section 68 and Rule 17 (12) of the Companies (Share Capital and Debentures) Rules, 2014
12	Register	Register of Deposits	Section 73 and Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014 Companies (Acceptance of Deposits) Rules, 2014
13	CHG-7	Register of Charges	Section 85 and Rule 7 of the Companies (Registration of Charges) Rules, 2014 Companies (Registration of Charges) Rules, 2014
14	MBP-2	Register of Loans, Guarantee, Security And Acquisition Made By Company	Section 186 and Rule 12 of the Companies (Meeting of Board and its Powers) Rules, 2014
15	MBP-3	Register of Investment Not Held In Its Own Name By The Company	Section 187 and Rule 14 of the Companies (Meeting of Board and its Powers) Rules, 2014
16	MBP-4	Register of Contracts With Related Party And Contracts And Bodies Etc. In Which Directors Are Interested	Section 189 and Rule 16 of the Companies (Meeting of Board and its Powers) Rules, 2014

Other Important Books and Registers
Minutes Book • Board Meeting Minutes Book • General Meeting Minutes Book (i.e. AGM, EGM, Postal Ballot, Creditors Meetings, Debenture holders Meetings)
Books of Accounts/Financial Statements
Register of Directors Attendance at Board/Committee Meetings.

Financial Records required to be maintained by Enterprises			
Records to be maintained by businesses can be broken up into four broad heads :			
Income Records	Purchase Records	Cash Records	Banking Records

Income Records

To be able to accurately state income is important due to several reasons. Not only is it important to be able to assess the viability and strength of the business but it is also important that financial records neither overstate nor understate the incomes earned by the business. Overstating revenues subjects the business to additional tax costs whilst understatement of income can attract penalties on account of tax evasion.

Ordinarily invoices must contain the following information heads:

- Name of issuing business
- Address of business
- Date of issue
- Serial No
- CIN (company identification no) if business is being run by a company
- Service tax, VAT registration numbers (if applicable)
- Description of goods, services as well as prices
- Details of taxes levied, if any
- Total invoice Value

Expenses and Purchase Records

To be able to determine your business's profitability it is important that you should record and retain details of expenses and purchases made by your business. Documents that contain such details include:

- Invoices received
- Credit card statements
- Receipts/ counterfoils
- Cheque book counterfoils
- Cash vouchers
- Salary information
- Credit Documents

Collectively, these will represent the sum total of monies expended by the business in the pursuit of its main activities. Retaining and filing this data shall lead to meaningful information on the expense patterns of the company which can then be used to make informed decisions by the business owners.

This data is also useful in a tax context as it will form the basis for the justification of profitability figures as reflected by the business in its returns of incomes during scrutiny proceedings undertaken by the income tax department.

Banking Records

Bank records offer great insight into the transaction undertaken by a business. To be able to correctly ascertain the financial strength of an enterprise it is necessary that the bank balances as per records be in sync with the reality. To accomplish this a business must maintain up to date records of :

- Bank account statements along with reconciliations
- Cheque books, with completed counterfoils
- Cheque/ Cash Deposit Counterfoils

The aforementioned data sets allow one to determine the exact deposits and withdrawals from the bank as well as identify the nature and purpose of such withdrawals along with the identity of the person to whom such payments have been made.

Cash Records

Despite all advances in banking technology and facilities, businesses must still undertake a large number of transactions in cash. Due to the very sensitive nature of cash holdings and transactions, It is important from a business as well as reporting perspective to have a tight handle on the cash in circulation within the enterprise.

To be able to actively ascertain the exact amount of cash available, a business must maintain two principle documents :

- Cash collection register, to record and reconcile all collections made by the business in cash, and;
- Day books / Cash book to map the inward and outward movement of cash from the business

Place of Keeping the Records and Registers

Unless otherwise notified, it is assumed that statutory records are held at registered office address of the company. If it is inconvenient to make certain records available for inspection at the registered office, you may keep some or all of them at the other near premises under the jurisdiction of the company.

Inspection of Statutory Registers.

Companies are required by law to make their statutory records available for public inspection at their registered office or at an alternative address every working day between working hours.

Advance notice of the date and time of inspection must be provided to the company

Suggested Method of Keeping Statutory Registers

The companies have an option to keep all of their statutory registers together in a bound or loose-leaf folder or book. This ensures all important company documents are filed together and easily accessible for inspection purposes. Furthermore one may also keep digital copies instead of, or in addition to the paper registers.

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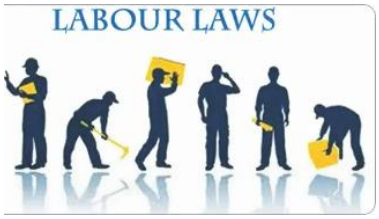
CHAPTER 15
IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPLIANCE

LAWS RELATING TO INDUSTRIES AND INDUSTRIES IN SPECIFIC

- In India, there are several Acts and legislations enacted by the Government of India for regulation of industries in the country. These enactments play a very important role in the country's overall progress and economic development. These legislations are amended from time to time in accordance with the changing circumstances and environment.
- The most important Act is the Companies Act, 2013 which relates to setting up and operation of companies in India. It empowers the Central Government to regulate the formation, financing, functioning and winding up of companies.
- In order to provide the Central Government with the means to implement its industrial policies, several legislations have been enacted. The most important being the Industries (Development and Regulation) Act, 1951 (IDRA).
- The main objectives of the Act is to empower the Government to take necessary steps for the development of industries; to regulate the pattern and direction of industrial development; and to control the activities, performance and results of industrial undertakings in the public interest.
- The bulk of the transactions in trade, commerce and industry are based on contracts. In India, the Indian Contract Act, 1872 is the governing legislation for contracts, which lays down the general principles relating to formation, performance and enforceability of contracts and the rules relating to certain special types of contracts like Indemnity and Guarantee; Bailment and Pledge; as well as Agency.

Adhering to labour laws



Adhering to labour laws are integral to every organization, small or big. When you are established as a company and have hired people to work for your organization, you are subject to several labour laws regardless of the size of the organization. Laws with regards to minimum wages, gratuity, PF payment, weekly holidays, maternity benefits, sexual harassment, payment of bonus among others will need to be complied with.

Some major labour laws applicable

- The Industrial Disputes Act, 1947
- The Trade Union Act, 1926
- Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- The Industrial Employment (Standing Orders) Act, 1946
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Payment of Gratuity Act, 1972
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948.

Having a well-designed employee policy can be a major differentiator for new companies to set up and advance well. An attractive employee policy can be the key to attract and retain good talent. Employee policies can also prove to be the starting point for boosting employee morale and increasing productivity.

There are several legislations which regulate the conditions of employment, work environment and other welfare requirements of certain specific industries. These enactments deal with factories and workshops; mines and minerals; plantations; shops and establishments as well as transportation. Some of the major legislations indicating the laws applicable to the Industries in specific are as below:

THE PLANTATION LABOUR ACT, 1951

- This Act is enacted to provide for the welfare of plantation labour and regulates the conditions of work in plantations.
- According to the Act, the term 'plantation' means "any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply".
- The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations.
- It works in close co-ordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output.

THE MINES ACT, 1952

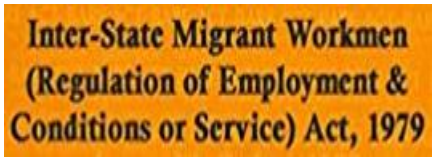
- The Mines Act, 1952 contains provisions for measures relating to the health, safety and welfare of workers in the coal, metalliferous and oil mines.
- According to the Act, the term 'mine' means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all borings, bore holes, oil wells and accessory crude conditioning plants, shafts, opencast workings, conveyors or aerial ropeways, planes, machinery works, railways, tramways, slidings, workshops, power stations, etc. or any premises connected with mining operations and near or in the mining area.
- The Act is administered by the Ministry of Labour and Employment through the Directorate General of Mines Safety (DGMS). DGMS is the Indian Government regulatory agency for safety in mines and oil-fields. It conducts inspections and inquiries, issues competency tests for the purpose of appointment to various posts in the mines, organises seminars/conferences on various aspects of safety of workers.

THE MOTOR TRANSPORT WORKERS ACT, 1961

- The Act was enacted to provide for the welfare of motor transport workers and to regulate the conditions of their work. It applies to every motor transport undertaking employing five or more motor transport workers.
- The State Government may, after giving notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers.
- According to the Act, 'motor transport undertaking' means "an undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier.
- Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act.
- No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week. Also, no adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour; and between the hours of 10 P.M. and 6 A.M.

THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

- This Act is enacted to regulate employment of contract labour so as to place it at par with labour employed directly, with regard to the working conditions and certain other benefits.
- Contract labour refers to "the workers engaged by a contractor for the user enterprises". These workers are generally engaged in agricultural operations, plantation, construction industry, ports & docks, oil fields, factories, railways, shipping, airlines, road transport, etc.
- The Act is implemented both by the Centre and the State Governments. The Central Government has jurisdiction over establishments like railways, banks, mines etc. and the State Governments have jurisdiction over units located in that state.
- In the Central sphere, the Central Industrial Relations Machinery (CIRM) headed by Chief Labour Commissioner (Central) and his officers have been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder.



The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to protect the rights and safeguard the interest of migrant workers. The Act intends to regulate the employment of inter-state migrant workmen and to provide their conditions of service. It applies to every establishment and the contractor, who employ five or more inter-state migrant workmen. The Act has provision for issue of Pass-Book to every interstate migrant workman with full details, payment of displacement allowance, payment of journey allowance including payment of wage during the period of journey, suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work irrespective of sex etc.

The responsibility for enforcement of the Act in establishments where the Central Government is the appropriate Government lies with the office of the Chief Labour Commissioner (Central) and for the establishments located under the States sphere lies with the respective State Governments.

LABOUR WELFARE FUNDS FOR SOCIAL ASSISTANCE TO WORKERS

- To extend a measure of social assistance to workers in the unorganised sector, the concept of 'Labour Welfare Fund' was evolved and five welfare funds were set up under the Ministry of Labour and Employment.

- These funds are aimed to provide housing, medical care, educational and recreational facilities to workers employed in beedi industry, certain non-coal mines and cine workers. Such funds are financed out of the proceeds of cess levied under respective Cess/Fund Acts. The various legislation so enacted include:-

The Mica Mines Labour Welfare Fund Act. 1946 - was enacted to provide for constitution of a fund for financing the activities which promote welfare of labour employed in the mica mining industry.

The Limestone and Dolomite Mines Labour Welfare Fund Act. 1972 - was enacted to provide for the levy and collection of a cess on limestone and dolomite for financing the activities which promote the welfare of persons employed in the limestone and dolomite mines.

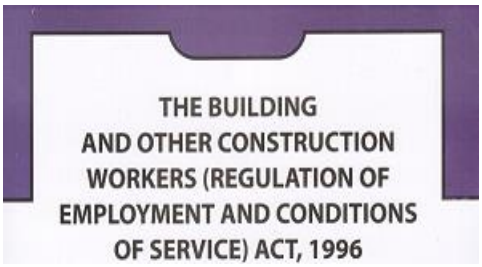
The Iron Ore Mines. Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976 was enacted to provide for financing the activities which promote the welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines.

The Beedi Workers Welfare Fund Act, 1976 - was enacted to provide for financing the measures which promote the welfare of persons engaged in beedi establishments.

The Cine Workers Welfare Fund Act, 1981 - was enacted to provide for financing the activities which promote the welfare of certain cine-workers.

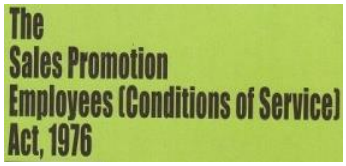
THE BUILDING & OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT & CONDITIONS OF SERVICE ACT, 1996

- This law was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures.



- The Act is applicable to every establishment which employs ten or more workers in any building or other construction work and to the projects costing more than Rs. 10 lakh.

- The Act contains provision for immediate assistance to the workers in case of accidents; old age pension; loans for construction of house; premium for group insurance; financial assistance for education, medical expenses and maternity benefits, etc.



The Sales Promotion Employees (Conditions of Service) Act, 1976 was enacted to regulate certain conditions of service of sales promotion employees in certain establishments. According to the Act, the term 'sales promotion employees' means, "any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do include any such person:- (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or (ii) who is employed or engaged mainly in a managerial or administrative capacity".

Apart from the above mentioned laws, there is a plethora of laws which are applicable to Specific Industries. The sector-wise Indicative list could be seen as below:

Sector	**Applicable Laws**
Pharmaceutical Industry	• Pharmacy Act, 1948; • Drugs and Cosmetics Act, 1940; • Homoeopathy Central Council Act, 1973 • Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 • Narcotic Drugs and Psychotropic Substances Act, 1985 • Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 • Petroleum Act 1934 • Poisons Act 1919 • Food Safety And Standards Act, 2006 • Insecticides Act 1968 • Biological Diversity Act, 2002 • The Indian Copyright Act, 1957 • The Patents Act, 1970 • The Trade Marks Act, 1999
Computer Programming, Consultancy and Related Services	• The Information Technology Act, 2000 • The Special Economic Zone Act, 2005 • Policy relating to Software Technology Parks of India and its regulations • The Indian Copyright Act, 1957 • The Patents Act, 1970 • The Trade Marks Act, 1999

Gas Industry	• The Petroleum Act, 1934 • Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962 • Explosives Act, 1884 • The Oilfield (Regulation & Development) Act , 1948 Petroleum and Natural Gas Regulatory Board Act, 2006 • The Oil Industry(Development) Act 1974 • The Mines Act, 1952
Oil & Petroleum Sector	• The Petroleum Act, 1934 • Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962 • Explosives Act, 1884 • The Oilfield (Regulation & Development) Act, 1948 • Petroleum and Natural Gas Regulatory Board Act, 2006 • The Oil Industry(Development) Act, 1974 • The Mines Act, 1952 • Mines and Minerals (Regulations and Development) Act, 1957 • The Territorial Waters, Continental Shelf, Exclusive Economic • Zone And Other Maritime Zones Act, 1976 • Offshore Areas Minerals (Development and Regulation) Act,2002
Power	• The Electricity Act, 2003 • National Tariff Policy • Essential Commodities Act, 1955 • Explosives Act, 1884 • Mines Act, 1952 (wherever applicable) • Mines and Mineral (Regulation and Development) Act, 1957(wherever applicable)
Sugar Industry	• Sugar Cess Act, 1982 • Levy Sugar Price Equalisation Fund Act, 1976 « Food Safety And Standards Act, 2006 • Essential Commodities Act, 1955 • Sugar Development Fund Act, 1982 • Export (Quality Control and Inspection) Act, 1963 Agricultural and Processed Food Products Export Act, 1986

Tobacco Industry	• Tobacco Board Act, 1975 • Tobacco Cess Act, 1975 • Beedi and Cigar Workers (Conditions of Employment) Act, 1966 as amended in 1993 • Beedi Workers Welfare Cess Act, 1976 • Beedi Workers Welfare Fund Act, 1976 • Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COPTA) • The Cable Television Network (Regulation) Act, 1955
Insurance	• Insurance Act, 1938 • Insurance Regulatory and Development Authority Act, 1999 • General Insurance Business (Nationalisation) Act, 1972 • Industrial Disputes (Banking and Insurance Companies) Act, 1949 • Marine Insurance Act, 1963
Insurance	• Insurance Act, 1938 • Insurance Regulatory and Development Authority Act, 1999 • General Insurance Business (Nationalisation) Act, 1972 • Industrial Disputes (Banking and Insurance Companies) Act, 1949 • Marine Insurance Act, 1963
Commercial Banks (Other Than Nationalised Banks And State Bank Of India	• Reserve Bank of India Act, 1934 • Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 • The Bankers' Books Evidence Act, 1891 • Recovery of Debts due to Banks & Financial Institution Act, 1993 • Credit Information Companies (Regulation) Act, 2005 • Prevention of Money Laundering Act, 2002 • The Deposit Insurance and Credit Guarantee Corporation Act, 1961 • Industrial Disputes (Banking and Insurance Companies) Act, 1949 • Information Technology Act, 2000
Beverages (Non- Alcoholic)	• Food Safety and Standards Act, 2006 • The Insecticide Act, 1968 • Export (Quality Control and Inspection) Act, 1963 • Inflammable Substances Act, 1952 • Agricultural and Processed Food Products Export Cess Act, 1986 • Agricultural Produce (Grading and Marking) Act, 1937

Real Estate Sector	• Housing Board Act, 1965 • Transfer of Property Act, 1882 • Building and Other Construction Workers' (Regulation of Employment and Conditions of Services) Act, 1996
Automobile	• Motor Vehicles Act, 1988 • The Motor Transport Workers Act, 1961 • The Explosive Act, 1884 • The Petroleum Act, 1934 • The Environment (Protection) Act, 1986 • The Water(Prevention and Control of Pollution) Act, 1974 • The Air(Prevention and Control of Pollution) Act, 1981
Aviation Sector	• Aircraft Act, 1934 • Airports Authority of India Act, 1994 • Carriage by Air Act, 1972 • Tokyo Convention Act, 1975 • Anti-Hijacking Act, 1982 • Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 • Airports Economic Regulatory Authority of India Act,2008
Human Health Sector	• Clinical Establishment (Registration and Regulation) Act, 2010 • Indian Medical Council Act, 1956 • Indian Medical Degrees Act, 1916 • Indian Nursing Council Act, 1947 • The Dentists Act, 1948 • Rehabilitation Council of India Act, 1992 • Drugs and Cosmetic Act, 1940 • The Drugs Control Act, 1950 • Pharmacy Act, 1948 • Narcotics and Psychotropic Substances Act, 1985 • Homoeopathy Central Council Act, 1973 • Insecticide Act, 1968 • Transplantation of Human Organs Act, 1994 • Drugs and Magic Remedies (Objectionable) Advertisements Act, 1954 • Birth and Death and Marriage Registration Act, 1886 • Mental Health Act, 1987

	• Ear Drums and Ear Bones (Authority for Use For Therapeutic Purposes) Act, 1982 • Eyes (Authority for Use For Therapeutic Purposes) Act, 1982 • The Epidemic Disease Act 1897
Mining Of Metal Ores	• Mines Act, 1952 • Mines and Minerals (Development and Regulation) Act, 1957 • Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976 • Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
Edible Oils	• National Oil Seeds and Vegetable Oils Development Board Act, 1983 • Cotton Copra and Vegetable Oils Cess (Abolition) Act, 1987 • Seeds Act, 1966 • Protection of Plant Varieties and Farmers Right Act, 2001 • Food Safety And Standards Act, 2006
Road Transport	• National Highways Act, 1956 • The Multimodal Transportation of Goods Act, 1993 • Control of National Highways (Land and Traffic) Act, 2002 • Carriage by Road Act, 2007 • Road Transport Corporations Act, 1950 • Motor Vehicles Act, 1988

Formalizing and Deciding the Business Structure

- The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be.
- For example, if it's a company, it would be governed under Companies Act, 2013, in case of Partnership, the Partnership Act, 1932 would be applicable, if it is an MSME, the MSME Act, 2006 would come into picture.
- It shows that there is a plethora of laws which need to be complied with the respective form of businesses. Therefore, the first thing for starting any business is to determine the nature and type of the business.
- Founders need to incorporate the business as a specific business type - sole proprietorship, private limited, public limited, partnership, limited liability partnership etc.
- It is very essential to have this clarity at the very beginning as this will be integral to the business' overall vision and goals, both short term and long term. Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before incorporating the business.

Here is a quick look into the legal implications for the major business types in India

Legal Details	Business Types			
	Proprietorship	**Partnership**	**Limited Liability Company (LLP)**	**Private Limited Company**
Registration	No formal registration Required.	Registration is optional	Has to be registered with the Ministry of Corporate Affairs under the LLP Act 2008	Has to be registered with the Ministry of Corporate Affairs under the Companies Act 2013
Legal Status	Not recognised as a separate entity and promoter is personally responsible for all liabilities	Not recognised as a separate entity and promoters are personally responsible for all liabilities	Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP	Is a separate legal entity. The promoters of the company are not personally liable towards the company
Member Liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP	Limited Liability to the extent of share capital
Number of Members Required	Can only have one person	Minimum of two persons required to start a Partnership	Minimum of two persons required to start a LLP	Minimum of one person required to start a Private Limited Company
Transferability	Not transferable	Not transferable	Ownership can be transferred	Ownership can be transferred by means of share transfer
Taxation	Taxed as individual, based on total income of proprietor	Partnership profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable	LLP profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable	Private Limited Company profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable

Annual Statutory Meetings	No requirement for annual statutory meetings	No requirement for annual statutory meetings	No requirement for annual statutory meetings	Board and General Meetings should be conducted periodically
Annual Filings	No requirement to file annual report with the Registrar of companies. Income tax to be filed on the income of the proprietorship	No requirement to file annual report with the Registrar of Companies. Income tax to be filed for the partnership.	Must file Annual Statement of Returns & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually.	Must file Annual Statement of Returns & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually
Existence or Survivability	Proprietorship existence is dependent on proprietor	Partnership existence is dependent on partners. Can be dissolved at will or upon on the death of partner(s)	Existence not dependent on partners. Can be dissolved voluntarily or by order of the Company Law Board	Existence not Dependent on directors or shareholders. Can be dissolved voluntarily or by Regulatory Authorities
Foreign Ownership	Foreigners are not allowed to be sole proprietors	Foreigners are not allowed to be part of a partnership	Foreigners are allowed in invest with/without the approval of the Reserve Bank of India (RBI) and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are allowed to invest with/without The approval of RBI And other applicable permissions for the relevant Government of India authorities depending on the Category of business they are Interested to invest.

Procedure for Setting up of Company

Among others one important form of business is the Company which is governed under the Companies Act, 2013. The procedure for setting up an enterprise in the form of company could be seen as below:

Incorporation:- Formation of companies in India is governed by the Indian Companies Act, 2013 ("companies act") which is a comprehensive legislation, in relation to the erstwhile Companies Act, 1956, and provides for provisions relating to all phases of a company's life, i.e. incorporation, management, mergers, winding up.

A Registrar of Companies ("RoC") is appointed under the Act for designated regions, who is the nodal authority for affairs related to companies in that particular region.

Form of a Company:- Before formation and registration of the enterprise, the entrepreneur should consider the form (viz. Public, Private, OPC), and the liability pattern, before starting the registration pattern of the Companies in India. Any person can choose to incorporate either a company with unlimited liability or one with liability limited either by shares or guarantee.

Legal Formalities for Incorporation of a Company

Pre-incorporation formalities

The below mentioned compliances are required to be carried out with regard to setting up of company in India:-

- Obtaining Director's Identification Number ("DIN") and Digital Signature Certificates ("DSC") for the proposed directors of the company by preparing and filing of all the relevant forms and documents as required under the provisions of the companies act.
- Once the DIN and DSC are ready, the next step is filing of online application for the approval of name of the company, provided the name is not matching or similar with any other existing company.
- On approval of name by the Registrar of Companies, the drafting of the charter documents of the company needs to be carried out *i.e.* Memorandum (MoU) and Articles of Association (AoA), which are the basic documents for any company.
- Thereafter all the incorporation forms, shall be prepared and filed with the RoC for registration of company for the final step of the incorporation process and obtaining a certificate of incorporation of the company.

Post incorporation formalities:

- Once the certificate of incorporation has been issued by RoC, the company becomes a separate legal entity in the eyes of laws in India, and requires certain basic registrations to initiate the business which includes filing of application for obtaining a permanent account number and tax deduction account number on the name of the company and any other business specific registrations from the relevant government authorities i.e. Import – Export Code Number in case of company carrying out the business of import and/or export.
- Further, every company shall be required to carry out certain compliances, as required under the provisions of the companies act, for their day to day activities which includes holding of first board meeting immediately after incorporation, carrying out the annual general meetings every year, maintaining all the secretarial records at the registered office of the company, maintaining of statutory registers, minutes books etc. of company in compliance with the companies act.

CHECKLIST FOR COMPLIANCES

CHECK LIST FOR INCORPORATION

Incorporation as One Person Company

Sr.No.	Compliance	Action
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	

Incorporation as Small Company

Sr.No.	Compliance	Action
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	

Incorporation as Private Limited Company		
Sr.No.	**Compliance**	**Action**
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	

Incorporation as Public Limited Company		
Sr.No.	**Compliance**	**Action**
1.	Obtain Digital Signature Certificate [DSC] for the proposed Director(s)	
2.	Obtain Director Identification Number [DIN] for the proposed director(s).	
3.	Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name	
4.	Draft MOA & AOA	
5.	Sign and file various documents including MOA & AOA with the Registrar of Companies electronically	
6.	Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.	
7.	Receipt of Certificate of Registration/Incorporation from ROC	

Incorporation as Limited Liability Partnership		
Sr.No.	**Compliance**	**Action**
1.	Deciding the Partners and Designated Partners	
2.	To obtain Director Identification Number (DIN) & Digital Signature Certificate	
3.	To Apply for Name of LLP (*RUN LLP- Reserve Unique Name) { replacing the erstwhile Form 1} ***LLP (Second Amendment) Rules, 2018***	
4.	After Name Approval file *'FiLLiP' (Form for incorporation of Limited Liability Partnership) { replacing the erstwhile Form 2} to the ROC ***LLP (Second Amendment) Rules, 2018***	
5.	After that File LLP agreement (i.e. Form-3) and Partners' details (i.e. Form-4)	

CHECK LIST OF ANNUAL COMPLIANCES DEPENDING ON THE FORMATION OF COMPANY

Annual Compliances for One Person Company

Sr.No	Compliance	Action
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-OPC shall hold a minimum number of Two Meetings of its Board of Directors every year in such a manner that Minimum gap between both the Meetings, should be not less than 90 (Ninety) days	
4.	Appointment of auditor	
5.	File form ADT-1 of Auditor appointment	
6.	Annual Filling	

Annual Compliances for Small Company

Sr.No	Compliance	Action
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Small Company shall hold a minimum number of Two Meetings of its Board of Directors every year in such a manner that Minimum gap between both the Meetings not less than 90 (Ninety) days	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Appointment of Auditor	
7.	File form ADT-1 of Auditor appointment	
8.	Annual Filing	

Annual Compliances for Private Company other than Small Company		
Sr.No	**Compliance**	**Action**
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Appointment of Auditor	
7.	File form ADT-1 of Auditor appointment	
8.	Maintenance of Statutory Registers	
9.	Annual Filing	

Annual Compliances for Unlisted Public Company		
Sr.No	**Compliance**	**Action**
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.	
4.	Holding AGM every year	
5.	Adoption of Financial Account & Board Report	
6.	Filing of Adoption of Financial Account & Board Report in Form MGT-14	
7.	Appointment of Auditor	
8.	File form ADT-1 of Auditor appointment	
9.	Maintenance of Statutory Registers	

10.	Annual Filing	
11.	Certification of Annual Return by PCS if paid up share	
	capital of 10 Crore or more or turnover of Rs. 50 crore or more	
12.	E–Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor	
13.	Following Companies are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3). a) All Listed Companies b) Every Public Company having; • Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or • Every Public Company having a Turnover of Rs. 250 Crore (two hundred fifty crore rupees) or more	
14.	Constitution of Audit Committee if applicable	
15.	Constitution of Nomination Committee	

Annual Compliances for Listed Company

Sr.No	Compliance	Action
1.	Receipt of MBP-1	
2.	Receipt of DIR-8	
3.	Board Meeting:-Every Company shall hold a minimum number of FOUR Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 (One hundred Twenty) days. Company should hold at least 1 (one) Board Meeting every quarter of calendar year.	
4.	Providing E-Voting Facilities to shareholders	
5.	Holding AGM every year	
6.	Filing Report of AGM	
7.	Adoption of Financial Account & Board Report	
8.	Filing of Adoption of Financial Account & Board Report in Form MGT-14	
9.	Appointment of Auditor	

10.	File form ADT-1 of Auditor appointment	
	Filing return for change in Stake of Promoters	
11.	Maintenance of Statutory Registers	
12.	Filing of Annual accounts in XBRL Form	
13.	Certification of Annual Return by PCS if paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more	
14.	E–Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor, Appointment of Cost Auditor, Appointment of Secretarial auditor	
15.	Following Companies are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3). a) All Listed Companies b) Every Public Company having; • Paid-Up Share Capital of Rs. 50 Crore (fifty crore rupees) or more; or • Every Public Company having a Turnover of Rs. 250 Crore (two hundred fifty crore rupees) or more	
16.	Constitution of Audit Committee if applicable	
17.	Constitution of Nomination Committee	
18.	Compliances prescribed in SEBI (LODR) Regulation, 2015 are also required to be comply by the listed companies	

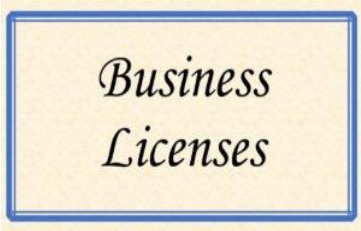
Annual Compliances for LLP

Sr.No	**Compliance**	**Action**
1.	Maintenance of Minute Book	
2.	File E-Form 4 for any change of Partner and designated Partner	
3.	Supplementary LLP agreement require to file in E-form 3	
4.	Holding General Meeting every year	
5.	Statement of Account and solvency is required to be filed annually in E-form 8	
6.	Annual return should be filed with ROC in E-form 11	

7.	File Income tax Return: - LLP whose accounts are not required to be audited under any Law:- 31st July of every year - LLP whose accounts are subject to Audit under any Law: - 30th September of every year or such other date as may be notified by the Income Tax authorities.	

Annual Compliances for Sole Proprietorship		
Sr.No	**Compliance**	**Action**
1.	Proprietorship will have to file their annual tax return with the Income Tax Department. Other tax filings like service tax filing or VAT/CST filing may be necessary from time to time, based on the business activity performed. However, annual report or accounts need not be filed with the Ministry or Corporate Affairs, which is required for Limited Liability Partnerships and Companies.	

Annual Compliances for Partnership		
Sr.No	**Compliance**	**Action**
1.	Intimation of Change in Principal Place/ nature of business / firm name in Form B	
2.	Intimation of Change in the name (person/limited company and address of the partner) in Form D	
3.	Intimation of Change in Constitution-Admission/Retirement/Dissolution/ Death of Partner/minor partner in Form E	



***Applying for Business Licences*:-** Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. Knowing the applicable licenses for the enterprises and obtaining them is always the best way to start at business. The lack of relevant licenses can lead to costly lawsuits and unwanted legal battles. Business licenses are the legal documents that allow a business to operate while business registration is the official process of listing a business (along with relevant information) with the official registrar.

The common license that is applicable to all businesses is the Shop and Establishment Act which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry. For instance an e-commerce company may require additional licenses like GST Registration, Professional Tax etc.

For instance an e-commerce company may require additional licenses like GST Registration, Professional Tax etc. while a restaurant may require licenses like Food Safety License, Certificate of Environmental Clearance, Prevention of Food Adulteration Act, Health Trade License etc. along with the above mentioned licenses.

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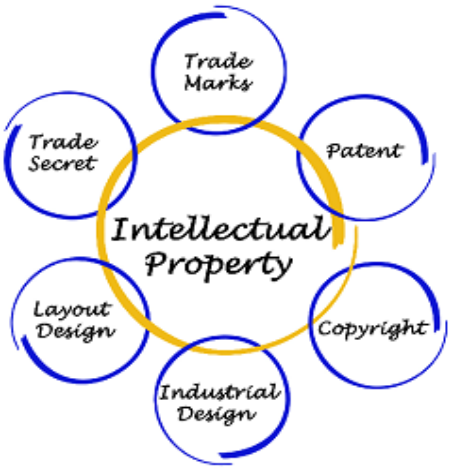
CHAPTER 16
INTELLECTUAL PROPERTY ACT

1. Meaning of Intellectual Property



- The term 'intellectual property' related to the creation of human mind and human intellect.
- A trademark, copyright or a patent right are the important IPRs. They are known as Incorporeal Assets.
- As patents, copyrights and trademarks represent title to property, they can be sold or assigned by the owner or holder thereof to another person in accordance with law.
- The most important objective of IPR is to serve as a powerful incentive for entrepreneurs to invest resources into, creating ideas and inventions. In this way research and development is encouraged.
- It encourages the dissemination of useful information for further research for the benefit of society.

Introduction

• Intellectual Property Rights are considered to be the backbone of any economy and their creation and protection is essential for sustained growth of a nation.
• IPR means **RIGHT TO PROTECT** a property which is created by intellect.
• It is intangible incorporate property consisting of bundle of rights.
• In other words, intellectual property relates to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world.
• The property right does not vest in those copies but in the information reflected in those copies.
• Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them.

2. TYPES AND REGULATORY FRAMEWORK OF INTELLECTUAL PROPERTY

Patent	The Patents Act, 1970 and was amended in 1995,1999, 2002, and 2005
Trademarks	Trademarks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958 w.e.f September 15, 2003.
Industrial Design/ Design	Design Act, 2000 has been enacted superseding the earlier Designs Act, 1911.
Copyright	The Copyright Act, 1957 as amended in 1983, 1984, and 1992, 1994, 1999 and the Copyright Rules, 1958.
Geographical Indication of Goods	The Geographical Indication of Goods (Regulation and Protection) Act, 1999
Integrated Circuit	The Semiconductor Integrated Circuit Layout Design Act, 2000.
Protection of Undisclosed Information such as Trade Secrets	No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872.

Intellectual property vis-à-vis Business:-A Rationale of Relativity

- In today's world, the abundant supply of goods and services on the markets has made life very challenging for any business, big or small. In its on-going quest to remain ahead of competitors in this environment, every business strives to create new and improved products (goods and services) that will deliver greater value to users and customers than the products offered by competitors. To differentiate their products - a prerequisite for success in today's markets - businesses rely on innovations that reduce production costs and/or improve product quality.

- In the current knowledge-driven, private sector oriented economic development paradigm, the different types of intangible assets of a business are often more important and valuable than its tangible assets. A key subset of intangible assets is protected by what are labelled collectively as intellectual property rights (IPRs). These include trade secrets protection, copyright, design and trademark rights, and patents, as well as other types of rights. IPRs create tradable assets out of products of human intellect, and provide a large array of IPR tools on which businesses can rely to help drive their success through innovative business models.

- All businesses, especially those which are already successful, nowadays have to rely on the effective use of one or more types of intellectual property (IP) to gain and maintain a substantial competitive edge in the marketplace. Business leaders and managers, therefore, require a much better understanding of the tools of the IP system to protect and exploit the IP assets they own, or wish to use, for their business models and competitive strategies in domestic and international markets.

Intellectual Property Regime in India

- India remains one of the world's most growing economies in past 20 years and the ballgame of entrepreneurship and industries is a key element for contribution outstanding growth of Indian economy. On one hand, where businesses and their successful run is vital to the growth of economy; on the same hand, a structured set of IP protection helps in the advancement and development of businesses under a hassle free environs. Henceforth, aligning the International practices, India too is having a systemized legal system to take care of IP protection. Historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions. In the United States, patent laws were introduced in 1760.

- Over the past fifteen years, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. In 1990s, many countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise. At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization elevates the protection and enforcement of IPRs to the level of solemn international commitment. It is strongly felt that under the global competitive environment, stronger IPR protection increases incentives for innovation and raises returns to international technology transfer.

Trademarks

A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for patent protection, the mark must be distinctive. For example, the Nike "swoosh" design identifies athletic footwear made by Nike.

The Trade Marks Act 1999 ("TM Act") provides, inter alia, for registration of marks, filing of multiclass applications, the renewable term of registration of a trademark as ten years as well as recognition of the concept of well-known marks, etc. It is pertinent to note that the letter "R" in a circle i.e. ® with a trademark can only be used after the registration of the trademark under the TM Act.

Trademarks mean any words, symbols, logos, slogans, product packaging or design that identify the goods or services from a particular source. As per the definition provided under Section 2 (zb) of the TM Act, "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.

The trademarks can be broadly classified into following five categories:

- Generic
- Descriptive
- Suggestive
- Arbitrary
- Invented/Coined

1. Generic marks means using the name of the product for the product, like "Salt" for salt.
2. Descriptive marks mean the mark describing the characteristic of the products, like using the mark "Fair" for the fairness creams.
3. Suggestive marks mean the mark suggesting the characteristic of the products, like "Habitat" for home furnishings products.
4. Arbitrary marks means mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like "Blackberry" for phones.
5. The invented/ coined marks means coining a new word which has no dictionary meaning, like "Adidas". The strongest marks, and thus the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

Enforcement of Trademark Rights

Trademarks can be protected under the statutory law, i.e., under the TM Act and the common law, i.e., under the remedy of passing off. If a person is using a similar mark for similar or related goods or services or is using a well-known mark, the other person can file a suit against that person for violation of the IP rights irrespective of the fact that the trademark is registered or not.

Registration of a trademark is not a pre-requisite in order to sustain a civil or criminal action against violation of trademarks in India. The prior adoption and use of the trademark is of utmost importance under trademark laws.

The relief which a court may usually grant in a suit for infringement or passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings. It is pertinent to note that infringement of a trademark is also a cognizable offence and criminal proceedings can also be initiated against the infringers.

Geographical indication of Goods (Registration and Protection) Act; 1999

Until recently, Geographical indications were not registrable in India and in the absence of statutory protection; Indian geographical indications had been misused by persons outside India to indicate goods not originating from the named locality in India. Patenting turmeric, neem and basmati are the instances which drew a lot of attention towards this aspect of the Intellectual property. Mention should be made that under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), there is no obligation for other countries to extend reciprocal protection unless a geographical indication is protected in the country of its origin. India did not have such a specific law governing geographical indications of goods which could adequately protect the interest of producers of such goods.

To cover up such situations it became necessary to have a comprehensive legislation for registration and for providing adequate protection to geographical indications and accordingly the Parliament has passed a legislation, namely, the Geographical indication of Goods (Registration and Protection) Act, 1999. The legislation is administered through the Geographical Indication Registry under the overall charge of the Controller General of Patents, Designs and Trade Marks.

The salient features of this legislation are as under:

(a) Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc.

(b) Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.

(c) Registration of geographical indications of goods in specified classes.

(d) Prohibition of registration of certain geographical indications.

(e) Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.

(f) Compulsory advertisement of all accepted geographical indication applications and for inviting objections.

(g) Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.

(h) Provisions for higher level of protection for notified goods.

(i) Prohibition of assignment etc. of a geographical indication as it is public property.

(j) Prohibition of registration of geographical indication as a trademark.

(k) Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation.

(l) Provision relating to offences and penalties.

(m) Provision detailing the effects of registration and the rights conferred by registration.

(n) Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

Design Act 2000

Industrial Design law deals with the aesthetics or the original design of an industrial product. An industrial product usually contains elements of both art and craft, that is to say artistic as well as functional elements.

The salient features of the Design Act, 2000 are as under:

(a) Enlarging the scope of definition of the terms "article", "design" and introduction of definition of "original".

(b) Amplifying the scope of "prior publication".

(c) Introduction of provision for delegation of powers of the Controller to other officers and stipulating statutory duties of examiners.

(d) Provision of identification of non-registrable designs.

(e) Provision for substitution of applicant before registration of a design.

(f) Substitution of Indian classification by internationally followed system of classification.

(g) Provision for inclusion of a register to be maintained on computer as a Register of Designs.

(h) Provision for restoration of lapsed designs.

(i) Provisions for appeal against orders of the Controller before the High Court instead of Central Government.

(j) Revoking of period of secrecy of two years of a registered design.

(k) Providing for compulsory registration of any document for transfer of right in the registered design.

(l) Introduction of additional grounds in cancellation proceedings and provision for initiating the cancellation proceedings before the Controller in place of High Court.

(m) Enhancement of quantum of penalty imposed for infringement of a registered design.

(n) Provision for grounds of cancellation to be taken as defense in the infringement proceedings to be in any court not below the Court of District Judge

(o) Enhancing initial period of registration from 5 to 10 years, to be followed by a further extension of five years.

(p) Provision for allowance of priority to other convention countries and countries belonging to the group of countries or inter-governmental organizations apart from United Kingdom and other Commonwealth Countries.

(q) Provision for avoidance of certain restrictive conditions for the control of anticompetitive practices in contractual licenses.

Copyrights

Copyrights protect original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work

Copyright in India is governed by Copyright Act, 1957. This Act has been amended several times to keep pace with the changing times.

Classes of work for which Copyright protection is applicable

Copyright subsists throughout India in the following classes of works:

- ✓ Original literary,
- ✓ dramatic,
- ✓ musical work (consists of music and also graphic notation of such works but excludes any words or action intended to be sung, spoken or performed with music)
- ✓ artistic works (painting, sculpture, drawing, engraving, photograph, architecture or any other work of artistic craftsmanship (whether or not any such work poses artistic work)
- ✓ Cinematograph films (work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording); and
- ✓ Sound recordings (recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced).

Protection to Authors

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings.

The following rights are protected:

- ✓ reproduce the work
- ✓ issue copies of the work to the public
- ✓ perform the work in public
- ✓ communicate the work to the public.
- ✓ make cinematograph film or sound recording in respect of the work
- ✓ make any translation of the work
- ✓ make any adaptation of the work (conversion of dramatic work into non dramatic work, literary work into dramatic work, re-arrangement of literary or dramatic work, depiction in comic form or through pictures of a literary or dramatic work, transcription of musical work or any act involving rearrangement or alteration of an existing work and the making of a cinematograph film of literary or dramatic or musical work)

In addition to all the rights applicable to a literary work, owner of the copyright in a computer programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

Owners of copyrights

The following are the owners of the copyrights:

- ✓ **In musical sound recordings:** lyricist, composer, singer, musician and the person or company who produced the sound recording
- ✓ **In works by journalists during their employment:** in the absence of any agreement to the contrary, the proprietor
- ✓ **In works produced for valuable consideration at the instance of another person:** in the absence of any agreement to the contrary, the person at whose instance the work is produced

Assignment of Copyright

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. The assignment mention the rights, duration, the territorial limits of the assignment and the royalty payable thereon and should be in writing signed by the assignor or by his duly authorized agent.

Term of the protection of Copyright

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

Exceptions to the use Copyright

In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work:

- ✓ for the purpose of research or private study,
- ✓ for criticism or review,
- ✓ for reporting current events,
- ✓ in connection with judicial proceeding,
- ✓ performance by an amateur club or society if the performance is given to a non-paying audience, and
- ✓ the making of sound recordings of literary, dramatic or musical works under certain conditions.
- ✓ for the purpose of education and religious ceremonies

Infringement of Copyrights

Copyright in a work is considered as infringed only if a substantial part is made use of unauthorized. What is ‘substantial’ varies from case to case. More often than not, it is a matter of quality rather than quantity.

For example, if a lyricist copy a very catching phrase from another lyricist’s song, there is likely to be infringement even if that phrase is very short.

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire;
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- Public exhibition of infringing copies by way of trade; and
- Importation of infringing copies into India.

A copyright owner can take legal action against any person who infringes the copyright and is entitled to remedies by way of injunctions, damages and accounts.

Penalty for infringement and the status of the infringing copies

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of `50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

All infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright

Patents

A patent grants property rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. Inventions allow many businesses to be successful because they develop new or better processes or products that offer competitive advantage on the marketplace. One could get a patent by filing a patent application with the Patent Office in India.

Patent, in general parlance means, a monopoly given to the inventor on his invention to commercial use and exploit that invention in the market, to the exclusion of other, for a certain period. As per Section 2(1) (j) of the Patents Act, 1970, "invention" includes any new and useful;

- art, process, method or manner of manufacture;
- machine, apparatus or other article;
- substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention;

The definition of the word "Invention" in the Patents Act, 1970 includes the new product as well as new process. Therefore, a patent can be applied for the "Product" as well as "Process" which is new, involving inventive step and capable of industrial application can be patented in India.

It is important to note that any invention which falls into the following categories, is not patentable:
(a) frivolous,
(b) obvious,
(c) contrary to well established natural laws,

(d) contrary to law,
(e) morality,
(f) injurious to public health,
(g) a mere discovery of a scientific principle,
(h) the formulation of an abstract theory,
(i) a mere discovery of any new property or new use for a known substance or process, machine or apparatus,
(j) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance,
(k) a mere arrangement or rearrangement or duplication of known devices
(l) a method of agriculture or horticulture, and
(m) inventions relating to atomic energy or the inventions which are known or used by any other person, or used or sold to

any person in India or outside India. The application for the grant of patent can be made by either the inventor or by the assignee or legal representative of the inventor. In India, the term of the patent is for 20 years.

Use of Technology/Invention

While using any technology or invention, the startup should check and confirm that it does not violate any patent right of the patentee. If the startup desires to use any patented invention or technology, the startup is required to obtain a license from the patentee.

Enforcement of Patent Rights

It is pertinent to note that the patent infringement proceedings can only be initiated after grant of patent in India but may include a claim retrospectively from the date of publication of the application for grant of the patent. Infringement of a patent consists of the unauthorized making, importing, using, offering for sale or selling any patented invention within the India. Under the (Indian) Patents Act, 1970 only a civil action can be initiated in a Court of Law. Like trademarks, the relief which a court may usually grant in a suit for infringement of patent includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings.

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CHAPTER 17
COMPLIANCE UBDER LABOUR LAWS

FACTORIES ACT, 1948

- The law relating to factories is governed under the Factories Act, 1948.
- The Act has been enacted primarily with the object of **protecting workers** employed **in factories against industrial and occupational hazards.** For that purpose, it seeks to **impose** upon the **owner** or the **occupier** certain **obligations** to protect the workers and to secure for them employment in conditions conductive to their health and safety.
- The State Governments assume the main responsibility for administration of the Act and its various provisions by utilizing the powers vested in them.

APPLICABILITY OF ACT

The Act applies on all Factories.

FACTORY

"Factory" includes any premises including the precincts thereof:-

(a) whereon **ten or more** workers are working, or were working on any day of the preceding **twelve months,** and in any part of which a manufacturing process is being carried on with the **aid of power** or is ordinarily so carried on; or

(b) whereon **twenty or more workers** are working, or were working on a day of the preceding **twelve months,** and in any part of which a manufacturing process is being carried on **without the aid of power,** or is ordinarily so carried on.

The following are **not covered** by the definition of factory:
Railway running sheds, (ii) mines, (iii) hotels, eating places or restaurants.

SAFETY MEASURES

Facing of machinery

- Work on near machinery in motion.
- Employment prohibition of young persons on dangerous machines.
- Striking gear and devices for cutting off power.
- Self-acting machines.
- Casing of new machinery.
- Prohibition of employment of women and children near cotton-openers.
- Hoists and lifts.

Working Hours, Spread Over & Overtime of Adults (Section 51, 54 to 56, 59 & 60)

- Weekly hours not more than 48.
- Daily hours, not more than 9 hours.
- Intervals for rest at least ½ hour on working for 5 hours.
- Spread over not more than 10½ hours.

- Overlapping shifts prohibited.
- Extra wages for overtime double than normal rate of wages.
- Restrictions on employment of women before 6 AM and beyond 7 PM.

Welfare Measures

- Washing facilities
- Facilities for storing and drying clothing
- First-aid appliances – one first aid box not less than one for every 150 workers.
- Canteens when there are 250 or more workers.
- Shelters, rest rooms and lunch rooms when there are 150 or more workers.
- Creches when there are 30 or more women workers.
- Welfare office when there are 500 or more workers.

Employment of Young Persons (Section 51, 54 to 56, 59 & 60)

- Prohibition of employment of young children e.g. 14 years.
- Non-adult workers to carry tokens e.g. certificate of fitness.
- Working hours for children not more than 4 ½ hrs.
- And not permitted to work during night shift.

Annual Leave with Wages (Section 79)

- A worker having worked for 240 days @ one day for every 20 days and for a child one day for working of 15 days.
- Accumulation of leave for 30 days.

MINIMUM WAGES ACT 1948

Object of the Act

To provide for fixing minimum rates of wages in certain employments

Fixation of Minimum Rates of Wages (Section 3)

- The appropriate government to fix minimum rates of wages. The employees employed in para 1 or B of Schedule either at 2 or either part of notification u/s 27.
- To make review at such intervals not exceeding five years the minimum rates or so fixed and revised the minimum rates.

Government can also fix Minimum Wages for

- Time work
- Piece work at piece rate
- Piece work for the purpose of securing to such employees on a time work basis
- Overtime work done by employees for piece work or time rate workers.

Minimum Rates of Wages (Section 4)

- Such as Basic rates of wages etc. Variable DA and Value of other concessions etc.

Procedure for fixing and revising Minimum Rates of Wages

- Appointing Committee issue of Notification etc.

Overtime (Section 5)

- To be fixed by the hour, by the day or by such a longer wage-period works on any day in excess of the number of hours constituting normal working day.
- Payment for every hour or for part of an hour so worked in excess at the overtime rate double of the ordinary rate of (1½ times or for agriculture labour)

Composition of Committee (Section 9)

- Representation of employer and employee in schedule employer in equal number and independent persons not exceeding 1/3rd or its total number one such person to be appointed by the Chairman.

Payment of Minimum Rates of Wages (Section 12)

- Employer to pay to every employee engaged in schedule employment at a rate not less than minimum rates of wages as fixed by Notification by not making deduction other than prescribed.

Fixing Hours for Normal Working (Section 13)

- Shall constitute a normal working day inclusive of one or more specified intervals.
- To provide for a day of rest in every period of seven days with remuneration.
- To provide for payment for work on a day of rest at a rate not less than the overtime rate.

Wages of workers who works for less than normal working days (Section 15)

- Save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

Wages for two class of work (Section 16)

- Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, wages at not less than the minimum rate in respect of each such class.

Minimum time rate wages for piece work (Section 17)

- Not less than minimum rates wages as fixed.

Claims by employees (Section 16)

- To be filed by before authority constituted under the Act within 6 months.
- Compensation upto 10 times on under or non-payment of wages

Maintenance of registers and records (Section 18)

- Register of Fines – Form I Rule 21(4)
- Annual Returns – Form III Rule 21 (4-A)
- Register for Overtime – Form IV Rule 25
- Register of Wages–Form X, Wages slip–Form XI, Muster Roll–Form V Rule 26
- Representation of register – for three year Rule 26-A.

PAYMENT OF WAGES ACT 1936

Object of the Act

To regulate the payment of wages of certain classes of employed persons.

Applicability of Act

- It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment
- The State Government may after giving three months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment of class of establishments specified by the Central Government or a State Government

Time of payment of wages (Section 5)

- The wages of every person employed is paid.
- When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month.
- When more than 1000 workers, before the expiry of the 10th day of the following month.
- Equal Remuneration Act; 1976

Wages to be paid in current coins or currency notes (Section 6) (As Amended in 2017)

- All wages shall be paid in current coin or currency notes or
- By cheque or by crediting the wages in the bank account of the employee.

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.".

Deduction made from wages (Sec. 7)

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house-building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, ESI contributions etc.

Fines as prescribed by Competent Authority (Section 8)

- Not to imposed unless the employer is given an opportunity to show cause
- To record in the register

Deduction for absence from duties for unauthorized absence

- Absence for whole or any part of the day
- If ten or more persons absent without reasonable cause, deduction of wages up to 8 days.

Deduction for damage or loss

- For default or negligence of an employee resulting into loss. Show cause notice has to be given to the employee.

Deductions for service rendered

When accommodation amenity or service has been accepted by the employee

EMPLOYEE STATE INSURANCE ACT 1948

- The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.
- The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters in relation there to.

APPLICABILITY OF ACT

- The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories.
- The Act empowers the Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise in consultation with the Employees' State Insurance Corporation.
- Where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act.

FACTORY

"Factory" means any premises including the precincts thereof:

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

EMPLOYEES' STATE INSURANCE CORPORATION

The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

EMPLOYEES' STATE INSURANCE

The Act makes compulsory that all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

EMPLOYEES'STATE INSURANCE FUND

The Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are **4.75 percent and 1.75** percent of workers wages by employers and employees respectively.

Contribution period

- 1st April to 30th September. 1st October to 31st March

E.g. If the person joined insurance employment for the first time, say on 5th January, his first contribution period will be from 5th January to 31st March and his corresponding first benefit will be from 5th October to 31st December.

Recovery of contribution

In the first instance the Principal Employer is required to pay employers' share of contribution in respect of every employee whether employed directly or through immediate employer. The employees' share may thereafter, be recovered by making deduction from their wages for the wage period for which their contribution is made, however is payable. No such deduction may be made from any wages to their employees other than those relating to the period in respect in which contribution is payable.

BENEFITS TO THE INSURED

The insured persons, their dependants are entitled to the following benefits on prescribed scale:

(a) periodical payments in case of sickness certified by medical practitioner;
(b) periodical payments to an insured workman sickness arising out of pregnancy,
(c) periodical payment to an insured person suffering from disablement as a result of employment injury;
(d) periodical payment to dependants of insured person;
(e) medical treatment and attendance on insured person;
(f) Payment of funeral expenses on the death of insured person at the prescribed rate of Rs.1,500/-

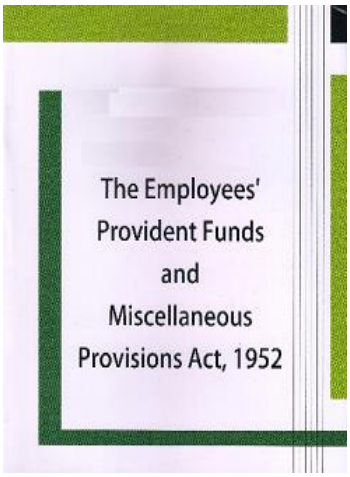
GENERAL PROVISIONS RELATING TO BENEFITS

(a) Right to receive benefits is not transferable or assignable.

(b) When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment,

(c) An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT 1952



Applicability

- Applies to entire India (except Jammu & Kashmir)
- Applies to every establishment which is a factory engaged in any industry specified in Schedule 1 & in which 20 or more persons are employed
- Any other establishment employing 20 or more persons which Central Government may, by notification, specify in this behalf.
- Any establishment employing even less than 20 persons can be covered voluntarily u/s 1(4) of the Act

Eligibility

- Any person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment.

NON-APPLICABILITY OF THE ACT

The Act shall not apply to certain establishments as stated there under.

Such establishments include;

- Establishments registered under the Co-operative Societies Act, 1912,
- to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- to any other establishment set up under any Central, or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

Payment of Contribution

- The employer shall pay the contribution payable to the EPF, DLI and Employees' Pension Fund in respect of the member of the Employees' Pension Fund employed by him directly by or through a contractor.
- It shall be the responsibility of the principal employer to pay the contributions payable to the EPF, DLI and Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

Rates of Contribution

- Equal contribution of 12% (10% in certain cases) of Wages (Basic wages, dearness allowance and retaining allowance, if any) is required to be paid by employer and employee (Whether employed directly or through contractor).
- Employees can opt to contribute more than 12 % of their wages (Voluntary contribution)
- Option of Voluntary Provident Fund(VPF) to be provided to employees/workers – in writing (although Employer not obliged to contribute equal amount)

Rate of 10 % is applicable for following industries

- For establishments having less than 20 employees, or
- Sick Industrial Company declared by Board for Industrial and Financial Reconstruction, or – Establishment which has at the end of any financial year, accumulated losses equal to or exceeding its entire net worth or
- Any establishment in following industries:- (a) Jute (b) Beedi (c) Brick (d) Coir and (e) Guar gum Factories

Threshold and Procedures

- Contribution by employer is subject to present threshold of Rs. 15,000/- per month, beyond which there is no obligation by employer to contribute.
- Establishment will include all department and branches in any location.
- In respect of employees employed through Contractor, Contractor shall recover the contribution payable by such employee and pay to Principal Employer amount of contribution along with administrative charges or Contractor may deposit such contribution directly to EPFO
- Employer needs to deposit its statutory contribution by 15th of every month. (With respect to wages of immediate preceding month).
- If the employee leaves the existing establishment and obtains re-employment to the establishment in which this act is applicable, it is the duty of the employer to transfer the accumulations to the credit of such employee's account in the fund in which he is re-employed.

Benefits

- Employees covered enjoy a benefit of Social Security in the form of a non-attachable and non-withdrawable (except in severely restricted circumstances like buying house, marriage/education, etc.) financial nest egg to which employees and employers contribute equally throughout the covered persons' employment.
- This sum is payable normally on retirement or death. Other Benefits include Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme.

Penalty

In case the employer has made default in transferring of the accumulated amount, he is required to pay damages as follows:

- If period of default is less than 2 months- 5 % of arrears per annum
- If period of default is 2 -4 months- 10 % of arrears per annum
- If period of default is 4 -6 months- 15 % of arrears per annum
- If period of default is more than 6 months- 25 % of arrears per annum.

With Effect from 01.04.2012, employers need to make remittance only after generating challan (ECR) from the Employer Portal of EPFO.

PAYMENT OF BONUS ACT 1965

Applicability

- Every factory (as defined under Factories Act, 1948)
- Establishment in which 20 or more persons are employed on any day during an accounting year. (CG may specify lesser no. of employees)

Eligibility of Bonus

- Employees/workers who have worked for more than 30 days in a month and drawing salary/remuneration of Rs. 21,000/- per month.
- Salary or wage means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, and Dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living)

Responsibility and Amount of Bonus

- Mandatory for employer to pay Minimum Bonus of 8.33% of Salary & Maximum Bonus of 20% of Salary from the accounting year in which establishment has profits (excluding First 5 years of existence)
- Payment of statutory bonus- within statutory time limit of 8 months of close of financial year
- Company is entitled to adjust any customary or interim bonus/puja bonus, against bonus payable under this Act.

Statutory Registers and Records

- Form A-Showing the computation of the allocable surplus.
- Form B-Showing the set-on and set-off of the allocable surplus.
- Form C -Showing the amount of bonus due to each of the employees and the amount actually disbursed.
- Form D- Annual Return.

PAYMENT OF GRATUITY ACT 1972

Applicability

It is applicable to

- Factories (as registered under Factories Act, 1948)
- Company (As registered under Companies Act, 1956/2013),
- Shop & Establishment (As registered under State Shops & Establishment Act),
- Education institution, employing 10 or more employees
- Registration of establishment

The Act does not apply to the following persons-

1. Apprentices
2. Employees of central Government or a State Government

NOTE:

- FACTORY MEANS AS DEFINED IN FACTORIES ACT 1948
- MINE MEANS AS DEFINED IN MINES ACT 1952
- OILFIELD MEANS AS DEFINED IN OILFIELD (REGULATION AND DEVLOPMENT ACT) ACT 1948
- PLANTATION MEANS AS DEFINED IN PLANTATION LABOUR ACT 1948
- PORT MEANS AS DEFINED IN INDIAN PORT ACT 1908
- RAILWAY CO. MEANS AS DEFINED IN INDIAN RAILWSYS ACT 1890

Wages for Calculation

- Payment of Gratuity (15 days salary for every completed year of service) to be payable to an employee after rendering services of 5 years on his:
  - Superannuation
  - Retirement or resignation
  - Death or disablement due to accident or disease.

Display of Notice

- On conspicuous place at the main entrance in English language or the language understood by majority of employees of the factory, etc.

Compliance and Procedure

- Intimation in prescribed Form for any change in the name, address of employer or nature of business - within 30 days of such change.

Nomination

- Employee to submit his nomination in Form F - within 30 days of appointment.

Recovery of Gratuity

- To apply within 30 days in Form I when not paid within 30 days.

Forfeiture of Gratuity

- On termination of an employee for moral turpitude or riotous or disorderly behavior.
- Wholly or partially for willfully causing loss, destruction of property etc.

Protection of Gratuity

- It can't be attached in execution of any decree.

Penalties

- Imprisonment for 6 months or fine up to Rs.10, 000 for avoiding to make payment by making false statement or representation.
- Imprisonment not less than 3 months and up to one year with fine on default in complying with the provisions of Act or Rules.

EMPLOYEES COMPENSATION ACT 1923

Applicability

It is applicable all over India.

Coverage of Workmen

- All workers irrespective of their status or salaries either directly or through contractor or a person recruited to work abroad.

Employer's liability to pay compensation to a workman

- On death or personal injury resulting into total or partial disablement or occupational disease caused to a workman arising out of and during the course of employment

Amount of compensation

- Where death of a workman results from the injury
  - An amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor on an amount of eighty thousand rupees, whichever is more.
- Where permanent total disablement results from the injury.
  - An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees, whichever is more

Procedure for calculation

Higher the age – Lower the compensation

- Relevant factor specified in second column of Schedule IV giving slabs depending upon the age of the concerned workman.

When an employee is not liable for compensation

- In respect of any injury which does result in the total or partial disablement of the workman for a period exceeding three days.
- In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-
- The workman having been at the time thereof under the influence of drink or drugs, or
- Willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- Willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

Report of accident (Rule 11 Form EE)

- Report of fatal Accident and Serious Injury within 7 days to the Commissioner (not application when ESI Act applies)

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT 1970

Applicability

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Object of the Act

To regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

Registration of Establishment

Principal employer employing 20 or more workers through the contractor or the contractor(s) on deposit of required fee in Form 1.

Prohibition of Employment of Contract Labour

Only by the appropriate Government through issue of notification after consultation with the Board (and not Courts) can order the prohibition of employment of contract labor.

Revocation of Registration

When obtained by

- Misrepresentation or suppression
- Of material facts etc. after opportunity to the principal Employer.

Licensing of Contractor

- Engaging 20 or more than 20 workers and on deposit of required fee in Form IV.
- Valid for specified period.

Revocation or Suspension & Amendment of Licences

- When obtained by misrepresentation or suppression of material facts.
- Failure of the contractor to comply with the conditions or contravention of Act or the Rules.

Welfare measures to be taken by the Contractor

- Contract labor either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.
- First Aid facilities.
- Number of rest-rooms as required under the Act.
- Drinking water, latrines and washing facilities.

Laws, Agreement or standing orders inconsistent with the Act-Not Permissible

- Unless the privileges in the contract between the parties or more favorable than the prescribed in the Act, such contract will be invalid and the workers will continue to get more favorable benefits.

Liability of Principal Employer

- To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.
- Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.

Registers of Contactors

Principal employer

- To maintain a register of contractor in respect of every establishment in Form XII.

Contractor

- To maintain register of workers for each registered establishment in Form XIII.
- To issue an employment card to each worker in Form XIV.
- To issue service certificate to every workman on his termination in Form XV.

Muster Roll, Wages Register, Deduction Register and Overtime Register by Contractor

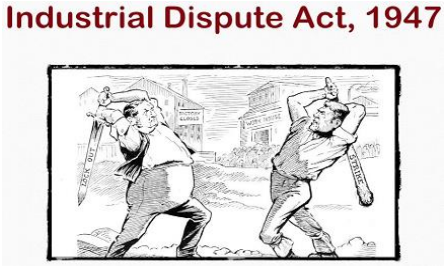
Every contractor shall:

- Maintain Muster Roll and a Register of Wages in Form XVI and Form XVII respectively when combined.
- Register or wage-cum-Muster Roll in Form XVII where the wage period is a fortnight or less.
- Maintain a Register of Deductions for damage or loss, Register or Fines and Register of Avances in Form XX, from XXI and Form XXII respectively.
- Maintain a Register of Overtime in Form XXIII.
- To issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages.
- Obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of wages or Muster Roll-Cum-Wages Register.
- When covered by Payment of Wages Act, register and records to be maintained under the rules

INDUSTRIAL DISPUTE ACT 1947

Objective of the Act

- The objective of the Industrial Disputes Act 1947 is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.
- This act deals with the retrenchment process of the employees, procedure for layoff, procedure and rules for strikes and lockouts of the company.



Meaning of Industrial Dispute

- According to Section 2A: Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Significance of Industrial Dispute Act, 1947

- Industrial Disputes have adverse effects on industrial production, efficiency, costs, quality, human satisfaction, discipline, technological and economic progress and finally on the welfare of the society.

- A discontent labour force, nursing in its heart mute grievances and resentments, cannot be efficient and will not possess a high degree of industrial morale. Hence, the Industrial Dispute Act of 1947, was passed as a preventive and curative measure.

Scope

- The Industrial Dispute Act of 1947, came into force on the first day of April, 1947.
- Its aim is to protect the workmen against victimization by the employers and to ensure social justice to both employers and employees.
- The unique object of the Act is to promote collective bargaining and to maintain a peaceful atmosphere in industries by avoiding illegal strikes and lock outs.
- The Act also provides for regulation of lay off and retrenchment.
- The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

Important Definitions

Industry – has attained wider meaning than defined except for domestic employment, covers from barber shops to big steel companies.

Works Committee –Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems.

Conciliation–is an attempt by a third party in helping to settle the disputes Adjudication – Labor Court, Industrial Tribunal or National Tribunal to hear and decide the dispute.

Industrial dispute – means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Settlement – means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between an employer and a workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised by the Appropriate Government and the Conciliation Officer.

Wages – mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied were fulfilled, be payable to a workman in respect of his employment or of the work done in such an employment and includes:

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) Any traveling concession. But the following are excluded:

(a) Any bonus.

(b) Any contribution paid or payable to any pension fund or provident fund, or for the benefit of the workman under any law for the time being in force.

(c) Any gratuity payable on the termination of his service.

Public utility service means-

(i) any railway service or any transport service for the carriage of passengers or goods by air;

(ii) any service in, or in connection with the working of, any major port or dock;

(iii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iv) any postal, telegraph or telephone service;

(v) any industry which supplies power, light or water to the public;

(vi) any system of public conservancy or sanitation;

(vii) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

Dispute Settlement Authorities under the Act

The I.D. Act provides elaborate and effective machinery for the investigation and amicable settlement of industrial disputes by setting up the various authorities. These are:

- Works Committee;
- Conciliation Officer;
- Conciliation Board;
- Court of Enquiry;
- Labour Court;
- Industrial Tribunal;
- National Tribunal;
- Arbitrators;
- Grievances Settlement Authority.

Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. (Sec 2A)

Difference in between the workman and his employer connected arising out of following activities shall be deemed to the industrial dispute.

- Dismissal of workman
- Discharge of workman
- Retrenchment of the workman
- Termination of workman from his services

Works Committee (Sec. 3)

- In the case of an industrial establishment in which 100 or more workmen are employed, the appropriate Government may require the employer to constitute a 'Work Committee'. It consists of equal number of representatives of employers and workmen engaged in the establishment.

Conciliation Officer (Sec. 4)

- The appropriate Government is empowered to appoint any number of persons, as it thinks fit, to be conciliation officers. The conciliation officer having duty of mediating and acts as the mediators in between the parties to resolve the dispute.
- In the case of public utility services matters like strikes and lockouts the conciliation officer can initiate the conciliation proceeding ad tries to settle the dispute in between the parties.
- If the conciliation officer fails to resolve the dispute between the parties, he should report to the appropriate government. If necessary the dispute shall be referred to the Board, Labour Court, Tribunal or National Tribunal, by the appropriate government. (Sec 12 (5))

Duties of conciliation officers. (Sec 12)

- Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- Investigate the matters of the disputes.
- Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.
- In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at,
- Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding or within such shorter period as may be fixed by the appropriate Government.

Conciliation Board (Sec. 5)

- As occasion arises appropriate Government is also authorized to constitute a Board of conciliation for promoting the settlement of an industrial dispute. It consists of a chairman who shall be an independent person, and two or four other members. The members appointed shall be in equal numbers to represent the parties to the dispute. On the dispute being referred to the Board it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to fair and amicable settlement.
- If there are many parties relating to or in the dispute the government may appoint the conciliation board consisting of the above said members

Court of Enquiry (Sec. 6)

- As occasion arises, Government can initiate a Court of Inquiry. This Court of Inquiry was to find out matters connected with or relevant to an industrial dispute. Where a Court consists of two or more members, one of them shall be appointed as the chairman.
- A Court of Inquiry looks into only matters which are referred to it by Government and submits its report to the Government ordinarily within certain period from the date of reference.

Adjudication

1. Labour Court - The appropriate Government is empowered to constitute one or more Labour Courts. Its function is the adjudication of industrial disputes relating to any matter specified in the Second Schedule.
2. Industrial Tribunal -The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.
3. National Tribunal - The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals. Its main function is the adjudication of industrial disputes which involve questions of national importance or affecting the interest of two or more States.

Arbitration

Voluntary reference of disputes to arbitration (Section 10 (a)) –

- An arbitrator is appointed by the Government.
- Whether the dispute is before Labour Court, or Industrial Tribunal or National Tribunal, the parties can go to arbitration by written agreement.
- The arbitrators conduct the investigation in to the dispute matters and give arbitration award (final decision or settlement or decree) as for making reference of an industrial dispute.
- If an industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to an arbitration, they may refer the dispute to an arbitration. But such reference shall be made before the dispute has been referred under Sec. 19 to a Labour Court or Tribunal or National Tribunal by a written agreement.
- The arbitrator may be appointed singly or more than one in number.
- The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

Grievance Settlement Authority (Section 9 (c)) –

This Section is incorporated as a new chapter II B of the Act.

As per this Section, the employer in relation to every industrial establishment in which **fifty or more workmen** are employed or have been employed **on any day in the preceding twelve months**, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievances Settlement Authority.

Every industrial establishment employing **20 or more workmen** shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

- The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
- The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
- The total number of members of the Grievance Redressal Committee shall not exceed more than 6:
  Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members is more than two, the number of women members may be increased proportionately.
- The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.

- The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.

- Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned."

Awards (Decree) (Sections 16, 17, 17A)

- The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer. [Sec 16(2)].

- Every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. [Sec 17(1)].

- The award published shall be final and shall not be called in question by any Court in any manner whatsoever. [Sec 17 (2)].

- An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication [Sec 17A (1)].

- where the award has been given by a National Tribunal, that it will be inexpedient (not advisable or not practicable) on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days. [Sec 17A (1) (b)].

- The appropriate Government or the Central Government may, within 90 days from the date of publication of the award under section 17, make an order rejecting or modifying the award, to legislature of sate or parliament [Sec 17A (2)]. And if no pursuance has made, the order become enforceable after the expiry of 90 days. [Sec 17A (3)].

- Any award as rejected or modified laid before legislature of state or parliament, shall become enforceable on the expiry of 15 days from the date on which is so laid. [Sec 17A (3)].

- Award declared becomes enforceable on the specified date if mentioned, if no date mentioned award becomes enforceable according to above rules.

Period of Operation of Settlements and Awards

- A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

- An award shall remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A.

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit.

- The appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

STRIKES AND LOCKOUTS

Strike as per section 2 (q) means "a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.

Lockout as per section 2(1) means "the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him".

Lockout is the antithesis of strike.

- It is a weapon of the employer while strike is that of the workers.
- Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his points of view and to accept his demands.
- The Industrial Dispute Act does not intend to take away these rights.
- However, the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation and settlement of the industrial disputes.

Procedure of Strikes

According to Sec. 22(1) No person employed in a public utility service shall go on strike in breach of contract-

a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

b) Within fourteen days of giving such notice; or

c) Before the expiry of the date of strike specified in any such notice as aforesaid; or

d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Procedure of Lockouts

According to Sec. 22(2) - No person employed in a public utility service shall go on Lockout in breach of contract-

a) Without giving to the employer notice of Lockout, as hereinafter provided, within six weeks before lockout; or

b) Within fourteen days of giving such notice; or

c) Before the expiry of the date of lockout specified in any such notice as aforesaid; or

d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Notice of lock-out or strike

According to Sec. 22 (3) the notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service.

Prohibits an employer from declaring a lockout in any of the eventualities mentioned therein (Section 22(2) of the Industrial Disputes Act 1947)

No employer carrying on any public utility service shall lock-out any of his workman

a. Without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or

b. Within fourteen days of giving such notice; or

c. Before the expiry of the date of lock-out specified in any such notice as aforesaid; or

d. During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Legal strikes and Lockouts (Section 24 of ID Act 1947)

- A strike or a lockout shall be illegal, if employers or worker who ever disobeys or fails to follow [Sec 22, 23, 10(3), 10-A (4-A)] for commencing strikes or lockout, those strikes and lockout are said to illegal.
- A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

General Prohibition of Strikes and Lock-Outs

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock- out--

(a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;

(bb) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub- section (3A) of section 10A; or] [10A. Voluntary reference of disputes to arbitration]

(c) During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

No notice of strike and lockout is necessary in industrial establishments except in public utility services.

Penalty for illegal strikes and lock-outs

As per Section-26 of the Industrial Dispute Act 1947, the Penalty for illegal strikes and lock-outs is as below-

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

LAY-OFFS

According to section 25A of chapter VA of Industrial Dispute Act 1947, certain establishments do not have any provisions relating to layoff of the employees by the employer. In such circumstances, layoff would be considered without any authority of law.

Such establishments are:

i Industrial establishments in which less than 50 workmen are employed, on an average per working day.

ii Industrial establishments which are of a seasonal character and in which work is performed only intermittently. Employees employed in the above said establishments do not have right for laid-off compensation. However if there is any agreement between employer and employee for that purpose or on the grounds of social justice, laid-off competition can be paid.

Except above said industrial establishments, all other industrial establishments (50 workmen and above industrial establishments which are not of seasonal character) have provisions relating to lay off of the employees by the employer.

Right of Compensation by workmen laid-off

As per Section 25-C, workman has right to lay-off compensation subject to the following conditions, they are:

i. Workman name should be borne on muster rolls of the establishment and he/she is not a badli workman or a casual workman; and

ii. The workman should have completed not less than one year continuous service as defined under Section 25-B; and

iii. The workman should have laid-off, continuously or intermittently;

iv. Then the workman shall be entitled to lay-off compensation for all days during which he was so laid- off;

v. However, the workman shall not be paid lay-off compensation for such weekly holidays as may intervene the period of lay-off.

vi. The lay-off compensation is equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, if he had not been so laid off.

Explanation: "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

Maximum days allowed to Layoff of employee by employer

According to section 25C of Industry and dispute Act 1947, maximum days allowed to Layoff of employee by employer is 45 days, for those days, employee who is laid-off is entitled for compensation equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid off.

However, if this contingency is prolonging beyond a reasonable time, say 45 days, it would be matter of serious concern both to the employer and to the workmen because both of them are put to a loss of 50% wages i.e. The employer is required pay lay-off compensation without extracting work from workmen and workmen too, would be losing 50% wages which he would have earned had he not been so laid-off.

Therefore the parties can enter into an agreement not to continue lay-off after a period of 45 days in a year.

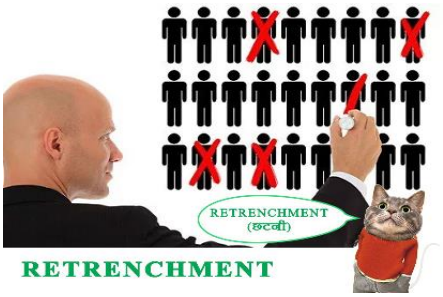
Workmen not entitled to compensation in certain cases (Section 25E)

(i) If he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call. for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) If such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

RETRENCHMENT



As per Section 2(oo) - "retrenchments" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

43[(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or]

(c) Termination of the service of a workman on the ground of continued ill-health;]

Re-employment of Retrenched Workmen (Section 25H)

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re- employment shall have preference over other persons.

Retrenchment Conditions

To an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [50 but not more than 100] workmen were employed on
an, average per working day for the preceding twelve months.

Conditions Precedent to Retrenchment of Workmen

According to the Section 25N:

a. Employee should have continuous service for not less than one year under an employer

b. Three months' notice in writing indicating the reasons for retrenchment or payment for the period of the notice

c. Compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months.

d. An application for permission to specified authority for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

e. Compulsory permission from competent authority by employer retrenchment of workmen

f. For Industrial establishments in which not less than 100 workmen are employed, on an average per working day and are of not being seasonal character and in which work is performed only intermittently, have to seek prior permission from competent authority by the employer to layoff workman.

If no application seeking permission to retrench workmen is made by the employer or where such permission is refused, such retrenchment shall be deemed to be illegal and the workmen shall be entitled to all benefits as if they have not been given any notice. (Sub-Section 7).

Penalty for Lay-Off and Retrenchment without Previous Permission [Section5Q]

- Section 25K applies to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an, average per working day for the preceding twelve months.
- Section 25M provides for Compulsory permission from competent authority by employer to lay off of Workmen of Industrial Dispute act 1947 –

a) When there are more than 100 (in UP 300 or more) workmen during preceding 12 months.

b) Three months' notice or wages thereto

c) Form QA

d) Compensation @ 15 days' wages.

- Section 25N states the Conditions precedent to retrenchment of workmen
- Any employer who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

During Pendency of Proceedings (Section 33)

During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, employer should not do the following-

- For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,
- Alter the term of contract according to standing orders.
- Take action against the protected workman.

If employer wants to take above actions against the employee, employer should makes an application to a conciliation officer, Board, an arbitrator, a Labor Court, Tribunal or National Tribunal

TRADE UNION ACT 1926

Object of the Act

- To provide for the registration of Trade Union and in certain respects
- To define the law relating to registered Trade Unions

Registration of Trade Union

- Any 7 or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least 10%, or 100 of the work-men, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has on the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Forms Required for Registration of Trade Union

- Prescribed form with following details.
- Names, occupations and address of the members' place of work.
- Address of its head office; and
- Names, ages, addresses and occupations of its office bearers.

Minimum Requirements for Membership of Trade Union

- Not less than 10%, or 100 of the workmen, whichever is less,
- Subject to a minimum of 7,
- engaged or employed in an
- Establishments etc.

Cancellation of Registration

- If the certificate has been obtained by fraud or mistake or it has ceased to exist or has willfully contravened any provision of this Act.
- If it ceases to have the requisite number of members.

Criminal Conspiracy in Trade Disputes

No office bearer or member of a registered trade union shall be liable to punishment under sub section (2) of conspiracy u/s 120B of IPC in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union.

Disqualification of Office Bearers of Trade Union

- If one has not attained the age of 18 years.
- Conviction for an offence involving moral turpitude.
- Not applicable when 5 years have elapsed.

Returns

Annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st December.

MATERNITY RELIEF ACT 1961 ALONG WITH Maternity Benefit (Amendment) Act, 2017

To protect the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the woman and her child at this important time when she is not working.

Cash Benefits

- Leave with average pay for six weeks before the delivery.
- Leave with average pay for six weeks after the delivery.
- A medical bonus of Rs.25 if the employer does not provide free medical care to the woman.
- An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage, or premature birth.
- In case of miscarriage, six weeks leave with average pay from the date of miscarriage.

Non Cash Benefits/Privilege

- Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it.
- Two nursing breaks in the course of her daily work until the child is 15 months old.
- No discharge or dismissal while she is on maternity leave.
- No change to her disadvantage in any of the conditions of her employment while on maternity leave.
- Pregnant women discharged or dismissed may still claim maternity benefit from the employer.

Exception: Women dismissed for gross misconduct lose their right under the Act for Maternity Benefit

The Maternity Benefit (Amendment) Bill 2016 (the "Amendment Bill"), an amendment to the Maternity Benefit Act, 1961 ("Act"), was passed in Lok Sabha on March 09, 2017 , in Rajya Sabha on August 11, 2016 and received an assent from President of India on March 27,2017.

The provisions of The Maternity Benefit (Amendment) Act, 2017 (MB Amendment Act) is effective from April 01, 2017. However, provision on crèche facility (Section 11 A) shall be effective from July 01, 2017.

Applicability: The Act is applicable to all establishments which are factories, mines, plantations, Government establishments, shops and establishments under the relevant applicable legislations, or any other establishment as may be notified by the Central Government.

Eligibility: As per the Act, to be eligible for maternity benefit, a woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months. Payment during the leave period is based on the average daily wage for the period of actual absence.

Paid Maternity leave increased to 26 weeks.
Leave prior to expected delivery date - 8 weeks

Key Highlights of Amendments

- Increase in Maternity Benefit: The period of paid maternity leave ("Maternity Benefit") that a woman employee is entitled to has been increased to 26 (twenty six) weeks. Further, the Act previously allowed pregnant women to avail Maternity Benefit for only 6 (six) weeks prior to the date of expected delivery. Now, this period is increased to 8 (eight) weeks. Maternity benefit of 26 weeks can be extended to women who are already under maternity leave at the time of enforcement of this Amendment.
- No increased benefit for Third Child: The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 (twelve) weeks of Maternity Benefit of which not more than 6 (six) shall be taken prior to the date of the expected delivery.
- Adoption/Surrogacy: A woman who adopts a child below the age of 3 (three) months, or a commissioning mother (means a biological mother, who uses her egg to create an embryo implanted in any other woman), will be entitled to Maternity Benefit for a period of 12 (twelve) weeks from the date the child is handed over to the adopting mother or the commissioning mother.
- Crèche Facility: Every establishment having 50 (fifty) or more employees are required to have a mandatory crèche facility (within the prescribed distance from the establishment), either separately or along with other common facilities. The woman is also to be allowed 4 (four) visits a day to the crèche, which will include the interval for rest allowed to her.

- Work from home: If the nature of work assigned to a woman is such that she can work from home, an employer may allow her to work from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman.
- Prior Intimation: Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

Leave for Miscarriage & Tubectomy Operation

- Leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or her medical termination of pregnancy.
- Entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

Prohibition of dismissal during absence of Pregnancy

- Discharge or dismissal of a woman employed during or on account of such absence or to give notice or discharge or dismissal on such a day that the notice will expire during such absence or to very her disadvantage.
- Discharge or dismissal during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.
- At the time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus, etc.
- Not barred in case of dismissal for cross misconduct.

Failure to Display Extract of Act

- Imprisonment may extend to one year or fine.

Forfeiture of maternity benefit

- If permitted by her employer to absent herself under the provisions of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.
- For discharging or dismissing such a woman during or on account of her absence from work, the employer shall be punishable with imprisonment which shall not be less than 3 months, but it will extend to one year and will find, but not exceeding 5, 000

CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT 1986

An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

Hours and Period of Work

(1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub- section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No child shall be required or permitted to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Weekly holidays

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to Inspector

(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:

- **(a)** The name and situation of the establishment;
- **(b)** The name of the person in actual management of the establishment;
- **(c)** The address to which communications relating to the establishment should be sent; and
- **(d)** The nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).

Disputes as to age

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

Maintenance of register

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing:

(a) The name and date of birth of every child so employed or permitted to work ;

(b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;

(c) The nature of work of any such child; and

(d) Such other particulars as may be prescribed.

Display of notice containing abstract of Sections 3 and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3 and 14.

Health and Safety

(1) The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:

(a) Cleanliness in the place of work and its freedom from nuisance;

(b) Disposal of wastes and effluents;

(c) Ventilation and temperature;

(d) Dust and fume;

(e) Artificial humidification;

(f) Lighting;

(g) Drinking water;

(h) Latrine and urinals;

(i) Spittoons;

(j) Fencing of machinery;

(k) Work at or near machinery in motion;

(l) Employment of children on dangerous machines;

(m) Instructions, training and supervision in relation to employment of children on dangerous machines;

(n) Device for cutting off power;

(o) Self-acting machines;

(p) Easing of new machinery;

(q) Floor, stairs and means of access;

(r) Pits, sumps, openings in floors, etc.

(s) Excessive weights;

(t) Protection of eyes;

(u) Explosive or inflammable dust, gas, etc.

(v) Precautions in case of fire;

(w) Maintenance of buildings; and

(x) Safety of buildings and machinery.

PREVENTION OF SEXUAL HARRASEMENT OF WOMEN AT WORKPLACE ACT 2013

Objectives of the Act

- The Act is enacted by the Indian Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

- Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right to life and to live with dignity under Article 21 of the Constitution of India.

- Sexual harassment is also considered a violation of a right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

Definitions

Sexual Harassment

The Act has adopted the definition of 'sexual harassment' from Vishaka Judgment and the term sexual harassment includes ***any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.***

Section 3 of the Act provides that no woman shall be subjected to sexual harassment at any workplace. This section further provides the circumstances which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as implied or expressed promise to preferential treatment or implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.

Complaints Committee & Complaint Procedure

Internal Complaints Committee

The Act makes it mandatory for every employer to constitute an internal complaints committee ("ICC") which entertains the complaints made by any aggrieved women. The members of the ICC are to be nominated by the employer and ICC should consist of;

(i) A Presiding Officer;

(ii) Not less than two members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge and;

(iii) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least one- half of the members of ICC nominated by employer are women.

Local Complaints Committee

Provisions are provided under the Act to form Local Complaints Committee (LCC) for every district for receiving complaints of sexual harassment from establishments where the ICC has not been formed due to having less than 10 workers or if the complaint is against the employer himself.

Complaint procedure

- The Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the ICC or to the LCC (in case a complaint is against the employer), within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

- If the aggrieved woman is unable to make complaint in writing, reasonable assistance shall be rendered by the presiding officer or any member of the ICC (or in case the aggrieved woman is unable to make complaint in writing to the LCC, the reasonable assistance shall be rendered by the Chairperson or any member of the LCC) for making the complaint in writing.

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, in case the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed inter alia by her relative or friend or her co-worker or an officer of the National Commission for Woman or State Women's Commission or any person who has knowledge of the incident, with the written consent of the aggrieved woman.

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CHAPTER 18
COMPLIANCE RELATING TO ENVIRONMENTAL LAWS

Introduction

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. Along with specific laws regulating environment, Indian Constitution also directs few directives in the ensuring protection of the environment at priority

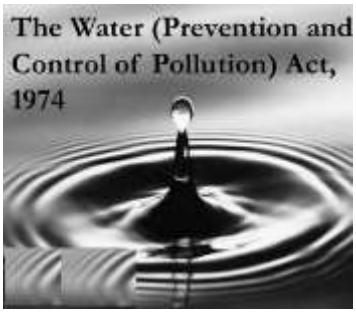
Environmental Regulation in India:-A Bird's Eye View

With the recognition of Right to Healthy Environment as a human right under the Universal Declaration of Human Rights and its related covenants, measures are taken at full force to enforce these rights and guard the right to environment at parity.

With the endowed protection to environment under the Constitution and Specific Statutes, all the personas be it natural or legal including a Company owes a duty to conduct themselves in such a manner that their act or omission should not pollute the environment.

Therefore, a company is necessitated to abide by various laws in order to protect the environment

Water (Prevention and Control of Pollution) Act 1974



- The Water Prevention and Control of Pollution Act, 1974 (the "Water Act") has been enacted to provide for the prevention and control of water pollution and to maintain or restore wholesomeness of water in the country.
- It further provides for the establishment of Boards for the prevention and control of water pollution with a view to carry out the aforesaid purposes. The Water Act prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance.
- At the Centre, the Water Act has set up the CPCB which lays down standards for the prevention and control of water pollution. At the State level, SPCBs function under the direction of the CPCB and the State Government.

Responsibilities:

- Obtain "Consent to Establish"
- Obtain "Consent to Operate"
- Apply for renewal of the "Consent to Operate" before the expiry of validity period
- Consent to be deemed as granted automatically and unconditionally after four months from the date of application already given or refused before this period
- Refusal of "Consent" to be recorded in writing

- Pay Water Cess as indicated in the assessment order
- Affix water meters of the prescribed standards
- Provide access to SPCB
- Pay interest in case of delay in paying the Water Cess
- Pay penalty for non-payment of Cess
- Industry is entitled to 25% rebate if meeting certain conditions.

Air (Prevention and Control of Pollution) Act 1981

- The Air (Prevention and Control of Pollution) Act, 1981 (the "Air Act") is an act to provide for the prevention, control and abatement of air pollution and for the establishment of Boards at the Central and State levels with a view to carrying out the aforesaid purposes.
- To counter the problems associated with air pollution, ambient air quality standards were established under the Air Act. The Air Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. The Air Act empowers the State Government, after consultation with the SPCBs, to declare any area or areas within the State as air pollution control area or areas.

Responsibilities

- Comply with the conditions in the "Consent to Establish" or "Consent to Operate"
- Not to discharge air pollutant(s) in excess of the prescribed standards
- Furnish information to the SPCB of any accident or unforeseen act or event
- Allow entry to the SPCB to ascertain that provisions of the Act are being complied with
- Provide information to enable SPCB to implement the Act
- Provide access to the SPCB for taking samples
- Comply with the directions issued in writing by the SPCB
- Obtain "Consent to Establish"
- Obtain "Consent to Operate"
- Apply for the renewal of "Consent to Operate" before expiry of the validity period
- Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received
- A prior "Notice of Inspection" to be served by the SPCB
- Industry to ensure that specified emission sampling procedure is being followed by the SPCB
- Opportunity to file objections with the SPCB within 15 days from the date of service of notice
- PCB to record reasons in writing in case it does not provide an opportunity to the industry to file objections.

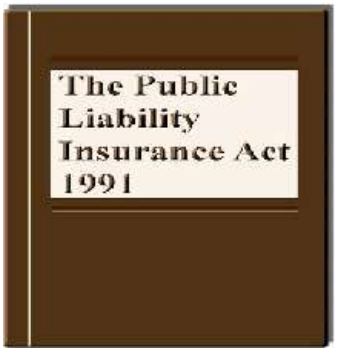
Environmental Protection Act 1986

- The Environment Protection Act, 1986 (the "Environment Act") provides for the protection and improvement of environment. The Environment Protection Act establishes the framework for studying, planning and implementing long-term requirements of environmental safety and laying down a system of speedy and adequate response to situations threatening the environment. It is an umbrella legislation designed to provide a framework for the coordination of central and state authorities established under the Water Act, 1974 and the Air Act.
- The term "environment" is understood in a very wide term under s 2(a) of the Environment Act. It includes water, air and land as well as the interrelationship which exists between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.
- Under the Environment Act, the Central Government is empowered to take measures necessary to protect and improve the quality of environment by setting standards for emissions and discharges of pollution in the atmosphere by any person carrying on an industry or activity; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare. From time to time, the Central Government issues notifications under the Environment Act for the protection of ecologically- sensitive areas or issues guidelines for matters under the Environment Act.

Responsibilities

- Comply with the directions issued by the Central Government. The direction may include:
  - closure, prohibition or regulation of any industry, or
  - stoppage or regulation of the supply of electricity, water or any other service
- Prevent discharges or emissions excess of the prescribed standards
- Furnish information of any accidental or unforeseen event
- Allow entry and inspection to ascertain compliance
- Allow samples to be taken
- Submit an “Environmental Statement” every year to the SPCB
- Obtain prior “Environmental Clearances” from MoEF, in case of a new project or for modernization/expansion of the existing project.

Public Liability Insurance Act 1991



- Public Liability Insurance Act, 1991 is to provide the compensation for damages to victims of an accident of handling any hazardous substance or it is also called, to save the owner of production/storage of hazardous substance from hefty penalties. This is done by proving compulsory insurance for third party liability. As from the name of the act, it is Public Liability.
- First time owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

- Actually the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accidents come in knowledge of Collector, then he/she verify the occurrence of accident and order for relief as he/she deems fit.

The salient features of compliance under this Act are as below

- Owner to provide relief in case of death or injury or damage to property from an accident on the principle of no fault.
- Owner to draw insurance policies more than the paid-up capital but less than Rs. 50 Crores.
- 'Paid-up Capital' is the market value of all assets and stocks on the date of insurance.
- Owner to pay additional amounts as contribution to the 'Environmental Relief Fund'
- Owner to provide any information required for ascertaining compliance with the provisions of the Act.
- Owner to allow entry and inspection to ascertain compliance with the provisions of the Act.
- Owner to pay the amount of an award as specified by the Collector.
- Comply with the directions issued in writing by the Central Government, directions may include;
  - (i) Prohibition or regulations of handling of any hazardous substances, or
  - (ii) Stoppage or regulation of the supply of electricity, water or any other service.

National Green Tribunal Act 2010

- The National Green Tribunal Act, 2010 (No. 19 of 2010) (NGT Act) has been enacted with the objectives to provide for establishment of a National Green Tribunal (NGT) for the effective and expeditious disposal of cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

- It comprises of a chairman, who could be a sitting or a retired judge of the Supreme Court, and various other members and experts provided under the provisions of the tribunal. It would mainly deal with civil cases and is not bound to follow the procedural law under Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.
- It proposed to have five places of sitting with Delhi as its headquarters and others being Bhopal, Pune, Kolkata and Chennai.

Objectives of National Green Tribunal

- The effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- It aims at enforcing all the legal rights relating to the environment
- It also accounts for providing compensation and relief to effected people for damage of property.

Power of National Green Tribunal

The NGT has a power to hear all civil matters which are related to environment and questions regarding the enforcement and implementation of laws which fall under the seven categories of laws namely (in order of their enactment)

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002

The NGT has been given the power to regulate the procedure by itself. It does not follow the principles of civil procedure code instead it follows principles of natural justice. The NGT also at the time of giving orders shall apply the principals of sustainable development and also the principal that the one who pollutes shall pay. It will have the same power as of the civil court in deciding the matter falling within these seven legal acts.

The major benefit with NGT is that it has a strong order enforcing mechanism. If the orders of NGT are not complied with than it has the power to impose both punishment as well as fine.

If a person is not satisfied with the orders of the tribunal he can seek the review of the decision of NGT under rule 22 of the NGT rule. And even then if he is not satisfied with the decision of the tribunal he can file an appeal to the Supreme Court of India. But the appeal has to be filed within ninety days of the orders passed by NGT.

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Setting up of Business Entities and Closure

EXECUTIVE PROGRAMME
Module 1
Paper 3

Part C: Insolvency; Winding up & Closure of Business (25 Marks)		
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CHAPTER 19
DORMANT COMPANY

INTRODUCTION:-

- In simple words, dormant company means a company which is an inactive company in the records of the Registrar of Companies and which is not carrying out any business activity and has applied to the Registrar of Companies to change its status in the register of companies maintained by the Registrar of Companies from "Active Company "to "Dormant company".
- A company can become dormant immediately after its registration or after a few years of its incorporation. There are many reasons why a company changes its status from "active "to "dormant". Major reason for such a change is when a company is to start its business activities after few years owing to a variety of reasons, it may make application to the Registrar of Companies to change the status of the company to "dormant". Dormant companies are also known as inactive companies.

ADVANTAGES:-

A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage. For instance: if a promoter wants to buy lands now for its future project at a comparatively lesser price, he may do the same through dormant company so that he can use the land for its future project. Thus, dormant company status is a new phenomenon in the Companies Act, 2013 and is an excellent tool for keeping assets in the company for its future usage. A dormant company may be either a public company or a private company or a one person company.

DEFINITION AND MEANING:-

Section 455 of the Companies Act 2013 read with Companies (Miscellaneous) Rules, 2014 stipulate the provisions pertaining to "Dormant Company". Where a company is formed and registered under this Act for a future projector to hold an asset or intellectual property and "has no significant accounting transaction", such a company or An Inactive Company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

For the above purposes, **Inactive Company** means a company which:

(a) is not carrying on any business or operations; or

(b) has not made any significant accounting transaction during last two financial years,

(c) has not filed financial statements and annual returns during the last two financial years.

Significant Accounting Transaction means any transaction made by the company except below transaction:

(a) payment of fees by a company to the Registrar;

(b) payments made by company to fulfill the requirements of this Act or any other law;

(c) allotment of shares to fulfill the requirements of this Act; and

(d) payments for maintenance of its office and records.

All the transactions apart from the above mentioned transactions will be considered as Significant accounting transactions. If a company has made above mention transactions in last two year then also that company will fall under definition of Inactive Company.

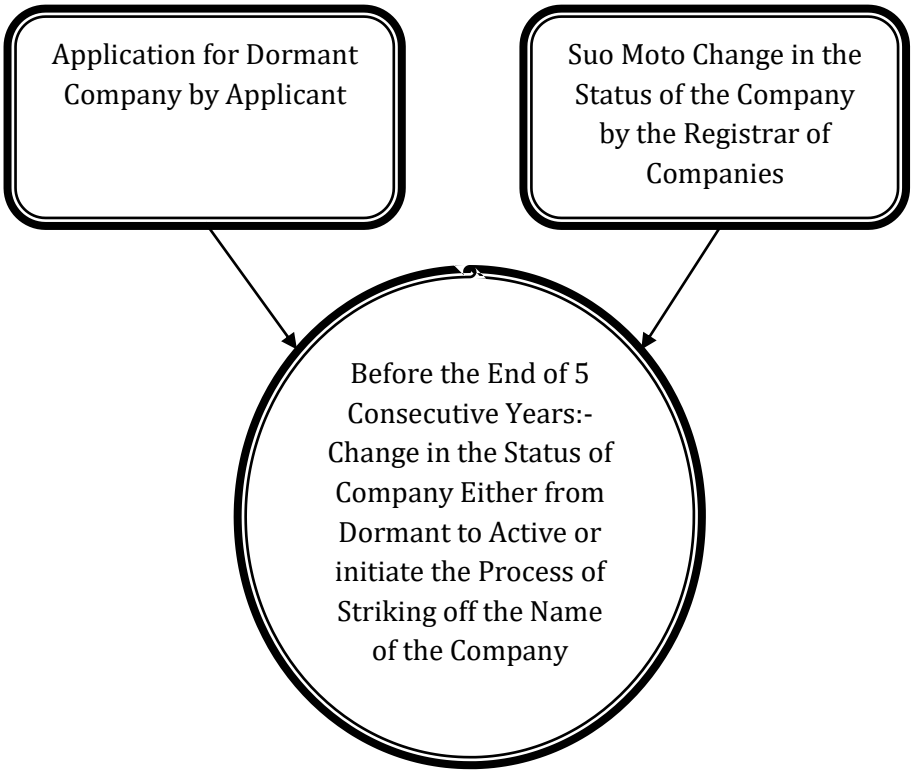
OBTAINING DORMANT COMPANY:-

A Company can obtain status as Dormant Company by Suo moto or ROC can declare a company as Dormant.

- ***Suo-Moto* application:** A company which meets the above criteria can apply suo-moto to Registrar of Companies (ROC) for the status of a "Dormant company" in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 after complying with the provision of Rule 3 of The companies (Miscellaneous) Rules, 2014 .

- **Dormant by ROC:** In case of a company which has not filed financial statements or annual returns two financial years consecutively, the Registrar may issue a notice to such company and enter the name of such company in the register maintained for dormant companies.

LEGAL FRAMEWORK OF DOMINAT COMPANY:-



- Maximum period for which the company can be in the dormant status is five consecutive years. A company cannot be in the dormant status for more than five years. Before completion of 5 years as dormant Company, such company have to apply for activation or strike off.

- The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

- Where a company fails to comply with the requirements of Section 455 of the Companies Act 2013 read with Companies (Miscellaneous) Rules, 2014, the Registrar can strike off the name of a dormant company from the register of dormant companies.

Procedure to obtain the status of a Dormant Company

1. The company shall call a board meeting to fix day, date, time and venue for General Meeting of the members of the company to pass resolution for making application to the ROC to obtain status of a dormant company.

2. The company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position of the company at the time of passing resolution in the shareholders meeting.

3. The company shall hold the General Meeting at the appointed time, place and date as per the notice calling the said meeting. The notice shall propose the resolution as a special resolution.

4. The company shall pass a special resolution for obtaining the status of a dormant company and authorizing the director(s) to make application to ROC or After issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

5. After passing the special resolution, the company shall file e-form MGT-14 with ROC for filing special resolution.

6. After filling of form MGT-14, the company shall file Form MCS-1 with the ROC along with the copy of the special resolution, copy of statement of affairs, declarations by the directors and other necessary documents.

7. On being satisfied with the merits of the application, the ROC shall issue certificate in Form MSC -2 on confirming the application.

Prerequisite for obtaining the status of Dormant Company:

The Registrar shall not grant the status of a dormant company if:

(a) any inspection, inquiry or investigation has been ordered or taken up or carried out against the company

(b) any prosecution has been initiated and pending against the company under any law

(c) there are public deposits which are outstanding or the company is in default in payment thereof or interest thereon;

(d) there are outstanding loans, whether secured or unsecured.

(e) The company is not having any outstanding loan, whether Secured and Unsecured- But if company has any Outstanding Unsecured Loan then the company may apply for status of Dormant only after obtaining NOC from the lender. Such NOC required to be attached in the Form which is required to be filed with ROC.

(f) There is No Dispute in the Management or Ownership of The Company; A certificate in this regard required to taken from Management. Such Certificate required to be attached in the Form which is required to be filed with ROC.

(g) there are outstanding statutory taxes, dues, duties etc. payable

(h) there is default in payment of its workmen's dues the Company is a listed company.

BENEFITS /EXEMPTION PROVIDED TO A DORMANT COMPANY:-

By obtaining the status of a dormant company, the company enjoys the following exemptions:

(a) Dormant Company shall hold only two board meetings in a year with a gap of 90 days in between the two company.

(b) Dormant Company is not required to include the statement of cash flow in its financial statement.

(c) The provision of rotation of auditors is not applicable in case of the dormant company.

(d) Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company

(e) Dormant status is an advantage to promoters who want to hold an intellectual property or an asset under the corporate shield for its usage at a later stage.

(f) Companies can enjoy the status of dormant company for a period of 5 consecutive years

COMPLIANCE REQUIREMENT BY DORMANT COMPANIES:-

- The Registrar maintains the register of Dormant Companies.
- A dormant company shall have such Minimum Number of Directors. {A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company}
- In order to retain the status of the dormant company , such a company is required to file "Return of Dormant Company" in form MSC -3 annually, inter-alia, indicating financial position, duly audited by a chartered accountant in practice along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year
- A Dormant Company need not enclose cash flow statements in its annual accounts.
- A Dormant Company is required to convene 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 meetings is not less than ninety days. Section 173(5)
- The provisions of the Act in relation to the rotation of auditors are not applicable to dormant companies
- Company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company

LEGAL FRAMEWORK DEALING WITH THE PROVISION OF SEEKING THE STATUS OF ACTIVE COMPANY TO DORMANT COMPANY:-

- Section 455 of the Companies Act 2013 read with Rule 8 of the Companies (Miscellaneous) Rule, 2014 lays down the provisions for seeking the status of active company from dormant company. An application for obtaining the status of an active company from dormant company is required to be made before the end of five consecutive years from the date of becoming a dormant company.
- In case the application for obtaining the status of an active company from dormant company is not made before the end of five consecutive years from the date of becoming a dormant company, the name of the company is struck off from the register of companies maintained by the Registrar of companies.

- Moreover, if any company has contravened any of the conditions mentioned in the grounds of application for obtaining the status of dormant company, such company should within seven days of such contravention, file an application for obtaining the status of an active company.

- The Registrar can take action to remove the company from the list of dormant companies, after carrying out an enquiry and after giving a notice and giving a reasonable opportunity of being heard and if it finds out that the company has contravened the conditions for granting the dormant company status.

PROCEDURE TO OBTAIN THE STATUS OF AN ACTIVE COMPANY FROM DORMANT COMPANY

The dormant company shall follow the below procedure for obtaining status of an active company on its own:

(a) An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 which should be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

(b) The Registrar after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

The Registrar of Companies shall in following cases change the status of the dormant company to active company:

(a) Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.

(b) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company , Registrar can initiate the proceedings for enquiry under section 206 of the Companies Act 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar can remove the name of such company from register of dormant companies and treat it as an active company.

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CHAPTER 20
STRIKING OFF AND RESTORATION OF NAME OF THE COMPANY AND LLP

INTRODUCTION:-

Section 248 to 252 of the Companies Act, 2013 ("Act") dealing with the provision for Removal of Names of Companies from the Register of Companies. The provisions relating to strike off provide an opportunity to the non-working companies to get their names struck off from the records of the ROC.

WAYS OF STRIKING OFF OF COMPANIES:-

- By Registrar of Companies on suo-motto
- By Application of Company for removal of name/ Strike off of Company

A company which is undergoing the process of 'Striking Off' either voluntarily or by action of the Registrar is given the status as 'Striking Off' and the status of the company is changed to Dissolved or Liquidated when affairs of the company are completely wound up by following the provision of winding up of Company. After dissolution or liquidation, the company ceases to exist.

STRIKE OFF BY ROC SUO MOTO:-

Subject to the provisions of sub section 1 of section 248 of companies Act 2013, read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016; in the following cases, the Registrar can suo Moto remove the name of the company from the Register:

(a) a company has failed to commence its business within one year of its incorporation or;

(b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455

(c) *the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(d) *the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12 (Physical Verification by ROC)

* ***Companies (Amendment) Ordinance, 2018 dated November 02, 2018***

Procedure to be followed by ROC for striking of the name of the Company on suo motu basis:

1. Service of notice
2. Reply to Notice
3. Consideration of the representation made
4. Publication of Notice
5. Intimation to regulatory authorities
6. Striking off / Removal of the name of the company
7. Provision for realization of amount due
8. Notice of dissolution of the company

1. Service of notice: The registrar is required to send a notice in Form STK 1 to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies.

Such a notice should contain the reasons on which the name of the company is to be removed from the register of companies. Such a notice should be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post.

2. Reply to Notice: On receipt of such a notice the company and all the directors of the company are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the company should not be removed from the register of companies.

Such a representation should be given within a period of thirty days from the date of the notice.

3. Consideration of the representation made: The ROC will consider the representation made by the company and all the directors of the company.

If the ROC is not satisfied with the representation made by the company and its directors, it may proceed to strike off the name of company.

4. Publication of Notice: The notice for removal of the name of the company should be in form STK 5 for the information of the general public and should be;
(i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
(ii) published in the Official Gazette;
(iii) published in Form No. STK 5A in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

Such a publication is required to be given for the information of the general public in order to enable them to give their objections, if any, to the proposed removal / striking off and requiring them to send their objection to the ROC within thirty days from the date of publication of the notice.

5. Intimation to regulatory authorities: Intimation about the proposed action of removal or striking off the names of company should be sent to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company.

Such intimation should be given to enable the authorities to give their objections, if any. Such objections are required to be given within a period of thirty days from the date of issue of the letter of intimation.

6. Striking off / Removal of the name of the company: After expiry of thirty days from the date of publication of the notice in the newspaper, official gazette and intimation to regulatory authorities and unless cause to the contrary is shown by the company, if there are no objections received within thirty days from the general public or respective authority, the ROC can proceed to strike off or remove the name of the company from the Register of companies.

7. Provision for realisation of amount due: The ROC before passing an order for Striking off / Removal of the name of the company should satisfy that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. Registrar can obtain necessary undertakings from the director or other persons in charge of the management of the company.

8. Notice of dissolution of the company: After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register.

The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official Gazette in Form STK 7 and the same should also be placed on the official website of the Ministry of Corporate Affairs. The company shall stand dissolved on the publication of this notice in the Official Gazette.

Case Law

***International Security Printers Private Limited* v/s *ROC* Delhi dated 8th August, 2017**

In this case; Petition filed by the International Security Printers Pvt. Ltd and challenges the order of ROC for strike off the name of the Company. ROC exercises his power for strike off of Companies. Petitioner….Roc has struck off 6000 Companies.

- No notice was issued to them and neither did the roc adhere to any legal procedure which required a letter to be sent to the Company.
- The gazette notification was required to be published and the copy of the notification was required to be sent to the registered office of the Company.
- It is averred that without adhering to the aforesaid procedure, the impugned action is vitiated and is in gross violation of the principles of natural justice as no opportunity for hearing was given before taking the impugned step.

Decision of the HON'BLE BENCH:
Principle of Natural Justice: ROC however have failed to prove the allegation that proper step were taken in compliance of the mandatory provisions of Section 252 (4),(5),(6) which are a pre requisite for striking off the name of Company from the Registrar.

In the absence of impugned action of the Respondent would be arbitrary, illegal and against the principles of natural justice. This Petition Accepted.

STRIKE OFF BY WAY OF FILING AN APPLICATION BY THE COMPANY:-

Strike off provisions gives a choice or an option to non-working company to remove its name from the Register of Companies. There are many companies which are registered with ROC but due to various reasons they are not operative. The Strike off gives an option to such companies to apply to ROC for removal of their name from the Register of Companies

Subject to the provisions of sub section 2 of section 248 of companies Act 2013 read with Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the company can on its own file an application for removal of name of company from the Register of companies.

Type of Companies Which Cannot Be Removed Under these Provisions:-

(i) Listed Companies

(ii) Companies registered under section 8

(iii) Companies having charges which are pending for satisfaction

(iv) Companies whose application for Compounding is pending

(v) Companies against which any prosecution for an offence is pending in any court

(vi) Vanishing Companies (Means a Company registered under this act, listed on stock exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of 2 years, and not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange, and none of its directors are traceable)

(vii) Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;

(viii) Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court.

(ix) Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;

(x) Companies where notices under section 234 of CA 1956 or 206 or 207 of the Act, 2016 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court.

On the following grounds, the company through its board of directors, can file an application for removal of name of company from the Register of companies

(a) Where a company has failed to commence its business within one year of its incorporation or;

(b) Where a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013.

Before making an application to the ROC for removal of the name of the company, the board of directors of the company shall take all the steps necessary in order to extinguish all its liabilities. Approval of the shareholders is also required to be taken for filing an application to the ROC for the removal of the name of the company from the Register of companies.

SITUATION IN WHICH COMPANY CAN'T APPLY FOR STRIKE OFF

The Company shall not made any application for the strike off of the Company if any time in the previous 3 month the company has done any of the below mentioned workings:

i. Has Changed its name or

ii. Has Shifted its registered office from one State to another;

iii. has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

iv. has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

v. has made an application to the Tribunal for the sanctioning of a Compromise Or Arrangement and the matter has not been finally concluded; or

vi. is being wound up under Chapter XX, whether voluntarily or by the Tribunal

Procedure of striking off of the name of the company by way of an application to ROC:

1. Call and hold Board Meeting to pass Board resolution for the purpose of striking off of the name of the company from the register of the ROC subject to the approval of the shareholders of the company and to authorize any director to file an application, fixing date, date, time and venue for the Extra Ordinary General Meeting of the shareholder.
2. After passing of Board resolution, if there is any liability in the company, the company will set off / pay all liabilities.
3. Every director of the company should sign and execute; • indemnity bond in Form STK 3 and; • Affidavit in Form STK 4 (duly notarized). In case director is a foreign national or non-resident Indian, the documents should be notarized or apostilled or consularised.
4. Prepare statement of accounts showing the assets and liabilities made up to a day, not more than thirty days before the date of application. Such a statement should be certified by a Chartered Accountant;
5. General Meeting should be held on the day, date, time and venue as fixed earlier. special resolution should be passed or consent of seventy-five percent members in terms of paid-up share capital should be obtained.
6. Within thirty days from the date of the passing of the special resolution in the General Meeting or after obtaining consent, company should file MGT-14.
7. Approval of concerned authorities is required in case of a company regulated by any other authority.
8. Thereafter, an application for removal of the name of the company shall be made in Form STK-2 along with fee Rs. 5,000/-. E-Form STK-2 shall be signed by authorized director and shall be certified by Company secretary in whole time practice or Chartered Accountant in whole time practice or Cost Accountant in whole time practice. Attachments to Form STK-2. (a) NOC from the appropriate concerned authority, if required (RBI, IRDA, Housing Finance, SEBI etc.) (b) Indemnity Bond from Every Director in Form STK-3 (c) Statement of Accounts certified by CA. Statement should not be older than 30 days from the date of application. (d) An Affidavit from every Director in Form STK-4 (e) CTC of Special Resolution duly signed by each Director (f) Statement regarding pending litigations, if any, involving Company. (Better to give in affidavit format)
9. After filing application for strike off by the company, the ROC shall publish a public notice in Form STK-6 inviting objections to the proposed strike off, if any.
10. Intimation about the proposed action of removal or striking off the names of company should be sent to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company.
11. After thirty days from the date of publication of the notice in the newspaper, official gazette and intimation to regulatory authorities and unless cause to the contrary is shown by the company, if there are no objections received within thirty days from the general public or respective authority, the ROC can proceed to strike off or remove the name of the company from the Register of companies.

12. The ROC before passing an order for striking off / Removal of the name of the company should satisfy that the sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time.
13. After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official Gazette in Form STK 7 and the same should also be placed on the official website of the Ministry of Corporate Affairs. The company shall stand dissolved on the publication of this notice in the Official Gazette.

STATUS OF STRIKE OFF COMPANY

If a company stands dissolved under section 248, it shall on and from the date mentioned in the notice cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Liabilities of directors, managers, officers and members to be continue:

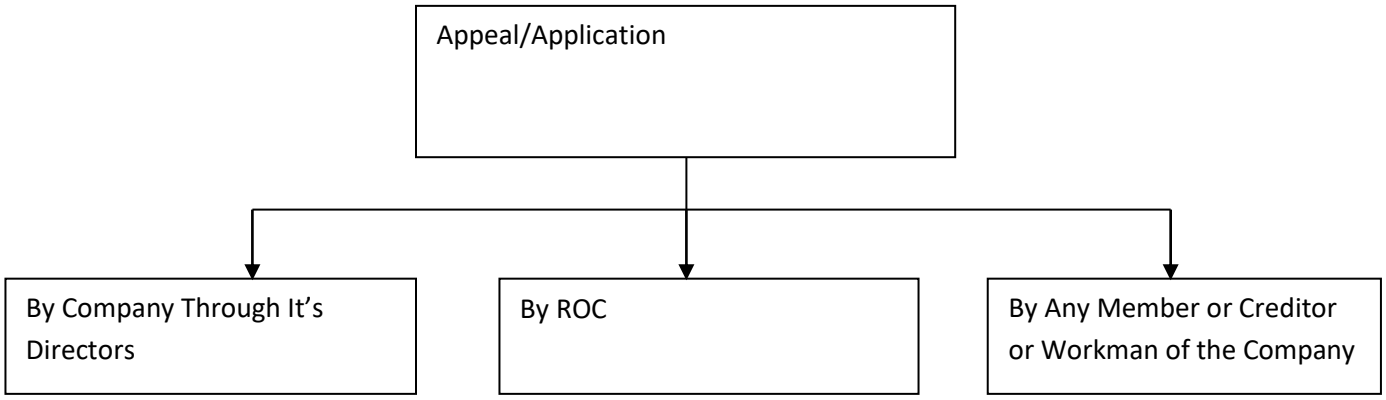
The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under this section, continue and may be enforced as if the company had not been dissolved.

LIST OF STK FORMS

Name of Form	Purpose
Form STK-1	Notice by Registrar for removal of name of a company from the register of Companies
Form STK-2	Application by company to ROC for removing its name from register of Companies.
Form STIC-3	INDEMNITYBOND (to be given individually or collectively by every director).
Form STK-4	AFFIDAVIT (to be given individually by every Director).
Form STK-5	PUBLIC NOTICE
Form STK-5A	PUBLIC NOTICE
Form STK-6	PUBLIC NOTICE
Form STK-7	Notice of Striking Off and Dissolution

RESTORATION OF THE COMPANY

- Registrar of Companies can suo motu after issuing the notices under section 248(1) strike of the name of the company.
- In such a case it may happen that the name of the company may be struck off even though the company is active company but due to the non-filing of reply, the ROC has removed the name of the company from the Register.
- In such a case the directors of such a company have no option but to approach NCLT by making an appeal for the restoration of the name of the company in the Register of companies maintained by the ROC.



Appeal to NCLT FOR restoration of Name of the Company

Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC and if the Tribunal is of the opinion that the removal of name of company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the register of companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

Application to NCLT by ROC for Restoration of Name of the Company

The ROC may, within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company if it is satisfied that that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors.

Application to NCLT for Restoration of the Name of the Company or Any Member or Creditor or Wokman

The Tribunal, on an application made by the company, member, creditor or workman before the expiry of 20 years from the publication in the Official Gazette of the notice of dissolution of the company, if satisfied that:

(a) the company was, at the time of its name being struck off, carrying on business or in operation; or

(b) otherwise it is just that the name of the company be restored to the register of companies,

may order the name of the company to be restored to the register of companies. Further, the Tribunal may also pass an order and give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

STRIKING OFF THE NAME OF THE LIMITED LIABILITY PARTNERSHIP (LLP) FROM THE REGISTER OF LIMITED LIABILITY PARTNERSHIP

- Section 75 of the Limited Liability Partnership Act, 2008 read with Rule 37 deals with the provision for the striking off the name of the Limited Liability Partnership from the register of limited liability partnerships.
- The Ministry of Corporate Affairs has recently amended Limited Liability Partnership Rules, 2009 by introducing the Limited Liability Partnership (Amendment) Rules, 2017 with effect from 20th May, 2017.
- With this amendment, LLP Form 24 has been introduced by the MCA to allow easily close a LLP by making an application to the Registrar for striking off name of LLP.
- In case of an existing LLP which is not carrying on any business or operation for a period of one year or more can make an application in Form 24 to the Registrar, with the consent of all partners of the limited liability partnership for striking off its name from the register.
- Similarly, where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act for a period of two years or more, the name of limited liability partnership may be struck off from the register of limited liability partnerships by ROC by taking suo motu action for striking off the name of the LLP.
- However before striking off the name of the LLP, the registrar shall give reasonable opportunity of being heard.

STRIKE OFF BY SUO MOTO

Registrar can suo motu remove the name of the LLP from the Register in case a limited liability partnership is not carrying on any business or operation for a period of two years or more and the Registrar has reasonable cause to believe the same. In such a case the Registrar can suo motu take the action for striking off the name of the LLP.

Procedure to be followed by ROC for striking of the name of the LLP on suo motu basis:

Serve of notice
Reply to Notice
Consideration of the representation made
Publication of Notice
Striking off of the name of the LLP
Provision for realisation of amount due
Notice of dissolution of the LLP

1. **Serve of notice:** Before striking off the name of the LLP, the registrar is required to send a notice to the LLP and all the partners of the LLP of his intention to remove the name of the LLP from the register of partnership. Such a notice shall contain the reasons for which the name of the LLP is to be removed from the register.
2. **Reply to Notice:** On receipt of such a notice the LLP and all the partners of the LLP are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the LLP should not be removed from the register. Such a representation should be given within a period of one month from the date of the notice.

3. **Consideration of the representation made**: The Registrar will consider the representation made. If the Registrar is not satisfied with the representation made by the LLP and its partners, it may proceed to strike off the name of LLP
4. **Publication of Notice:** Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month. Such publication is required to be given for the information of the general public in order to enable the general public to give their objections, if any, to the proposed striking off of name of the LLP from the register and requiring them to send their objection to Registrar within one month from the date of publication of the notice
5. **Striking off of the name of the LLP:** After the expiry of the time limit of one month and unless cause to the contrary is shown by the LLP, if there are no objections received, the Registrar can proceed to strike off the name of the LLP from the Register of partnership.
6. **Provision for realisation of amount due:** The Registrar before passing an order for striking off of the name of the LLP should satisfy that the sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time. Registrar can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership.
7. **Notice of dissolution of the LLP:** After the expiry of the time mentioned in the notice, the Registrar can strike off the name of the LLP from the Register. The notice of striking off the name of the LLP from the register and its dissolution should be published in the Official Gazette. The LLP shall stand dissolved on the publication of this notice in the Official Gazette.

STRIKE OFF BY WAY OF FILING AN APPLICATION BY THE LLP:-

where a limited liability partnership is not carrying on any business or operation for a period of one year, such a LLP can make an application for purpose of suo motu striking off the name of the LLP.

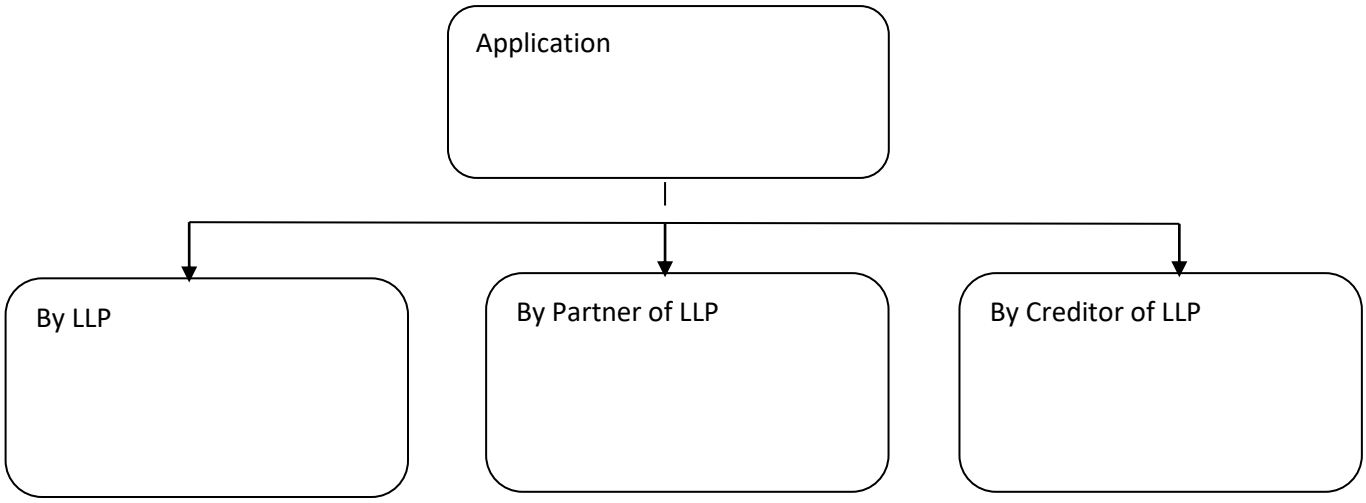
1. Holding the meeting of the partners for authorizing and making an application for the striking off of the name of the LLP with the Registrar. The consent of all partners of the limited liability partnership should be obtained before making an application to the Registrar for striking off of the name of the LLP.
2. All the pending filing including the Annual Filing of form 8 and 11 up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations should be completed before making of an application.
3. Approval of concerned authorities should be obtained in case of a LLP regulated by any Special Law.
4. All the Designated Partners of the LLP must execute an affidavit, either jointly or severally, that the Limited Liability Partnership ceased to carry on commercial activity from (Date) or has not commenced business and also declare that the LLP has no liabilities and indemnify any liability that may arise even after striking off its name from the Register.
5. An application for striking of the name of the LLP shall be made in Form 24 with following attachments: (a) a statement of account disclosing nil assets and nil liabilities. (b) Copy of acknowledgement of latest Income tax return- Self Explanatory (c) copy of the initial limited liability partnership agreement (d) an affidavit signed by the designated partners. (e) Copy of Detailed Application- Mention full details of LLP plus reasons for closure (f) Copy of Authority to Make the Application- Duly signed by all the Partners
6. Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month.

7. After the expiry of the time limit of one month and unless cause to the contrary is shown by the LLP, if there are no objections received, the Registrar can proceed to strike off the name of the LLP from the Register of partnership.
8. The Registrar before passing an order for striking off of the name of the LLP should satisfy that the sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time.
9. After the expiry of the time mentioned in the notice, the Registrar can strike off the name of the company LLP from the Register. The notice of striking off the name of the LLP from the register and its dissolution should be published in the Official Gazette. The company shall stand dissolved on the publication of this notice in the Official Gazette.
10. On processing the application, if found acceptable, the concerned Registrar will strike off the name of the LLP from the Register of the Partnership.

LIABILITIES OF PARTNERS TO BE CONTINUE AFTER STRIKING OFF:-

The liability of all designated partners of the limited liability partnership would continue and may be enforced as if the limited liability partnership had not been dissolved.

RESTORATION OF THE LLP:-



If an LLP, or any partner or creditor thereof, feels aggrieved by the LLP having been struck off the register, the Tribunal, on an application made by the

- LLP
- Partner or
- Creditor

before the expiry of five years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the LLP was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the LLP be restored to the register, order the name of the LLP to be restored to the register; and the Tribunal may, by order, give such directions and make such provisions as seem just for placing the LLP and all other partners in the same position as nearly as may be as if the name of the LLP had not been struck off.

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CHAPTER 21
CORPORATE INSOLVENCY RESOLUTION PROCESS, LIQUIDATION AND WINDING UP: An Overview

Applicability

This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.

However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Important Definitions

- **Adjudicating Authority**", for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013
- "**corporate applicant"** means—

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or

(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

(d) a person who has the control and supervision over the financial affairs of the corporate debtor;

- **Corporate person** – "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.
- "**financial creditor**" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.
- "**financial debt**" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

- **Insolvency professional** – "Insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.
- **Insolvency professional agency –** "Insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency.
- **"insolvency resolution process costs"** means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board

- **Liquidation commencement date** – "Liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be.
- **Liquidation cost** – "Liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.
- **Liquidator** – "Liquidator" means insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.
- "**resolution professional**", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional; and

Important Rules And Regulations

- Insolvency and Bankruptcy board of India(Insolvency Professional Agencies) Regulations, 2016
- Insolvency and Bankruptcy board of India(Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
- Insolvency and Bankruptcy board of India(Insolvency Professionals) Regulations, 2016
- Insolvency and Bankruptcy board of India(Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- Insolvency and Bankruptcy (Application to Adjudicating Authority)Rules, 2016
- Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
- Insolvency and Bankruptcy board of India (Voluntary Liquidation Process) Regulations, 2017

Person Who May Initiate Corporate Insolvency Resolution Process

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution Process.

Resolution Process

1. A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

2. The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

3. The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub- section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

4. Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

However, before rejecting the application, the Adjudicating Authority shall give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

5. The corporate insolvency resolution process shall commence from the date of admission of the application.

6. The Adjudicating Authority shall communicate the order to the financial creditors and the corporate debtor within seven days of admission or rejection of such application, as the case may be.

7. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Time Limit of Corporate Insolvency Resolution Process

- Corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.
- However, resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of ***Sixty Six** per cent of the voting shares.

****Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018***

- However, in case corporate insolvency resolution process cannot be completed within 180 days , it may by order extend the duration of such period beyond 180 days by such periods as it thinks fit, but not exceeding 90 days: and also he extension of the period of corporate insolvency resolution process under this section shall not be granted mo0re than once.

Moratorium

On commencement of the CIRP, the adjudicating authority passes an order declaring moratorium for prohibiting all of the following by virtue of section 14 of the IBC:

(a) Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

The order of moratorium shall have effect from the date of order till the completion of CIRP or date of approval of resolution plan or order of liquidation, as the case may be.

Interim Resolution Professional

The IRP takes over the management of the corporate debtor and is in charge of day of day affairs of the corporate debtor. He may appoint professionals and consultants to support him in his duties.

The primary duty of the IRP is to:

(a) Make public announcement about the CIRP of the corporate debtor

(b) Invite claims from creditors

(c) Get valuation of the corporate debtor done

On receipt of claims from the creditors, the IRP shall verify the claims and make list of accepted claims.

Within 30 days of commencement of CIRP, the IRP shall constitute a Committee of Creditors (COC) which primarily consists of all financial creditors of the corporate debtor. The IRP shall also prepare an Information Memorandum containing prescribed details of the corporate debtor.

Resolution Professional

- Resolution Professional (RP) is a new category of professionals who on meeting stipulated criteria, is registered with the Insolvency and Bankruptcy Board of India.
- Only a person who is registered as a Resolution Professional / Insolvency Professional can act as such.
- Company Secretaries are eligible to be registered as Resolution Professionals subject to meeting stipulated criteria.

Committee of Creditors

- The COC at its first meeting shall appoint a Resolution Professional (RP). In doing so, it may either confirm the appointment of IRP as RP or appoint another RP of its choice.
- The RP then takes over the management of the corporate debtor from the IRP. The RP shall act under the guidance and superintendence of the COC.
- All decisions of the COC shall be taken by ***66%** majority. Each member of the COC has voting share in proportion to the amount of debt outstanding to the corporate debtor. The RP shall take approval of the COC for matters stipulated in the Code.

****Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018***

Resolution Plan

- The objective behind the CIRP is that the corporate debtor should get a chance to revive itself from insolvency.
- The corporate debtor is in insolvency due to various reasons including market conditions, business cycles, wrongful acts of the promoters, amongst others.
- The corporate debtor should get a fresh chance to revive itself and recommence its operations either in the same management or a new management.
- With this intent in mind, the RP invites proposals to revive the corporate debtor.
- These proposals are known as “resolution plans” and they can be submitted by any person who is interested in revival of the company.
- These plans include proposals to pay off the existing liabilities of the corporate debtor in part or in full and to restart its operations over a period of time.
- There are safeguards against a defaulting promoter submitting a resolution plan so that such defaulting promoter is not able to takeover a debt free company at lower cost by way of a resolution plan.

The resolution plan is submitted to the RP who in turn places all such plans before the COC. The COC shall approve the most suitable resolution plan. Such resolution plan approved by the COC is submitted to the Tribunal for its approval. In case the Tribunal approves the resolution plan, the corporate debtor is out of CIRP.

Liquidation Process

In terms of Section 59 of the IBC, only a corporate person is allowed to initiate voluntary liquidation process, which has not committed any default.

It is imperative to understand, whether the word 'default' includes past default or existing default of a corporate person? While analysing the definition of a default which is defined under the IBC to mean – "non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be",

1. Additional declaration by the directors that company is not wound up to defraud any person
2. Only insolvency professional can, who meets the eligibility criteria as specified under New Regulations, be appointed as liquidator;
3. Maintenance and preservation of various registers in the prescribed manner;
4. Preparation of various reports by the liquidator as to be submitted to a corporate person, Registrar of Companies ("ROC"); and the Insolvency and Bankruptcy Board of India ("Board")
5. Receipt of stakeholders claims by liquidator only in specified forms;
6. The liquidator shall Endeavour to wind up the affairs of the corporate person within 12 (twelve) months from the voluntary liquidation commencement date;

(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub- section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator

Voluntarily Liquidation

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation.

Below is the brief procedure of voluntary liquidation of a corporate person under IBC:

Step I: Submission of declaration(s) to ROC, stating that the company will be able to pay its dues and is not being liquidated to defraud any person;

Step II: Passing of special resolution for approving the proposal of voluntary liquidation and appointment of liquidator ("Approval"), within 4 (four) weeks of the aforesaid declaration(s). If a corporate person owes debts, approval of two-third majority creditors would also be required;

Step III: Public announcement inviting claims of all stakeholders, within 5 (five) days of such Approval, in newspaper as well as on website of the corporate person;

Step IV: Intimation to the ROC and the Board about the Approval, within 7 (seven) days of such Approval;

Step V: Preparation of preliminary report about the capital structure, estimates of assets and liabilities, proposed plan of action etc., and submission of the same to a corporate person within 45 (forty-five) days of such Approval;

Step VI: Verification of claims, within 30 (thirty) days form the last date for receipt of claims and preparation of list of stakeholders, within 45 (forty-five) days from the last date for receipt of claims;

Step VII: Opening of a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person

Step VIII: Sale of assets, recovery of monies due to corporate person, realization of uncalled capital or unpaid capital contribution;

Step IX: Distribution of the proceeds from realization within 6 (six) months from the receipt of the amount to the stakeholders;

Step X: Submission of final report by the liquidator to the corporate person, ROC and the Board and application to the National Company Law Tribunal ("NCLT") for the dissolution;

Step XI: Submission of NCLT order regarding the dissolution, to the concerned ROC within 14 (fourteen) days of the receipt of order.

Waterfall Arrangement

Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified:

(a) Insolvency resolution process costs and liquidation costs paid in full

(b) Following debts shall rank equally between and among the following:

  (i) Workmen's dues for the period of 24 months preceding the liquidation commencement date

  (ii) Debts owed to secured creditor in the event such secured creditor has relinquished security under section 52

(c) Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date

(d) Financial debts owed to unsecured creditors

(e) Following dues shall rank equally between and among the following:

  (i) Any amount due to the Central / State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date

  (ii) Debts owed to a secured creditor for any amount unpaid following enforcement of security interest

(f) Any remaining debts and dues

(g) Preference shareholders, if any; and

(h) Equity shareholders or partners, as the case may be.

Any contractual arrangements between recipients above with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

The fees payable to the liquidator shall be deducted proportionately from proceeds payable to each class of recipients and proceeds to the relevant recipient shall be distributed after such deduction.

Dissolution of Corporate Debtor

Once the assets of the corporate debtor are completely liquidated, the liquidator shall make an application to the Tribunal for dissolution of the corporate debtor. The Tribunal shall pass necessary order to dissolve the corporate debtor.

Thus, it can be seen that the CIRP and subsequent liquidation process of the corporate debtor is a time bound process aimed at expediting the revival or dissolution of corporate debtors.

WINDING UP

Meaning of Winding Up

- ❖ Winding up is the process of closing down the legal existence of a company or LLP.
- ❖ During this process, the assets of the entity are realized, its liabilities are paid off and any surplus is distributed amongst the contributories.
- ❖ Once the adjudicating authority is convinced that these processes are completed, the entity is dissolved.
- ❖ During winding up, the management of the company / LLP is in the hands of the liquidator and not the governing body / board of directors.
- ❖ However, the assets and liabilities still belong to the company until dissolution takes place. On dissolution, the entity loses its legal existence.

Difference between Winding up and Dissolution

Many times, the terms 'winding up' and 'dissolution' are used interchangeably. This is not correct. There are very important differences in these two terms which are given below:

(1) Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities paid off and surplus, if any, is distributed amongst the contributories. Whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.

(2) The winding up process is handled by a liquidator / insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.

(3) Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists.

(4) Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over / amalgamated by any other entity / company which will result in the company coming out of winding up process and being handed over to the shareholders. This is not possible in case of dissolution.

Winding Up by Tribunal

According to section 271, a company may be wound up by the Tribunal in following cases:

(a) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(c) If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

For commencing proceedings under section 271, a petition is to be made to the Tribunal. According to section 272, this petition may be made by any of the following persons:

(a) The company;

(b) Any contributory or contributories;

(c) All or any of the persons specified in clauses (a) and (b);

(d) The Registrar;

(e) Any person authorised by the Central Government in that behalf; or

(f) In a case falling under clause (b) of section 271, by the Central Government or a State Government.

Any petition filed by the company shall be accompanied by a statement of affairs in prescribed form. A petition can be filed by the Registrar only with previous sanction of the Central Government which shall be accorded only after giving to the company a reasonable opportunity of being heard.

On a petition filed under section 272, the Tribunal may pass any of the following orders within 90 days of presentation of the petition:

(a) Dismiss it, with or without costs;

(b) Make any interim order as it thinks fit;

(c) Appoint a provisional liquidator of the company till the making of a winding up order;

(d) Make an order for the winding up of the company with or without costs; or

(e) Any other order as it thinks fit.

The Tribunal shall give an opportunity of being heard to the company before appointment of a Provisional Liquidator.

The order for winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

The liquidator is required to submit to the Tribunal, a report containing the following particulars, within sixty days from the order:

(a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company:

(b) valuation Report of the assets obtained from registered valuers

(c) amount of capital issued, subscribed and paid-up;

(d) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(e) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(f) guarantees, if any, extended by the company;

(g) list of contributories and dues, if any, payable by them and details of any unpaid call;

(h) details of trademarks and intellectual properties, if any, owned by the company;

(i) details of subsisting contracts, joint ventures and collaborations, if any;

(j) details of holding and subsidiary companies, if any;

(k) details of legal cases filed by or against the company; and

(l) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

The Tribunal shall on an application filed by the Company Liquidator or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

*The provisions relating to voluntary winding up of companies have been removed from the Companies Act w.e.f. April 01, 2017 and are now governed by Insolvency and Bankruptcy Code.

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

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