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STARTUP COMPANY

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STARTUP INDIA POLICY

- The "Startup India" initiative announced by the Hon'ble Prime Minister on 15th August, 2015 aims at fostering entrepreneurship and promoting innovation by creating an ecosystem.
- The Hon'ble Prime Minister on 16th January 2016 launched the Startup India Action Plan.
- Since, the launch of Startup India initiative, a total of 82,141 Startups has been recognized by DPIIT by 2022.

DEFINITION OF START-UP

"Start Up as defined vide Notification No. G.S.R. 127 (E), dated 19th February 2019 by DPIIT as:

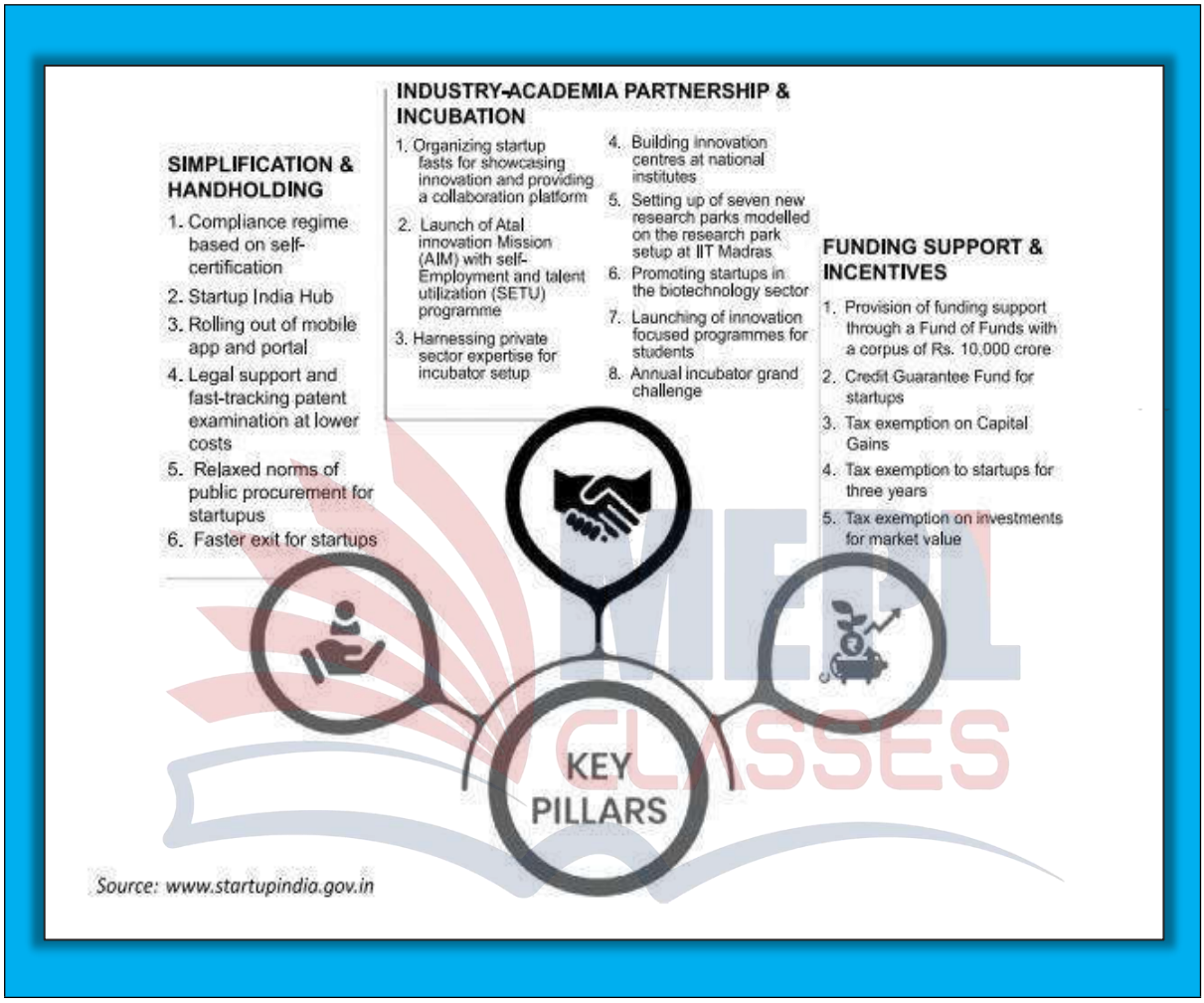
An entity shall be considered as a Startup:

1. Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
2. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs 100 crore.
3. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

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

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The Startup India Action Plan consists of 19 action items spanning across areas such as "Simplification and handholding."



Recognition as Startups

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

A. Startup shall make an online application over the mobile app or portal set up by the DPIIT.

B. The application shall be accompanied by –

a. a copy of Certificate of Incorporation or Registration, as the case may be, and
b. a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or

services, or its scalability in terms of employment generation or wealth creation.

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

a. recognise the eligible entity as Startup; or
b. reject the application by providing reasons.

Certification of the Inter-Ministerial Board for availing the Tax Benefit under Section 80-IAC

A Startup being a private limited company or limited liability partnership, which fulfils the conditions specified in sub-clause (i) and sub-clause (ii) of the Explanation to section 80-IAC of the Income Tax Act, 1961 (Act).

i. grant the certificate referred to in sub-clause (c) of clause(ii) of the Explanation to section 80- IAC of the Act; or
ii. reject the application by providing reasons.

The "Board" means the Inter-Ministerial Board of Certification comprising of the following members:

i. Joint Secretary, Department of Promotion of Industry and Internal Trade, Convener (DPIIT);
ii. Representative of Department of Biotechnology, Member;
iii. Representative of Department of Science & Technology, Member.

The Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

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EXEMPTIONS FOR STARTUPS

1. Simple process

Government of India has launched a mobile app and a website for easy registration for startups.

2. Reduction in cost

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.

4. Tax holiday for 3 Years

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

5. Apply for tenders

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

6. R&D facilities

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

7. No time-consuming compliances

Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.

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8. Tax saving for investors

People investing their capital gains in the venture funds setup by government will get exemption from capital gains.

9. Choose your investor

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

10. Easy exit

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

11. Meet other entrepreneurs

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

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The Companies Act, 2013

Section	Description
CHAPTER IV SHARE CAPITAL AND DEBENTURES	
Section 54 – Issue of sweat equity shares.	50% of its paid-up capital
Section 62 – Further issue of share capital	(i) promoter or a person (ii) a director
CHAPTER V ACCEPTANCE OF DEPOSITS BY COMPANIES	
Section 73 – Prohibition on acceptance of deposit from public	Clauses (a) to, (e) of sub-section (2) of section 73 shall not apply to a private company which is a start-up, for five years from the date of its incorporation.
CHAPTER VII MANAGEMENT AND Administration	
Section 92- Annual Return.	The company secretary, or where there is no company secretary, by the director of the company
CHAPTER XII MEETINGS OF BOARD AND ITS POWERS	
Sections 173 – Meetings of Board	At least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meeting is not less than ninety days.
CHAPTER XXVIII SPECIAL COURTS	
Section 446B- Lesser penalties for One Person Companies or Small Companies.	The case may be, shall be liable to a penalty which shall not be more than one half of the penalty specified in such provisions subject to a maximum of Rs. 2 lakh in case of a company and Rs. 1 lakh in a case of an officer who is in default or any other person, as the case may be.

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SEED CAPITAL

- Startup business needs the nurturing of finance to explore and grow. The funding done at the nascent stage is called seed funding and the capital is known as a seed capital.
- Technically, seed capital is the initial capital used at the time of starting the business. This capital can come from the founders, families or friends. It is required for the market research, product development, and other initial stage operations.
- Seed funding is a risky investment option, as most funding agencies would like to adopt a wait and watch.
- Financing is generally of two types i.e.
  (a) equity financing; or
  (b) debt-financing.

A. Equity Financing

(i) 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.

Funding Procedure

(a) A Term Sheet / Letter of Intent /Memorandum of understanding is entered.
(b) The contracting parties will enter into a Share Subscription Agreement/ Debenture Subscription Agreement.
(c) Thereafter, the contracting parties may enter into a Shareholders' Agreement providing for the following:

- Nomination/representation rights on the board of investee;
- Information and reporting right and disclosure obligation of investee to the investors;

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- Redemption rights on debenture or preference shares;
- Pre-emption rights, Right of First Refusal or Right of First Offer, Tag Along Right, Drag Along Rights, Lock-in-period for the investor or promoter's holding, put and call options, affirmative vote rights on certain reserved matters, anti-dilution provisions;
- Exit options to investors after the lock-in-period; etc.

(d) Issuance of Securities through Private Placement process;
(e) Filing of necessary eForms with ROC for completing the process of issuance and allotment of securities;
(f) Amendment of AOA as per Shareholders' Agreement;
(g) Completion of Conditions Subsequent.

(ii) Angel Investors

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

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

(iii) Bridge Round

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

Example: M/s ABC & Ltd., is already approved for a term loan of INR 5,00,00,000/- from bank, but the loan is broken into tranches, with the first tranche set to come in six months, the company may seek a bridge loan. It can apply for a six-month short-term loan that gives it just enough money to survive until the first tranche hits the company's bank account.

(iv) Series Funding

After Seed Funding Round or Angel Funding Round and Bridge Funding Round, Series Funding Round will start like Series A to Z.

SOURCES OF FUNDS

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

1. Be Series A Ready

Promising unit economics, revenue, proof of business model, systems ready to support efficient scaling, product/market fit, customer acquisition strategy.

2. Start Early

Make sure you start the process at least 7-8 months prior to when you want to raise a Series A financing.

3. Leverage Your Network

Seed funding is more plentiful and easier to raise as compared to Series A. Leveraging your network and building genuine relationships. Reach out to your extended network and request them to reach out to their connections.

4. Practice your "Pitch"

Treat the pitch a product – iterate on it until it is great.

5. Create a Fundraise Momentum

Try keeping your conversations with interested investors moving along at as close to the same pace as possible.

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".

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7. Get the deal terms right

It is imperative that you ensure that the deal terms for your Series A are right and consistent with the trajectory of your business.

8. Engage a Professional

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

9. Paperwork in place

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

10. Raise 10-15% more than budgeted for

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

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FUNDING SUPPORT & INCENTIVES

1. Fund of Funds

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

2. Startup India Seed Fund

Government has launched a Startup India Seed Fund worth INR 1000 crore.

3. Credit Guarantee Fund for Startups

A budgetary corpus of Rs.500 crore per year, over the next four years.

4. Relaxed Norms in Public Procurement for Startups

5. Tax Incentives

i. Income Tax Exemption on profits under Section 80-IAC of Income Tax (IT) Act.
ii. Tax Exemption on Investments above Fair Market Value.
iii. Introduction of Section 54EE in the Income Tax Act, 1961.
iv. Amendment in Section 54GB of the Income-tax Act.
v. Amendment in Section 79 of Income Tax Act.

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

This will reduce the time taken in getting patents. The fee for filing of patents for Startups has also been reduced up to 80%.

7. Self-Certification based Compliance Regime:

Ministry of Environment and Forests (MOEF) has published a list of 36 white category industries.

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Startups falling under the "White category" would be able to self-certify compliance in respect of three (3) Environment Acts.

- The Water (Prevention & Control of Pollution) Act, 1974;
- The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003;
- The Water (Prevention & Control of Pollution) Act, 1981.

8. Setting up Incubators

- Atal Incubation Centres (AICs) is an initiative of the Atal Innovation Mission (AIM).
- ACIC is envisaged to serve the unserved/underserved areas of the country with respect to the start-up and innovation ecosystem. Each ACIC is supported with a grant of up to INR 2.5 crores over a period of 5 years.

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

10. Research Parks

7 Research Parks will be set up as per the Startup India Action Plan.

INDIAN STATES WITH STARTUP POLICIES

State Startup Ranking

The States' Startup Ranking Framework was conceived by the Government of India in 2018.

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Evolution across the Years

The States' Startup Ranking Framework is an ever-evolving tool with collaboration at its core. With learnings from previous years and consultation with States and Union Territories, three new Reform Areas were introduced to the framework:

1. Capacity Building of Enablers
2. Mentorship Support
3. Fostering Innovation and Entrepreneurship

States' Startup Ranking 2021 Results:

[redacted]

The top 3 best performing states are:

- Gujarat
- Karnataka
- Meghalaya

[redacted]

i. Institutional Support
ii. Fostering Entrepreneurship and Innovation
iii. Access to Market
iv. Incubation Support
v. Funding Support
vi. Mentorship Support
vii. Capacity Development of Enablers

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LIFE CYCLE OF START-UP



Stage 1: Ideation and Development

Eg. OLA, UBER



Stage 2: Validation

- Feasibility of the idea
- Through customer feedback



- It highlights the features as considered

Stage 3: Early Traction

- It is at the Early Traction stage that a set of target customers may test efficacy of the product/ service offered.
- The customer retention rate confirms the early traction of the company and its product.

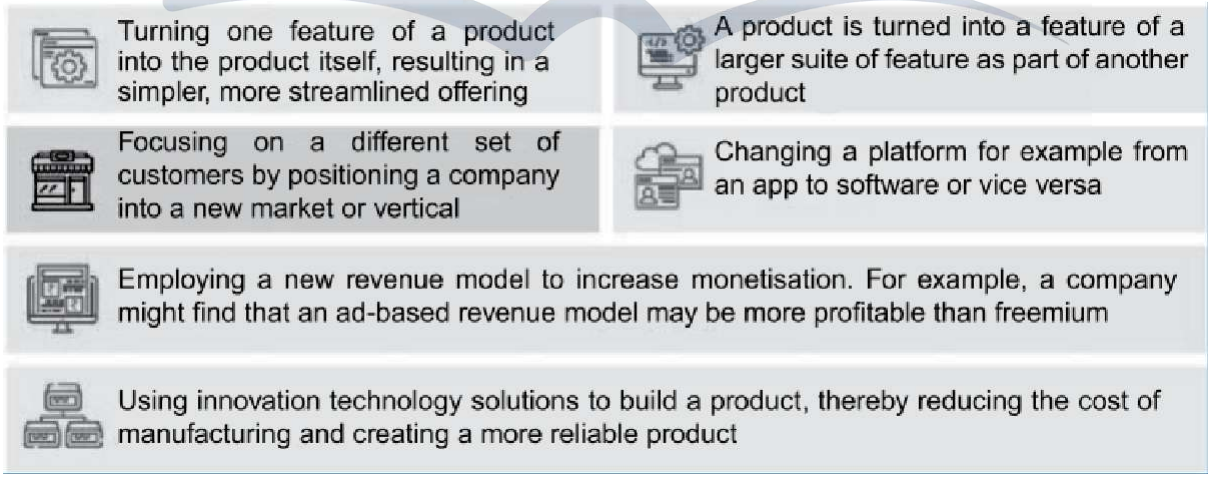
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- **Startup acquires more customers by actively seeking funds from crowd funding agencies, angel investors or networks, incubators and seed grants from Government.**

PIVOTING

- **It is essentially the process of a startup translating direct or indirect feedback into a change in its business model.**
- **Most successful companies go through several pivots to find product-market fit.**
- **Experiments across customers, problem, product, and technology and growth channels.**

MAJOR AREAS OF FOCUS DURING PIVOTING INCLUDE THE FOLLOWING:

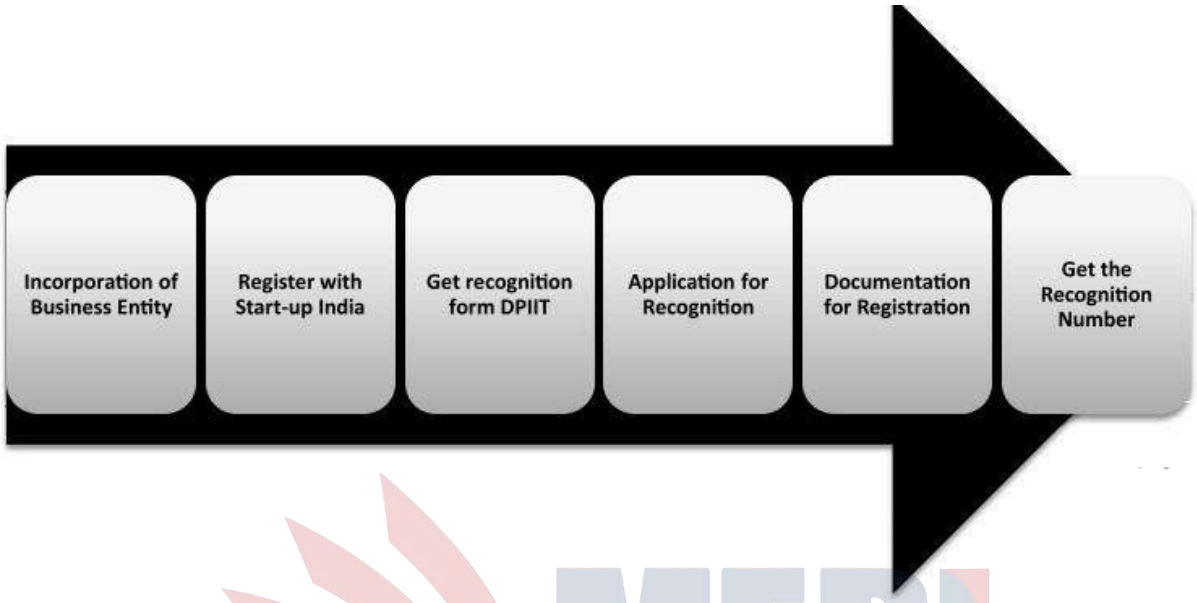


STAGE 4: GROWTH/EXIT

In the fourth stage of the startup lifecycle, the company has attained true economic health, has sufficient size and product-market penetration to ensure economic success, and earns average or above-average profits. The company can stay at this stage indefinitely, provided environmental changes do not hinder its market niche or ineffective management reduce its competitive abilities. At this stage, the company may choose to scale up or expand its market through mergers and acquisitions or preparing for an Initial Public Offering (IPO). Depending upon the strategy followed, some of the companies are successfully able to sustain the growth stage, rapidly scaling up their business to achieve valuation of more than $1 billion and become unicorns. These businesses offer ideal business for other startup across sectors and encourage them to scale up.

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REGISTRATION STEPS



A. Incorporation of Business Entity:

- Private Limited Company
- A Limited Liability Partnership (LLP)
- Registrar of Companies (ROC) for the state where the registered office of the new entity is proposed to be established.
- The Registrar of Firms

I. Formation of a Company in India

The law of companies in India is governed by the Companies Act, 2013 which is a comprehensive legislation and provides for provisions relating to all phases of a company's life, i.e., incorporation, management, mergers, winding up, etc.

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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.

II. Types of Companies in India

II-1. Private Company

- With restrictions on transfer of shares, and limited number of members, a private limited company enjoys greater flexibility, less legal formalities, and the small shareholders body facilitates prompt decisions.
- A private company must have a minimum of two directors.
- A private company may be converted into a public company for raising capital from the public, if need arises, by completing certain legal formalities as specified in the Companies Act.

II-2. Public Company

- Public companies are subject to stricter legal formalities.
- Shares of a listed public company can be traded on stock exchange.
- The scrutiny and watch of Securities and Exchange Board of India.
- A public company must have a minimum of seven members and three directors.

II-3. One Person Company

- At the time of incorporation, the memorandum of association must name a nominee for the sole member of an OPC.
- The minimum number of directors for an OPC is also one.

- OPC provides the option of limited personal liability of proprietors (as opposed to unlimited liability in sole proprietorship).

III. Charter documents of a Company

1. Memorandum of Association

a. The first and foremost clause in MoA shall be the name of the proposed company.
b. The state where the registered office of the company shall be situated.

2. Articles of Association

a. The articles of a company contain regulations for the management of the company.

IV. Legal formalities for incorporation of a company:

IV-1. Pre-incorporation formalities:

a. Digital Signature Certificates ('DSC').
b. Any person (not having DIN) proposed to become a first director in a new company shall have to make an application for DIN (Maximum 3) through web form SPICe+.
c. The next step is filing of online application through Simplified Proforma for Incorporating Company electronically (SPICe+ -INC-32), with eMoA (INC-33), eAOA (INC-34) and AGILEPRO-S. SPICe+ form is an integrated web-form and an advanced version of the previous SPICe form (i.e., e-form INC-32).
d. The final step of the incorporation process and obtaining a certificate of incorporation of the company.

IV-2. 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.
- 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.
- Maintaining all the secretarial records at the registered office of the company.

B. Register with Start-up India:

- One needs to visit the Startup India website and click on the 'Register' button.
- After that one needs to enter his/her name, email id, mobile number, password and after that click on "Register" button.
- OTP will be sent to the email.
- After entering these details, the Startup India profile will be created.
- The profile is created on the website, startups can apply for various acceleration, incubator/mentorship programmes.

C. Get recognition from DPIIT:

D. Application for Recognition:

- On the 'Startup Recognition Form', the details has to be filled such as the entity details, full address (office), authorized

representative details, directors/partner details, information required, startup activities and self-certification.

- Click on the plus sign on the right-hand side of the form.
- Click on the 'Submit' button.

E. Documentation required for Registration:

- PAN Number
- Proof of funding, if any
- Proof of concept like pitch deck/website link/video
- Patent and trademark details, if any
- List of awards or certificates of recognition, if any.

F. Getting the Recognition Number:

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

Important Points for a Start-up

1. Choose the right legal structure for your startup:

2. Registrations and business licenses:

- Any user who intends to incorporate company through SPICe+ web form can now also apply for GSTIN / Establishment code as issued by EPFO / Employer Code as issued by ESIC through this web form (INC-35).
- Application for registration of Goods and Service Tax Identification Number (GSTIN).

- Employees' Provident Fund organisation (EPFO) Registration and profession Tax Registration.
- Opening of Bank Account and Shops and Establishment Registration" along with E-MOA (INC-33) and E-AOA (INC-34) to obtain GSTIN / Establishment Code / Employer Code etc.

3. Intellectual Property Protection:

- All Intellectual Property (including trademark, copyright, design, trade secrets, inventions, patents, etc.) should be registered in the name of the entity and not in the name of the promoters/founders of the startup.
- 80% reduction in cost of filing patents.

4. Founder Equity – Split and Vesting:

- % of shareholding of the promoters should be decided in advance.

5. Founder agreements:

- The founder's agreement is the most valuable tool to establish the relationship between the founders of a startup.
- The agreement should represent a clear understanding between the founders on all key issues related to the startup.
- The roles and responsibilities of the founders.
- Founder equity split with vesting.

6. Employment contracts:

- Contract specifying the terms & conditions of the employment of employees.

7. Employee Stock Option Pool (ESOP):

- ESOP's are incentives given to employees/directors of a company to attract talent and retain employees by rewarding them.
- ESOPs create a sense of ownership amongst employees.
- ESOPs are not shares.
- They are structured in a way that they are option to buy shares at a discounted price and can be exercised only after a certain vesting period which is decided by the company granting the ESOPs.

8. Third Party Agreements:

- Agreement with Creditors, Clients, Logistics, Warehouses, etc.

9. 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

10. Compliance management:

- Compliance and its importance is often overlooked by many startups.
- The startup is in compliance with legal, secretarial, accounting, taxation, employee related and other associated compliances.

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FINANCING OPTIONS AVAILABLE FOR STARTUP COMPANIES



Source: www.startupindia.gov.in

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Analysis of the different financing options are as under:

Characteristics of Investment	Equity Financing	Debt Financing	Grants
Nature	There is no component of repayment of the invested funds	Invested Funds to be repaid within a stipulated time frame with interest	There is no component of repayment of the invested funds
Risk	Risk factor for the investor is higher as he has no guarantee against his investment	Risk Factor for the investor is lower as he generally has collateral against his investment	There is no risk factor for the startup as no collateral is involved
Pressure for Repayment	Less pressure	More pressure	No pressure
Return to Investor	Capital growth for investors	Interest payments	No Return
Involvement in Decisions	To involve themselves in decision making process	Very less involvement	No direct involvement
Sources	Angel Investors, Self-financing, Family and Friends, Venture Capitalists, Crowd Funding, Incubators/ Accelerators	Banks, Financial Non-Banking Institutions, Government Loan Schemes (CGTMSE, Mudra Loan, Standup India)	Central Government, State Governments, Corporate Challenges, Grant Programs of Private Entities

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B. Debt Financing

i. Loan from Banks & NBFCs

- Loans from banks and NBFCs help finance the purchase of inventory and equipment, besides securing operating capital and funds for expansion.
- 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.
  - Application for loan sanction by borrowers;
  - Issue of sanction letter by the Bank;
  - Agreement of Loan;
  - Security/collateral documentation, such as
    (i) Deed of Mortgage;
    (ii) Deed of Hypothecation;
    (iii) Deed of guarantee;
    (iv) Share pledge agreement;
    (v) Memorandum of Entry; etc.

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ii. External Commercial Borrowings

1. ECB can be accessed under two routes, viz., (i) Automatic Route; and (ii) Approval Route
2. Can also be availed from non-resident lenders to fund the business requirement of a company.
3. End use restrictions
   a) on lending or investment in capital market;
   b) acquiring a company in India;
   c) real estate sector etc.
4. ECB guidelines framed by Reserve Bank of India.

iii. CGTMSE Loans

- Under the Credit Guarantee Trust for Micro and Small Enterprises scheme launched by Ministry of Micro, Small & Medium Enterprises (MSME), Government of India.
- One can get loans of up to 1 crore without collateral or surety.
- NSIC, NEDFi, and SIDBI, which have signed an agreement with the Credit Guarantee Trust.

C. Initial Public Offering (IPO) to raise the funds or increase the magnitude of the business operations

- During the IPO, the Company raises funds by offering and issuing equity shares to the public.
- Companies can also issue of American Depository Receipts ("ADRs") or Global Depository Receipts ("GDRs")

D. Unconventional modes of financing options which are now becoming popular in India

i. Crowd Funding

- Seed funding
- It should be supported by suitable images and videos of the project.
- 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.

- The Consultation Paper defined Crowd funding as solicitation of funds (small amount) from multiple investors through a web-based platform or social networking site for a specific project, business venture or social cause.
- However, SEBI not issued any further regulations in this regard.

ii. Incubators

- By providing resources and services.
- 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.
- Government-supported institutes like the IIMs or IITs, technical institutes or private business incubators.
- IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT-Kanpur, SIIC and the Shri Ram College of Commerce (SRCC).

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ENTREPRENEURSHIP

Entrepreneurship is defined as the process of making money, earning profits and increasing the wealth while posing characteristics such as risk taking, management, leadership and innovation.

Traits of an Entrepreneur

- He is a person who develops and owns his own enterprise.
- He is a moderate risk taker and works under uncertainty for achieving the goal.
- He is innovative.
- Reflects strong urge to be independent.
- Determined but patient.

Characteristics of an Entrepreneur

(i) Mental Ability:
(ii) Business Secrecy:
(iii) Clear Objectives:
(iv) Human Relation:
(v) Communication Ability:

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How Entrepreneurship is different from a Startup?

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

UNICORNS STARTUPS

- A unicorn is a term used to indicate a privately held startup company with a valuation of over $1 billion.
- Bengaluru is India's unicorn capital with the largest number of unicorns headquarters followed by Delhi (NCR) and Mumbai.
- Traditional sectors such as E-commerce, Fin-tech, E-commerce, Supply Chain & Logistics, and Internet Software & Services do dominate the arena but a strong wave of unconventional sectors such as Content, Gaming, Hospitality, Data management & analytics, etc are making their place on the list.

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- While every startup has its unique journey to becoming a unicorn, the minimum and maximum time taken by a startup to become a unicorn are 6 months and 26 years, respectively.
- Mensa Brands took only 6 months to become a unicorn in 2021, making it one of fastest unicorns in Asia.

INDIAN STARTUPS TURNED UNICORNS

- Tata 1mg
- Purple.com
- BharatPe
- Blink It
- Car Dekho
- Meesho
- Share Chat
- Mobikwik
- Mamaearth
- Groww
- PharmEasy
- Meesho
- Firstcry
- Byju's
- Delhivery
- Bigbasket
- Glance

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- Lenskart
- Dream 11

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CASE STUDY ON ZOMATO – INDIA'S FIRST LISTED UNICORN

Main Products of Zomato:

The technology platform of Zomato connects customers, restaurant partners and delivery partners.

- B2C Marketplace to identify the Restaurants for Food Delivery
- B2C Marketplace to identify the Restaurants for Dining Out
- B2B Marketplace for Restaurants to Order Grocery

Zomato's Role during COVID-19:

- Zomato had launched contactless payments and deliveries to reduce face-to-face interaction, which was a win-win situation for both the customers and the delivery executives at the time of COVID-19.
- Zomato took the initiative of training hygiene practices to their delivery partners and the platform that provided free medical consultation to the delivery partners and ensure their financial safety as well.

Conclusion:

- Zomato becomes one of the successful food delivery apps in India. The customers appreciate the Zomato food delivery apps start-up in India.

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- Strong advertising channel, efficient personnel, the good rating system and social media and experienced sources of funds are some of the main successive factor of Zomato.

STUDY ON DELHIVERY – E-COMMERCE-FOCUSED LOGISTICS PLATFORM

Main Offerings of Delhivery:

1. Warehousing
2. Transportation
3. E-Commerce - Ready integration with Shopify, WooCommerce, Magento & Open cart.

Delhivery's Role during COVID-19:

During the period of April to June 2021, Delhivery partnered with Hunger Heroes to import 8419 oxygen concentrators. It also partnered with "ACT Grants" and others to import 35875 oxygen concentrators, oxygen plants, oxygen cylinders, equipment required to set up new oxygen plants and various medical supplies from around the world and distributed them across India.

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Conclusion:

Delhivery became a unicorn in 2019 when it raised $413 million in a Series F round led by SoftBank Vision Fund, Carlyle Group, and Fosun International. The company is attempting to change the logistics industry by trying to innovate more and more and by coming up with new strategies every day. The company grew and evolved from following a small and local business model to focusing just on the e-commerce sector. With the industry being so competitive, Delhivery has experienced outstanding growth since its inception.

Eligibility Criteria for applying to Income Tax exemption (80IAC)

Approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act:

It has been recognised by DPIIT.

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Income Tax Exemption u/s 80 IAC	100% Exemption from Profits & Gains derived from eligible business for 3 consecutive years out of 10 years from the date of Incorporation * Approval from Inter Ministerial Board * Startup recognized by DPIIT.
Exemption u/s 56(2) (viib)	Consideration for share received exceeds FMV No tax payable ✓ Declaration to DPIIT ✓ Form 2 to claim exemption.
54EE of IT Act	Exemption from LTCG If funds invested in specified assets notified by C.G ✓ Minimum 3 years Lock-in-Period ✓ Upto 50 lacs.
54 GB of IT Act	Exemption on sale of Residential Plot or Flat if Amount invested in shares of eligible startup ✓ Minimum holding 25% Voting Power ✓ Minimum 3 years carrying.
Sec 79 of IT Act	Carry Forward of losses 7 years * Organising shareholders should continue to hold the shares of the company.

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NON-CORPORATE ENTITY

REGULATORY FRAMEWORK

The Partnership Act , 1932

Multi State Cooperative Societies Act 2002, and Rules made thereunder

Indian Trust Act , 1882

Societies Registration Act , 1860

The Company Secretary Regulations , 1982.

Sole Proprietorship

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. It is the simplest and most easily formed business organization. This is because not much legal formality is required to establish it.

Merits of Sole Proprietorship:

A sole proprietary organization has the following advantages:

(1) 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.

(2) Swift decisions - In sole proprietary organization, all the decisions relating to business operations are taken by one person, which makes functioning of business simple and easy.

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(3)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.

(4)Benefits of small-scale operations: The sole proprietorship is generally organized for small-scale business. This helps the proprietor's family members to be employed in business. At the same time such a business is also entitled to certain concessions from the government

(5) 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.

(6)Confidentiality: A sole proprietor can keep all business-related information to themselves as the business's only decision-maker.

(7)Lesser paperwork: Business setup involves several tasks. Among these, one of the most dreaded ones is paperwork or documentation. Most of the 'would-be' business owners do not wish to spend their time in the lengthy process of registering the business as a corporation.

(8)Simple tax calculations: One of the benefits of being a sole proprietor is that the taxes are simpler. The tax requirements are pretty straightforward compared to the other business structures.

(9) Lower business fees - Starting a new venture with a tight budget is not uncommon. Several individuals plan their ventures with less capital. For such entrepreneurs, the sole proprietorship is the best business structure.

Limitations of Sole Proprietorship:

(1) 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.

(2) **Limitation of Resources:** A significant disadvantage of owning a sole proprietorship is the challenge of raising capital. Though the setup costs are much lower in a sole proprietorship, it is difficult to finance the business because banks mostly prefer to finance established businesses.

(3) **Unlimited liability:** The sole proprietor is personally liable for all business obligations.

(4)Lack of continuity: The owner and their business are a singular entity in a sole proprietorship. While this has several advantages, the continuity of this form of business depends solely on the owner's wellbeing.

(5)**Selling the business is a challenge:** Generally, entrepreneurs do not want to consider the possibility of selling their businesses.

Selling a sole proprietorship business is challenging. If the business is significantly profitable, selling it would trigger high capital gains tax.

(6)**Risk in decision-making:** One of the significant disadvantages of a sole proprietorship that several people do not consider is the risk of making wrong decisions.

(7)**No economies of scale:** Large-scale business organizations enjoy large-scale economies as well. That means they can produce more in lesser overhead costs per product.

But for sole proprietorships, this is hard to achieve. Hence, the cost of production of sole proprietorships is generally high. So, facing competition from larger organizations becomes quite challenging for sole proprietorship businesses.

From the above account of the merits and limitations, it becomes clear that it is only personal services like repair work, tailoring etc. small factories, retail shops and professional activities which can be set up as sole proprietary organizations. In India, this form of organization is quite popular and accounts for the largest number of business units.

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Procedure for formation of Sole Proprietorship Firm

Sole Proprietor is formed, managed and controlled by one individual. No deed or agreement is required to constitute a Sole Proprietorship.

However, in actual practice and keeping in mind the nature of business activity, registration may be required under the following enactments as prevailing in the respective States or of the Central Government, such as

i. Shops and Commercial Establishments Act (State specific)

ii. Law relating to Professional Tax (State specific)

iii. Registration under Micro, Small and Medium Enterprises Development Act, 2006.

iv. Registration as a Small-Scale Industry (State specific)

v.GST registration (with the launch of GST, only GSTIN will be used for Import-Export Code Number)

vi. Intellectual Property laws.

PARTNERSHIP

Partnership is an association of persons who agree to combine their financial resources and managerial abilities to run a business and share profits in an agreed ratio. Since the resources of a sole proprietor to finance, and his capacity to manage a growing business are limited, he feels the need for a partnership firm. Partnership business, therefore, usually grows out of the need for expansion of business with more capital, better supervision and control, division of work and spreading of risks.

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Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm. Partnership firms in India are, governed by the Indian Partnership Act, 1932. Maximum no. of partners in a partnership firm can be 50 partners, and the Profit & loss are shared in manner as agreed in the partnership deed.

The Indian Partnership Act defines partnership as "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. The persons who have agreed to join in partnership are individually called "Partners" and collectively a 'firm'. A partnership firm can be formed with a minimum of two partners and it can have a maximum of fifty partners.

Certain key definitions contained in the Indian Partnership Act, 1932:

As per Section 4 of Indian Partnership Act, 1932 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

As per Section 7 of Indian Partnership Act, 1932 where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is partnership at will.

As per Section 8, particular partnership means a person may become a partner with another person in particular adventures or Undertakings.

Holding out [Section 28]

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the

person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

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

Dissolution of a firm [Section 39]

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

Insolvency and Bankruptcy of Partnership Firm

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

Is Partnership Firm a Body Corporate under Companies Act, 2013?

The definition of Body Corporate under Section 2 (11) of the Companies Act, 2013 specifically says that it does not include a co-operative society registered under any law relating to co-operative societies and any other body corporate (not being a company defined in the Act), which the Central Government may by notification specify in this behalf.

For an entity to be Legal/ Juristic person, it shall be recognized by law as a separate entity, have perpetual succession, must be competent to enter into a contract, capable to sue or being sued in its own name and can hold the property in its own name. A Partnership Firm does not possess all the attributes as:

–it is merely an association of individuals and the law does not recognize partnership to have a personality or existence distinct from its partners.

–it does not have a perpetual succession as the firm collapses on change in the partners of the firm which can be due to death or retirement of the partners.

–since it is not regarded as a legal entity, therefore the firm cannot enter into any contract on its own. Any Partner authorized by all the partners or all the Partners of the firm shall execute the contract.

– it can sue or be sued only if the Firm is a registered Partnership.

And hence, the concept of Limited Liability Partnership (LLP) which includes the benefits of both partnership and body corporate was introduced. LLP is formed and incorporated under the Companies Act with perpetual succession. It is a separate legal entity with no effect of change in partners on existence, rights or liabilities of the LLP. The definition of 'body corporate' under the Limited Liability Partnership Act, 2008 ('LLP Act') specifically includes LLP registered under the LLP Act.

Features of Partnership

The features of partnership are as follows:

(i)Existence of an agreement: Partnership is formed on the basis of an agreement between two or more persons to carry on business. It does not arise out of the operation of law as in the case of joint Hindu family business. The terms and conditions of partnership are laid down in a document known as Partnership Deed.

(ii)Engagement in business: A partnership can be formed only on the basis of a business activity. Its business may include any trade, industry or profession. Thus, a partnership can engage in any occupation - production and/or distribution of goods and services with a view to earning profits.

(iii)Sharing of profits and losses: In a partnership firm, partners are entitled to share in the profits and are also to bear the losses, if any.

(iv)Agency relationship: The partnership business may be carried on by all or any of the partners acting for all. Thus, each partner is a principal and so can act in his own right. At the same time, he can act on behalf of other partners as their agent. Thus, every partner can bind the firm by his acts.

(v)Unlimited Liability: The liability of partners is unlimited as in the case of sole proprietorship. In case some obligation arises then not only the partnership assets but also the private property of the partners can be taken for the payment of liabilities of the firm.

(vi)Common Management: Every partner has a right to take part in the running of the business. It is not necessary for all partners to participate in the day-to-day activities of the business but they are entitled

to participate. Even if partnership business is run by some partners, the consent of all other partners is necessary for taking important decisions.

(vii)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.

(viii)Registration: To form a partnership firm, it is not compulsory to register it. However, if the partners so decide, it may be registered with the Registrar of Firms.

(ix)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.

Types of Partnership

(Insert the figure)

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. (Section 7 of the Indian Partnership Act, 1932)

(ii)**Particular partnership:** A particular partnership is formed for undertaking a particular venture. It comes to an end automatically with completion of the venture. (Section 8 of the Indian Partnership Act, 1932)

(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

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

(i)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.

(ii)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.

(iii)Others: Active and sleeping partners are, as a matter of fact, the full-fledged partners i.e. they share in profits and losses of the business and are liable for its dues. However, there are other types of partners also who may be associated with partnership directly or indirectly. They are not full-fledged partners; such partners may include the following:

(a)**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.

(b)**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. (Section 28)

(c)**Minor Partners:** A minor cannot be a partner according to Indian Contract Act. But he can be admitted to get the benefits if all the partners give their consent. He will share the profit equally but his liability will be limited in case of loss. (Section 30)

Minor admitted into the benefits of partnership

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

Merits of Partnership

A partnership form of organization offers the following advantages:

(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.

(v)Sharing of risks: Unlike sole proprietary organization, the risks of partnership business are shared by partners on a predetermined basis. This encourages partners to undertake risky but profitable business activities.

(vi)Privacy: It is not required for a partnership firm to publish its accounts. As a result, the affairs taking place in the business remain within the business. Also, the partners are the ones who carry out the significant decisions of the business, and hence there is no chance of leakage of trade secrets, and the privacy of the firm is maintained.

(vii)Division of work: In a partnership, all the firm's work is divided among the partners based on their knowledge and skills. Division of labor is possible in partnership. This division of work leads to efficient management, which results in higher profits.

Limitations of Partnership

A partnership form of organisation suffers from the following major limitations:

(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)**Unlimited Liability:** 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 or Blocking of Capital:** 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. If a partner wishes to withdraw their wealth from the firm, they cannot do so alone. Withdrawal is possible only if the other partners agree to it. The partners are also not allowed to transfer their shares to someone else. If someone wants to do so, then they must get the consent of the other partners. As a result, they lose the liquidity of their investment. This is one of the significant reasons that discourage people from investing in a partnership.

(v)**Lack of institutional confidence:** A partnership business does not enjoy much confidence of banks and financial institutions. It is because the nature of its activities is not disclosed at public and the agreement among partners is not regulated by any law. As a result, large financial resources cannot be raised by partnership and growth of business cannot be ensured.

(vi)**Lack of Public Trust:** The public has less confidence in partnership firms since their annual reports and accounts are not published. Therefore, the public does not trust their dealings.

(vii)**Lack of a Control:** Leadership can both uplift and derail a firm. Combined ownership takes away the possibility of leadership and lack of leadership leads to directionless operations. On the other hand, in a partnership firm, certain partners can be given the position of designated partner with more powers and responsibilities.

(viii)**Difficulties of expansion:** It is difficult for a partnership firm to undertake modernization of expansion of its operations. This is because of its inability to raise adequate funds for the purpose. Limited membership (restricted to 50 as per the Companies Act, 2013) and their limited personal resources do not permit large amounts of capital to be raised by the partners. Therefore, large-scale business cannot generally be organized by partnerships

It is quite obvious from the discussions that the partnership form of organisation is excellent when the size of business is medium, i.e., neither too small not too large, and when the partners can work in full co-operation with one another.

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, name and address of all partners and a short summary of the nature of business the partners intend to operate.

2. Partnership duration

The Deed must mention the firm's establishment date and the deal period.

3. 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.

4. 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.

5. 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.

6. Profit & loss ratio

Profit/Loss ratio to be accrued to and be borne by the Partners.

7. 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).

8. Admission/ Retirement of a partner

Details/ Rules regarding the future admission, retirement and exit of a partner.

9. 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.

10. Banking and Partnership Funds

The funds held in the firm's name will be placed in a bank account designated by the Partners.

11. Borrowings

A written consent of all the partners will be required for taking loans from banks, financial institutions, or any third parties for the firm's financial requirements.

12. 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

13. 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.

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

Benefits of Partnership Deed

A partnership deed can be in an oral format; however, it is crucial to have it written. The drawback with the oral one is that it has no value for tax purposes, and one cannot use it as a legal document if there's any dispute among the partners. So, it is desirable to have a written partnership deed.

a. It enables business owners to file a suit in court in case of a dispute.

b.It helps avoid any misunderstanding or conflict among the business owners as all the terms and conditions have been decided and mentioned already in the Deed.

c. It clearly outlines the duties of each partner.

d. It provides details of the profit/loss ratio and reduces the chances of misunderstanding.

e. It mentions the amount invested by each partner in the business.

f.It also details the salary and commission paid to partners, and if any of the partners withdraw the capital, then what interest they will have to pay.

Registration Procedure

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

1.Application for partnership registration should include the following information, namely, name of your firm, name of the place where business is carried on, names of any other place where business is carried on, date of partners joining the firm, full name and permanent address of partners and duration of the firm. The Application should be duly signed by all the partners of the firm or by their duly authorized agents.

2. Every partner needs to verify and sign the application.

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3. Ensure that the following documents and prescribed fees are enclosed with the registration application:

- Application for Registration in the prescribed Form -1
- Duly filled Affidavit
- Certified copy of the Partnership deed (The deed so created by the partners should be on a stamp paper in accordance with the Indian Stamp Act/ stamp paper as applicable in the State where the Partnership Deed is executed)
- Proof of ownership of the place of business or the rental/lease agreement thereof.

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

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

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

Consequences of Non-Registration

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

- A partner cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act.
- A right arising from a contract cannot be enforced in any Court by or on behalf of your firm against any third party.
- Further, the firm or any of its partners cannot claim a set off (i.e. mutual adjustment of debts owned by the disputant parties to one another) or other proceedings in a dispute with a third party.

Registration under Income Tax

It should be noted that registration with the Registrar of Firms is different from registration with the Income Taxation Department. It is mandatory for all firms to apply for registration with the Income Tax Department and have a PAN Card. After obtaining a PAN Card, the partnership firm

is required to open a Current Account in the name of the partnership firm and to operate all its operations through this bank account.

Hindu Undivided Family (HUF)

Meaning of Joint Hindu Family Business

The Joint Hindu Family Business is a distinct form of organisation peculiar to India. Joint Hindu Family Firm is created by the operation of law. It does not have any separate and distinct legal entity from that of its members.

The laws that govern HUFs are not codified and are read along with the Hindu Succession Act and the Income tax Act.

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

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

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

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

Characteristics of a Joint Hindu Family Business

1. Governed by Hindu Law:

The business of the Joint Hindu Family is controlled and managed under the Hindu law. There are two schools of Hindu law:

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

(ii)Mitakshara: There are four schools of Mitakshara. The application of schools of Mitakshara is region wise. It allows only male members to be co-parceners.

Note:

The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be co-parceners or become legal heirs in the same way as male does. This was well established in the case of Vineeta Sharma v. Rakesh Sharma & Ors. (2020).

Facts: The Supreme Court, in this case, stated that the right in coparcenary is accorded by birth.

Thus, the birthdate of a daughter is immaterial in this regard. Moreover, it stated that the father need not be alive as on commencement of the 2005 Amendment Act. It was held that the Act will be effective retroactively. That is, daughters will be given a share in the coparcenary property even if the father died before 2005. The Supreme Court pointed to the object of the Act which was to remove gender discrimination regarding rules of the coparcenary. Thus, the object could be fulfilled only if the Act was applied retroactively.

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.

The members of the family have full faith and confidence in Karta. Only Karta is entitled to deal with outsiders. But other members can deal with outsiders only with the permission of Karta.

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. In a 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 & Control:

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.

7. Expanded loyalty & cooperation:

In Joint Hindu Family Business, it is the natural love and affection which the members are having for each other. It helps to run the business more efficiently and smoothly.

8. Freedom regarding Selection of Business:

The Karta is at freedom to select any business of his choice. He has not to depend on others.

Limitations of HUF

1. Limited Resources:

The Joint Hindu Family Business experiences a financial shortage, since it is mostly dependent on ancestral property. This limits the possibility of business expansion. As a result, the size of the business remains small, and the Karta cannot benefit from large-scale economies.

2. Unlimited Liability of Karta:

The Karta carries not just the burden of decision-making and management, but also unlimited liability.

His personal belongings might be utilized to pay off business debts.

3. Dominance of Karta:

The control and management of the business are vested solely in the hands of the Karta, which may not always be acceptable to the other members, and it may lead to conflicts and breakdown of the family unit.

4. Limited Managerial Skills:

Karta cannot be an expert in all areas of management, his poor judgments may affect the business.

His failure to make good decisions may even lead to financial difficulties and losses. Also, Hindu Undivided Family do not have adequate funds to hire experts or professionals in several domains such as purchasing, manufacturing, marketing, etc.

5. Misuse of Power:

Management of a Joint Hindu Family Business is centred in the hands of the family's Karta. No other member is allowed to interfere with his management. This may lead to power misuse, with Karta misusing his position for personal benefits.

6. Limited Membership:

The membership of the business is restricted to family members exclusively. No one from outside the Joint Hindu Family Business can join the business. Therefore, they face the demerit of limited membership.

Hindu Undivided Family (HUF) – Formation

(i) Create a HUF Deed.

One has to prepare a deed on stamp paper declaring the formation of the HUF. It should have all the details, including the name of karta, co-parceners, address and source of funds in the corpus. Creating a HUF Deed is not mandatory. However, it is always beneficial to have a HUF Deed. Key issues to be noted in preparation of a HUF Deed are:

(a)A HUF deed is a written formal document on a stamp paper (as applicable in the respective State) specifying the name of Karta and Coparceners of HUF.

(b) The eldest male member of HUF becomes Karta of HUF.

(c)The name of members of HUF and the name of the HUF is also required to be stated in the HUF Deed at the time of creating of HUF.

(d)The name of HUF is usually the name of the Karta followed by the word HUF e.g. Ram Kumar HUF.

(e) HUF Deed also states the capital with which the HUF has been initiated. There are various

sources through which capital can be introduced.

(f) A declaration is also provided by each member of family where they declare the name of Karta and also state that –

i. Karta has the authority of the accounts vested in his hand.

ii.Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.

(g) Further, a rubber stamp of HUF will also be prepared. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.

(h) It is recommended that the Deed should be notarised.

i. Register the Deed.

ii. Obtain PAN.

iii.Once the declaration deed is made, the karta should apply for a permanent account number (PAN) for the HUF. This is mandatory because all financial transactions must carry PAN.

iv. Open bank account.

After one has allotted a PAN, open a bank account in the name of the HUF. It is also advisable to get some stationery printed for official communication. The HUF is now functional. The karta will have to invest in tax saving instruments and file tax returns on behalf of the HUF.

While there are tax advantages of forming an HUF, the following matters merit consideration:

- 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.
- Use a capital asset to establish the corpus of the HUF. This can be ancestral property, assets gifted by relatives and friends, or received by the HUF through a will. If you give a personal asset to the HUF, the income will be clubbed with your own. Gifts of over 50,000 a year received by HUF will be taxable. The best way is for the HUF to receive assets as part of a will.

Key Points in creation of HUF and format of Deed for creation of HUF

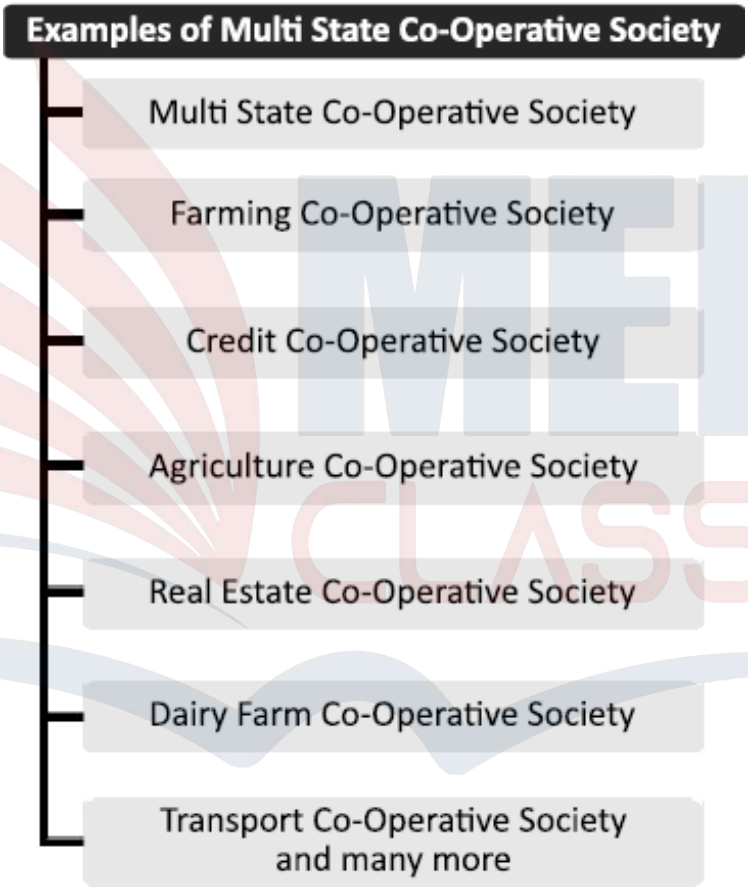
- Under the Income Tax Act, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to individual assessee.
- One cannot transfer your own assets/money into HUF.
- If one has ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- One can transfer the money received on sale of ancestral property /assets into your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc. and will be assessed under HUF.
- Existence of property or multiple members is not a pre-requisite to create HUF. A family which does not own any property may still have the character of Hindu joint family.
- This jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.
- Any gifts received by the members of HUF (birthday, marriage, etc.) can be treated as assets of HUF.
- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh. HUF will also gain from the tax slab structure of computing income tax.
- Apart from basic exemption of Rs. 2.50 lakh, section 80C deduction up to Rs. 1.50 lakh is also available.

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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.

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



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

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In order to ensure financial discipline, extensive provisions have been enacted. No part of the fund other than net profit shall be distributed among members (Sec.62). Investment of society's fund only in recognized securities is permissible (Sec.64). Contribution to political parties or loans to non-members or borrowing from external sources are prohibited. Annual auditing by recognized auditors is mandatory (Sec.70).

Central Government may direct for special audit if it is of the opinion that the society's affairs are not being managed in accordance with the co-operative principles or prudent commercial practices (Sec.77).

Any application for the registration of a multi-state cooperative society, of which all the members are individuals, should be signed by at least fifty persons from each of the states concerned. In the case of a society of which the members are cooperative societies, it should be signed by duly authorized representations of at least five such societies registered in different 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

(A) 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:

1.A certificate from the bank stating credit balance there in favour of the proposed multi-state cooperative society.

2.A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.

3. Four copies of bye-laws in original.

4.Proposed area of operation for registration shall initially be permitted for two contagious states only.

5.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.

6.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.

7. Contact number and e-mail address of the Chief Promoter or Society on cover page.

(B) For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted along with documents mentioned at point [A] above:

1.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.

2.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.

Note: Societies which are already registered under the MSCS Act, 2002 and are desirous of expanding their area of operations falling under category (B) above shall be required to submit an No Objection Certificate as mentioned at [B](1).

Registration Procedure

1.For the purposes of registration of a multi-state cooperative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed.

2. The application shall be signed

a. in the case of a multi-state cooperative society of which all the members are individuals - by at least fifty persons from each of the state concerned;

b. in the case of a multi-state cooperative society of which the members are cooperative societies - by duly authorised representatives on behalf of at least five such societies as are not registered in the same state; and

c. in the case of a multi-state cooperative society of which another multi-state cooperative society and other cooperative societies are members, by duly authorised representatives of each of such societies: Provided that not less than two of the cooperative societies referred to in this clause, shall be such as are not registered in the same state;

d. in the case of a multi-state cooperative society of which the members are cooperative societies or multi-state cooperative societies and individuals, by at least

i. fifty persons, being individuals, from each of the two states or more; and

ii. one cooperative society each from two states or more or one multi-state cooperative society.

3.The application shall be accompanied by four copies of the proposed bye-laws of the multi-state cooperative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.

4. If the Central Registrar is satisfied

a. that the application complies with the provisions of this Act and the rules;

b.that the proposed multi-state cooperative society satisfies the basic criterion that its objects are to serve the interests of members in more than one state;

c.that its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles;

d.that the proposed bye-laws are not contrary to the provision of this Act and the rules, he may register the multi-state cooperative society and its bye-laws.

5.The application for registration shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him.

6.Where the Central Registrar refuses to register a multi-state cooperative society, he shall communicate, within a period of four months from the date of receipt of the application for registration, the order of refusal together with the reasons thereof to the applicant or applicants, as the case may be. Provided that no order or refusal shall be made unless the applicants have been given a reasonable opportunity of being heard.

The application for registration of the Multi- State Cooperative Society shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him and if the application for registration is not disposed of within a period of four months specified above or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of the MSCS Act, 2002 and the rules made thereunder.

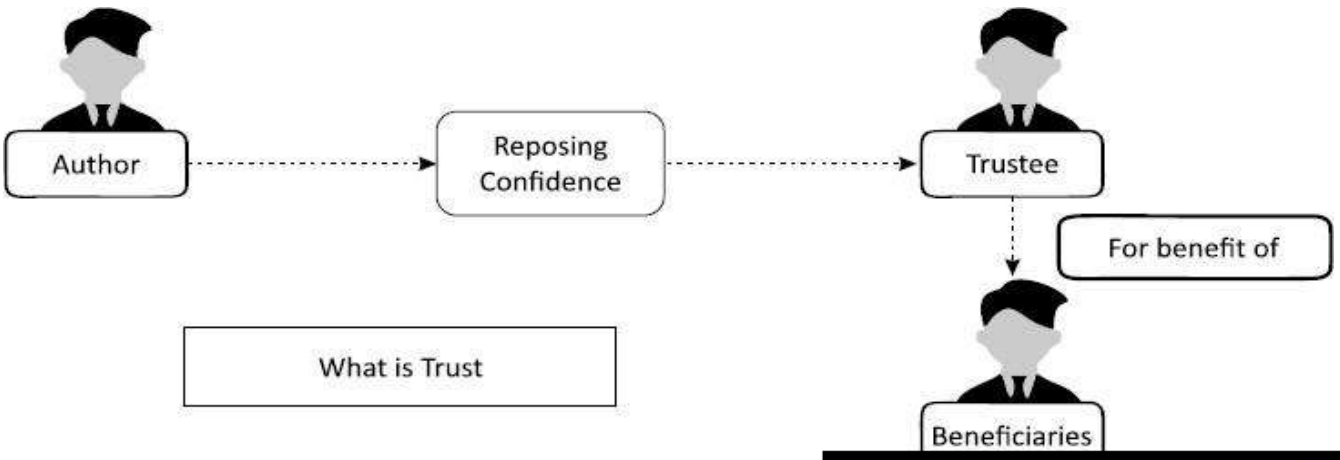
Registration certificate

Where a multi-state cooperative society is registered under this Act, the Central Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act, unless it is proved that the registration of the society has been cancelled.

TRUST

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

Trust is defined in section 3 of the Indian Trust Act, 1882 as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner. In other words, it is simply a transfer of property by one person (the settlor) to another (the “trustee”) who manages that property for the benefit of someone else (the “beneficiary”). The settlor must legally transfer ownership of the assets to the trustee of the trust.



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The statutory basis governing Trusts, in general, under Indian law is the Indian Trusts Act, 1882. Generally, there are two types of trusts in India: private trusts and public trusts. Private trusts are regulated by the Indian Trusts Act, 1882, whereas Public trusts are classified as Charitable and religious trusts. The Charitable and Religious Trust Act, 1920, the Religious Endowments Act, 1863, the Charitable Endowments Act, 1890, the Societies Registration Act, 1860, and the Bombay Public Trust Act, 1950 are the relevant legislations for the recognition and enforceability of public trusts. Moreover, in recent times, trusts can also be used as a vehicle for investments, such as mutual funds and venture capital funds. These trusts are governed by Securities and Exchange Board of India (SEBI).

In India, there are thousands of trusts created by the owner of industrial houses and rich individuals and their families. Under Indian laws, Public Charitable Trusts are treated as organisations with charitable purpose entitling all the tax benefits applicable. Examples of Public Charitable Trusts promoted by business families are Paragon Charitable Trust, Sir Dorabji Tata Trust, etc. Private trust or family trust is not a Public Charitable Trusts and hence does not enjoy the privileges entitled to a trust with charitable purpose.

Objectives of a Trust

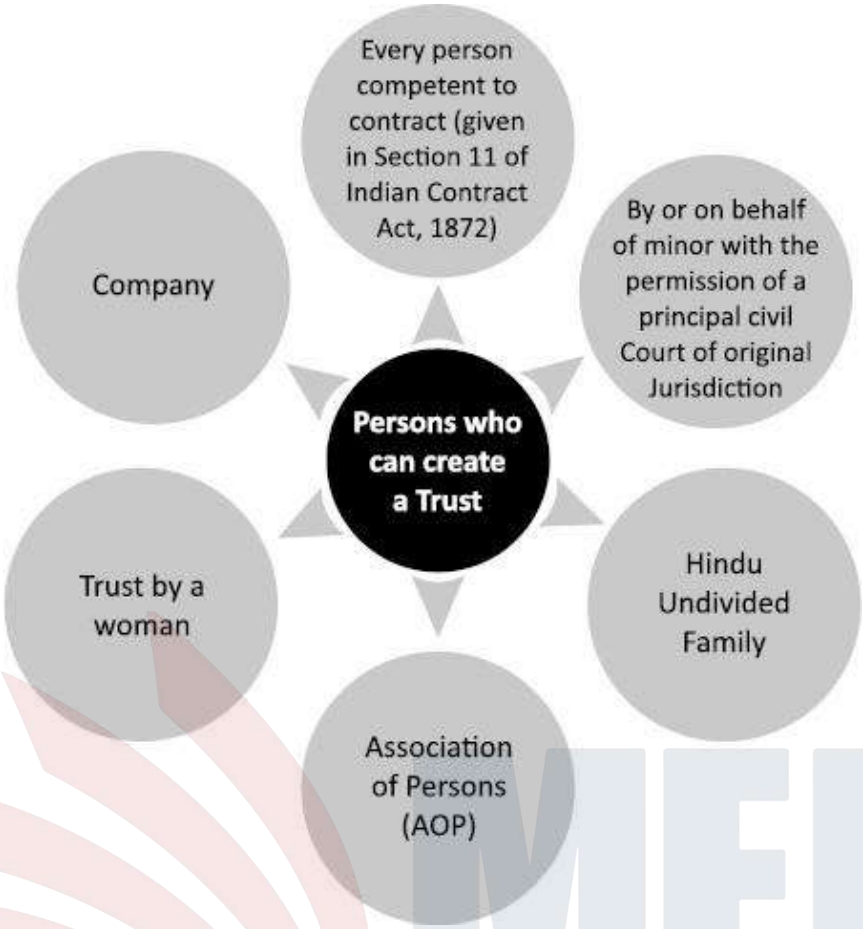
As per Section 4 of the Indian Trusts Act, 1882, a trust may be created for any lawful purpose. The purpose of trust is lawful unless it is:

- FORBIDDEN BY LAW
- IS OF SUCH NATURE THAT IF PERMITTED , IT WOULD DEFEAT THE PROVISIONS OF ANY LAW
- IS FRAUDULENT , OR
- INVOLVES OR IMPLIES INJURY TO THE PERSON OR PROPERTY OF ANOTHER , OR
- THE COURT REGARDS IT AS IMMORAL OR OPPOSED TO PUBLIC POLICY

Persons who can create a Trust

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

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Persons who can be a Trustee

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

Difference between Public Trust and Private Trust

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

(b)in a Public Trust, the interest is vested in an uncertain and fluctuating body . They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756)

(c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

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

While a public trust is set up for what is called 'uncertain and fluctuating body of persons', it is possible to create a sectarian or communal trust as a public charitable trust. There are trusts which are only for specific religious communities. However, such trusts may not be tax-exempt.

Exemptions available to Trusts

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

Certain key exemptions are listed below:

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

Total tax exemption is available for certain types of trusts which include those which are formed for any of the activities related to sports, education, scientific research, professions, or promotion of khadi and village based industries, hospitals etc. and are notified as charitable or religious institutions.

Tax exemption under Section 11 of Income Tax Act, 1961

As per Section 11, any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust.

Since such income shall not constitute to be a part of the trust's income, therefore, it is not taxable.

However, as per section 13, there are certain situations where the tax exemptions under section 11 are not applicable.

Such instances include where –

(a) income earned from the property held under the trust of private religious nature and does not endure benefit for the public, or

(b) the entire income of a charitable trust which is established for a particular religion, community or caste, income of those charitable trust whose funds do not get invested in the modes specified under section 11(5).

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

The incomes that are excluded from the computation of taxable income of trust or society are as follows:

1.Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.

2.Income which is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.

3. In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India.

4.In furtherance of the above case, the income which is set apart to a certain extent and which does not exceed twenty five percent of the total income.

5. In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposes and spent outside India.

6. Income made by way of voluntary contributions towards the corpus of the trust.

7.Charitable trusts created for the benefit of any of the socially and economically backward castes such as Scheduled Castes, Scheduled Tribes or women or children.

Trusts are allowed to set apart or accumulate some of the funds received from voluntary contributions for certain specific purposes. The resultant benefit obtained by the trust is that amount so deducted is not considered as forming part of income of the previous year and therefore not taxed.

Tax exemption for a 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.

Section 161(1A) of the IT Act provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust

including any profits and gains from business would be liable to income tax at the maximum marginal rate.
Thus, tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

Further, Private Trusts may comply with the provisions of Section 11 and 12 and 164 of the Income Tax Act, 1961.

FORMATION OF TRUST

A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding.

Before registration of a trust, the following aspects have to be decided:

(a) Name of the trust
(b) Address of the trust
(c) Objects of the trust (charitable or Religious)
(d) One settler of the trust
(e) Two trustees of the trust
(f)Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

1. Creation of a Trust Deed: A trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust arc present. Though the use of the word 'trust' is not needed to create a valid trust, the terms of the grant or will make it clear that an obligation is actually annexed to the ownership of the trust property.

A trust-deed, generally, incorporates the following:
(i) the name(s) of the author(s)/settlor(s) of the trust;
(ii) the name(s) of the trustee(s);
(iii) the name(s) if any, of the beneficiary/ies or whether it shall be the public at large;
(iv) the name by which the trust shall be known;
(v) the place where its principal and or other offices shall be situated;
(vi)the property that shall devolve upon the trustee(s) under the trust for the benefit of the beneficiary/ies;

(vii) an intention to divest the trust property upon the trustee(s);
(viii) the object and purpose of the trust;
(ix)the procedure for appointment, removal or replacement of a trustee, their rights, duties and powers, etc;
(x) the rights and duties of the beneficiary/ies;
(xi) the mode and method of determination of the trust.

2. Obtain the signatures of Settlor, Trustees and Witnesses at the appropriate places. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.

3.Print the Trust Deed on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

4.Register the Original deed in a Sub-Registrar office paying registration charges: A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of settlor on all the pages.

5.At the time of registration, the settlor and witnesses must be personally present with their identity proof in original.

6. The Sub- Registrar retains the photocopy and returns the original copy of the Trust Deed.

7.Thereafter, the Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

Registration of Trust

The requirements to register a trust deed are as follows:
i.Trust Deed on stamp paper – The value of the stamp paper is a certain percentage of the total property value belonging to the trust. The percentage differs from one state to another.
ii.Proof of Identity – Self-attested copies of ID proofs of the Trustor and the Trustees (passport/voter ID/ Aadhar Card/Driving license)
iii. Address Proof of Registered office – Property Registration certificate or utility bill copy (water bill/ electricity bill)
iv. No Objection Certificate (NOC) from the property owner – For rented property
v.Passport-sized photographs of the Trustor, the Trustees and the witnesses present while signing of the Deed.

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PARTNERSHIP AGREEMENT & TRUST DEED

S.N	Partnership Agreement	Trust Deed
1.	Partners, as mentioned in the Deed runs the Partnership Firm. The procedure to admit a partner in the firm is mentioned in the Deed	Trustees are generally appointed or elected. Procedure to elects/ appoint the trustees is set out in Deed.
2	A partnership Deed can be between two or more persons. Maximum no. of partners in a partnership firm can be 50 partners.	Three parties must be involved with any deed of trust: *Trustor*: This party is the borrower. A trustor is sometimes called an obligor. *Trustee*: As a third party to a deed of trust, the trustee holds the property's legal title. *Beneficiary*: This party is the lender.
3.	The Deed may mention a fixed term of partnership or for a specific undertaking, or may mention the condition of dissolution by notice of intention to dissolve, if mutually agreed by the partners.	Trust deed can provide for trust to be wound up within certain number of years.
4.	The Deed states the rights and duties of the Partners. Partners owe a fiduciary duty to each other, based on loyalty, trust and confidence.	The Trust Deed states the rights and duties of the Trustees as well as Beneficiaries. Trustees have fiduciary duties to beneficiaries.
5.	Expectations of Partner are more limited to financial success of business ventures. More easily measured.	Expectations of trustees can be high- difficult to satisfy beneficiaries with so many choices on where to spend income.

SOCIETY

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

In India, The Societies Registration Act, 1860 lays down the procedure for society registration and operation in India. The Act has been adopted by most of the State Governments with/without modifications as considered by the respective State Governments.

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

i. Charitable societies;

ii. the military orphan funds or societies established at the several presidencies of India;

iii.societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge;

iv. The diffusion of political education;

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v.the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public;
vi.public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

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

Advantages of Society

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

Disadvantages of Society

(a)Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable;
(b)Since such institutions are of charitable nature, it is an inappropriate form of a commercial venture;
(c)The concept of equity investment or ownership is virtually absent; hence, it is not attractive for commercial investors interested in microfinance;
(d)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;
(e)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
(f)It is vulnerable to the implication under the Money Lenders Acts (prevention of usurious interest rates) of various State Governments.

Formation of Society

Under Section 1 of the Societies Registration Act, 1860, any seven or more persons who have come together for any legal pursuits, including literary, scientific, charitable or social pursuits, may subscribe their names to a memorandum of association and file the same with the Registrar and form themselves into a society under this Act.

The memorandum of association filed with the Registrar should contain details such as the name and objectives of the society, names, addresses and occupations of the members of the governing body with which the management of the affairs of the society is entrusted. A copy of the rules and regulations of the society should be provided.

With the completion of these processes, the society could be registered with the Registrar after payment of a fee, which will be specified by the State Government from time to time. As per Section 4 of the Act, once in every year, an annual general meeting of the society should be conducted.

If the rules do not provide for an annual general meeting, a list of the names, addresses and occupations of the members of the governing body should be presented to the Registrar, every year.

- Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies)
- Memorandum of association and rules and regulations
- Consent letters of all the members of the managing committee
- Authority letter duly signed by all the members of the managing committee
- An affidavit sworn by the president or secretary of the society on non-judicial stamp paper of Rs.20-/, together with a court fee stamp
- A declaration by the members of the managing committee that the funds of the society will be used only for the purpose of furthering the aims and objects of the society

- The documents needed to be submitted to the Registrar are:

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 documents are to be filed with the Registrar along with the fees, and a suitable name (which should be unique and not suggest a relationship with the government or violate the provisions of the Emblem and Names Act, 1950). If the Registrar is satisfied with the application, the society will be registered.

Benefits of forming a Society

1. Under Income Tax Act, and subject to fulfilment of certain conditions, a society can avail exemption from income tax, if it obtains registration under Section 12A/12AA of the Income Tax, 1961.

2.Donors to societies may claim a rebate under Income Tax Act for donations made to the Society, provided the society has applied and obtained approval under Section 80G. Registration under section 12A is one-time registration. Once the registration is granted to the trust, it will be hold good till the cancellation of registration. There is no provision which requires any renewal of registration. Thus, the benefits of registration can be claimed for lifetime by NGO.

3. Societies, being NGO's receive various grants from government and other agencies. They are eligible to get grants and financial funding from various agencies. These agencies generally make grants to societies registered under Section 12A.

4.Societies are run on democratic principles and ensures wider participation by members in the activities.
5.In view of the election process, there is scope for removing inefficient management and effect changes in the management to ensure better governance.

Registration of a Society in India

A Society can be created by a minimum of 7 or more persons. Apart from persons from India, companies, foreigners, as well as other registered societies can also register for the Memorandum of the society.
Society registration is maintained by state governments. Thus, the application for society registration must be created to the specific authority of the state, where the registered office of society is situated.

For Society registration, the establishing members must agree with the name of society first and then prepare for the Memorandum, followed by Rules & Regulations of the society.

Selection of a Name

When selecting a name for society registration, it is vital to understand that according to Society Registration Act, 1860, an identical or similar name of a currently registered society will not be allowed. Moreover, the proposed name shall not suggest any patronage of State Government or Government of India or contravene the provisions of the Emblem & Names Act, 1950. Memorandum of Association.

Memorandum of Association

The Memorandum of society along with Rules & Regulations of society must be signed by every establishing member, witnessed by Gazetted Officer/Notary Public/ Chartered Accountant/ Oath Commissioner/ Advocate/ Magistrate first class /Chartered Accountant with their official stamping and complete address.

The memorandum must also contain details of members of the society registration along with their names, addresses, designations, and occupations.

The following documents have to be prepared, submitted and signed for the sake of registration:
l Requesting society registration by providing covering letter, signed by all establishing members
l Duplicate copy of memorandum of association of society along with certified copy
l Duplicate copy of Rules & Regulations of society along with duplicate copy duly signed by all establishing members
l Address proof of registered office of society as well as no-objection certificate (NOC) issued by landlord
l Affidavit by secretary or president of society declaring relationship among subscribers
l Few minutes of meeting regarding the society registration along with providing some essential documents.

Following are the documents required for the Society Registration in India:
1.PAN Card of all the members of the proposed society has to be submitted along with the application.
2.The Residence Proof of all the members of the society also has to be submitted. The following can be used as a valid residence proof:
l Bank Statement
l Aadhaar Card

l Utility Bill
l Driving License
l Passport

3.Memorandum of Association has to be prepared which will contain the following clauses and information: The work and the objectives of the society for which it is being established
l The details of the members forming the society
l It will contain the address of the registered office of the society

4. Articles of Association also have to be prepared which will contain the following information:

l Rules and regulations by which the working of the society will be governed and the maintenance of day to day activities.
l It will contain the rules for taking the membership of the society.
l The details about the meetings of the society and the frequency with which they are going to be held is to be mentioned.
l Information about the Auditors.
l Forms of Arbitration in case of any dispute between the members of the society.
l Ways for the dissolution of the society will also be mentioned once the rules have been formed, they can be changed but the new set of rules will be signed by the President, Chairman, Vice President and the Secretary of the Society.

5.A covering letter mentioning the objective or the purpose for which the society is being formed will be annexed to the beginning of the application. It will be signed by all the founding members of the society.
6.A copy of the proof of address where the registered office of the society will be located along with a NOC from the landlord if any has to be attached.
7. A list of all the members of the governing body has to be given along with their signatures.
8.A declaration has to be given by the president of the proposed society that he is willing and competent to hold the said post.
All the above documents have to be submitted to the Registrar of Societies along with the requisite fees in two copies. On receiving the application, the registrar will sign the first copy as acknowledgment and return it while keeping the second copy for approval. On proper vetting of the documents, the registrar will issue an Incorporation Certificate by allotting a registration number to it.
The signed Rules & Regulations, as well as Memorandum, has to be filed with concerned society or registrar of state with a mentioned fee. If the registrar is fulfilled with society registration application, then they will certify that the society is registered.

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Consequences of Registration / Non-Registration of a Society

The Societies Registration Act, 1860 lays down procedure for registration of societies for various bonafide purposes. 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.

When the society is registered, it along with its members become bound to the same extent, as if each member had signed the memorandum. Once registered under the Societies Registration Act, the society must restrict its activities to the objects contained in its Memorandum.

A society registered under the Act enjoys the status of a legal entity apart from the members constituting it. A society so registered is a legal entity/person similar to an individual but with no physical existence. As such it can acquire and hold property and can sue and be sued in its own name.

The society should be registered under the Act to acquire the status of juridical person.
In the absence of registration, all the trustees in charge of the fund have alone a legal status and the society has no legal status, and, therefore, it cannot sue and be sued.

If a society is not registered, it may exist in fact and theory, but not in the eyes of law. If benefits are to be claimed, the registration of society under the Act us required. 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.

Every society should get its accounts audited once a year by duly qualified auditor and have balance sheet prepared by him.

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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.

MEGA FIRM

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

MDF is a step towards mega firm. It is paradigm shift from traditional approach of 10X10 offices to a global office.

MDF will put the professionals in general and company secretaries in particular on fast track. Large firms will still become larger and one day the global business enterprise will call them a "Mega Firm".

Keeping in view of the present needs of the corporate and multi-dimensional growth of CS profession especially in the areas of practicing in the areas of Corporate Laws, Labour laws, RBI/ FEMA, acting as Secretarial Audit, Resolution Professional Insolvency Bankruptcy Code, GST Practitioner there is a need to structure and build the Multidisciplinary (MDF)/mega firms. There is a huge demand and scope for a multifunctional firm, where several services are provided under one roof. Clients always have a comfort level in dealing with such firms.

They are assured of timely and quality service since even if one of the Partners is not available for consultancy they can bank on the others. Unless there are MDF/Mega firms, it may not be possible to cater to the bigger assignments.

Multidisciplinary Firm – According to Regulation 165A of The Company Secretaries Regulations, 1982 inserted by the Company Secretaries (Amendment) Regulations, 2020- A member in practice

may form multidisciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of The Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

Regulation 168 A - Other Professional bodies:

1.For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be member of any of the following, namely:

a.The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;

b.The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;

c. Bar Council of India established under the Advocates Act, 1961;

d. The Indian Institute of Architects established under the Architects Act, 1972;

e. The Institute of Actuaries of India established under the Actuaries Act, 2006;

f.The membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council under Sub-section (2) of Section 38 of the Act.

2.For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:

a. Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;

b. Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;

c. Actuary within the meaning of the Actuaries Act, 2006;

d.Bachelor in Engineering from a University established by law or an institution recognized by law;

e. Bachelor in Technology from a University established by law or an institution recognized by law;

f.Bachelor in Architecture from a University established by law or an institution recognized by law;

g. Bachelor of Law from a University established by law or an institution recognized by law;

h.Master in Business Administration from Universities established by Law or Technical Institutions recognized by All India Council for Technical Education.

Regulation 168B of Company Secretaries Regulations, 1982 determines the membership of professional body for partnership, accordingly for the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Act, a person shall be a member of any of the

following professional bodies, namely:

l The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;

l The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;

l Bar Council of India established under the Advocates Act, 1961;

l The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;

l The Indian Institute of Architects established under the Architects Act, 1972;

l The Institute of Actuaries of India established, under the Actuaries Act, 2006;

l Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act.

Pre-requisites

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

1. All minds should work together and in unison;
2. Say go to ego;
3. Mutual faith and respect lays strong foundation;
4. Unanimity shall be the rule on important policy decisions;
5. Financial discipline is a must;
6. Founder partners shall be given equal status;
7. Income of the firm shall be distributed at short regular intervals;
8. One shall not put undue influence on the others or show that he is king pin of the association.

Even the small crack in the above stated pre requisites ruin the things.

Benefits

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

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

a) **Working in a team environment:** The concept of MDF will have an opportunity to work with team members who share interests, expertise, ideas, and work ethically.

b)**Good Exposure:** Every client has different expectations, needs, audience, products and services, so consultants get to oversee projects of all kinds. In MDF being more than two partners having different experience in different fields the apprentice and employee will have an exposure to various and different works. With each partners specialized knowledge the MDF may venture into new areas of practice.

c)**Cost effective:** With large investment budgets, the MDF have not only create state-of-the-art training facilities, they also may have much more developed infrastructure, processes and tools which can make your life less stressful when trying to sell or deliver a project. The overheads and the risks get distributed amongst the partners.

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

e)**Continuous Learning:** The partners of MDF having multi-dimensional experience they can impart continuous training by adapting to new trends in the Profession. The great thing about staying on your toes is that clients appreciate it because you'll be able to develop relevant and successful ideas.

Though it might sound overwhelming to always be on top of news and trends, it will eventually become habit – and the results are worth it!

f)**Better Growth opportunities:** With the right work ethic and dedication, MDF can experience professional growth early compared to the other small firms. MDF may attract big multinationals. They get comfort about availability of at least one of the partners, if they are dealing with a firm rather than an individual.

Senior partners can concentrate on critical assignments which obviously are more lucrative.

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

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

i) **Structure & Processes:** The structure for execution of works or assignments will be more systematic and the process will be cost effective due to the standard processes and procedure.

The hiring and training of people will be more systematic there by productivity of the company will be improved.

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

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

Process of Constitution

The process of formation of MDF shall be an outcome of conscious and sincere decision and it is essential that the like-minded professional should deliberate and take this decision. It shall be ensured that the proposed constituents have expertise in different disciplines. There could be series of meetings before MOU is reached. It is advisable to work under MOU for one year. This works as a cooling period and for better understanding each other such trial period help in getting acclimatised. Mutual faith and understanding is sine qua non. Time has to be given to understand the compatibility of the individuals to each other. Once the initial bridge is successfully crossed then formal partnership may be constituted on the agreed terms. It will be in the long term interest of the MDF to have all the founder partners on equal footing. Their intellectual level shall be at par. During the reasonable period individual practice existing if any, shall be introduced in the firm. When it is proposed to add new partner, apart from settling commercial terms, it is suggested that the MDF shall enter into MOU effective at least for one year with the proposed partner and after understanding each other's compatibility he or she may be admitted to the MDF.

Agreement between partners

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

Risks Involved

1. Lack of understanding and multiplicity of directions to the staff could be disastrous.
2. More cost on infrastructure and technology.
3. Dominance of senior partners over the younger partners.

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4. Defining exit route is difficult.
5. Lack of transparency may lead to disputes.
6. If crack develops in mutual faith & trust, very difficult to cure.
7. Communication gap between partners.

One stop or single window solutions or services always attract clients or customers. We can witness that conventional shops are being replaced by big shopping malls. In the same manner there is need for corporate and business sector to have "service malls". It always works better for a business enterprise to have handy team of consultants, both from cost and management point of view. It is most likely that MDF giving professional advice considers all angles and dimensions rather than an advice only from one point of view. Well considered advice by MDF can add value to their clients. Off late, business enterprises have become professionally shroud and they always like to have a professional firm who is willing to invest in improving their knowledge of the industries they serve. MDF is the right platform that caters to the requirement of the business enterprises. With specialized partner, "knowledge management" becomes easier and less costly.

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FINANCIAL SERVICES ORGANISATION

NON-BANKING FINANCIAL ORGANSIATION

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

NBFC's are regulated by RBI.

Financial activity as principal business is when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income. A company which fulfils both these criteria will be registered as NBFC by RBI.

This test is popularly known as 50-50 test and is applied to determine whether or not a company is into financial business.

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

NBFC	BANKS
1. DO NOT ACCEPT DEMAND DEPOSITS	1. CAN ACCEPT DEMAND DEPOSITS WHICH ARE PAYABLE ON DEMAND.
2. CANNOT ISSUE CHEQUES. DOES NOT FORM PART OF	2. CAN ISSUE CHEQUES

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PAYMENENT AND SETTLEMENT SYSTEM	
3.LESS REGULATED	3. MORE REGULATED
4. NO INSURANCE AVAILABLE AGAINST DEPOSITS	4. INSURANCE UPTO ₹5 LACS AVAILABLE AGAINST DEPOSITS
5. 50-50 TEST APPLICABLE	5. NOT APPLICABLE

Systemically important NBFCs

NBFCs whose asset size is of Rs. 500 cr or more as per last audited balance sheet are considered as systemically important NBFCs. The rationale for such classification is that the activities of such NBFCs will have a bearing on the financial stability of the overall economy.

At this time, the Reserve Bank did note that there were deposit taking activities undertaken by non-banking companies. Though they were not systemically as important as the banks, the Reserve Bank initiated regulating them, as they had the potential to cause pain to their depositors.

In November 2014, the entire regulatory framework was reviewed with a view to transitioning, over time, to an activity-based regulation of NBFCs. As a first step in this direction, certain changes to the regulatory framework are sought to be made to:

(a) address risks wherever they exist,

(b)address regulatory gaps and arbitrage arising from differential regulations, both within the sector as well as vis-a-vis other financial institutions,

(c)harmonise and simplify regulations to facilitate a smoother compliance culture among NBFCs, and

(d) strengthen governance standards.

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Regulatory and Supervisory Framework

The Regulatory and Supervisory Framework of the Reserve Bank provides for, among other things, registration of NBFCs, prudential regulation of various categories of NBFC, issue of directions on acceptance of deposits by NBFCs and surveillance of the sector through off-site and on-site supervision. Deposit taking NBFCs and Systemically Important Non-Deposit Accepting Companies are subjected to a greater degree of regulation and supervision. The focus of regulation and supervision is three fold, viz.,

a) depositor protection,

b) consumer protection and

c) financial stability.

Nedumpilli Finance Company v. State of Kerala.

In this case, the Supreme Court of India upheld the supremacy of the Reserve Bank of India over the supervision and regulation of NBFCs registered under the RBI Act, 1934.

The legislatures of Kerala and Gujarat had sought to bring NBFCs under the ambit of their respective legislations (the Kerala Money Lenders Act, 1958 and the Gujarat Money-Lenders Act, 2011) to regulate the interest rate charged by moneylenders and protect borrowers. However, on 10th May, 2022, the Hon'ble Supreme Court held that state enactments regulating the business of moneylending would have no application on non-banking finance companies (NBFCs) registered with, and regulated by, the Reserve Bank of India (RBI).

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In its final judgment, the Apex Court held that Chapter III-B of RBI Act, 1934 (dealing with NBFCs) is a complete code in itself as regards regulation of NBFCs. In addition to this, the RBI Act has provisions which override other state laws.

This implies that NBFCs are totally under the purview of the RBI Act, and only the Central bank has the powers to regulate the NBFCs registered with it. Previously, there used to be tussles between the RBI and state governments over certain aspects of NBFC regulation.

Scale Based Regulatory Framework for NBFCs

Non-banking Finance Companies (NBFCs) plays a pivotal role in the economic growth of the country. The NBFC sector has undergone a significant transformation over the years and has created its own niche in supplying credit to retail customers in the relatively under-served and un-banked areas.

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

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

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

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

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

The different types of NBFCs are as follows:

I. Asset Finance Company (AFC)

An AFC is a company which is a financial institution carrying on as

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

II. Investment Company (IC)

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

III. Loan Company (LC)

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

IV. Infrastructure Finance Company (IFC)

IFC is a non-banking finance company –

(a) which deploys at least 75 per cent of its total assets in infrastructure loans;

(b) has a minimum Net Owned Funds of Rs.300 crore;

(c) has a minimum credit rating of 'A' or equivalent; and

(d) a CRAR of 15%.

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

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

(a)it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;

(b)its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;

(c)it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

(d)it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies;

(e) Its asset size is Rs. 100 crore or above; and

(f) It accepts public funds.

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

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

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

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

(a) Reserve Bank of India specifies ten crore rupees as net owned fund (NOF) requirement for NBFC-MFI with effect from October 01, 2022. However, existing non-banking financial companies holding a certificate of registration as on October 22, 2021 issued by the Reserve Bank of India and having net owned fund of less than ten crore rupees, shall achieve the NOF of Rs.10 crore as per the following glide path:

– Rupees 7.00 Crores by March 31, 2025

– Rupees 10.00 Crores by March 31, 2027

(b) Not less than 85% of its net assets are in the nature of "qualifying assets" which satisfy the following criteria:

i. Loan which is disbursed to a borrower with household annual income not exceeding Rs. 1,25,000 and Rs. 2,00,000 for rural and urban/semi-urban households, respectively;

ii.Loan amount does not exceed Rs 75,000 in the first cycle and Rs 1,25,000 in subsequent cycles

iii.Total indebtedness of the borrower does not exceed Rs 1,25,000 (excluding loan for education and medical expenses);

iv. Minimum tenure of 24 months for loan amount exceeding Rs 30,000;

v. Collateral free loans without any prepayment penalty;

vi.Minimum 50 per cent of aggregate amount of loans for income generation activities; and

vii. Flexibility of repayment periodicity (weekly, fortnightly or monthly) at borrower's choice.

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

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

IX. Mortgage Guarantee Companies (MGC)

MGC are financial institutions for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage guarantee business and net owned fund is Rs 100 crore.

X. 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.

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

BENEFITS OF INCORPORATING AN NBFC

According to research and studies it is proved that NBFCs are outperforming banks. The continued better performance from NBFCs has given rise to an uptick of 15% customer satisfaction as compared to the banking customers. The same is agreed by the RBI according to the recent Financial Stability Report. Banks and Non- Banking Financial Companies (NBFCs) are financial intermediaries and the services offered by them are pretty much the same as banks.

The benefits of incorporating an NBFC can be enumerated as under :

(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 easier and more affordable. This has also resulted in lower EMI (Equated Monthly Instalment) for borrowers.

(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

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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.

(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.

(4) LAST RESORT OF BORROWING

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

(5) CATERS CUSTOMER NEEDS

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

(6) LOAN AVAILABLE FOR INDIVIDUALS WITH POOR CREDIT RATING

Individuals with poor credit rating generally will not get loans from banks. 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.

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INCORPORATION OF NBFC's.

The procedure for incorporating a Non-Banking Finance Company (NBFC) is the same as any other company through web form SPICE+. Their principal business, to be stated in the MOA, while registering under the Companies Act shall be lending credit, making investments in various types of shares and stocks, leasing, hire purchase, insurance business, chit business, and receiving deposits under any scheme or arrangement.

REGISTRATION PROCESS WITH RESERVE BANK OF INDIA

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

(a) obtaining a certificate of registration issued by the Bank; and

(b)having the net owned fund of two crore rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify.

Further, in terms of the powers given to the Reserve Bank, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz.

Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956 or formed under section 406 of the Companies Act, 2013, Chit companies

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as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company.

Registration Procedure

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

(a)It should have minimum one director from NBFC background or senior Bankers as full-time director in the company

(b) Clean CIBIL records

(c) Understanding of NBFC / Finance business.

Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify.

The Bank, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled: –

(a)that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b)that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c)that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors;

(d)that the non-banking financial company has adequate capital structure and earning prospects;

(e)that the public interest shall be served by the grant of certificate of registration to the nonbanking financial company to commence or to carry on the business of India;

(f)that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, and economic growth considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g)any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interests of the depositors.

The Bank may, after being satisfied that the above specified conditions are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

The Bank cancel a certificate of registration granted to a non-banking financial company under this section if such company –

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii)has failed to comply with any condition subject to which the certificate of registration had been issued

to it; or

(iii)at any time fails to fulfil any of the conditions referred to in clauses (d) to (g) of sub-section (4); or

(iv) fails–

(a)to comply with any direction issued by the Bank under the provisions of this Chapter; or

(b)to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c)to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Procedure for filing application with Reserve Bank of India

1.The applicant company is required to apply online and submit a physical copy of the application along with the necessary documents to the Regional Office of the Reserve Bank of India.

2. The application can be submitted online by accessing RBI's secured website https://cosmos.rbi.org.in.

At this stage, the applicant company will not need to log on to the COSMOS application and hence user- ids are not required.

3.The company can click on "CLICK" for Company Registration on the login page of the COSMOS Application. A window showing the Excel application form available for download would be displayed.

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The company can then download suitable application form (i.e. NBFC or SC/RC) from the above website, key in the data and upload the application form.

4.The company may note to indicate the correct name of the Regional Office in the field "C-8" of the "Annex- Identification Particulars" in the Excel application form. The company would then get a Company Application Reference Number (CARN) for the CoR application filed on-line.

5.Thereafter, the company has to submit the hard copy of the application form (indicating the online Company Application Reference Number) along with the supporting documents, to the concerned Regional Office.

6.The company can then check the status of the application from the above-mentioned secure address, by keying in the acknowledgement number.

Certain documents are also required to be filed with the application with the Reserve Bank of India for registration.

These are listed below.

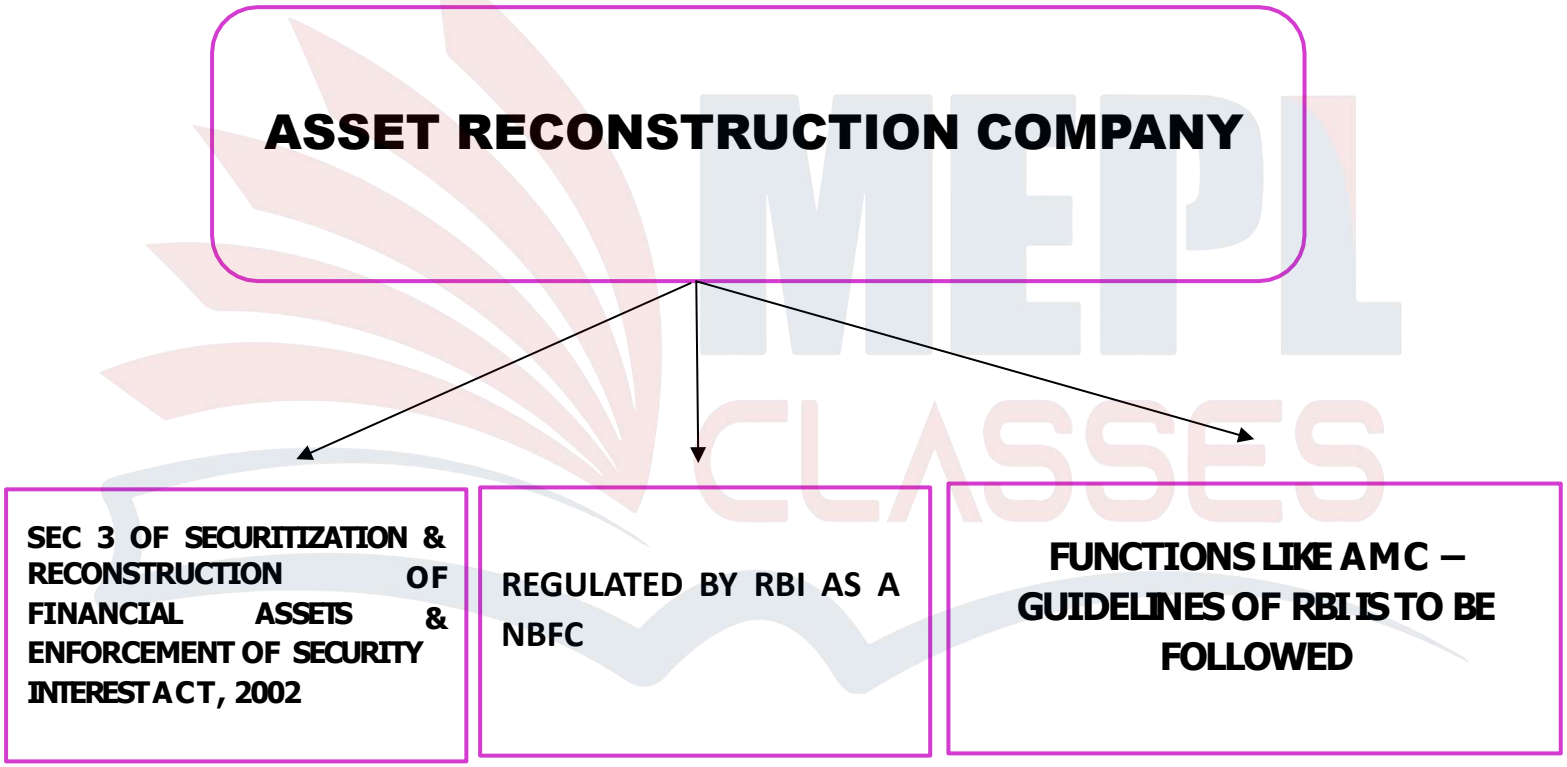
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ASSET RECONSTRUCTION COMPANY (ARC)

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



NOTE – SECTION 3 PROVIDES THAT NO ARC SHALL COMMENCE A BUSINESS OF SECURITIZATION OR ASSET RECONSTRUCTION WITHOUT OBTAINING CERTIFICATE OF REGISTRATION GRANTED UNDER THIS SECTION BY RBI.

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

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

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

(c) Facilitating development of market for distressed assets.

As per RBI Notification No. DNBS.2/CGM (CSM)-2003, dated April 23, 2003, ARC performs the following functions: - **(FUNCTIONS OF ARC)**

(i) Acquisition of financial assets (as defined u/s 2(L) of SRFAESI Act, 2002)

(ii) Change or takeover of Management / Sale or Lease of Business of the Borrower

(iii) Rescheduling of Debt

(iv) Enforcement of Security Interest (as per section 13(4) of SRFAESI Act, 2002)

(v) Settlement of dues payable by the borrower.

ASSET SECURITISATION

What is securitization?

When Asset Reconstruction Companies (ARC) acquires financial assets, a kind of security receipt is issued to the qualified buyers. This security receipt means an undivided interest in the financial assets.

What is Asset Reconstruction?

- When banks grant loans, advances or are involved in lending, the bank has some right or interest in that transaction.

- When the ARCs take the bad assets, all such rights or interests are also transferred.
- The asset reconstruction company can then realise all such rights and interests.
- The financial assistance that can be over by the asset reconstruction companies is loans, advances, bonds, guarantees and other credit facilities.

Asset Reconstruction Company – the Registration Process

Conditions for Registering an Asset Reconstruction Company

1. The company must be registered as a company under the Companies Act, 2013.

2. After the company is formed, it must be eligible for registration under the RBI under the respective statutory legislation.

3. There should not be any losses incurred by the company in the previous or preceding three financial years. (NO LOSS – PRECEEDING 3 FY)

4. If there is a process for the realisation of assets, then sufficient arrangement must be carried out for the purpose of securitisation and asset reconstruction .

5. The ARC must be able to pay all the periodical returns.

6. The company must be capable of redeeming the amount of investment which is made by qualified buyers and other investors in the company .

7. Directors must have sufficient experience and exposure in matters related to financial affairs which include reconstruction, insolvency, financial assets and other areas related to regulation.

8. There must be no criminal convictions against the directors. The directors and shareholders should not have committed any acts which affect their moral turpitude. Any acts which would lead to prosecution would also be covered.

9. All the key management executives or individuals should pass the requirements related to the fit and proper person test in order to comply with the requirements of

the act. The requirements related to the fit and proper test would be notified by the RBI from time to time. These criteria and requirement would also be applicable to the sponsors of the company.

10. The entity is responsible for complying with the financial and prudential norms as set by the RBI.

11. There are specific guidelines which have to be followed by the RBI for registration of Asset Reconstruction Company in India.

Documents Required for Registration of an Asset Reconstruction Company

The following documents are required for registering an ARC:

1. Certificate of Incorporation of the Company
2. Memorandum of Association and Articles of Association of the Company
3. Resolutions stating that the company has not taken or accepted any form of deposits (BR)
4. Resolution that directors are not disqualified as per Companies Act .
5. Certified Copy related to the certificate of audit by the auditor of the company
8. Copy of the audited balance sheet of the company
9. Copy of the directors and auditor's report of the company
10. Net Owned Funds of the Company
11. Detailed Information on Related Party Transactions (RPT).

Asset Reconstruction companies (ARCS) are governed by the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 issued by the Reserve Bank of India as amended from time to time.

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How to register?

(i)Every ARC shall apply for registration in the form of application issued by the Reserve Bank of India and obtain a certificate of registration from the Bank as provided under Section 3 of the SARFAESI Act, 2002.

(ii)The ARCs seeking registration from the RBI shall submit their application in the format
specified by the Bank, duly filled in with all the relevant annexures / supporting documents to the Chief General Manager-in-Charge, Department of Non- Banking Regulation, Central Office, Reserve Bank of India, Centre 1, World Trade Centre, Cuffe Parade, Colaba, Mumbai 400 005.

(iii)An ARC, which has obtained a certificate of registration issued by the Bank under Section 3 of the Act, can undertake both securitization and asset reconstruction activities.

(iv)An ARC shall commence business within six months from the date of grant of Certificate of Registration by the Bank; RBI may grant extension for further period not exceeding 12 months.

Provisions of section 45 -IA, 45-IB and 45-IC of RBI Act,1934 shall not apply to non-banking financial company, which is an ARC registered with the Bank under Section 3 of the SARFAESI Act, 2002.

UPDATES –

In April 2021, the Reserve Bank of India (RBI) formed committee to comprehensively review the functioning of Asset Reconstruction Companies and suggest suitable measures to enhance their role play in absorbing stressed assets of the system. The Committee submitted a set of recommendations in September 2021.

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This was probably one of the most comprehensive documents relating to the ARC sector, after reasoned discussions with all stakeholders.

Based on the above report, the RBI came out with a set of guidelines for ARCs in October 2022. Some of the guidelines issued now have no connection with the said report and primarily meant for improvement of controls and governance framework, which is great for orderly development of the sector.

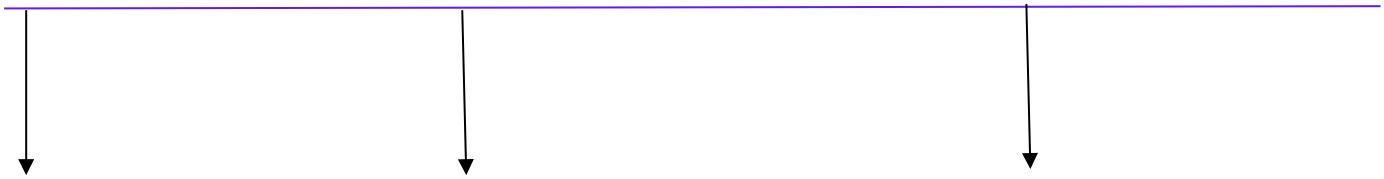
The prescribed minimum Net Owned Fund applicable to ARCs, till 2016, was only Rs 2 crore. This was increased to Rs100 crore in 2017. Now again it is further raised to Rs 300 crore by March 2026. In effect, the NOF requirement for an ARC has increased 150 times in just 10 years, from 2017 to 2026. And this comes now, when minimum investment in Security Receipts by ARCs has been reduced from 15% to 2.5% in cases where they (ARCs) are able to give full cash exit to seller (rest 97.5% coming from other investors, eligible Qualified Buyers).

Development of a sector, particularly a regulated entity, depends on a conducive framework that is aligned to operating business dynamics. Business models become unsustainable if the framework becomes too prescriptive. This will make attracting investors into the sector exceedingly difficult.

The ARC Committee had recommended various positive measures for deepening the distressed debt market and enhancing role play of ARCs. Based on the recommendations, ARCs were expecting their '1991 moment' of liberalization and measures leading to the ease of doing business. What has come, so far, is too late, too little. They are now waiting for the balance set of regulations based on residual recommendations of ARC Committee referred to above, which may possibly bring a whiff of new life for ARCs.

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NET OWNED FUND



2 cr.

100 cr.

300 cr.

(Oct.2022 – guidelines to increase 300 cr. Till 2026, for existing ARC)

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HOUSING FINANCE COMPANIES

TYPES OF NBFC (GOVERNED BY NATIONAL HOUSING BANK) (COLLATERAL LOAN) (REG. UNDER CO. ACT, 2013 + REG. UNDER NHB) (FINANCE FOR HOUSING WHETHER DIRECTLY OR INDIRECTLY)

GOVERNED BY NATIONAL HOUSING BANK, 1987.

Introduction -

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).

Collateral securities are accepted against loans advanced by HFCs which include the property for which loan has been granted and some other collaterals as well. Since properties serve as the underlying asset on which financing is given, the amount of loan advanced depends upon the value of the collateral offered. The value of the

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collateral ensures that the lender is secured and has covered itself from the risk of default. Hence, correct and realistic valuation of properties or fixed assets becomes necessary at the time of advancement of loan.

Further, loans given by HFCs are usually for a long period of time. Though the value of property is less volatile but there are chances that the same may fluctuate during the loan tenure. Usually after a loan has been granted, HFCs do regular property valuation to understand how the property value is changing. There is a need for revaluation at regular intervals so that the lender is assured of little or no deviation in the Loan to Value (LTV) ratio and also that the property is valued at its current fair market value.

A Housing Finance Company (HFC) is a company registered under the Companies Act, 2013 or any earlier enactment which primarily transacts or has as one of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly. In addition to it being a company registered under the Companies Act, an HFC also requires registration with National Housing Bank (NHB) for commencing or carrying on the business of housing finance. The National Housing Bank was set up under the National Housing Bank Act, 1987. Housing Finance Companies are governed by the said Act and by Circulars, Guidelines, Notifications and Directions issued by National Housing Bank.

Eligibility Criteria for Obtaining Housing Finance Company Registration

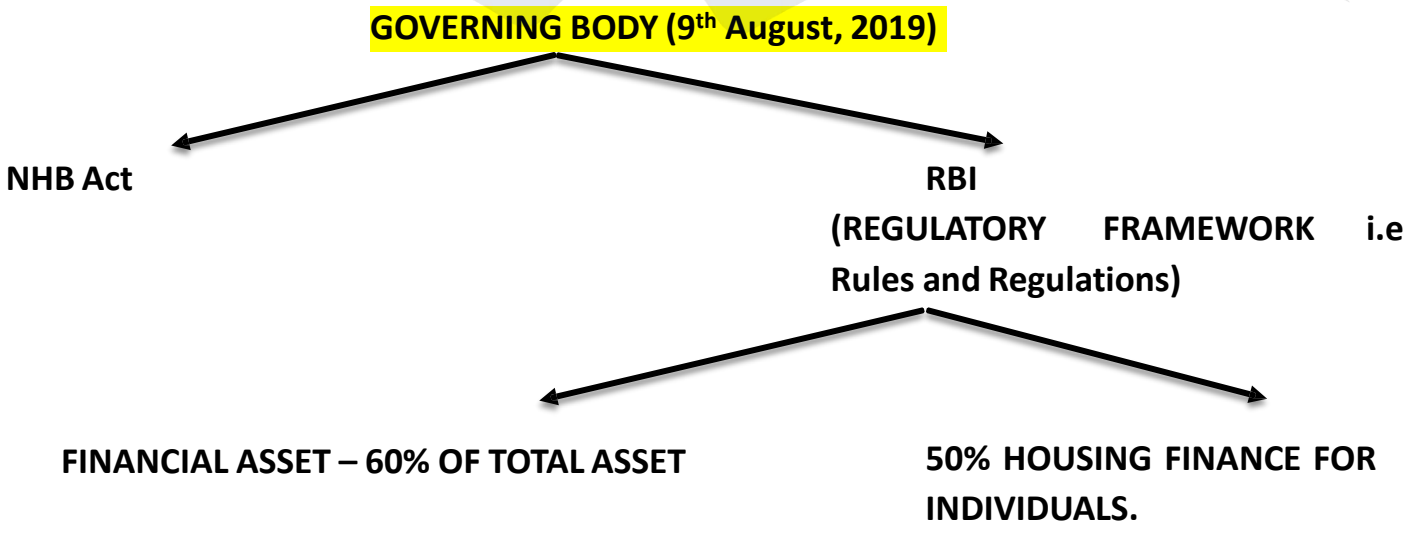
Based on the provisions of section 29A of the National Housing Bank Act 1987, no Housing Finance Company shall start to carry out its operations of providing housing loans unless the same had met all the accompanying guidelines.

- **Must be an NBFC**: The business entity that wants to operate as a Housing Finance Company must acquire registration as the Non-Banking Financial Company from the Apex Bank, i.e. RBI.

- **Net Owned Funds**: It shall be noted that the Net owned fund of a Housing Finance Company must be at least Rs 20 Crores. Therefore, an applicant needs to satisfy the requirements of net worth for obtaining Housing Finance Company Registration.
- **Must be registered under the Companies Act 2013**: The said Company requires to satisfy the requirements of a private limited company under the provisions of the Companies Act 2013 or the Companies Act 1956.
- **Housing Finance Activities as Object Clause**: It is the last but the most important requirement of all that the objects of this type of company must mention for financing housing loans and other commercial complexes. Besides providing finance, the said company must also have the predictions of earning.

The management and operations of the company must act in good faith and in the interest of the public and other consumers. That means they need to work in the interests of the public.

The regulatory power of the Housing Finance Companies (HFCs) was transferred from National housing Bank to Reserve Bank of India by the Central Government with effect from 09 August 2019. It was further submitted that the RBI would regulate the framework for HFCs and determine the extent to which rules can be subjected to HFCs and till this particular point of time the HFCs were directed to comply with the instructions as issued by NHB.



On 22 October 2020, the RBI issued the revised regulatory framework ("Revised Framework")for HFCs. Set out below are the key aspects of the Revised Framework:

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

a.It is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60% of its total assets (netted off by intangible assets).

b.Out of the total assets (netted off by intangible assets), not less than 50% should be by way of housing financing for individuals.

"Housing Finance" shall mean financing, for purchase/ construction/ reconstruction/ renovation/ repairs of residential dwelling units, which includes:

a.Loans to individuals or group of individuals including co-operative societies for construction/ purchase of new dwelling units.

b. Loans to individuals or group of individuals for purchase of old dwelling units.

c.Loans to individuals or group of individuals for purchasing old/ new dwelling units by mortgaging existing dwelling units.

d.Loans to individuals for purchase of plots for construction of residential dwelling units provided a declaration is obtained from the borrower that he intends to construct a house on the plot within a period of three years from the date of availing of the loan.

e.Loans to individuals or group of individuals for renovation/ reconstruction of existing dwelling units.

f.Lending to public agencies including state housing boards for construction of residential dwelling units.

g. Loans to corporates/ Government agencies for employee housing.

h.Loans for construction of educational, health, social, cultural or other institutions/ centres, which are part of housing projects and which are necessary for the development of settlements or township.

i.Loans for construction meant for improving the conditions in slum areas, for which credit may be extended directly to the slum-dwellers on the guarantee of the Central Government, or indirectly to them through the State Governments.

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j. Loans given for slum improvement schemes to be implemented by Slum Clearance Boards and other public agencies.

k. Lending to builders for construction of residential dwelling units.

All other loans including those given for furnishing dwelling units, loans given against mortgage of property for any purpose other than buying/ construction of a new dwelling unit/s or renovation of the existing dwelling unit/s as mentioned above, will be treated as non-housing loans and will not be falling under the definition of "Housing Finance".

Transition time for existing HFCs to fulfil the asset based criteria

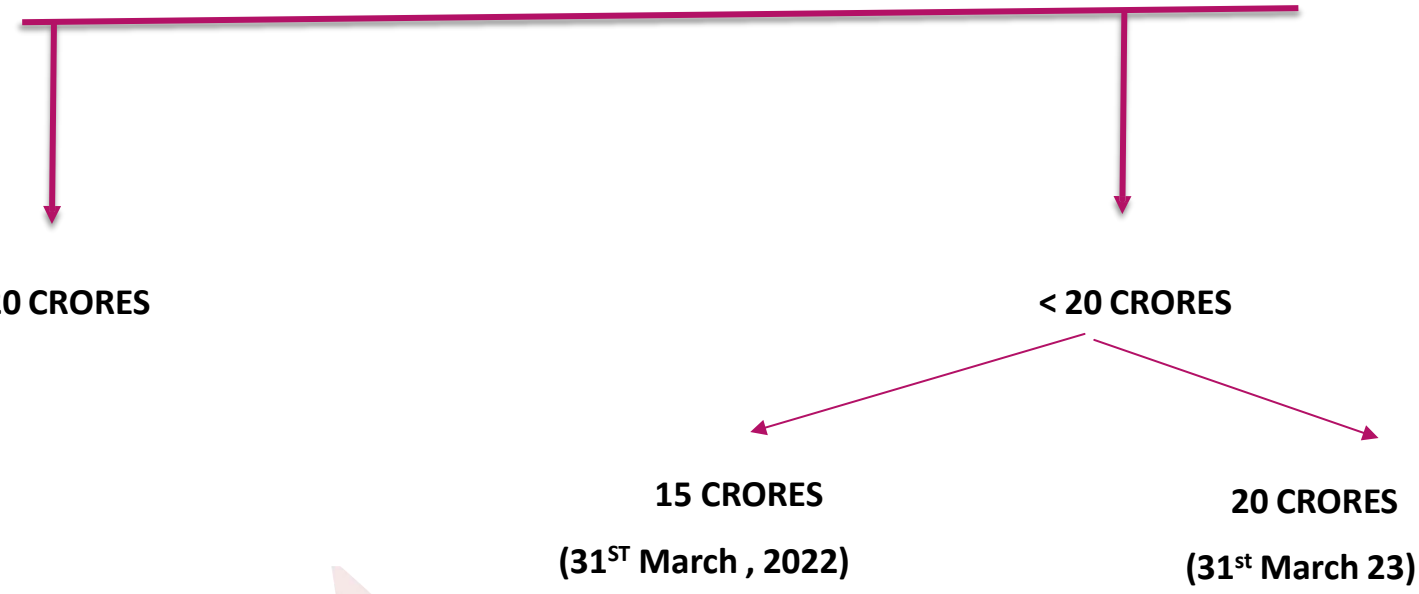
The Revised Framework has allowed a transition time till 31 March 2024 to the existing registered HFCs to fulfil the asset based criteria as set out above in case such HFCs proposed to continue the business as HFCs:

Timeline	*Minimum percentage of total assets towards housing finance*	*Minimum percentage of total assets towards housing finance for individuals*
March 31, 2022	50%	40%
March 31, 2023	55%	45%
March 31, 2024	60%	50%

Such HFCs shall be required to submit to the Reserve Bank, a Board approved plan within three months including a roadmap to fulfil the above-mentioned criteria and timeline for transition. HFCs unable to fulfil the above criteria as per the timeline shall be treated as NBFC – Investment and Credit Companies (NBFC-ICC) and they will be required to approach the Reserve Bank for conversion of their Certificate of Registration from HFC to NBFC-ICC. Application for such conversion should be submitted with all supporting documents meant for new registration together with an auditor's certificate on principal business criteria and necessary Board resolution approving the conversion.

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Net Owned Fund (NOF) Requirement



In exercise of the powers conferred by clause (b) of sub-section (1) of Section 29A of the National Housing Bank Act, 1987, and all powers enabling it in that behalf, the Reserve Bank hereby specifies Rupees twenty crore as the minimum net owned funds required for a company to commence housing finance as its principal business or carry on the business of housing finance as its principal business.

Provided that a housing finance company holding a Certificate of Registration (CoR) and having net owned fund of less than Rupees twenty crore, may continue to carry on the business of housing finance, if such company achieves net owned fund of Rupees fifteen crore by March 31, 2022 and Rupees twenty crore by March 31 2023.

It will be incumbent upon such HFCs whose NOF currently stands below Rupees twenty crore, to submit a statutory auditor's certificate to Reserve Bank within a period of one month evidencing compliance with the prescribed levels as at the end of the period indicated above. HFCs failing to achieve the prescribed level within the stipulated period shall not be eligible to hold the Certificate of Registration (CoR) as HFCs and registration for such HFCs shall be liable to be cancelled.

Benefits of incorporating a Housing Finance Company

1. Among the financial services, housing finance creates employment, both directly and indirectly.

2.Industries such as cement, brick manufacturing, sanitary products, electrical fittings and glass industries experience more demand due to house construction.

3. Rural housing develops not only rural areas but prevents migration of labor to urban areas.

4.Housing finance helps in creation of more houses which results in building up more infrastructure facilities, such as roads, electricity generation, drinking water facilities, etc.

5.Factories or industrial establishments create townships by providing more housing facilities to their employees. Housing finance thereby reduces congestion in urban areas.

6.Due to housing finance, there is a vertical expansion and re building of dilapidated houses and re modelling of the existing houses.

7.Housing facilities not only improve, they also reflect the culture of the country. Chandigarh city is an example for modern housing which has been built by a French architect.

8.Non conventional energy gets popularized due to modern housing facilities which is one of the major benefits of housing finance.

9.At present, the macro environment is extremely favourable for housing finance companies. The Modi government's incentives in terms of allocation related to Pradhan Mantri Awas Yojana (PMAY) of Rs. 23,000 crore would provide the much-needed momentum to the sector. The total allocation for the infrastructure sector in the Budget stood at Rs 39,6135 crore in 2017-18.

10.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 1.4.1981 to 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.

11.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.

12.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.

SUMMARY :

1. SOCIAL BENEFITS – GOVERNMENT SCHEMES CAN BE IMPLEMENTED EASILY – PM AWAS YOJANA

2. **BENEFITS TO RURAL INDIA – HELPS IN MIGRATION OF LABOUR; BUILDING INFRASTRUCTURE, ROADS, DRINKING WATER FACILITIES**
3. **BENEFITS TO INDUSTRIES – ALL ROUND INDUSTRIAL ESTABLISHMENT BY INCREASE IN DEMAND FOR FURNITURE, CEMENT, GLASS, BRICKS, ELECTRICAL FITTINGS, SANITARY FITTINGS**
4. **EMPLOYEE BENEFITS – DIRECTLY / INDIRECTLY EMPLOYEMENT GENERATION.**

REGISTRATION PROCESS OF HOUSING FINANCE COMPANIES

The following procedure must be followed by the applicant for housing finance company registration:

1. **DOWNLOAD APPLICATION FORM - First the applicant has to download the application form for Housing Finance company registration from the website nhb.org.in.**
2. **ATTACH DOCUMENTS & SUBMIT THE PHYSICAL COPY - All the documents must be attached along with the application. The demand draft in favour of the NHB also must be attached. This must be submitted in the Head Office of the NHB.**
3. **NHB AFTER VERIFICATION SHALL REGISTER - The NBH would check the authenticity of the application. If the documents provided are sufficient then the NBH would go ahead and register the housing finance company. The procedure for incorporating a Housing Finance Company (HFC) is the same as any other company.**

   NHB after satisfying itself on the fulfilment of following conditions provided under sub-section (4) of Section 29A of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

   (i)HFC is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;
   (ii)Affairs of the HFC are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
   (iii)General character of the management or the proposed management of the HFC shall not be prejudicial to the public interest or to the interests of its depositors;
   (iv) HFC has adequate capital structure and earning prospects;
   (v)Public interest shall be served by the grant of certificate of registration to the HFC to commence or carry on the business in India;
   (vi)Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and

(vii)Any other condition, fulfilment of which in the opinion of the Reserve Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a HFC shall not be prejudicial to the public interest or in the interests of the depositors.
(viii)The Reserve Bank may, wherever it considers necessary so to do, require the National Housing Bank to inspect the books of such housing finance institution and submit a report to the Reserve Bank for the purpose of considering the application.
(ix) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (4)are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

HFCs are categorized in terms of the type of liabilities, by NHB, into Deposit and Non-Deposit accepting HFCs and are issued Certificate of Registration accordingly.

Conditions pertaining to the cancellation of the Housing Finance Company License
The Certificate of registration granted to a housing finance company may be cancelled in some of the circumstances subject to certain provisions, if such company:

- Ceases to carry on the business of financing in India; or
- HFC has not complied with the below-mentioned terms and condition prescribed by the NHB:
- to comply with any direction issued by the National Housing Bank under the provisions of Chapter V of the National Housing Bank Act 1987; or
- to maintain accounts in accordance with the requirement of any law or any direction or order issued by the National Housing Bank under the provisions of Chapter V of the National Housing Bank Act 1987; or
- Mandatory to submit its books of accounts and other relevant documents as per NHB Act, when it is demanded by an inspecting authority of the National Housing Bank; or
- Has been prohibited from accepting deposit by an order made by the National Housing Bank under the provisions of this Chapter V of the National Housing Bank Act, 1987 and such order has been in force for a period of not less than 3 months.

Net Owned Fund

According to the Explanation to Section 29A Net Owned Funds means:

(a) The aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the housing finance institution after deducting therefrom -

(i) accumulated balance of loss;

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(ii) deferred revenue expenditure, and

(iii) other intangible assets; and

(b) further reduced by the amounts representing –

(i) investments of such institution in shares of –

- its subsidiaries;
- companies in the same group;
- all other housing finance institutions which are companies; and

(ii)the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with, -

- subsidiaries of such company; and
- Companies in the same group, to the extent such amount exceeds ten per cent of (a) above;

Paid up Capital

ADD :

FREE RESERVES

LESS :

ACCUMULATED LOSSES

DEFERRED REVENUE EXPENDITURE

OTHER INTANGIBLE ASSETS

INVESTMENT IN SUBSIDIARY COS OF SAME GROUP

INVESTMENT IN ALL OTHER HOUSING FINANCIAL INST. WHICH ARE COMPANIES

BOOK VALUE OF DEBENTURES , LOAN AND ADVANCES (INCLUDING HIRE PURCHASE) WITH SUBSIDIARIES OF SUCH COMPANY AND COMPANY IN SAME GROUP TO THE EXTENT SUCH AMOUNT EXCEEDS BY 10%

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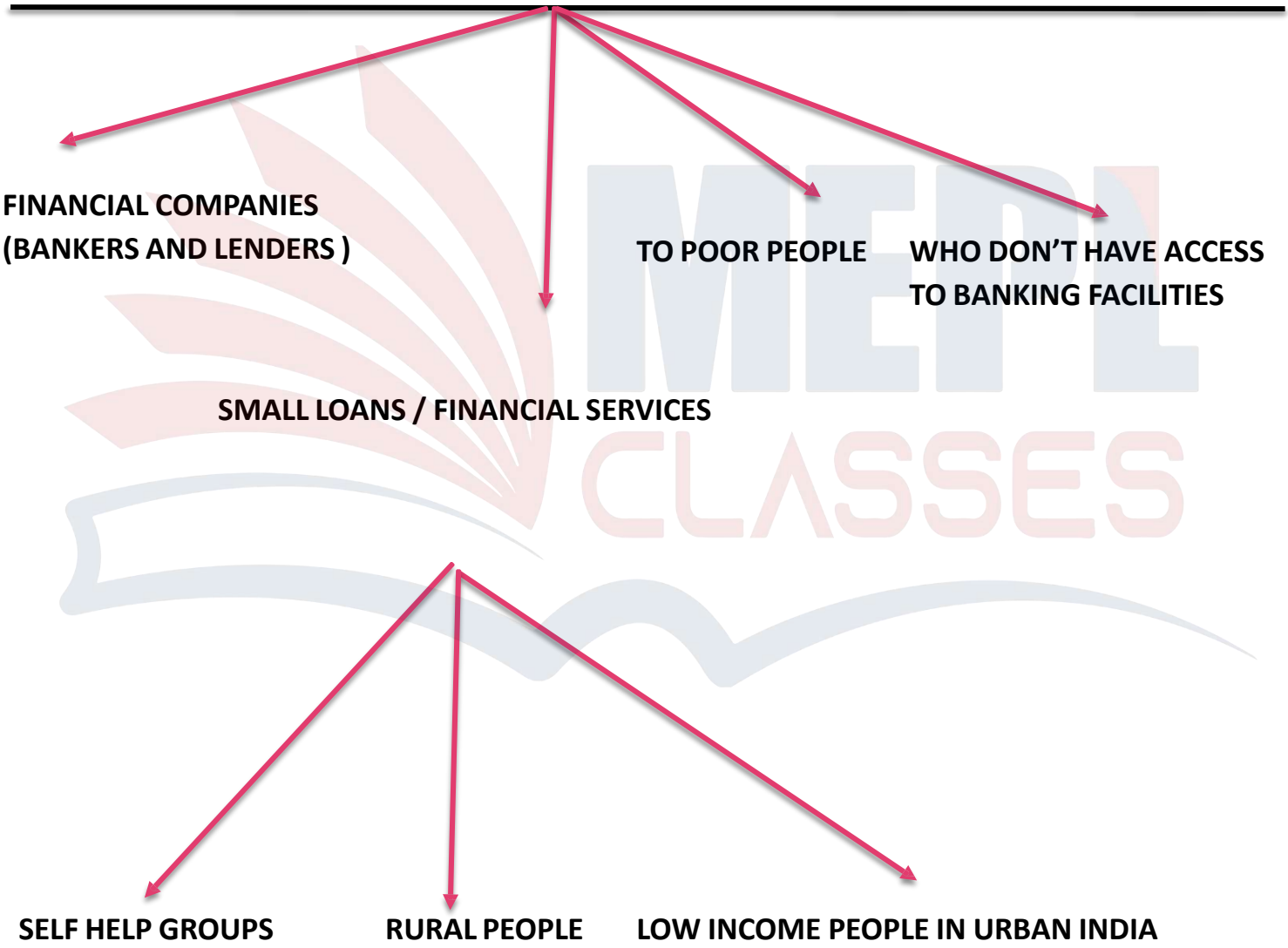
MICRO FINANCE INSTITUTIONS (MFI)

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

(1) transactions value is small and

(2) customers are poor."

Due to low security and increasing operating costs, many traditional banks were not willing to provide loans to the poor in India. This led to the development & growth of microfinance institutions in the country.



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Characteristics of a Micro Finance Institution

(1)Micro finance provides financial services to those whose income is small and unstable. These people are in need of credit facilities for several reasons. To name a few:

(a) their needs are small and arise suddenly.

(b)the institutional providers of finance, namely, the banks, demand collateral security which they cannot provide.

(c)most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education, illness, funerals, weddings for which it is difficult to obtain institution finance.

(d) for purpose of investment in income generating activities.

(2) **Concept of Self-Help Group** (SHGs) is the most exciting discovery in the context of microfinance. The Indian microfinance scene is dominated by SHGs and their linkage with banks. This has helped in empowerment of women and eradication of property among people with low income.

(3)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.

(4)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 MFIs may be summarised as under:

i. The size of the loan given by the MFI is small.

ii. The repayment period is short.

iii. MFI can mobilize resources both from internal and external sources.

iv. No collateral for loan is required.

v. the purpose of end use of loan is flexible.

vi. loans given are mostly group loans, trickling down to individuals.

vii. Transaction cost is low, due to group lending.

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Incorporation of MFI

Firstly, a company has to be incorporated under the Companies Act, 2013.

The company may be a private company or a public company or LLP

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

DOCUMENTS REQUIRED FOR REGISTRATION WITH RBI :

1. CERTIFIED COPIES OF CERTIFICATE OF INCORPORATION.
2. CERTIFIED COPIES OF EXTRACT OF ONLY THE MAIN OBJECT CLAUSE IN THE MOA RELATING TO THE FINANCIAL BUSINESS.
3. NET OWNED FUND (IN CASE OF NBFC -MFI , NOF IS 5 CRORES)
4. AUDITED B/S , P/L for LAST 3 YEARS OR LOWER IN CASE OF NEWLY INCORPORATED COMPANY
5. QUALIFICATION CERTIFICATE OF DIRECTORS
6. BOARD REPORT , BANKERS' REPORT
7. BOARD RESOLUTION NOT ACCEPTING ANY PUBLIC DEPOSIT
8. BOARD RESOLUTION NOT CARRYING ON ANY NBFC ACTIVITY / STOPPED NBFC ACTIVITY AND WILL NOT CARRY ON / COMMENCE BEFORE REGISTERING WITH RBI
9. BOARD RESOLUTION THAT COMPANY HAS FORMULATED "FAIR PRACTICES CODE " AS PER RBI GUIDELINES

NOTE – IN CASE OF TYPE – II NBFC ND , FOLLOWING LIST OF DOCUMENTS ARE REQUIRED :

1. ROAD MAP FOR ACHIEVING 85% QUALIFYING ASSETS.
2. BOARD RESOLUTION STATING THAT COMPANY HAS ADHERED TO REGULATIONS, FAIR PRACTICE CODE IN LENDING AND NON CORECIVE METHOD OF RECOVERY AS PER RBI GUIDELINES
3. BOARD RESOLUTION STATING THAT THE COMPANY IS NOT LICENSED UNDER SECTION 8 OF COMPANIES ACT, 2013/ SECTION 25 OF COMPANIES ACT 1956.

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4. **BOARD RESOLUTION STATING THAT COMPANY WILL BE MEMBER OF ALL THE CREDIT INFORMATION COMPANIES AND WILL BE A MEMBER OF AT LEAST ONE SELF REGULATORY ORGANISATION.**

NIDHI COMPANIES

Nidhi company is governed by Nidhi Rules, 2014. They are incorporated in the nature of Public Limited Company and hence, they have to comply with two set of norms, one of Public limited company as per Companies Act, 2013 and another is the Nidhi Rules, 2014. No RBI approval is necessary to register the company, as RBI has specifically exempted this category of NBFC in India to comply its core provisions such as registration with RBI etc. Even though Nidhis are regulated by the provisions of the Companies Act, 2013, they are exempted from certain provisions of the Act, as applicable to other companies, due to limiting their operations within members.

The exemptions are contained in the Notification F. No. 2/11/2014-CL.V dated June 5, 2015 issued by the Ministry of Corporate Affairs.

Section 406 of the COMPANIES ACT

TYPE OF NBFC

RECOGNIZED u/s 406 of the Companies Act.

CORE BUSINESS

BORROWING AND LENDING MONEY

BETWEEN MEMBERS

ALSO KNOWS AS

- **PERMANENT FUND**
- **BENEFIT FUND**
  - **MUTUAL BENEFIT FUND**
  - **MUTUAL BENEFIT COMPANY**

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Regulated

Governed by Nidhi Rules, 2014

MCA, Govt of India

Registered as Public Ltd Co. under Cos Act 2013

2 NORMS

- NIDHI RULES
- NORMS OF PUBLIC LTD CO.

NIDHI COMPANY

Not regulated by RBI as it is exempt , though they are NBFC

Certain provisions of Cos Act , 2013 are exempt

as limiting operation with members

(Notification No – 2/11/14)

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Conditions to recognize as a Nidhi

- Public company having share capital of ₹10 lakhs
- Declared as Nidhi by CG
- Promoter /Director – fit and proper test laid down with the Rules
- Within 45 days of application, CG's approval shall be deemed to be granted .

On and after commencement of Nidhi (Amendment) Rules, 2022, a public company desirous to be declared as a Nidhi shall apply, in Form NDH-4, within a period of one hundred twenty days of its incorporation for declaration as Nidhi, if it fulfils the following conditions, namely:-

(I) it has not less than two hundred members; and

(II) it has Net Owned Funds of twenty lakh rupees or more.

KEY POINTS

1. Popular in South India, 80% located in Tamil Nadu

2.Mutual Benefit Societies – Dealings are restricted only to the members and membership is limited to individual

3. Principal Source of Fund – Contribution from Members

4. Loans given to members at low rates – for house construction / repairs etc. – secured only.

Incorporation of Nidhi .

1.Incorporate Nidhi as a Public Ltd Company by following the provisions of Companies Act such as filing MOA , AOA and other related documents .

2.Object clause should restrict itself to lending and receiving deposits only from its members i.e for their mutual benefits only

3. Name of the company should end with Nidhi Ltd.

4. Apply in Form NDH-4 for declaration as Nidhi .

5.Within 120 days of incorporation after those 2 conditions (20 lacs, 200 members) are satisfied

6.Company shall attach along with NDH 4 the declaration of fit and proper person criteria by all promoters and directors of company

7. Guidelines for fit and proper test –

- **Integrity**
- **Honesty**
- **Ethical Behaviour**
- **Character of Person**
- **Person should not be disqualified by any of the following – criminal complaint, charge sheet, order of prohibition by any law, an order of conviction,**
- **Such person declared insolvent**
- **Unsound Mind**

8.CG examine application and shall convey its decision within 45 days , if not , concept of deemed approval (If CG has not conveyed its decisions within 45 days , then , deemed to be approved)

9. On being satisfied , CG notifies in OG declaring as Nidhi

10. In case of company does not comply with the requirements of the criteria as set out in point (1) , it shall not be allowed to file Form No SH 7 (Notice to Registrar of any alteration of share capital) and Form PAS – 3 (Return of Allotment)

11. The above provisions as set out in Nidhi (Amended) Rules 2023, shall not be applicable to a public company incorporated under this Act before the date of commencement of the said rule .

Benefits of 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.

Characteristics of Nidhi.

1. Is allowed to transact business only with its members and with nobody else.

2.In case a person wishes to place deposit with a Nidhi or borrow money from a Nidhi, he must first become a member (shareholder) of the Nidhi by subscribing to 10 equity shares or shares equivalent to Rs. 100.

3. No Nidhi shall issue preference shares.

4.They are allowed to open branches subject to compliance with Rule 10 of the Nidhi Rules, 2014, but do not operate on a pan India basis.

5.They are incorporated as public companies with a minimum paid up equity share capital of Rs. 10,00,000.

6. Loans may be provided only to its members and should be fully secured.

7.A director of a Nidhi shall be a member and shall hold office for a term upto 10 consecutive years on the Board of a Nidhi.

8.Nidhi can declare dividend not exceeding 25% and any higher amount shall be specifically approved by the Regional Director.

9.Nidhi shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as provided in Rule 20 of the Nidhi Rules, 2014.

General restrictions or prohibitions on Nidhis (Rule 6)

No Nidhi shall –

- carries on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;

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- 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 anybody corporate;

- enter into any partnership arrangement in its borrowing or lending activities;

- issue or cause to be issued any advertisement in any form for soliciting deposit;

- private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words" for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.

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PAYMENTS BANK

1. NEW MODEL OF BANK CONCEPTUALISED BY RBI

2. ACCEPT RESTRCUTED DEPOSIT OF ₹2 LACS PER INDIVIDUAL CUSTOMER

3. CANNOT ISSUE LOANS AND CREDIT CARDS

4.HAVE TO APPLY FOR DIEFFERENT BANK LICENSE AS CANNOT OFFER ALL THE SERVICE AS REGULAR COMMERCIAL BANK .

5. FIRST PAYMENT BANK WAS BHARTI AIRTEL PAYMENTS BANK LTD .

6.VERY EASY TO OPEN AN ACCOUNT WITH PAYMENT BANK , ONLY AADHAR NUMBER WITH KYC IS NEEDED .

7. REGULATED BY RBI

8. MINIMUM CAPITAL FUND REQUIREMENT IS 100 CRORES

9.CERTAIN RULES AND REGULATIONS HAS TO BE FOLLOWED FOR PERIOD OF 18 MONTHS FOR CONVERSION OF 'IN PRINCIPLE ' LICENSE TO A FULL – LICENSE u/s 22 of BANKING REG. ACT

10.APPLICATION HAS TO BE FILED IN FORM III UNDER SECTION 22 OF THE BANKING REGULATION ACT

11.MANY COMPANIES GAVE SURRENDERED THEIR LICENSE DUE TO STRICT NORMS SUCH AS ADITYA BIRLA NUVO LIMITED

TERMS AND CONDITIONS TO BE FOLLOWED

1. TO BE REGISTERED AS PUBLIC LIMITED
2. CANNOT FORM SUBSIDIARY
3. FOR FIRST 5 YEARS – PROMOTERS STAKE TO REMAIN AR 40% MINIMUM .
4. FOREIGN SHAREHOLDING ALLOWED AS PER FDI NORMS
5. VOTING RIGHTS AS PER BANKING REG ACT –
   RESTRICTED UPTO 10%, FOR ANY 1 SHAREHOLDER

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RBI CAN RAISE IT TO 26% ON MERITS

6.IF THERE IS ANY ACQUISITION OF MORE THAN 5% SHARES IT SHALL REQUIRE PRIOR RBI APPROVAL

7. NO LENDING ACTIVITIES IS PERMITTED

8. 25% OF BRANCHES SHOULD BE IN RURAL AREAS

PAYMENTS BANK CAN BE PROMOTED BY

- MOBILE TELEOCM COMPANIES
- SUPER MARKET CHAIN
- PUBLIC SECTOR UNDERTAKINGS
- INDIVIDUALS OR PROFESSIONALS
- NBFC
- REAL SECTOR CO-OPERATIVES

- PAYMENT BANKS CAN ISSUE DEBIT CARDS BUT NOT CREDIT CARDS

- CRR TO BE MAINTAINED AS PER RBI GUIDELINES

- INVEST MINIMUM 75% OF DEMAND DEPOSITS BALANCE IS SLR SECURITIES WITH MATURITY UPTO 1 YEAR AND HOLD MAXIMUM 25% IN CURRENT AND TIME DEPOSITS WITH OTHER SCHEDULED COMMERCIAL BANKS.

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MUDRA

MICRO UNITS DEVELOPMENT AND RE-FINANCE AGENCY BANKS

1. IT WAS LAUNCHED BY PM MODI ON 8TH APRIL , 2015
2. IT IS A TYPE OF PUBLIC SECTOR FINANCIAL INSTITUTION
3. RE-FINANCE SUPPORT TO BANKS / MFI'S / NBFC'S / RRB'S / SFB'S
4. FOR LENDING TO MICRO UNITS (RE-FINANCE FACILITIES) HAVING LOAN REQUIREMENT UPTO 10 LACS.

3 CATEGORIES OF CLIENTS

1. Shishu – Allowed loans up to Rs.50,000 (US$780)
2. Kishore - Allowed loans up to Rs.5 lakh (US$7,800)
3. Tarun - Allowed loans up to Rs.10 lakh (US$16,000)

ELIGIBILITY OF MUDRA LOAN

1. TO WHOM ?

l Small manufacturing unit

l Shopkeepers

l Fruit and vegetable vendors

l Artisans.

2. PURPOSE ?

COMMERCIAL OR BUSINESS PURPOSE

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3. FOR ?

NEW BUSINESS / SMALL BUSINESS OWNERS. AGE LIMIT – 18 YEARS .

PROCEDURE FOR MUDAR LOAN .

1. SELECT CATEGORY (SHISHU , KISHOR, TARUN)

2. VISIT NEAREST PUBLIC / PVT SECTOR BANKS PARTNERING WITH

3. ATTACH LIST OF DOCUMENTS

4. THE BANK WILL APPROVE THE LOAN

5. REPAY PERIOD – UPTO 5 YEARS .

IMPORTANT NOTE – MUDRA BANK IS NOT A SEPARATE BANK .

IT IS A SCHEME INTRODUCED BY THE GOVERNMENT OF INDIA . IT IS A WHOLLY OWNED SUBSIDIDARY OF SIDBI .

AUTHORISED CAPITAL – 1000 CRORES

PAID UP CAPITAL – 750 CRORES

100% WHOLLY OWNED BY SIDBI .

Documents Required –

l Proof of Identity (Self attested Voter ID/Driving License/PAN Card/ Aadhaar Card/Passport/any other Photo ID issued by Government)

l Proof of Residence(Recent Telephone Bill/Electricity Bill/Property Tax Receipt (not older than 2 months)/ Voter ID Card/Aadhaar Card/Passport/Domicile Certificate/Certificate Issued by a local authority)

l Applicant's recent photograph(not older than 6 months)

l Quotation of Machinery/other items to be purchases

l Name of the Supplier/Details of Machinery/Price of Machinery

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l Proof of Identity/Address of the Business Enterprise(relevant licenses & certificates)

l Proof of Category (SC/ST/OBC/Minority etc.)

LIST OF ACTIVITIES COVERED UNDER MUDRA LOANS .

1) Transport Vehicle

2) Community, Social & Personal Service Activities

3) Food Products Sector

4) Textile Products Sector / Activity

5) Business loans for Traders and Shopkeepers

6) Equipment Finance Scheme for Micro Units

7) Activities allied to agriculture

MUDRA CARD

1. Debit card issued against the MUDRA loan account, for working capital portion of the loan.

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

3.MUDRA Card also helps in digitalization of MUDRA transactions and creating credit history for the borrower.

4. MUDRA Card can be operated across the country for withdrawal of cash from any ATM / micro ATM and also make payment through any 'Point of Sale' machines.

Types of funding support from MUDRA

1. Micro Credit Scheme (MCS) for loans up to 1 lakh finance through MFIs.

2.Refinance Scheme for Commercial Banks / Regional Rural Banks (RRBs) / Scheduled Co-operative Banks.

3. Women Enterprise programme.

4. Securitization of loan portfolio

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CHIT FUNDS

Section 2 of the CHIT FUND ACT defines Chit Fund

Rotating Savings and Credit Association

Popular in areas with limited access to banking facilities .

Section 2 of the Chit Fund Act ,

a “chit “means a transaction whether it is called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of individual that every one of them will subscribe to a certain sum of money (or instead a certain quantity of grain) by way of periodical instalments over a definite time period and that each such subscriber will, in her/his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in chit agreement, be entitled to prize amount.

FEATURES OF CHIT FUND

1. WORKS LIKE MFI
2. PRE DETERMINED VALUE
3. FINANCIAL NEEDS OF LOW INCOME HOUSEHOLDS
4. DEPOSITS TURNED INTO LUMPSUM
5. LOWER INTEREST RATE THAN MONEY LENDER
6. SAFE DEPOSITS: A PERSON CAN DEPOSIT THE MONEY IN THE PRESENT AND ENJOY THE LUMP SUM IN FUTURE.
7. LOANS: A PERSON CAN TAKE A LOAN IN THE PRESET AND CONTINUE TO MAKE PAYMENTS IN THE FUTURE.
8. INSURANCE: ALLOWS THE DEPOSITOR TO ENJOY THE LUMP SUM IN CASE OF AN EMERGENCY.

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LAWS GOVERNING CHIT FUNDS

1. Union Government – Chit Funds Act, 1982 (Except the State of Jammu and Kashmir)
2. Tamil Nadu Chit Funds Act, 1961
3. The Chit Funds (Karnataka) Rules, 1983
4. Delhi Chit Funds Rules, 2007
5. Maharashtra Chit Fund Act, 1975
6. West Bengal Protection of Interest of Depositors in Financial Establishments Bill, 2013
7. Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

Laws not governing chit

RBI cannot regulate chit funds as term "deposit" does not comprise the subscription to chit .
RBI only issues guidelines regarding chit to various State Govt.

SEBI also no regulation over Chit
PMLA has recognised chit business

Price Chit and Money Circulation Scheme (Banning) Act , 1978

Conventional Chit – Chit defined u/s 2 of the Chit Fund Act
Price Chit u/s 2(e) of the PCMLS - Banned in India .

Permitted if the organiser is registered .

Price Chit

Issue/ Sale of certificates, units and other instruments

Admission Fees

Chit Funds Act , 1982

Chit Agreement - agreement between the foreman and the subscribers of the chit.

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Chit Amount - sum-total of all the subscriptions payable by all the subscribers for any instalment of a chit without any deduction of discount.

Discount - sum of money which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers or for both.

Foreman: The person who under the chit agreement is responsible for the conduct of the chit and includes any person discharging the functions of the foreman under section 39 of the Act.

Key Points of the Act

1.The Act states that all registered chit funds should contain either of the words "chit fund", "chitty", or "Kuri" as part of their name. These names can only be used by chit funds, no other person or entity has the right to use these names.

2. Registered chit funds are not allowed to conduct any business other than chit businesses.

3.The foreman is allowed to start or run several chits simultaneously. However, prior approval of the state government is required before starting each chitty.

4.It prohibits every kind of fund that does not have prior permission of the respective state government.

5.The foreman needs to deposit 100% of the chit value with the Registrar of Chits prior to the commencement of the chit scheme. This deposit will be refunded to the foreman on the successful completion of the chit cycle.

6.All Chit funds registered under this Act needs to have its accounts audited by a qualified Chartered Accountant.

7.The Act requires that all registered chit funds impose a 40% cap on the bidding amount. This 40% is calculated on the chit value of the scheme. This bid-cap is administered to ensure that the bid does not rise uncontrollably leading to subsequent default by the bidder.

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Types of Chit Funds

1. Organized Chit Funds: common type of chit fund ; small paper chits with each member's names are gathered in a box ; then lottery is done ; fund distributed to person whose name selected

2. Special Purpose Funds – Christmas Fund , Ladies Kitty Fund

3. Online Chit Funds – Electronic chit funds

4. Registered Chit Funds – Registered with Govt under Chit Fund Act

5. Un-registered Chit Funds – Not regulated by any law

Other key points

Type of NBFC .
Exempted from RBI registration .
Regulated by other regulators .

Incorporation of Chit Fund

Incorporated as Pvt Ltd Co

Objective of operating chit fund business
Apply with chit fund registrar of state

Start Chit Fund business

Deny Registration

1.Any individual or entity convicted of any offence under the Chit Fund Act or under any other Act regulating the business and sentenced to imprisonment for any such offence; or

2.Any individual or entity who had defaulted in payment of the fees or the filing of any statement or the record required to be paid or filed under this Act or had previously violated any of the provisions of this Act or the rules made thereunder; or

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3. Any individual or entity had been convicted of any offence that involves moral turpitude and had been sentenced to imprisonment for any such offence unless a period of five years has elapsed since his/her release.

Restriction by RBI .

l Chit fund business can be conducted only by a registered company. Running of Chit business by family and partnership firms are restricted.

l Chit companies must register with the Registrar of Chit Company in every state, furnishing full particulars about their chit company.

l The maximum discount that could be taken in a bid was restricted to 30% of the total chit amount. However, in 2001, the same has been enhanced to 40% (in the case of a chit for Rs. 1 lakh, not more than Rs. 40,000/- can be the bid amount).

l Details of each and every chit must be furnished to Reserve Bank of India along with the personal particulars of the subscribers.

l It is mandatory to keep one month's chit amount of all the subscribers/members with the Reserve Bank of India till the end of a particular chit.

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Industrial Relations

Industrial Dispute Act, 1947

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Industrial Dispute Act, 1947 - HISTORY

Employers' and Workmen's Disputes Act, 1860

↓

Trade Disputes Act, 1929

↓

WORLD WAR II

Rule 81-A of the Defence of India Rule

↓

Industrial Disputes Act, 1947

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Industrial Dispute Act, 1947 – OBJECT & SIGNIFICANCE

- The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes.
- This Act extends to whole of India.
- The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms.

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Industrial Dispute Act, 1947 – OBJECT & SIGNIFICANCE

- This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage **[Workmen, Hindustan Lever Limited v. Hindustan Lever Limited, (1984) 1 SCC 728].**

- The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments too **[Hospital Employees Union v. Christian Medical College, (1987) 4 SCC 691].**

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INDUSTRY

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. Section 2(j)

The Supreme Court carried out an in-depth study of the definition of the term industry in a comprehensive manner in the case of Bangalore Water Supply and Sewerage Board v. A Rajiappa, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term "industry"

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TEST TO DETERMINE INDUSTRY

Test - 1

systematic activity,

(ii) organised by co-operation between employer and employee,

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasad or food) prima facie, there is an "industry" in that enterprise.

Test - 2

Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector

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TEST TO DETERMINE INDUSTRY

Test - 3 → The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations

Test - 4 → If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking

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TEST TO DETERMINE INDUSTRY

Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-stretch itself. Undertaking must suffer a contextual and associational shrinkage, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in (i) although not trade or business, may still be "industry", provided the nature of the activity, viz., the employer - employee basis, bears resemblance to what we find in trade or business. This takes into the fold of "industry", undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms, there is analogy.

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TEST TO DETERMINE INDUSTRY

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more

NOTE –

When there is employer/ employee relation but the service are given free or at a nominal cost or for small honorarium then the institution is not an industry even if stray servants, manual or technical, are hired. Such undertakings alone are exempt - not other generosity compassion, developmental compassion or project

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DEFINATION OF INDUSTRY – Section 2 (j)

"Industry" means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes:

(a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

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DEFINATION OF INDUSTRY – Section 2 (j)

but does not include:

1. any **agricultural operation** except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one; Explanation: For the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or
2. **hospitals or dispensaries**; or
3. **educational, scientific, research to training institutions**; or
4. institutions owned or managed by organisations wholly or substantially **engaged in any charitable, social or philanthropic service**; or
5. **khadi or village industries**; or
6. any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or
7. **any domestic service**; or
8. any activity, being a **profession practised by an individual or body of individuals**, if the number of persons employed by the individuals or body of individuals in relation to such profession is **less than ten**; or
9. any activity, being an **activity carried on by a co-operative society or a club** or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is **less than ten**.

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INDUSTRIAL DISPUTE – Section 2(k)

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.

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INDUSTRIAL DISPUTE – Section 2(k)

INDUSTRIAL DISPUTE

There should exist a dispute or difference	The dispute or difference should be between: (a) employer and employer; (b) employer and workmen; or (c) workmen and workmen.	The dispute should relate to an industry as defined in Section 2(j).	The dispute or difference should relate to (a) the employment or non-employment, or (b) terms of employment, or (c) the conditions of labor of any person;

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WORKMAN – Section 2(s)

"Workman" means any person (including an apprentice) employed in any industry to **do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,** whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

(a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute; or

(b) any person whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

i. who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
ii. who is employed in the police service or as an officer or other employee of a prison; or
iii. who is employed mainly in a managerial or administrative capacity; or
iv. who is employed in a supervisory capacity drawing more than Rs. 1,600 per month as wages; or
v. who is exercising either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. [Section 2(s)

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STRIKE – Section 2(q)

"Strike" means a **cessation of work** by a body of persons employed in any industry acting in combination, or **a concerted refusal**, or a 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.

Strike is a weapon of collective bargaining in the amount of workers

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STRIKE – Section 2(q)

The following points may be noted regarding the definition of strike

Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employers authority. Proof of formal consultations is not required. However, mere presence in the striking crowd would not amount to strike unless it can be shown that there was cessation of work.

A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike. However, the refusal by workmen should be in respect of normal lawful work which the workmen are under an obligation to do. But refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike (Northbrooke Jute Co. Ltd. v. Their Workmen, AIR 1960 SC 879). If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike [National Textile Workers' Union v. Shree Meenakshi Mills, (1951) II L.L.J. 516]

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STRIKE – Section 2(q)

The following points may be noted regarding the definition of strike

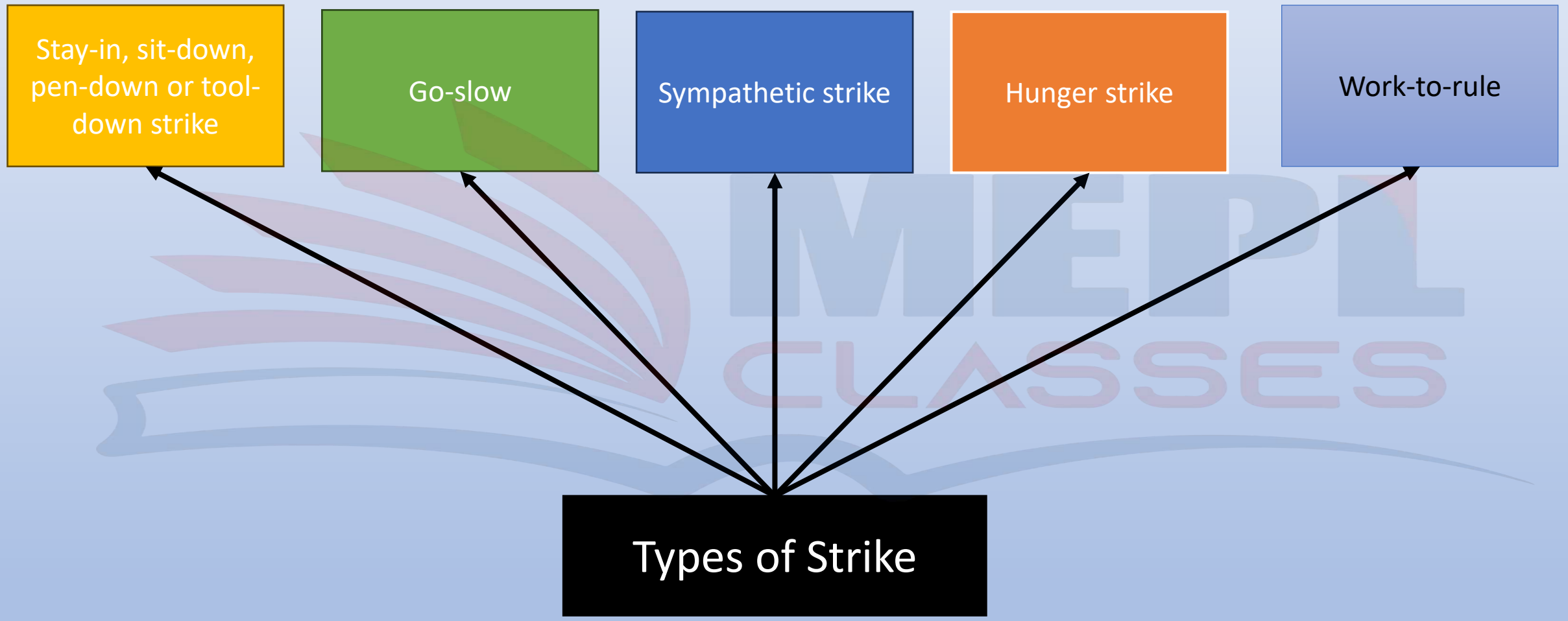
The striking workman, must be employed in an "industry" which has not been closed down

Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension. In Express Newspaper (P.) Ltd. v. Michael Mark, 1962-11, L.L.J. 220 S.C., the Supreme Court observed that if there is a strike by workmen, it does not indicate, even when strike is illegal, that they have abandoned their employment. However, for illegal strike, the employer can take disciplinary action and dismiss the striking workmen

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Types of Strike



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Types of Strike

Stay-in, sit-down, pen-down or tool-down strike

- In all such cases, the workmen after **taking their seats, refuse to do work.**
- Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike.
- Since such strikes are directed against the employer, they are also called **primary strikes**. In the case of Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation, AIR 1960 SC 160, the Supreme Court observed that on a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work.
- **Refusal under common understanding not to work is a strike**. If in pursuance of such common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands that would no doubt be a strike under Section 2(q).

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Types of Strike

Go Slow

- **Go-slow does not amount to strike**, but it is a **serious case of misconduct**
- In the case of Bharat Sugar Mills Ltd. v. Jai Singh, (1961) II LU 644 (647) SC, the Supreme Court explained the legality of go-slow in the following words: **"Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory**, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, 'go-slow' is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, 'go- slow' has always been considered a serious type of misconduct.

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Types of Strike

Go Slow

- In another case, it was observed that slow-down is **an insidious method of undermining the stability of a concern** and Tribunals certainly will not countenance it. It was held that **'go slow' is a serious misconduct being a covert and a more damaging breach of the contract of employment** (SU Motors v. Workman 1990-11 LU 39). **It is not a legitimate weapon** in the armory of labour. It has been regarded as a misconduct

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Types of Strike

Sympathetic Strike

- **Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike**. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in Ramalingam v. Indian Metallurgical Corporation, Madras, 1964-1 L.L.J. 81, it was held that such **cessation of work will not amount to a strike** since there is no intention to use the strike against the management

Hunger strike

- Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, **it will not constitute a strike**. **But if due to such an act, even those present for work, could not be given work, it will amount to strike** [Pepariach Sugar Mills Ltd. v. Their Workmen).

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Types of Strike

Work-to-rule

- Since there is no cessation of work, it does not constitute a strike.

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Legality of Strike

The legality of strike is determined with reference to the legal provisions enumerated in the Act and the **purpose for which the strike was declared is not relevant** in directing the legality. Section 10(3), 10A(4A), 22 and 23 of the Act deals with strike. Sections 22 and 23 impose restrictions on the commencement of strike while Sections 10(3) and 10A(4A) prohibit its continuance.

The **justifiability of strike** has no direct relation to the question of its legality and illegality. The justification of strike as held by the Punjab & Haryana High Court in the case of Matchwell Electricals of India v. Chief Commissioner, (1962) 2 LU 289, is entirely **unrelated to its legality or illegality**. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled

The Supreme Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha, AIR 1980 SC 1896 held that **justifiability of a strike is purely a question of fact**. Therefore, if the strike was resorted to by the workers in support of their **reasonable, fair and bona fide demands in peaceful manner, then the strike will be justified**. Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified

As regards the wages to the workers strike period are concerned, the Supreme Court in Charakulam Tea Estate v. Their Workmen, AIR 1969 SC 998 held that in case of strike which is legal and justified, **the workmen will be entitled to full wages for the strike period**. Similar view was taken by the Supreme Court in Crompton Greaves Ltd. case 1978 Lab 1C 1379 (SC)

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Legality of Strike

The Supreme Court in Statesman Ltd. v. Their Workman, AIR 1976 SC 758 held that if the strike **is illegal or unjustified**, strikers **will not be entitled to the wages for the strike period unless considerate circumstances constraint a different cause**. Similar view was taken by the Supreme Court in Madura Coats Ltd. v. The Inspector of Factories, Madurai, AIR 1981 SC 340

The Supreme Court has also considered the situation if the **strike is followed by lockout and vice versa**, and **both are unjustified**, in India Marine Service Pvt. Ltd. v. Their Workman, AIR 1963 SC 528. In this case, the Court evolved **the doctrine of "apportionment of blame"** to solve the problem. According to this doctrine, **when the workmen and the management are equally to be blamed**, the Court normally awards **half of the wages**. This doctrine was followed by the Supreme Court in several cases. Thus, the examination of the above cases reveal that when the blame for situation is apportioned roughly half and half between the management and workmen, the workmen are given half of the wages for the period involved

A division bench of the Supreme Court in the case of Bank of India v. TS Kelawala, (1990) 2 Lab 1C 39 held that the workers are not entitled to wages for the strike period. The Court observed that "**the legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike**". The Court, further observed, "whether the strike is legal or illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon or deprive the workers of it".

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Lockout – Section 2(l)

"Lock-out" 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. [Section 2(l)

Lock out is an **antithesis to strike**. Just as "strike" is a weapon available to the employees for enforcing their industrial demands, a **"lock out" is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands** [Express Newspapers (P). Ltd. v. their Workers (1962) II L.L.J. 227 SC]

In lock out, **the employer refuses to continue to employ** the workman employed by him even though there is no intention to close down the unit. The essence of lock out is the refusal of the employer to continue to employ workman. Even if suspension of work is ordered, it would constitute lock out. But **mere suspension of work, unless it is accompanied by an intention on the part of employer as a retaliation, will not amount to lock out**.

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Lockout

Locking out workmen **does not contemplate severance of the relationship of employer and the workmen.** In the case Lord Krishna Sugar Mills Ltd. v. State of U.P., (1964) II LU 76 (All), a closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen (i.e. to teach them a lesson) was held to be a lock out. But closure is not a lock out

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Layoff – Section 2(kkk)

"Lay-off' (with its grammatical variations and cognate expressions) means the failure, **refusal or inability of an employer to give employment** due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

(a) shortage of coal, power or raw materials, or

(b) accumulation of stocks, or

(c) break-down of machinery, or

(d) natural calamity, or

(e) for any other connected reason.

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Layoff – Section 2(kkk)

- Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is **not given employment by the employer within two hours of his so presenting himself** shall be deemed to have been **laid-off for that day** within the meaning of this clause.
- Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during this second half of the shift for the day and is given employment, then, he shall be **deemed to have been laid-off only for one-half of that day**.
- **Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day**

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Layoff – Section 2(kkk)

From the above provisions, it is clear that **lay-off is a temporary stoppage and within a reasonable period of time**, the employer expects that his business would continue and his employees who have been laid-off, the **contract of employment is not broken but is suspended for the time being.** But in the case of M.A. Veirya v. C.P. Fernandez, 1956-1, L.L.J. 547 Bomb., it was observed that it is not open to the employer, under the cloak of "lay-off", to keep his employees in a state of suspended animation and not to make up his mind whether the industry or business would ultimately continue or there would be a permanent stoppage and thereby deprive his employees of full wages. In other words, **the lay-off should not be mala fide in which case it will not be layoff.** Tribunal can adjudicate upon it and find out whether the employer has deliberately and maliciously brought about a situation where lay-off becomes necessary. **But, apart from the question of mala fide, the Tribunal cannot sit in judgement over the acts of management and investigate whether a more prudent management could have avoided the situation which led to lay-off** [Tatanagar Foundry v. Their Workmen, AIR 1962 SC 1533].

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Layoff – Section 2(kkk)

Further, refusal or inability to give employment must be due to

(i) shortage of coal, power or raw materials, or

(ii) accumulation of stock, or

(iii) break-down of machinery,

(iv) natural calamity, or

(v) for any other connected reason**. Financial stringency cannot constitute a ground for lay-off** (Hope Textiles Ltd. v. State of MP, 1993 I LU 603)

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Layoff – Section 2(kkk)

Lastly, the right to lay-off **cannot be claimed as an inherent right of the employer**. This right must be specifically provided for either by the contract of employment or by the statute (Workmen of Dewan Tea Estate v. Their Management). In fact 'lay-off' is an obligation on the part of the employer, i.e., in case of temporary stoppage of work, not to discharge the workmen but to lay-off the workmen till the situation improves. **Power to lay-off must be found out from the terms of contract of service** or the standing orders governing the establishment (Workmen v. Firestone Tyre and Rubber Co., 1976 3 SCC 819). **There cannot be lay-off in an industrial undertaking which has been closed down. Lay-off and closure cannot stand together.**

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DIFFERENCE BETWEEN LAYOFF & LOCKOUT

Lay-off	Lock-out
The employer refuses to give employment due to certain specified reasons	There is deliberate closure of the business and employer locks out the workers not due to any such reasons
The business continues	The place of business is closed for the time being
Wages are not to be paid for the period of layoff subject to certain condition	There is no question of any wages or compensation being paid unless the lock-out is held to be unjustified
The result of trade reasons	A weapon of collective bargaining
No such case in layoff	Subject to certain restrictions and penalties

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation

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Retrenchment – Section 2(oo)

"Retrenchment" 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 or reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

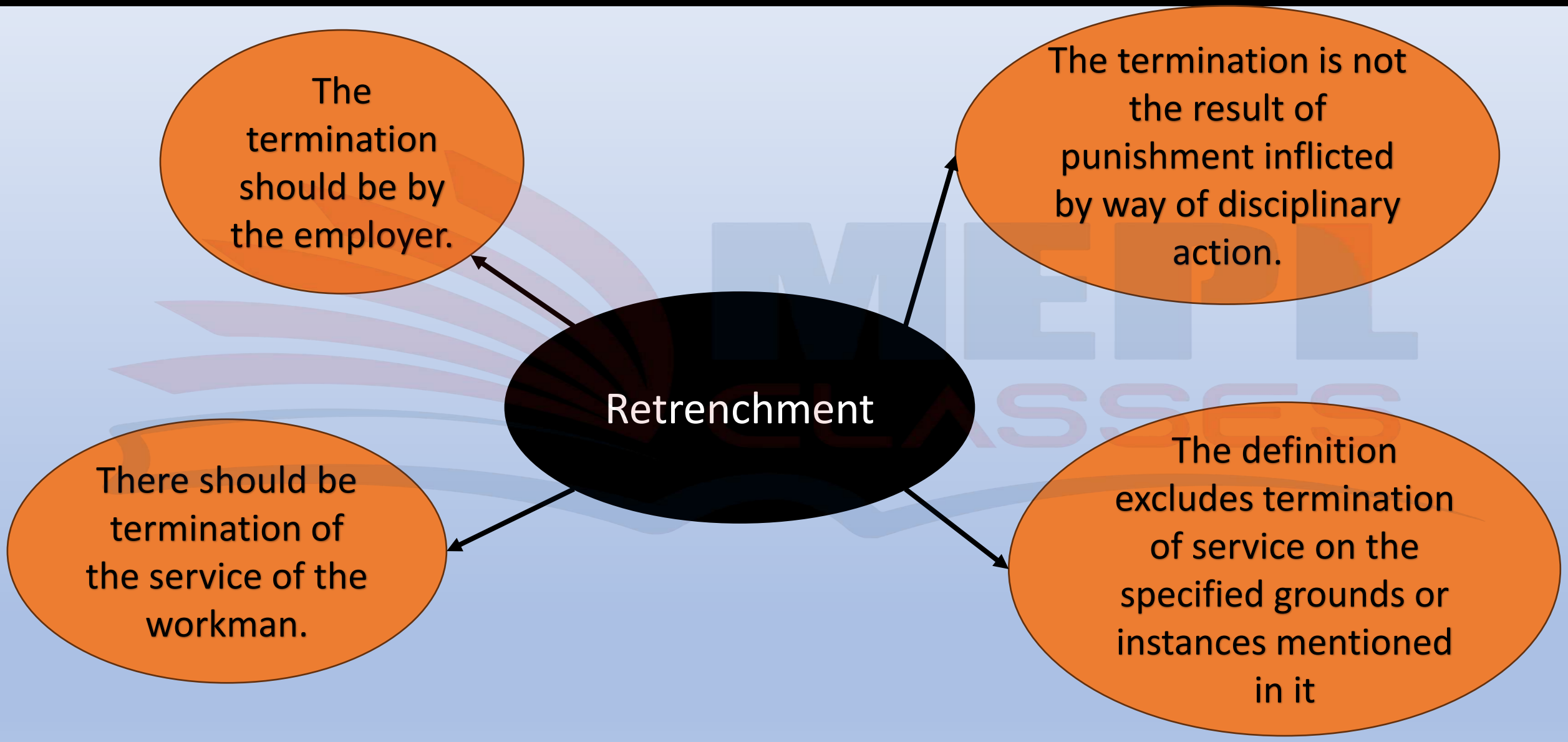
(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

(c) termination of the service of workman on the ground of continued ill-health.

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Retrenchment – Section 2(oo)



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Award – Section 2(b)

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

This definition was analysed in the case of Cox & Kings (Agents) Ltd. v. Their Workmen, AIR 1977 S.C. 1666 as follows: The definition of "award" is in two parts.

- determination, final or interim, of any industrial dispute
- determination of any question relating to an industrial dispute.

However, basic thing to both the parts is the **existence of an industrial dispute, actual or apprehended**. The 'determination contemplated is of the industrial dispute or a question relating thereto on merits

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Appropriate Government – Section 2(a)

in relation to any industrial **disputes concerning any industry carried on by or under the authority of the Central Government** or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporation Act, 1962, or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964, or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank establishment under Section 3 of the National Housing Bank Act, 1987 or the Banking Service Commission established under Section 3 of the Banking Service Commission Act, 1975, or an air transport service, or a banking or an insurance company, a mine, an oil-field, a Cantonment Board or a major port, the Central Government, and in relation to any other Industrial Dispute, the State Government.

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Average Pay – Section 2(aaa)

Average pay" means the average of the wages payable to a workman:

(i) in the case of monthly paid workman, in the three complete calendar months;

(ii) in the case of weekly paid workman, in the four complete weeks;

(iii)in the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked

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Closure – Section 2(cc)

"Closure" means the permanent closing down of a place of employment or a part thereof

Controlled Industry – Section 2(ee)

"Controlled Industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest

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Employer – Section 2(g)

"Employer" means:

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

"Employer includes among others an agent of an employer, general manager, director, occupier of factory etc.

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Public Utility Service – Section 2(n)

"Public Utility Service" means:

(i) any railway service or any transport service for the carriage of passengers or goods by air;

(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

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Public Utility Service – Section 2(n)

(vi) 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:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any one time, if in the opinion of the appropriate Government public emergency or public interest requires such extension.

Public utility services may be carried out by private companies or business corporations [D.N. Banerji v. P.R. Mukharjee (Budge Budge Municipality), AIR 1953 SC 58].

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Settlement – Section 2(p)

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen 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 in this behalf by the appropriate Government and the conciliation officer.

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Trade Union – Section 2(qq)

"Trade Union" means a trade union registered under the Trade Unions Act, 1926.

Unfair Labour Practice – Section 2(ra)

It means any of the practices specified in the Fifth Schedule.

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Wages – Section 2(rr)

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and includes:

(i) such allowance (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 foodgrains or other articles;

(iii) any travelling concession,

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Wages – Section 2(rr)

but does not include:

(a) any bonus;

(b) any contribution paid or payable by the employer 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;

(d) any commission payable on the promotion of sales or business or both.

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AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

(i) Works Committee.

(ii) Conciliation Officers.

(iii) Boards of Conciliation.

(iv) Court of Inquiry.

(v) Labour Tribunals.

(vi) Industrial Tribunals.

(vii) National Tribunal.

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(i) Works Committee – Section 3(2)

Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

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(ii) Conciliation Officers – Section 4

With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit. The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period. The main objective of appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes.

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(iii) Boards of Conciliation – Section 5

For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

It shall be the duty of Board to endeavour to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement. The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute. In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes.

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(iv) Courts of inquiry – Section 6

According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman. It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry. The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry.

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(v) Labour Courts – Section 7

Under Section 7, the appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act.

A Labour Court shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court unless —

(a) he is, or has been, a judge of a High Court: or
(b) he has, for a period not less than three years, been a district Judge or an Additional District Judge; or
(c) he has held any judicial office in India for not less than seven years; or
(d) he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

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(v) Labour Courts – Section 7

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to (i) hold its proceedings expeditiously, and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil Court. Labour Court has no power to permit suo motu the management to avail the opportunity of adducing fresh evidence in support of charges (1998 Lab 1C 540 AP).

Provisions of Article 137 of the Limitation Act do not apply to reference of dispute to the Labour Court. In case of delays, Court can mould relief by refusing back wages or directing payment of past wages (1999 LAB 1C SC 1435).

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(vi) Industrial Tribunals – Section 7-A

(1) 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.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:

(a) he is, or has been, a Judge of High Court; or

(b) he has, for a period of not less than three years, been a District Judges or an Additional District Judge.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.

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(vi) Industrial Tribunals – Section 7-A

Further, the person appointed as a Presiding Officer should be an independent person and must not have attained the age of 65 years.

The Industrial Tribunal gets its jurisdiction on a reference by the appropriate Government under Section 10. The Government can nominate a person to constitute a Tribunal for adjudication of industrial disputes as and when they arise and refer them to it. The Tribunal may be constituted for any limited or for a particular case or area. If appointed for a limited period, it ceases to function after the expiry of the term even when some matters are still pending (J.B. Mangharam & Co. v. Kher, A.I.R. 1956 M.B.113).

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(vii) National Tribunals – Section 7-B

(1) Under Section 7-B, the Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve questions of national importance or (b) are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes;

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government;

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court; or

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Section 7-C further provides that such a presiding officer should be an independent person and must not have attained the age of 65 years.

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REFERENCE OF DISPUTES – Section 10

The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10. The various provisions contained in this lengthy Section are summed up below:

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(A) Reference of disputes to various Authorities – Section 10(1)

Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing make a reference to various authorities in the following ways:

a) It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute. As noted earlier, duty of the Board is to promote settlement and not to adjudicate the dispute. A failure report of the Board will help the Government to make up its mind as to whether the dispute can be referred for compulsory adjudication. Further, any matter appearing to be connected with or relevant to the dispute cannot be referred to a Conciliation Board (Nirma Textile Finishing Mills Ltd. v. Second Tribunal, Punjab 1957 I L.L.J. 460 S.C.).

b) It may refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry. The purpose of making such a reference is not conciliatory or adjudicatory but only investigatory.

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(A) Reference of disputes to various Authorities – Section 10(1)

c) It may refer the dispute, or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. However, disputes relating to any matter falling in the Third Schedule can also be referred to a Labour Court, if the appropriate Government so thinks fit provided the dispute is not likely to affect more than 100 workmen.

d) It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication. [Section 10(1)]

Under the second proviso to Section 10(1), where the dispute relates to a public utility service and a notice of strike or lock-out under Section 22 has been given, it is mandatory for the appropriate Government or the Central Government as the case may be, to make a reference even when some proceedings under the Act are pending in respect of the dispute. But the Government may refuse to make the reference if it considers that

(i) notice of strike/lock-out has been frivolously or vexatiously given, or

(ii) it would be inexpedient to make the reference.

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(A) Reference of disputes to various Authorities – Section 10(1)

If the Government comes to a conclusion and forms an opinion which is vitiated by mala fide or biased or irrelevant or extraneous considerations, then the decision of the Government will be open to judicial review.

Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court (Labour Court, Tribunal or National Tribunal), the appropriate Government, if satisfied that the person applying represent the majority of each party, shall make the reference accordingly.

The Industrial Disputes Act provides for no appeal or revision as against the awards so made nor any such remedy is specifically provided for by any other statute or statutory provision though no doubt the Supreme Court in its discretion may under Article 136 of the Constitution of India, grant special leave to a party aggrieved by such an award to appeal to the Supreme Court against an award so made (1978-11 Labour Law Journal, Cal.).

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(A) Reference of disputes to various Authorities – Section 10(1)

Section 10(1) providing for the powers of appropriate Government to make a reference, has been the favoured subject of judicial interpretation. The various observations made in the course of judicial interpretation of Section 10(1) are summarised below:

i. The order making a reference is an administrative act and it is not a judicial or quasi-judicial act [State of Madras v. C.P. Sarathy, (1953) I L.L.J. 174 SC]. It is because the Government cannot go into the merits of the dispute. Its duty is only to refer the dispute for the adjudication of the authority so that the dispute is settled at an early date.

ii. The powers of the appropriate Government to make a reference is discretionary but within narrow limits it is open to judicial review.

iii. Ordinarily the Government cannot be compelled to make a reference. But in such a situation the Government must give reasons under Section 12(5) of the Act. If the Court is satisfied that the reasons given by the Government for refusing to the issue, the Government can be compelled to reconsider its decision by a writ of Mandamus (State of Bombay v. K.P. Krishnan, AIR 1960 SC 1223). The appropriate government is not bound to refer belated claims (1994 I LLN 538 P&H DB).

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(A) Reference of disputes to various Authorities – Section 10(1)

iv. In the case of Western India Match Co. Ltd. v. Workmen, it was held that it is not mandatory for the appropriate Government to wait for the outcome of the conciliation proceedings before making an order of reference. The expression "the appropriate Government at any time may refer" takes effect in such cases where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed.

v. Refusal of the Government to refer the dispute for adjudication does not debar it from making subsequent reference. It at one stage the appropriate Government had come to the conclusion that no reference was called for in the interest of industrial peace, there is nothing in the Act, which bars it from re-examining the matter, whether in the light of fresh material or otherwise, and from making a reference if it comes to the conclusion that a reference is justified and it is expedient in the interest of industrial peace to make such reference (Western India Match Co. Ltd. v. Workers Union).

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(A) Reference of disputes to various Authorities – Section 10(1)

vi. The appropriate Government has no power either expressly or impliedly to cancel, withdraw or supersede any matter referred for adjudication. However, it is empowered to add to or amplify a matter already referred for adjudication (State of Bihar v. D.N. Ganguli, 1958-11 L.L.J. 634 S.C.). The Government is competent to correct clerical error (Dabur Ltd. v. Workmen, AIR 1968 S.C. 17). Even the Government can refer a dispute already pending before a Tribunal, afresh to another Tribunal, if the former Tribunal has ceased to exist. Now under Section 33-B the Government is empowered to transfer any dispute from one Tribunal to another Tribunal.

vii. If reference to dispute is made in general terms and disputes are not particularised, the reference will not become bad provided the dispute in question can be gathered by Tribunal from reference and surrounding facts (State of Madras v. C.P. Sarthy. Also see Hotel Imperial, New Delhi v. The Chief Commissioner, Delhi).

viii. The appropriate Government can decide, before making a reference, the prima facie case, but it cannot decide the issue on merits [Bombay Union of Journalists v. State of Bombay, (1964) 1 L.L.J., 351 SC].

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(B) Reference of dispute to National Tribunal involving question of importance, etc. – Section 10(1-A)

According to Section 10(1-A), where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal, and accordingly.

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(B) Reference of dispute to National Tribunal involving question of importance, etc. – Section 10(1-A)

(a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal. [Section 10(1-A) and 10(5)]

In this sub-section, "Labour Court" or "Tribunal" includes any Court or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

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(C) Reference on application of parties – Section 10(2)

According to Section 10(2), where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly and shall specify the time limit (not exceeding three months) to submit the award, such time limit may be extended if required.

Thus, it is mandatory for the Government to make a reference if

(i) application to this effect has been made by the parties to the dispute, and

(ii) the applicants represent the majority of each party to the satisfaction of the appropriate Government. [Poona Labour Union v. State of Maharashtra, (1969) II L.L.J. 291 Bombay]. The Government cannot, before making reference, go into the question of whether any industrial dispute exists or is apprehended.

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(D) Time limit for submission of awards – Section 10(2A)

According to Section 10(2A) an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal shall specify the period within which its award shall be submitted to the appropriate Government. The idea is to expedite the proceedings. Sub-section (2A) reads as follows:

"An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

Provided that where such dispute is connected with an individual workman, no such period shall exceed three months:

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(D) Time limit for submission of awards – Section 10(2A)

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed".

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(E) Prohibition of strike or lock-out – Section 10(3)

Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. [Section 10(3)]

It is necessary that the Government makes an order prohibiting strike or lock out. If no order is made, continuance of strike or lock-out is not illegal. Further, once the order prohibiting strike or lock-out is made, the mere fact that strike was on a matter not covered by the reference, is immaterial [Keventers Karamchari Sangh v. Lt. Governor Delhi, (1971) II L.L.J. 525 Delhi].

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(E) Prohibition of strike or lock-out – Section 10(3)

The only requirement for taking action under Section 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradiction to judicial or quasi-judicial function. Merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a review of any judicial or quasi-judicial order or determination. The industrial dispute may nevertheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Section 10(1) nor is it precluded from making a reference on the only ground that on an earlier occasion, it had declined to make the reference.

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(F) Subject-matter of adjudication – Section 10(4)

Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

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(G) Powers of the Government to add parties – Section 10(5)

Where a dispute concerning any establishment of establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this Section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

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VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION – Section 10-A

Section 10-A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators. To achieve this purpose, Section 10-A makes the following provisions:

i. Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

ii. An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

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VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION – Section 10-A

iii. A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

According to Section 10-A(3A), where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed; and when any such notification is issued, the employer and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

iv. The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.

v. Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

vi. Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

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STRIKES AND LOCK-OUTS – Section 10(3) & Section 10A(4A)

Strikes and lock-outs are the two weapons in the hands of workers and employers respectively, which they can use to press their viewpoints in the process of collective bargaining. The Industrial Disputes Act, 1947 does not grant an unrestricted right of strike or lock-out. Under Section 10(3) and Section 10A(4A), the Government is empowered to issue order for prohibiting continuance of strike or lock-out. Sections 22 and 23 make further provisions restricting the commencement of strikes and lock-outs.

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(i) General prohibition of strikes and lock-outs – Section 23

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 the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and Mo 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

(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. (Section 23)

The purpose of above provisions is to ensure peaceful atmosphere during the pendency of any proceeding before a Conciliation Officer, Labour Court, Tribunal or National Tribunal or Arbitrator under Section 10A.

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(ii) Prohibition of strikes and lock-outs in public utility service – Section 22

The abovementioned restrictions on strikes and lock-outs are applicable to both utility services and non-utility services. Section 22 provides for following additional safeguards for the smooth and uninterrupted running of public utility services and to obviate the possibility of inconvenience to the general public and society (State of Bihar v. Deodar Jha, AIR 1958 Pat. 51).

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, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or
   b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or
   c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or
   d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.

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(ii) Prohibition of strikes and lock-outs in public utility service – Section 22

2) No employer carrying on any public utility service shall lock-out any of his workmen:
   (a) without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or
   (b) within 14 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 7 days after the conciliation of such proceedings.

Right to Strike is to be exercised after complying with certain conditions regarding service of notice and also after exhausting intermediate and salutary remedy of conciliation proceedings (Dharam Singh Rajput v. Bank of lndia, Bombay, 1979 Lab. I.C. 1079).

The Act nowhere contemplates that a dispute would come into existence in any particular or specified manner. For coming into existence of an industrial dispute, a written demand is not a size qua non unless of course in the case of public utility service because Section 22 forbids going on strike without giving a strike notice (1978-1 Labour Law Journal 484 SC).

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(ii) Prohibition of strikes and lock-outs in public utility service – Section 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, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.
4) The notice of strike referred to in Section 22(1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.
5) The notice of lock-out referred to in Section 22(2) shall be given in such manner as may be prescribed.
6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day. (Section 22)

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(iii) Illegal strikes and lock-outs – Section 25

1) A strike or lock-out shall be illegal if:
   (i) it is commenced or declared in contravention of Section 22 or Section 23; or
   (ii) It is continued in contravention of an order made under Section 10(3) or Section 10A(4A).
2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10(3) or Section 10A(4A).
3) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. (Section 24)

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

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UNFAIR LABOUR PRACTICES – Section 25U

A new Chapter VC relating to unfair labour practices has been inserted. Section 25T under this Chapter lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

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PENALTIES

1. Penalty for illegal strikes – Section 26(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.

In the case of Vijay Kumar Oil Mills v. Their Workmen, it was held that the act of a workman to participate in an illegal strike gives the employer certain rights against the workman, which are not the creation of the Statute but are based on policy, and the employer has every right to waive such rights. In a dispute before the Tribunal, waiver can be a valid defence by the workman. However, waiver by the employer cannot be a defence against prosecution under Section 26 and something which is illegal by Statute cannot be made legal by waiver (Punjab National Bank v. Their Workmen).

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2. Penalty for illegal lock-outs – Section 26(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.

3. Penalty for instigation etc. – Section 27

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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4. Penalty for giving financial aid to illegal strikes and lock-outs – Section 28

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

5. Penalty for breach of settlement or award – Section 29

Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, should be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for everyday during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion has been injured by such breach.

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6. Penalty for disclosing confidential information – Section 30

Any person who wilfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaints made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

7. Penalty for closure without notice – Section 30-A

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both.

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8. Penalty for other offences – Section 31

Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Further, whoever contravenes any of the provisions of this Act or any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

9. Offence by companies, etc. – Section 32

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every director, manager, secretary, agent or other officer or person concerned with management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

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Industrial Relations

Industrial Employment (Standing Orders) Act, 1946

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Industrial Employment Act, 1946 – OBJECT & SCOPE

- Firstly, to enforce uniformity in the conditions of services under different employers in different industrial establishments.
- Secondly, the employer, once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests.
- Thirdly, with the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment.
- Fourthly, for maintaining industrial peace and continued productivity, the significance of the express written conditions of employment cannot be minimised or exaggerated. he object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment [Barauni Refinery Pragati Sheet Parishad v. Indian Oil Corporation Ltd. (1991) 1 SCC 4].

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Industrial Employment Act, 1946 – OBJECT & SCOPE

- The Act extends to the whole of India and applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.
- Section 13-B of the Act specifically exempt certain industrial establishments from the purview of the Act, viz., the industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.
- Further, Section 14 provides that the appropriate Government may by notification in the Official Gazette exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

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Appellate Authority – Section 2(a)

It means an authority appointed by the appropriate Government by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act.

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Appropriate Government – Section 2(b)

"Appropriate Government" means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:

Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

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Certifying Officer – Section 2(c)

"Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act.

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Employer – Section 2(d)

"Employer" means the owner of an industrial establishment to which this Act applies and also includes the following persons:

(i) A manager so named under Section 7(1)(f) of the Factories Act, 1948.

(ii) The head of the department or any authority appointed by the Government in any industrial establishment under its control.

(iii) Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of Government.

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Industrial Establishment – Section 2(e)

It means

(i) an industrial establishment defined by Section 2(ii) of the Payment of Wages Act, 1936, or

(ii) a factory as defined by Section 2(m) of the Factories Act, 1948, or

(iii) a railway as defined by Section 2(4) of the Indian Railways Act, 1890, or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

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Standing Orders – Section 2(g)

"Standing Orders" means rules relating to matters set out in the Schedule to the Act.

Wages and Workmen – Section 2(i)

The terms "Wages" and "Workmen" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947.

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CERTIFICATION OF DRAFT STANDING ORDERS

Submission of draft Standing Orders by employers to the certifying officer

- Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.
- Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.
- The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.
- If the industrial establishment are of similar nature, a group of employers owning those industrial establishment may submit a joint draft of Standing Orders subject to such conditions as may be prescribed.

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Conditions for certification of Standing Orders

According to Section 4 of the Act, Standing Orders shall be certifiable if

(a) provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and

(b) the Standing Orders are otherwise in conformity with the provisions of the Act.

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Fairness or reasonableness of Standing Orders

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.

The Act, has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction. The Certifying Officer has a mandatory duty to discharge and he acts in a quasi-judicial manner. Where a matter is not included in the Schedule and the concerned appropriate Government has not added any such item to the Schedule, neither the employer has a right to frame a Standing Order enabling him to transfer his employees nor the Certifying Officer has jurisdiction to certify the same. The consent of the employees to such standing orders would not make any difference (Air Gases Mazdoor Sangh, Varanasi v. Indian Air Gases Ltd., 1977 Lab. I.C. 575).

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Certification of Standing Orders

Procedure to be followed by the Certifying Officer:

Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

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Certification of Standing Orders

Effect of certification:

The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the employer with respect to any of those matters. These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.

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Certification of Standing Orders

Register of Standing Orders:

Section 8 empowers the Certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.

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APPEALS – Section 6

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives. The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

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DATE OF OPERATION OF STANDING ORDERS – Section 7

Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.

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POSTING OF STANDING ORDERS – Section 9

The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

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DURATION AND MODIFICATION OF STANDING ORDERS – Section 10

Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen. Such modification will not be affected until the expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be. This Section further empowers an employer or the workmen or a trade union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified by making an application to the Certifying Officer. Such application should be accompanied by 5 copies of the proposed modifications and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of such agreement should be filed along with the application.

Workmen are entitled to apply for modification of the Standing Orders. (1977-II Labour Law Journal 503). Section 10(2) does not contain any time limit for making modification application. It can be made at any time. [Indian Express Employees Union v. Indian Express (Madurai) Ltd. (1998) 1 Cur LR 1161 (Ker)]

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PAYMENT OF SUBSISTENCE ALLOWANCE – Section 10A

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Act which was inserted by the amending Act (No. 18) of 1982. Section 10A provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and

(b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

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INTERPRETATION OF STANDING ORDERS – Section 13-A

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any Labour Court constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour Court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

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TEMPORARY APPLICATION OF MODEL STANDING ORDERS – Section 12-A

Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that establishment and the provisions of Sections 9, 13(2) and 13-A shall apply.

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Matters to be provided in Standing Orders under this Act

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.

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Matters to be provided in Standing Orders under this Act

7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

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Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company

Regulatory Framework

l The Companies Act, 2013 and Rules made thereunder

l Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

INTRODUCTION

With India possessing vast natural and human resources and being among the fastest-growing economies in the world with a large market, it provides immense opportunities for foreign companies to grow and diversify their business. Therefore, there is a lot of interest among foreign companies and foreign nationals to open a wholly owned subsidiary, branch, liaison or project office in India or start a business in India.

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

- **Incorporation of a private limited company:** It is the easiest and fastest type of India entry strategy for foreign nationals and foreign companies. Foreign direct investment of up to 100% into a private limited company or limited company is under the automatic route, wherein no Central Government permission is required. Hence, incorporation of a private limited company as a wholly-owned subsidiary of a foreign company or joint venture is the cheapest, easiest and fastest entry strategy for foreign companies and foreign nationals into India.

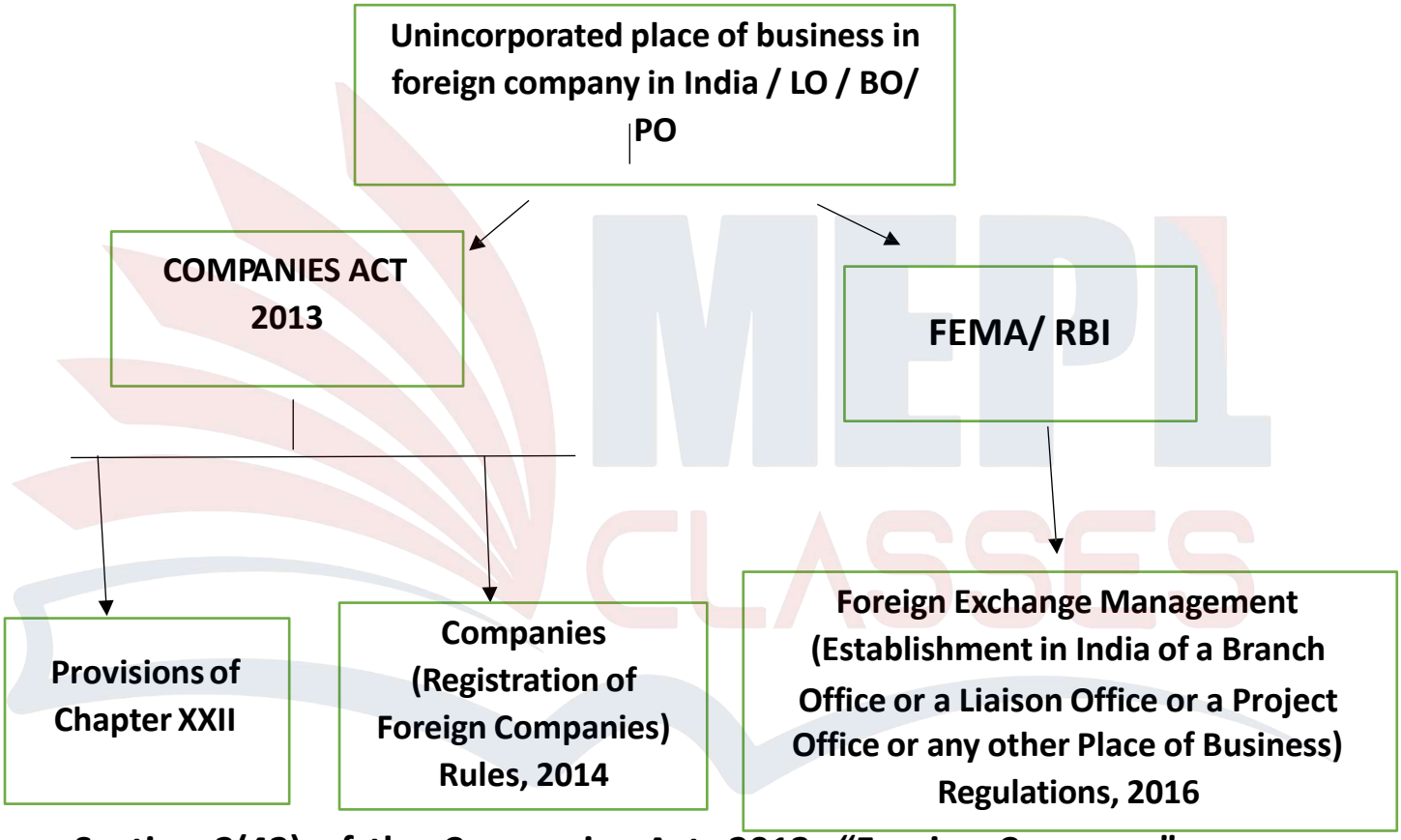
- **Registration of Branch Office, Liaison Office or Project Office:** It requires RBI and/or Government approval. Therefore, the cost and time taken for registration of branch

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office, liaison office or project office for a foreign company are higher than the cost and time associated with incorporation of a private limited company. Further, foreign nationals cannot open a branch office, liaison office or project office.

Hence, this option is limited to being an India entry strategy only for foreign companies.

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



As per Section 2(42) of the Companies Act, 2013, "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.

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As per Section 2(87) of the Companies Act, 2013, Subsidiary Company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company –

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

(ii)exercises or controls more than one-half of the 19[total voting power] either at its own or together with one or more of its subsidiary companies:

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

Explanation. –For the purposes of this clause, –

(a)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.

Key Provisions

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

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

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

Sections 379 to 393A under Chapter XXII of the Companies Act, 2013 ('Act') deal with Companies Incorporated Outside India.

Section 379 of the Act provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference of a foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act, as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India.

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 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 prescribed.

Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified places or documents as required under Section 382.

Section 381 of the Act requires a Foreign Company to maintain books of Account and file a copy of balance sheet and profit and loss account in prescribed form with ROC every calendar year. These accounts should be accompanied by list of place of business established by the foreign company in India.

Sections 380 to 386 (both inclusive) and sections 392 and 393 of the Act shall apply to all foreign companies.

As regards the applicability of the provisions of the Act to foreign companies, the following provisions of section 384 are to be noted:

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

(i)The provisions of section 71 relating to Debentures shall apply mutatis mutandis to a foreign company.

(ii)The provisions of Section 92 regarding (filing of annual returns) and Section 135 (Corporate Social Responsibility) shall, subject to such exceptions, modifications or adaptations as may be made therein by the rules made under the Act, apply to a foreign company as they apply to a company incorporated in India.

(iii)The provisions of Section 128 relating to the (to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India), Section 209A (inspection of accounts), Section 233A (Special audit), Section 233B (audit of cost accounts), Section 234-246 (investigations), so far as may be, apply only to the Indian business of a foreign company having an established place of business in India as they apply to a company incorporated in India.

(iv)The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.

(v)The provisions of Chapter XIV (Inspection, Inquiry and Investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

As per Section 386(c) of the Act, having a share transfer office or registration office will constitute a place of business. In Tovarishestvo Manufacture Liudvig Rabenek, Re [1944] 2 All ER 556 it was held that where representatives of a company incorporated outside the country frequently stayed in a hotel in England for looking after matter of business, it was held that the company had a place of business in England.

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

Provisions pertaining to name

As per Rule 8 of the Companies (Incorporation) Rules, 2014 ("hereinafter referred to as the Rules") states that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available.

Provided further that provisions of Rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India.

The name shall be considered undesirable, if -

- **The proposed name implies association or connection with an embassy or consulate of a foreign government.**
- **The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country.**

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government-to-government participation or patronage and no company shall be incorporated using the name of an enemy country.

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

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management

(Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time.

Branch Office

A branch office is a suitable business model for foreign companies looking to establish a temporary presence in India. The branch office serves as an extension of the head office business and carries on the same business and activity as that of its parent company.

Branch office in relation to a company, means any establishment described as such by the company. These BOs represent the parent company and usually undertake the same activities as the latter. The profits from these are easily remittable from India, subject to the taxes applicable.

Eligibility for setting up a Branch Office

- The applicant company must be a body corporate incorporated outside India;
- The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);
- The net worth of the branch office must not be less than US $100,000; and
- The parent company should have a profit-making record in the immediately preceding five financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

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

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

(i) Export/import of goods.

(ii) Rendering professional or consultancy services.

(iii) Carrying out research work in which the parent company is engaged.

(iv)Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

(v)Representing the parent company in India and acting as buying/ selling agent in India.

(vi)Rendering services in Information Technology and development of software in India.

(vii)Rendering technical support to the products supplied by parent/group companies.

(viii) Representing a foreign airline/shipping company

A branch office is not allowed to undertake any Retail Trading Activities. Manufacturing or Processing activities, undertaken directly or indirectly, are also barred.

The RBI has given general permission to foreign companies to set up branch offices in Special Economic Zones (SEZs) subject to the following conditions:

1. such BOs are functioning in those sectors where 100 per cent FDI is permitted;

2. such BOs comply with Chapter XXII of the Companies Act, 2013;

3. such BOs function on a stand-alone basis.

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Every Branch Office has to deliver documents as specified in Section 380 of the Companies Act, 2013 within thirty days of its establishment to the Registrar.

Registration of a Branch Office in India

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

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

The procedures for registration require a foreign company to deposit the following set of forms:

- FNC form duly signed by AR;
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration;
- The incorporation documents of the branch office to be established in India;
- Proof of registered office;
- Note on location or proposed activity;
- The latest audited balance sheet of the applicant entity;
- Board resolution to open a branch office;
- KYC of the authorized signatory; and
- Information about the local representatives of the parent company in the branch office.

Funding of the BO by the Foreign Company

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A. Equity Share Capital: in the usual way Indian companies are financed.

B.Preferred Share Capital: such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).

C.Debentures and Borrowings: there can be redeemable, convertible or non-convertible. Companies can issue debentures, bonds and other debt securities. These also, when convertible into equity shares, are treated as FDI.

LIAISON OFFICE

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

Eligibility for setting up a Liaison office

- The applicant company must be a body corporate incorporated outside India;
- The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);
- The net worth of the liaison office must not be less than US $ 50,000; and
- The parent company should have a profit-making record in the immediately preceding three financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

(i) Representing the parent company / group companies in India.

(ii) Promoting export / import from / to India.

(iii)Promoting technical/ financial collaborations between parent / group companies and companies in India.

(iv)Acting as a communication channel between the parent company and Indian companies.

Extension of the validity period for Liaison Office

1)A person resident outside India may establish a liaison office for a period of three years.

2)The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a period of three years from the date of expiry of the original approval / extension granted, subject to such directions issued by the Reserve Bank in this regard.

3)The application for extension of the validity period of the liaison office of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Regulation (DBR), Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively.

4)Entities engaged in construction and development sectors and which are Non-Banking Finance Companies are permitted to open a Liaison Office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies).

Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

	Branch Office	*Liaison Office*
Track Record	A profit making track record during the immediately Five Financial years in the home country	A profit making track record during the immediately Three Financial years in the home country
Net Worth	Not less than USD 100,000 or its equivalent.	Not less than USD 50,000 or its equivalent.
Permissible Activities	• Export & Import of goods – only on wholesale basis. • Rendering professional or consultancy services. • Carrying on research work, in areas in which the parent company is engaged. • Promoting technical or financial collaborations between Indian companies and parent or overseas group company. • Representing the parent company in India and acting as buying/ selling agent in India. • Rendering services in information technology and development of software in India. • Rendering technical support to the products supplied by parent/ group companies. • Foreign airline/ shipping company.	• Representing in India the parent company / group companies. • Promoting export / import from / to India. • Promoting technical/financial collaborations between parent/group companies and companies in India. • Acting as a communication channel between the parent company and Indian companies.

PROJECT OFFICE

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

Parameters of project office

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

i. the project is funded directly by inward remittance from abroad; or

ii.the project is funded by a bilateral or multilateral International Financing Agency; or

iii. the project has been cleared by an appropriate authority; or

iv.a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

A person from any country other than Pakistan who has been awarded a contract for a project by a government authority/ Public Sector Undertaking may open a bank account with an Authorised Dealer Category-I bank without any prior approval from the Reserve Bank.

"a bilateral or multilateral International Financing Agency" means the World Bank or the International Monetary Fund or similar other body.

Cases in which RBI Approval is required for Setting up BO, PO and LO in India

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

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

A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The process of setting up is an easy one with minimal compliance requirements. The permission to set-up a BO has to be obtained by the RBI under the FEMA, 1999 provisions. RBI provides guidelines to be followed for establishing a BO; the former also reserves the right to reject an application on the non-fulfilment of the same. The Applications are to be made in form FNC and are considered by the RBI under two routes determined by the degree of Foreign Direct Investment (FDI):

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

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

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

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Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-I bank as per the guidelines given by Reserve Bank of India (RBI). If the principal business of the entity resident outside India falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time, and the entity seeks to open a BO/LO/PO, the AD Category-I bank may consider such applications under the delegated powers.

An application from a foreign for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India and shall be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110 001 who shall process the applications in consultation with the Government of India, in the following cases:

- The applicant is a citizen of or is registered/incorporated in Pakistan;
- The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. However, prior approval of Reserve Bank of India shall not be required in cases where Government approval or license/permission by the concerned Ministry/ Regulator has already been granted. Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. The term “permission” used in the Government of India Notification dated January 21, 2019 does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the above four sectors;

- The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government. However, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act and shall not seek permission under FEMA 22(R).

The application by the foreign company has to be made through a designated AD Category-I bank to the General Manager of the Foreign Exchange Department of RBI. Some prescribed documents have to be attached with the application. The RBI Master Circular of 2016 provides two of the documents that have to be attached:

1.English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
2. Latest Audited Balance Sheet of the applicant entity."

Even if applications do not satisfy the criteria if an agent files them on behalf of a parent company, that parent company ought to satisfy the criteria. The AD-I Category bank involved in the process will conduct due diligence on the Applicant in the following areas- "background, antecedents of the promoter, nature and location of activity, sources of funds, etc.", along with compliance of the Know Your Customer (KYC) norms.

The BO hence, once approved by the RBI, will be allotted a Unique Identification Number (UIN). Once the offices have been set up, the BO must also obtain a Permanent Account Number (PAN) from the Income Tax Authorities. This should be reported in the Annual Activity Certificate (AAC) that the BO is required to present at the end of each ear to show that the activities are undertaking in the permitted categories only.

Section 382 of the Companies Act, 2013, states that the company has to 'conspicuously' exhibit outside the office, the company's name and the specify

country it was incorporated in. The name must be in English Language and in the local language of the area where the office is set-up. If the members of the company have limited liability, then the same has to be specified with the name of the company outside the office and also mentioned in all the broachers, prospectus and any other circulars generated by the company. The Act also provides for the registration of the prospectus of the company with the registrar before it circulates and spreads any information about the issuance of securities by the company.

Procedure for Establishment of BO/LO/PO

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

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

Following are the prescribed documents:
(a)Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.
[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].
(b)Audited Balance sheet of the applicant company for the last three/ five years in case of branch office/ liaison office respectively.
[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted].

(c)Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.
(d)Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

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

2.Allotment of Unique Identification Number (UIN): However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/ LO.

3.Issue of Approval letter: After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India. This is in order to enable the Reserve Bank to keep, maintain and upload up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India, on its website.

4.Intimation to Designated AD Category I bank: An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly. In case an approval granted by the AD bank has either been surrendered by the applicant or has expired without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly.

5.Extension for setting up office: The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/ PO for which approval

has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require the prior approval of Reserve Bank of India in this regard.

6. BO/LO by foreign banks and insurance companies: All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

Opening of bank account by BO/LO/PO

I. An LO may approach the designated AD Category I Bank in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India. The permitted Credits and Debits to the account shall be:

(a) Credits

1.Funds received from Head Office through normal banking channels for meeting the expenses of the office.

2.Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels.

3. Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.

4. Sale proceeds of assets of the LO.

(b) Debits: Only for meeting the local expenses of the office.

A BO may approach any AD Category I Bank in India to open an account for its operations in India.
Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. Debits to this account shall be for the expenses incurred by the BO and towards remittance of profit/ winding up proceeds.

II.Any foreign entity except an entity from Pakistan who has been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank. An entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its project office in India.

III.AD Category – I banks can open non-interest bearing foreign currency account for POs in India subject to the following:
(a)The PO has been established in India, with the general / specific permission of Reserve Bank of India, having the requisite approval from the concerned Project Sanctioning Authority concerned as per FEM (Establishment in India of Branch Office or a Project Office or any other Place of Business Regulations, 2016).
(b)The contract governing the project specifically provides for payment in foreign currency.
(c) Each PO can open two foreign currency accounts, usually one denominated in USD and other in-home currency of the project awardee, provided both are maintained with the same AD Category–I bank.
(d)The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/ Group Company abroad or bilateral / multilateral international financing agency.
(e)The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category I bank. Further, the accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD Category–I bank.

(f) The foreign currency accounts have to be closed at the completion of the project.

Project Office

To open the bank account approval AD Bank is required

- If the project office is of an entity not from Pakistan: No prior approval of RBI is required
- If the project office is of an entity from Pakistan: Prior approval of RBI is required Project office can have two foreign currency accounts- one denominated in USD and other in the home currency of the awardees of the project- but with the same bank

Annual Activity Certificate by BO/LO/PO

(i) The Annual Activity Certificate (AAC) as at the end of March 31 each year along with the required documents needs to be submitted by the following:
(a) In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
(b)In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

(ii) The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank, the same should immediately be reported to the General Manager, Reserve Bank of India, CO Cell, New Delhi, along with the copy of the AAC and their comments thereon.

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Extension of validity period of the approval of LO and PO

(i) Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the AD Category-I bank concerned under whose jurisdiction the LO/nodal office is located. The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval/ extension granted if the applicant has complied with the following conditions and the application is otherwise in order:

(a)The LO should have submitted the Annual Activity Certificates for the previous years; and

(b)The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

Such extension has to be granted, as expeditiously as possible as and in any case not later than one month from the receipt of the request under intimation to the General Manager, Reserve Bank of India, CO Cell, New Delhi quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on its website immediately.

(ii) Further, entities engaged in construction and development sectors and Non-Banking Finance Companies are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies).

Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

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Application for additional offices and activities

i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

(a)If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.

(b)The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.

(c) Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank. Changes in the postal address may be intimated to the CO Cell, New Delhi by the AD Category-I bank at the earliest.

ii. Requests for undertaking activities in addition to what has been permitted initially (Annex C) by Reserve Bank of India / AD Category-I bank may be submitted by the applicant to the Reserve Bank through the designated AD Category -I bank justifying the need.

Extension of Fund and Non-Fund Based Facilities

AD Category-I bank may be based on their business prudence, Board approved policy and compliance to extant rules/ regulations stipulated by DBR, RBI extend fund/non-fund-based facilities to BOs/POs only.

Remittances of Profits/ Surplus

An overview of remittances of profits or surplus for branch and project offices is given below. As liaison office cannot undertake any business activities, the question of remittance of profits etc. by them does not arise.

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Branch Office	Project Office
Permitted, net of taxes	Intermittent remittances permitted pending winding up or completion of the project
Following documents to be submitted with AD Bank: (i) Certified copy of audited balance sheet and profit and loss account for the relevant year. (ii) Chartered Accountant certificate certifying: - the manner of arriving remittable profits - that the remittable profit has been earned by undertaking permitted activities	Following documents to be submitted with AD Bank: (i)Auditors/ Chartered Accountant Certificate confirming that a sufficient provision has been made to meet the liabilities in India including income tax (ii)Undertaking from the project office that remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittances from abroad.

Closure of BO/PO/LO

1. Submission of request for closure: Requests for closure of the BO / LO/ PO and allowing the remittance of winding up proceeds of BO / LO/ PO may be submitted to the designated AD Category - I bank by the BO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submitted along with the following documents:

a)Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.

b) Auditor's certificate:

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(i)indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
(ii)confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
(iii)confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.

c)Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.

d)A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.

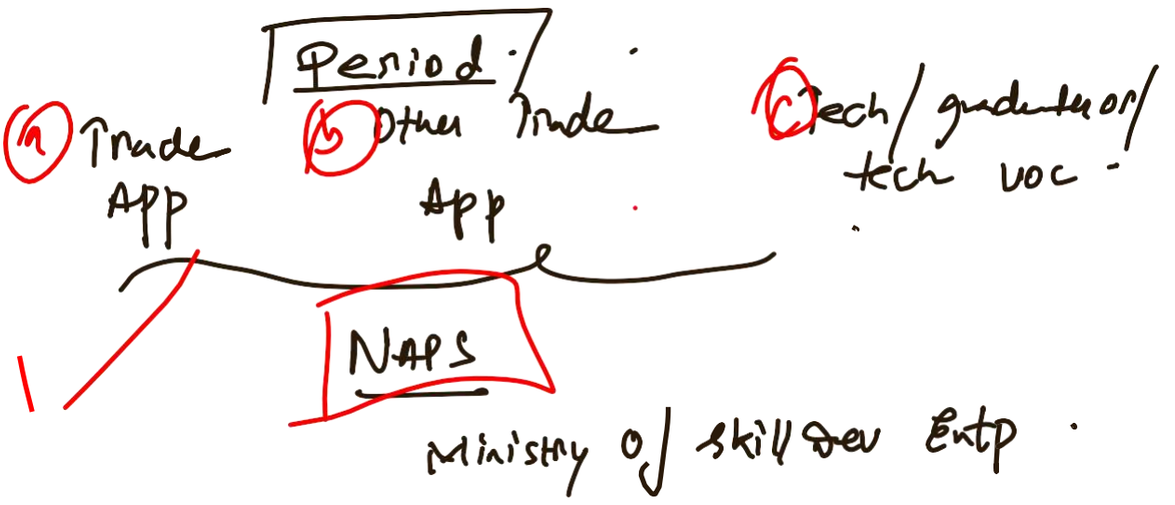
e)The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.

f)Any other document/s, specified by Reserve Bank of India / AD Category- I bank while granting approval.

2. Remittance of winding up proceeds: Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

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Industrial Disputes Act, 1947

(1) The Industrial Disputes Act, 1947 is the legislation for investigation & settlement of all industrial disputes.

(2) It applies to the industries owned by central & state govts. too.

(3) Section 2(j) stands amended by Amendment Act of 1982.

(i) Systematic Activity ✓

(ii) carried on by co-operation between a employer & his workmen to satisfy human wants

(iii) not being merely spiritual or religious in nature

(iv) whether or not any capital invested ✓

(v) " " " profit motive ✓

(c) includes any activity of the Dock Labour Board.

(d) but does not include :-

(1) any agriculture operation (except plantation).

(2) hospital or dispensaries or

(3) educational, scientific, research to training inst.

(4) Inst. or owned or managed by charitable

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(5) Khadi or village industries.
(6) Sovereign functions of Govt; defence, research, atomic energy & space.
(7) any domestic service.
(8) any activity being a profession practised by an individual or body of individuals. < 10 persons employed
(9) Co-operative society where no. of individuals < 10.

What is a Industrial Dispute?

(i) There should exist a dispute or difference.
(ii) Dispute should be between:-
  (a) Employer & Employer
  (b) Employer & workmen
  (c) workmen & workmen.
(iii) Dispute or difference should be connected with (a) employment or non employment
  (b) terms of employment (c) conditions of labour of any person;
(iv) The dispute should relate to an industry defined in section 2(j).

Workman

means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment be expressed or implied.
includes
(a) any such person who has been dismissed, discharged

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or retrenched in connection with or consequance of that dispute.

(b) Any person whose dismissal, discharge or retrenchment has led to that dispute but does not includes any such person:-

(i) who is subject to Army Act, 1950

(ii) who is employed by police service.

(iii) who is employed in managerial or admin capacity or

(iv) who is employed in a super-visory capacity drawing more than ₹ 1600 per month as wages.

(v) who is exercising managerial nature duties.

Strike.

1. cessation of work by a body of persons
2. by workmen acting in combination or in concerted manner.
3. Time or Duration of strike is immaterial.
4. Mere presence in striking crowd would not amt. to strike unless cessation of work.
5. But Refusal to do work which the employer has no right to ask for performance. → NOT A STRIKE.
6. If Industry closed down → No strike.
7. Relationship of employer & Employee is deemed to continue in a state of
8. Illegal strike → disciplinary actions can be taken

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belligerent suspension & dismiss the striking workmen.

Industrial Dispute

Working Committee
1. 100 or more worker
2. Representation of both Employer & Workmen

Conciliation officer
- A.G may appt by notification
- Area or industry
- Promoting settlement

Board of conciliation
- Settlement of dispute
- Report to A.G of settlement
- Chairman & 2-4 person of A.G

Court of Inquiry
- Inquiry of Industrial Dispute
- 6 months of commencement
- One Independant person (atleast)

Labour Court
- Matter related to 2nd schedule
- 1 person only as Presiding officer

Industrial Tribunal
- 2nd or 3rd schedule
- 1 person
- Same as court but not pt 3 & < 65yrs.
- Judge/ Addition District Judge (3yr).
- Judicial officer for 7 yrs.
- or Presiding officer in Labour Court for 5 yrs
- Submit Report to AG
- No time limit.

National Tribunal
- C.G only can constitute.
  - National importance
  - If involves more than 1 state.
- One person appt by C.G
- Judge of HC < 65yrs.

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Reference of Dispute

- **Conciliation Board** → Settlement of Dispute, No Adjudication
- **Court of Inquiry** → Only Investigation → No conciliation, No Adjudication
- **Labour Court** → Matter of 2nd Schedule → Only adjudication
  + Matter of 3rd Schedule if affecting >100 workers
- **Industrial Tribunal** → 2nd or 3rd Schedule → Only Adjudication
- **National Tribunal** → Matter of National Importance → Only
  e.g.
- **In case of Public Utility Services.** (*)
  - Notice of strike/lockout
    - Valid → Mandatory to refer when some proceeding are still pending under the Act.
    - Invalid → refuse
  - No Notice of strike & lock out (*)

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Reference by Parties

↓

Jointly or separately apply to A.G for reference to the authorities.

- Parties to Dispute
- Applicant represent majority of each party

↓

Mandatory to make reference

↓

Award shall be made within 3 months.

(i) If reference of dispute is there

↓

S.G/C.G may order to prohibit strike/lock-out.

(ii) Govt. may add parties to dispute which has been referred to the Board/Court/Tribunal

↓

Before the Award -

Strikes & lock-outs

↓

Govt. can issue order to prohibit strikes & lockouts

↓

General Prohibition.

- Pendency of conciliation
- Pendency at Labour Court
- Arbitration Proceeding ↓
- Award is in operation ↓

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proceedings [Board] ⇓ 7 days from End i.e conclusion of such proceedings

Tribunal/ National Tribunal ↓

2 months after conclusion

Matters covered in the award / settlement.

Voluntary Reference of Disputes to Arbitration

(1) In case of Industrial Disputes not referred for adjudication to a Labour court, Tribunal or National Tribunal.

(2) Workmen & Employer by a written agreement refer the dispute to arbitrator.

(3) Presiding officer of a Labour Court / Tribunal / National Tribunal can be appointed as arbitrator

(4) Arbitration Agreement ⇒ Signed by parties & must be in prescribed form.

(5) Copy of Arbitration Agreement shall be forwarded to A.G & Conciliation officer & A.G to publish within 1 m of receipt.

(6) Arbitrator investigates & submit A.G, Arb. Award.

(7) A.G by order prohibit continuance of any strike or lock-out in connection with such dispute.

(8) If arbitrators are equally divided in their

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opinion – then Award of Umpire shall prevail.

Prohibition of Strikes & lockouts in public Utility Service

Employee [strike]
No person shall go on strike
(1) Notice of strike without to Employer within 6 weeks before strike
OR
(2) within 14 days of giving of such notice i.e. 14 days must have elapsed from the date of notice to date of strike.
OR
(3) before the expiry of the date of strike specified in any such notice
OR
(4) during pendency of any conciliation proceedings

Employer (lockout).
No employer shall lockout
(1) without giving notice within 6 weeks before lockingout
or
(2) within 14 days of giving such notice
or
(3) → ↵
(4) → ↵

Illegal strikes & lock-outs

(i) it is commenced or declared in contravention of Sec 22, Sec 23 or contrivention of an order (Public Utility Servial Strikes or lockouts)

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made u/s 10(3), 10A(4A).

(2) where reference of Dispute already made to Board, arbitrator, Labour court, Tribunal, National Tribunal.

(3) Lockout declared in consequence of an illegal strike or strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

Penalty.

	Nature of Breach	Penalty (Maximum)
①	Illegal strikes	Imprisonment upto 1 month or fine upto ₹ 50 or both.
②	Illegal lock-outs	Imprisonment - 1 month or with fine upto ₹ 1000 or both.
③	Instigation	6 months or 1000 or both.
④	Financial Aid to Illegal Strikes & lock-outs	6 m or ₹ 1000 or both.
⑤	Breach of settlement or award	6 m or fine or both. continuing one ⇒ ₹ 200 per day.
⑥	disclosing confidential info.	6m or ₹ 1000 or both.
⑦	Closure without notice	6 m or ₹ 5000 or both
⑧	Other offences.	6 m or ₹ 1000 or both.

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(9) Offence by companies. — Every director, manager, secretary, agent liable.

Industrial Employment (Standing Order) Act, 1946

- Uniformity in the conditions of service under different employers
- Once condition known cannot be changed
- They are written conditions of employment
- The workers can take decisions of employment on the basis of same

- Uniform standing order (1)
- Applicable to all workers (2)
- 100 or more workers (3)
- There are certain exempt industry [eg. defence] (4)

#

A.G.

- C.G → Govt. Controlled
  - Railway administrator
  - Major port, mine or oil field.
- S.G → others

#

Industrial Establishment.

- Payment of wage Act → Industrial
- Factories Act → Factory
- Railways Act → Railways
- Contractor of all mentioned above.

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establishment

Wages & workman.
↓
Same as Industrial Dispute Act.

Certification of Draft Standing Order

- 5 copies of Draft Standing Order
- 6 months the act becomes applicable [Employer shall submit].
- Confirmity with the model Standing Order
- If applicable to industry of similar nature may submit joint copy.

→ TO CERTIFYING OFFICER.

① Provisions of every matter stated in the Schedule of the Act.
② Confirmity with the provisions of the Act.
③ Provisions of Standing Order must be reasonable, if not reasonable then the Certifying officer may refuse the same.

PROCEDURE FOR CERTIFICATION:

① forward the copy to the trade Union or Workmen
② Notice requiring Objection
③ Objection to be submitted within 15days
④ Opportunity of being heard to workmen or employer.

→ copy of the Certified Standing Order will be sent within

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7 days of certification

- Standing order can be challenged within 30 days from the date of Receipt of copies
  ⇓
  Appellate Authority
  ⇓
  can Amend or Certify
  ⇓
  7 days of order send copies as confirmed or modified

-
  - 7 days from date of order
  - 30 days from the date of receipt of C.O.

Modification [By Employer]

- Agreement between Employer & workmen
- 6 months cooling period
- Apply to certifying officer
- 5 copies of proposed modification
  Certified copy of agreement.
- For Employee/workmen NO such restraint.

Payment of Subsistence Allowance

↳ wages paid on suspension of workmen on grounds of misconduct investigation is going on

(1) for 1st 90 days :) 50% of wages.

(2) remaining days of sus :) 75% of wages

provided the delay is not attributable to the mis-conduct of the workmen.

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Matters to be provided in the Standing Order under this Act:-

1. Classification of workmen
   - Perm.
   - temp.
   - apprentices.
   - probationers.
2. Attendance or bk comig.
3. Hrs. of work, period of holidays, wages, pay per period & how to intimate them
4. Req. to enter the factory premises by which gate & liability to search.
5. Termination of Employment.
6. Grounds of mis-conduct.
7. closig & re-openig of sections of establishment & temporary stoppage of work.
8. how to redress the grievances of the workers.
9. Shift working
10. Attendance & bk comig.
11. Any other matter as may be prescribed.

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Financial Services Organisation

ASSET RECONSTRUCTION COMPANY:-

- Sec 3 of Securitization & Reconstruction of financial Assets & Enforcement of Security Interest Act, SRFAESI Act, 2002
- Regulated by RBI as a NBFC
- Functions like AMC ⇓ Guidelines of RBI to be followed.

Note :~ Sec 3 provides that no ARC shall commence a business of securitisation or Asset Reconstruction without obtaining

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cert of Registration granted under this Section by RBI.

Objectives

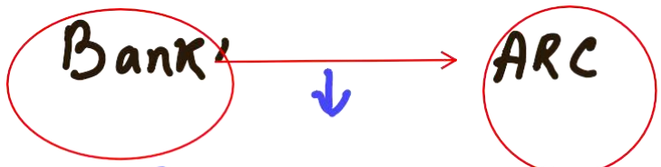
Isolating NPA's from System.	freeing the financial system to focus on their core activities.	facilitating Development of Market for distressed Assets.

functions of ARC

- Acquisition of financial Assets
- Change/takeover of Management or sale or lease of Business of Borrower.
- Rescheduling of Debt.
- Enforcement of Security Interest
- Settlement of dues by the borrower.

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Transfer of Rights such as Loans/Advances of that transaction.

Conditions for Registering as ARC

- Registered as Company under Companies Act, 2013
- Register with RBI.
- NO loss - Preceeding 3 f.y.
- Sufficient arrangement for securitisation & asset de-construction.
- ARC must be able to pay all the periodical returns.
- ① Directors → experienced (Reconstruction, Insolvency, fin. Assets & other related areas).
  → NO Criminal Convictions.

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- KMP's, executives should pass requirements related to Fit & Proper Test as notified by RBI.
- Comply with RBI norms (financial & prudential).
- Securitisation Companies & Reconstruction Companies (Reserve Bank) Guidelines & Directions, 2003 issued by RBI → (ARC are governed by this).

FORM FILL-UP & REGISTRATION.

↓ Apply to RBI as per sec 3 of SARFAESI Act, 2002.

↓ Apply to RBI to Chief General Manager in charge, Dept. of Non-Banking Regulation, Central Office, RBI Mumbai.

↓ After Obtaining Certificate of registration can undertake both securitisation & Asset Reconstruction Activities.

↓ Commence business within 6 months from date of grant of Cert. of Reg ↓ RBI can extend 12 months.

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Documents Required for Reg of ARC

1. Certificate of Incorporation of the company
2. MOA, AOA.
3. Resolutions stating that the company has not taken or accepted any form of deposits. (BR).
4. Resolution that directors are not dis-qualified as per Co's Act.
5. Copy of Audited Bls of Co.
6. copy of Directors & Auditor's Report.
7. Net Owned fund
8. Details of Related Party Transactions :—
9. Info. related to management of company :—
10. Cert. of Audit By Auditor of Co. —

- Provisions of 45 IA, IB, IC of RBI Act 1934 shall not apply

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to NBFC which is a ARC.

Net Owned fund

2016 → 2cr.

2017 → 100cr : ~~~~ 2026 → 300cr

(Oct 2022 → guidelines to increase 300cr → till 2026. for existing ARC.

What is Securitisation

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

What is Asset Reconstruction ?

① When Bank grant loans, advances → (NPA's)

② ARC takes the bad assets, all such rights or int. are also transfered.

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③ ARC can then realise all such rights & interests.

Housing finance company

- Type of NBFC
- Governed by National Housing Bank (NHB)
- Collateral Loan
- Registered under Co. Act 2013 + Registered with NHB
- Finance for housing whether directly or indirectly.

⇓

[National Housing Bank Act, 1987]

* **Eligibility criteria**

- [NBFC Registered from RBI]
- 20 crore Net Owned fund.
- Companies Act Registered 2013
- Housing finance Activities as Object clause.

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Governing Body (9th Aug 2019)

- NHB Act 1987
- RBI ↓ Regulatory framework i.e. Rules & Regulation
  - Financial Asset 60% of Total Asset
  - 50% Housing finance for Individuals

HFC Loan to whom?

1. Housing loan Individuals for cons/pur of New+old dwelling units
2. Housing loan Companies
3. Re-building loan to Ind or Companies
4. Slum Development
5. State Housing Board for construction of Residential
6. Builders loan

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Dwellings

(2) Employee Housing loan

Net Owned Fund (NOF)

20 crores

< 20 crores

15 cr (31 Mar 22)

20 cr (31.3.23)

Auditors Certificate to RBI within 1 month.

February, 2019

Asset finance co. ✓

Invest-ment co ✓

Loan company ✓

NBFC - ICC (Investment & credit Companies)

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(for operational benefit).

Benefits of Incorporating HFC.

① Social Benefits/Govt. Benefits
- Govt. Schemes can be implemented easily PM Awas Yojna.

② Benefits to Rural India
- Helps in migration of labour
- Building Infrastructure, roads, drinking facilities.

③ Benefits to Industries
All Round Industrial Establishment by Increasing in dd for furniture, cement, glass, bricks, electrical fittings, sanitary fittings etc.

④ Employment Benefits
directly/indirectly employment generation

Registration Process

Download Application form → Attach documents → Submit the Physical copy → NHB after verifying shall register.

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↓ Website
NHB.org.in

↓ Cert. of Incorporation, MOA, AOA, NOF, PL, DD of 10,000 rupees favouring NHB Payable at Delhi

↓ In Duplicate
↓ Head office of NHB.

↓ Issue Registration Certificate.

Cancellation of HFC License

① ceases to carry business of financing in India

OR

② failed to comply terms & conditions of NHB
(Regular submission of Books of A/cs to NHB when demanded

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- Should not accept deposits if prohibited by NHB
- Any other rules & conditions as notified by NHB
- Maintain Books of A/cs as per the directions issued by NHB.

Net Owned fund Calculation

Paid up Capital (Eq) ✓
(+) free+ Reserves R&S ✓
(-) Accossel (✓)
(-) Deferred Rev Exp (✓)
(-) Other Intangible Assets (✓)

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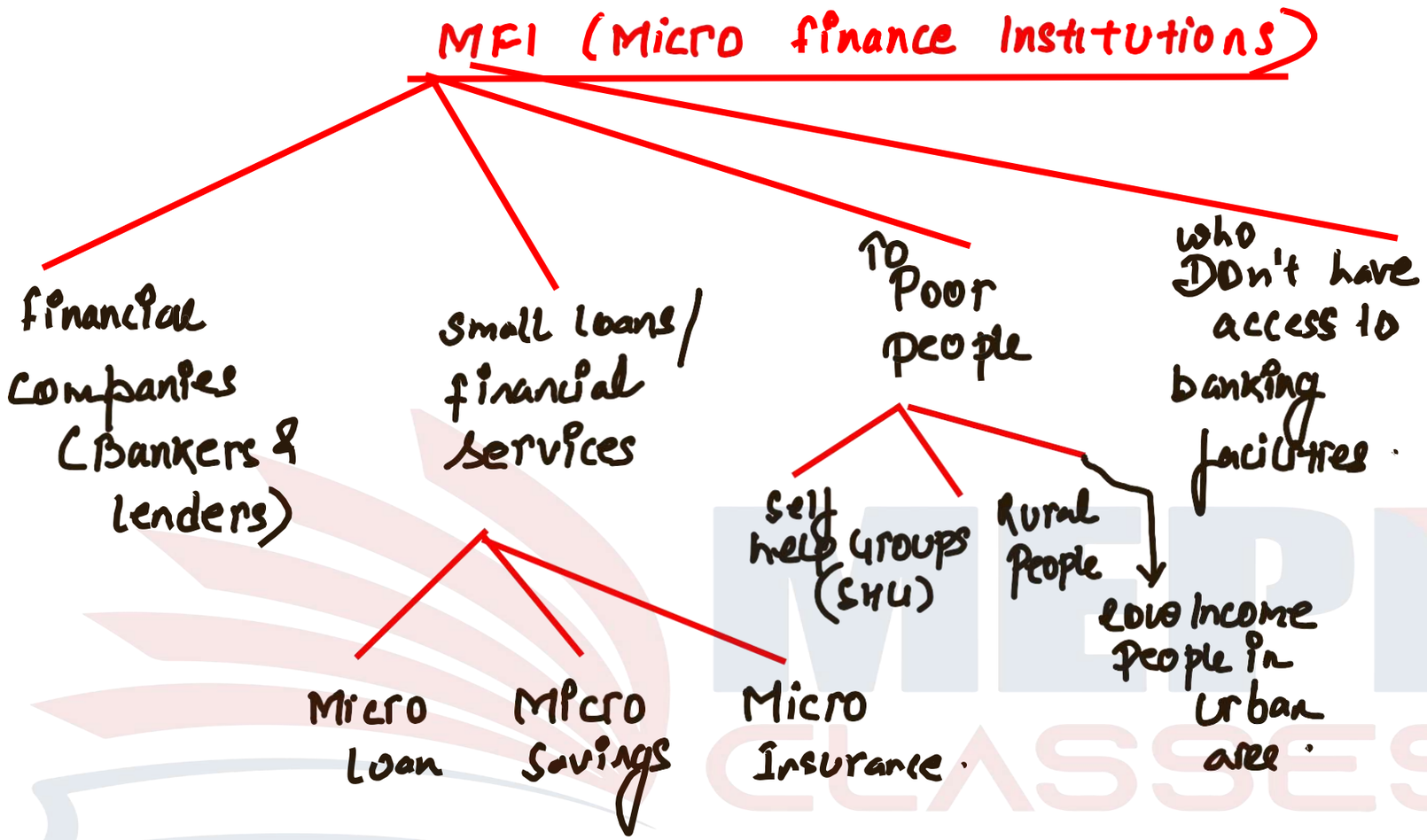
(–) Investment in subsidiary, (✓) Co.'s of same group

(–) Inv in All other housing financial (✓) Inst which are companies

(–) B.V of Deb, Loan & Advances (✓) (including hire pur) with subsidiaries of such company & Co. in same grp to the extent such amt exceeds by 10 % -

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Note:~ Micro finance needs these 2 qualifications:~

(a) Transaction Value is Small
&
(b) Customers are poor.

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Incorporation of MFI (SHL) :-

1. Incorporate under Companies Act 2013 ✓
2. Pvt company or Public or LLP ✓
3. Registered ~~with~~ body with RBI as an MFI. ✓

Characteristics of MFI.

1. Small Sized Loans
2. Short Repayment Period
3. Mfi can mobilize resources both from internal & external sources.
4. No collaterals
5. End use of loan is flexible.
6. Mostly group loans tickling down to individuals.
7. Transaction cost is low due to group lending.

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Documents Required for Registration with RBI

1. Cert. of Inc. (COI)
2. MOA, AOA
3. Net Owned fund (In case of NBFC-MFI NOF is 5cr)
4. Audited B/s, P/L for last 3 yrs or lower in case of Newly incorporated company.
5. Qualification Certificate of Directors
6. Board Report, Bankers Report.
7. Board Resolution (BR) not accepting any public deposit
8. BR not carrying any NBFC Activity/stopped NBFC activity & will not carry/commence before registering with RBI.
9. BR that Co. has formulated 'fair Practices code' as per RBI guidelines.

Type II

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Note: In case of Type II NBFC-ND following list of documents

1. Road-map for achieving 85% Qualifying Assets.
2. B/R stating that
   Co. has adhered to regulations, fair, Practise Code in lending & non coercive method of recovery as per RBI guidelines.
3. B/R stating the Co is not licensed under sec 8 of Co's Act 2013 / sec 25 Co. of Co's Act 1956.
4. B/R stating that Co. will be member of all

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the Credit into Co's & will be a member of atleast 1 Self Reg. org.

PAYMENT BANKS

- New model of Bank conceptualized by RBI.
- Accept restricted deposit of 1 & 2 lac per individual customer
- Cannot issue loans & credit cards.
- Have to apply for different bank License as cannot offer all the service as regular commercial bank.

Delhi ⟶ Durgapur factory → Payment to Labour
↓
UPI come now
↓
You can't do RTGS, issue cheque to them so deposited upto 2 lacs in Payment Bk. Give Labour hand.

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- first Payment BK was Bharti Airtel Pay BKs.

• Airtel Pymt BK	• NSDL Pymt BK
• India Post Pymt BK	•
• fino Pymt Bank	
• Jio Pymt Bank	
• Paytm Payment BK	

LIST OF PYMT BANKS

- Very easy to open an account with payment Bank only Adhar number with KYC is needed.
- Regulated by RBI.
- Min Capital fund Requirement 100 cr.
- certain Rules & Reg have to be followed for period of 18 months for conversion of 'In Principle' License to a full-License u/s 22 of Banking Reg Act.
- Application has to be filed in form [11] with RBI u/s 22 of the Banking Reg Act.

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- Many Companies have surrendered their license due to strict norms such as Aditya Birla Nuvo Ltd.

TERMS & CONDITIONS TO BE FOLLOWED

- To be registered as Public Ltd.
- Cannot form Subsidiary
- for first 5 years - promoters stake to remain at 40% min.
- foreign shareholding allowed as per FDI Norms.
- Voting Right as per BR Reg A/c → Restricted upto 10% for any 1 shareholder.
  → RBI can raise it to 26% on merits.
- If there is any Acquisition of more than 5% shares it will require prior RBI approval.
- No lending Activities is permitted
- 25% of branches should be in Rural Areas.

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Payment Bank can be promoted by

- Mobile Telecom Companies
- Super Market chain
- Public Sector Undertakings
- Individuals or Professionals
- NBFC
- Real Sector Co-operatives

Payment Banks can issue debit cards but not credit cards.

CRR to be maintained as per RBI guidelines

Invest Min 75% of Demand Deposit Balance in SLR securities with maturity upto 1yr & hold maximum 25% in Current & TD Deposits with other Scheduled Commercial Banks.

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MUDRA

Micro Units Development & Re-finance Agency Banks.

1. Launched by PM - Modi 8th April 2015 (PMMY)
2. It is a type of Public sector financial Institution.
3. Re-finance Support to Banks/ MFI's/ NBFC's / RRB's / SFB's
4. for lending to Micro Units [Refinance facilities] having Loan Req. upto 10 Lacs.

3 Categories of Clients.

1. Shishu → Loan upto
2. Kishore → upto ₹
3. Tarun → upto ₹ 10 Lacs.

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₹ 50,000 allowed

5 lacs

Eligibility of Mudra Loan

To whom?

Small Manufacturing Unit,
Shop-keeper,
Fruit, Vegetables Vendors,
Artisians
Other Service Sector Industries

Purpose?

Commercial or Business Purpose

For?

New Business/ Small Business Owners
Age limit = 18 years.

Procedure for Mudra Loan

1. Select Category i.e. Shishu, Kishore, Tarun
2. Visit nearest Public/Pvt Sector Banks partnering with
3. Attach List of Documents with the
4. The Bank will Approve the Loan.
5. Repay period ↓ upto 5yrs.

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Mudra Banks

Imp Note :→ • MUDRA Bank is not a separate Bank. It is a scheme introduced by the Govt of India. It is a wholly-owned Subsidiary of SIDBI.

- Authorized Capital - 1000 cr
- Paid Up Capital - 750 cr.

100% wholly owned by SIDBI.

PMMY Application form. ↓

- Proof of Identity [Voter Id, Adhaar Card]
- Proof of Address
- Photograph
- Details of Item to be purchased i.e. quotation & name of Supplier
- Proof of Identity/Add. of Business Enterprise.
- Proof of Category [Minority, SC, ST]

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LIST OF ACTIVITIES COVERED UNDER MUDRA LOANS

1. Transport Vechile (two wheeler for rapido)
2. Community, Social & Personal Service Activities (Beauty parlour, gym, dry-cleaning, cycle repair shops)
3. food Product sector (pappad making, achar, ice-cream making)
4. Textile Product Sector (Embroidery, Stitching, Khadi, Chikan work, Zardozi work)
5. Business loans for Trades & Shop-keepers (Non-farm Activities Loan Size upto 10 Lacs)
6. Equipment finance Scheme (Setting up of micro Enterprises by purchasing necessary machine equipments upto 10Lc)
7. Activities Allied to Agriculture
   - Pisciculture, beekeeping, poultry, live-stock rearing, grading

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MUDRA CARD

- debit card issued against the Mudra Loan A/c, for working capital portion of the Loan.
- Borrowers can make use of Mudra Cards in multiple drawals & credits to keep interest burden minimum.
- Helps in digitalization of Mudra transactions & create credit history for borrower
- Can be operated across country for withdrawl of cash from any ATM/micro ATM & make payment through any Point of Sale.

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Types of funding Support for Mudra

1. MICRO CREDIT SCHEME
2. REFINANCE SCHEME FOR BANKS
3. WOMEN ENTERPRISE PROGRAMME
4. SECURITIZATION OF LOAN PORTFOLIO.

CHIT FUND

- Sec 2 of the chit fund Act
- Rotating Savings & Credit Association
- Popular in Areas with limited access to Banking facilities.

Sec 2 OF CHIT FUND ACT, 1982.

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Chit means a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of individual that every one of them will subscribe to a certain sum of money by way of periodical installments over a definite time period and that each subscriber will, in her/his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in chit agreement be entitled to prize amount.

Chit fund company

Registered as a chit fund Scheme with Registrar of chit Company

U/s 2 of the chit fund Act, 1982

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FEATURES OF CHIT FUND

- Works like MFI
- Pre-determined value & duration
- Financial needs of low income households
- Deposits turned into lumpsum
  - Safe Deposit (Deposit now & take lump-sum in future)
  - Loans (take lumpsum now & deposit monthly)
  - Insurance (lump-sum amt in need/ emergency)
- Lower Int Rate than Money lender

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LAWS GOVERNING CHIT FUNDS

- Central Govt
  - Chit Funds Act 1982
  - PCMLS Banning Act, 1978
    - Prize chits & Money circulation Scheme
- State Govt
  - ① Tamil Nadu Chit funds Act, 1961
  - ② UTs Protection of Depositer in financial Establishment Bill, 2013
  - ③ Delhi Chit fund Rules, 2007.
  - ④ The Chit fund (Karnataka) Rules, 1983
  - ⑤ Maharastra Chit fund Act, 1975.

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LAWS NOT GOVERNING CHIT

- RBI cannot regulate chit funds as term 'deposit' does not comprise the subscription to chit. RBI only issue guide-lines regarding chit to various State Govt.
- SEBI also no regulation over Chit.
- PMLA has recognised chit business

Price Chit & Money Circulation Scheme (Banning) Act, 1978 (PCMCS)

↓

Price chit U/S 2(e) of the PCMCS

↓

Banned in India

↓

Conventional chit i.e. chit defined U/S 2 of the Chit fund Act

↓

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Permitted if the organiser is registered

Price Chit

- Issue/Sale of certificates, Units & other Instrument
- Admission fees

Chit Funds Act, 1982

Imp. Definition

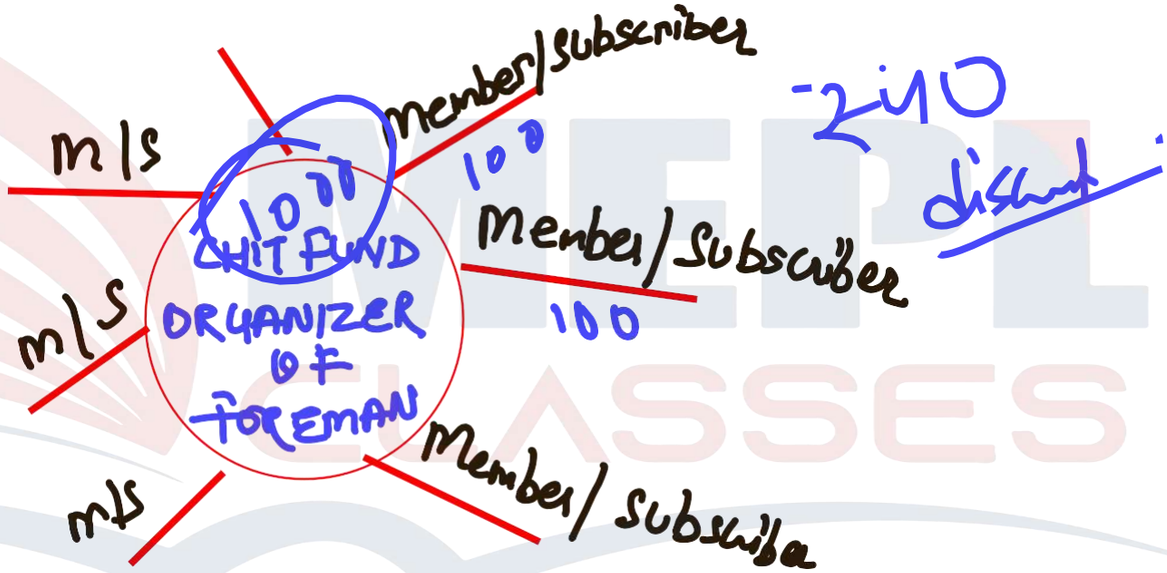
- **Chit Agreement** (Agreement between the foreman & subscribers)
- **Chit Amount** (Sum total of subscription payable by all subscriber for any installment of chit)
- **Discount** → Sum of money which a prized subscriber is requested to forgo & which is set apart to meet the
- **foreman** → Person responsible to conduct the chit & includes any person

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Chit expenses or which is distributed among subscribers.

defined U/s 39 of the Act.



KEY POINTS OF THE ACT

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- Chit funds, Chitty or Kum
  - No other person can use this name
- Registered Chit fund not allowed to carry any other business
- Foreman can run several chit simultaneously
  - prior approval needed by S4
- Prior permission is needed by S.4 or cancel the fund
- Foreman needs to deposit 100% of chit value with the Registrar of Chits prior to commencement
  - Refunded after completion.
- Chit funds needs to have A/c Audited
- 40% cap on Bid amount so that bid does not rise Uncontrollably.

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Types of Chit funds

- Organised Chit funds
  - common type of CF
  - Small paper chits with each members name are gathered in the box, then lottery is done, fund distributed to person whose name selected)
- Special Purpose funds
  - Ex-) Christmas Gift funds, Ladies kitties etc.
- Online Chit funds
  - Electronic Chit funds
- Registered Chit funds
  - Registered with Govt. under Chit fund Act.
- Un-Registered Chit funds
  - Not Regulated by any law.

Other key Points

- Type of NBFC
- Exempted from RBI registration [RBI can issue guidelines]
- Regulated by Other Regulatons.

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Incorporation of Chit fund

- Incorporated as Pvt. Ltd co.
- Objective of operating Chit fund business
- Apply with Chit fund Registrar of State
- Start Chit fund Business

DENY REGISTRATION (IF IND/ENTITY)

- convicted of offence under Chit fund Act or any other Act regulating Chit Business & Sentenced to Imprisonment
- Defaulted in payment of fees or filing of any statement or record under this Chit fund Act.
- convicted of offence → Moral Turpitude → Imprisonment unless a period of 5 yrs have elapsed of

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his release.

RESTRICTION BY RBI.

- only by registered Company
  - family X
  - Partnership firm X
- Registrar of chit Company
  - Registered
- Max Discount 40 % (2001) Before 2001 30%.
- Details of Every chit to RBI along with personal particulars of subscribers.
- Mandatory to Keep one month's chit amount of all the subscriber with the RBI till end of chit
  - chit fund Company will keep security.

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NIDHI COMPANY

Sec 406 of the Co's Act

Type of NBFC

HABIT OF THRIFT & SAVINGS AMONG MEMBERS

Core Business

Borrowing & Lending Money

⇓

Between Members

⇓

Also Known as

- ✓ Permanent fund
- ✓ Benefit fund
- ✓ Mutual Benefit fund
- ✓ Mutual Benefit Co.

Recognized U/s

406 of Companies Act.

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Regulated

- Governed by Nidhi Rules, 2014
- MCA, Govt of India.
- Registered under Co. Act, 2013 as Public Ltd. Company

→ 2 Norms

- NIDHI RULES
- NORMS OF PUBLIC Ltd. Co.



NIDHI COMPANY (Exemptions)

- Not regulated by RBI as it is exempt, though they are NBFC.
- Certain provisions of Co. Act, 2013 are exempt ⇓ as Limiting Operation

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With members
⇓
Notification F.No. 2/11/2014 - CLV
June 5, 2015
by MCA.

Conditions to Recognize as a Nidhi

- Public co. having share capital of ₹ 10 Lakhs
- Declared as Nidhi By C.G.
- Promoter/ Director
  - ↓
  - fit & Proper Test Laid down with the rules
- Within 45 days of Application
  - C.G. Approval OK
  - deemed to be granted.

Within 100 days from the date of Incorporation.

- Application showing min membership of 200 Individual
- Net Owned fund ₹ 20 Lakhs

AMENDMENT: 19th April 2022

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members.

Key Points

- Popular in South India. Eg. located in Tamil Nadu.
- Mutual Benefit Societies → Dealings are restricted only to the members & membership is limited to individual.
- Principle Source of fund → Contribution from members
- Loans given to members at low rates → for house Construction / Repairs etc → Secured only.

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INCORPORATION OF NIDHI

① Incorporate Nidhi company as a Public Ltd. company by following the provisions of Companies Act such as filing MOA, AOA & other related documents.

↓

① object clause should restrict itself to lending & receiving deposits only from its members i.e. for their mutual benefits only.

② Name of the company should end with the word NIDHI LTD.

② Apply in form NDH-4 – for declaration as NIDHI.

↓

① within 120 days of incorporation after those 2 conditions (20 lacs, 200 members) are satisfied.

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(2) Company shall attach along with NOA & the declaration of fit & proper person criteria by all directors & promoters of co.

Guidelines For fit & Proper Test (Misc Rules)

(a) integrity
(b) honesty
(c) ethical behaviour
(d) character of person
(e) person should not be disqualified by any of following criminal complaint, charge sheet, order of prohibition by any law, an order of conviction
(f) such person declared insolvent
(g) unsound mind.

(3) C.G. examine application & shall convey its decision within 45 days.

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IF NOT ↓

concept of deemed approval.

(If C.G. has not conveyed his decisions within 45 days then deemed to be approved)

(4) On being satisfied, C.G notifies in O.G declaring as Nidhi.

(5) In case of co. does not comply with the requirements of the criteria as set out in point (1), it shall not be allowed to file form No. SH7 (Notice to Registrar of any alteration of Share capital) & form PAS- 3 (Return of allotment).

(6) The above provisions as set out in Nidhi (Amend.) Rules, 2021 shall not be applicable to a public co. incorporated under this Act before the date of Commencement of said Rule.

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Benefits of Nidhi Co.

- mobilises small savings. Owing to small size speedy loan disbursements.
- Repayment guaranteed
  - secured + peer pressure
- Higher Rate of Int. on Deposits
- BOD consists of senior persons with experience in handling finances.

Characteristics

1. Transact only with member
2. A person want to place deposit with Nidhi Co. must first become member (shareholder) by subscribing to 10 eq. shares or share equivalent to ₹100.
3. No Nidhi shall issue preference shares (Co. Act, 2013)

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(4) Can Open Braches → Rule 10 of Nidhi Rules, 2014
↓
But not Pan India.

(5) Public Co → Min. S.C 10 Lakhs.

(6) Loan to member only → fully secured.

(7) Director of Nidhi — Shall be member
— hold office upto 10 consequtive years on the Board of Nidhi.

(8) Declare Dividend — < 25%.
— higher amt if approved by Regional Director.

(9) Adhere to prudential Norms as prescribed by Rule 20 of Nidhi Rules, 2014.
- Revenue Recognition
- Classification of Asset

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Mortgage Loan Jewel Loan.

General Restrictions or Prohibitions on Nidhi's (Rule 6)

- Carry on Business of chit fund, hire purchase, finance, lease finance, insurance, acquisition of securities issued by any body corporate.
- issue Pref shares, debenture or any other debt instrument by any name or form.
- Open current A/c of members
- Acquire company or change its Mgmt w/o (SR + RD approval)
- locker facilities to Rel. (Inc) 25% of 47% of Nidhi i.e. upto 25% then can grant locker facilities.

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↓ Accept deposits / lend to any person other than its members.

↓ pledge any of assets lodged by its members as security

↓ take/lend to any body corp.

↓ Enty into partnership arrangement in borrowing or lending.

↓ issues adv. soliciting deposits.

- issue or cause to issue any adv. for soliciting deposit
  (Members ≠ adv. for pvt. circulation allowed.
- Payment of any brokerage or incentive for deployment or grant of funds.

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Nidhi Co.

↓

inculcate the habits of thrift & savings.

↗ Individuals =

↓

public deposit -

float to individual

✓ NBFC

✓ Public Co.

✓ u/s 406 of Co's Act 2013.

✓ Nidhi Co Rules 2014.

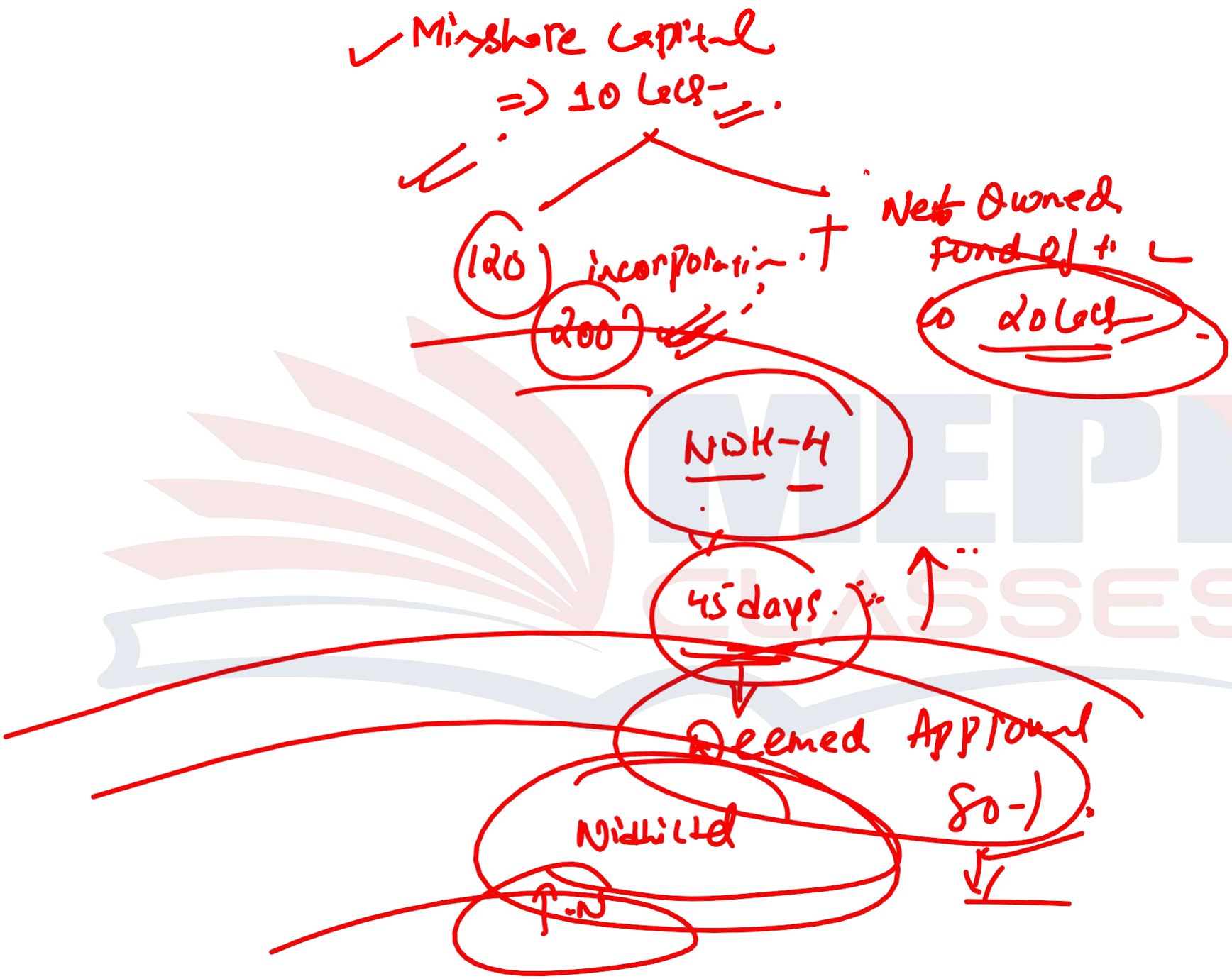
✓ RBI X

✓ providing exempted ← activities

restricted.

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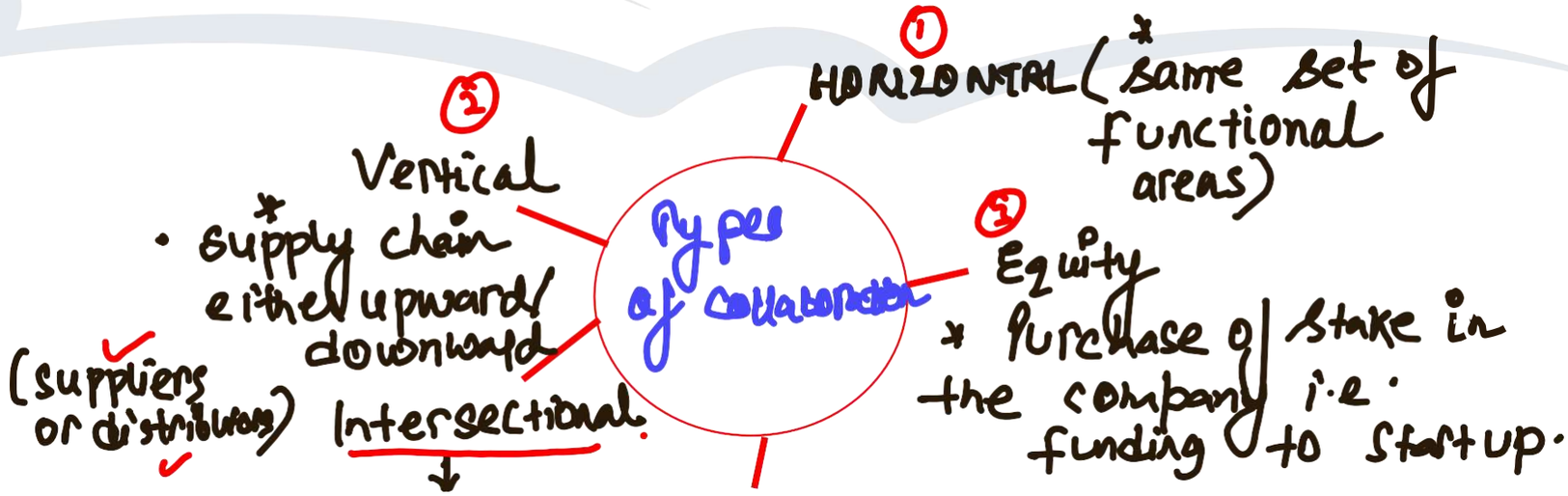
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BUSINESS COLLABORATION

Companies Act, 2013 | FEMA, 1999 | LLP, 2008 | FDI POLICY.

Collaboration is when 2 or more entities work together through idea sharing & thinking to accomplish a common goal.



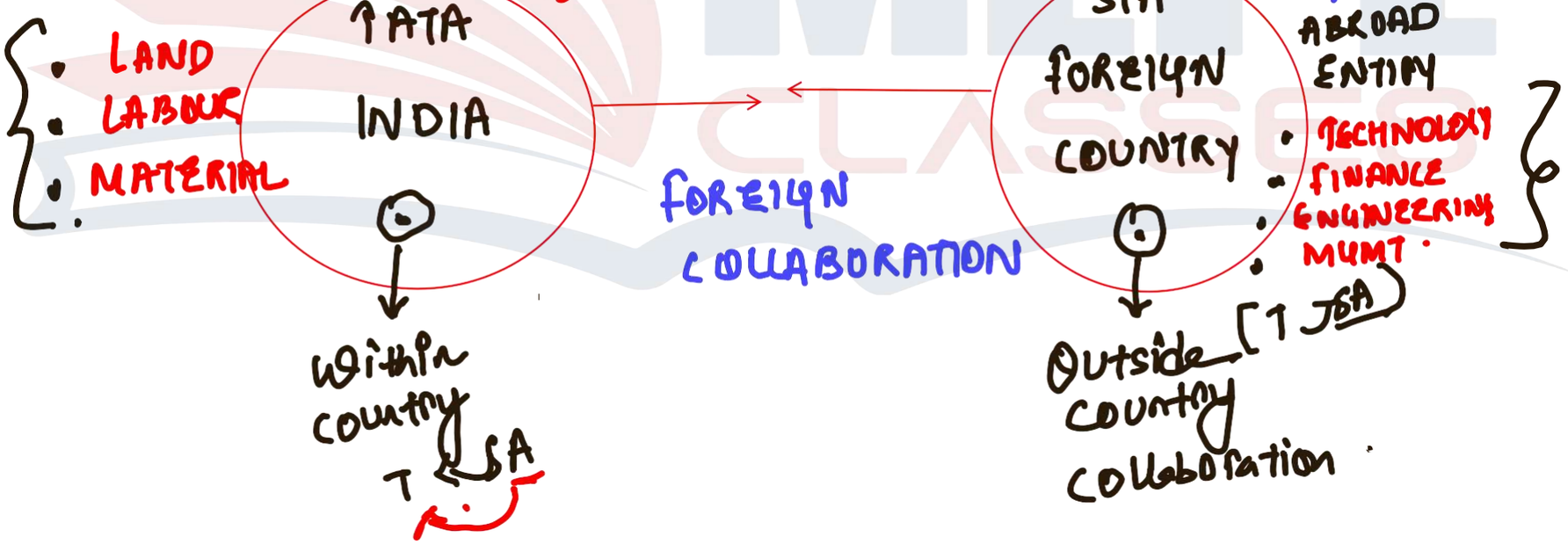
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(5) * Different functional areas agrees to share special knowledge

Joint (4) Venture
* Two or more business form a new company

FOREIGN COLLABORATION



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(1) Alliance to carry on agreed task collectively.
↓
b/w Resident & Non Resident

(2) Intention to finalise a job, they enter a Contract.

(3) Alliance (Mutual Co-operation).

APPROVAL OF GOVT. ENTITY

(1) PRELIMINARY AGREEMENT
(Sharing of Knowledge & Resources)

(2) PERMISSION (3) CONTRACT.

Ex :→ ICICI Lombard GIC
Tata Docomo
Maruti Suzuki

[Indian] + [foreign] = Foreign Collaboration.

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features of foreign Collaboration

write 1 line each.

- Partnership
- Approval of CG
- Developed & Developing Country (Tie-up)
- Benefit to Developed Country
- Benefit to Developing Countries
- Establishing Business Relationship
- Better Utilisation of Resources
- Scope of foreign Collaboration

Types of F.C

- Financial
  - ✓ shares
  - ✓ loans
  - ✓ credit facility (WC)
- Technical
  - ✓ Tech Know-how
  - ✓ Expertise
- Marketing
  - ✓ foreign countries goods are sold in the domestic
- Mgmt Consultancy
  - ✓ product Mgmt

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countries
✓ Increases export of good & services

✓ Marketing Mgmt
✓ Personal Mgmt
✓ financing Mgmt

F.C in India

FINANCIAL
⇓
RBI

TECHNICAL
⇓
DPIIT

DIRECT ROUTE
Directly can join

INDIRECT ROUTE
forming new company.

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Objective of foreign coll

1. Improve the financial growth of the collaborating entities.
2. Occupy a major share for the collaborating entities.
3. Reduce the higher operating cost of a non-resident entity.
4. Make optimum & effective use of resources available in resident entity's country.
5. Generate employment in resident's country.

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JOINT VENTURE

- Association of two or more Individual / Business Entities
- Combine Respective Knowledge skills & resources
- Share ownership and control over property rights & operation

Example

Land is owned by A — B has knowledge of construction

→ J/V

To Develop the land and build a Residential Complex.

(AB & construction)

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MNC's in different form including JV

- Franchising
- Branches
- Subsidiaries
- JV
- Turn-key Projects

ADVANTAGES	DIS-ADVANTAGES
(1) Risk Sharing	(1) Unreliable Partners
(2) Economies of Scale	(2) Extensive Research & Planning
(3) Market Access	(3) Lack of clear communication
(4) Exploring Global Markets	(4) Cultural Differences
(5) Acquisition of Business	(5) Lack of Equal Involvement
(6) cost efficiency	(6) Creation of competitor
(7) Flexible Nature	(7) Restricted flexibility where full concentration is required for JV.

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STRATEGIES OF JOINT VENTURE

1. Identification of Prospective JV partner
   (business, tech, resources) partner must compliment)
2. Trustworthy
   (strong to generate benefits)
3. Strong JV relationship
   (financially profitable, long lasting)
4. Equal contribution
   (in terms of skill, capital, intellectual resources)
5. Written Agreement
   - simple language
   - define all term
6. Limiting the scope of JV
   (to create trust, once trust is built scope can be increased later on)
7. Well-Defined Business Model
   (Nature of New Venture, value chain, investments, income, costs)
8. flexibility
9. Establishment of Exit Rules
   ↓
   establish clear protocols for amending or unwinding the relations if fails to meet expectations

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Joint Venture

EQUITY

- Company
- LLP
- Partnership

✓ New company is formed

✓ New company becomes the Owner of the Resources.

FEATURES :~(New Entity PROM)

✓ Agreement to Create new Entity or join into existing entity.

✓ Shared Ownership (O)

✓ Shared Management (M)

✓ Shared Responsibility (R)

✓ Shared Profit & loss (P)

CONTRACTUAL

⇓

Agreement / Strategic Alliance

↓

- NO separate legal Entity
- Joint Venture Agreement
- No Shared Ownership
- Host country do not permit Ownership by foreign co. [eg Dubai]

Characteristics

✓ Two or more parties have a common intention

✓ Each party will bring

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Different Types of Entities (EBJV)

- Company
  - S/H may be FC/FSH
  - Director at least one should be Resident of India
- LLP
  - foreign inv. allowed subject to certain restrictions
- Venture Capital Fund
  - Foreign Venture Capital Investors
  - 100% in Indian Venture Capital Funds.
- Trusts
  - foreign co not allowed to fund a Trust
  - Certain trust can receive the fund [SEBI]
  - eg - Real Estate Investment Trust / Infrastructure Inv. Trust.
- Other Entities
  - foreign co. Not allowed other than that.

Some inputs - Money, technology, material

- Each party has certain degree of control.
- Not a transaction but has a character of longer time duration.
- Must be concluded in accordance with the provisions of various laws of land.

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FDI Policy (Restrictions under FDI policy of GOI)

Any Non Resident Entity can set up Equity based JV in India

- Invest only after approval from Govt. of India
  - Prohibited
    - ✓ Defence
    - ✓ Space
    - ✓ Atomic Energy
    - ✓ Sector Prohibited
  - ✓ Can Invest on Repatriation Basis.
    - ✓ Investment coming in free foreign Exchange (USD or Euro) through normal Banking Channels
- Nepal / Bhutan
- FII
  - Only under Portfolio Investment Scheme
- Foreign Venture Capital Investor
  - Registered in India
    - ✓ 100% of the Capital of Indian Co under Automatic Route
    - ✓ Can set up domestic

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asset management company

- SEBI Registered
- Invest under FDI scheme or Non Resident Entities in another co.

RBI Rules & Regulation

FDI policy.

STAGES OF JV (Documents for JV)

FAMILIRISATION

- ✓ MOU
- ✓ Relationship at Initial Stage
- ✓ Duties of

ENGAGEMENT

- ✓ Contract
  - ↓
  - Resources are shared JV

JOINT VENTURE

- ✓ Equity Based JV
  - ↓
  - As Confidence is Reached

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both parties

Short Period

Longer Period

- JV Agreement
- Shareholders Agr
- Partnership Deed.

Features of JV Agreement / SHA

Essential Components of JVA

SHA/PA

- ✓ Business of the new company/LLP
- ✓ Resource (fin, tech, Mgt)
- ✓ Allotment/transfer of shares
- ✓ Chairman/MD/BOD
- ✓ Dividend dis. policy
- ✓ Valuation of Co. at the time of separation

JVA (Joint Venture Agreement)

- ✓ Nature of Agreement (Description)
- ✓ Parties (Full Det)
- ✓ Recitals (Situation prior to execution of JVA)
- ✓ Operative Part (defines rules for future, name & cont. of new entity, equity, BOD, MD, Chairman, milestones)
- ✓ Legal Aspects.

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- ✓ Dispute Resolution mechanism.
- ✓ Term of office of Nominate Directors
- ✓ Persons Responsible for finance, mkg, production
- (Amendment of JV Agreement,
- ✓ Duration of JV
- ✓ Termination
- ✓ Dispute resolution/ Arbitration/ ADR.
- ✓ NDA (Non Disclosure Agreement)
- ✓ Non compete clause
- ✓ Indemnification.

Examples of JV Companies in India

• TATA STARBUCKS	Tata + Starbuck
• BHARTI AXA GIC Ltd	Bharti Enterprise + AXA GIC Ltd.
• FRATELLI WILNES	
• MAHINDRA RENAULT Ltd.	Mahindra + Renault.
• ICICI Bank (Insurance & Inv)	
• Air Asia Ltd. [Tata Sons + Malaysian Airlines].	

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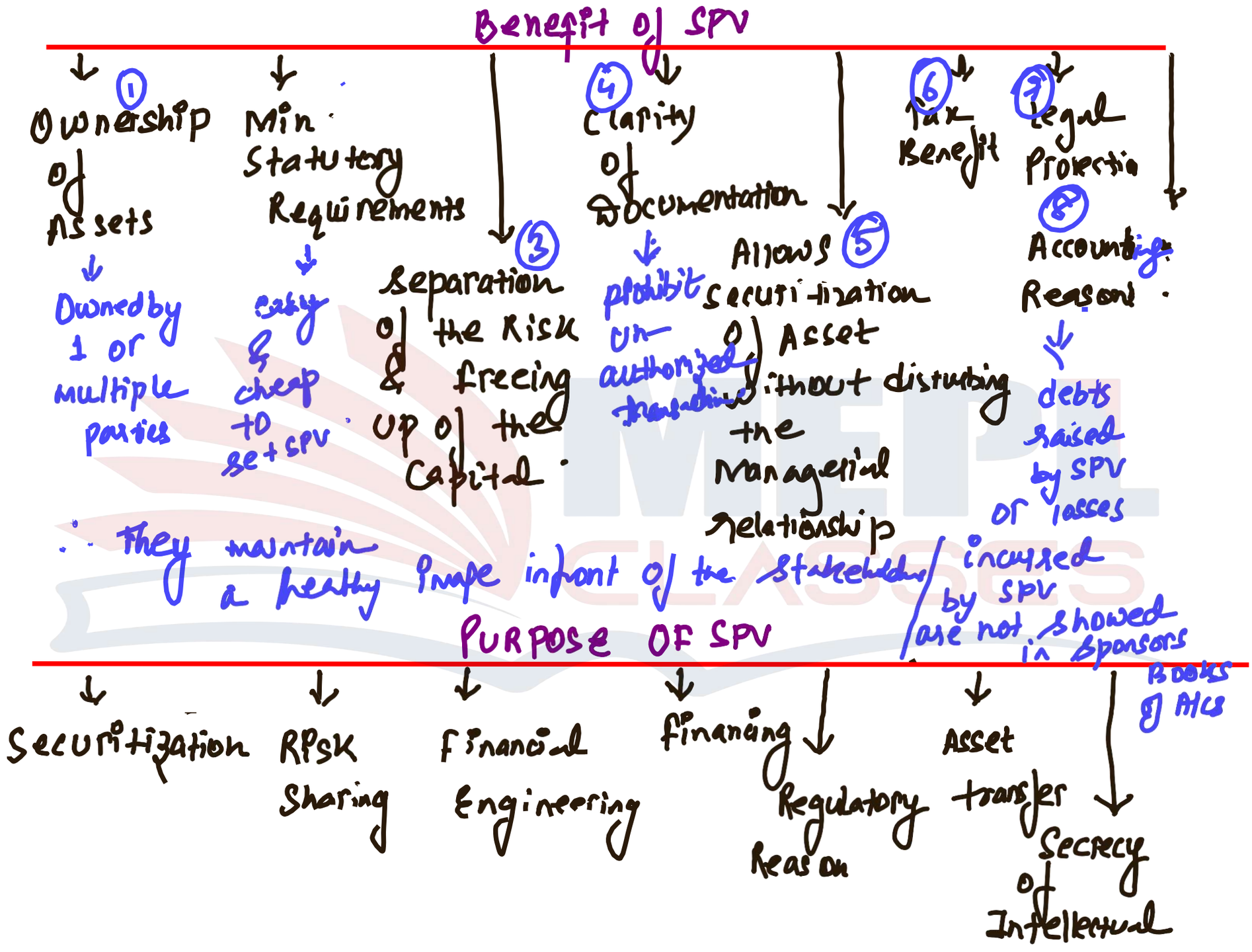
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SPECIAL PURPOSE VEHICLE

1. Formed for Special Purpose
2. Scope of SPV are limited only to those activities which are required to perform those special purpose
3. Operations of SPV close once purpose is over.
4. Distinct identity from its promoter/ shareholder
5. free from financial Risk (i.e even if the sponsor/ promoter becomes bankrupt ⇓ No Risk on SPV.

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Property

	Company	SPV
①	General Purpose Vehicle.	Special purpose Vehicle
②	Scope mentioned in MOA/AOA	Scope of operation is limited & focussed
③	X	SPV can also be a partnership firm
④	X	Members of SPV are mostly the companies & Individual sponsors
⑤	may not be distanced and can be a subsidiary co	Distanced from the parent co

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Key ADVANTAGES of LLP As a SPV → (foreign Co & Indian Co).

1. Low cost of Incorporation
2. Flexibility by Rules based On Agreement
3. Partners can be companies but Mgmt is by designated Partners (DP's) who are individuals
   → Divorce b/w Ownership & Mgmt
4. Low maintenance cost
5. No need to pay Div Dis Tax
   → Tax Efficient
6. Voluntary
7. Investment in LLP

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winding up is very easy
↓
If no creditor then no court req

firm is permitted 100% FDI
↓
Automatic Route without any Performance linked conditions

Example:-

Infrastructure

(1) SPV is preferred vehicle for raising funds by the Infrastructure sector

IRFC, IDFC Infrastructure Dev Fin Co

IRFC
↓
Indian Rail FC

are engaged in

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raising funds for dev of Infra.

(2) Smart City Mission at the City Level by SPV

(1) First select the mode in which SPV needs to be established (LLP, PF, Com)

(2) Every SPV have a promoter/ sponsor.

(3) Assets of SPV are distanced from the parent co.

(4) LIV — less Risk, less Legal Complications

(5) Winding up also very easy.

→ Deposits (RBDCI) ...ly

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