STUDY MATERIAL

EXECUTIVE PROGRAMME

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

GROUP 1
PAPER 3

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EXECUTIVE PROGRAMME

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

The main types of business entities in India include Sole Proprietorship, Partnership, Hindu Undivided Family (HUF) Business, Limited Liability Partnership (LLP), Co- operative Societies, various types of companies, Branch/ Liaison Office of foreign companies. It involves regulatory/procedural aspects in setting up of these entities under various authorities and also involve Initial Registrations like Shops & Establishment, FSSAI, ISO, MSME, licenses from the regulatory authorities like RBI, IRDA, GST, Income Tax, IPR, etc. as applicable.

It is very important to understand registration process, funding options available for startups and MSMEs as part of skill enhancement. Accordingly this study material *inter alia* covers matters relating to startup policy different types of capitals available for startups, Udyam Registration, MSME Schemes etc.

With the objective to provide the working knowledge and understanding of the various procedural requirements involved in the setting up of business entities and to give broad understanding and application of labour laws on various entities which are aligned with the concept of Setting up of business, this study material is divided into two Parts viz. Part I covering Setting up of Business and Part II, covering Industrial and Labour Laws.

Part II of this study material covers aspects including Constitutional provision relating to Labour laws, Laws relating to welfare & working Conditions, Industrial relations, wags. Social security aspects, Prevention of Sexual Harassment and also the emerging labour code.

The legislative changes made up to November, 2025 have been incorporated in the study material. The students are advised to refer to the updations at the Regulator's website, Supplement relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, students are advised to read "**Student Company Secretary**" e-Journal which covers regulatory and other relevant developments relating to the subject. In the event of any doubt, students may contact the Directorate of Academics at **academics@icsi.edu.**

The amendments to law made up to 31st May of the Calendar Year for December Examinations and up to 30th November of the previous Calendar Year for June Examinations shall be applicable.

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Important Note:

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

EXECUTIVE PROGRAMME

Group 1

Paper 3

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

SYLLABUS

OBJECTIVES:

Part I: To provide the working knowledge and understanding of the various procedural requirements involved in the setting up of business entities.

Part II: To acquire working knowledge, understanding and application of Labour Laws.

Level of Knowledge: Working Knowledge

PART I: SETTING UP OF BUSINESS (60 MARKS)

1. **Selection of Business Organization:**

   • Key features of various Business Organizations and issues in choosing business organization including policy matters, identification of location, tax implications and other relevant aspects

2. **Corporate Entities – Companies:**

   Types of Corporate Business Entities:

   • Private Company • Public Company • One Person Company • Nidhi • Section 8 Company • Producer Company • Foreign Company.

   Drafting of Incorporation Documents:

   • Memorandum of Association and Articles of Association • Incorporation contracts, documents and forms.

   Formation and Registration:

   • Procedural Aspects with regard to Incorporation of corporate entities.

3. **Limited Liability Partnership:**

   • Concept of LLP • Formation and Registration • LLP Agreement • Alteration in LLP Agreement • Annual and Event Based Compliances.

4. **Startups and its Registration:**

   • Start-up India Policy • Registration Process • Benefits and other Government Policies • Different types of capital - Seed Capital • Venture Capital • Private Equity • Angel Investor • Entrepreneurship • Case Studies on Unicorn

5. **Micro, Small and Medium Enterprises:**

● Classification of Enterprises ● Memorandum ● Measures for promotion and development ● Udyam Registration Process ● NSIC Registration ● MSMEs Schemes.

6. **Conversion of Business Entities:**

● Conversion of private company into public company and vice versa ● Conversion of Section 8 company into other kind of Company ● Conversion of Company into LLP and vice versa ● Conversion of OPC to other type of company and vice versa ● Companies authorized to registered under Chapter XXI of the Companies Act, 2013.

7. **Non-Corporate Entities:**

● Partnership ● Hindu Undivided Family ● Sole Proprietorship ● Multi State Co-operative Society ● Trust and Society ● Formation and registration ● Partnership Agreement and Trust Deed ● Mega Firms.

8. **Financial Services Organisation:**

● NBFCs ● Housing Finance Company ● Asset Reconstruction Company ● Micro Finance Institutions (MFIs) ● Nidhi ● Payment Banks ● Mudra Bank ● Registration ● Chit Funds.

9. **Business Collaborations:**

● Foreign Collaborations ● Joint Venture ● Special Purpose Vehicle

10. **Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company:**

● Formation and Registration

11. **Setting up of Business outside India and Issues Relating thereto**

● Issues in choosing location ● Structure and the processes of incorporation of business entities in UK ● USA ● Canada and Australia.

12. **Identifying laws applicable to various Industries and their initial compliances:**

● Compliance of industry specific laws applicable to an entity at the time of setting up of the enterprise.

13. **Various Initial Registrations and Licenses:**

● Mandatory Registration - PAN/TAN ● GST Registration ● Shops & Establishments ● Additional Registration/License - ESI/PF ● Pollution ● Other registration as per requirement of sector ● IE Code ● FSSAI ● Telecom ● I & B ● Industrial License, Industrial Entrepreneurs Memorandum (IEM) ● Activities specific approvals/ permissions/licenses ● Environmental & Pollution clearances ● Sectoral approvals / permissions / licenses ● State Level Approval from the respective State Industrial Department

PART II: INDUSTRIAL AND LABOUR LAWS (40 MARKS)

14. **Constitution and Labour Laws:**

● Fundamental rights vis-à-vis labour laws ● Equality before law and its application in Labour Laws, Equal pay for equal work ● Article-16 and reservation policies ● Articles 19, 21, 23 and 24 and its implications.

15. **Evaluation of Labour Legislation and need of Labour Code**

16. **Law of Welfare & Working Condition:**

● Occupational, Safety, Health and Working Conditions Code, 2020 ● The Child and Adolescent Labour (Prohibition and Regulation) Act

17. **Law of Industrial Relations:**

    ● Industrial Relations (IR) Code, 2020

18. **Law of Wages:**

    ● Code on Wages, 2019

19. **Social Security Legislations:**

    ● Code on Social Security, 2020 ● Apprentices Act, 1961 ● The Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by Certain Establishments) Act.

20. **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

ARRANGEMENT OF STUDY LESSONS

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

GROUP 1 • PAPER 3

PART I: SETTING UP OF BUSINESS

Sl. No.	Lesson Title
1.	Selection of Business Organization
2.	Corporate Entities – Companies
3.	Limited Liability Partnership
4.	Startups and its Registration
5.	Micro, Small and Medium Enterprises
6.	Conversion of Business Entities
7.	Non-Corporate Entities
8.	Financial Services Organization
9.	Business Collaborations
10.	Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company
11.	Setting up of Business outside India and Issue Relating thereto
12.	Identifying laws applicable to various Industries and their initial compliances
13.	Various Initial Registrations and Licenses

PART II: INDUSTRIAL AND LABOUR LAWS

14.	Constitution and Labour Laws
15.	Evaluation of Labour Legislation and need of Labour Code
16.	The Occupational Safety, Health and Working Conditions Code, 2020
17.	The Industrial Relations Code, 2020
18.	Code On Wages, 2019
19.	Code on Social Security, 2020
20.	The Child and Adolescent Labour (Prohibition and Regulation) Act
21.	Apprentices Act, 1961
22.	The Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by Certain Establishments) Act.
23.	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

LESSON WISE SUMMARY

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

PART I: SETTING UP OF BUSINESS (60 MARKS)

Lesson 1: Selection of Business Organization

The choice of a business organization is driven by a combination of several factors such as nature of activity, capital requirement, degree of independence required, etc. There is no readymade formula for selecting the particular type of business organization. Tax implication is also an extremely important factor. Company Secretaries while playing advisory role would help the clients in deciding about the type of organization one may opt for when considering to start a business.

This chapter will cover the factors which are taken into account in choosing a form of business organization alongwith the brief outline of the various forms of business organization.

Lesson 2: Corporate Entities – Companies

Companies may be classified on the basis of their incorporation, number of members, size, basis of control and motive. On the basis of incorporation of the companies, it may be classified into Charter Companies, Statutory Companies and Registered Companies. On the basis of liability, it may be Companies limited by shares/ guarantee and unlimited liability companies. Further, on the basis of number of members, they may be classified into One Person Company, private company and public company. On the basis of size, they may be divided into small companies and other companies. On the basis of control, they may be classified into holding company, subsidiary company and associate company. Besides these, companies may be nonprofit companies licensed under Section 8, Government companies, foreign companies, holding/subsidiary companies, investment companies, producer companies etc.

This chapter covers the concepts of various types of companies, their legal basis, special provisions and privileges for some classes of companies, distinction between different types of companies etc. and procedural aspects with regard to the Incorporation of corporate entities.

The chapters also cover the concept of drafting the Incorporation documents of the company. The memorandum and articles of association of a company are the most important documents for the formation of a company and for its functioning thereafter.

The memorandum of association contains the name, situation of registered office, objects, capital and liability and subscription clauses. The articles are its bye-laws or rules and regulations that govern the management and internal affairs and the conduct of its business. Both the documents are required to be registered with the Registrar of Companies at the stage of incorporation of the company.

Before dealing with a company, it is advisable to read the memorandum and articles of the company to understand aspects, such as powers of Board, scope of company's activities etc. and its relationship with the outside world.

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

Company Secretary in employment should work within the four walls of the MOA and also subject to the provisions of AOA.

Lesson 3: Limited Liability Partnership

Limited Liability Partnership is governed by the Limited Liability Partnership Act, 2008 and the Rules framed thereunder. In this Lesson we shall cover Limited Liability Partnership (LLP), its formation and registration; the features of an LLP agreement and the manner of alterations therein.

LLP is required to make various compliances and file various forms with the Registrar which are on the basis of annual and event based compliances as and when applicable to the LLP.

Being compliance professional, Company Secretary should be aware of all the compliance requirements of various business entities including Limited Liability Partnership.

Lesson 4: Startups and its Registration

Startups have emerged as a fast-growing business model. This chapter deals with the evolution of Startups in India, the Startup India Policy, the exemptions available to start-ups and their registration process. The Chapter also deals with the different kinds of Debt financing and Equity Financing which can be raised by Startups. It also includes the benefits/ exemptions given to start ups, different financing options available and the procedures involved for incorporation and registration as startups.

The Lesson also explains the concept of unicorns and case studies on it. Unicorn is a term used in the venture capital industry to describe a privately held startup company with a value of over $1 billion.

Lesson 5: Micro, Small and Medium Enterprises

The lesson deals with the classification of Micro, Small and Medium enterprises. Ministry of Micro, Small and Medium Enterprises vide Notification No. S.O. 1364(E) dated 21st March, 2025 revised the Definition of MSMEs. As per this notification, A micro enterprise is where the investment in Plant and Machinery or Equipment does not exceed two crore and fifty lakh rupees and turnover does not exceed ten crore rupees. A small enterprise is where the investment in Plant and Machinery or Equipment does not exceed twenty-five crore rupees and turnover does not exceed one hundred crore rupees. A medium enterprise is where the investment in Plant and Machinery or Equipment does not exceed one hundred and twenty-five crore rupees and turnover does not exceed five hundred crore rupees.

The lesson also covers the topics like Udyam Registration Process, NSIC Registration and various MSMEs schemes launched by the Government.

Lesson 6: Conversion of Business Entities

Companies Act, 2013 provides for conversion of public companies to private companies vice versa, conversion of One Person Company into public/private Company, conversion of Section 8 companies (companies for charitable purpose) into any other class of companies. Companies (Incorporation) Rules, 2014 provides details of the procedural aspects. In addition the students will be able to understand the overall legal and procedural aspects relating to various conversions.

Conversion of existing business entity to other form is a strategic decision which needs to be taken to get the benefits of one form of business entity over other form for a particular business at a particular point of time. Company Secretaries can help in taking such strategic decisions and implementation of the same.

Lesson 7: Non-Corporate Entities

This Chapter deals with the concept of Non-Corporate Entities like Partnership, Hindu Undivided Families, Sole Proprietorship, Multi-State Cooperative Society, Trust and societies, formation and registration of NGOs, namely, Section 8 Company its features, exemptions available to them and registration process. Trust, difference between public trust and private trust, exemptions available to them, more specifically, under the Income Tax Act and formation process. Society, its advantages and disadvantages, consequences of non-registration, benefits of forming a Society and formation process. The lesson also explains the concept of Companies authorized to register under Chapter XXI of the Companies Act, 2013.

Company Secretary should have clarity with regard to institutions which are not for profit, their features and formation process.

Lesson 8: Financial Services Organization

Different forms of Financial Services Organizations operating in India are Non-Banking Finance Companies (NBFC'S) and the various categories of such companies, Housing Finance Companies (HFC's), Asset Reconstruction Companies (ARC's), Micro Finance Institutions (MFI's), Nidhi Companies, Payment Banks, Mudra Banks and Chit Funds. The lesson summarizes different forms of Financial Services Organizations and their features.

This Chapter also explains the process of registering such entities.

Lesson 9: Business Collaborations

A Joint Venture (JV) is generally short lived for conducting specific business activities. It is a business agreement in which the parties agree to develop, for a finite time, a new entity and new assets by contributing equity. A Special Purpose Vehicle (SPV) is formed for a specific purpose.

In this chapter, Joint Venture and Special Purpose Vehicle, their advantages and disadvantages, their characteristics and the process for registering these entities are covered.

Lesson 10: Setting up of Branch Office/Liaison Office/ Wholly owned Subsidiary by Foreign Company

This lesson helps in understanding how to establish branch and liaison office of Foreign Companies in India. Foreign company means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner. 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 and amended from time to time.

Lesson 11: Setting up of Business outside India and Issues Relating Thereto

In this lesson, the students will learn about the various forms of business organization, such as sole proprietorship, partnership, Hindu Undivided Family and Multi State Co-operative Societies, their respective merits and demerits and the manner in which they can be registered in India. The lesson also outlines the Issues in choosing location, structure and the processes of Incorporation of business entities in UK, USA, Canada and Australia. Company Secretaries, while playing advisory role, can guide and help in setting up of business outside India.

Lesson 12: Identifying Laws applicable to Various Industries and their Initial Compliances

Keeping in pace with the contemporary global market and emerging stand of Indian economy, government initiated various flagship programs to boost the entrepreneurship environment in the country. Few of the major flagships including Make in India" coupled with "Ease of Doing Business in India", "Skill India", "Digital India", etc., are starred to build the interest and ease among various domestic and overseas stake holders to set up and advance the entrepreneurship in India. Indeed, when the entrance and advancement to Indian business market would be of ultimate fortune, there are various laws which need to be abided for successfully setting up and taking forward an enterprise in India.

In this perspective, this chapter aims at proving a quick understanding laws applicable to various industries, their setting up along with the thorough details of their initial compliances.

Lesson 13: Various Initial Registrations and Licenses

A business entity is required to secure various registration and licenses for setting up their businesses in India. In India, there are plethora of laws which requires various registrations and licenses to be obtained for setting up the business unit in India along with ensuring state level compliances. In order to facilitate one spot understanding, this chapter deals with the list of Mandatory as well as Additional Registration and Licenses along with their detailed process.

PART II: INDUSTRIAL AND LABOUR LAWS (40 MARKS)

Lesson 14: Constitution and Labour Laws

The Constitution of a country is the fundamental law of the land. It is under this fundamental law that all other laws are made and executed . Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels. The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

The objective of the lesson is to familiarize the students with:

- Labour Welfare provisions under Constitution of India.
- Fundamental rights vis-à-vis labour laws.
- Directive Principles of the State Policy of the Constitution vis-à-vis Labour Legislations.

Lesson 15: Evaluation of Labour Legislation and need of Labour Code

The need for better working conditions, the right to organise, and employer demands to limit employee rights in numerous groups and keep labour costs down led to the development of labour law. The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

The objective of the lesson is to facilitate students to acquaint with:

- History and evolution of Labour Legislations, internationally.
- Need and objective behind bringing in New Labour Codes

Lesson 16: The Occupational Safety, Health and Working Conditions Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 represents one of India's most significant labour reforms. Enacted to streamline and modernise the regulatory landscape, the Code consolidates 13 central labour laws into a single comprehensive statute, making compliance simpler, uniform, and more transparent across the country. It incorporates the essential features of the 13 enactments relating to Factories, Dock Workers, Building and other Construction Workers, Plantation Labour, Contract Labour, Inter-State Migrant Workers, Working Journalists and other News Paper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine Workers and Cinema Theatre Workers.

The objective of the lesson is to:

- Understand the purpose and significance of consolidating 13 labour laws into a single OSH Code.
- Assess the enforcement mechanisms, penalties, and compliance framework under the Code.

Lesson 17: The Industrial Relations Code, 2020

The Industrial Relations Code, 2020 is a landmark consolidation of India's labour laws, merging three major statutes—the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947—into a single, streamlined framework. Historically, these laws were enacted in different eras and addressed specific industrial concerns, resulting over time in fragmentation, inconsistent procedures, and delays in dispute resolution. The Central Government has notified the Code for enforcement with effect from 21st November 2025, bringing its provisions formally into operation across the country.

The objective of the lesson is to:

- Examine the provisions regarding Standing Orders, certification process and obligations of employers.
- Evaluate the statutory provisions on notice of change, strikes, lock-outs, lay-off, retrenchment and closure.
- Industrial dispute resolution mechanism

Lesson 18: Code on Wages, 2019

The Code on Wages, 2019 seeks to simplify, consolidate, and rationalize the provisions of four existing laws- The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. It aims to strengthen workers' rights while promoting simplicity and uniformity in wage-related compliance for employers.

The objective of the lesson is to:

- Understand the Payment of minimum rate of wages
- Payment of Dues, Claims and Audit

Lesson 19: Code on Social Security, 2020

The Code on Social Security incorporates existing nine Social Security Acts viz; The Employee's Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine-Workers Welfare Fund Act, 1981; The Building and Other Construction Workers' Welfare Cess Act, 1996 and; The Unorganised Workers' Social Security Act, 2008. The Code extends social security to all workers- including unorganized, gig, and platform workers- covering life, health, maternity, and provident fund benefits, while introducing digital systems and facilitator-

based compliance for greater efficiency. The Code on Social Security, 2020 represents a significant reform in India's labour welfare framework, aimed at ensuring comprehensive and inclusive social protection for all sections of the workforce.

The objective of the lesson is to understand:

- The scope of ESI (Employees' State Insurance):
- The scope of EPF (Employees' Provident Fund)
- The Maternity Benefits
- Payment of Gratuity

Lesson 20: The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments.

The objective of the lesson is to understand:

- The legal frame work provided for law regulating Child and Adolescent Labour practices in India.
- The law on working abolition and prohibition of Child Labour practices
- The provisions relating to employment of adolescent in non-hazardous occupations and processes

Lesson 21: Apprentices Act, 1961

The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.

The objective of the lesson is to understand:

- The legal frame work provided for law regulating regulate and control the programme of training of apprentices in India.

Lesson 22: The Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.

The objective of the lesson is to understand:

- The legal frame work provided for law regulating the furnishing of returns and maintenance of registers by Certain Establishments in India
- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988

Lesson 23: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. Sexual harassment of a woman in workplace is of serious concern to

humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

The purpose of this lesson is to familiarize students with the need of recognising and understanding:

- The legal framework provided for Prevention of Sexual Harassment of Women at Workplace.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the "Rules").
- The important definitions.
- The need of recognising the sensitivity attached to matters pertaining to sexual harassment.

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Selection of Business Organization

Lesson 1

KEY CONCEPTS

■ Sole Proprietorship ■ Partnership Firm ■ HUF ■ Co-Operative Society ■ Limited Liability Partnership ■ Private Company ■ Public Company ■ One Person Company

Learning Objectives

To understand:

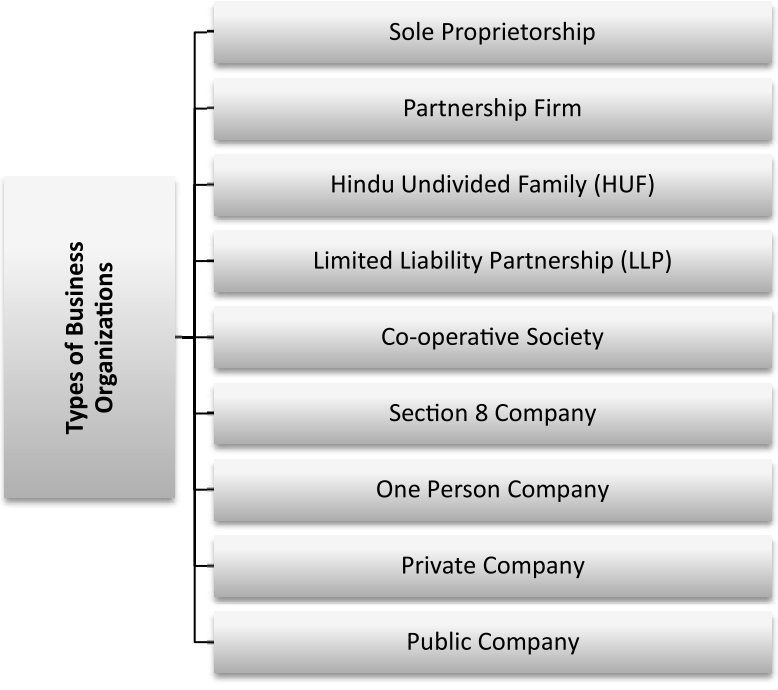
- The features of the various forms of business organization
- The factors which are taken into account in choosing a form of business organization

Lesson Outline

- Types of Business Organizations
- Key Features of various Business Organizations:
  - Sole Proprietorship
  - Partnership Firm
  - Hindu Undivided Family (HUF)
  - Limited Liability Partnership (LLP)
  - Co-operative Society
  - Section 8 Company
  - One Person Company
  - Private Company
  - Public Company
- Selection of a Business Organization
- Factors governing the decisions for suitable form of organization
- Synopsis for consideration of form of Organization
- Company as a choice of business Organization for Start-Ups
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

TYPES OF BUSINESS ORGANIZATIONS

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



Choosing a form of business entity is crucial to a successful organization. The choice of a business entity will depend on an object, nature and size of the business of such entity which will be varied from case-to-case basis and will also depend upon the will of the owners of the business entity which they want to accomplish. The main types of business entities in India are Sole Proprietorship, Partnership, Hindu Undivided Family (HUF) Business, Limited Liability Partnership (LLP), Co-operative Societies and Company which may be any kind of company including One Person Company (OPC), private company, public company, Guarantee Company, Subsidiary company, statutory company, insurance company or unlimited company. There can also be Association of Persons (AOP) and Body of Individuals (BOI), Corporation, Co-operative Society, Trust etc.

Sole Proprietorship

Sole proprietorship is a form of business, wherein one person owns all the assets of the business, no legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship. The owner reports income/loss from this business along with is personal income tax return.

Features of Sole Proprietorship

***Unlimited Liability*:** Just as a partnership, a sole proprietorship has no separate existence. Therefore, all debts can only be recovered from the sole proprietor. Therefore, the owner has unlimited liability with regard to all the debts. This should heavily discourage any risk-taking, which means that it is suited to only small businesses. If

one plans on running a business that requires a loan or may end up paying penalties, fines or compensation, it is best to look into registering an OPC.

***Easy to Start*:** There is no separate registration procedure for proprietorships. All a person needs is a government registration relevant to the business. If one is selling goods online, a proprietor would only need a sales tax registration. Therefore, starting up as a sole proprietor is relatively easy.

Partnership Firm

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

Section 464 of the Companies Act, 2013 empowers the Central Government to prescribe maximum number of partners in a firm but the number of partners so prescribed cannot be more than 100.

The Central Government has prescribed maximum number of partners in a firm to be 50 vide Rule 10 of the Companies (Miscellaneous) Rules, 2014.

Features of Partnership

***Unlimited Liability*:** On account of unlimited liability, the partners in the business are liable for all of its debts. This means that if, for whatever reason, a partner is unable to repay a bank loan or is liable to pay a fine, this can be recovered from his or her personal possessions. So, the bank, institution or supplier would have right to their jewellery, house or car. Furthermore, aside from ease of set-up and minimal compliance, the partnership offers no benefits over the LLP. If one opts to register it, which is optional, it may not even be cheaper. Therefore, unless one is running a very tiny business, one should not opt for a partnership.

***Easy to Start*:** If one chooses not to register the partnership firm, all that is needed to get started is a partnership deed. As compared with a private limited company or LLP, the procedure for starting-up a partnership firm is much simpler.

***Relatively Inexpensive*:** A General Partnership is cheaper to start than an LLP and even over the long-term, due to the minimal compliance requirements, is inexpensive. One need not to hire an auditor. This is why, despite its short comings, home businesses may opt for it.

Hindu Undivided Family (HUF)

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

Features of Hindu Undivided Family (HUF)

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

Limited Liability Partnership (LLP)

Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm, introduced in India by way of Limited Liability

Partnership Act, 2008. LLP is relatively a cheaper approach to incorporate as compared to a Private Limited Company and requires fewer compliances; its main improvement over General Partnership is that it limits the liabilities of its partners to their contributions to the business and offers each partner protection from negligence, misdeeds or incompetence of the other partners.

Features of Limited Liability Partnership

***Suitable for Non-Scalable Businesses*:** If one is running a business that is unlikely to require equity funding, may register an LLP as it combines several benefits of the private limited company and general partnership. It has limited liability, like a private limited company, and has a simpler structure, like a general partnership.

***Fewer Compliances*:** The Ministry of Corporate Affairs ('MCA') has given some concessions to the LLP. For example, an audit needs to be performed only if in any financial year the turnover is greater than Rs. 40 lakhs or whose contribution is more than Rs. 25 lakhs. Furthermore, whereas all structural changes need to be communicated to the RoC in the case of private limited companies, the requirement is minimal for LLPs.

***Number of Partners*:** There is no limit to the number of partners there may be in an LLP. If one is building a large advertising agency, for example, one need not worry about any cap on the number of partners.

Co-operative Society

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

Features of Co-operative Society

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

Section 8 Company

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

Features of Section 8 Company

Certain features of a Section 8 company can be summarized as under:

1) It is formed for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.
2) The profits, if any, are applied in promoting its objects.
3) It prohibits the payment of dividends to its members.
4) The name of the Company can be incorporated without using the word "Limited" or "Private Limited" as the case may be.
5) There is no requirement of any minimum paid up capital.
6) Flexibility of Administration.

One Person Company

An OPC means a company with only 1 (one) person as a member. Share holder can make only 1 nominee, he shall become a shareholder in case of death / incapacity of original stakeholder. The constitution of a One Person Company (OPC) is a strong improvement over sole proprietorship. It gives a single promoter full control over the company while limiting his/her liability to contributions to the business. This person will be the only director and shareholder (there is a nominee, but with no power until the original member is incapable of entering into contract). Hence, there is no scope of raising equity funding or offering employee stock options.

Features of One Person Company

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

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

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

Private Company

Private company is a company which has the following characteristics:

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

Public Company

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

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

SELECTION OF A BUSINESS ORGANIZATION

Essentially, companies could be either private or public company. Public company could be unlisted or listed. A person must sit down and carefully consider all the advantages and disadvantages of each type of entity before choosing one of the forms of business entity which suited best to the nature and size of the business which the entrepreneur / business owner desires to undertake.

A business enterprise can be owned and organized in several forms. Each form of organization has its own merits and demerits. The ultimate choice of the form of business depends upon the balancing of the advantages and disadvantages of the various forms of business. The right choice of the form of the business is very crucial because it determines the power, control, risk and responsibility of the entrepreneur as well as the division of profits and losses. Being a long-term commitment, the choice of the form of business should be made after

considerable thought and deliberation. The selection of a suitable form of business organization is an important entrepreneurial decision because it influences the success and growth of a business – e.g., it determines the division or distribution of profits, the risk associated with business, and so on.

Once a form of business organization is chosen, it is very difficult to switch over to another form because it needs the winding up, dissolution of the existing organization which may be treated as a case which is raised by one-self to face with the complex issues and procedures which ultimately results into the waste of time, effort and money. Further, closure of business will entail loss of business opportunity, capital and employment. The volume of risks and liabilities as well as the willingness of the owners to bear it, is also an important consideration in choosing the right business entity.

Therefore, the form of business organization must be chosen after giving the due thought and consideration in respect of all the sides of the glorious coin of each form of business entity and its suitability to the business ideas of an entrepreneur. There are several factors to be considered while selecting an appropriate form of business organization.

As discussed earlier, the different forms of business organization differ from each other in respect of division of profit, control, risk, legal formalities, flexibility, etc. Therefore, a thoughtful consideration should be given to this aspect of planning and only that form of organization which most suited to the style of business should be chosen. Since the need for the selection of business organization arises both initially i.e., while starting a business, and at a later stage for meeting the needs of its growth and expansion, it is desirable to address this issue at both these levels.

FACTORS GOVERNING THE DECISIONS FOR SUITABLE FORM OF ORGANIZATION

For a new or proposed business, the selection of a suitable form of a business organization is generally governed by the following factors:

1. Nature of Business Activity
2. Scale of Operations
3. Capital Requirements
4. Managerial Ability
5. Degree of Control and Management
6. Degree of Risk and Liability
7. Stability of Business
8. Flexibility of Administration
9. Division of Profit
10. Costs, Procedure and Government Regulation
11. Tax Implication
12. Geographical Mobility
13. Transferability of Ownership
14. Managerial Needs
15. Secrecy
16. Independence

1. Nature of Business Activity

This is an important factor having a direct bearing on the choice of a form of ownership.

In small trading businesses, professions, and rendering of personal services, sole-proprietorship is predominant. Examples are Laundromats, beauty parlors, repair shops, consulting agencies, small retail stores, medicine stores, dentist, accounting concerns, boarding-house, restaurants, specialty ships, jobbing builders, painters, decorators, bakers, confectioners, tailoring shops, small scale shoe repairers and manufacturers, etc.

The partnership is suitable in all those cases where sole proprietorship is suitable, provided the business is to be carried on a slightly bigger scale with help of one or more partner (owner).Besides, partnership is also advantageous in case of manufacturing activities on a modest scale. The finance, trading and real estate industries (on a smaller scale) seem to be suited to partnership form of organization.

Some of the financial businesses that find this form advantageous are tax, accounting, stockbrokerage firms, and consulting agencies etc.

Service enterprises like hotels and lodging places; trading enterprises, such as wholesale trade, retail houses; small scale manufacturing enterprises, small drug manufacturers, etc. can be undertaken in the form of partnership.

Similarly, the business lines such as carrying on large chain stores, multiple shops, super-bazaars, engineering, industrial activities with high capital and working capital requirements and software industrial activities are generally in the form of companies.

Where the persons intending to start a business wish to launch a business organization clothed with a legal entity and in corporate form with a feature of having their sole ownership and control thereon, they may decide to form a One-Person Company (OPC). OPC is a new concept in India and hybrid of Sole-Proprietor and Company form of business. The concept opens spectacular possibilities for sole proprietors and entrepreneurs as, such companies retain the character of a Sole Proprietorship, provides limited liability feature to the sole proprietor and is clothed with a legal entity distinct from its owner.

An alternative form of organization where two or more persons are involved in starting the business organization is the Limited Liability Partnership ('LLP') under the Limited Liability Partnership Act, 2008. Such entities have also gained popularity nowadays. A major advantage of such an entity is that the liabilities (if any), of the LLP lies with the entity and does not fall on the individual partners unlike the partnership form of business organization under the Indian Partnership Act, 1932, where the joint and several liabilities of the partner(s) is one of the features.

In an LLP form, the liability of the Partner is limited to the extent of his contribution towards the LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner himself. What is at stake for the partner is what he has put into the business along with any personal guarantees he would have furnished. However, such forms of business organization are suitable generally in the service industry and where there is no dependence on large amounts of financing from outside sources.

A One-Person Company (OPC), LLP and limited company exist as a separate business entity in the eyes of law and this creates a wall between the personal assets of the investor and that of the business. Thus, in these form of business organizations the personal property of the owner(s) is protected and this gives the owner(s) the ability to build the business credit, get loans and raise capital.

2. Scale of Operations

The second factor that affects the form of business organization is the scale of operations. If the scale of operations of business activities is small, sole proprietorship or a One Person Company (OPC) is suitable; if the

scale of operations is modest - neither too small nor too large - partnership or limited liability partnership (LLP) is preferable; whereas, in case of large scale of operations, the company form is advantageous.

For instance, in accordance with the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 the Micro, Small and Medium Enterprises (MSME) are classified as below:

For instance, in accordance with the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 the Micro, Small and Medium Enterprises (MSME) are classified as below:

As per Ministry of Micro, Small and Medium Enterprises- w.e.f. 21st March, 2025 an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

(i) A micro enterprise is where the investment in Plant and Machinery or Equipment does not exceed two crore and fifty lakh rupees and turnover does not exceed ten crore rupees.

(ii) A small enterprise is where the investment in Plant and Machinery or Equipment does not exceed twenty-five crore rupees and turnover does not exceed one hundred crore rupees.; and

(iii) A medium enterprise is where the investment in Plant and Machinery or Equipment does not exceed one hundred and twenty-five crore rupees and turnover does not exceed five hundred crore rupees.

The scale of business operations depends upon the size of the market area served, which, in turn, depends upon the size of demand for goods and services. If the market area is small, local - sole-proprietorship, OPC or partnership is opted. If the demand originates from a large area- partnership including LLP or Company may be adopted.

3. Capital Requirements

Capital is one of the most crucial factors affecting the choice of a particular form of ownership organization. Requirement of capital is closely related to the type of business and scale of operations. Enterprises requiring heavy investment (like iron and steel plants, large scale infrastructure projects etc.) should be organized as companies. Depending on the capital required, they can be set up as public companies and, in some cases, may be in the form of listed companies by raising money from the public and being listed on the stock exchanges.

Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organized as sole proprietorships or even as Partnerships. Apart from the initial capital required to start a business, the future capital requirements - to meet modernization, expansion, and diversification plans - also affect the choice of form of organization.

In sole proprietorship, the owner may raise additional capital by borrowing, by purchasing on credit, and by investing additional amounts himself. Banks and suppliers, however, will look closely at the proprietor's individual financial resources before sanctioning any loans or advances.

Partnerships can often raise funds with greater ease, since the resources and credit of all partners are combined in a single enterprise. Companies are usually best able to attract capital because investors are assured that their liability will be limited, their operations are in public domain in the transparent manner, easily accessible and the ownership can be transferred to other investors.

4. Managerial Ability

It is difficult for a sole proprietor to have expertise in all functional areas of business. Further, the size of the business may not permit engagement of professional management.

In other forms of organizations like partnership and company, there is division of work among the partners which allows the partners to specialize in specific areas, leading to better outputs and decision making. However, this may sometimes lead to conflicts due to differences of opinion. Company form of organization is a better alternative if the operations are far flung, complex in nature and require professional management at various levels.

5. Degree of Control and Management

The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization.

***In sole proprietorship and OPC*:** ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.

In partnership: management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

In a company: however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organization rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organization.

6. Degree of Risk and Liability

The size of risk and the willingness of owners to bear it, is an important consideration in the selection of a form of business organization. The amount of risk involved in a business depends, among other factors like, on the nature and size of business. Smaller the size of business, smaller the amount of risk.

Thus, a sole proprietary business carries small amount of risk with it as compared to partnership or company. However, the sole proprietor is personally liable for all the debts of the business to the extent of his entire property. Likewise, in partnership, partners are individually and jointly responsible for the liabilities of the partnership firm.

Companies and LLPs have a real advantage, as far as the risk is concerned, over the other forms of business organization. Creditors can force payment of their claims only to the limit of the company's and LLPs assets. Thus, while a shareholder/member/partner may lose the entire money he puts into or agreed to put into the company and LLP, he cannot be forced to contribute additional funds out of his own pocket to satisfy the business debts of the company and LLP.

7. Stability of Business

Stability of business is another factor that governs the choice of an ownership organization. A stable business is preferred by the owners in so far as it helps him in attracting suppliers of capital who look for safety of investment and regular return, and also helps in getting competent workers and managers who look for security of service and opportunities of advancement. From this point of view, sole proprietorships are not stable, although no time limit is placed on them by law.

The illness of owner may derange the business and his death can lead to permanent closing off the business operations. Partnerships are also unstable, since they are terminated by the death, insolvency, insanity, retirement, admission, expulsion or withdrawal of/ by one of the partners. Companies and LLPs have the most business stability due to its feature or perpetuity being an artificial or legal person. The life of the company and LLP is not dependent upon the life of its members/partners. Members/partners may come, members/partners may go, but the company/LLP goes on forever unless and until it being wound up.

8. Flexibility of Administration

As far as possible, the form of organization chosen should allow flexibility of administration. The flexibility of administration is closely related to the internal organization of a business, i.e., the manner in which organizational activities are structured into departments, sections, and units with a clear definition of authority and responsibility.

The internal functioning of a sole proprietary business, for instance, is very simple, and therefore, any change in its administration can be affected with least inconvenience and loss. To the large extent, the case is the same in a partnership business also.

While, in case of company, administration is not that flexible because its activities are conducted on a large scale and they are quite rigidly structured. Thus, in this form of structures any substantial change in the existing line of business activity- say from cotton textiles to sugar manufacturing may not be permitted by law if such a provision is not made in the 'objects clause' of the Memorandum of Association of the company.

Thus, from flexibility point of view, sole proprietorship has a distinct edge over other form.

9. Division of Profit

Profit is the guiding force of private business and it has a tremendous influence on the selection of a particular form of business organization. An entrepreneur desiring to pocket all the profits of business will naturally prefer sole proprietorship of course, in sole proprietorship, the personal liability is also unlimited.

But, if he is willing to share the profits, partnership form of organization would be preferred. In company form of organization, however, the profits (whenever the Board of Directors decides) are distributed among shareholders in proportion to their shareholding, but the liability of the shareholders is limited. The rate at which dividend is to be distributed is decided by the Board, though approved by the shareholders. Companies may also reward shareholders by issue of bonus shares. In case of listed companies, the equity shares are tradable on the stock exchanges, enabling the shareholders to exit the company at any time as per their own discretion.

10. Costs, Procedure and Government Regulation

This is also an important factor that should be taken into account while choosing a particular form of organization. Different forms of organization involve different procedure for establishment and are governed by different laws which affect the immediate and long-term functioning of a business enterprise. From this point of view, sole proprietorships are the easiest and cheapest to get started. There is no one specific government regulation but is guided by various state and central laws to give a valid proof of existence e.g. – Shops and Establishment Act. What is necessary is the technical competence and the business acumen of the owner and the requirement of meeting tax liabilities.

Partnerships are also quite simple to be initiated. Even a written document is not always necessarily a prerequisite since an oral agreement can be equally effective. However, in actual practice, written partnership deed is usually entered into, as it is needed for registration of the firm and for tax authorities. The procedure for dissolution of partnership is also, relatively simple.

Company form of business organization is more complicated to form. It can be created by law, dissolved by law, and operate under the express provisions of the law. In the formation of a company, a number of legal formalities have to be gone through which entails, at times, quite a substantial amount of expenditure. Further, various formalities have to be complied with for closure of companies. Non - payment of dues may land the company into insolvency or liquidation.

For example, the cost incurred on the drafting of the Memorandum of Association, the Articles of Association, the Prospectus, issuing of share capital, etc. can be quite high. This cost is however, small in case of private

companies. Besides, companies are subjected to a large number of anti-monopoly and other economic laws so that they do not hamper the public interest.

11. Tax Implication

In the choice of the form of business organization, tax implication plays an important factor. In smaller entities, such as sole proprietorship or partnership, tax liability is dependent on the extent of profits. However, the liability of the owner(s) is unlimited. In case of companies or LLPs the liability of shareholders is limited to the value of shares they have purchased. In case of companies or LLPs, tax liability could be higher and charged at a flat rate.

12. Geographical Mobility

The extent to which the product or service is proposed to be manufactured or made available also plays a vital role in choosing the type of business organization. If a concern deals with local market, a seasonal product or perishable goods, or is meant to cater to a specific city or locality, then sole proprietorship or partnership form of business may be suitable. If it is proposed to market the product or service all over India (which may also entail providing customer support services), a company form of organization may be preferred.

13. Transferability of Ownership

Sole proprietorship, being a one-person entity does not lend itself to transferability of ownership as the owner himself enjoys the profits and suffers the losses in his business. Partnership form of organization is one where two or more partners share the profits and/or losses in the agreed proportion. If a partner exits, the partnership, may decide to induct a new partner with benefits of ownership and share of profits or losses. In the company form of organization, transfer of ownership is possible by transfer of shareholding by any person or group of persons in favor of another person or group of persons.

14. Managerial Needs

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

15. Secrecy

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

16. Independence

The company is subject to strict government regulations. So, if the entrepreneur wants to have a freedom in business with little governmental interference, he has to go for either sole proprietorship or partnership.

SYNOPSIS FOR CONSIDERATION OF FORM OF ORGANIZATION

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

(a) These factors do not exist in isolation, but are interdependent, and all these factors are important in their own right. Nevertheless, the factors of nature of business and scale of operations are the most basic ones in the selection of a form of ownership for setting up of a business organization.

All other factors are dependent on these basic considerations. For instance, the financial requirements of a business will depend on the nature of business and the scale of operations planned. To take an example, if a business wants to set up a trading enterprise (say, a retail store) on a small scale, his financial requirements will be small.

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

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

COMPANY AS A CHOICE OF BUSINESS ORGANIZATION FOR START-UPS

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

LESSON ROUND-UP

- The main types of business entities in India are Sole Proprietorship, Partnership, Hindu Undivided Family (HUF) Business, Limited Liability Partnership (LLP), Co-operative Societies, Branch Office and Company which may be any kind of company including one person company (OPC), private limited company, public limited company, Guarantee Company, subsidiary company, statutory company, insurance company or unlimited company.
- There can also be Association of Persons (AOP) and Body of Individuals (BOI), Corporation, Co-operative Society, Trust etc.
- Choosing a form of business entity is crucial to a successful organization.
- Various factors involved are Nature of business activity, Scale of operations, Capital requirements, Managerial Ability, Degree of control and management, Degree of risk and liability, Stability of business, Flexibility of administration, Division of profit, Costs, procedure, and government regulation, Tax implication, Geographical mobility, Transferability of ownership, Managerial Needs, Secrecy, Independence.
- These factors do not exist in isolation, but are interdependent, and all these factors are important in their own right. Nevertheless, the factors of nature of business and scale of operations are the most basic ones in the selection of a form of ownership for setting up of a business organization. All other factors are dependent on these basic considerations.

- The various factors listed above are only major factors, and in no case, they constitute an exhaustive list. Depending upon the requirements of the business, the demands of the situation and sometimes even the personal preference of the owner, the choice of a form of ownership is made.
- There is a need to analyse and weigh the relative advantages and disadvantages to find the one that will yield the highest net advantage and for that, weights may be assigned to different factors depending upon their importance in each form of organization, and the type of organization that obtains the maximum weights may be ultimately selected.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the factors which govern the choice of a business organization?
2. Why would you prefer a Limited Liability Partnership compared to a Private Limited Company? Explain.
3. Distinguish between a sole proprietorship and partnership.
4. In which form of business organization, the owner is personally liable for all the debts of the business?
5. What are the advantages of partnership compared to a private limited company?
6. Why would you prefer One Person Company (OPC) compared to a Sole Proprietorship? Explain.
7. Requirement of Capital affects the choice of suitable form of a business organization. Explain.

LIST OF FURTHER READINGS

- ICSI Premier on Company Law
- Bare Act- The Companies Act, 2013
- Bare Act- The Partnership Act, 1932
- Bare Act- The LLP Act, 2008

OTHER REFERENCES (Including Websites/ Video Links)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==
- https://www.indiacode.nic.in/

Corporate Entities - Companies

Lesson 2

KEY CONCEPTS

■ Public Company ■ Private Company ■ One Person Company ■ Producer Company ■ Section 8 Company ■ Foreign Company ■ Nidhi ■ Memorandum of Association ■ Articles of Association

Learning Objectives

To understand:

- The classification and characteristics of companies
- Incorporation Documents
- The working knowledge and understanding of the various procedural requirements involved in the setting up of corporate entities

Lesson Outline

- Types of Corporate Entities:
  - Introduction
  - Private Company
  - Public Company
  - One Person Company
  - Nidhi
  - Section 8 Company
  - Producer Company
  - Foreign Company
- Drafting Of Incorporation Documents:
  - Memorandum of Association and Articles of Association
  - Incorporation Contracts, Documents and Forms
- Formation and Registration:
  - Procedural aspects with regard to Incorporation of Corporate Entities
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Companies Act, 2013
- The Companies (Incorporation) Rules, 2014

INTRODUCTION

The word "Company" is combination of the Latin word 'Cum' meaning "with or together" and "Panis" meaning "bread." Originally, it referred to a group of persons who took their meals together. A company is a group of persons who have come together or who have contributed money for some common purpose and who have incorporated themselves as a separate legal entity in the form of a company for that purpose. Under Halsbury's Laws of England, the term " company" has been defined as a collection of many individuals united into one body under special denomination, having perpetual succession under an artificial form and vested by the policies of law with the capacity of acting in several respect as an individual, particularly for taking and granting of property, for contracting obligation and for suing and being sued, for enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution or the powers upon it, either at the time of its creation or at any subsequent period of its existence.

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

A company as an entity has several distinct features which together make it a unique organization. The following are the defining characteristics of a company:



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

(a) Private Companies;

(b) Public Companies; and

(c) One Person Company (to be formed as a Private Limited Company).

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

1) A company may be formed for any lawful purpose by–

   (a) seven or more persons, where the company to be formed is a public company;

   (b) two or more persons, where the company to be formed is a private company; or

   (c) one person, where the company to be formed is a One Person Company that is to say, a private company,

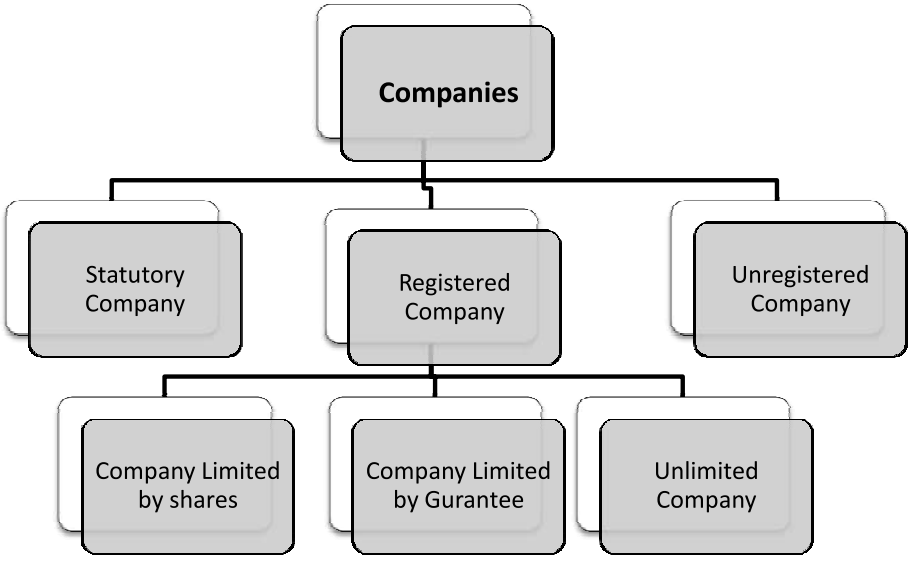
   by subscribing their names or his name to a memorandum and complying with the requirements of the Act in respect of registration.

2) A company formed under sub-section (1) may be either–

   (a) a company limited by shares; or

   (b) a company limited by guarantee; or

   (c) an unlimited company.



Classification of Companies:

(i) Classification on the basis of Incorporation: Companies may be incorporated under the following categories:

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

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

(ii) Classification on the basis of Liability: Companies can be classified into following three categories on the basis of Liability: -

   (a) Unlimited Companies: The liability of members of this type of company is unlimited. Section 2(92) of the Companies Act, 2013 provides that unlimited company means a company not having any

limit on the liability of its members. Such companies may or may not have share capital. They may be either a public company or a private company. The members are liable to the company and to any other person.

(b) Companies limited by guarantee: Section 2(21) of the Companies Act, 2013 provides that a company that has the liability of its members limited to such amount as the members may undertake respectively, by the Memorandum of Association, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are placed in the position of guarantors of the company's debts up to the agreed amount. The members are liable to the company and to any other person upto the extent of guarantee given by them.

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

For example, a shareholder who has paid Rupees 85 on a share of face value Rupees 100 can be called upon to pay the balance of Rupees.15 only. These companies can be either public or private.

(iii) Other Forms of Companies:

(a) Section 8 Companies: Any person or an association of persons proposed to be registered under this Act as a limited company and are able to prove to the satisfaction of the Central Government that the company –

i. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

ii. intends to apply its profits, if any, or other income in promoting its objects; and

iii. intends to prohibit the payment of any dividend to its members,

such person or association of person may be allowed to be registered as a limited company without addition to its name of the word "limited" or "private limited" by the Central government by issuing a license under section 8 of the Companies Act and by prescribing the specified conditions. The association proposed to be registered under section 8 shall not be proposed to be an unlimited company. However, the same may be company limited by guarantee or a Company limited by shares.

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

i. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

ii. Conducts any business activity in India in any other manner.

(c) Producer Companies: Under Section 378A of the Companies Act, 2013, Producer Company means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956.

(d) Nidhi: A Nidhi is a type of company in the Indian non-banking financial sector, recognized under section 406 of the Companies Act, 2013. Their core business is borrowing and lending money only among their members. They are also known as Permanent Fund, Benefit Fund, Mutual Benefit

Fund and Mutual Benefit Society. These companies are regulated under the Nidhi (Amendment) Rules, 2022 issued by the Ministry of Corporate affairs.

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

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

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

Provided that nothing in this clause shall apply to -

(a) a holding company or a subsidiary company;

(b) a company registered under section 8; or

(c) a company or body corporate governed by any special Act.

(Note: For more details on classification of companies the students are advised to read Lesson 2 of "Company Law & Practice")

PRIVATE COMPANY

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

i. restricts the right to transfer its shares;

ii. except in case of One Person Company, limits the number of its members to two hundred:

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

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

iii. prohibits any invitation to the public to subscribe for any securities of the company.

It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.

The aforesaid definition of private limited company specifies the restrictions, limitations and prohibitions, which must be expressly provided in the articles of association of a private limited company.

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

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

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

Examples of Private Companies:

1. Flipkart India Private Limited
2. Ola Automatic Engine Private Limited
3. Caratlane Trading Private Limited
4. Zomato Foods Private Limited
5. Makemytrip (India) Private Limited

Source: Master Data of Company

PUBLIC COMPANY

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

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

As per section 3(1)(a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names to a memorandum of association and complying with the requirements of this act in respect of registration.

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

As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. However, any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

The concept of free transferability of shares in public and private companies is discussed in the case of *Western Maharashtra Development Corpn. Ltd.* v. *Bajaj Auto Ltd*. [2010]. It was held that the Companies Act makes a clear distinction in regard to the transferability of shares relating to private and public companies. By definition, a "private company" is a company which restricts the right to transfer its shares. In the case of a public company, the Act provides that the shares or debentures and any interest therein, of a company, shall be freely transferable.

The provision contained in the law for the free transferability of shares in a public company is founded on the principle that members of the public must have the freedom to purchase and every shareholder should have the freedom to transfer.

Examples of Public Companies:

1. Snapdeal Limited
2. Procter & Gamble Health Limited
3. Reliance Agro Tech Ltd
4. Godrej Capital Limited

Source: Master Data of Company

ONE PERSON COMPANY

OPC is a one shareholder corporate entity, where legal and financial liability is limited to the company only. In India, in the year 2005, the J.J. Irani Expert Committee recommended the formation of OPC. It had suggested that such an entity may be provided with a simpler legal regime through exemptions so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances.

Characteristics of One Person Company

1. The financial statement, with respect to One Person Company, may not include the cash flow statement.
2. The Memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.
3. The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
4. In relation to One Person Company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
5. For the purposes of section 114, in respect of any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
6. Notwithstanding anything in this Act, where there is only one director on the Board of Directors of a One Person Company, in respect of any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient, if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act. [sub section (4) of section 122}
7. The financial statement, shall be approved by the Board of Directors before they are signed on behalf of the Board by only one director, for submission to the auditor for his report thereon.
8. A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
9. A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors. [Section 173(5)].

Examples of OPC:

1. Pharma First (OPC) Private Limited
2. Solar Nest (OPC) Private Limited

Source: Master Data of Company

NIDHI

The primary objective of Nidhi is to carry on the business of accepting deposits and lending money to member-borrowers only against jewels, etc., and mortgage of property. The principle of mutual benefit has been incorporated to pool the savings from members and lend only to members and they are prohibited from having dealing with non-members. Nidhis are not permitted to engage themselves in the business of chit fund, hire -purchase, insurance or in any other business including investments in shares or debentures. These Nidhis do their business only with members. Such members are only individuals. Bodies Corporate or Trusts are not to be admitted as members in these companies.

Nidhi means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.

In exercise of powers conferred under section 406 read with section 469 of the Companies Act, 2013, Central Government issued the Nidhi Rules, 2014 which came into force on the 1st day of April, 2014. Nidhi Rules, 2014 are applicable to:

- every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956;
- every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-Section (1) of Section 620A of the Companies Act, 1956;
- every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Companies Act, 2013;
- every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Companies Act, 2013.

Characteristics of Nidhi

- Every Nidhi shall be incorporated as a public company and shall have the last words “Nidhi Limited” as part of its name. It shall have a minimum paid up share capital of ten lakh rupees.
- Every Nidhi shall, within a period of 120 days from the date of its incorporation, file an application in form NDH-4 ensure that it has–
    i. not less than two hundred members;
    ii. Net Owned Funds of twenty lakh rupees or more.
- **Share capital and allotment**:
    (a) Every Nidhi shall issue fully paid up equity shares of the nominal value of not less than ten rupees each.

(b) No service charge shall be levied for issue of shares.

(c) Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees.

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

- **Membership of Nidhi**:

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

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

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

(d) It may be noted that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

(e) A member shall not transfer more than fifty percent of his shareholding during the subsistence of such loan or deposit, as the case may be; Provided that the member shall retain the minimum number of shares required under sub rule (3) of rule 7 at all times.

- **Branches of Nidhi:**

(a) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding 3 financial years. A Nidhi may open up to 3 branches within the district.

(b) If a Nidhi proposes to open more than 3 branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director in Form NDH-2 with fee and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.

(c) Nidhi shall not open branches outside the State where its registered office is situated.

(d) Nidhi shall not open branches unless financial statement and annual return (up to date) are filed with the Registrar.

(e) A Nidhi shall not close any branch unless –

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

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

(f) After obtaining the approval of the Regional Director, publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure.

(g) Fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published.

(h) Gives an intimation to the Registrar within thirty days of such closure.

- **Acceptance of deposits:**

  Rule 13 of the Nidhi Rules, 2014 provides that

  (a) Fixed deposits accepted by a Nidhi shall be for a minimum period of 6 months and a maximum period of 60 months.

  (b) Recurring deposits shall be accepted for a minimum period of 12 months and a maximum period of 60 months. In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by Nidhi.

  (c) The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed 2% above the rate of interest payable on savings bank account by nationalised banks.

  (d) A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.

- **Un-encumbered term deposits by Nidhi:**

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

  In cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director by making an application in Form NDH-2 for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of 10%.

- **Loans by Nidhi :**

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

  (a) two lakh rupees, where the total amount of deposits of such Nidhi from its members is less than two crore rupees;

  (b) seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees;

  (c) twelve lakh rupees, where the total amount of deposits of such Nidhi from its members is more than twenty crore rupees but less than fifty crore rupees; and

  (d) fifteen lakh rupees, where the total amount of deposits of such Nidhi from its members is more than fifty crore rupees.

  Where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent of the maximum amounts of loans specified in clauses (a), (b), (c) or (d).

  A member shall not be eligible for any further loan if he has borrowed any earlier loan from the Nidhi and has defaulted in repayment of such loan.

- **Rate of interest on any loan given by a Nidhi:**

  The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method. Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rate of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of Nidhi.

- **Directors in a Nidhi:**

  The Director shall be a member of the Nidhi. The Director of a Nidhi shall hold office for a term up to 10 consecutive years on the Board of the Nidhi. The Director shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director. Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure. The person to be appointed as a Director shall comply with the requirements of Director Identification Number. All the directors of the company shall fulfill the fit and proper person criteria.

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

SECTION 8 COMPANY

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

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

(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

  (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

  (b) intends to apply its profits, if any, or other income in promoting its objects; and

  (c) intends to prohibit the payment of any dividend to its members,

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

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

  (ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered

under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard. Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to "Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016".

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees.

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Characteristics of Section 8 Company

Certain features of a Section 8 company can be summarized as under:

1. It is formed for promoting commerce, art, science, sports, education, research, social welfare, religion, Charity, protection of environment or any such other object.
2. The profits, if any, are applied in promoting its objects.
3. It prohibits the payment of dividends to its members.
4. The Company can be incorporated without using the word “Limited” or “Private Limited” as the case may be.
5. There is no requirement of any minimum paid up capital.
6. It is exempted from stamp duty registration.
7. Many privileges and exemptions are available to such a company, Section 8 companies have been granted total/partial exemptions from various sections of the Companies Act, 2013 vide Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015.
8. A One Person Company cannot be incorporated or converted into a Section 8 Company.
9. Section 8 company has its independent corporate legal entity, similar to private company, public company or a Limited Liability Partnership and hence enjoys credibility in the eyes of the public.

PRODUCER COMPANY

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

Objects of Producer Companies

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

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

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

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

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

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

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

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

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

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

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

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

Examples of Producer Companies:

1. Kisan Bandhu Agro Producer Company Limited
2. Kisan Bhoomi Producer Company Limited
3. Agro Acres Women Farmers Producer Company Limited

Source: Master Data of Company

FOREIGN COMPANY

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

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode ; and

(b) Conducts any business activity in India in any other manner.

Sections 379 to 393 under Chapter XXII of the Act deal with such companies.

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:

(i) 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;

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

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

(iv) 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;

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

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

(vii) 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

(viii) Any other information as may be 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 of the Act.

Section 376 of the Companies Act, 2013 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.

Section 379 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 381 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 places of business established by the foreign company in India as at the date with reference to which the balance sheet is made out.

As regards the applicability of the provisions of the Companies Act, 2013 to foreign companies, the following provisions of section 384 are to be noted:

(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 shall apply to a foreign company 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.

(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), having a share transfer office or registration office will constitute a place of business. In *Tovarishestvo Manufacture Liudvig Rabenek*, Re [1944] 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.

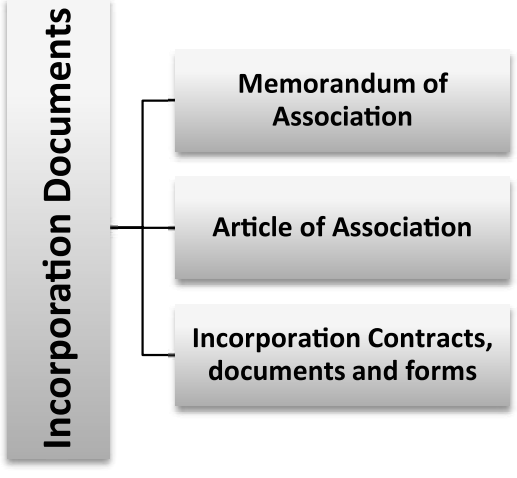
In a certain case, it was held that mere holding of property cannot amount to having a place of business.

Illustration:

India and America have had strong business relations over the many years. Some renowned American companies are Amazon, Citibank, Coca-Cola, Ford India, Google, American Express, Pepsico, Hewlett Packard, IBM, JP Morgan Chase, Adobe Systems Incorporated, Apple Inc., Microsoft Corporation, Cognizant, Oracle.

Source: https://www.makeinindia.com/5-countries-are-making-big-india#:~:text=Some%20renowned%20American %20companies%20are,Microsoft%20Corporation%2C%20Cognizant%2C%20Oracle.

DRAFTING OF INCORPORATION DOCUMENTS



MEMORANDUM OF ASSOCIATION

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

The first step in the formation of a company is to prepare a document called the memorandum of association. In fact, memorandum is one of the most essential pre-requisites for incorporating any form of company under the Companies Act, 2013 (hereinafter referred to as 'Act'). This is evidenced in Section 3 of the Act, which provides the mode of incorporation of a company and states that a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is a public company; two or more persons, where the company to be formed is a private company; or one person, where the company to be formed is a One Person Company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of its registration.

To subscribe means to append one's signature or mark in a document as an approval or attestation of its contents.

According to Section 2(56) of the Act "memorandum" means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this Act.

Section 4 of the Act specifies in clear terms the contents of this important document which is the charter of the company. The memorandum of association of a company contains the objects of the company which it shall pursue. It not only shows the objects of formation of the company but also determines the scope of its operations beyond which its actions cannot go.

Forms of Memorandum of Association

Section 4(6) of the Act provides that the memorandum of association should be in any one of the Forms specified in Tables A, B, C, D or E of Schedule I to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

(i) the Form in Table A is applicable in the case of companies limited by shares;

(ii) the Form in Table B is applicable to companies limited by guarantee not having a share capital;

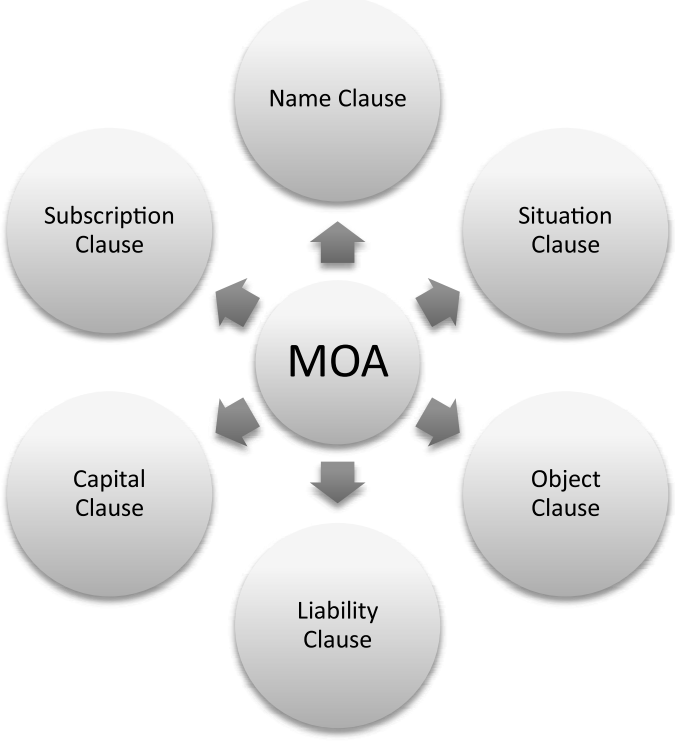
(iii) the Form in Table C is applicable to the companies limited by guarantee having a share capital;

(iv) the Form in Table D is applicable to unlimited companies not having a share capital;

(v) The Form in Table E is applicable to unlimited companies having a share capital.

A company shall adopt any of the model Forms of the memorandum of association mentioned above, as may be applicable to it.

Contents of Memorandum of Association



As per Section 4, the memorandum of a limited company must state the following:

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

Similarly, in case of government companies the name of the company need not end with the words "Limited" or "Private Limited". This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2015.

Example in case of Public Company: Wipro Ltd.

Example in case of Private Company: Lifestyle & Media Broadcasting Limited

Example in case of Section 8 Company: Tata Foundation

Example in case of Section 8 Company: Truffle House (OPC) Private Limited

According to section 4(*2*), the name stated in the memorandum shall not –

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

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

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

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

Identical Names

Rule 8 of the Companies (incorporation) Rules, 2014, provides that before granting any name, it will be examined whether name is identical with name of any other company/LLP or any other name already allowed to a company/LLP. To determine whether a proposed name is identical with another, the differences which are arising on account of the following are to be disregarded:

a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;

b) the plural or singular form of words in one or both names;

Illustrations

(i) Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.

(ii) SM Computers Ltd. is not same as SMS Computers Ltd.

c) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;

Illustration

ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.

d) use of different tenses in one or both names;

Illustration

Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.

e) use of different phonetic spellings including use of misspelled words of an expression;

Illustration

Chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd.

f) use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names;

> ***Illustration***
>
> Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.

g) the order of words in the names;

> ***Illustration***
>
> Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.

h) use of the definite or indefinite article in one or both names;

> ***Illustration***
>
> Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.

i) a slight variation in the spelling of the two names including a grammatical variation thereof;

> ***Illustration***
>
> Color Technologies Ltd. is same as Colour Technologies Ltd.

j) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English;

> ***Illustration***
>
> National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.

k) addition of the name of a place to an existing name, which does not contain the name of any place;

> ***Illustration***
>
> If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.

l) addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand;

> ***Illustration***
>
> Thunder Services Ltd is same as Thunder11 Services Ltd and OneThunder Services Ltd.

Undesirable Names

Rule 8A of the Companies (incorporation) Rules, 2014, provides that the Undesirable names are those names which in the opinion of the Central Government are:

1. Prohibited under the Provisions of Section 3 of Emblems and Names (Prevention and Improper Use) Act, 1950.
2. The name includes a trade mark registered under the Trade Marks Act, 1999.

3. Name is identical with or too nearly resembles the name of a limited liability partnership.
4. The name includes any word or words which are offensive to a section of people.
5. The proposed name contains the words 'British India'.
6. The proposed name includes the word "State", in case the company is not a Government company.
7. The proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited.

Word or expression which can be used only after obtaining previous approval of Central Government.

Rule 8B of the Companies (incorporation) Rules, 2014, provides that, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:-

- Board
- Commission
- Authority
- Undertaking
- National
- Union
- Central
- Federal
- Republic
- President
- Rashtrapati
- Small Scale Industries
- Khadi and Village Industries Corporation
- Financial Corporation and the like
- Municipal
- Panchayat
- Development Authority
- Prime Minister or Chief Minister
- Minister
- Nation
- Forest corporation
- Development Scheme
- Statute or Statutory
- Court or Judiciary

- Governor
- the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities
- Bureau.

Precautions to be taken care before applying for the proposed name

One should be very careful while applying for the name, there can be rejection of name approval application in the following cases:

a) Proposed Name exactly identical/resembled/phonetically to the name of an existing company/ LLP.

b) Proposed Name includes words which are registered under Trademark Act with a specific class(es).

c) Wrong Class/Category/Sub-Category of the Proposed Company is mentioned in web form.

d) Industrial Activity Code of NIC is not found in consonance with the attached objects of the Company in SPICe+ PART A.

e) Proposed Name is found Descriptive i.e. it contains commonly used words. (proper pre- fix or suffix not used in name)

f) No significance about Abbreviations used in proposed name.

g) Proposed Name indicates words Finance/Investment/Capital/ Holding/ Insurance etc whereas the proposed objects of the Company do not indicate such activities.

h) Objects mentioned in the form are vague and the TM cannot be ascertained. (E.g. manufacturing / development / producing of all type of goods etc.)

i) Name contain words viz Board, National, Commission etc as given in Rule 8B of the Companies (Incorporation) Rules, 2014 for which previous approval of the Central Government is required.

j) Application made with Restricted and Undesirable names. (System may not allow filing of such applications)

k) Proposed name if resembles closely the popular or abbreviated description of an existing company or limited liability as per rule 8A(1)(h) of Companies (Incorporation) Fifth Amendment Rules, 2019.

l) Previous approval of the Central Government has not been obtained and attached with application Where any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Government, or any local authority, corporation or body constituted by the any Government.

m) If the proposed name contains the name a foreign country/city/town etc. then applicant has to attach any proof of significance of business relations with such foreign country like MOU with a company of such country. In case proposed name includes name of India and a foreign country (e.g. India Japan or Japan India) in such cases name shall be allowed if, there is Government to government participation or patronage and no company shall be incorporated using the name of enemy country.

Reservation of Name

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

(a) The name of the proposed company; or

(b) The name to which the company proposes to change its name.

Reservation of Name for 20 days

Section 4(5) (i) lays down that upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 20 days from the date of approval.

In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.

Common reasons for rejection of name:

- Proposed name is not according to the activities described in Main Objects.
- Proposed Name is not available in view of the existence of identical or closely resembling companies.
- Proposed name is too general without any distinct word or identity.
- Keywords like Industry/ Udyog, Enterprises, Products, Business, manufacturing may be considered when the company proposes to deal in various business activities. In case business activity is in particular trade said keywords cannot be allowed.
- Words like International, Hindustan, India, Bharat, Continental, Asiatic, Corporation will not be allowed unless the scope and scale of business of the proposed company justify the use of words.
- Proposed name includes words like National, Central, Union, Federal etc which are considered as undesirable.

Section 4(5)(ii) provides that giving wrong or incorrect name information in the name reservation application is wrong and if it is found that name was applied by furnishing wrong or incorrect information, then the reserved name shall be cancelled and the person making name reservation application shall be liable to a penalty which may extend to one lakh rupees.

Further, if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

- either direct the company to change its name within a period of three months, after passing an ordinary resolution;
- take action for striking off the name of the company from the register of companies; or
- make a petition for winding up of the company.

(b) Situation Clause: The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. According to section 12 of the Act within thirty (30) days of company's incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent.

Verification of registered office: The Company must also furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in such manner as may be prescribed (e-form INC-22). However, it may be noted that e- Form INC 22 is not required to be filed with SPICe+, if a company is registered with the same address as the address for correspondence. In case the registered address is different, INC-22 is required to be filed within 30 days of its incorporation, for intimating the registered office address.

Obligation of the company regarding the registered office: According to Section 12(3) of the Act, every company is required to display its name and address in legible letters in conspicuous position and in all its business letters, bill heads, and letter papers. Accordingly, the company shall –

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) have its name engraved in legible characters on its seal, if any;

(c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications;

(d) have its name printed on negotiable instruments such as hundies, promissory notes, bills of exchange and such other document as may be prescribed;

(e) If it has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

However, where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years.

Further, in case of One Person Company, the words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

The Ministry of Corporate Affairs (MCA) vide its notification dated August 18, 2022 has notified "The Companies (Incorporation) Third Amendment Rules, 2022" which has came into force on the date of its publication in the Official Gazette. According to the amendment, rule 25B is inserted in the Companies (Incorporation) Rules, 2014, stating physical verification of registered office of the company by the Registrar in terms of section 12(9) of the Companies Act, 2013 in presence of two witnesses of the locality.

The Registrar shall carry the documents as filed on MCA 21 in support of address of the registered office of the company for the purposes of physical verification and take a photograph of the registered office. Further a report of physical verification of the registered office of the company is also required to be in the prescribed format.

(c) Object Clause: The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1) (c) of the Act, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities. It states affirmatively the ambit and

extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. The purpose of the objects clause is to enable the persons dealing with the company to know its permitted range of activities. The acts beyond this ambit are ultra vires and hence void. Even the entire body of shareholders cannot ratify such acts. The subscribers to the memorandum of association enjoy almost unrestricted freedom to choose the objects. The only restriction is that objects should not be illegal and against the provisions of the Companies Act, 2013.

The objects are divided into two sub-categories:

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

> The main objects of the MOA give a brief about the activities that are decided to be carried by the company. The main objects of the company generally include the activities like manufacturing, trading or providing any kind of services by the company. Further, another sub clause (any matter considered necessary in furtherance thereof) describes the activities incidental to the main objects. Also, it can contain the activities related to the business keeping in mind the diversification needs of future and to avoid alteration in future.

(d) Liability Clause: The liability of members of the company, whether limited or unlimited, and also state,—

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

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

A. to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

B. to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.

For Example:

In the MOA of Tata Consultancy Services Limited, it is provided that a Company Limited by Shares.

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

1. **Limited by Shares:** The first type is Liability limited by shares. In the case of a company whose Liability is limited by shares, the Liability of the members in case the company goes for winding up is limited by the number of shares that have been purchased and to the extend unpaid by the members.
2. **Limited by Guarantee:** The second kind is Liability limited by Guarantee. In this case, every member beforehand guarantees a certain amount that they will pay in case the company moves for winding up.
3. **Unlimited Liability:** In the case of an unlimited company, every member of the company is liable to pay for an unlimited amount if the company moves for winding up. The liability of members can be for an amount as large as can be and extends to members' personal property as well.

(e) Capital Clause: in the case of a company having a share capital, the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount. This clause shall state the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as "nominal", "authorized" or "registered". The amount of nominal capital is determined having regard to the present as well as future requirements of the company with reference to its objects.

> The usual way to state the capital in the memorandum is: "The share capital of the company is 10,00,000 rupees divided into 1, 00,000 equity shares of 10 rupees each". This amount lays down the maximum limit beyond which the company cannot issue shares without altering the memorandum as provided by Section 61 of the Companies Act, 2013.

If there are both equity and preference shares, then the division of the capital is to be shown under these two heads. A company is not authorized to issue capital beyond its authorized/nominal/registered capital. If it receives applications for shares beyond the shares covered by the authorized capital, the amount received on excess number of shares should be returned.

Out of the issued capital, the total amount actually subscribed or agreed to be subscribed is known as subscribed capital, and this subscribed capital again may be wholly paid or partly paid, in which latter case the balance would be payable on future calls when made. The amount actually paid by the shareholders is called the paid- up capital.

(f) Subscription Clause:

(i) the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

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

> The subscriber sheet to the Memorandum of Association is a vital document that is required to be submitted along with the Memorandum of Association during the company registration process. It provides the details of the first members of the company.
>
> The required details include:
>
> - The name of the subscribers.
> - The details of the father or spouse of the subscribers.
> - The complete address of the subscribers with a valid pin code.
> - The pan card number and occupation of the subscribers.
> - Signatures of the subscribers.
> - The subscription sheet needs to mention the total number of shares that have been subscribed to by each subscriber.
> - If a subscriber is a Company or corporate body, its director or partner's signature on behalf of the company.
> - The witness authenticates details of the subscriber sheet.

Provision in the memorandum or articles is void

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

The above clauses are compulsory and are designated as "conditions" prescribed by the Act, on the basis of which a company is incorporated.

It is to be noted that the Companies Act, 2013 shall override the provisions in the memorandum articles, agreement or resolution of a company, if the latter contains anything contrary to the provisions in the Act (Section 6).

ARTICLES OF ASSOCIATION

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

The general functions of the articles have been aptly summed up by Lord Cairns, L.C. in *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche,* (1875) L.R. 7 H.L. 653 as follows:

"The articles play a part that is subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, rights and powers of the governing body as between themselves and the company at large, and the mode and form in which business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made... The memorandum, is as it were... the area beyond which the action of the company cannot go; inside that area shareholders may make such regulations for the governance of the company as they think fit".

Thus, the memorandum lays down the scope and powers of the company, and the articles govern the ways in which the objects of the company are to be carried out and can be framed and altered by the members. But they must keep within the limits marked out by the memorandum and the Companies Act.

The articles of a company are subordinate to and subject to the memorandum of association and the Act. Any clause in the Articles going beyond the memorandum will be ultra vires. But the articles are only internal regulations, over which the members of the company have full control and may alter them according to what they think fit. Only care has to be taken to see that regulations provided for in the articles do not exceed the powers of the company as laid down by its memorandum [*Ashbury v. Watson,* (1885) 30 Ch. D 376 (CA)]. Articles that go beyond the company's sphere of action are inoperative, and anything done under the authority of such article is void and incapable of ratification.

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

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

Entrenchment provisions of Articles

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

The provisions for entrenchment referred to in section 5(3) shall be made either (a) on formation of a company, or (b) by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. [Section 5 (4)]

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar in Spice+ form at the time of the incorporation of the Company or E-form MGT-14 in case of existing Companies. The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or ultra vires the memorandum, nor should it be contrary to the provisions of the Companies Act 2013.

Contents of Articles

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

1. Exclusion wholly or in part of Table F, G, H, I or J.
2. Adoption of preliminary contracts.
3. Share Capital and variation of rights, if any.
4. Terms governing issue and redemption of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. General meetings, proceedings at general meetings, adjournment of meeting.
14. Share certificates.
15. Dematerialization.
16. Conversion of shares into stock.
17. Voting rights and proxies.
18. Meetings and rules regarding committees of the Board.
19. Directors, their appointment and delegations of powers.
20. Nominee directors.
21. Issue of Debentures and stocks.
22. Audit committee.

23. Managing director, Whole-time director, Manager, Secretary, Chief Executive Officer and Chief Financial Officer.
24. Additional directors.
25. Seal.
26. Remuneration of directors.
27. General meetings, proceedings at general meetings, adjournment of meeting.
28. Board of Directors, Proceedings of the Board meetings.
29. Borrowing powers.
30. Dividends and reserves.
31. Accounts and audit.
32. Winding up.
33. Indemnity.
34. Capitalization of profits, reserves.
35. Secrecy.

Utmost caution must be exercised in the preparation of the articles of association of a company. At the same time, certain provisions of the Act are applicable to the company "notwithstanding anything to the contrary in the articles". Therefore, the articles must contain provisions in respect of all matters which are required to be contained therein so as not to hamper the working of the company later.

Drafting of Articles of Association

Section 5 of the Act provides that the articles of association should be in any one of the Forms as specified in Tables F, G, H, I or J of Schedule I to the Companies Act, 2013.

1. the form in Table F is applicable to company limited by shares
2. the form in Table G shall be applicable to company limited by guarantee and having share capital
3. the form in Table H shall be applicable to company limited by guarantee and not having share capital
4. the form in Table I shall be applicable to unlimited company and having share capital
5. the form in Table I shall be applicable to unlimited company and not having share capital

Precautions to be taken while framing the articles of association :

- Articles of association must be divided into paragraphs and numbered consecutively.
- It shall not contain something that is contrary to the memorandum.
- Anything that would be stated or amended in the articles shall be in accordance with the Companies Act.

For Example, Section 272 of the Companies Act, 2013 states contributories right for presentation of petition of winding up of a company, in any circumstance this right cannot be limited by the articles.

- The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation.
- Subscribers shall sign the Articles in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation.

FORMATION AND REGISTRATION OF CORPORATE ENTITIES

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

Features of SPICE+:

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

Part A - for Name reservation for new company and

Part B - offering a bouquet of services viz.

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

For the incorporation of company the user may either choose to submit Part-A for reserving a name first and thereafter submit Part B for incorporation & other services or file Part A and B together at one go for incorporating a new company and availing the bouquet of services as listed above. In case SPICe+ Part A is submitted individually for name reservation, Part B and all other linked forms shall be enabled only after the SRN of SPICE+ Part A is 'Approved' i.e. the name is reserved. Incorporation applications (Part B) after name reservation (In Part A) can be submitted as a seamless process in continuation of Part A of SPICe+. In form Spice+, stakeholders will not be required to even enter the SRN of the approved name as the approved name will be automatically displayed on the dashboard and a click on the same will take the user for continuation of the application through a hyperlink that will be available on the SRN/ application number in the new dashboard.

It may be noted that from 23rd February 2020 onwards, RUN service is applicable only for 'change of name' of existing company and the new web form facilitates on-screen filing and real time data validation for seamless incorporation of companies. The approved name and related incorporation details as submitted in Part A, would be automatically pre-filled in all linked forms also viz., AGILE-PRO, eMoA, eAoA, URC1, INC-9 (as applicable)

All Check form and Pre-scrutiny validations (except DSC validation) happen on webform itself. Once the SPICe+ is filled completely with all relevant details, the same would then have to be converted into pdf format, with just a click of the mouse button, for affixing DSCs. All digitally signed applications can then be uploaded along with

the linked forms as per the existing process. Changes/modifications to SPICe+ (even after generating pdf and affixing DSCs), can also be done by editing the same web form application which has been saved, generating the updated pdf affixing DSCs and uploading the same.

Registration for EPFO and ESIC shall be mandatory for all new companies incorporated w.e.f 23rd February 2020 and no EPFO & ESIC registration numbers shall be separately issued by the respective agencies. However, the Registration for Profession Tax shall also be mandatory for all new companies incorporated in the State of Maharashtra w.e.f 23rd February, 2020.

All new companies incorporated through SPICe+ (w.e.f 23rd February 2020) also be mandatorily required to apply for opening the company's Bank account through the AGILE-PRO linked web form.

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

(i) Total number of subscribers and/or directors is greater than 20 and/or

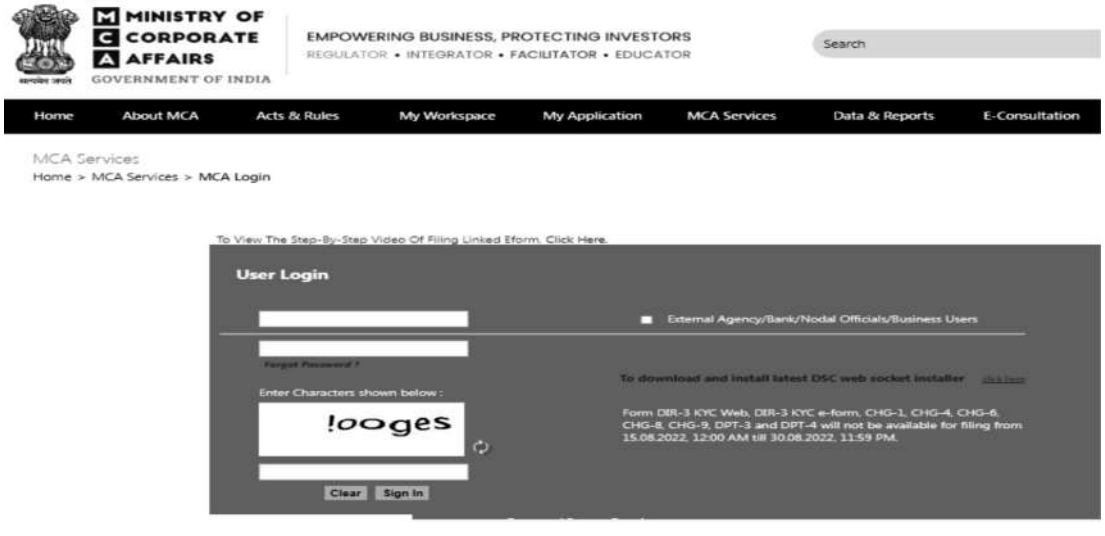
(ii) Any such subscribers and/or directors has neither DIN nor PAN.

STEP – I: Apply For Name Approval

A. Login on MCA Website

Applicant has to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)

After Login, user has to click on the icon SPICe+ in MCA Service. An online form shall be opened. Applicants have to fill the information online. (This form cannot be downloaded).



B. Details required to be mentioned in online form:

New fields introduced in Part A of SPICe+ are:

(i) Type of company

(ii) Class of company

(iii) Category of company

(iv) Sub-Category of company

(v) Main division of industrial activity of the company

(vi) Description of the main division.

C. Choose File:

This option is available to upload the PDF documents. If applicant want to attach any file, it can be uploaded at this option.

D. Submission of Form on MCA Website:

After completion of above steps user shall submit the Form with MCA website.

E. Validity of Reserved Name:

Reserved name shall be valid for 20 days from the date of approval of name, whereas for change of name of existing company, the validity period of new name would be 60 days from the date of approval.

STEP – II: Preparation of Documents for Incorporation of Company

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

- INC-9 – Declaration by Subscriber(s) and director(s).
- DIR-2- Declaration from the proposed Directors along with Copy of Proof of Identity and residential address.
- Form MBP-1-Disclosure of interest in other entities.
- NOC from the owner of the property, where the registered office of the company will be located.
- Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts).
- Copy of the utility bills which should not be older than two months.
- In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers.
- All the Subscribers should have Digital Signature.
- Copy of PAN from the subscribers along with Proof of Identity and residential address.

STEP – III: Fill the Information in Form

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

Features of SPICe+ (Inc-32) form:

- Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attached to the Form.
- In case of a company having share capital, minimum authorized and subscribed share capital required for an OPC is Rupee one , for a private company having share capital is Rupees two and in case of a public company, Rupees seven. (as per Instruction Kit).

- Maximum details of directors are TWENTY (20).
- Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company, other than a Producer Company.
- Person can apply for the name also in this form. (In SPICe+ Part A)
- By affixation of DSC of the subscriber on the INC-33 (MOA) date of signing will appear automatically in the form.
- Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.
- Company can apply for Application for Goods and services tax Identification number, Employees State Insurance Corporation registration (ESIC), Employees Provident Fund Organization (EPFO) registration, and Professional tax Registration (in Maharashtra, Karnataka and West Bengal) and Opening of bank account through AGILE-PRO form.
- In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees fifteen lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC- 32 (SPICe+) shall not be applicable.

SPICe+ (INC-32)-a Single Window Form for Incorporation of Company

Earlier if a Person wants to incorporate a company , then it has to apply for the DIN for the proposed directors, seek approval for availability of name , separate form for first Director, Registered office address, PAN, TAN etc. Now, this form is a single window for Incorporation of Company.

This form can be used for the following purposes:

- Application of DIN (upto 3 Directors)
- Application for Availability of Name– SPICe+ - Part A
- No need to file separate form for first Director (DIR-12)
- No need to file separate form for address of registered office (INC-22)
- No need to file separate form for PAN & TAN
- No need to file separately for GSTN.

Points to Remember

- In case of incorporation of a company having more than 7 subscribers, MOA & AOA shall be filed with SPICe+(INC 32) as Physical attachment in the respective format as specified in Table A to J in Schedule I without filing form INC 33 and INC 34 as Physical attachment of MOA & AOA in e-form INC 32.
- In case of incorporation of a company where any of the subscribers of the MOA/AOA is a foreign national, MOA & AOA shall be filed with INC 32 in the respective format as specified in Table A to J in Schedule I along with valid Business Visa (In case of Individual) and apostillised MOA and AOA (In case business Visa is not available) and in such cases E-MOA (INC-33) and E-AOA (INC-34) are not required .Company has to pay the Stamp Duty in case of incorporation of Company with authorized Capital of Rs. 15 Lakh or below because Stamp Duty is a state matter. Companies Act has given exemptions for the ROC fees not for the stamp duty.
- Maximum 3 (Three) DIN can be applied through SPICE form. If applicant want to incorporate a Company

with more than 3 Directors, applicant have to initially incorporate the Company with 3 Directors and have to appoint new directors later on after incorporation.

- Only one (1) Name can be applied for through SPICE+ form. After filing of e-form, if the name is not available, the applicant has to propose new name and have to alter the name on all the attachments of the Form.

STEP – IV: Preparation of MOA & AOA (Electronic or Physical)

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

STEP – V: Fill details of PAN & TAN

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

STEP – VI: Fill details of GST, IEC in AGILE-PRO

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

STEP – VII: Submission of INC-32, 33, 34, AGILE-PRO-S on MCA

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

STEP – VIII: Certificate of Incorporation

Incorporation certificate shall be generated with CIN, PAN & TAN in Form INC-11.

Commencement of Business

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

(a) a declaration in form INC-20A is filed by a director within a period of one hundred and eighty day of the date of incorporation of the company in such form and verified by a Company Secretary or a Chartered Accountant or a Cost Accountant in practice with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) The company has filed with the Registrar a verification of its registered office in form INC-22 as provided in sub-section (2) of section 12.

Precaution to be taken by Professionals

1. **Obtain engagement letter from subscriber**: – As per certification in e-form DIR-12 & INC-22, a professional declares that he has been engaged for the purpose of certification. Therefore, the professional should take engagement letter from the promoters.
2. **Verification of original records pertaining to registered office**: – As per certification in e-form INC-22, a professional declares that he has verified all the particulars (including attachments) from original records.
3. **Ensure all attachments are clear enough to read**: – As per certification in e-form DIR-12 & INC-22, a professional declares that all attachments are completely and legibly attached.
4. **Ensure registered office of the company is functioning for the business purposes of the company:**

   As per certification in e-form INC-22, a professional declares that he has personally visited the registered office.
5. Take a declaration to the effect that all the original documents have been handed over after incorporation. Since as per section 7(4) copies all documents/information as originally filed should be preserved at the registered office of the company. Therefore, a professional should take a declaration while handing over the incorporation documents.
6. **MCA Circular 10/2014: –** According to this circular ROC/RD in case of omission of material fact or submission of false/incomplete/ misleading information, the Ministry can after giving opportunity of being heard, refer the matter to the e-governance division of MCA, which in turn may initiate proceedings under section 447 and/ or ask the respective professional institute to take requisite disciplinary action.

PROCESS OF INCORPORATION OF A PUBLIC LIMITED COMPANY

Requirement of minimum number of directors and shareholders:

There is a minimum requirement of directors and shareholders, as mentioned below:

(A) Public Company

- Minimum Shareholders: 7 (Seven)
- Minimum Directors: 3 (Three)

Statutory compliances

A public or private company will have to comply with all the laws, rules and regulations as applicable, including but not limited to the Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income Tax Act, etc., failing which , it may be subjected to penal action.

- There must be at least seven members to start a public company.
- There is no ceiling on the maximum number of members in a public company.
- A public company should have at least three directors.
- In a Public Limited Company, there must be at least five members, personally present at the General Meeting for constituting the requisite quorum.
- The shareholders of a public company can freely transfer their shares.
- A public company can invite the general public for subscribing to shares of the company.
- The shares of a public company can be listed on a recognized stock exchange and traded publicly.

STEPS FOR INCORPORATION OF PUBLIC COMPANY

The Incorporation procedure for a public company is **similar** to the private company. However, it is to ensure that the proposed company is in compliance with the minimum requirement of the members and directors in a public company and the Articles and Memorandum of Association are drafted as per the requirement of the Act. The name shall be suffixed by the word "Limited". If there are any entrenchment clauses in the articles of the company, then such entrenchment shall be in compliance with the Act.

PROCESS OF INCORPORATION OF A ONE PERSON COMPANY (OPC)

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

Rule 3(1) of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:-

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

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

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

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

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

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

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

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

A natural person can be member of only one "One Person Company", at any point of time and the said person shall not be a nominee of more than a One Person Company. The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination details along with consent of such nominee shall be filled in Form No. INC-32 (SPICe+) as a declaration and the said Form alongwith fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.

PROCESS OF INCORPORATION OF NIDHI

(1) A Nidhi shall be a public company and shall have a minimum paid up equity share capital of ten lakh rupees.

(2) Nidhi shall not issue preference shares, debentures or any other debt instruments.

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

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

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

Under Nidhi (Amendment) Rules, 2022 , the Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the official Gazette. Thus, prior to this amendment, a public company could directly get incorporated as a Nidhi by the Registrar. After this amendment, in addition to following the procedure for incorporating a public company, the Central Government on receipt of NHD-4 will have to satisfy itself and notify the company as a Nidhi in the Official Gazette.

Requirements for Minimum Number of Members and Net Owned Funds

Nidhi (Amendment) Rules, 2022 deals with requirements for minimum number of members, net-owned fund etc. It provides that:

(1) Every Nidhi shall, within a period of 120 days from the date of its incorporation, ensure that it has filed –

(a) E-form NDH-4;

(b) Net Owned Funds of 20 lakh rupees or more;

(c) minimum of 200 persons as members;

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

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

It may be noted that "Net Owned Funds" means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet. Further, the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above mentioned, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form NDH-2 along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.

Provided that the Regional Director may extend the period upto one year from the date of receipt of application.

Where the failure to comply with sub-rule (1) above mentioned extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1), and gets itself declared under sub-section (1) of section 406 besides being liable for penal consequences as provided in the Act.

Return of Statutory Compliances by Nidhi

Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.

However, the above mentioned compliance is not applicable for companies incorporated on after the commencement of Nidhi (Amendment) Rules, 2022.

General restrictions or prohibitions

In terms of Rule 6, Nidhi shall not –

(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any Body corporate;

(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;

(c) open any current account with its members;

(d) acquire or purchase securities of any other company 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;

(e) 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;

(f) accept deposits from or lend to any person, other than its members;

(g) pledge any of the assets lodged by its members as security;

(h) take deposits from or lend money to any Body corporate;

(i) enter into any partnership arrangement in its borrowing or lending activities;

(j) issue or cause to be issued any advertisement in any form for soliciting deposit;

It may be noted that 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.

(k) pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans;

(l) raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi.

PROCESS OF INCORPORATION OF SECTION-8 COMPANY

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

(i) obtaining of licence under section 8(1) of the Companies Act, 2013; and

(ii) obtaining certificate of incorporation.

Before formation of the company, the promoters must decide on the following:

(a) the proposed name to be applied;

(b) objects to be carried by the Company;

(c) proposed registered office address;

(d) authorized capital;

(e) Number of promoters, number of directors, and number of shares to be subscribed by each promoter.

In deciding the proposed name, the following rules have to be borne in mind:

(i) The name of the company should be in consonance with the principal objects of the company as set out in the memorandum of association. Every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum. [Rule 8(2)(b)(ii) of Companies (Incorporation) Rules, 2014].

(ii) The proposed name should not fall in the ambit of undesirable names specified in Rule 8 of Companies (Incorporation) Rules, 2014.

(iii) Name of Section 8 Company shall include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral trust and the like words. [Rule 8(7) of the Companies (Incorporation) Rules, 2014].

(iv) There is no requirement to add the word Limited or Private Limited to its name. [Proviso to Section 4(1)(a) and Section 8(1)]

After deciding on the name and the structure of the proposed company, the following steps will be taken:

1. It has to be ensured that all the proposed directors should have valid DIN. If not, steps are to be taken for applying for DIN and obtaining the same.
2. Digital Signature for any one of the Directors is required to digitally sign the E-Forms to be submitted with the Registrar of Companies.
3. Memorandum of Association and Articles of Association have to be drafted. MOA of the Section 8 Company must be in form INC-13 (Rule 19) and AOA must be in the form INC-31 are must be taken to ensure see that:
   (a) Objects of Section 8 Company must be the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object. [Section 8(1)(a)]
   (b) the proposed company should intend to apply its profits, if any or other income in promoting its objects. [Section 8(1)(b)]
   (c) It should intend to prohibit the payment of dividend to its members. [Section 8(1)(c)].
4. The following provisions have to be noted before incorporation:
   (a) There must be at least 2 or 3 subscribers to the memorandum in case company is proposed to be incorporated as private company or public company respectively. [Section 3(1)(a) and Section 3 (1)(b)]
   (b) Minimum number of Directors required is 2 Directors or 3 Directors, in case company is proposed to be incorporated as private company or public company respectively with a maximum limit of up to 15 Directors. A Company may appoint more than 15 directors after passing a special Resolution in a general Meeting. [Section 149(1)(a) (b)]
   (c) Section 8 company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days during the financial year. [(Section 149(3)]

Application for Incorporation

The incorporation procedure can be carried out through eForm SPICe+ which is a single application for reservation of name, incorporation of a new company and/or application for allotment of DIN and/or application for PAN and TAN. This eForm is accompanied by supporting documents including details of Directors & subscribers,

MOA and AoA etc. It is to be noted that e-MOA (INC-33) and e-AOA (INC-34) is not applicable to Section 8 companies and physical copies of MOA and AOA are to be attached with the form SPICe+.

Once the e-Form is processed and found complete, company would be registered and CIN would be allocated. Also, DINs would be issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company. Also, PAN and TAN would get issued to the Company.

Earlier there were 2 Steps in the process of Incorporation of a Section 8 Company. First an application had to be made to the Central Government for the licence and once the licence was granted the Company could apply to the Registrar for Incorporation process.

In order to encourage the concept of 'Ease of Doing Business', the Form SPICe+ was introduced where both licence and the Certificate of Incorporation can be obtained by applying through a single form.

Incorporation application is filed in Form e forms SPICe+ along with the following attachments:

1. Memorandum of Association;
2. Article of Association;
3. Declaration by professional (Rule 19 (3) (b) of Companies (Incorporation) Rules, 2014) that the Memorandum and Articles have been drawn up in conformity with the provisions of Section 8 and rules made thereunder and all other requirements of the act relating to incorporation of a Section 8 Company have been complied with ;
4. Declaration by each of the persons making the application;
5. Declaration by First Directors and Subscribers;
6. Address Proof of the subscribers;
7. Identity proof of subscribers;
8. An estimate of the future annual income and expenditure of the company for next three years, specifying sources of income and the objects of the expenditure;
9. The verification of the registered office shall be filed in Form No. INC. 22 (when address for correspondence is the address of registered office of the company) and the following documents shall be attached thereto:

   (a) the registered document of the title of the premises of the registered office in the name of the company; or

   (b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

   (c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

   (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

   (*Note: This is not required if the correspondence address given in the SPICe+ Form is the registered office of the Company as per Rule 38(8) of Companies (Incorporation) Rules, 2014*.

10. Appointment of directors of the company in Form DIR - 12 along with the following attachments:
    - Consent to act as Directors in Form DIR- 2.
    - Affidavit by the Directors for Not accepting Deposits (On Non- judicial stamp paper of Rs. 100/- and duly notarised).
    - Declaration by each Subscriber to Memorandum of Association (On Non- judicial stamp paper of Rs. 100/- and duly notarised) in Form INC-9.
    - AGILE-PRO-S is applicable for incorporation of Section 8 Companies.

Certificate of Incorporation

If the Concerned Registrar of Companies is satisfied that all the requirements of the Companies Act, 2013 have been complied with, a Certificate of Incorporation is issued which carries a unique Company Identification Number (CIN) in form INC-11, along with the license issued by the Central Government.

LESSON ROUND-UP

- From the point of view of incorporation, companies can be classified as chartered companies, statutory companies and registered companies. Companies can be categorized as unlimited companies, companies limited by guarantee and companies limited by shares. Companies can also be classified as public companies, private companies, one person companies, small companies, associations not for profit having license under Section 8 of the Act, government companies, foreign companies, holding companies, subsidiary companies, associate companies, investment companies, Nidhi and Producer Companies.
- A private company has been defined under Section 2(68) of the Companies Act, 2013 as a company which has a minimum paid-up capital as may be prescribed, and by its articles restricts the right to transfer its shares, limits the number of its members to two hundred, and prohibits any invitation to the public to subscribe for any securities of the company.
- A private company can be further classified into a One Person Company and Small Company.
- "One Person Company" means a company which has only one person as a member.
- A public company is a company which (a) is not a private company (b) has a minimum paid-up share capital as may be prescribed.
- 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.
- A Producer Company is a body corporate having objects or activities specified in Section 378B(1) and which is registered as such under the provisions of the Act. Section 378B (1) of the Companies Act, 2013 provides the objects for which a producer company may be registered under the Act.
- "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. According to section 406 of Companies Act, 2013, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

- The Memorandum of Association is a document which sets out the constitution of the company and is the foundation on which the structure of the company stands. It defines as well as confines the powers of the company. If the company enters into contract or engages in any trade or business which is beyond the powers conferred on it by the memorandum, such a contract or the act will be ultra vires the company and hence void.
- Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act. It also includes the regulations contained in Tables F to J in Schedule I of the Act, in so far as they apply to the company.
- The memorandum lays down the scope and powers of the company and the articles govern the ways in which the objects of the company are to be carried out and can be framed and altered by the members.
- The memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member to observe and be bound by all the provisions of the memorandum and of the articles.
- As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has notified & deployed a new Web Form 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form.
- A company incorporated under Section 8 of the Companies Act, 2013 is a company incorporated for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, provided the profits, if any, or other income is applied for promoting only the objects of the company.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. State in brief the various kinds of companies which can be registered under the Companies Act, 2013.
2. Define a private company and state the exemptions which it enjoys under the Companies Act, 2013.
3. Define a public company and distinguish it from a private company.
4. State the consequences in each of the following cases giving reasons for your answers:
   (a) A Private Company has 210 members in total of which 10 are the employees of the company. Five of these employees leave the employment of the company.
   (b) A private firm has 20 partners, including a private company which is having 30 shareholders.
5. Write short notes on:
   (a) Small Companies
   (b) One Person Companies
   (c) Nidhi
   (d) Producer Companies

6. What is the importance of the objects clause of the memorandum of association? If a company undertakes to do anything which is not either expressly or impliedly provided for by the objects clause, what would be the consequences?
7. "Memorandum of association is a charter of the company". Comment upon the statement and explain the clauses which are included in a memorandum of association of a company.
8. State the procedure for incorporation of Public Company having share capital.

LIST OF FURTHER READINGS

- ICSI Premier on Company Law
- Bare Act- Companies Act, 2013

OTHER REFERENCES (Including Websites/ Video Links)

- https://mca.gov.in/

Limited Liability Partnership

Lesson 3

KEY CONCEPTS

■ Limited Liability Partnership ■ LLP Agreement ■ Designated Partner ■ Small Limited Liability Partnership

Learning Objectives

To understand:

- The concept of LLP and its features
- Formation and Registration of LLP
- LLP Agreement and its essential clauses
- Provisions on maintenance of Books of Account, Records and Audit
- Compliance related to Annual Filing of LLP

Lesson Outline

- Introduction
- Regulatory Framework - LLP Act, 2008
- Salient Features of "Limited Liability Partnership" or "LLP"
- Important Definitions
- Nature of Limited Liability Partnership
- Partners
- Minimum Number of Partners
- Designated Partners
- Liabilities of Designated Partners
- Changes in Designated Partners
- Incorporation of Limited Liability Partnership
- Incorporation Document
- Incorporation by Registration
- Effect of Registration
- Partners and their Relations
- Cessation of Partnership Interest
- Registration of Changes in Partners
- Extent and Limitation of Liability of Limited Liability Partnership and Partners
- Whistle Blowing
- Contributions
- Financial Disclosures
- Maintenance of Books of Account, other Records and Audit
- Annual Return
- Compounding of Offences
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Limited Liability Partnership Act, 2008
- The Limited Liability Partnership Rules, 2009

INTRODUCTION

The concept of LLPs emerged as a hybrid form of business entity that combines the flexibility and benefits of a partnership with the limited liability protection typically associated with a corporation. The need for dedicated legislation for LLPs arose due to the limitations and complexities associated with traditional partnerships. LLP has become an alternative business vehicle to carry out business as it combines the characteristics of a private company and a conventional partnership. The difference between LLP & traditional partnership firms is under a traditional partnership firm, every partner is liable, jointly and severally, with all the other partners for all acts of the firm done while he is a partner. Under the LLP structure, the liability of the partner is limited to his agreed contribution. Additionally, individual partners are not held responsible for the independent or unauthorized actions of their counterparts. This provision ensures that partners can be protected from collective liability resulting from the wrongful acts or misconduct of another partner.

The LLP is an alternative operating vehicle that offers the distinctive feature of limited liability for its members while maintaining an open and flexible internal structure based on mutual understanding and a duly executed agreement. This flexibility makes LLP a suitable vehicle for small and medium enterprises and investment venture capitalists, which allows them to provide services with minimum cost and risk, thereby enhancing competitiveness in the global market and making it an attractive choice for their business endeavors and that is why nowadays many start-ups choose LLP over private companies.

The increasing popularity of LLPs has been instrumental in encouraging unorganized and unincorporated structures to shift towards an organized and incorporated business structure. Recognizing this trend, the LLP Act has undergone several amendments since its inception. These amendments aim to improve the ease of business and ensure that LLPs operate on a level playing field with companies. In recent years, the growth of LLPs in India has been significant and showcases a positive trajectory.

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Chapter I	Preliminary	Sections 1 to 2
Chapter II	Nature Of LLP	Sections 3 to 10
Chapter III	Incorporation of Limited LLP And Matters Incidental to it	Sections 11 to 21
Chapter IV	Partners and Their Relations	Sections 22 to 25
Chapter V	Extent and Limitation of Liability of LLP And Partners	Sections 26 to 31
Chapter VI	Contributions	Sections 32 to 33
Chapter VII	Financial Disclosures	Sections 34 to 41
Chapter VIII	Assignment and Transfer of Partnership Rights	Section 42
Chapter IX	Investigation	Sections 43 to 54
Chapter X	Conversion Into LLP	Sections 55 to 58
Chapter XI	Foreign LLPs	Section 59

Chapter XII	Compromise, Arrangement or Reconstruction of LLP	Sections 60 to 62
Chapter XIII	Winding Up and Dissolution	Sections 63 to 65
Chapter XIV	Miscellaneous	Sections 66 to 80
The First Schedule	Provisions regarding matters relating to mutual rights and duties of partners and LLP and its partners applicable in the absence of any agreement on such matters	
The Second Schedule	Conversion from Firm into Limited LLP	
The Third Schedule	Conversion from Private Company Into LLP	
The Fourth Schedule	Conversion from Unlisted Public Company Into LLP	

SALIENT FEATURES OF "LIMITED LIABILITY PARTNERSHIP" OR "LLP"

- The name of every LLP must bear the words "Limited Liability Partnership" or "LLP".
- Any two or more persons associated with carrying on a lawful business with a view to profit may by subscribing their names to an incorporation document and filing the same with the Registrar, form LLP.
- LLP is a suitable structure for medium-sized businesses and commercial activities such as manufacturing, trading, export, consultancy, professional services, education, joint ventures, and similar endeavors, unless specifically prohibited by notification.
- The incorporation procedure of LLP is, to a certain extent, similar to a company. LLP's incorporation documents (parallel to the memorandum) and LLP agreement (parallel to Articles of Association) are required to be filed online.
- Minimum two partners, no limit on a maximum number of partners. A minimum of two partners should be designated as 'Designated Partners', out of which one should be a resident of India to fulfil day-to-day statutory obligations under LLP Act. However, other partners are not normally liable except in cases of fraud etc.
- LLP is a body corporate which must be registered with the Registrar having a distinct name, and such name shall not be the same as other LLP, company or partnership firm already registered.
- It is a separate legal entity and a simple form of a partnership firm which holds the property in its name; thus, any type of debt of the LLP shall be borne by itself, and partners are separated from such obligations.
- LLP itself decide the relationship between the partners through its agreement thus, give the liberty to the partners to set the terms and conditions for effective business; however, subject to the LLP Act and Rules made there under.
- LLP activities are controlled and managed by its partner, whose name is specified in the incorporated documents. Designated partners have the fiduciary responsibility to carry on the day-to-day activities of the LLP.

- The right and duties of the LLP and its partners are defined in the LLP agreement.
- There is no limit on the capital contribution quantum that is to be made available in the business, just like a company where there is no requirement of the paid-up capital unless the context is otherwise provided.
- In the absence of the LLP agreement or any provisions therein, then the majority number of partners decide the specific matter by having one vote one partner. Also, material matters like the change of name, change in object or change in the registered office of the LLP etc., cannot be made unless the consent of all the partners.
- As the LLP itself is liable for the debts incurred to it to the full extent of its assets, this means that partners will be liable only for the limited contribution they have made to those assets, and likewise, partners may also be liable for their wrongful or fraudulent activity. It means that the personal asset of the partner of the LLP will not be at risk for the wrongful acts of the LLP or other partners. Thus, the separate legal entity limits the liability of its partners.
- LLP is also required to notify the Registrar if there is any change in name, registered office, terms and conditions of the LLP agreement. Also, it is required to submit the financials and annual return to the Registrar.
- LLP must display its name, place, registration number, and registered office address on all the conspicuous places of the business.
- LLP is capable of creating a charge over its movable and immovable property, thus enabling financial institutes to obtain finance. Also, the partners can lend money to the LLP in their personal capacity.
- Also, foreign direct investment is allowed in LLP, subject to the terms and conditions.
- Under the provisions of the LLP Act, a partnership firm, private company, or unlisted public company can be converted into an LLP.
- LLP can also take actions like compromise, arrangements, reconstructions, mergers, and amalgamations. Similarly, there are strike-off, winding up, dissolution, inspection and investigation provisions.
- Accounts are required to be maintained by LLP.
- If necessary, the Central Government possesses the authority to examine the operations of an LLP by appointing a qualified Inspector for the designated objective of investigation.

IMPORTANT DEFINITIONS

Body Corporate

Body Corporate means a company as defined in section 2(20) of the Companies Act, 2013 and includes

(i) a limited liability partnership registered under this Act;

(ii) a limited liability partnership incorporated outside India; and

(iii) a company incorporated outside India,

but does not include

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate (not being a company as defined in section 2 (20) of the Companies Act,

2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf. [Section 2(1)(d)]

Business

Business includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude. [Section 2(1)(e)]

Designated Partner

Designated partner means any partner designated as such pursuant to section 7. [Section 2(1)(j)]

Entity

Entity means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm set-up under the Indian Partnership Act, 1932. [Section 2(1) (k)]

Financial Year

Financial year, in relation to a limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year. [Section 2(1) (l)]

Foreign Limited Liability Partnership

Foreign limited liability partnership means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India. [Section 2(1)(m)]

Limited Liability Partnership

Limited liability partnership means a partnership formed and registered under this Act. [Section 2(1) (n)]

Limited Liability Partnership Agreement

Limited liability partnership agreement means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership. [Section 2(1) (o)]

Partner

Partner, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement. [Section 2(1) (q)]

Small Limited Liability Partnership

Small limited liability partnership means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed. [Section 2(1) (ta)]

NATURE OF LIMITED LIABILITY PARTNERSHIP

Limited Liability Partnership to be Body Corporate

According to Section 3 of the LLP Act, 2008, a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

A limited liability partnership shall have perpetual succession.

Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

It may be noted that the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership. (Section 4)

PARTNERS

Partner, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

Section 5 of the Act provides that any individual or body corporate may be a partner in a limited liability partnership.

An individual shall not be capable of becoming a partner of a limited liability partnership, if:

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum Number of Partners

Section 6 states that every limited liability partnership shall have at least two partners.

If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

It may be noted that business includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude. [Section 2(1)(e)]

Designated Partners

Designated Partner means any partner designated as such pursuant to section 7.

Section 7(1) of the Act provides that every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

However, in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

It may be noted that the term resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.

If the incorporation document:

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply *mutatis mutandis* for the said purpose.

Liabilities of Designated Partners

As per Section 8 of the Act, a designated partner shall be-

(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Changes in Designated Partners

Section 9 provides that a limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of section 7(4) & (5) shall apply in respect of such new designated partner.

It may be noted that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

Punishment for contravention of sections 7 and 9

Section	Who shall be liable	Provisions contravened by LLP	Max. Penalty for one time contravention	Penalty in case of continuing contravention	
				Per day penalty	Maximum penalty
10(1)	the limited liability partnership and its every partner	Sec 7(1)	ten thousand rupees and	with a further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every partner of such limited liability partnership.
10(2)	such limited liability partnership and its every designated partner	Sec 7(4)	five thousand rupees and	with a further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of fifty thousand rupees for the limited liability partnership and twenty-five thousand rupees for its every designated partner.
10(3)	such limited liability partnership and itsevery partner	Sec 7(5)or 9	ten thousand rupees, and	further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for its every partner

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

Incorporation Document

Section 11(1) of the Act states that for a limited liability partnership to be incorporated,

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and

(c) there shall be filed along with the incorporation document, a statement in the prescribed form, made by

either an advocate, or a ***Company Secretary*** or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.

According to Section 11(2) of the Act, the incorporation document shall be:

(a) filed in Form FiLLiP with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated along with prescribed fee.

- If an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP.
- An Application for allotment of DPIN shall not be made by more than five individuals in Form FiLLiP.
- An Application for reservation of name may be made through Form FiLLiP.
- Where an applicant had applied for reservation of name under rule 18 in Form RUN-LLP and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership.

Further, the incorporation document shall:

(b) state the name of the limited liability partnership;

(c) state the proposed business of the limited liability partnership;

(d) state the address of the registered office of the limited liability partnership;

(e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;

(f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;

(g) contain such other information, as may be prescribed,concerning the proposed LLP..

Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies.

It may be noted that the total period for re-submission of documents shall not exceed thirty days.

The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16 and shall mention Permanent Account Number and Tax Deduction Account Number issued by the Income Tax Department.

Incorporation by Registration

According to Section 12(1) of the Act, when the requirements imposed by section 11(1)(b) &(c) have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by section 11(1)(a) of that sub-section has not been complied with, he shall, within a period of fourteen days:

(a) register the incorporation document; and

(b) give a certificate that the limited liability partnership is incorporated by the name specified therein.

The certificate issued shall be signed by the Registrar and authenticated by his official seal.

The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Registered Office of Limited Liability Partnership and Change therein

Section 13 of the Act states that every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

According to LLP Rules, Rule 16 provides further requirements w.r.t. registered office of LLP and changes therein as follows:

(1) A limited liability partnership shall give an address for service of documents within the jurisdiction of the Registrar where its registered office is situate. Such address shall include the postal code and e-mail address.

(2) The limited liability partnership, may, in addition to the registered office address, declare any other address as its address for service of documents, under sub-section (2) of section 13, in the manner as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such manner, consent of all partners shall be required for declaring any other address as the address for service of documents.

(3) The intimation of other address for service of documents to LLP shall be given to the Registrar in Form 12, within thirty days of complying with the requirements of sub-rule (2) above along with the fee as mentioned in Annexure 'A'.

(4) The effective date for the service of documents to LLP at the other address declared by the LLP cannot be prior to the date of filing of document under sub rule (3).

Effect of Registration

Section 14 of the Act provides that on registration, a limited liability partnership shall, by its name, be capable of

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Name

Section 15 of the Act provides for the specifications w.r.t. name of LLP as follows:

(1) Every limited liability partnership shall have either the words limited liability partnership or the acronym LLP as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is

(a) undesirable; or

(b) identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

Reservation of name

Section 16 of the Act provides for reservation of name by the Registrar if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15. The name may be reserved for a period of three months from the date of intimation by the Registrar.

A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as

(a) the name of a proposed limited liability partnership; or

(b) the name to which a limited liability partnership proposes to change its name.

A foreign LLP or a foreign company may on payment of prescribed fee apply in Form 25 to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation. It is provided that such reservation shall be valid for three years but may be renewed on a fresh application along with payment of fee as may be prescribed.

CHANGE OF NAME OF LLP

According to section 17 of the Act, notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new body corporate, is registered by a name which is identical with or too nearly resembles to—

(a) that of any other limited liability partnership or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999,as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

It is provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

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

If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter:

It is provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

Change of Registered Name

Section 19 of the Act provides that any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

According to Rule 20 of the LLP Rules, 2009

(1) The limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

(2) Notice of change of name shall be given to the Registrar in Form 5, within 30 days of complying with requirement of sub-rule (1), along with a fee as mentioned in Annexure 'A'.

(3) The Registrar on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the changed name shall be effective from the date of such certificate.

Penalty for improper use of words Limited Liability Partnership or LLP

Section 20 of the Act provides for penalty for improper use of words LLP as follows:

If any person or persons carry on business under any name or title of which the words Limited Liability Partnership or LLP or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Publication of Name and Limited Liability

According to section 21 of the Act:-

(1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:

  (a) the name, address of its registered office and registration number of the limited liability partnership; and

  (b) a statement that it is registered with limited liability.

(2) If the limited liability partnership contravenes the provisions of this section, the limited liability partnership shall be liable to a penalty of ten thousand rupees.

PARTNERS AND THEIR RELATIONS

Eligibility to be Partners

According to Section 22 of the Act, on the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Relationship of Partners

Section 23 provides that save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by ***the limited liability partnership agreement*** between the partners, or between the limited liability partnership and its partners.

It may be noted that Limited Liability Partnership Agreement means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership. {Section 2(1) (o)}

The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in prescribed form, manner and accompanied by such prescribed fees.{Section 23(2)}

Rule 21 provides that For the purposes of sub-section (2) of section 23, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days of the date of incorporation alongwith the fee as provided in Annexure "A":

Further Rule provides that any change made in the limited liability partnership agreement shall be filed in Form 3 within thirty days of such change alongwith the fee as provided in Annexure "A".

An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership. .{Section 23(3)}

Rule 21 provides for sub-section (3) that every limited liability partnership shall get the limited liability partnership agreement, referred to in that sub-section, rectified by all the partners immediately after incorporation and shall file information contained therein in Form 3 with the Registrar within thirty days of the incorporation of the limited liability partnership alongwith the fee as provided in Annexure A.

In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.

It may be noted that the First Schedule provides provisions regarding matters relating to mutual rights and duties of partners and Limited Liability Partnership and Its partners applicable in the absence of any agreement on such matters. The matters are as under:

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this First Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.

3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him.
   (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
   (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

Cessation of Partnership Interest

As per Section 24 of the Act, a person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.

A person shall cease to be a partner of a limited liability partnership:

(a) on his death or dissolution of the limited liability partnership; or

(b) if he is declared to be of unsound mind by a competent Court; or

(c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as former partner), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless:

(a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or

(b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership:

(a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership,

after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

Registration of Changes in Partners

Section 25 provides that every partner shall inform the limited liability partnership of any change in his name or address (in Form 6) within a period of fifteen days of such change. {Section 25(1)}

A limited liability partnership shall:

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change. {Section25(2)}

A notice filed with the Registrar:

(a) shall be in such form (Form 4) and accompanied by such fees as may be prescribed;

(b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed i.e. the form shall be accompanied by a certificate from a Chartered Accountant in practice or Cost Accountant in practice or a Company Secretary in practice that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.and

(c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice of his cessation.if he has reasonable cause to believe that the limited liability partnership may not

file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice.

It may be noted that where no confirmation is given by the limited liability partnership within fifteen days, the Registrar shall register the notice made by a person ceasing to be a partner under this section.

Sub-section (4) provides for penalty in case if the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and its every designated partner shall be liable to a penalty of ten thousand rupees.]

According to sub-section (5), if the contravention referred to in sub-section (1) is made by any partner of the limited liability partnership, such partner shall be liable to a penalty of ten thousand rupees.

EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

Partner as Agent

Section 26 states that every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

Extent of Liability of Limited Liability Partnership

Section 27 of the Act provides that a limited liability partnership is not bound by anything done by a partner in dealing with a person if:

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Extent of liability of partner

Section 28 of the Act provides for the extent of liability of partner as follows:

(1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.

(2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

Holding out

Section 29 of the Act lays down liability of a partner on the principle of holding out as follows:

(1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has

on the faith of any such representation given credit to the limited liability partnership, 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:

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

(2) Where after a partners death the business is continued in the same limited liability partnership 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 limited liability partnership done after his death.

Unlimited Liability in case of Fraud

According to Section 30(1) of the Act, in the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership.

However, in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.

Where any business is carried on with such intent or for such purpose as mentioned in Section 30(1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to five years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

It may be noted that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

Whistle Blowing

Section 31(1) of the Act states that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that:

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

Partner or employee of any limited liability partnership may not be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited

liability partnership or employment merely because of his providing information or causing information to be provided pursuant to Section 31(1).

CONTRIBUTIONS

Form of Contribution

Section 32 of the Act provides that a contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

Obligation to Contribute

Section 33 of the Act provides that the obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.

A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

FINANCIAL DISCLOSURES

Maintenance of Books of Account, other Records and Audit

According to Section 34(1) of the Act the limited liability partnership shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Section 34 (2) states that every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.

Rule 24(1) of the LLP Rules 2009 provides that every limited liability partnership shall keep books of accounts which are sufficient to show and explain the limited liability partnership's transactions and are such as to-

(a) disclose with reasonable accuracy, at any time, the financial position of the limited liability partnership at that time; and

(b) enable the designated partners to ensure that any Statement of Account and Solvency prepared under this rule complies with the requirements of the Act.

According to Rule 24(2) of the LLP Rules the books of account shall contain-

(a) particulars of all sums of money received and expended by the limited liability partnership and the matters in respect of which the receipt and expenditure takes place;

(b) a record of the assets and liabilities of the limited liability partnership;

(c) statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and

(d) any other particulars which the partners may decide.

Rule 24(3) states that the books of account which a limited liability partnership is required to keep shall be preserved for eight years from the date on which they are made.

As per Rule 24(6) of the LLP Rules, Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. Where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 or the Limited Liability Partnership Act, 2008 has come under liquidation under the said Code, 2016 or the said Act, 2008, the said Statement of Account and Solvency may be signed on behalf of limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator.

Rule 24 (7) of the LLP Rules states that the Statement of Account and Solvency of a limited liability partnership shall be signed by the designated partners of the LLP and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed.

Section 34(3) provides that every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

For the purposes of sub-section (3) of section 34, every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates. {Rule 24(4)}

As per Section 34(4) of the Act, the accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed.

Provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.

Any limited liability partnership which fails to comply with the provisions of sub-section (3), such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every designated partner. {Section 34(5)}

Any limited liability partnership which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4), such limited liability partnership shall be punishable with fine which shall not be less than twenty-five thousand rupees, but may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees, but may extend to one lakh rupees. {Section 34 (6)}

The statement of Account and Solvency of a LLP shall be signed by the designated partners of the LLP and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed. [Rule 24(7)]

Rule 24(8) of the LLP Rules provides that the accounts of every limited liability partnership shall be audited in accordance with LLP Rules.

However, limited liability partnership whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees shall not be required to get its accounts audited.

Provided further that if partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited in accordance with these rules.

Provided also that where the partners of such LLP do not decide for audit of the accounts of the LLP, such LLP shall include in the Statement of Account and Solvency a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the form specified in Form 8.

Rule 24(9) of the Rules states that a person shall not be qualified for appointment as an auditor of a limited liability partnership unless he is a Chartered Accountant in practice.

According to Rule 24(10) an auditor or auditors of a limited liability partnership shall be appointed for each financial year of the LLP for auditing its accounts.

Rule 24(11) of the LLP Rules provides that the designated partners may appoint an auditor or auditors-

(a) at any time for the first financial year but before the end of the first financial year,

(b) at least 30 days prior to the end of each financial year (other than the first financial year),

(c) to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of a limited liability partnership exceeds the limits specified under sub-rule (8), or

(d) to fill up the vacancy caused by removal of an auditor.

As per Rule 24(12) the partners may appoint an auditor or auditors where the designated partners have power to appoint under sub-rule (11) and have failed to appoint.

According to Rule 24(13) an auditor or auditors of an LLP shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

(a) the new auditors are appointed, or

(b) they are re-appointed.

Rule 24(14) provides that where no auditor has been appointed under sub-rule (11), any auditor in office shall be deemed to be re-appointed, unless-

(a) the limited liability partnership agreement requires actual re-appointment, or

(b) the majority of partners have determined that he should not be re-appointed and have given a notice to this effect to the LLP.

Provisions of sub-rule (14) shall be applicable without prejudice to the provisions of the rules relating to removal and resignation of auditors. {Rule 24 (15)}

Rule 24(16) states that a notice specified under clause (b) of sub-rule 14-

(a) may be in hard copy or electronic form, and

(b) must be authenticated by the person or persons giving it.

Rule 24 (17) provides that the remuneration of an auditor appointed by the limited liability partnership may be fixed by the designated partners or by following the procedure as laid down in the limited liability partnership agreement.

Rule 24 (18) of the LLP Rules states that:

(a) The partners of a limited liability partnership may remove an auditor from office at any time by following the procedure as laid down in the limited liability partnership agreement.

(b) Where the limited liability partnership agreement does not provide for removal of an auditor, consent of all the partners shall be required for removal of the auditor from his office.

Rule 24 (19) LLP Rules provides that:

(a) An auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office.

(b) Where an auditor is unwilling to be re-appointed, he shall give a notice in writing to that effect at the LLP's registered office, not less than 14 days before the end of the time allowed for appointing the new auditor.

(c) The notice under clause (a) or (b) is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office.

(d) The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as may be specified in the notice.

ANNUAL RETURN

Section 35(1) of the LLP Act provides that every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

Every limited liability partnership shall file an annual return with the Registrar in Form 11.

The annual return of an LLP having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a ***Company Secretary in Practice*** to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

It may be noted that where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 or the Limited Liability Partnership Act, 2008 having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees has come under liquidation under the said Code, 2016 or the said Act, 2008, the said annual return may be signed on behalf of limited liability artnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator and no certification by a designated partner shall be required.

As per Section 35 (2) of the Act, if any limited liability partnership fails to file its annual return under sub-section (1) before the expiry of the period specified therein, such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for designated partners.

Inspection of documents kept by Registrar

According to section 36 of the Act, the incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

Penalty for false statement

According to section 37 of the Act, if in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

The Ministry of Corporate Affairs (MCA) notified **the Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023** (SBO Rules) on November 9, 2023. These rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, aim to regulate and identify significant beneficial owners in Limited Liability Partnerships (LLPs) similar to companies under the Companies Act,2013.

Key definitions

<table>
<tr><td><u>“Control”</u></td><td colspan="2">“Control” shall include the right to
● appoint majority of the designated partners or
● control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their contribution or management rights or limited liability partnership agreements or other agreements or in any other manner;</td></tr>
<tr><td rowspan="4"><u>Significant beneficial owner</u>:</td><td rowspan="4">In relation to a reporting LLP means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting LLP, namely –</td><td>(i) Contribution Criterion: holds indirectly or together with any direct holdings not less than 10% of the contribution;</td></tr>
<tr><td>(ii) Voting right criterion: holds indirectly or together with any direct holdings, not less than 10% of the voting rights in respect of the management or policy decisions in such LLP;</td></tr>
<tr><td>(iii) Profit sharing criterion: has right to receive or participate in not less than 10% of the total distributable profits or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;</td></tr>
<tr><td>(iv) Significant Influence or Control: has right to exercise or actually exercises significant influence or control, in any manner other than through direct-holdings alone.</td></tr>
<tr><td></td><td>Explanation I -</td><td>If an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a SBO.</td></tr>
<tr><td></td><td>Explanation II -</td><td>An individual shall be considered to hold a right or entitlement directly in the reporting LLP, if he satisfies any of the following criteria, namely:
(i) the contribution in the reporting LLP representing such right or entitlement are held in the name of the individual
(ii) the individual holds or acquires a beneficial interest in the contribution of the reporting LLP under rule 22B(2) of the LLP Rules, 2009 and has made a declaration in this regard to the reporting LLP i.e. Form LLP 4B/4C.</td></tr>
</table>

	Explanation III - An individual shall be considered to hold a right or **entitlement indirectly in the reporting LLP**, if he satisfies any of the following criteria, in respect of a partner of the reporting LLP, namely:	(i) where the partner of the reporting LLP is a body corporate (whether incorporated or registered in India or abroad) other than a LLP, and the individual,- a) holds majority stake in that partner; or b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner;
		(ii) where the partner of the reporting LLP is a HUF (through karta), and the individual is the karta of the HUF;
		(iii) where the partner of the reporting LLP is a partnership entity (through itself or a partner), and the individual,- a) is a partner; or b) holds majority stake in the body corporate which is a partner of the partnership entity; or c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.
		(iv) where the partner of the reporting LLP is a trust (through trustee), and the individual,- a) is a trustee in case of a discretionary trust or a charitable trust; b) is a beneficiary in case of a specific trust; c) is the author or settlor in case of a revocable trust.
	Explanation IV - Where the partner of the reporting LLP is, (i) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.	
	Explanation V - If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting LLP, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be**, shall be deemed to be "acting together".**	
Majority stake-Rule 3(f) -	"majority stake" means;-	(i) holding **more than one-half of the equity share capital** in the body corporate; or
		(ii) holding more than one-half of the contribution in a partnership entity i.e. (partnership firm or LLP); or
		(iii) holding more than one-half of the voting rights in the body corporate; or
		(iv) having the **right to receive or participate in more than one half of the distributable dividend or distributable profits** or any other distribution by the body corporate including a partnership entity as the case may be.

"Partnership entity" means	• a partnership firm registered under the Indian Partnership Act, 1932 or a limited partnership registered under the Act:
"reporting limited liability partnership" means	• a limited liability partnership required to comply with the requirements of section 90 of the Companies Act, 2013 as modified by the notification;
Significant influence	• The power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting LLP but is not controlled or jointly controlled by those policies.
"ultimate holding company"	• is a holding company as defined under clause (46) of section 2 of the Companies Act, 2013, which is not a subsidiary of any other body corporate.

Obligations on the reporting LLP

(i) Identification of SBO

- **Declaration by SBO (individual) :** Every reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-I .
- **Declaration by SBO (non individual partner)** Without prejudice to sub-rule (1), every reporting limited liability partnership shall in all cases where its partner (other than an individual), holds not less than ten per cent. of its- (a) contribution; or (b) voting rights; or (c) right to receive or participate in the distributable profits or any other distribution payable in a financial year, **give notice to such partner in Form No. LLP BEN-4**, seeking information in accordance with sub-section (5) of section 90 of the Companies Act, 2013 as applied to the limited liability partnership as per the notification.

(ii) Reporting to Registrar of Companies

Upon receipt of declaration from SBO, the reporting LLP is required **to file a return in Form No. LLP BEN-2** along with prescribed fee with the Registrar of Companies within a period of 30 days from the date of receipt of the declaration.

(iii) Register of SBO

- Upon receiving declarations, reporting LLPs must maintain a register of **significant beneficial owners in Form No. LLP BEN-3.**
- The register shall be **open for inspection during business hours**, at such reasonable time of not less than two hours. on every working day as may be decided by limited liability partnership agreement, or by partners of the limited liability partnership on payment of such fee as may be specified by the limited liability partnership but not exceeding fifty rupees for each inspection.

Obligations on the SBO

- Every individual **who is a SBO in a reporting LLP shall file a declaration in Form No. LLP BEN-I** within 90 days from the date of commencement of these SBO Rules.

- Every individual who subsequently becomes a SBO or where his or her significant beneficial ownership undergoes any change shall file a declaration in Form No. LLP BEN-I to the reporting LLP, within 30 days of acquiring such significant beneficial ownership or any change therein.

Application to the Tribunal

The reporting limited liability partnership shall apply to the Tribunal:

(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein: or

(ii) where the information given is not satisfactory, under sub-section (7) of section 90 of Companies Act, 2013 for order directing that the contribution in question be subject to such restrictions as Tribunal deems fit, including-

(a) restrictions on the transfer of interest attached to the contribution in question:

(b) suspension of the right to receive profits or any other distribution in relation to the contribution in question:

(c) suspension of voting rights in relation to the contribution in question:

(d) any other restriction on all or any of the rights attached with the contribution in question

Exclusions from applicability of SBO Rules

SBO Rules are not applicable to the extent the contribution of the reporting LLP is held by –

- the Central Government, State Government or any local authority;
- a reporting LLP; a body corporate; or an entity controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;
- nvestment vehicles registered with and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds, Real Estate Investment Trusts and Infrastructure Investment Trust;
- investment vehicles regulated by the Reserve Bank of India or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

COMPOUNDING OF OFFENCES

According to Section 39(1) of the LLP Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

It is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional

Director authorised by the Central Government, as the case may be.

Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.

Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.

The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the limited liability partnership to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.

Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the limited liability partnership who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, the maximum amount of fine for the offence, which was under consideration of Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

Destruction of old records

According to section 40 of the Act, the Registrar may destroy any document filed or registered with him in physical form or in electronic form in accordance with such rules as may be prescribed.

LESSON ROUND-UP

- The concept of LLPs emerged as a hybrid form of business entity that combines the flexibility and benefits of a partnership with the limited liability protection typically associated with a corporation.
- Minimum two partners, no limit on a maximum number of partners. A minimum of two partners should be designated as 'Designated Partners', out of which one should be a resident of India to fulfil day-to-day statutory obligations under LLP Act. However, other partners are not normally liable except in cases of fraud etc.
- According to Section 3 of the LLP Act, 2008, a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
- Contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

- Section 34 (2) states that every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.
- Section 35(1) of the LLP Act provides that every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.
- The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the steps involved in the formation and registration of LLP?
2. What is an LLP Agreement? State the procedure for altering the LLP Agreement.
3. A Limited Liability Partnership wants to change its name. Explain under what factors have to be borne in mind and the procedure for the same.
4. LLP Agreement is the essence of LLP formation. Examine the statement in light of all the essential clauses of the LLP Agreement.
5. ABC LLP wants to shift its registered office from Delhi to Maharashtra. Suggest the partners the procedure for the change in the registered office of the company.
6. The Financial Statements of Limited Liability partnership are nor mandatorily required to be audited by a Chartered Accountant. Comment.

LIST OF FURTHER READINGS

- Bare Act- The LLP Act, 2008
- The LLP Rules, 2009

OTHER REFERENCES (Including Websites/ Video Links)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==

Startups and its Registration

Lesson 4

KEY CONCEPTS

■ Start-Up ■ Funding ■ Incubators ■ Unicorn ■ Entrepreneurship ■ Angel Investor

Learning Objectives

To understand:

- Evolution of Startups in India
- Startup India Policy
- Developments initiated in various States to encourage Startups
- Exemptions available to Start-Up and the registration process
- Kinds of Debt financing and Equity Financing for Startups
- Case studies on Unicorn

Lesson Outline

- Introduction
- Startup India Policy
- Exemptions for Startups
- Benefits and Other Government Policies
- Life Cycle of Startups
- Registration Process
- Financing options available for Startup Companies
- Entrepreneurship
- Case studies on Unicorn
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- DPIIT Notifications
- The Companies Act, 2013 and Rules made thereunder
- The Income Tax Act, 1961

INTRODUCTION

A startup company (startup or start-up) is an entrepreneurial venture which is typically an emerging, fast-growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, process or a platform. A startup is usually a company designed to effectively develop and validate a scalable business model. Start-ups may have high rates of failure, but the minority of successes includes companies that have become large and influential.

Startup companies can come in all forms and sizes. Some of the critical tasks are to build a co-founding team to secure key or complementary skills, know-how, financial resources, and other elements to build the product for the target market.

Typically, a startup will begin by building a first minimum viable product (MVP), a prototype, to validate, assess and develop the new ideas or business concepts. In addition, startups founders do research to deepen their understanding of the ideas, technologies or business concepts and their commercial potential.

A Founders' agreement are often agreed early on to confirm the commitment, ownership and contributions of the founders and to deal with the intellectual properties and assets that may be generated by the startup. A Shareholders' Agreement (SHA) is entered into between the founders and investors to confirm investment terms, rights of investors, exit clauses and any other important agreement terms.

Business models for startups are generally found via a "bottom-up" or "top-down" approach. A company may cease to be a startup as it passes various mile stones, such as becoming publicly traded on the stock market in an Initial Public Offering (IPO), or ceasing to exist as an independent entity via a merger or acquisition. Companies may also fail and cease to operate altogether, an outcome that is very likely for startups, given that they are developing disruptive innovations which may not function as expected and for which there may not be market demand, even when the product or service is finally developed.

Given that startups operate in high-risk sectors, it can also be hard to attract investors to support the product/ service development or attract buyers.

A number of organizations and/or organized activities exist with Startup activities. To name a few, Universities, Advisory and mentoring organizations Startup incubators, Startup accelerators, Co working spaces, Service providers (Consulting, Accounting, Legal, etc.), Event organizers, Start-up competitions, Startup Business Model Evaluators, Business Angel Networks, Venture capital companies, Equity Crowd funding portals, corporates (telcos, banking, health, food, etc.), other funding providers (loans, grants etc.), Start-up blogs and social networks and other facilitators.

Investors from these roles are linked together through shared events, activities, locations and interactions. Startup ecosystems generally encompass the network of interactions among people, organizations, and their environment. Any particular start-up ecosystem is defined by its collection of specific cities or online communities.

In addition, resources like skills, time and money are also essential components of a start-up ecosystem. The resources that flow through ecosystems are obtained primarily from the meetings between people and organizations that are an active part of those startup ecosystems. These interactions help to create new potential startups and/or to strengthen the already existing ones.

STARTUP LANDSCAPE IN INDIA

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'

The Startup India initiative was launched by the Government on 16th January 2016 to build a strong ecosystem for nurturing innovation, startups and encouraging investments in the startup ecosystem of the country. In order to meet these objectives, the Government unveiled an Action Plan for startups comprising of schemes and incentives envisaged to create a vibrant startup ecosystem in the country. The Action Plan comprises of 19 action items spanning across areas such as "Simplification and hand holding", "Funding support and incentives" and "Industry-academia partnership and incubation".

For attaining specific objectives, various programs are implemented by the Government under the Startup India initiative. As a result of sustained efforts, the Government has recognised ***1,17,254 entities as startups as on 31st December 2023.***

Realising the action items of the Startup India Action Plan, the Government is implementing flagship Schemes under Startup India initiative namely, Fund of Funds for Startups (FFS), Startup India Seed Fund Scheme (SISFS) and Credit Guarantee Scheme for Startups (CGSS) to support startups at various stages of their business cycle to enable startups to graduate to a level where they are able to raise investments or seek loans. The brief of each of the three flagship Schemes implemented under Startup India initiative are as under:

Startup India Seed Fund Scheme (SISFS): The Startup India Seed Fund Scheme has been approved for the period of 4 years starting from 2021-22 with a corpus of Rs. 945 crore. The Scheme aims to provide financial assistance to startups for proof of concept, prototype development, product trials, market entry and commercialization. The Scheme is implemented from 1stApril 2021. The Experts Advisory Committee (EAC), under SISFS, is responsible for the overall execution and monitoring of SISFS. The EAC evaluates and selects incubators for allocation of funds under the Scheme. As per provisions of the Scheme, the selected incubators shortlist startups based on parameters outlined in Scheme guidelines.

Fund of Funds for Startups (FFS) Scheme: The Fund of Funds for Startups Scheme was approved and established in June 2016 with a corpus of Rs 10,000 crore, with contribution spread over the 14th and 15th Finance Commission cycle based on progress of implementation, to provide much-needed boost to the Indian startup ecosystem and enable access to domestic capital. The Scheme is operationalized by Small Industries Development Bank of India (SIDBI). Under FFS, the Scheme does not directly invest in startups, instead provides capital to SEBI-registered Alternative Investment Funds (AIFs), known as daughter funds, who in turn invest money in growing Indian startups through equity and equity-linked instruments. SIDBI has been given the mandate of operating this Fund through selection of suitable daughter funds and overseeing the disbursal of

committed capital. AIFs supported under FFS are required to invest at least 2 times of the amount committed under FFS in startups.

Credit Guarantee Scheme for Startups (CGSS): The Government has established the Credit Guarantee Scheme for Startups for providing credit guarantees to loans extended to DPIIT recognized startups by Scheduled Commercial Banks, Non-Banking Financial Companies (NBFCs) and Venture Debt Funds (VDFs) under SEBI registered Alternative Investment Funds. CGSS is aimed at providing credit guarantee up to a specified limit against loans extended by Member Institutions (MIs) to finance eligible borrowers viz. DPIIT recognised startups. CGSS is operationalized by the National Credit Guarantee Trustee Company Limited (NCGTC).

The details of various programs undertaken by the Government to promote startups across the country are as under:

1. **Startup India Action Plan:** An Action Plan for Startup India was unveiled on 16th January 2016. The Action Plan comprises of 19 action items spanning across areas such as "Simplification and handholding", "Funding support and incentives" and "Industry-academia partnership and incubation". The Action Plan laid the foundation of Government support, schemes and incentives envisaged to create a vibrant startup ecosystem in the country.
2. **Regulatory Reforms:** Over 50 regulatory reforms have been undertaken by the Government since 2016 to enhance ease of doing business, ease of raising capital and reduce compliance burden for the startup ecosystem.
3. **Ease of Procurement:** To enable ease of procurement, Central Ministries/ Departments are directed to relax conditions of prior turnover and prior experience in public procurement for all DPIIT recognised startups subject to meeting quality and technical specifications. Further, Government e-Marketplace (GeM) Startup Runway has been developed which is a dedicated corner for startups to sell products and services directly to the Government.
4. **Support for Intellectual Property Protection:** Startups are eligible for fast-tracked patent application examination and disposal. The Government launched Start-ups Intellectual Property Protection (SIPP) which facilitates the startups to file applications for patents, designs and trademarks through registered facilitators in appropriate IP offices by paying only the statutory fees. Facilitators under this Scheme are responsible for providing general advisory on diff¬erent IPRs, and information on protecting and promoting IPRs in other countries. The Government bears the entire fees of the facilitators for any number of patents, trademark or designs, and startups only bear the cost of the statutory fees payable. Startups are provided with an 80% rebate in filing of patents and 50% rebate in filling of trademark vis-a-vis other companies.
5. **Self-Certification under Labour and Environmental laws:** Startups are allowed to self-certify their compliance under 9 Labour and 3 Environment laws for a period of 3 to 5 years from the date of incorporation.
6. **Income Tax Exemption for 3 years:** Startups incorporated on or after 1st April 2016 can apply for income tax exemption. The recognized startups that are granted an Inter-Ministerial Board Certificate are exempted from income-tax for a period of 3 consecutive years out of 10 years since incorporation.
7. **International Market Access to Indian Startups:** One of the key objectives under the Startup India initiative is to help connect Indian startup ecosystem to global startup ecosystems through various engagement models. This has been done though international Government to Government partnerships, participation in international forums and hosting of global events. Startup India has launched bridges with over 17 countries that provides a soft-landing platform for startups from the partner nations and aid in promoting cross collaboration.

8. **Faster Exit for Startups:** The Government has notified Startups as 'fast track firms' enabling them to wind up operations within 90 days vis-a-vis 180 days for other companies.

9. **Startup India Hub:** The Government launched a Startup India Online Hub on 19th June 2017 which is one of its kind online platform for all stakeholders of the entrepreneurial ecosystem in India to discover, connect and engage with each other. The Online Hub hosts Startups, Investors, Funds, Mentors, Academic Institutions, Incubators, Accelerators, Corporates, Government Bodies and more.

10. **Exemption for the Purpose Of Clause (VII)(b) of Sub-section (2) of Section 56 of the Act (2019):** A DPIIT recognized startup is eligible for exemption from the provisions of section 56(2)(viib) of the Income Tax Act.

11. **Startup India Showcase:** Startup India Showcase is an online discovery platform for the most promising startups of the country chosen through various programs for startups exhibited in a form of virtual profiles. The startups showcased on the platform have distinctly emerged as the best in their fields. These innovations span across various cutting-edge sectors such as Fintech, EntrepriseTech, Social Impact, HealthTech, EdTech, among others. These startups are solving critical problems and have shown exceptional innovation in their respective sectors. Ecosystem stakeholders have nurtured and supported these startups, thereby validating their presence on this platform.

12. **National Startup Advisory Council:** The Government in January 2020 notified constitution of the National Startup Advisory Council to advise the Government on measures needed to build a strong ecosystem for nurturing innovation and startups in the country to drive sustainable economic growth and generate large scale employment opportunities. Besides the ex-officio members, the council has a number of non-official members, representing various stakeholders from the startup ecosystem.

13. **Startup India Seed Fund Scheme (SISFS):** Easy availability of capital is essential for entrepreneurs at the early stages of growth of an enterprise. The capital required at this stage often presents a make-or-break situation for startups with good business ideas. The Scheme aims to provide financial assistance to startups for proof of concept, prototype development, product trials, market entry and commercialization.

14. **National Startup Awards (NSA):** National Startup Awards is an initiative to recognize and reward outstanding startups and ecosystem enablers that are building innovative products or solutions and scalable enterprises, with high potential of employment generation or wealth creation, demonstrating measurable social impact. Handholding support is provided to all the finalists across various tracks viz. Investor Connect, Mentorship, Corporate Connect, Government Connect, International Market Access, Regulatory Support, Startup Champions on Doordarshan and Startup India Showcase, etc.

15. **States' Startup Ranking Framework (SRF):** States' Startup Ranking Framework is a unique initiative to harness strength of competitive federalism and create a flourishing startup ecosystem in the country. The major objectives of the ranking exercise are facilitating states to identify, learn and replace good practices, highlighting the policy intervention by states for promoting startup ecosystem and fostering competitiveness among states.

16. **Startup Champions on Doordarshan:** Startup Champions program on Doordarshan is a one-hour weekly program covering stories of award winning/ nationally recognised startups. It is telecasted in both Hindi and English across Doordarshan network channels.

17. **Startup India Innovation Week:** The Government organises Startup India Innovation week around the National Startup Day i.e., 16th January, with the primary goal was to bring together the country's key startups, entrepreneurs, investors, incubators, funding entities, banks, policymakers, and other national/ international stakeholders to celebrate entrepreneurship and promote innovation.

18. **The Startup India Investor Connect Portal** has been co-developed under the Startup India Initiative with SIDBI, serving as an intermediary platform that links startups and investors in order to help entrepreneurs from various industries, functions, stages, regions, and backgrounds in mobilizing capital. The portal has been built with the aim to enable in particular; early-stage startups located anywhere in the country to showcase themselves to leading investors/ venture capital funds.

19. **National Mentorship Portal (MAARG)**: In order to facilitate accessibility to mentorship for startups in every part of the country, the Mentorship, Advisory, Assistance, Resilience, and Growth (MAARG) program has been developed and launched under the Startup India Initiative.

20. **ASCEND:** Under ASCEND (Accelerating Startup Caliber & Entrepreneurial Drive), sensitization workshops on startups and entrepreneurship were conducted for all eight North Eastern States with the objective to capacitate and augment knowledge on key aspects of entrepreneurship and continue efforts towards creating a robust startup ecosystem in these States.

21. **Startup20 Engagement Group:** As a result of India's belief in startup ecosystem, a Startup20 Engagement Group under India's G20 Presidency has been institutionalised which is working towards harmonisation and cross collaboration amongst the largest global economies. The engagement group acts as the voice of the global startup ecosystem bringing together varied stakeholders on a common platform. The group aims to support startups by enabling synergies between startups, corporates, investors, innovation agencies and other key ecosystem stakeholders internationally and to create global synergies.

Issue of sweat equity shares by Startup Companies

With the Amendment, The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020, a startup company as defined in notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of lndia, may issue sweat equity shares not exceeding 50% of its paid -up share capital upto 10 (ten) years from the date of its incorporation or registration. (Earlier the time period was upto 5 (five) years from the date of incorporation or registration).

Recognition as Startups

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

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

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.

Startups Recognition by DPIIT enables the companies to access a host of tax benefits, easier compliance Intellectual Property Rights (IPR) fast tracking and more.



A complete online process has been institutionalised for recognition of startups



The process of recognition as a 'startup' is through an online application mode over the mobile app/portal set up by the Department for Promotion of Industry and Internal Trade. The link to the online application is :*https://www.startupindia.gov.in/content/sih/en/recognition-application-detail.html*



Modification of definition of startups in Feb 2019 and improvements incorporated in the recognition process reduced the time taken for grant of recognition certificate to 1-4 days.



The founders are required to upload incorporation/registration certificate and explain how their startup is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation

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) may, for obtaining a certificate for the purposes of section 80-IAC of the Act, make an application in Form-1 along with documents specified therein to the Board and the Board may, after calling for such documents or information and making such enquires, as it may deem fit, –

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;

ii. Representative of Department of Biotechnology, Member;

iii. Representative of Department of Science & Technology, Member.

Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

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

The entity should be a recognized Startup

- Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC.
- The Startup should have been incorporated after 1st April, 2016.

Amendment in section 80-IAC to provide for income tax exemption to eligible startups: –

Under Section 80-IAC, the Startup incorporated after April 1, 2016 but before the 1st day of April, 2022 is eligible for getting 100% tax rebate on profit for a period of three years. The startups recognized under the Startup India policy can now claim tax benefits in three out of the first ten years under Section 80-IAC of the Income-tax Act, 1961. Also, the annual turnover must not exceed Rs. 100 crores in the previous year relevant to the assessment year for which deduction is claimed.

Tax Exemption under Section 56 of the Income Tax Act (Angel Tax)

Post getting recognition a Startup may apply for Angel Tax Exemption. Eligibility Criteria for Tax Exemption under Section 56 of the Income Tax Act:

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

A Startup shall be eligible for notification under clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Act and consequent exemption from the provisions of that clause, if it fulfils the following conditions:

(i) it has been recognised by DPIIT under para 2(iii)(a) or as per any earlier notification on the subject.

(ii) aggregate amount of paid up share capital and share premium of the startup after issue or proposed issue of share, if any, does not exceed, twenty five crore rupees:

Provided that in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of twenty five crore rupees in respect of shares issued to any of the following persons shall not be included –

(a) a non-resident; or

(b) a venture capital company or a venture capital fund;

Provided further that considerations received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of twenty five crore rupees.

(iii) It has not invested in any of the following assets,–

(a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;

(b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;

(c) loans and advances, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;

(d) capital contribution made to any other entity;

(e) shares and securities;

(f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;

(g) jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;

(h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in sub-clauses (iv) to (ix) of clause (d) of Explanation to clause (vii) of sub-section (2) of section 56 of the Act.

Provided the Startup shall not invest in any of the assets specified in sub-clauses (a) to (h) for the period of seven years from the end of the latest financial year in which shares are issued at premium;

Explanation.– For the purposes of this paragraph,-

(i) "specified company" means a company whose shares are frequently traded within the meaning of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds one hundred crore rupees or turnover for the financial year preceding the year in which shares are issued exceeds two hundred fifty crore rupees.

(ii) the expressions "venture capital company" and "venture capital fund" shall have the same meanings as respectively assigned to them in the explanation to clause (viib) of sub Section (2) of Section 56 of the Act.

A startup fulfilling conditions mentioned in para 4 (i) and para 4 (ii) shall file duly signed declaration in Form 2 to DIPP that it fulfills the conditions mentioned in para 4. On receipt of such declaration, the DPIIT shall forward the same to the CBDT.

Indian States with Startup policies

States have a vital role to play in promoting the Startup ecosystem. One of the core strengths of India lies in its diversity, leading to enormous opportunities for cross-learning from each other. Only four State Governments were actively supporting Startups before the launch of Startup India through a State Startup policy. The Startup movement across the country was fragmented and there was a need for consolidating standalone efforts. Emphasis was also required simultaneously to encourage more and more States to undertake new initiatives. The national priority initiative has led to a wide spread movement across the country and presently 31 States have their own Startup policies. Many other States and Union Territories (UTs) are in the process of drafting their policies and operating guidelines. The core functioning of an enabling ecosystem in a State is a function of the policy framework and effective implementation of the same. In the journey of developing a conducive Startup community, it is important that States and UTs exchange and adopt good practices undertaken by each other.

Another important role of State is to reduce the regulatory burden on budding Startup founders by simplifying labour, taxation, land, and other laws and regulations under the State purview. Many States are organizing hackathons, boot camps, pitching sessions to promote Startups. Several other States have already begun to actively setup world class incubators for Startups across various sectors. However, a significant effort is required to accelerate the pace of these initiatives to be at par with the pace of growth of Startups. Concerted initiatives by States will accelerate the growth of Startup ecosystems in their respective territories and transform the country into a flourishing Startup Nation.

State Startup Ranking

The States' Startup Ranking Framework was conceived by the Government of India in 2018. With its focus on India's vision of cooperative federalism, the initiative works towards strengthening the support of States and UTs to holistically build the Indian Startup Ecosystem. The third edition of the exercise was launched in 2020 and has now been completed with the active participation of 31 States and Union Territories.

After the successful completion of a rigorous evaluation process, the Ministry of Commerce & Industry, Consumer Affairs, Food & Public Distribution and Textiles announced the results of 3rd edition of the States' Startup Ranking 2021 on 4th July 2022.

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* – This Reform Area focuses on holistic development through sensitization programs and trainings conducted for key stakeholders of the State startup ecosystem.
2. *Mentorship Support* – This Reform Area focuses on creating a large and accessible mentorship network within the State and the guidance provided by the State-supported mentors to the startups.
3. *Fostering Innovation and Entrepreneurship* – This Reform Area captures grassroots innovation, disruptive policies for startups, and the entrepreneurial spirit of the students.

States' Startup Ranking 2021 Results:

The results of the third exercise are a testament to the painstaking efforts taken by States to enable their startup ecosystems. Currently, most States and UTs have functioning State Startup portals with information available in local languages. Furthermore, several targeted policies and schemes have been introduced with a focus on disruptive technology, women entrepreneurs, and grassroots innovators to drive inclusive growth in the ecosystem. Additionally, State supported incubators, mentorship networks, and funding opportunities along have also expanded across the country.

Best Performing States: The top 3 best performing states are:

- Gujarat
- Karnataka
- Meghalaya

Compendium of Best Practices:

Compendium of Best Practices outlines initiatives adopted by various States in the following 7 Reform Areas:

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

The compendium contains more than 30 best practices, which may be directly used by States to identify and implement newer initiatives.

EXEMPTIONS FOR STARTUPS

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

1. **Simple process**

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

2. **Reduction in cost**

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

3. **Easy access to Funds**

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

4. **Tax holiday for 3 Years**

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

5. **Apply for tenders**

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

6. **R&D facilities**

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

7. **No time-consuming compliances**

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

8. **Tax saving for investors**

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

9. **Choose your investor**

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

10. **Easy exit**

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

11. **Meet other entrepreneurs**

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

Benefits / Exemptions to Start-ups under the Companies Act, 2013

Section	Description
CHAPTER I **PRELIMINARY**	
Section 2(40)- Definition of financialstatement.	The financial statement in relation to a private company (if suchprivate company is a start-up) may not include the cash flow statement *[Exemption notification dated 13th June, 2017]*.
CHAPTER IV **SHARE CAPITAL AND DEBENTURES**	
Section 54- Issue of sweat equity shares.	A start- up company may issue sweat equity shares not exceeding 50% of its paid up capital upto ten years from the date of its incorporation or registration *[Section 54 read the Rule 8(4) of The Companies (Share Capital and Debenture) Rules, 2014]*
Section 62 – Further issue of share capital	For the purposes of section 62(1)(b), an "Employee" does not include- (i) an employee who is a promoter or a person belonging to the promoter group; or (ii) a director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares ofthe company. The aforementioned conditions shall not apply to a start-up upto ten years from the date of its incorporation or registration *[Section 62 read with Explanation to rule 12(1) of the Companies (Share Capital and Debentures) Rules, 2014]*
CHAPTER V **ACCEPTANCE OF DEPOSITS BY COMPANIES**	
Section 73- Prohibition on acceptance ofdeposit from public	"Deposit" does not include an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person *[Section 2(31) read with Rule2(c) (xvii) ofthe Companies (Acceptance of Deposits) Rules, 2014]*
Section 73- Prohibition on acceptance of deposit from public r/w Rule 3 of the Companies (Acceptance of Deposits) Rules,2014	The maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a start- up, for ten years from the date of its incorporation *[Secondproviso to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014]*
Section 73- Prohibition on acceptance ofdeposit 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 *[Exemption notification dated 13th June,2017]*

Section	Description
CHAPTER VII **MANAGEMENT AND ADMINISTRATION**	
Section 92- Annual Return.	In relation to a private company, which is a start-up, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company *[Exemption notification dated 13th June, 2017],*
CHAPTER XII **MEETINGS OF BOARD AND ITS POWERS**	
Sections 173 – Meetings of Board	A private company, which is a start-up, shall be deemed to have compiled with the provisions of section 173, if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meeting is not less than ninety days *[Exemption notification dated 13th June, 2017]*
CHAPTER XXVIII **SPECIAL COURTS**	
Section 446B- Lesser penalties for One Person Companies or Small Companies.	If a start-up company fails to comply with any of the provisions of the Companies Act, 2013, where penalty is payable. Such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one half of the penalty specified in such provisions subject to a maximum of **Rs. 2 lakh** in case of a company and **Rs. 1 lakh** in a case of an officer who is in default or any other person, as the case may be.

LIFE CYCLE OF START-UP

The stages of a startup lifecycle are clearly demarcated owing not only to the promulgation at clarity but also to the exponential growth rate of the startup ecosystem. Each stage presents a new set off challenges and hurdles for entrepreneurs, elucidating the imperativeness of its understanding. Largely, the startup lifecycle is segregated into 4 stages.



Stage 1: Ideation and Development

The first stage of the startup lifecycle is ideation. It is categorised by the importance of testing feasibility of the products/service offered. It is at this stage that garnering a variety of opinions to further assess a business model takes precedence. Testing the potential viability of an entrepreneurs' business can help answer larger questions about government aid, regulations and other aiding factors as the business inches to the next stage. Some overarching considerations of the ideation and development stage are:



Stage 2: Validation

Once on entrepreneur has evaluated feasibility of the idea and has highlighted broad scale business strategies, it is important to validate the product or services offered. The process involves defining goals, developing a value proposition and validating the same through customer feedback. This stage of a startup exudes high relevance as it drives the understanding of potential outcomes. Moreover, it highlights the features as considered in the ideation stage by giving the entrepreneur viability proof through testing. Some overarching considerations of the validation stage are:



Stage 3: Early Traction

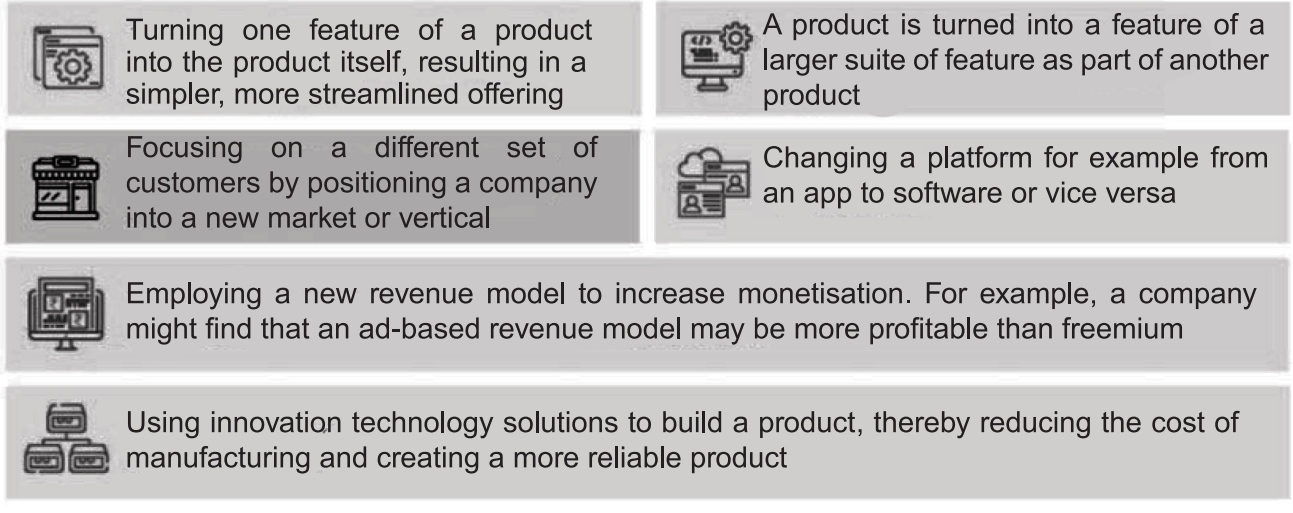
It is at the Early Traction stage that a set of target customers may test efficacy of the product/ service offered validation of a product can portray definitive results to the outside world, a stage that may present its own set of challenges and visibly express revenue and cash flow. It may be helpful to iterate that a market for this product is created and developed at this stage.

The customer retention rate confirms the early traction of the company and its product. Startup acquires more customers by actively seeking funds from crowd funding agencies, angel investors or networks, incubators and seed grants from Government.

Pivoting

Pivoting in startup usually occur when a company shifts its business strategy to accommodate changes in its industry, customer preferences, or any other factor that impacts its bottom line. 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. What makes the experiment work is usually not one major pivot, but a series of experiments across customers, problem, product, and technology and growth channels.

MAJOR AREAS OF FOCUS DURING PIVOTING INCLUDE THE FOLLOWING:

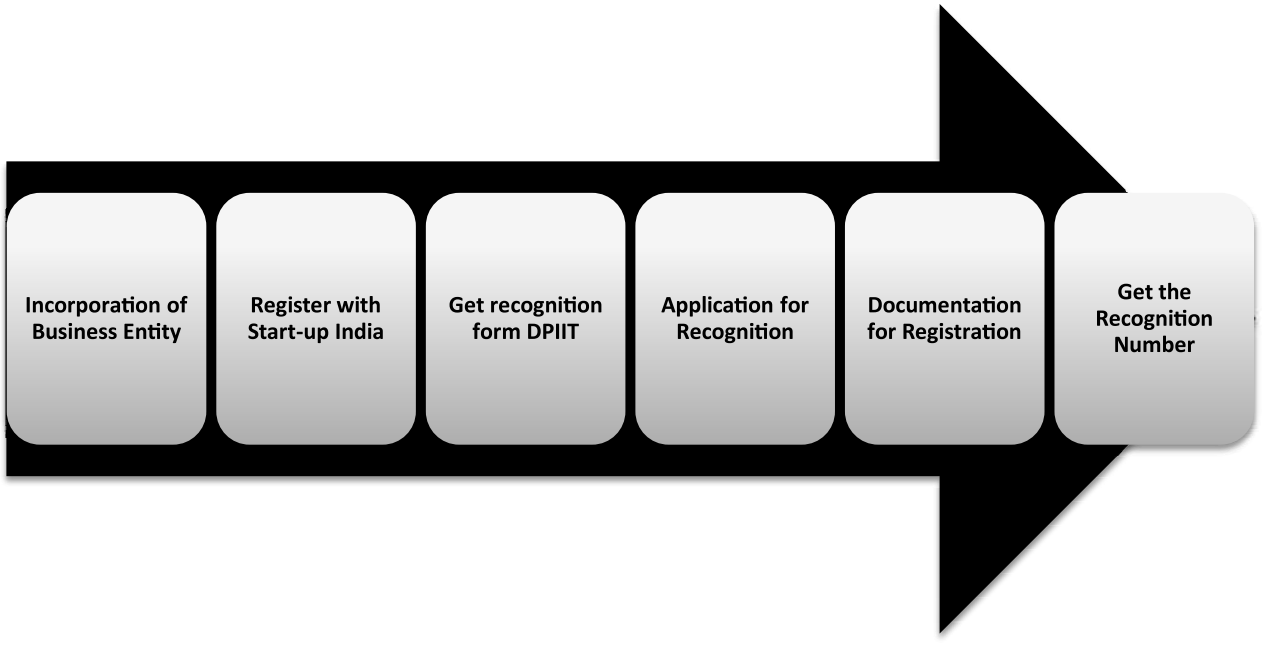


STAGE 4: GROWTH/EXIT

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.

Source: www.startupindia.gov.in

REGISTRATION STEPS



A. Incorporation of Business Entity: Before getting registered as Start-up one must need to incorporate his business either as a Private Limited Company or a Partnership firm or a Limited Liability Partnership. Incorporation of Private Limited Company or a Limited Liability Partnership (LLP) can be made by filing the incorporation application with the Registrar of Companies (ROC) for the state where the registered office of the new entity is proposed to be established. In order to get a partnership firm registered, the application has to be filed for registration with the Registrar of Firms of the area in which the firm is proposed to be registered.

What form should your Startup Venture have?

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.

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

Any person can choose to incorporate either a company with unlimited liability or one with liability limited either by shares or guarantee. An incorporated company may take one of the following three forms:

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. However, the free transferability of the shares of a public company and unlimited membership provides a larger base for raising of capital. Shares of a listed public company can be traded on stock exchange, which may open it to the scrutiny and watch of Securities and Exchange Board of India. A public company must have a minimum of seven members and three directors. Certain classes of public limited companies must have at least one third of the total number of directors as independent directors out of which one director has to be a woman director.

II-3. One Person Company

This concept has been brought by the new Companies Act and states that One Person Company is in the nature of a private company which has only one person as its member/director.

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).

Businesses which currently run under the proprietorship model could get converted into OPC's without any difficulty. The questions of consensus or majority opinions do not arise in case of OPCs, and is suitable for small entrepreneurs with low risk taking capacity.

III. Charter documents of a Company -

1. Memorandum of Association

The MoA sets out the objects for which the company is proposed to be incorporated in the manner provided hereunder:–

a. The first and foremost clause in MoA shall be the name of the proposed company suffixed with the words limited or private limited, as the case may be;

b. The state where the registered office of the company shall be situated.

The third clause contains the main objects for which the company is going to be formed/ incorporated. The MoA binds the area of operation of the company in respect to the

2. Articles of Association

The articles of a company contain regulations for the management of the company. This document is confined to the applicability of the provisions of the companies act, on private or public limited company, as the case may be.

IV. Legal formalities for incorporation of a company:

IV-1. Pre-incorporation formalities:

The below mentioned compliances are required to be carried out with regard to setting up of company in India:-

a. Digital Signature Certificates ('DSC') for the proposed directors of the company by preparing and filing of Incorporation documents as required under the provisions of the Companies Act, 2013.

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+. The applicant is required to attach the proof of Identity and address along with the application. DIN would be allocated to User only after approval of the form.

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 AGILE-PRO-S. SPICe+ form is an integrated web-form and an advanced version of the previous SPICe form (i.e. e-form INC-32). SPICe+ web form offers 11 services by 3 Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and three State Governments (Maharashtra, Karnataka &West Bengal), thereby saving as many procedures, time and cost for Starting a Business in India.

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, and requires certain basic registrations to initiate the business which includes filing of application for obtaining a permanent account number, tax deduction account number in the name of the company and any other business specific registrations from the relevant government authorities i.e. Import– Export Code Number in case of company carrying out the business of import and/or export.

Further, every company shall be required to carry out certain compliances, as required under the provisions of the Companies Act, for their day to day activities which includes holding of first board meeting immediately after incorporation, convening the annual general meeting every year, maintaining all the secretarial records at the registered office of the company, maintaining of statutory registers, minutes books etc. of company in compliance with the Companies Act, 2013.

B. Register with Start-up India: Once the entity is incorporated, the business can be registered as a startup. The registration process is completely online and simple for the users. One needs to visit the Startup India website and click on the 'Register' button. After that one needs to enter his/her name, email id, mobile number, password and after that click on "Register" button. OTP will be sent to the email and other details like, the type of user, name and stage of the startup, etc. should be mentioned. After entering these details, the Startup India profile will be created. Once, the profile is created on the website, startups can apply for various acceleration, incubator/mentorship programmes and other challenges on the Startup India website along with getting access to various resources like Learning and Development Program, Government Schemes, State Polices for Startups.

C. **Get recognition from DPIIT:** The next step after creating the profile on the Startup India Website is to avail the Recognition from the Department for Promotion of Industry and Internal Trade (DPIIT). The recognition helps the startups to avail various benefits like access to high-quality intellectual property services and resources, relaxation in public procurement norms, self-certification under labour and environment laws, easy winding of company, access to Fund of Funds, tax exemption for 3 consecutive years and tax exemption on investment above fair market value.

   For getting Recognition from DPIIT, log on to the registered profile (account) credentials on the Startup India website and click on the 'DPIIT Recognition for Startups' button under the 'Schemes and Policies' tab. Click on the 'Get Recognized button on the next page. A new page will open. Scroll down this page and click on the 'Click here for submitting your application for recognition as a Startup' button.

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 and enter each section of the form. After entering all the sections of the 'Startup Recognition Form', accept the terms and conditions and click on the 'Submit' button.

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

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

F. **Getting the Recognition Number**: Once the application is made a recognition number will be generated for the startup. The certificate of recognition will be issued after the examination of all the documents which is usually done within 2 days after submitting the details online.

Important Points for a Start-up

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

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

2. **Registrations and business licenses:**

   Post incorporation of a business entity in India, some necessary registrations are required and mandated by law. 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). User is required to file application (SPICe+) for incorporation of a company accompanying linked e-form AGILE PRO S -"Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration, 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.

This process will be applicable only for Companies incorporated by MCA through SPICe+ application. Other categories of applicants (Tax Deductor, Tax Collector, Casual Taxable person, ISD, etc.) for GSTIN shall follow the existing process of registration through Common Portal for GST registration Similarly, other type of establishment such as Factory shall follow the existing process of registration through Common Portal for EPFO & ESIC registration).

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

Other determining factors may include the number of employees, location of business and the form of business ownership. Some examples are Food safety license, Health/Trade license, Shops & Establishment License etc.

3. Intellectual Property Protection:

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

A trademark search should be conducted before deciding on these business name/ trade names to prevent any issues in future including potential infringement. 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.

4. Founder Equity – Split and Vesting:

Founder equity should be split amongst founders based on the nature of role played by each founder along with their time, effort and capital contribution to the startup. Splitting founder equity equally by default without a thorough discussion on expectations and contribution generally leads to tension and unhappiness amongst founding teams as the startup matures.

Founder shares should be always subject to vesting schedule – typically over a period of three to four years. When vesting is imposed on a founder equity, the unvested shares held by the founder become subject to a contractual right to repurchase/transfer often at a nominal value, if one of the founders is terminated or voluntarily leaves the startup. This is very important to ensure future viability of the business.

5. Founder agreements:

The founder's agreement is the most valuable tool to establish the relationship between the founders of a startup. The agreement should represent a clear understanding between the founders on all key

issues related to the startup. Founder agreements should clearly mention the roles and responsibilities of the founders and have clauses detailing the decision making and operating structure of the startup, founder equity split with vesting (explained above), assignment of all intellectual property in favour of the startup, termination of a promoter and exit process etc.

6. **Employment contracts:**

Startups must ensure to enter into clear employment contracts detailing terms and conditions of employment with their employees. While employment contracts are certainly valuable to the employees as it details terms regarding description of job profile, compensation and other associated benefits, a number of clauses may be inserted to safeguard and protect the interest of the startup – such as stopping employees from setting up competing entities (non- compete clause), poaching other employees/clients/ customer (non-solicitation clause), preventing employees from claiming any intellectual property right on the work done/developed during the course of employment (assignment of intellectual property rights).

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. It is important to note that 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:**

Prior to entering into a third-party agreement and while negotiating the terms, it is advisable to execute a non- disclosure agreement. If creation/development of intellectual property is a component of such a third- party agreement, it must clearly state that all rights to the intellectual property rights shall vest and be owned by the startup and the third-party shall not stake any claim on the same and will do all acts to ensure the protection of the intellectual property. Clauses related to breach, termination and dispute resolution should be well negotiated and captured in all third-party agreements.

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 in different structures and on varied terms. It is imperative for startups to seek proper legal advice while negotiating the deal terms for investment and the rights of the investors.

Typically, as a process an intention document detailing the structure of the transaction called the term sheet is executed followed by due diligence of the startup and execution of investment related definitive agreements.

10. **Compliance management:**

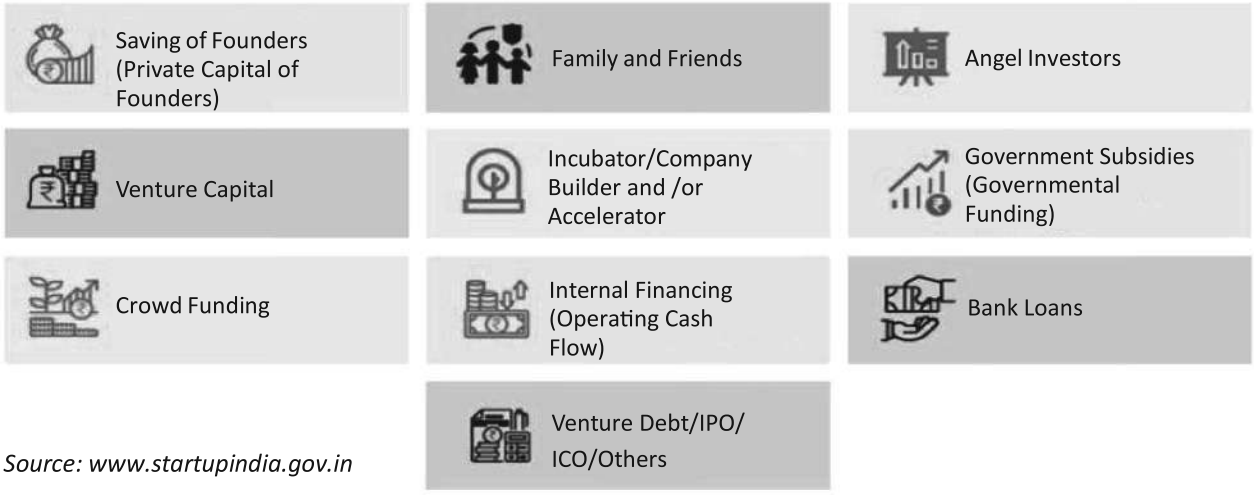
Compliance and its importance is often overlooked by many startups. There are multiple laws applicable to specific entity structures under which separate event based and annual compliance is mandated. It is extremely critical for the sustainable growth of any business that the startup is in compliance with legal, secretarial, accounting, taxation, employee related and other associated compliances. The consequences of non- compliance can be levy of punitive fines on the startup.

FINANCING OPTIONS AVAILABLE FOR STARTUP COMPANIES

Finance is the life blood of any business. In case the venture is self-funded there can be no better option than that. However, a Startup is mostly the result of a novel idea that is the brainchild of its founder(s) and more often than not, funds are always a challenge.

Funding asserts its importance for operative processes, research, development and multiple other primary business features for evolving businesses. However, it is the foremost consideration when contemplating growth and development of startups. Funding can be derived sources, it can help sustain the existing projects and enable expansion.

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



Source: www.startupindia.gov.in

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 for startups to adhere to a repayment timeline but added pressure from investors to achieve growth targets	More pressure for startups to adhere to repayment timeline and as a result more pressure to generate cash flows to meet interest repayments	No pressure for repayment as grants are a form of monetary support provided for a specific purpose
Return to Investor	Capital growth for investors	Interest payments	No Return

Involvement in Decisions	Equity Fund Investors usually prefer to involve themselves in decision making process	Debt Fund have very less involvement in decision making	No direct involvement in decision making
Sources	Angel Investors, Self-financing, Family and Friends, Venture Capitalists, Crowd Funding, Incubators/ Accelerators	Banks, Non-Banking Financial Institutions, Government Loan Schemes (CGTMSE, Mudra Loan, Standup India)	Central Government, State Governments, Corporate Challenges, Grant Programs of Private Entities

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 permits exploration of the business idea and converting it into a viable product or service that further attracts venture capitalists. A business founder must be clear on how to utilise seed capital in the most optimum manner to ensure smooth transition to the advanced stage of the business.

Seed funding is a risky investment option, as most funding agencies would like to adopt a wait and watch approach to see whether the idea has a business potential. From the founder's point of view, the option of obtaining seed funding has to be carefully utilised as obtaining seed funding may result in dilution of ownership of the founder.

The paperwork involved in seed funding is relatively less and straightforward, compared to advanced rounds of funding. Even the legal fees required are also quite less as compared to the seed equity. The interest rates too are usually lower and there are mostly no restrictions in the manner of business working as it is still in the nascent stage.

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

A. Equity Financing

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

(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. Due-diligence will help the investors to finalize the representation and warranties and also to identify conditions precedent to the completion of investments and conditions subsequent in the aforesaid transaction documents.

Upon completion of due-diligence to the satisfaction of investor, such investments involve execution of essentially following transaction documents between the investors and startups:

Funding Procedure

(a) A Term Sheet / Letter of Intent /Memorandum of understanding is entered into, setting out the following:

- basic commercial understanding between the VC and the startup; and
- legal terms for the agreements to follow the due-diligence.

(b) The contracting parties will enter into a Share Subscription Agreement/ Debenture Subscription Agreement. It usually captures the following:

- the issuance of shares in the share capital or debentures at subscription amount determined based on the valuation of the startup;
- condition precedents to completion of transaction or conditions subsequent to be completed within the agreed time frame after the completion date;
- sets of representation and warranties and indemnification resulting from due-diligence exercise or otherwise, etc.

(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;
- 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. Under the SEBI (Alternative Investment Funds) Regulations, 2012 which was subsequently amended in 2021, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

(1) Angel funds shall invest in startups which:

(a) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 crore; and

(b) are not companies with family connection with any of the angel investors who are investing in the company.

(2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.

(3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.

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

Startups will first target existing investors during the bridge round and raise from new investors, if additional funding is needed.

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. Series preferred stock is the first round of stock offered during the seed or early stage round by a portfolio company to the venture capital investor. Series preferred stock is often convertible into common stock in certain cases such as an Initial public offering (IPO) or the sale of the company.

Series rounds are traditionally a critical stage in the funding of new companies. A typical series A round is in the range of $2 million to $10 million, purchasing 10% to 30% of the company. The capital raised during a series round is usually intended to capitalize the company for 6 months to 2 years as it develops its products, performs initial marketing and branding, hires its initial employees, and otherwise undertakes early stage business operations.

SOURCES OF FUNDS

Because there are no public exchanges listing their securities, private companies meet venture capital firms and other private equity investors in several ways, including warm referrals from the investors' trusted sources and other business contacts; investor conferences and demo days where companies pitch directly to investor groups. As equity crowd funding becomes more established, startups are increasingly raising part of their Series round online using platforms such as Onevest or Seed Invest in the USA and Seeds in the UK, VC- Circle, Private Circle, Lets Vanture and Tracxn Labs, etc. in India. These blended rounds include a mix of angel investors, strategic investors and customers alongside the offline venture capital investors.

A. Structure

Smaller investment amounts are usually not worth the legal and financial expense, the burden on a company of adjusting its capital structure to serve new investors, and the analysis and due diligence on the part of institutional investors. A company that needs money for operations but is not yet ready for venture capital will typically seek angel capital. Larger amounts are usually unwarranted given the cost of business in fields such as software, data services, telecommunications, and so on. However, there are routinely series A rounds in excess of $10 million in fields such as pharmaceuticals, semiconductors, and real estate development.

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

If a startup is looking to raise a Series A, it might be a good idea to get familiar with what venture funds looks for to ascertain if your company is Series A ready.

Most startups, even those who gets angel funding or seed-stage funding or investments from accelerators/ incubators, are unable to get follow-on funding.

The first time that a startup raises capital is normally called a 'seed round'. Other names include angel round or HNI round. Some even call it a pre-Series A round, but this term usually refers to a small interim fundraising exercise between the seed round and Series A.

1. ***Be Series A Ready***

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

2. ***Start Early***

   Fundraising in the current environment is a time consuming process - be realistic about the timeframe. Make sure you start the process at least 7-8 months prior to when you want to raise a Series A financing. The deal process has two parts, pre-term sheet and post-term sheet. Underestimating the time required inevitably leads to desperation and will often need to alter your funding strategy to include diverting attention to raise a bridge round to sustain the business.

3. ***Leverage Your Network***

   Seed funding is more plentiful and easier to raise as compared to Series A. Leveraging your network and building genuine relationships before you start your Series A fundraise will make it easier for you to get potential meetings with investors. Reach out to your extended network and request them to reach out to their connections. These second degree networks have powerful and favourable outcome. Spreading word about your business through your network or through PR/marketing initiatives is always helpful.

4. ***Practice your "Pitch"***

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

5. ***Create a Fundraise Momentum***

   Approaching multiple venture funds at the same time is a good idea to get a competitive dynamic into the process. Try keeping your conversations with interested investors moving along at as close to the same pace as possible. This may not be easy but is if you manage to orchestrate well, you may be able to negotiate from a high bargaining power that generally leads to better valuation and deal terms. Nothing accelerates the process and you landing up a term sheet from one VC – you are likely to get few more.

6. ***Know the "standard market practice"***

   Keep yourself up to date with the commonly offered deal terms for a Series A. It is highly possible that the first version of your term sheet you receive is not exactly "founder-friendly". The strongest line of defence and the most accepted rationale for negotiating such terms is that they are not standard market practice.

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

8. Engage a Professional

If you're raising venture capital – you need a professional who specializes in structuring venture capital financing. A professional who has done multiple such deals understands the nuances involved in structuring such rounds both from the perspective of which deal terms are important, what the "standard market practice" is and when to stay firm and when to concede to the investor. This will aid you to close your investment documents faster and more efficiently.

9. Paperwork in place

Shorten your transaction closing time by having all paper work in place for due diligence. Ensure that your company's legal documentation and compliance is up to date and have your team put together all records relating to employees, past financing, corporate structure and establishment, client contracts, intellectual property, cap table, etc. The paperwork should be organized and ready for review by the Investor appointed legal counsel/diligence team.

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. Raise enough to allow you a fair shot to meet your milestones for the next round of financing so that you can channel all your focus on building the business and scaling it in the right direction. Raising every round of funding post Series A becomes significantly difficult and therefore is time consuming process and highly distracting. Additionally, there is a transaction cost every time you close an additional round.

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. They require substantial collateral and a good track record, besides the fulfilment of other terms and conditions and a lot of documentation as follows:

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

ii. External Commercial Borrowings

External Commercial Borrowings (ECB) in form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. non-convertible, optionally convertible or partially convertible preference shares,

floating rate notes and fixed rate bonds) can also be availed from non-resident lenders to fund the business requirement of a company. ECB can be accessed under two routes, viz., (i) Automatic Route; and (ii) Approval Route depending upon the category of eligible borrower and recognized lender, amount of ECB availed, average maturity period and other applicable factors.

ECB raised has also certain end use restrictions such as that it cannot be used for (a) on lending or investment in capital market; (b) acquiring a company in India; (c) real estate sector etc. Under ECB also the borrower needs to create certain charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees in favour of overseas lender / security trustee, to secure the ECB raised by the borrower, subject to compliance of certain conditions as prescribed under ECB guidelines framed by Reserve Bank of India. The documentation on similar lines as mentioned under bank loan section above will need to be executed.

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 to encourage entrepreneurs, one can get loans of up to Rs. 1 crore without collateral or surety. Any new and existing micro and small enterprise can take the loan under the scheme from all scheduled commercial banks and specified Regional Rural Banks, NSIC, NEDFi, and SIDBI, which have signed an agreement with the Credit Guarantee Trust.

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

Companies can also issue of American Depository Receipts ("ADRs") or Global Depository Receipts ("GDRs") to raise funds from international stock investors. The promoter has certain obligations such as (a) meeting minimum contribution requirements; and (b) is generally subject to a 3 year lock-in once the IPO is concluded.

Various parties such as investment bankers, underwriters and lawyers need to be engaged as part of the procedure of IPO.

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

i. Crowd Funding

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

The entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success.

The entrepreneur needs to put up on a portal his profile and presentation, which should include the business idea, its impact, and the rewards and returns for investors. 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 in relatively small sums from a broad investor base. 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

These set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an equity stake ranging from 2-10%. Incubators offer office space, administrative support, legal compliances, management training, mentoring and access to industry experts as well as to funding through angel investors or VCs. These are usually government-supported institutes like the IIMs or IITs, technical institutes or private business incubators run by industry veterans or companies. The incubation period can be 2-3 years and admission is rigorous. Some of the top options in India include IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT- Kanpur, SIIC and the Shri Ram College of Commerce (SRCC).

ENTREPRENEURSHIP

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

The concept of Entrepreneurship has wide range of meanings. On one extreme an entrepreneur is a person of very high aptitude who pioneers change, possessing characteristics found in only a very small fraction of the population. On the other extreme, anyone who wants to work for himself is considered to be an entrepreneur.

That is, entrepreneurship is equated to simply starting one's own business. Most economists believe it is more than that. To some economists, the entrepreneur is one who is willing to bear the risk of a new venture if there is a significant chance for profit. Others emphasize the entrepreneur plays a role of an innovator who markets his innovation. Still other economists say that entrepreneurs develop new goods or processes that the market demands and are not currently being supplied.

Four Key Elements of Entrepreneurship

- Innovation
- Risk taking
- Vision
- Organising skills.

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.
- Persistently tries to do something better.
- Prepared to withstand the hard life.
- Determined but patient.
- Exhibits sense of leadership.
- Also exhibits sense of competitiveness.

- Takes personals responsibility.
- Oriented towards the future.
- Tends to persist in the face to adversity.
- Convert a situation into opportunity.

Characteristics of an Entrepreneur

(i) **Mental Ability**: entrepreneur must have creative thinking and must be able to analyse problems and situations. He should be able to anticipate changes.

(ii) **Business Secrecy**: he should guard his business secrets from his competitors.

(iii) **Clear Objectives**: he must have clear objectives as to the exact nature of business or the nature of goods to be produced.

(iv) **Human Relation**: he must maintain good relations with his customers, employees etc. to maintain good relationship he should have emotional stability, personal relations, tactfulness and consideration.

(v) **Communication Ability**: he should have good communication skills means both the sender and the receiver should understand each other's message.

How Entrepreneurship is different from a Startup?

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

CASE STUDIES ON UNICORN

Unicorns Startups

A unicorn is a term used to indicate a privately held startup company with a valuation of over $1 billion. For a unicorn, the journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators. However, in the past decade. There has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

The Indian Unicorns are flourishing in the fast-paced and dynamic economy of today. These startups are not only developing innovative solutions and technologies but are generating large-scale employment. Till FY 2016-17, approximately one unicorn was being added every year. Over the past four years (since FY 2017-18), this number has been increasing exponentially, with a whopping 66% Year-on-Year growth in the number of additional unicorns being added every year. As of 03rd October 2023, India is home to 111 unicorns with a total valuation of $ 349.67 Bn. Out of the total number of unicorns, 45 unicorns with a total valuation of $ 102.30 Bn were born in 2021 and 22 unicorns with a total valuation of $ 29.20 Bn were born in 2022.

The year 2021, 2020, and 2019 saw the birth of the maximum number of Indian unicorns with 45, 11, and 7 unicorns coming each year, respectively. COVID-19 has caused a great amount of socio-economic suffering globally, but it is during this time when the resilient Indian Entrepreneurs have worked effortlessly to not only

contribute to the economy but to also contribute toward COVID-19 relief efforts. In 2020, we witnessed the birth of more than 10 unicorns. 'Its raining unicorn' has been the motto of the year 2021 with 45 unicorns pumped in the ecosystem and many soonicorns waiting in line.

Geographically, the center of India's high-tech industry, Bengaluru is India's unicorn capital with the largest number of unicorns headquarters followed by Delhi (NCR) and Mumbai. While we see unicorns active in Tier I cities, this ecosystem is not restricted and is proliferating across the country till the last district. Traditional sectors such as E-commerce, Fin-tech, E-commerce, Supply Chain & Logistics, 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.

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.

Next Stage: Going Beyond the Unicorn

The global startup ecosystem is witnessing a shift as the world is increasingly realising the potential carried by the startups. We are gradually transitioning from the age of unicorns to the age of decacorns.

A **decacorn** is company that has attained a valuation of more than $ 10 Bn.

As of 03rd October 2023, 55 companies, 56 companies world over have achieved the decacorn status. India has five startups namely, Flipkart, BYJU's, Nykaa and Swiggy, added in decacorn cohort.

CASE STUDY ON ZOMATO – INDIA'S FIRST LISTED UNICORN

***About the Company*:**

Zomato was originally incorporated as "DC Foodiebay Online Services Private Limited" as a Private Limited Company under the Companies Act, 1956 at New Delhi, on January 18, 2010. The Company's name was changed to "Zomato Media Private Limited" on May 25, 2012. Subsequently, pursuant to a special resolution passed by the company's Shareholders on April 3, 2020, the name of the Company was changed to "Zomato Private Limited" on April 22, 2020.

Consequent upon conversion into a public limited company under the Companies Act, 2013 in the year 2021, the fresh certificate of incorporation was issued by the RoC with the name "Zomato Limited" on April 9, 2021.

The Company is a professionally managed company and does not have an identifiable promoter in terms of the SEBI (ICDR) Regulations and the Companies Act. It's Board has eight Directors comprising of one executive Director, two Non-Executive Nominee Directors and five Independent Directors including four women Independent Directors.

Growth of Business from year to year:

The business of Zomato has grown substantially in recent years. Since its incorporation in 2010, Zomato have evolved from a single -service category provider to a multi-category service provider, offering various services across food delivery, diningout, Hyperpure and Zomato Pro. Almost all aspects of its business, in particular food delivery, have experienced rapid growth in recent years. Its revenue from operations has grown from INR 13,125.86 million in Fiscal Year 2019 to INR 19,937.89 million in Fiscal Year 2021. In particular, as lockdowns in response to the COVID-19 pandemic eased in India towards the end of May 2020, Zomato's food delivery business started recovering and in the fourth quarter of Fiscal 2021 it recorded the highest gross order value (GOV) achieved by Zomato in any quarter till March 2021.

Main Products of Zomato:

The technology platform of Zomato connects customers, restaurant partners and delivery partners, serving their multiple needs. Customers use its platform to search and discover restaurants, read and write customer generated reviews and view and upload photos, order food delivery, book a table and make payments while dining-out at restaurants. On the other hand, Zomato provide restaurant partners with industry-specific marketing tools which enable them to engage and acquire customers to grow their business while also providing a reliable and efficient last mile delivery service. Zomato also operates a one-stop procurement solution, Hyperpure, which supplies high quality ingredients and kitchen products to restaurant partners. It also provide its delivery partners with transparent and flexible earning opportunities. The company products can be broken down in 3 parts:

- 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

Food-delivery app Zomato Ltd. became the nation's first unicorn to make its stock-market debut, raising $1.3 billion with backing from Morgan Stanley, Tiger Global and Fidelity Investments. The IPO, which opened on July 14, 2021 and closed on July 16, 2021 was oversubscribed by over 38.25 times. The IPO received very strong subscription from qualified institutional investors, non-institutional investors, and retail investors with each category being subscribed multiple times. The public issue was subscribed 7.45 times in the retail category, 51.79 times in the QIB category, and 32.96 times in the NII category and 0.62 times in Employee category.

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. 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

***About the Company*:**

The Company was incorporated as "SSN Logistics Private Limited", a private limited company under the Companies Act, 1956, on June 22, 2011. Subsequently, the name of Company was changed to "Delhivery Private Limited", with effect from December 8, 2015. On the conversion of the Company from Private Limited to a Public Limited company, its name was changed to "Delhivery Limited" on October 12, 2021.

The main objects of Delhivery as placed in its MOA are:

1. To provide logistics and delivery solutions to consumers and a wide range of businesses, to provide logistics means, option and facilities to all kinds of business houses, corporates on contract or otherwise.
2. To provide web hosting, internet content development, web interface, web sites design, domain name services, and website maintenance services to other businesses.

The company have 11 Directors on its Board, comprising of 3 Executive Directors, 3 Non-Executive Nominee Directors and 5 Non-Executive Independent Directors, including one woman Director.

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. It was then valued at $1.5 billion. Delhivery has last been valued at $4.77 Billion in May 2022.

Financial Aspects from year to year:

The company incurred restated losses for the year/period of INR 17,833.04 million, INR 2,689.26 million, INR 4,157.43 million, INR 2,974.92 million and INR 8,911.39 million in Fiscal 2019, Fiscal 2020 and Fiscal 2021 and the nine month periods ended December 31, 2020 and December 31, 2021, respectively. The restated losses included a fair value loss on financial liabilities at fair value through profit or loss of INR 14,806.64 million, nil, INR 91.95 million, nil and INR 2,997.39 million in Fiscal 2019, Fiscal 2020 and Fiscal 2021 and the nine month periods ended December 31, 2020 and December 31, 2021, respectively, which is a non-cash item.

As the scale of the company's business grows further, its revenue from contracts with customers has improved from INR 16,538.97 million in Fiscal 2019 to INR 36,465.27 million in Fiscal 2021 and from INR 26,438.66 million for the nine months period ended December 31, 2020 to INR 48,105.30 million for the nine months period ended December 31, 2021.

Main Offerings of Delhivery:

Delhivery has currently been hailed as India's leading supply chain Services Company. It is one of India's largest B2B, B2C, and C2C Logistics Courier Service providers. The company is best known for the economical shipping rates that it charges for its services. Furthermore, Delhivery claims to have - No Setup Fees or Subscription Charges. The services offered by Delhivery can be divided into 3 primary departments:

1. **Warehousing** - Flexible warehousing across 40+ cities in India
2. **Transportation** - Largest pan-India reach across 19000+ pin codes and 2500+ cities
3. **E-Commerce** - Ready integration with Shopify, WooCommerce, Magento & Opencart.

Since its inception, Delhivery has fulfilled over 1.4 billion orders across India. It has built a nation-wide network with a presence in every state, servicing over 18000 pin codes, 21 automated sort centres, 96 gateways, 93 fulfilment centres, 2948 direct delivery centres, and a team of over 58000 people make it possible to deliver 24 hours a day, 7 days a week, 365 days a year.

Its mission is to enable customers to operate flexible, reliable and resilient supply chains at the lowest costs. It provide supply chain solutions to a diverse base of over 29,200 active customers such as e-commerce marketplaces, direct-to-consumer e-tailers and enterprises and SMEs across several verticals such as FMCG, consumer durables, consumer electronics, lifestyle, retail, automotive and manufacturing. Delhivery achieved the same through high-quality logistics, infrastructure and network engineering, a vast network of domestic and global partners and significant investments in automation that drive network synergies within and across its services and enhance the value proposition to customers.

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.

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.

LESSON ROUND-UP

- A startup company (startup or start-up) is an entrepreneurial venture which is typically an emerging, fast- growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, and processor a platform. A startup is usually a company designed to effectively develop and validate a scalable business model.
- A company may cease to be a startup as it passes various milestones, such as becoming publicly traded on the stock market in an Initial Public Offering (IPO), or ceasing to exist as an independent entity via a merger or acquisition.
- A number of organization and/or organized activities exist with Startup activities. To name a few, Universities, Advisory and mentoring organizations Startup incubators, Startup accelerators, Co working spaces, Service providers (Consulting, Accounting, Legal, etc.), Event organizers, Start- up competitions, Startup Business Model Evaluators, Business Angel Networks, Venture capital companies, Equity Crowd funding portals, corporates (telcos, banking, health, food, etc.), other funding providers (loans, grants etc.), Start-up blogs and social networks and other facilitators.
- The process of recognition as a 'startup' shall be through mobile app/portal of the Department of Industrial Policy and Promotion.
- To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing startups.
- There are Exemptions to Start-ups under Companies Act, 2013.
- There are different financing options available for Startups.
- Financing is generally of two types i.e. (a) equity financing; or (b) debt-financing.

GLOSSARY

LLP: A limited liability partnership (LLP) is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008.

General Meeting: Meeting of a company's shareholders at which they discuss the company's activities and make important decisions.

OPC: One Person Company (OPC) is a company incorporated by a single person. Before the enforcement of the Companies Act, 2013, a single person could not establish a company.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Define a Startup and trace the evolution of start-ups in India.
2. What are the highlights of the Startup Policy of the Government of India>
3. What are the tax exemptions available to Startups in India.
4. Describe the different forms of Debt and Equity Financing which can be raised by Startups.
5. "Start-ups India" initiative is used to promote growth and to help Indian economy by the Government of India. Explain the benefits which are being given to entrepreneurs establishing start-ups.

LIST OF FURTHER READINGS
• Bare Act - The Companies Act, 2013 • Bare Act – Income Tax Act, 1961

OTHER REFERENCES (Including Websites/ Video Links)
• www.startupindia.gov.in • https://dpiit.gov.in/ • https://www • mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ== • https://www.sebi.gov.in/

Micro, Small and Medium Enterprises

Lesson 5

KEY CONCEPTS

■ MSME ■ MSME Memorandum ■ Udyam Registration ■ MSME Schemes ■ NSIC Registration

Learning Objectives

To understand:

- The functions of National Board for Micro, Small and Medium Enterprises
- The classification of enterprises
- The process of Udyam Registration
- Various schemes for MSMEs
- The composition of Micro and Small Enterprises Facilitation Council

Lesson Outline

- Introduction
- The Micro, Small and Medium Enterprises Development Act, 2006 – Important Definitions
- Establishment of National Board for Micro, Small and Medium Enterprises
- Classification of Enterprises
- Memorandum of MSME
- Udyam Registration Process
- NSIC Registration
- MSME Schemes
- Composition of Micro and Small Enterprises Facilitation Council
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Micro, Small and Medium Enterprises Development Act, 2006
- MSME Rules
- MSME Notifications and Circulars

INTRODUCTION

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

The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is specified. The Act was notified to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector. The Act seeks to facilitate the development of these enterprises as also enhance their competitiveness. It provides the first-ever legal framework for recognition of the concept of "enterprise" which comprises both manufacturing and service entities. It defines medium enterprises for the first time and seeks to integrate the three tiers of these enterprises, namely, micro, small and medium. The Act also provides for a statutory consultative mechanism at the national level with balanced representation of all sections of stakeholders, particularly the three classes of enterprises; and with a wide range of advisory functions. Establishment of specific funds for the promotion, development and enhancing competitiveness of these enterprises, notification of schemes/programmes for this purpose, progressive credit policies and practices, preference in Government procurements to products and services of the micro and small enterprises, more effective mechanisms for mitigating the problems of delayed payments to micro and small enterprises and assurance of a scheme for easing the closure of business by these enterprises are some of the other features of the Act.

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

The Micro, Small and Medium Enterprises Development Act, 2006 came into force on 02nd October, 2006. The definitions are provided under section 2 of MSMED Act, 2006.

Important Definitions

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

***Advisory Committee*:**

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

Appointed Day:

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

Board:

"Board" means the National Board for Micro, Small and Medium Enterprises established under section 3.

Enterprise:

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

Medium Enterprise:

The term Medium Enterprise has been defined under Section 2(g) of the Act as to mean an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of Sub-section (1) of Section 7. Section 7 deals with the classification of enterprises.

Micro Enterprise:

Micro Enterprise under Section 2(h) has been defined to mean an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of Sub-section (1) of Section 7.

Small Enterprise:

Small Enterprise under Section 2(m) of the Act means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of Sub-section (1) of Section 7.

Supplier:

The term supplier defined under Section 2(n) of the Act means a micro or small enterprise, which has filed a memorandum with the authority referred to in Sub-section (1) of Section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

Establishment of National Board for Micro, Small and Medium Enterprises

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

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

(a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;

(b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;

(c) 6 Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio;

(d) 3 Members of Parliament of whom 2 shall be elected by the House of the People and one by the Council of States;

(e) the Administrator of a Union territory to be appointed by the Central Government, ex officio;

(f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, ex officio;

(g) 4 Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio;

(h) the Chairman of the Board of Directors of the National Bank, ex officio;

(i) the Chairman and Managing Director of the Board of Directors of the Small Industries Bank, ex officio;

(j) the Chairman, Indian Banks Association, ex officio;

(k) 1 officer of the Reserve Bank, not below the rank of an Executive Director, to be appointed by the Central Government to represent the Reserve Bank;

(l) 20 persons to represent the associations of micro, small and medium enterprises, including not less than 3 persons representing associations of women's enterprises and not less than 3 persons representing associations of micro enterprises, to be appointed by the Central Government;

(m) 3 persons of eminence, one each from the fields of economics, industry and science and technology, not less than 1 of whom shall be a woman, to be appointed by the Central Government;

(n) 2 representatives of Central Trade Union Organizations, to be appointed by the Central Government; and

(o) 1 officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.

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

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

1) To examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises.

2) To make recommendations on matters relating to promotion and development of micro, small and medium enterprises or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises.

3) To advise the Central Government on the use of the Fund or Funds constituted under section 12 of MSMED Act, 2006.

Classification of Enterprises

The Government vide notification no. S.O. 2119 dated 26.06.2020 has notified the composite criteria of classification of MSMEs based on investment in plant and machinery or equipment and turnover of the enterprises by simplifying the Udyam Registration process for MSMEs by making it fully online, digital, and paperless and based on self-declaration. No documents or proof are required to be uploaded for registering as a Micro, Small and Medium Enterprise. Aadhaar and PAN are required for registration. PAN, GSTIN linked details on investment and turnover of enterprises are taken automatically from relevant Government databases.

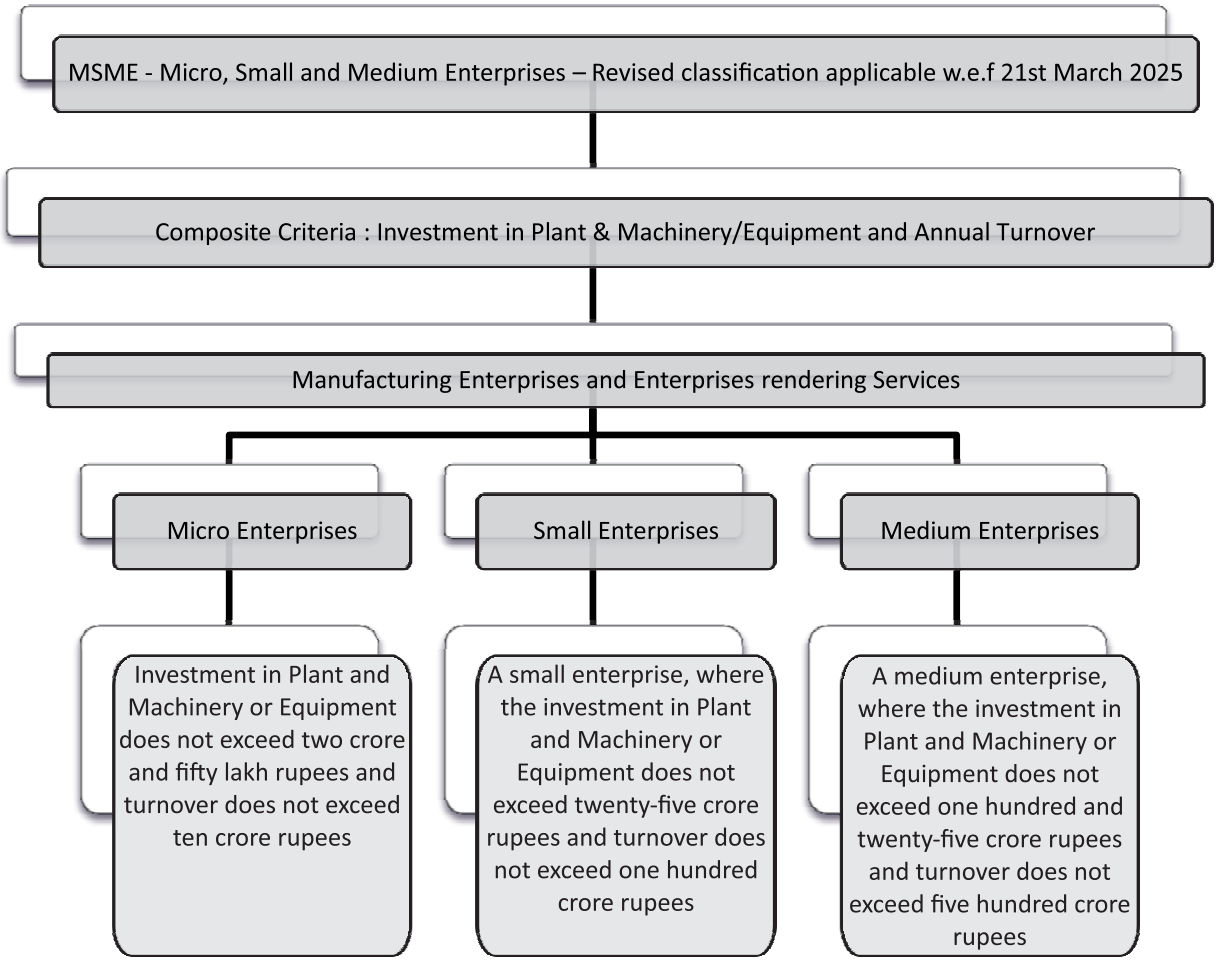
The turnover with respect to exports is not counted in the limits of the turnover for any category of MSMEs. The criteria become applicable to all States/UTs with effect from 01.07.2020. Promotion and development of enterprises is a State subject. The Central Government supplements the efforts of the State/UT Governments through various schemes, programmes and policy initiatives for promotion, development and enhancing the competitiveness of MSMEs in the country uniformly including tier 2 and tier 3 cities.

Ministry of Micro, Small and Medium Enterprises vide Notification No. S.O. 1364(E) dated 21st March, 2025

Revision of Definition of MSMEs

- A micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed two crore and fifty lakh rupees and turnover does not exceed ten crore rupees
- A small enterprise, where the investment in Plant and Machinery or Equipment does not exceed twenty-five crore rupees and turnover does not exceed one hundred crore rupees
- A medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed one hundred and twenty-five crore rupees and turnover does not exceed five hundred crore rupees.

MSME includes all establishment engaged either in manufacturing or rendering services but it does not include those enterprise which are engaged only in trading activities.



Memorandum of MSME

Any person who intends to establish a micro or small enterprise, may, at his discretion, or a medium enterprise engaged in providing or rendering of services may, at his discretion; or a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA, is required to file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government or the Central Government (Section 8).

Measures for Promotion and Development

The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development of skill in the employees, management and entrepreneurs, provisioning for technological upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit. (Section 9)

Registration Process

(1) The form for registration shall be as provided in the Udyam Registration portal.

(2) There will be no fee for filing Udyam Registration.

(3) Aadhaar number shall be required for Udyam Registration.

(4) The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a karta in the case of a Hindu Undivided Family (HUF).

It may be noted that according to Rule 5 of the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 the Ministry of Micro, Small and Medium Enterprises, having been authorised by the Central Government, hereby notifies that Aadhaar authentication of enterprises shall be performed, on voluntary basis, using Yes/No authentication facility, during the process of registration of owners of informal micro enterprises on its digital platform, to facilitate access for availing of priority sector lending.

(5) In case of a Company or a Limited Liability Partnership or a Co-operative Society or a Society or a Trust, the organisation or its authorised signatory shall provide its GSTIN and PAN along with its Aadhaar number.

(6) In case an enterprise is duly registered as an Udyam with PAN, any deficiency of information for previous years when it did not have PAN shall be filled up on self-declaration basis.

(7) No enterprise shall file more than one Udyam Registration: Provided that any number of activities including manufacturing or service or both may be specified or added in one Udyam Registration.

(8) Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

It may be Noted that:

- An enterprise for the purpose of this process will be known as Udyam and its Registration Process will be known as 'Udyam Registration'.
- A permanent registration number will be given after registration.
- After completion of the process of registration, a certificate will be issued online.

- This certificate will have a dynamic QR Code from which the web page on our Portal and details about the enterprise can be accessed.
- There will be no need for renewal of Registration. No enterprise shall file more than one Udyam Registration. However, any number of activities including manufacturing or service or both may be specified or added in one Registration.

Provision applicable for Udyam Assist Certificate issued through Udyam Assist Platform (UAP): With reference to the launch and implementation of Formalization Project of the Ministry of MSME and SIDBI for bringing the Informal Micro Enterprises (IMEs) into the formal ambit, it is to be noted that the certificate issued on the Udyam Assist Platform (UAP) would be treated at par with Udyam Registration Certificate for IMEs for availing of the benefits of Priority Sector Lending (PSL).

BENEFITS OF TAKING UDYAM REGISTRATION

- It will be a permanent registration and basic identification number for an enterprise.
- MSME Registration is paperless and based on self-declaration.
- There will be no need for renewal of Registration.
- Any number of activities including manufacturing or service or both may be specified or added in one Registration.
- The Udyam Registration may also help MSMEs in availing the benefits of Schemes of Ministry of MSMEs such as Credit Guarantee Scheme, Public Procurement Policy, additional edge in Government Tenders & Protection against delayed payments etc.
- Becomes eligible for priority sector lending from Banks.

NSIC REGISTRATION

NSIC enlists Micro & Small Enterprises (MSEs) under Single Point Registration scheme (SPRS) for participation in Government Purchases. The units enlisted under Single Point Registration Scheme of NSIC are eligible to get the benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Government of India, Ministry of Micro Small & Medium Enterprises, New Delhi vide Gazette Notification dated 23.03.2012 and amendment vide order no. S.O. 5670(E) dated 9th November 2018.The enlistment under SPRS is completely online.

Both manufacturing and service provider enterprises having MSME or Udyog Aadhaar registration are eligible for obtaining NSIC registration. To obtain registration, enterprises having MSME or Udyog Aadhaar registration can apply online or by submitting an application at one of the NSIC offices. On submission of the application, the NSIC forwards the application to a zonal branch or sub-branch office nearest to the applicant for completing technical inspection of the unit and forwarding of recommendation for NSIC registration. On receiving the inspection report, NSIC grants registration to the MSME unit.

Benefits extended to MSEs having valid registration:

1. Issue of the Tender Sets free of cost.
2. Exemption from payment of Earnest Money Deposit (EMD).
3. In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price, where L1 is non MSEs.
4. Consortia facility for Tender Marketing.

Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25% of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 25% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste /Schedule Tribes and 3% is earmarked for the units owned by Women entrepreneurs. SPRS registered units are integral part of the supply chain to Government

MSME SCHEMES

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

A. Prime Minister's Employment Generation Programme (PMEGP)

The scheme aims to provide financial assistance to set up self-employment ventures and generate sustainable employment opportunities in rural as well as urban areas. And to generate sustainable and continuous employment opportunities to rural and unemployed youth as well as prospective traditional artisans and thereby halt occupational migration. The scheme is applicable to all individuals above the age of 18 years. The scheme is designed in such a way that the own contribution of the beneficiary is 10% of the project cost in case of general category and 5% of the project cost in case of special category (SC/ST/OBC/PH/Women/Ex Servicemen/ NER) Beneficiaries. If the application for loan is approved, then the banks sanction and release the balance amount of 90 to 95 percent of the total project cost suitably for setting up of the units by the beneficiaries.

B. 2nd Loan For Up-Gradation Of The Existing PMEGP/Mudra Units

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

C. Credit Guarantee Scheme For Micro & Small Enterprises (CGTMSE)

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

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

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

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

The scheme is applicable to the existing entrepreneurs (in form of a SPV). The key benefits of the scheme is Creation of Common Facility Centers including Plug & Play Facilities and Support for Infrastructure Development Projects including Flatted Factory Complexes.

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

The main objective of SFURTI is to organize traditional industries and artisans into collectives by increasing production and value addition to make products competitive and to promote traditional sectors and increase income of artisans providing sustainable employment. The scheme is applicable to existing artisans from traditional industries, Cluster of Artisans in sectors such as Handicraft, Textile, Agro-Processing, Bamboo, Honey, Coir, Khadi etc. The scheme aims toward assistance and support to traditional industry artisans and to provide them sustainable employment through Hard Intervention in setting up physical infrastructure with CFCs, raw material banks, latest machineries. Soft Intervention in skill development, market promotion initiatives, etc. in clusters is also induced through this scheme. SFURTI provides financial assistance of up to 90% (95% in NER, J&K and Hill Areas) of Hard Intervention cost and entire cost of Soft Intervention.

F. Entrepreneurship And Skill Development Programme (ESDP) Scheme

ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country. It is applicable to all the aspiring and existing entrepreneurs. It facilitates entrepreneurship/ self-employment awareness and motivation to different sections of the society including SC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/ Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/ Fabrication/ Sheet metal work, Basic/ Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme. The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Management/Documentation &Procedures, Materials Management, Financial/Working Capital Management, Information Technology, Digital Marketing, Quality Management/QMS/ISO 9000/EMS, WTO, IPR, Supply Chain Management, Retail Management, Logistics Management etc. The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

G. Assistance To Training Institutions (ATI) Scheme

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

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

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

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

I. Procurement And Marketing Support (PMS) Scheme

The scheme aims to promote new market access initiatives like organizing / participation in National / International Trade Fairs / Exhibitions / MSME Expo, etc. held across the country and to create awareness and educate the

MSMEs about the importance / methods/ process of packaging in marketing, latest packaging technology, import-export policy and procedure, GeM portal, MSME Conclave, latest developments in international / national trade and other subjects / topics relevant for market access developments.

J. International Cooperation (IC) Scheme

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

K. National SC-ST Hub Scheme

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

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

The main objective of this scheme is to set up a network of Livelihood Business Incubation centers predominantly in the rural and underserved areas, to promote innovation and accelerate entrepreneurship by empowering the beneficiaries in creation of formal micro-enterprises and imparting skill development programs for creating wage/self-employment opportunities in the agro rural sector. The scheme is applicable to any agency/ institution of Government of India/ State government or existing training centers under Ministries/Departments of Government of India/State Government, Industry Associations, Academic Institutions and any not-for-profit private institutions with experience in successfully executing incubation and/or skill development programs may be eligible to set up an LBI.

M. Khadi Gramodyog Vikas Yojana – Umbrella Scheme

The schemes aim to increase productivity and wages of Khadi Artisans and secure livelihood and improve Infrastructure for Khadi Production. It aids in increased Khadi Production, Sales and Employment. It helps in development of Village Industries and increase number of rural artisans. It revives the traditional and inherent skills of rural artisans.

The Scheme applicable for:

Khadi Institutions (KIs) registered with KVIC or State Khadi and Village Industries Boards(KVIBs) and Khadi artisans. The beneficiaries may be identified by KVIC, NGOs /KIs/VIs/KVIB's/ DIC's/FPOs etc. Age Group: 18-55 Years. Having valid Aadhar Card or any other Identity Card issued by Government. One person from one family is eligible for the assistance under KGVY. Persons who have availed benefits from other Govt. Schemes for the same/similar purpose is not eligible. Preference shall be given to the people belonging to SCs/STs/Women/ Unemployed Youth /BPL category etc

PROMOTION OF MSMES IN - NER & SIKKIM

The scheme envisaged for providing financial support mainly for augmenting Infrastructure development for enhancing the productivity, sustainability, competitiveness and growth by addressing common issues such as improvement of technology, skills & quality, market access etc. of Micro, Small and Medium Enterprises (MSMEs). It helps in creation of common facilities to supplement manufacturing, testing, packaging, R&D, product and process innovations and training for natural resources such as fruits, spices, agri, forestry, sericulture and

bamboo etc. available in NER and Sikkim. It is applicable to State Government or any State Govt. organization engaged in promotion of MSMEs.

PM VISHWAKARMA – ENABLING ARTISANS & CRAFTSPEOPLE TO SCALE-UP THEIR ENTERPRISES

The scheme recognises artisans and craftspeople through PM Vishwakarma certificate and ID card. A Basic Training of 5-7 days and Advanced Training of 15 days or more, with a stipend of Rs. 500 per day and transport allowance of Rs 1,000 is being provided and a toolkit incentive of up to Rs. 15,000 through e-vouchers. Credit Support in form of Collateral free 'Enterprise Development Loans' of upto Rs. 3 lakh in two tranches of Rs. 1 lakh and Rs. 2 lakh with tenures of 18 months and 30 months, respectively, at a concessional rate of interest fixed at 5%, with Government of India subvention to the extent of 8%.

The Scheme covers artisans and craftspeople engaged in 18 trades.viz.(i) Carpenter (Suthar/Badhai); (ii) Boat Maker; (iii) Armourer; (iv) Metalsmith/Metal Caster (Lohar); (v) Hammer and Tool Kit Maker; (vi) Locksmith; (vii) Goldsmith (Sonar); (viii) Potter (Kumhaar); (ix) Sculptor (Moortikar, stone carver), Stone breaker; (x) Cobbler (Charmakar)/ Shoesmith/Footwear artisan; (xi) Mason (Rajmistri); (xii) Basket/ Mat/Broom Maker/Coir Weaver; (xiii) Doll & Toy Maker (Traditional); (xiv) Barber (Naai); (xv) Garland maker (Malakaar); (xvi) Washerman (Dhobi); (xvii) Tailor (Darzi); and (xviii) Fishing Net Maker.

TOOL ROOMS AND TECHNICAL INSTITUTIONS

The Scheme improves access of MSMEs to tooling facilities for enhancement of their efficiency and providing industry ready manpower by conducting training programme. It focuses on process and product development in relevant sector and also Consultancy and job works in relevant sector.

Industrial Units (focusing on MSME sector) can apply for this scheme. The intake eligibility for the training programmes from school dropout to M. tech level.

MSME CHAMPIONS SCHEME

MSME Champions scheme has been formulated through Standing Finance Committee (SFC) by merging all 6 components of erstwhile Technology Upgradation Scheme (TUS) for a period of 5 years i.e. 2021-22 to 2025-26. It is a holistic approach to unify, synergize and converge various schemes and interventions with a single purpose. The end objective is to pick up clusters and enterprises and modernize their processes, reduce wastages, sharpen business competitiveness and facilitate their National and Global reach and excellence. There are 3 components under the new MSME Champions scheme, the details of which are as below:

1) MSME-Sustainable (ZED) 2) 3) MSME-Competitive (Lean) 4) Digital MSME Yet to be launched. MSME-Innovative (for Incubation, IPR, Design) (The Digital MSME will be interlinked with all the other components of the MSME Champions Scheme.)

MSME SUSTAINABLE (ZED) CERTIFICATION

MSME Sustainable (ZED) Certification is an extensive drive to create awareness amongst MSMEs about Zero Defect Zero Effect (ZED) practices and motivate and incentivize them for ZED Certification while also encouraging them to become MSME Champions. Through the journey of ZED Certification, MSMEs can reduce wastages substantially, increase productivity, enhance environmental consciousness, save energy, optimally use natural resources, expand their markets, etc. MSMEs will also be motivated to adopt best practices in work culture, standardization of products, processes and systems etc. in order to enhance their global competitiveness and sustainability. The ZED Certification aims at enhancing the competitiveness of an MSME by assessment, modification through guidance, handholding, managerial and technological intervention – not just certification.

MSME - INNOVATIVE (INCUBATION, IPR AND DESIGN)

MSME Innovative is a holistic approach to unify, synergize and converge 3 sub- schemes and interventions with a single purpose. MSME Innovative is a new concept for MSMEs with a combination of innovation in incubation, design intervention and by protecting IPR in a single mode approach to create awareness amongst MSMEs about India's innovation and motivate them to become MSME

Champions. This will act as a hub for innovation activities facilitating and guiding development of ideas into viable business proposition that can benefit society directly and can be marketed successfully.

MSME COMPETITIVE (LEAN) SCHEME

Ministry of Micro, Small & Medium Enterprises, Government of India, aims to implement the MSME Competitive (Lean) Scheme for MSMEs with an objective to enhance their productivity, efficiency, and competitiveness by reduction of wastages in processes, inventory management, space management, energy consumption, etc.

RAISING AND ACCELERATING MSME PERFORMANCE (RAMP)

RAMP is a World Bank supported Central Sector Scheme aimed at improving access of MSMEs to market, finance and technology upgradation by enhancing the outreach of existing MoMSME schemes. The programme also aims at strengthening institutions at the Central and State level, and enhancing Centre- State collaboration.

N. Self reliant India (SRI) Fund

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

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

O. MSME Sambandh

MSME Sambandh Portal is launched as the Public Procurement Portal, whose main objective is to monitor the implementation of the Public Procurement from MSEs by Central Public Sector Enterprises. The Public Procurement Policy for Micro and Small Enterprises (MSME) order 2012 has mandated every Central Ministry/ Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year, with the objective of achieving an overall procurement goal of minimum 25 per cent of the total annual purchases from the products or services produced or rendered by MSEs. Out of 25% target of annual procurement 4% is exclusively reserved for MSEs owned by SC/ST and 3% for MSEs owned by Women entrepreneurs.

REFERENCE TO MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

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

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

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

providing alternate dispute resolution services for such arbitration. The Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

Every reference made under this section shall be decided within a period of 90 days from the date of making such a reference.

Section 19 of the MSMED Act, 2006 states that no application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it 75% of the amount in terms of the decree, award or, as the case may be.

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

Composition of Micro and Small Enterprises Facilitation Council

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

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

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

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

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

CASE LAWS

In the case of *M/s India Glycols Limited and Another vs. Micro and Small Enterprises Facilitation Respondents Council, Medchal - Malkajgiri and Others ,Civil Appeal No 7491 of 2023 (Arising out of SLP (C) No 9899 of 2023),* the Apex Court in its order dated November 6, 2023 inter alia observed that in terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.

In the judgment of Supreme Court in *Gujarat State Civil Supplies Corporation Limited vs Mahakali Foods Private Limited (Unit 2) and Another (2023) 6 SCC 401),* a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that: *"The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act 2006 would be governed by the Arbitration Act, 1996."*

LESSON ROUND-UP

- The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is specified. The Act was notified to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector.
- The Central Government shall establish a board under section 3 of MSMED Act, 2006 known as National Board for Micro, Small and Medium Enterprises. The main functions of the board is to examine the factors affecting the promotion and development of micro, small and medium enterprises and

  review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises.
- Central Government vide Notification S.O. 1702(E) dated 1st June 2020 notifies the criteria for classification of Micro, Small and Medium Enterprises.
- The Udyam Registration may help MSMEs in availing the benefits of Schemes of Ministry of MSMEs such as Credit Guarantee Scheme, Public Procurement Policy, additional edge in Government Tenders & Protection against delayed payments etc.
- Under section 18 of the Act, any party to a dispute may, with regard to any amount due to him make a reference to the Micro and Small Enterprises Facilitation Council.

GLOSSARY

Micro Enterprises: A micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs.1 crore and Turnover does not exceed Rs. 5 crore.

Small Enterprises: A small enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs.10 crore and Turnover does not exceed Rs. 50 crore.

Medium Enterprises: A medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed Rs.50 crore and Turnover does not exceed Rs. 250 crore.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. ABC Pvt. Ltd., is engaged in manufacture of textiles. The Company has investment of Rs. 5 Crore and Turnover of Rs. 25 Crore. The Company wants to know their category as per definition of MSME. Will your answer differ, if ABC Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover?
2. Discuss in brief the various Government schemes for MSME?
3. State the process of UDYAM Registration.
4. Write a short note on:
   i. MSME Memorandum
   ii. Micro and Small Enterprises Facilitation Council.

LIST OF FURTHER READINGS
• Bare Act - Micro, Small and Medium Enterprises Development Act, 2006 • Notifications issued by the Ministry Of Micro, Small And Medium Enterprises

OTHER REFERENCES (Including Websites and Video Links)
• https://msme.gov.in/ • https://www.indiacode.nic.in/

Conversion of Business Entities

Lesson 6

KEY CONCEPTS

■ Public Company ■ Private Company ■ Section 8 Company ■ Limited Liability Partnership ■ One Person Company ■ Company Limited by shares ■ Company Limited by Guarantee

Learning Objectives

To understand:

- The conversion from one corporate entity to other
- The registration and effect of registration under Part XXI of the Companies Act, 2013

Lesson Outline

- Introduction
- Conversion of Private Company into Public Company and *Vice Versa*
- Conversion of Section 8 company into other kind of Company
- Conversion of Company into LLP and *Vice Versa*
- Conversion of OPC to other type of Company and *Vice Versa*
- Companies authorized to registered under chapter XXI of the Companies Act, 2013
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The LLP Act, 2008
- The Companies (Incorporation) Rules, 2014

INTRODUCTION

The provisions of the Companies Act, 2013 read with rules made thereunder provides for the conversions of various entities from one type of company to other another type of Company. However, in some case the company is mandatorily required for the conversion in to another type of Company.

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered and provided that a company already registered in a class may convert itself as a company of another class by alteration of memorandum (section 13) and articles (section 14) of the company in accordance with the provisions of the Chapter II of the Companies Act, 2013.

An application in this regard is required to be made to Registrar. The Registrar after being satisfied that all provisions have been complied with, shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a fresh certificate of incorporation for the converted entity. The conversion of a company shall not affect any debt, liabilities and obligations. Such debt, liabilities, obligation and contracts may be enforced as if there is no such conversion.

The company can convert into following type of companies:

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

CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

The provisions related to conversion of private company into public company are provided under section 18 (conversion of companies already registered) and 14 (alteration of articles) of the Companies Act, 2013 read with Rule 33 of Companies (Incorporation) Rules, 2014.

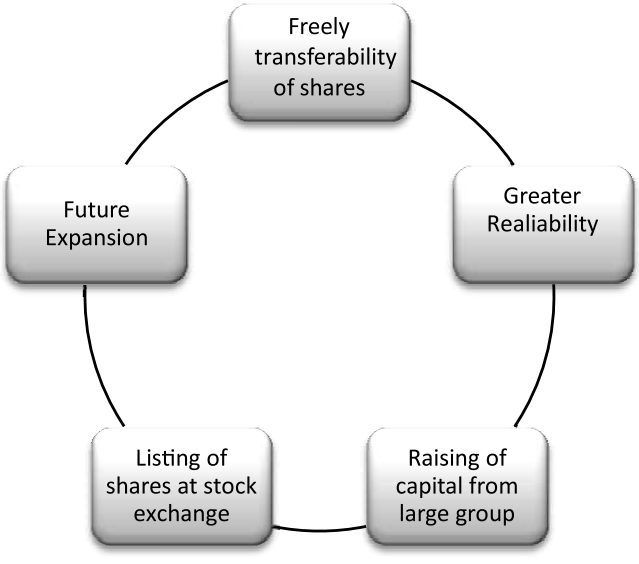
Section 14 of the Companies Act, 2013 plays an important role during conversion of a private company into a public company. Conversion of a private company into a public company involves alteration of article of association of private company, which cannot be done without passing special resolution by the company in general meeting. The company shall have minimum of 7 members in the company.

The alteration of the articles of the private company shall be made in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company i.e. minimum and maximum number of members, transfer of shares, number of directors, quorum of the general meeting etc., the company shall, as from the date of such alteration, cease to be a private company.

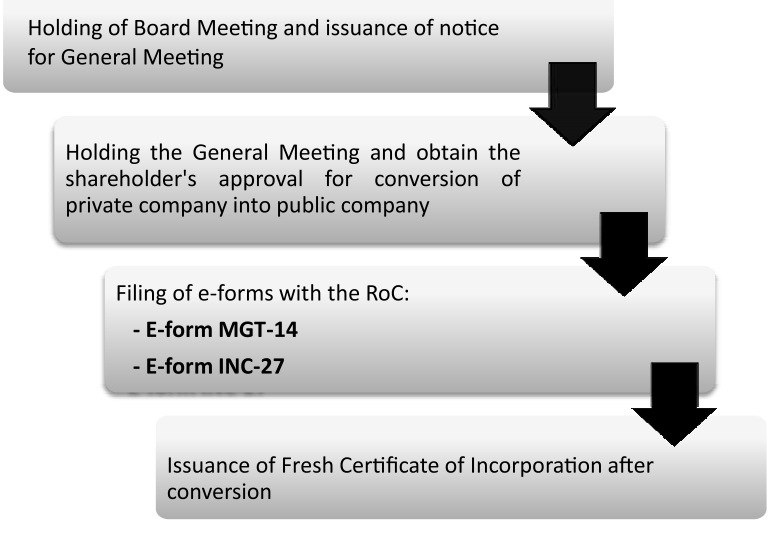
Benefits of Conversion of Private Company into a Public Company:

Now a days the private companies which are planning for future expansion prefer to get it converted into public limited companies due to various benefits and growth opportunities available to the public companies. The main advantage of being a public company is access to capital fund. Public company can easily raise share capital from existing and new investors. Even the shareholders of public company have the benefit of liquidity of their investments as the shares of public limited company are freely transferable, if listed on stock exchange. Various other benefits being a public company are illustrated below:

BENEFITS OF CONVERSION OF PRIVATE TO PUBLIC COMPANY



Procedure for Conversion of a Private Company into a Public Company



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

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Private Limited Company into Public Limited Company. The main agenda for this board meeting would be:
    a. To pass a board resolution to get in-principal approval of Directors for conversion of private company into a public company.
    b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Private company into a Public company.
    c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of private limited company into public limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
    d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
    e. Pass Board resolution for increase in number of Directors, if Directors are less than 3 in the company.
    f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
    g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Shorter notice can be issued if the consent of majority of shareholders holding 95% of paid-up capital has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including the removal of restrictive provisions as applicable to the private limited company and for change of name of the company to delete the word "private".
4. **Filing of e-form MGT-14:** In case of conversion of Private Company into a Public Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
    a. Notice of general meeting along with copy of explanatory statement under section 102;
    b. Certified true copy of special resolution;
    c. Altered memorandum of association;

d. Altered articles of association

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

5. **Filing of e-form INC-27:** For effecting the conversion of a private company into a public company, the application shall be filed in Form No.INC.27 with fee.

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

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

Points to ponder:

- Appropriate steps should be taken to increase the number of members to at least seven, if the company has less than seven members.
- Name clause of Memorandum needs to be amended to exclude the word 'Private'.
- The Articles of Association should be amended to remove the restrictive provisions applicable to the Private Company.
- If the number of directors of the Company is two, the number of directors should be increased to at least three.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- Company has not failed to pay or repay matured deposits or debentures or interest thereon.

Post Conversion requirements to be arranged by the company

Once the company gets converted into public limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

- A fresh PAN card has to be applied to reflect the conversion done.
- The bank account details of the company needs to be updated.
- Proper intimation needs to be given to tax authorities and other regulatory authorities about the conversion.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.
- A fresh rubber stamp is required to be arranged with the new name of the Company.
- Paint or affix or print, new name along with the former name so changed on the outside of every office.
- Inform about the conversion from private limited to public limited to various Government authorities like GST department, Regional Provided Fund department, Income tax department, etc.
- Intimate all the banks where the current accounts of the company are opened about the conversion with regard to change in the name and status of the Account holder.

CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE LIMITED

Section 13, 14, 15 & 18 of the Companies Act, 2013, Rule 33(2) the Companies (Incorporation) Rules, 2014 regulate the conversion of public company into private company. Conversion of status of company from public to private would become effective form the date of receipt of the approval of the Registrar by means of issuing a new certificate of Incorporation.

As per Section 13 and Section 14 of the Companies Act 2013 read with Rule 33 of the Companies (Incorporation) Rules, 2014. A public company can be converted into the private company only after obtaining its shareholders' approval by way of passing of special resolution in general meeting.

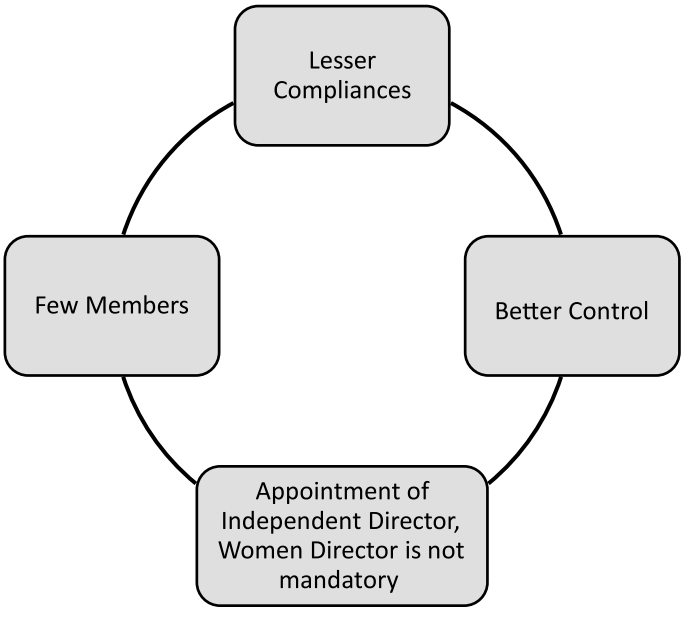
For conversion of public company into private company foremost requirement is Alteration in Article of Association of Company. According to the Act, any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Regional Director.

For effecting the conversion of a public company into a private company, a copy of order of the Regional Director approving the alteration, shall be filled with the Registrar in Form No. INC -27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Regional Director.

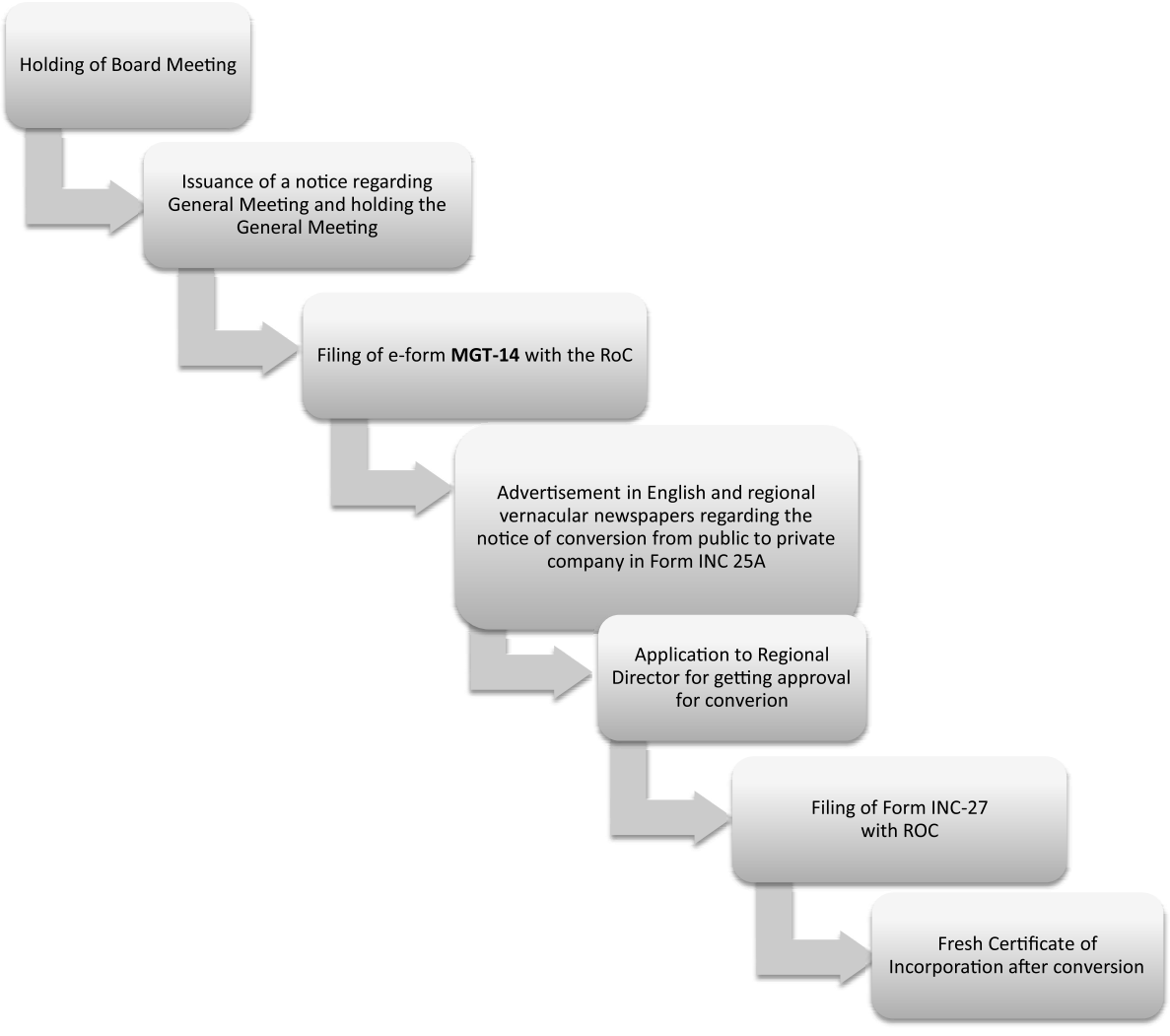
At the time of Conversion Company have to make several alterations. Some of them are mentioned below:

- Change of Name;
- Alteration of Memorandum of Association;
- Alteration of Article of Association;
- New Certificate of Incorporation;
- Alteration of Letter head, book & papers.

Benefits of conversion of Public Limited Company into Private Limited Company:



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



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

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Public Limited Company into Private Limited Company. The main agenda for this board meeting would be:

    a. To pass a board resolution for approving proposal of conversion of Public Company into a Private Company, and to recommend the proposal for conversion for approval of shareholders in the General Meeting of the Company.

    b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Public company into a Private company.

    c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of public limited company into private limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.

d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.

e. Pass Board resolution for considering and approving the reduction in the total number of members of the company to a maximum of 200 members.

f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.

g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Private Limited Company.

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

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Public Limited Company into a Private Limited company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including insertion of restrictive provisions as applicable to the private limited company and for change of name of the company to insert the word "private".

4. **Filing of e-form MGT-14:** In case of conversion of Public Company into a Private Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:

   a) A certified true copy of Altered MoA;

   b) A certified true copy of Altered AoA;

   c) Notice of General Meeting along with an explanatory statement;

   d) Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.

5. **Publication of an Advertisement:** The Company shall, at least twenty-one days before the date of filing of the application with Regional Director must advertise an application for conversion of public limited company into private limited company in a vernacular newspaper in the district, and in English newspaper, which is circulated widely in the State in which the Registered Office of the Company is situated as per Rule 41(5) of the Companies (Incorporation) Rules, 2014. The application should be advertised in ***Form INC-25A.*** The Company shall also serve the individual notice by registered post with acknowledgement due to each of the Creditors and debenture holders of the company and to the RD, Registrar of Companies and the regulatory body for the same.

6. **File an Application with the Regional Director for Conversion of Public Company into Private Company:** The Company must draft an application for the conversion of Public Company into

Private Company and file the same with the Regional Director within sixty days from the date of passing of Special Resolution in **e-Form RD-1** along with the prescribed fee as per Rule 41(1) and 41(3) of the Companies (Incorporation) Rules, 2014. The form needs to be filed along with the following annexures:

(a) e-Memorandum of Association and e-Articles of Association, with proposed alterations including the alterations pursuant to Section 2(68).

(b) Copy of minutes of General Meeting.

(c) Copy of Board resolution dated not earlier than thirty days authorizing to file application for such conversion.

(d) Declaration by a Key Managerial Personnel that pursuant to the provisions of Section 2(68) of the Companies Act, 2013 that the company limits the number of its members to 200 and also stating that no deposit has been accepted by the Company in violation of the Act and rules made thereunder.

(e) Declaration by a Key Managerial Personnel that there has been no non-compliance of sections 73 to 76A, 177 , 178, 185, 186 and 188 of the Act and rules made thereunder.

(f) Declaration by a Key Managerial Personnel and in case if there is no KMP, by any director of the company, that no resolution is pending to be filed in terms of sub-section (3) of section 179 and also stating that the Company was never listed in any of the Stock Exchanges and if was so listed, all necessary procedures were complied with for complete delisting of the shares in accordance with the applicable rules and regulations laid down by Securities Exchange Board of India.

(g) List of Creditors and Debenture Holders of a date not more than 30 days before the date of filing of Application with Regional Director along with the name and address of creditors and debenture holders, the nature of claims, debts and liability with amount due and in respect of any contingent or unascertained debt, the estimated value of such debt.

(h) An affidavit signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be managing director, where there is one, to the effect that full enquiry have been made into affairs of the company and have formed an opinion that the list of creditors and debenture holders is correct, and that the estimated value of the debts or claims payable on contingency or not ascertained are proper estimates of the values of such debts and claims that there are no other debts, or claims against, the company to their knowledge.

7. Approval of Application for conversion by Regional Director or seeking of further information, if required, by Regional Director: Where no objection has been received from any person in response to the advertisement or notice published in the newspaper and the application is complete in all respects, the concerned Regional Director shall pass an order approving the application within 30 days from the date of receipt of the application as per **Rule 41(6)(a) of the Companies (Incorporation) Rules, 2014**.

But where an objection has been received by the Regional Director or Regional Director on examining the application has specific objection under the provisions of the Act, the same shall be recorded in writing and shall hold a hearing/hearings within a period of 30 days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing.

In case where no consensus is received, the Regional Director may approve the conversion, if he is satisfied having regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene the provisions of the Act, with reasons to be recorded in writing.

Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within 30 days from the date of receipt of the application, call for such information or defects or incompleteness, directing the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of 15 days. In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within 15 Days, the Regional Director shall reject the application with reasons within 30 days from the date of filing application or within 30 days from the date of last re-submission made, as the case may be.

8. **Filing of e-form INC-28 with the Registrar of Companies:** Company shall file the order conveyed by the Regional Director with the Registrar in Form INC-28 within 15 days from the date of receipt of approval as per **Rule 41(9) of the Companies (Incorporation) Rules, 2014** along with the prescribed fee.

9. **Filing of e-form INC-27:** For effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD-1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director.

10. **Issuance of fresh Certificate of Incorporation**: The Registrar on the approval of E-Form MGT-14 and E-Form INC-27, after satisfying himself that the provisions applicable for conversion of companies have been complied with, close the former registration of the company and after registering the documents, issue a fresh certificate of incorporation in the same manner as its first registration.

Points to ponder:

- Name clause of Memorandum needs to be amended to include the word 'Private'.
- The Articles of Association should be amended to include the restrictive provisions applicable to the Private Company.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- Company has not failed to pay or repay matured deposits or debentures or interest thereon.
- Reduce in the total number of members of the company to a maximum of 200 members.

Post Conversion requirements to be arranged by the company

Once the company gets converted into private limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

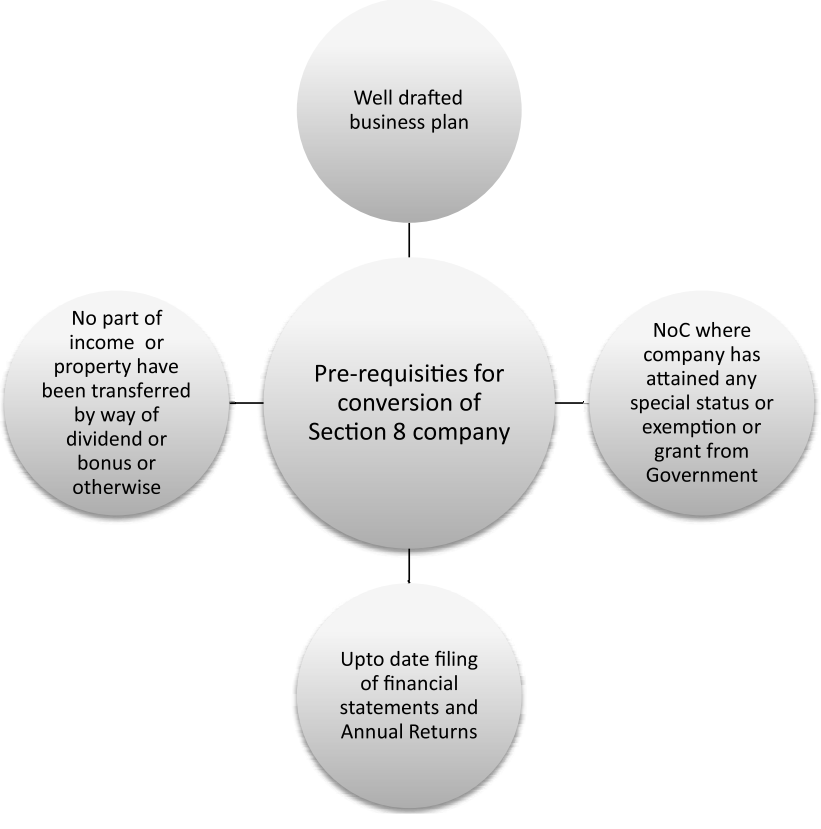
- Arrange new rubber stamps with the new name, and all the stationary in the new name of the Company.

- Arrange printing of fresh copies of Altered Memorandum of Association and Articles of Association with new Certificate of Incorporation.
- Paint the new name of the Company outside every office, building etc. along with former name so changed.
- Get the new name printed on its business letters, letter heads, Bill heads, Invoice Forms, Receipt Forms and all other official publications along with former name so changed.
- Inform about the conversion of the Company to all concerned persons/ govt. authorities.
- Intimate all the Banks where Company is operating Bank Accounts about its conversion and file necessary applications and documents with regard to change in the name of Account holder.
- Make application to Income Tax Department for new Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN).

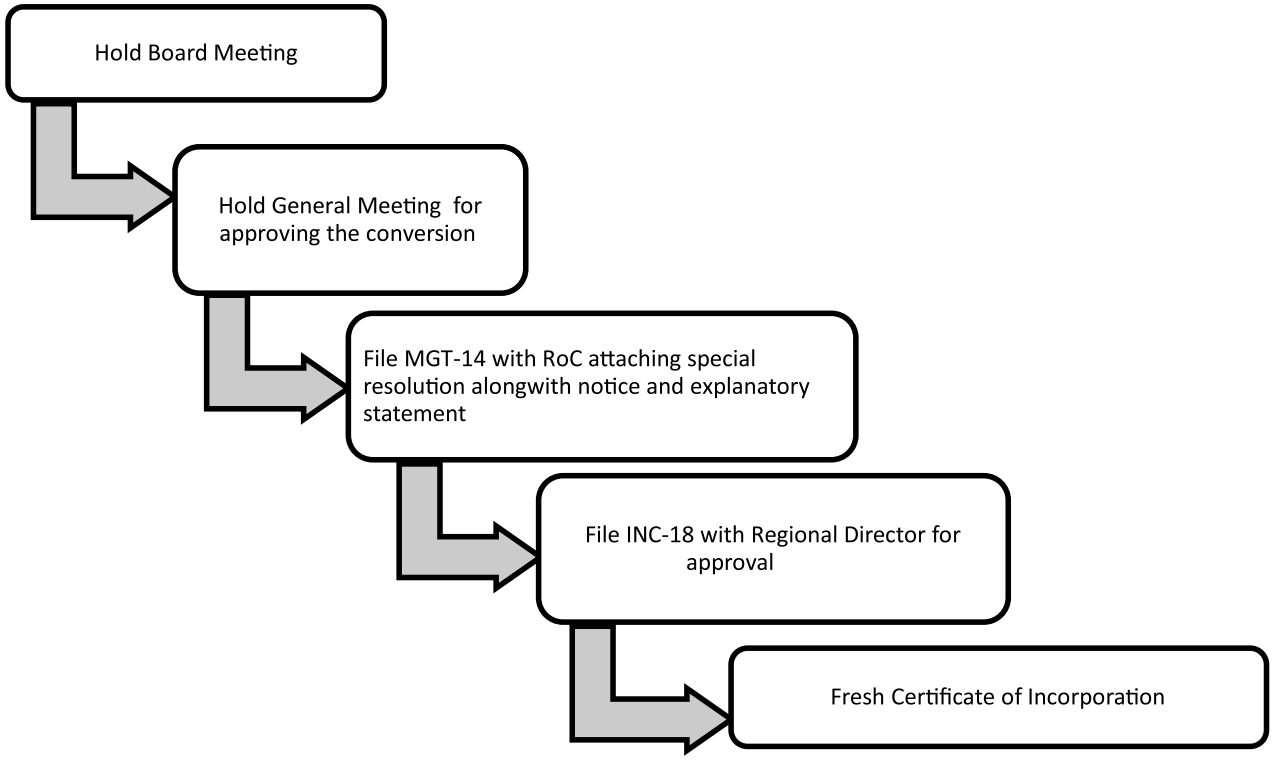
CONVERSION OF SECTION 8 COMPANY INTO OTHER KIND OF COMPANY

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

Section 8 company cannot be converted to One Person Company.



Procedure for Conversion of a Section 8 Company into any other kind



Detailed Procedure for Conversion of a Section 8 Company into any other Company:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Section 8 Company into any other Company. The main agenda for this board meeting would be:

    a. To pass a board resolution to get in-principal approval of Directors for conversion of section 8 company into any other company.

    b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a section 8 company into any other company.

    c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of section 8 Company into any other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.

    d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.

    e. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.

f. To approve the draft new set of Memorandum of Association and the Articles of Association.

2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 14 clear days' before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Section 8 Company into any other Company along with alteration in Memorandum of Association and Articles of Association under section 14.

4. **Filing of e-form MGT-14:** In case of conversion of Section 8 Company into any other company special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:

   - A certified true copy of Altered MoA.
   - A certified true copy of Altered AoA.
   - Notice of General Meeting along with an explanatory statement.
   - Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.

5. **Filing of e-form INC-18 with the Regional Director and Registrar:** An intimation alongwith copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the Registrar through MCA system.

6. **Publication of an Advertisement:** After submitting an application to the Regional Director, the Company should publish a notice in **FORM INC-19** in the newspaper at least one in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, for the Conversion of Section 8 Company into any other Company and on the website of the company, if any. The publication in the newspaper should be done within a week from the date of submitting an application to the Regional Director.

7. **Order of Conversion by Regional Director:** On receipt of application and on being satisfied, the Regional Director shall pass the order of conversion with certain conditions, as may be required depending upon the facts and circumstances of each case. However, before imposing any conditions or rejecting the application, the Regional Director shall give a reasonable opportunity of being heard to the Company.

8. **Issuance of fresh Certificate of Incorporation:** On receipt of all the required documents, the Registrar of Companies will Issue Fresh Certificate of Incorporation to the applicant. When the license of Company as Section 8 Company is revoked, the Company can apply for the Conversion of its status and name with the Registrar of Companies in **Form INC-20.**

Points to ponder:

- The Company has not transferred any part of the Income or property of the Company by way dividend or bonus or otherwise.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- No objection certificate is required in case where the Company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority or from Government.

Effect of conversion of Section 8 Company into Private Company

- The Company cannot claim the privileges and exemptions as enjoyed by Section 8 Company after the conversion.
- The newly converted Company has to pay the difference between the balance of market price and purchase price, if before the Conversion the Company has bought any immovable property from the Government at lower rates than the market price.
- Where the Company is left with some unutilized income and accumulated profits which are brought forward from the previous year the same should be utilized for the purpose of settlement of outstanding dues or any amount due to suppliers or creditors.
- After settlement of all the dues, if any amount is left, it will be transferred to the Investor Education & Protection Fund. The amount should be transferred within 30 days of the Conversion of Section 8 Company into other form of Company.

CONVERSION OF COMPANY INTO LLP

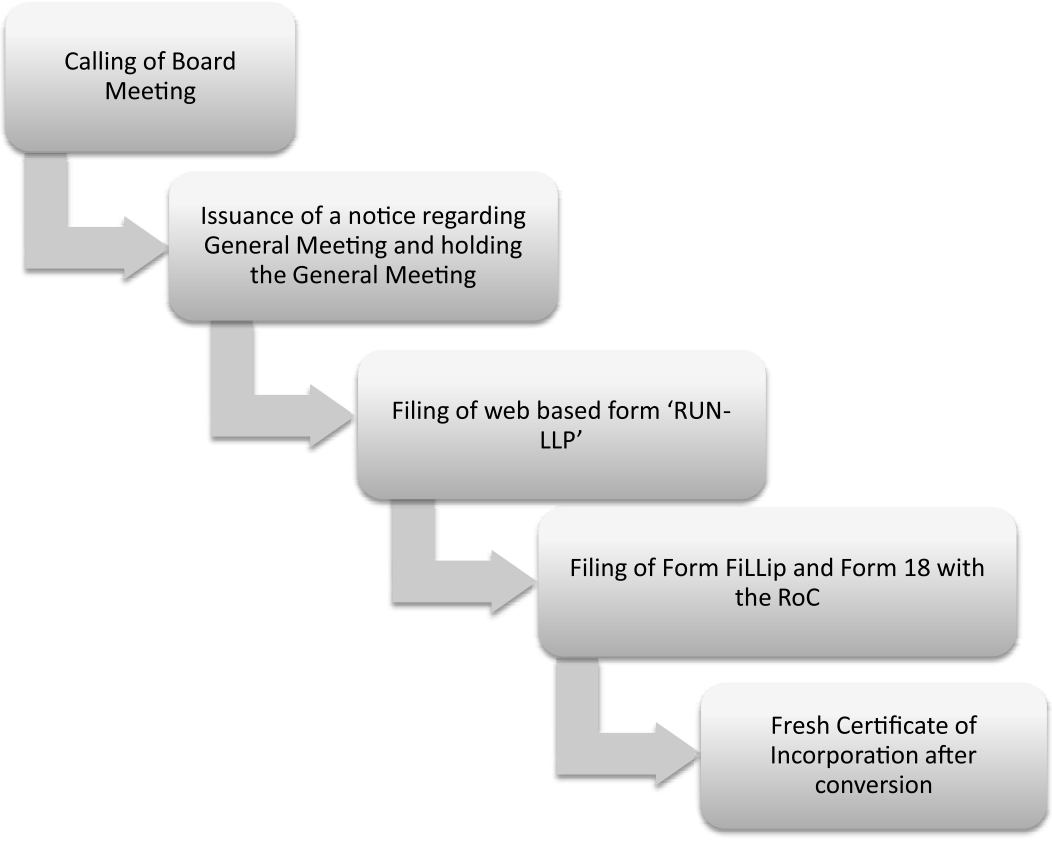
Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.

Before proceeding for conversion of company into Limited Liability Partnership one needs to confirm regarding certain pre-conditions and once all these conditions are fulfilled, the process for conversion of company into Limited Liability Partnership can be initiated.

Conditions to fulfill for conversion:

- All members/directors will become the partners of the newly converted LLP
- All statutory compliances have been fulfilled including Income tax returns, RoC returns, etc. up-to-date
- Creditors must agree for the conversion
- No prosecution or pending cases against the company proposing to convert
- There should be no pending E-Forms of a company
- There should be no open charges for or against the Company.

Procedure for Conversion of Company into Limited Liability Company



Detailed Procedure for Conversion of Company into Limited Liability Partnership:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Company into Limited Liability Partnership. The main agenda for this board meeting would be:

   a. To pass a board resolution to get in-principal approval of Directors for conversion of Company into Limited Liability Partnership.

   b. To fix date, time and place for holding general meeting to get written approval of shareholders, by way of Special Resolution, for conversion of Company into Limited Liability Partnership.

   c. To authorize the Director to issue notice of the general meeting as approved by the board.

   Before conducting board meeting obtain DIN for all those designated partners who don't have DIN already.

2. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' written approval for Conversion of Company into Limited Liability Partnership.

3. **Application for Name Availability on LLP Portal:** The Company must apply for a name reservation, by filing web based form 'RUN-LLP'with ROC along with the board resolution passed by the Company approving the conversion into LLP and obtain Name Approval Letter from ROC.

4. **Filing of incorporation documents in LLP Portal:** Once the Company reserves its name, LLP must file its incorporation in web based form FiLLip (Filing of Form of Incorporation) with ROC along with the below-mentioned documents:
    - Proof of Address of Registered office of LLP
    - Subscription sheet signed by the promoters
    - Latest Utility bill of registered office
    - NOC of owner of registered office, if taken on rent / lease
    - Notice of Consent & Appointment of Designated Partners with their personal details
    - Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner
5. **Application for Conversion of company into LLP:** For converting the existing Company into LLP, FiLLip Form 18 must be duly filled. The following information is required to be furnished along with the form 18:
    - Statement of shareholders
    - Incorporation Documents & Subscribers Statements
    - Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor
    - List of all the Secured creditors along with their consent to the conversion
    - NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return
    - Approval from any other body/authority as may be required
    - Particulars of pending proceedings from any court/Tribunal etc.
6. **Drafting of limited liability partnership agreement**: After the incorporation, the designated partners must enter into an LLP agreement in prescribed format. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to filed **in e-form 3** within 30 days of incorporation along with the Certificate of incorporation as LLP form ROC but in order to avoid any dispute between the partners as to the terms & conditions of the agreement the same can be filed afterwards. The contents of limited liability partnership agreement are as follows:
    - Name of LLP
    - Name of Partners & Designated Partners
    - Form of contribution
    - Profit Sharing ratio
    - Rights & Duties of Partners
    - Proposed Business
    - Rules for governing the LLP
7. **Issuance of fresh Certificate of Incorporation:** After all formalities and filings been complied with by the applicants and approved by the Ministry, Registrar of LLP will issue a Certificate of Registration in Form no. 19 as to conversion of the LLP. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

Effect of Conversion from Company to LLP:

- The Company gets dissolved after conversion.
- Registrar of Company will remove the name of Company from the register of Companies maintained with it.
- Conversion does not affect present liability, obligation, agreements and contracts.
- On conversion of Company into LLP, assets of the Company will be transferred to LLP. There is no requirement of instrument of transfer. Hence, no stamp duty implication is required for such transfer.
- After conversion into LLP there is no requirement for holding minimum number of meetings as prescribed by the Companies Act, 2013.

CONVERSION OF LLP INTO COMPANY

Several businesses started in India as Limited Liability Partnership (LLP), may now wish to convert into a private limited company for more growth in business or for infusing equity capital. The entire world is gradually drifting towards one global market without any trade barriers between the countries. With the emergence of corporate work culture and promotional startup benefits, a great chunk of entrepreneurs are looking forward to corporatization. This step can be initiated in 2 ways as enumerated below:

(i) Incorporation of a new corporate entity.

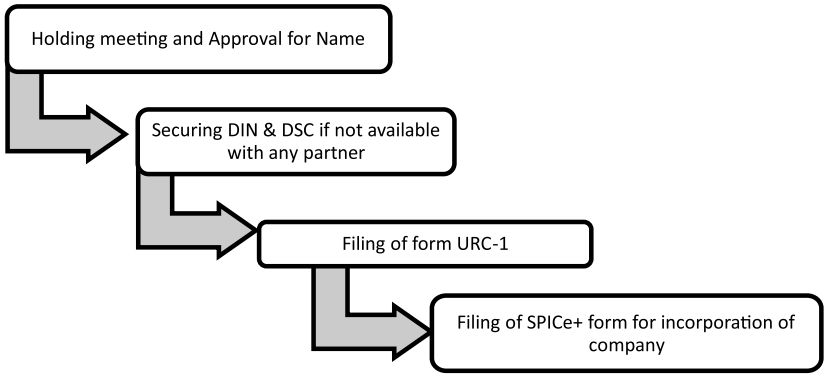
(ii) Conversion of existing entity (e.g. LLP/ Partnership Firm) into a Company.

The second option of conversion of Limited Liability Partnership into a corporate entity might be practical for the existing entities to switch over from one mode of business to another. The process of conversion is a step by step procedure, which is a technical process but if handled with expert knowledge may be time and cost saving, as well.

There were no provisions under Companies act, 2013 regarding Conversion of Limited Liability Partnership into Company. Ministry of Corporate Affairs has passed a notification on 31st May, 2016 in such notification conversion of LLP into Company is allowed. These rules called as "the Companies (Authorized to Register) Amendment Rules, 2016.

However, there are various requirements which need to be satisfied for converting an LLP into a Private Limited Company, for instance, an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company), approval from all the partners is required, advertisement in newspaper is to be done in a local and a national newspaper, a No Objection Certificate (NOC) is required from the ROC where such LLP is registered and then all the incorporation process has to be undertaken which includes:

Procedure for Conversion of Limited Liability Company into Company



Detailed Procedure for Conversion of Limited Liability Partnership into a Company:

1) **Approval of Name:** Hold a meeting of the partners to take assent of majority of its members summoned for the purpose of registering the LLP under Section 366 of the Companies Act, 2013.To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the LLP as a Company. One of the major advantages is that the business can be run under the same name as that of the LLP except that in addition to the name of the LLP the words 'limited' or 'private limited' has to be added. Apply for name reservation in form RUN in V3 portal. It is a web based form.

2) **Securing DSC and DIN:** In case all members, who are future directors of the company after conversion, do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors of the company must be obtained. For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs. The form must be accompanied by self-attested address proof and identity proof with 1 recent passport size color photo of the applicant. All the required documents should be attested by a practicing cost accountant or a practicing chartered accountant or a practicing company secretary.

3) **Filing form no. URC – 1:** After getting the approval of name from Registrar of Companies, the applicant must prepare & file the form no. URC-1 in addition to the following documents:

- List of the members with various details viz. names, address, shares held by them appropriately, etc.
- List of the first directors of the private company with various details viz. names, address, the DIN, passport number with an expiry date, etc.
- An affidavit from every person proposed as first directors, that he is not banned to be a director under section-164 and all the necessary documents filed with the registrar for the registration of firm must contain information which is complete and correct & true to be best of his belief and knowledge.
- A list including the names & addresses of partners of LLP and a copy of LLP agreement & certificate of registration duly verified by two designated partners of LLP must be enclosed.
- A statement indicating the following specifications.
- The nominal share capital of firm & the number of shares into which it is separated.
- The number of shares taken & the amount paid for every share.
- The name of the firm, with the addition of word Limited or private limited is required.
- A written consent or No objection certificate from all creditors.
- Copy of newspaper advertisement, statement of accounts of the company which must not be 6 days preceding the date of the application and it must be duly certified by the auditor.
  - Written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
  - an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable;
  - A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

In case of an application by a Limited Liability Partnership or firm for registration as a company limited by guarantee or as an unlimited company-

(i) a list showing the names, addresses and occupations of all persons, who on a day, not being

more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm, as the case may be with proof of membership;

(ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;

(iii) in case of a firm, deed of partnership, bye laws or other instrument constituting or regulating the company and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of guarantee;

(v) written consent or No Objection Certificate from all the secured creditors of the applicant;

(vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration;

(vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899), as applicable;

(viii) A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

4) Filing of SPICe, SPICe MOA and SPICe AOA: Similar to incorporation of new company, the process has to be followed by filing SPICe + form along with required attachments for the converted entity.

Conditions to fulfill for conversion:

- All the partners should have approved the conversion of LLP.
- The LLP should have complied with all the required returns and compliances.
- Publication related to such conversion of LLP into a Private Company, in at least two newspapers, one in English Language and another in any vernacular language newspaper of the place of registered office.
- The Limited Liability Partnership must have at least two partners who are required for incorporation of a Private Limited company.
- There should be no open charges for or against the Company.

Points to ponder:

- There is no capital gain tax in a private limited company.
- Existing LLP has just been replaced by the Private Limited Company by adding the "Pvt. Ltd." at the end of its name.

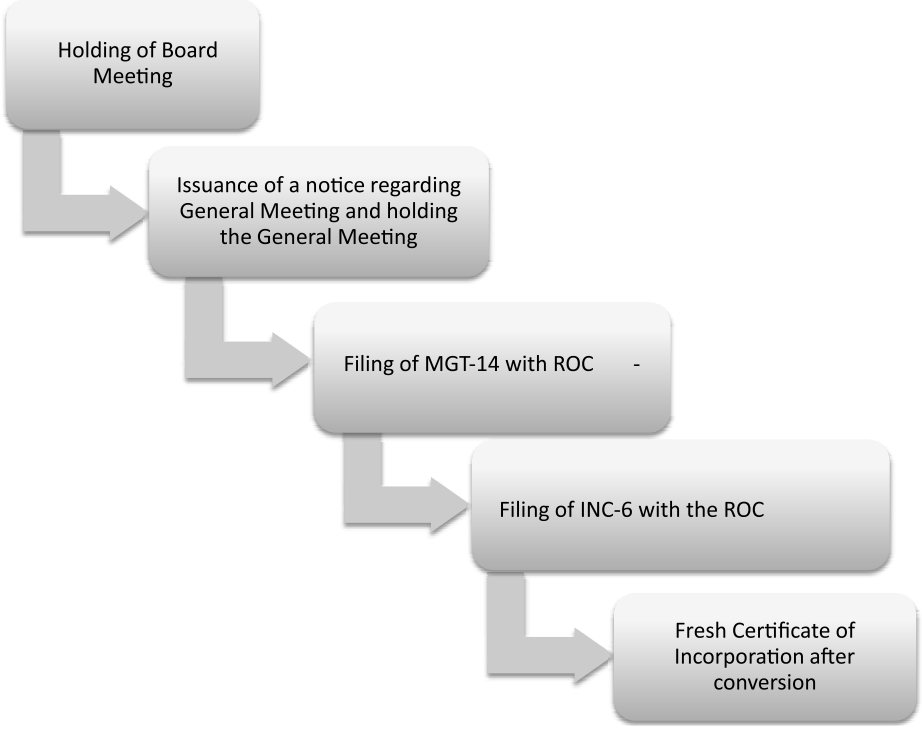
CONVERSION OF ONE PERSON COMPANY INTO A PUBLIC COMPANY OR A PRIVATE COMPANY

One Person Company (OPC) refers to a form of company that has only one person as a member, unlike a private company where the minimum number of members are two or a public company where the minimum number of members are seven. Section 18 of the Companies Act, 2013 read with Rule 6 of the Companies (Incorporation) Rules, 2014, explicitly provide provisions for the voluntary conversion of One Person Company (OPC) to other forms of the Company, as the case may be.

When conversion is necessary into a Private Company or Public Company

1. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with section 122(3) of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2. A One Person Company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.
3. The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.
4. On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

Procedure for Conversion of One Person Company into other Company



Detailed Procedure for Conversion of OPC into company:

1. **Holding of Board Meeting**: Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a One Person Company into Other Company. The main agenda for this board meeting would be:
   a. To pass a board resolution to get in-principal approval of Directors for conversion of One Person company into other company.
   b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of One Person Company into other company.

c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of One Person Company into other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.

d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.

e. Pass Board resolution for increase in number of Directors as per the type of company chosen for conversion.

f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.

g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.

2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for One Person Company into Other Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion.

4. **Filing of e-form MGT-14:** In case of conversion of One Person Company into Other Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:

   a. Notice of general meeting along with copy of explanatory statement under section 102;

   b. Certified true copy of special resolution;

   c. Altered memorandum of association;

   d. Altered articles of association;

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

5. **Filing of e-form INC-6:** The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.

   On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

6. **Issuance of New Certificate of Incorporation:** On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company in Form INC-25.

Conditions to fulfill for conversion:

- Alteration of Memorandum of Association and Articles of Association in accordance with Section 122(3) of the Companies Act, 2013 to give effect to the conversion.
- Increase the minimum number of directors to two or three as the case may be.
- Increase the minimum number of members to two or seven as the case may be.
- Due compliance with the provisions of section 18 of the Companies Act, 2013.

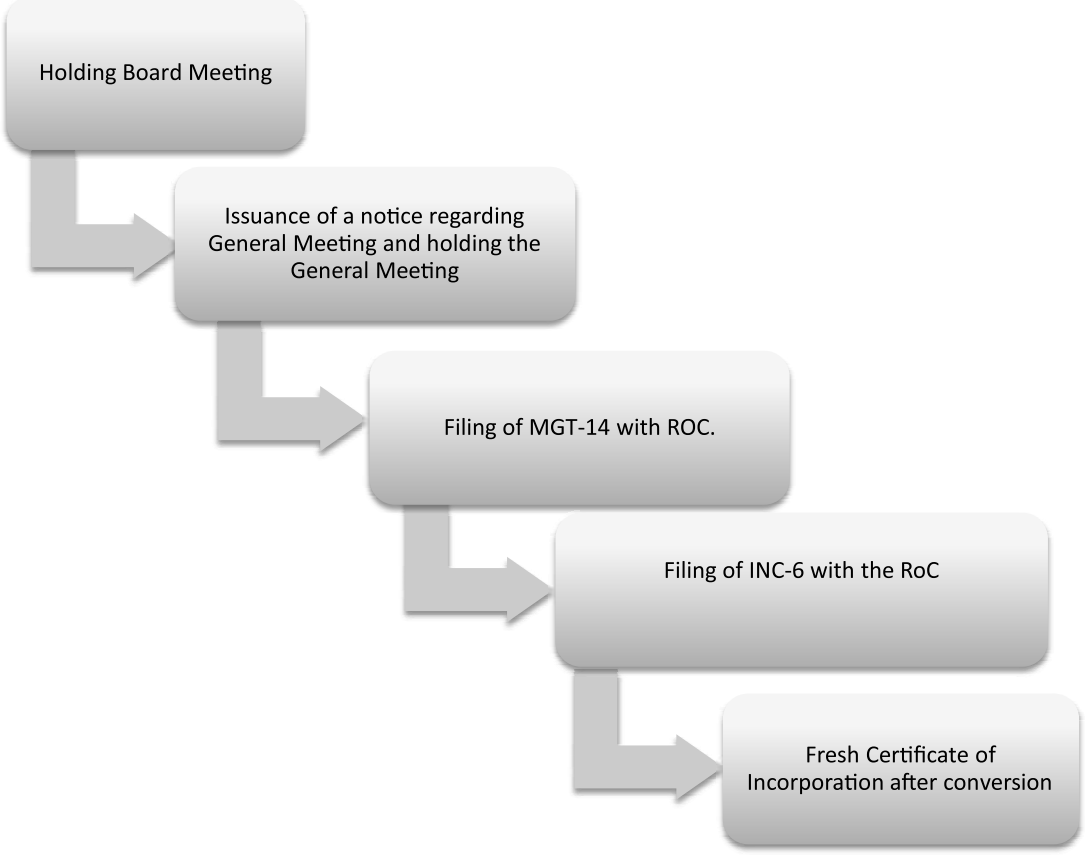
Points to ponder:

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

CONVERSION OF COMPANY INTO ONE PERSON COMPANY

Legal Provisions related to Conversion of Private Company into OPC are given in Section 18 the Companies Act, 2013 read with Rule 7 of Companies (Incorporation) Rules, 2014. One Person Company (OPC) can be easily managed with very fewer compliances to be followed as compared to other form of Company. The Conversion of Private Company into OPC will benefit most people associated with the Company.

Procedure for Conversion of Private Company into One Person Company



Detailed Procedure for Conversion of company into OPC:

1. **Holding of Board Meeting**: Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Company into One Person Company. The main agenda for this board meeting would be:

    a. To pass a board resolution to get in-principal approval of Directors for conversion of a Company into One Person Company.

    b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Company into One Person Company.

    c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of a Company into One Person Company and the required alteration in the Memorandum of Association and Articles of Association of the Company.

    d. To authorize the Director to issue notice of the general meeting as approved by the board.

    e. To authorize the director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.

    f. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of One Person Company.

2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Company into One Person Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion. Before passing the Special Resolution in the General Meeting, the Company should get a No Objection Certificate (NOC) in writing from the existing shareholders and creditors.

4. **Filing of e-form MGT-14:** In case of conversion of Company into One Person Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:

    a. Notice of general meeting along with copy of explanatory statement under section 102;

    b. Certified true copy of special resolution;

    c. Altered memorandum of association;

    d. Altered articles of association;

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

5. **Filing of e-form INC-6:** The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely:-

   (i) altered e-MOA and e-AOA;

   (ii) copy of NOC of every creditors with the application for conversion;

   (iii) affidavit of directors confirming that all the members of the company have given their consent for conversion.

6. **Issuance of New Certificate of Incorporation**: On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

Points to ponder:

- A minor shall not become a member or nominee of the One Person Company.
- The Shareholder should not be holding any other OPC, or he/she should not be a member of any other OPC.
- The Shareholder of the new OPC should be a resident person of India.
- The Shareholder of the new OPC should have Indian nationality.

COMPANIES AUTHORISED TO REGISTER UNDER THE COMPANIES ACT, 2013

(1) For the purposes of Part XXI Companies, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of two or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that-

(i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by any Act of parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;

(vii) a company with less than seven members shall register as a private company.

(3) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Once the compliance with respect to requirements of chapter XXI of the Act is done with respect to registration and on payment of prescribed fees under section 403 of the Act, he Registrar shall certify that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited.

As per section 368 of the Act, all the properties whether movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act. However the registration under this part shall not affect its rights or liabilities in respect of any debts or obligations incurred or any contract entered by or behalf of the company before registration.

With respect to the suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Effect of Registration under Part XXI of the Act

Following are the effects of registration of companies under this Part of the Act:

1) All provisions contained in any Act of Parliament or any other law for the time being in force constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and articles of Association.

2) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner as if it had been formed under this Act, subject to following:-

(a) Table F in Schedule I shall not apply unless it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

(c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration;

(d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories shall apply.

3) The provisions of this Act with respect to the registration of an unlimited company as a limited company; the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up and the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up shall apply to these companies notwithstanding anything in any Act of Parliament or any other law for the time being in force.

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

a) All the secured creditors of the company must either consented to or have given their no objection to company's registration under this Part;

b) Publish an advertisement in newspaper (one English and one in vernacular language) giving notice about registration under this Part, seeking objections and address them suitably;

c) file duly notarized affidavit from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

LESSON ROUND-UP

- Under section 2(71), a subsidiary of public company shall be deemed to be public company even if it continues to be private company in its Articles.
- Section 18 of the Companies Act, 2013 deals with conversion of companies already registered.
- A public company can be converted into the private company only after obtaining its shareholders' approval by way of passing of special resolution in general meeting.
- A public company can be converted into a private company only after the approval of the Tribunal.
- For commencement of new business by an existing company, the guiding criterion is whether the new activity is germane to the original business or not.
- For giving effect to conversion of Private Company into Public Company, an application in E-Form INC-27 needs to be filed with the Registrar of Companies along with prescribed fees within fifteen days of passing of Special Resolution.

- For effecting the conversion of a public company into a private company, a copy of order of the Regional Director approving the alteration, shall be filled with the Registrar in Form No. INC -27.
- For the purposes of Part XXI Companies, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

GLOSSARY

LLP: A limited liability partnership (LLP) is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008.

General Meeting: Meeting of a company's shareholders at which they discuss the company's activities and make important decisions.

OPC: One Person Company (OPC) is a company incorporated by a single person. Before the enforcement of the Companies Act, 2013, a single person could not establish a company.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. ABC Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on the following matters :
   (a) Provisions regarding notice of general meeting
   (b) Whether company required to obtain 'No Objection Certificate'.
   (c) Types of e-forms required to be filed with ROC for such conversion
   (d) Penalty for contravention of provisions with respect to conversion.
2. Discuss the procedure for conversion of section 8 Company into other form of company?
3. State the essential pre-conditions of companies for Registration under Part XXI of the Act.
4. What are the benefits of conversion of Public Limited Company into Private Limited Company?
5. What are the important points to be kept in mind for conversion of a Private Limited Company into a Public Company?

LIST OF FURTHER READINGS

- Bare Act – The Companies Act, 2013
- ICSI Premier on Company Law
- The LLP Act, 2008 and the Rules made thereunder

OTHER REFERENCES (Including Websites/ Video Links)
• https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=6567

Non-Corporate Entities

Lesson 7

KEY CONCEPTS

■ Sole Proprietorship ■ Partnership ■ Trust ■ Hindu Undivided Family ■ Multi State Co-Operative Society ■ Society ■ Mega Firm

Learning Objectives

To understand :

- Various forms of business organisation such as Sole Proprietorship, Partnership, Trust and Society, Hindu Undivided Family, Multi State Co- operative Societies and Mega Firm
- Respective merits and demerits and the manner in which above mentioned business organisations can be registered in India

Lesson Outline

- Introduction
- Features of Partnership
- Types of Partnership and Partners
- Merits and Limitations of Partnership
- Partnership Deed
- Registration Procedure of Partnership
- Hindu Undivided Family
- Characteristics of a Hindu Undivided Family
- Benefits and Limitations of HUF
- Sole Proprietorship
- Merits and Limitations of Sole Proprietorship
- Procedure for Formation of Sole Proprietorship Firm
- Multi State Cooperative Society
- Benefits of Multi State Co-Operative Society
- Formation of Multi State Co-Operative Society
- Trust
- Formation & Registration of Trust
- Partnership Deed & Trust Deed
- Society
- Advantages and Disadvantages of Society
- Formation of Society
- Benefits of forming a Society
- Mega Firm
- Pre-requisites and Benefits of Mega Firms
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

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 Secretaries Regulations, 1982

INTRODUCTION

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

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

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.

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 2(a) of Indian Partnership Act, 1932 an **"act of a firm"** means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

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.

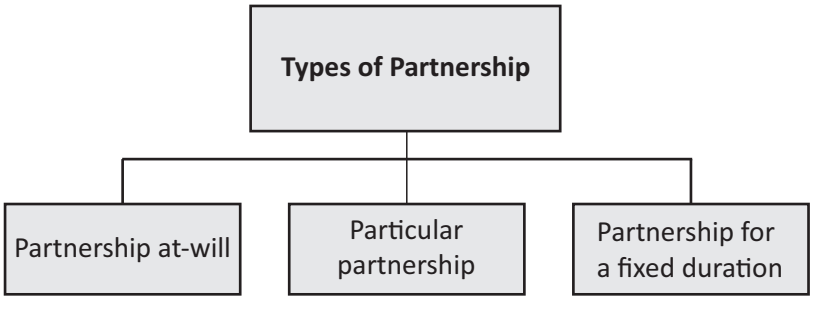
(vi) Common Management: Every partner has a right to take part in the running of the business. It is not necessary for all partners to participate in the day-to-day activities of the business but they are entitled to participate. Even if partnership business is run by some partners, the consent of all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



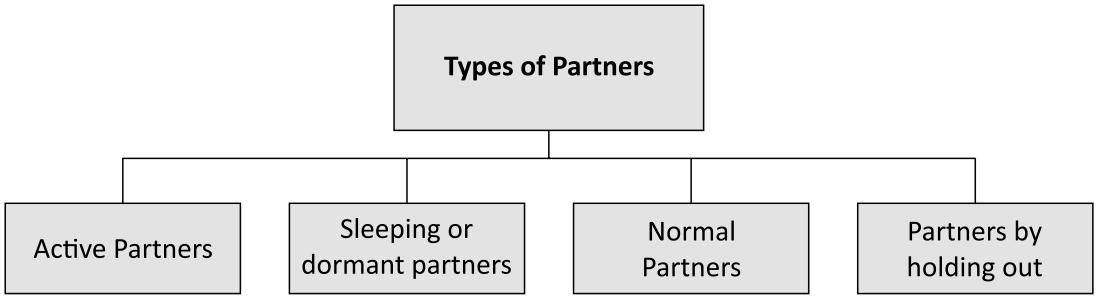
According to the nature of agreement among partners, there can be three types of partnership as follows:

(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.

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 authorised agents.
2. Every partner needs to verify and sign the application.
3. Ensure that the following documents and prescribed fees are enclosed with the registration application:
    - Application for Registration in the prescribed Form
    - 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 regionwise. 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 centered 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.

SOLE PROPRIETORSHIP

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

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

Merits of Sole Proprietorship

A sole proprietary organization has the following advantages:

(i) **Easy formation:** A sole proprietorship business is easy to form where no legal formality involved in setting up this type of organization. It is not governed by any specific law. It is simply required that the business activity should be lawful and should comply with the rules and regulations laid down by local authorities.

(ii) **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. The sole proprietor can also bring about changes in the size and nature of activity. This gives better control to business.

(iii) **Sole beneficiary of profits:** The sole proprietor is the only person to whom the profits belong. There is a direct relation between effort and reward. This motivates him to work hard and bear the risks of business.

(iv) **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. For example, small industrial organisations can get electricity and water supply at concessional rates on a priority basis.

(v) **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.

(vi) **Confidentiality:** A sole proprietor can keep all business-related information to themselves as the business's only decision-maker. The law does not bind them to make the accounts of a sole proprietorship public.

(vii) **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. So, for such individuals, a sole proprietorship is the best option.

The paperwork in a sole proprietorship is much less. Hence, business owners can spend their time planning the business strategies to prevent risks in the long-term journey.

(viii) **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. Sole proprietorships are not considered separate legal entities. So, business income or losses are reported on the owner's income tax. The sole proprietors need not file taxes separately for personal and

business transactions. Besides these, sole proprietors also get certain tax advantages accompanying small business deductions.

(ix) **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. Sole proprietorships can help the owners save on registration. Also, the legal requirements and involved costs in a sole proprietorship are much less.

A sole proprietorship is, therefore, very affordable. If the venture is well-planned from the start, with 100 percent commitment, one can easily set up a sole proprietorship business.

Limitations of Sole Proprietorship

A sole proprietor generally suffers from the following limitations:

(i) **Limitation of management skills:** A sole proprietor may not be able to manage the business efficiently as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.

(ii) **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. Also, since the revenue in such companies is more significant, they are considered to have a strong credit history.

In a sole proprietorship, the business is wholly reliant on a single owner's finances, investments, and credit history. So, banks and other lenders are often doubtful about the repayment aspect.

(iii) **Unlimited liability:** The sole proprietor is personally liable for all business obligations. For payment of business debts, his personal property can also be used if the business assets are insufficient.

(iv) **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 well-being. In case of death, insolvency, imprisonment, etc., it can shut down if there is no successor or heir to continue the business.

(v) **Selling the business is a challenge:** Generally, entrepreneurs do not want to consider the possibility of selling their businesses. But as the owner, it is practical to contemplate passing the baton.

Selling a sole proprietorship business is challenging. If the business is significantly profitable, selling it would trigger high capital gains tax. Also, selling off a sole proprietorship business means selling the debts as well. New start-ups might have more debts than profits. This often makes it difficult to predict profits for potential buyers.

(vi) **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.

As mentioned earlier, the final decision of every business function depends on the owner. In a sole proprietorship business, there is nobody to assist in decision-making. So, the risk of errors in decisions is high in sole proprietorships.

(vii) **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.

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.

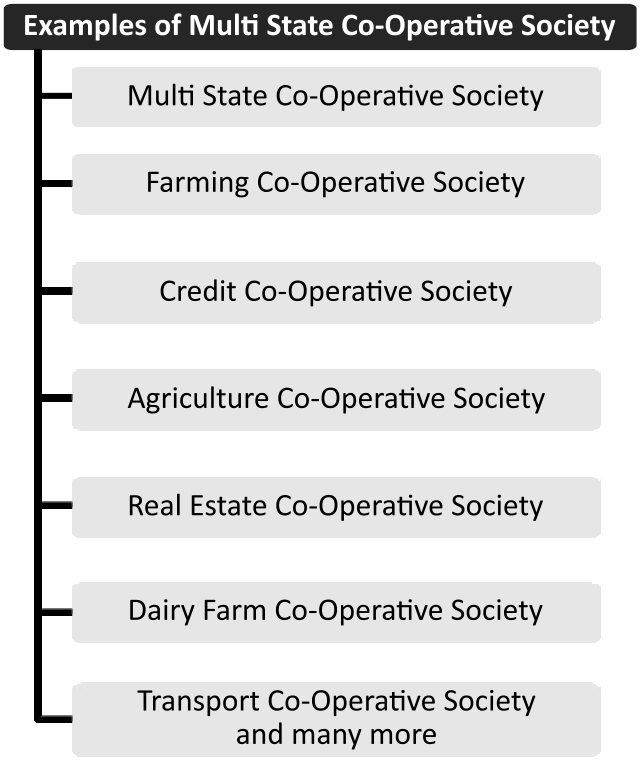
However, in actual practice and keeping in mind the nature of business activity, registration may be required under the following enactments as prevailing in the respective States or of the Central Government, such as

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.

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.

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 co-operative 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.

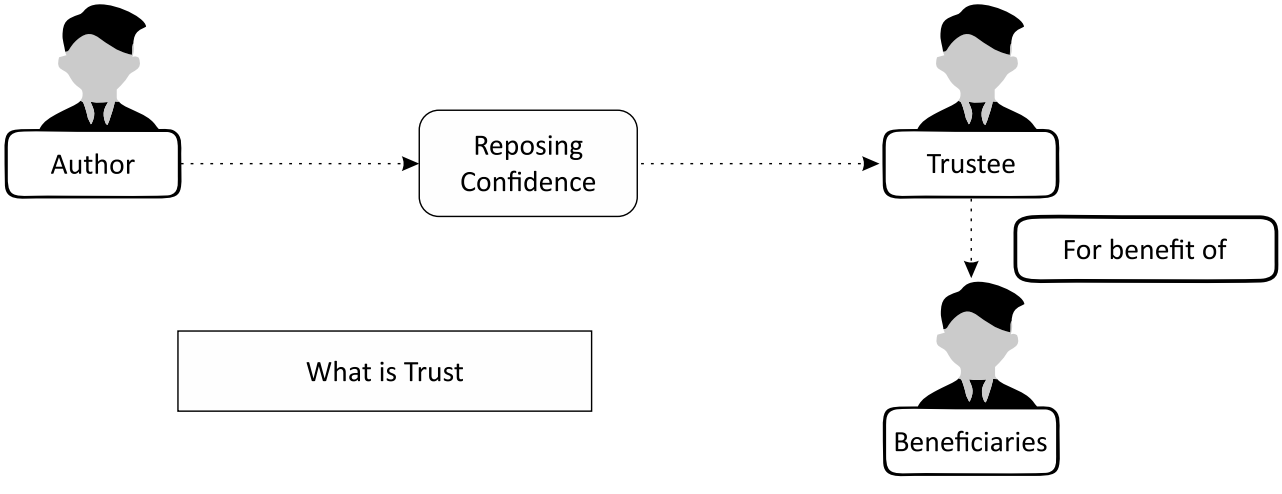
Registration certificate

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.



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.

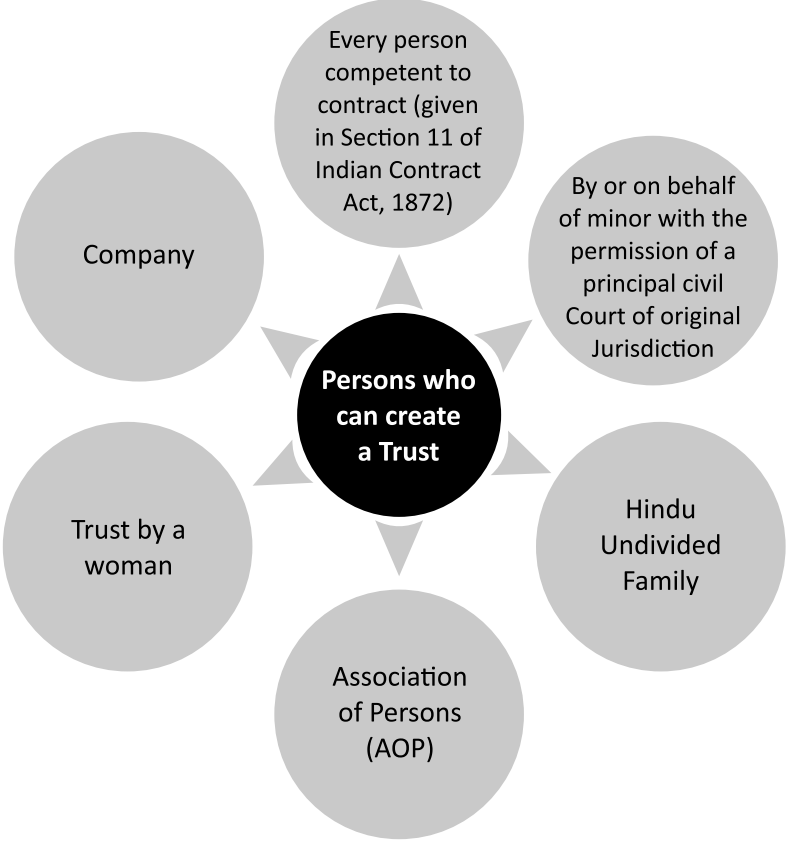
Objectives of a Trust

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, or
- is of such nature that, if permitted, it would defeat the provisions of any law, or
- 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:



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.

PARTNERSHIP AGREEMENT & TRUST DEED

Sl. No.	*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;

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:

- Requesting society registration by providing covering letter, signed by all establishing members
- Duplicate copy of memorandum of association of society along with certified copy
- Duplicate copy of Rules & Regulations of society along with duplicate copy duly signed by all establishing members
- Address proof of registered office of society as well as no-objection certificate (NOC) issued by landlord

- Affidavit by secretary or president of society declaring relationship among subscribers
- 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:
    - Bank Statement
    - Aadhaar Card
    - Utility Bill
    - Driving License
    - 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
    - The details of the members forming the society
    - 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:
    - Rules and regulations by which the working of the society will be governed and the maintenance of day to day activities.
    - It will contain the rules for taking the membership of the society.
    - The details about the meetings of the society and the frequency with which they are going to be held is to be mentioned.
    - Information about the Auditors.
    - Forms of Arbitration in case of any dispute between the members of the society.
    - 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.

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.

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

Regulation 168 A - Other Professional bodies:

1. For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be member of any of the following, namely:
    a. The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
    b. The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
    c. Bar Council of India established under the Advocates Act, 1961;
    d. The Indian Institute of Architects established under the Architects Act, 1972;
    e. The Institute of Actuaries of India established under the Actuaries Act, 2006;
    f. The membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council under Sub-section (2) of Section 38 of the Act.
2. For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:
    a. Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;
    b. Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
    c. Actuary within the meaning of the Actuaries Act, 2006;

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

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

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

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

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

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

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

Pre-requisites

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

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

Benefits

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

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

a) **Working in a team environment:** 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.
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.

LESSON ROUND-UP

- 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.
- 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.

- All the affairs of a Joint Hindu Family are controlled and managed by one person who is known as 'Karta' or 'Manager'. The business of the Joint Hindu Family is controlled and managed under the Hindu law.
- The sole proprietorship is a form of business that is owned, managed and controlled by an individual. It is the simplest and most easily formed business organization.
- The Multi-State Cooperative Societies (MSCS) Act, enacted in 1984, was modified in 2002. 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.
- 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.
- 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.
- 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.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What are the various forms of business organisations?
2. What are the advantages of partnership compared to sole proprietorship?
3. What are the different types of partners and the role they play in partnerships?
4. Are the partners personally liable for the debts of the partnership firm?
5. What are the benefits of a Multi-State Cooperative Society? Compare the same with a State Cooperative Society.
6. Rohan has completed MBA in dairy farming and is keen in uniting farmers in Rajasthan by forming a Multi-State Co-operative Society. Brief Rohan on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed.
7. Ramesh wants to form a society to promote the 'Beti Bachao, Beti Padao Movement' of Government of India. He seeks your advice on the following :
   (i) The purposes for which a society can be formed under the Societies Registration Act, 1860;
   (ii) Whether the foreigners and other registered societies can be members of a society ?
8. AB Ltd. wants to create a trust for the benefit of employees of the Company and their spouses and children. Decide with reasons whether this trust will be Public Trust or Private Trust. Also state the differences between Public Trust and Private Trust.
9. Can MEGA firm charge fees to the clients based on the result of the matter/ success of the litigation? Explain.
10. Can a Mega Firm have branches within / outside India? What regulations guide operations of such Branch office?

LIST OF FURTHER READINGS
• Bare Act - Partnership Act, 1932 • Bare Act - Multi State Cooperative Societies Act, 2002 • Bare Act - Indian Trust Act, 1882 • Bare Act - Societies Registration Act, 1860 • The Company Secretaries Regulations, 1982

OTHER REFERENCES (Including Websites/Video Links)
• https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ== • https://mscs.dac.gov.in/Default.aspx • https://www.icsi.edu/home/ • https://www.indiacode.nic.in/

Financial Services Organisation

Lesson 8

KEY CONCEPTS

■ Non-Banking Finance Companies (NBFCs) ■ Chit Funds ■ Housing Finance Companies ■ Asset Reconstruction Companies (ARCs) ■ Micro Finance Institutions (MFI's) ■ Nidhi ■ Payment Banks ■ Mudra Banks

Learning Objectives

To understand:

- Different forms of Financial Services Organisations operating in India
- Categories of:-
  - NBFCs
  - Housing Finance Companies (HFC's)
  - Asset Reconstruction Companies (ARC's)
  - Micro Finance Institutions (MFI's)
  - Nidhi Companies and Payment Banks
  - Chit Funds
- Benefits of such Financial Services Organisation
- Procedure involved in formation of Financial Services Organisation

Lesson Outline

- Introduction
- Non Banking Financial Company
- Scale Based Regulatory Framework For NBFCs
- Types/categories of NBFC's
- Benefits of incorporating an NBFC
- Difference between Banks & NBFCs
- Process of incorporation of NBFC
- Housing Finance Companies
- Benefits of incorporating a Housing Finance Company
- Housing Finance Company : Registration Process
- Asset Reconstruction Company (ARC)
- Benefits of incorporating an Asset Reconstruction Company (ARC)
- Asset Reconstruction Company – the Registration Process
- Micro Finance Institutions (MFI)
- Incorporation of MFI
- Nidhi and Benefits of incorporating a Nidhi
- Incorporation of a Nidhi Company
- Payment Banks
- Mudra Banks
- Chit Funds
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

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

INTRODUCTION

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

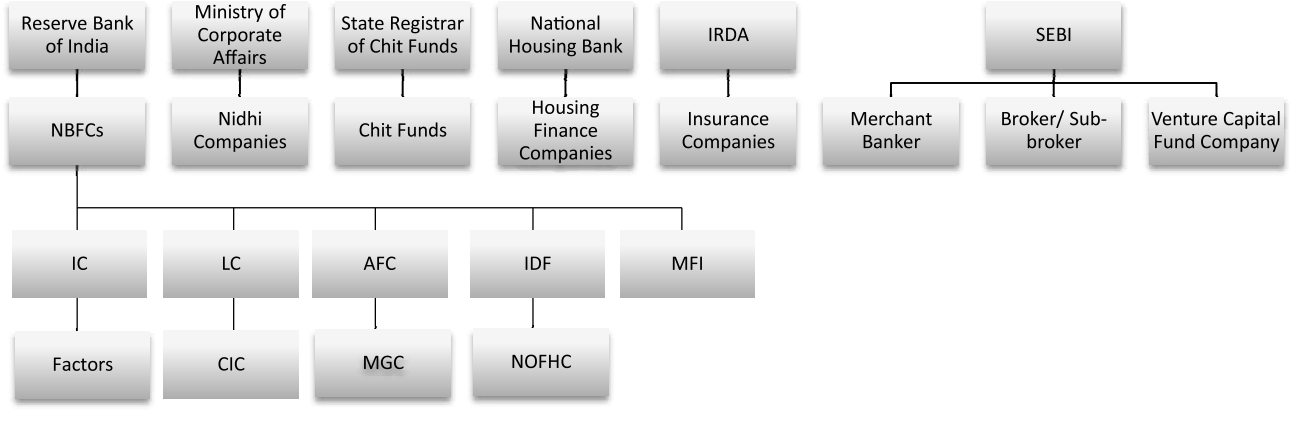
NBFC is a financial Institution that is into Lending or Investment or collecting monies under any scheme or arrangement but does not include any institutions which carry on its principal business as agriculture activity, industrial activity, trading and purchase or sale of immovable properties. A company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

The Government of India has introduced several reforms to liberalise, regulate and enhance this industry. The Government and Reserve Bank of India (RBI) have taken various measures to facilitate easy access to finance. These measures include (to name a few) launching different categories of Non Banking Finance Companies (NBFCs), Asset Reconstruction Companies (ARCs) and Micro Finance Institutions (MFIs).With a combined push by both government and private sector, India is undoubtedly one of the world's most vibrant capital markets.

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

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

Financial Services Organisations Structure in India:



IC – Investment Company

AFC- Asset Finance Company

LC – Loan Company

IFC - Infrastructure Finance Company

CIC - Core Investment Company

MGC - Mortgage Guarantee Company

IDF- Infrastructure Debt Fund

MFI – Micro Finance Institution

NOFHC - Non-Operative Financial Holding Company

NON BANKING FINANCIAL COMPANY

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

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

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

i. NBFC cannot accept demand deposits;

ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;

iii. deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

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.

In the wake of failure of several banks in the late 1950s and early 1960s in India, large number of ordinary depositors lost their money. 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. These institutions have thus been under the regulatory oversight of the Reserve Bank of India since 1963. Since then regulation has generally kept pace with the dynamism displayed by the sector. Later in 1996, in the wake of the failure of a big NBFC, the Reserve Bank tightened the regulatory structure over the NBFCs, with rigorous registration requirements, enhanced reporting and supervision.

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.

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.

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

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).

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. In October 2021, RBI notified scale-based regulations for NBFCs, which is effective from 1st October, 2022. With these regulations, RBI aims to increase transparency in NBFC operations through greater disclosures and improved governance standards.

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.

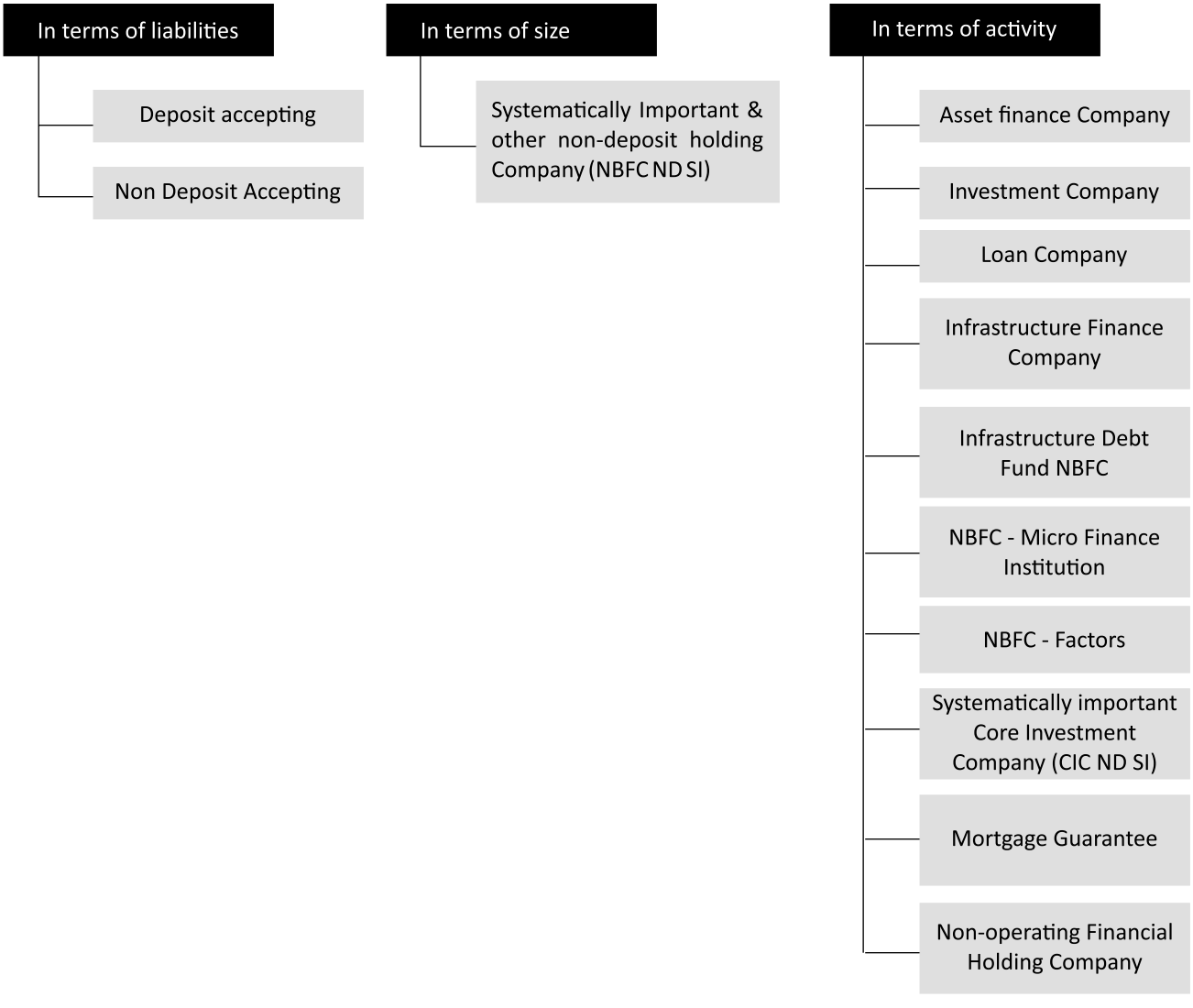
Middle Layer: The Middle Layer shall consist of all deposit taking NBFCs, non-deposit taking NBFCs with asset size of Rs.1000 crore and above and NBFCs undertaking the activities of Standalone Primary Dealers, Infrastructure Debt Fund, Core Investment Companies, Housing Finance Companies and Infrastructure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

TYPES/CATEGORIES OF NBFCS

NBFCs are categorized as:



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

I. Asset Finance Company (AFC)

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

II. Investment Company (IC)

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

III. Loan Company (LC)

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

IV. Infrastructure Finance Company (IFC)

IFC is a non-banking finance company -

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

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

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

(d) a CRAR of 15%.

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

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

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

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

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

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

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

(f) It accepts public funds.

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

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

IDFs are investment vehicles which can be sponsored by commercial banks and NBFCs in India in which domestic/offshore institutional investors, specially insurance and pension funds can invest through units and bonds issued by the IDFs. IDFs would essentially act as vehicles for refinancing existing debt of infrastructure companies, thereby creating fresh headroom for banks to lend to fresh infrastructure projects. IDF-NBFCs would take over loans extended to infrastructure projects which are created through the Public Private Partnership (PPP) route and have successfully completed one year of commercial production. Such take-over of loans from banks would be covered by a Tripartite Agreement between the IDF, Concessionaire and the Project Authority for ensuring a compulsory buyout with termination payment in the event of default in repayment by the Concessionaire.

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.

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. However, the benefits of incorporating an NBFC and carrying on its activities are listed below:

1. Competitive Interest Rates

Rate of interest is one of the main aspects of all types of loans. Non-Banking Financial Sectors have started to concentrate on this area in the recent decades and have brought down the interest rates to either equal to bank lending rates or at times even lower to bank rates. With all the other benefits when rate of interest is also lowered, borrowers found this more easy and affordable. This has also resulted in lower EMI (Equated Monthly Instalment) for borrowers. Based on the income, credit scoring and repayment, rate of interest is charged on the borrowers However it is at competitive rates.

2. Quick Processing

At banks, it is very important that the applicant should fulfil the eligibility criteria but NBFC are lenient in this aspect. This makes loan approval easier, smoother process and quicker. Most of the times, people apply for loan when they are in immediate need of money. NBFCs have taken this as an opportunity to meet the demand by quickly processing the loans at competitive rate of interest. At times, borrowers are even ready to compromise on the interest rates if the loan amount is huge and if they could get it approved quickly.

3. Less Rules and Regulations

As NBFC are incorporated under the Companies Act, (though regulated by the Reserve Bank of India), the rules and regulations for lending are not as stringent as banks. This helps borrowers to get loans easily. In view of less complicated loan processing requirements, borrowers are highly satisfied. Of course, the risk of default is high with NBFC and thus interest rates and other charges will be according priced by the NBFC. Even the loan amount approved will be quite lesser than the collateral value. This is due to the high risk of default. NBFCs do not have statutory reserve ratios and can open branches at will.

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. The continued better performance from NBFCs has given rise to an uptick of 15% customer satisfaction.

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. Due to these aforementioned advantages, most of the NBFCs are growing.

With regard to offering loans, banks and NBFCs will offer business, personal and retail loans. And this is totally on the basis of the repayment capacity of the borrower. Most of the corporate sector prefers banks; however retail sector chooses NBFCs over banks. Simple loans such are vehicle financing loans, gold loans, home loans and durable loans are offered by NBFCs and customer satisfaction ratio is high here. NBFC sector is also set to expand even further in the coming days.

DIFFERENCE BETWEEN BANKS & NBFCS

Sl. No.	*Particulars*	*Banks*	*NBFCs*
1.	Definition	Banking is acceptance of deposits withdrawable by cheque or demand; NBFCs cannot accept demand deposits	NBFC is a financial Institution that is into Lending or Investment or collecting monies under any scheme or arrangement
2.	Regulations	BR Act, 1949 and RBI Act, 1934 lay down stringent controls over banks	Governed by Companies Act, 2013 and RBI Act, 1934
3.	Scope	Scope of business for banks is limited by sec 6 (1) of the BR Act	There is no bar on NBFCs carrying activities other than financial activities
4.	Registration and Licensing	Licensing requirements are quite stringent. Transfer of shareholding is controlled by RBI	Formation of NBFC is easy. Acquisition of NBFCs is procedurally regulated and are subject to approval
5.	Loan Sanction Process	Comparatively Stringent	Easier and faster
6.	Restrictions on business	No non-banking activities can be carried	Cannot provide checking facilities

Sl. No.	Particulars	Banks	NBFCs
7.	Overdraft Facility	Available in some banks	Not available
8.	Privileges	Can exercise powers of recovery under SARFAESI and DRT law	None, except 196 NBFC, specified by Central Government, have powers under SARFAESI or DRT law
9.	Foreign investment	Up to 74% allowed to private sector banks	Up to 100% allowed (only 18 activities)
10.	Maintenance of Reserve Ratios	It is compulsory for banks to maintain reserve ratios	NBFC-Ds have to maintain a certain ratio of deposits in specified securities; no such requirement for non-deposit taking companies
11.	Priority sector lending requirements	Certain minimum exposure to priority sector required	Priority sector norms are not applicable to NBFCs

INCORPORATION OF NBFCS

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

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

Registration Process with Reserve Bank of India

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

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

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

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 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.

Note: Under the Companies (Amendment) Act, 2017, Nidhi Companies are required to be notified by the Central Government as such. This is similar to the provisions of Section 620A of the Companies Act, 1956.

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:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to company with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such term as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an Appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

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. 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.

Note: The documents required may vary depending on the category of registration sought by the applicant.

Documents required for registration as Type I - NBFC-ND

Sr. No.	*Requirements to be complied with and documents to be submitted to RBI by Companies for obtaining certificate and Registration from RBI as NBFC*
1	Certified copies of Certificate of Incorporation and Certificate of Commencement of Business in case of public limited companies.
2	Certified copies of extract of only the main object clause in the MOA relating to the financial business.
3	Board resolution stating that: • the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/ commence the same before getting registration from RBI • the UIBs in the group where the director holds substantial interest or otherwise has not accepted any public deposit in the past /does not hold any public deposit as on the date and will not accept the same in future • the company has formulated "Fair Practices Code" as per RBI Guidelines • the company has not accepted public funds in the past/does not hold any public fund as on the date and will not accept the same in the future without the approval of Reserve Bank of India • the company does not have any customer interface as on date and will not have any customer interface in the future without the approval of Reserve Bank of India
4	Copy of Fixed Deposit receipt & bankers certificate of no lien indicating balances in support of NOF
5	For companies already in existence, the Audited balance sheet and Profit & Loss account along with directors & auditors report or for the entire period the company is in existence, or for last three years, whichever is less, should be submitted
6	Banker's report in respect of applicant company, its group/subsidiary/associate/holding company/ related parties, directors of the applicant company having substantial interest in other companies The Banker's report should be about the dealings of these entities with these bankers as a depositing entity or a borrowing entity. Note: Please provide bankers report from all the bankers of each of these entities and provide the report for all the entities. The details of deposits and loans balances as on the date of application and the conduct of the account should be specified.

For different forms of application as applicable to different categories of NBFC's, please refer to the official website of the Reserve Bank of India, viz., www.rbi.org.

HOUSING FINANCE COMPANIES

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

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 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.

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.

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. Such companies, who wish to be treated as NBFC – Investment and Credit Companies (NBFC-ICCs), will be required to approach RBI for conversion of their CoR 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 (PBC) and necessary Board resolution approving the conversion.

"Net Owned Fund" means net owned fund as defined under Section 29A of the National Housing Bank Act, 1987 including paid up preference shares which are compulsorily convertible into equity.

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.

Housing Finance Company: Registration Process

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

First the applicant has to download the application form for Housing Finance company registration from the website *nhb.org.in*.

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.

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.

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;

  (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;

"subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act.

The applicant company is required to submit a physical copy of the application (in duplicate) along with the essentials documents to the Head Office of the National Housing Bank. Further, Company is also required to attach a Demand Draft for Rupees 10,000 favouring National Housing Bank payable at New Delhi.

A filled-in physical copy of the application form (in duplicate) along with necessary enclosures as stated in official website "*http://www.nhb.org.in/Regulation/applicationcr.php"* to be submitted to the Head Office of NHB.

An indicative checklist of the documents required to be submitted is also provided under the heading "Instructions for filling up the Application" in the same page.

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.

ASSET RECONSTRUCTION COMPANY (ARC)

India has a vast banking industry with the primary function of lending and borrowing money. Banks take all precautions to lend their money to only those customers who can repay them. However, there can be cases when a customer defaults on their payment. And the bank suffers a loss from such a customer. It creates a massive amount of defaulters with the banks or financial institutions. The majority of unsuccessful businesses have to shut down because of financial pressure.

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

In India, the problem of recovery from Non Performing Assets (NPAs) was recognized in 1997 by Government of India. The Narasimhan Committee Report mentioned that an important aspect of the continuing reform process was to reduce the high level of NPAs as a means of banking sector reform. It was expected that with a combination of policy and institutional development, new NPAs in the future could afford to be lower. However, the huge backlog of existing NPAs continued to hound the banking sector and this impinged severely on the banks performance and any ensuing hopes of their profitability. The Report envisaged creation of an "Asset Recovery Fund" to take the NPAs off the lenders books at a discount.

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

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

(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:-

(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 Reconstructions companies are created to manage and recover Non Performing Assets acquired from the banking system. Asset Reconstruction Companies are act as a bad bank by isolating Non Performing Assets from the balance sheet of bank/FII and facilitate the latter to concentrate in normal banking activities. Banks and financial institutions with a large proportion of their bad loans or Non-Performing Assets can sell to a separate entity i.e. Asset Reconstruction Company. Then Asset Reconstruction Companies recover a sum through attachment, liquidation etc. The objective is to help banks in making clean books by reducing Non Performing Assets. Asset Reconstruction Companies are also making profit by buying Non Performing Assets at a lower price.

Asset Reconstruction

Let us understand the meaning of asset reconstruction:

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

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

Benefits of incorporating an Asset Reconstruction Company (ARC)

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

Asset Reconstruction Company – the Registration Process

Conditions for Registering an Asset Reconstruction Company

There are specific conditions or eligibility criteria for registering an ARC. The following criteria have to be sufficed for this:

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.
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. This 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.

As long as the above criteria or requirements have been met by the asset reconstruction company, the applicant could go ahead with the process of registration.

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. These resolutions would be applicable by the board of the company
4. Information that the directors are not disqualified as per the provisions of the Companies Act
5. Information and profiles related to the sponsors of the company
6. Information related to the management of the company. The management of the company would include the shareholders and directors of the company
7. 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.

(i) Every ARC shall apply for registration in the form of application specified vide Notification No.DNBS.1/ CGM (CSM)-2003 dated March 7, 2003 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 (Annexed to Notification No. DNBS.1/CGM(CSM)-2003 dated March 7, 2003) 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 securitisation 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.

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. 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 liberalisation 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.

MICRO FINANCE INSTITUTIONS (MFI)

As the name implies, microfinance institutions are bankers and lenders who provide microfinance services, such as deposits, loans, payment services, money transfers, and insurance. Basically, a micro finance institution is an organization that offers financial services to low income populations. Almost all give loans to their members, and many offer insurance, deposit and other services. Organisations which finance on a larger scale are regarded as regarded as microfinance institutes. They are those that offer credits and other financial services

to the representatives of poor strata of population (except for extremely poor strata). An increasing number of microfinance institutions (MFIs) are seeking non-banking finance company (NBFC) status from RBI to get wide access to funding, including bank finance.

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

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.

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 mobilise 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.

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.

Secondly, 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.

The list of documents to be filed with RBI for registration are given below:

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	Board resolution stating that: ● the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/ commence the same before getting registration from RBI ● the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India ● the UIBs in the group where the director holds substantial interest or otherwise has not accepted any public deposit in the past /does not hold any public deposit as on the date and will not accept the same in future ● the company has formulated "Fair Practices Code" as per RBI Guidelines.
4	Copy of Fixed Deposit receipt & bankers certificate of no lien indicating balances in support of NOF.
5	For companies already in existence, the Audited balance sheet and Profit & Loss account along with directors & auditors report or for the entire period the company is in existence, or for last three years, whichever is less, should be submitted.
6	Copy of the certificate of highest educational and professional qualification in respect of all the directors.
7	Copy of experience certificate, if any, in the Financial Services Sector (including Banking Sector) in respect of all the directors.
8	Banker's report in respect of applicant company, its group/subsidiary/associate/holding company/ related parties, directors of the applicant company having substantial interest in other companies The Banker's report should be about the dealings of these entities with these bankers as a depositing entity or a borrowing entity. *Note*: Please provide bankers report from all the bankers of each of these entities and provide the report for all the entities. The details of deposits and loans balances as on the date of application and the conduct of the account should be specified.

In addition to the documents required for registration as Type II-NBFC-ND, following list of documents / information to be submitted by the NBFC-MFI applicant:

(i) Board resolution stating that:

(a) the company will be a member of all the Credit Information Companies and will be a member of at least one Self-Regulatory Organisation

(b) the company will adhere to the regulations regarding pricing of credit, Fair Practices in lending and non-coercive method of recovery as per RBI Guidelines

(c) the company has fixed internal exposure limits to avoid any undesirable concentration in specific geographical locations

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

(ii) Roadmap for achieving 85% qualifying assets.

In the developmental paradigm, microfinance has evolved as a need-based policy program to cater to the so far neglected target groups (women, poor, rural, deprived, etc.). Its evolution is based on the concern of all developing countries for empowerment of the poor and the alleviation of poverty. Microfinance programmes in the recent past have become one of the more promising ways to use scarce development funds to achieve the objectives of poverty alleviation.

NIDHI

Nidhi Companies have been in existence since centuries. They existed even prior to the existence of the Companies Act, 1956.

A Nidhi Company, is one that belongs to the non-banking finance sector and is recognized under section 406 of the Companies Act, 2013.Their core business is borrowing and lending money between their members. They are also known as Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company. They are regulated by the Ministry of Corporate Affairs, Government of India and are registered under the Companies Act, 2013(or any earlier enactments). Nidhis are more popular in South India and are highly localized single office institutions. They are mutual benefit societies, because their dealings are restricted only to the members; and membership is limited to individuals. The principal source of funds is the contribution from the members. The loans are given to the members at relatively reasonable rates for purposes such as house construction or repairs and are generally secured. The deposits mobilized by Nidhis are not much when compared to the organized banking sector.

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.

The Ministry of Corporate Affairs on 19th April, 2022 tightened compliance requirements governing Nidhi companies.

Accordingly, a public company set up as a Nidhi with share capital of Rs. 10 lakhs needs to first get itself declared as a Nidhi from the central government. This can be done by filing an application showing a minimum membership of 200 (only individual members) and net owned funds of Rs 20 lakhs within 120 days of its incorporation.

Also, the promoters and directors of the company would be required to meet the criteria of fit and proper person as laid down in the rules. In order to make sure that applications for certification as Nidhi companies are processed timely, the new rules introduce the concept of deemed approval i.e. if no decision on the application is conveyed to the company within 45 days of filing the application, approval would be deemed as granted.

Characteristics of a Nidhi Company

The characteristics of a Nidhi Company may be summarised below:

(1) It is allowed to transact business only with its members and with nobody else. Hence, 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.

(2) After commencement of the Companies Act, 2013, no Nidhi shall issue preference shares.

(3) 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.

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

(5) Loans may be provided only to its members and should be fully secured.

(6) 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.

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

(8) 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 –

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

- pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

Benefits of incorporating a 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 instills confidence in the minds of borrowers and depositors.

Incorporation of a Nidhi Company

For incorporation, the normal procedure for incorporating a public company is required to be complied with, such as obtaining availability of name, filing of Memorandum and Articles of Association and other related documents. Care must be taken to see that the Objects Clause of the Memorandum should restrict itself to the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to its members only for their mutual benefit and for other permitted purposes. The name of the company should end with the words “Nidhi Limited”.

1. 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.
2. The company shall also attach, alongwith Form NDH-4, the declaration with regard to fulfilment of fit and proper person criteria, as per this sub-rule, by all the promoters and directors of the company.
3. For the purpose of determining as to whether any promoter or director is a ‘fit and proper person’, the following shall be taken into account, namely:-
   a. integrity, honesty, ethical behaviour, reputation, fairness and character of the person; and
   b. the person not incurring any of the following disqualifications, namely:-
      i. criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed by a person authorised by the Central Government against such person and which is pending;
      ii. charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences which is pending;
      iii. an order of restraint, prohibition or debarment has been passed against such person by any regulatory authority or enforcement agency in any matter concerning company law, securities laws or financial markets which is in force;
      iv. an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

v. such person has been declared insolvent and not been discharged;

vi. such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

vii. such person has been categorised as a willful defaulter;

viii. such person has been declared a fugitive economic offender;

ix. such person is a director in five or more companies incorporated or declared as Nidhi, or is a promoter of three or more companies incorporated or declared as Nidhi.

4. The Central Government, shall examine the application filed in Form NDH-4 and convey its decision within a period of forty five days to the company:

   Provided that in case a decision on an application filed in form NDH-4 is not taken by the Central Government within the aforesaid period of receipt of such application, the same shall be deemed as approved.

5. On being satisfied that the company meets the above requirements as set out under point (2) and (3), the Central Government, shall notify in the Official Gazette, declaring it as a Nidhi or Mutual Benefit Society, as the case may be:

   Provided that the decision of the Central Government approving the application, shall be filed by the company with the Registrar.

   Provided further that such company shall commence its business only once the decision of the Central Government approving its application is obtained from the Central Government pursuant to the declaration given under rule 12 of the Companies (Incorporation) Rules, 2014.

6. In case a 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).

7. The above provisions as set out in Nidhi (Amendment) Rules, 2022 shall not be applicable to a public company incorporated under the Act before the date of commencement of the said Rule.

PAYMENT BANKS

Payment banks is a new model of banks conceptualised by the Reserve Bank of India (RBI). These banks can accept a restricted deposit, which is currently limited to Rupees 1 lakh per customer and may be increased further. They can pay interest on these deposits just like savings bank account. Both current account and savings accounts can be operated by such banks. Payments banks can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services. These banks cannot grant loans or issue credit cards.

On 7th April, 2021, in order to expand the ability of payments banks to cater to the growing needs of their customers, the current limit on maximum end of day balance of Rs.1 lakh per individual customer was increased to Rs.2 lakh.

A committee headed by Dr. Nachiket Mor recommended setting up of 'Payments Bank' to cater to the lower income groups and small businesses. There are two kinds of banking licences that are granted by the Reserve Bank of India - universal bank licence and differentiated bank licence.

Payments bank comes under a differentiated bank licence since it cannot offer all the services that a commercial bank offers. In particular, a payments bank cannot lend.

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

With payments banks, RBI seeks to increase the penetration level of financial services to the remote areas of the country.

To open a bank account and the application process of payments bank is made very easy as compared to other banks. These bank accounts can be opened instantly through their respective mobile apps just by providing details like Aadhar number with KYC verification.

Most of the payment banks have a non-NBFC heritage and will use payment bank as a customer retention and acquisition mechanism.

Regulations

Payment Banks are regulated by the Reserve Bank of India. It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016.

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

In July 2014, the RBI released the draft guidelines for payment banks, seeking comments from interested entities and public at large. After taking in to account suggestions from respondents in November 2014, RBI released the final guidelines for payment banks and invited applications for opening such banks from interested parties, subject to the guidelines enunciated. There were 41 applications from various applicants including some corporate houses. After a due process of vetting these applications through an External Advisory Committee headed by Mr. Nachiket Mor, in August 2015, the RBI accorded 'in-principle' licences to the following eleven entities to launch payments banks within a period of 18 months.

1. Aditya Birla Nuvo Limited
2. Airtel M Commerce Services Limited
3. Cholamandalam Distribution Services Limited
4. India Post Limited
5. FinoPayTech Limited
6. National Securities Depository Limited
7. Reliance Industries Limited
8. Vodafone M-Pesa Limited
9. Paytm Limited
10. Tech Mahindra Limited
11. Sun Pharmaceuticals Limited.

Within this period of 18 months, these entities were to comply with requirements regarding capital funds of Rs. 100 crores. The "in-principle" license was valid for 18 months within which the entities must fulfill the requirements and they were not allowed to engage in banking activities within the period. The RBI will grant full licenses under Section 22 of the Banking Regulation Act, 1949 after it is satisfied that requirements/conditions have been fulfilled.

The other terms and conditions are as follows:

- To be registered as a public limited company under the Companies Act, 2013.
- Payment Banks cannot form subsidiaries.
- For the first five years, the promoters stake to remain at 40% at minimum.
- Foreign shareholding will be allowed in these banks as per extant FDI norms.
- The voting rights will be regulated as per provisions of The Banking Regulation Act 1949. [Voting rights are restricted at 10% for any one share holder. RBI has the discretion to raise this to 26% on merits.].
- If there is any acquisition of more than 5% shares this will require prior RBI approval.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- The bank should be fully networked from the beginning. l Initially, the deposits will be capped at Rs. 1,00,000 per customer, but later it may be raised on the basis of performance of the bank.
- No lending activity is permitted. Bank can accept utility bills.
- A quarter of its branches should be in unbanked rural areas.

The list of Payment Banks operating in India are –

1. Airtel Payments Bank Ltd.
2. India Post Payments Bank Ltd.
3. FINO Payments Bank Ltd.
4. Paytm Payments Bank Ltd.
5. Jio Payments Bank Ltd.
6. NSDL Payments Bank Ltd.

Payment Banks can be promoted by:

i. Existing non-bank Pre-paid Payment Instrument (PPI) issuers;
ii. Individuals/professionals;
iii. NBFCs, Corporate Business Correspondents(BCs);
iv. Mobile telephone companies;
v. Super-market chain;
vi. Companies;
vii. Real sector cooperatives; that are owned and controlled by residents; and
viii. Public sector entities.

A promoter/promoter group can have a joint venture with an existing scheduled commercial bank to set up a payments bank. Scheduled commercial banks can take equity stake as permitted under Section 19 (2) of the Banking Regulation Act, 1949. Promoter/promoter groups should be 'fit and proper' with a sound track record of professional experience or running their businesses for at least a period of five years in order to be eligible to promote payments banks. PBs can accept demand deposits and they will initially be restricted to hold a maximum balance of Rs. 100,000 per individual customer.

PBs are also permitted to issue ATM/debit cards (but cannot issue credit cards); offer Payments and remittance services through various channels; function as Business Correspondent of another bank as per RBI guidelines; distribute non-risk sharing products like mutual fund units and insurance products, etc.

PBs cannot undertake lending activities. Apart from maintaining CRR with the RBI, a PB is required to invest minimum 75% of its "demand deposit balances" in SLR securities with maturity up to one year and hold maximum 25% in current and time/fixed deposits with other Scheduled Commercial banks for operational and liquidity management.

Right from the beginning a PB should be "fully networked and technology driven" as per the standards generally accepted and norms. Should also have a high powered Customer Grievances Cell to handle customer complaints. Procedure for granting license and its validity is similar to that of SFBs.

Key issues which require compliance by an applicant company are summarised below:

1. The minimum capital requirement is Rupees 100 crore. For the first five years, the stake of the promoter should remain at least 40%.
2. Foreign shareholding will be allowed in these banks as per the rules for FDI in private banks in India.
3. The voting rights will be regulated by the Banking Regulation Act, 1949. The voting right of any shareholder is capped at 10%, which can be raised to 26% by Reserve Bank of India. Any acquisition of more than 5% will require approval of the RBI.
4. The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
5. The bank should be fully networked from the beginning. The bank can accept utility bills. It cannot form subsidiaries to undertake non-banking activities.
6. Initially, the deposits will be capped at Rs. 100,000 per customer, but it may be raised by the RBI based on the performance of the bank.
7. The bank cannot undertake lending activities. 25% of its branches must be in the unbanked rural area.
8. The bank must use the term "payments bank" in its name to differentiate it from other types of bank.
9. The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949.
10. It will be registered as public limited company under the Companies Act, 2013.

MUDRA BANKS

Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs. It was launched by Prime Minister Narendra Modi on 8 April 2015.

MUDRA provides refinance support to Banks / Micro Finance Institutions (MFIs) for lending to micro units having loan requirement up to Rs. 10 lakh. MUDRA provides refinance to micro business under the Scheme of Pradhan Mantri MUDRA Yojana. The other products are for development support to the sector. It targets mainstream young, educated or skilled workers and entrepreneurs who cannot have access to credit from regular banking system.

It will provide its services to small entrepreneurs outside the service area of regular banks, by using last mile agents. About 5.77crore (57.6million) small business have been identified as target clients using the NSSO survey of 2013. Only 4% of these businesses get finance from regular banks. The bank will also ensure that its clients do not fall into indebtedness and will lend responsibly.

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

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

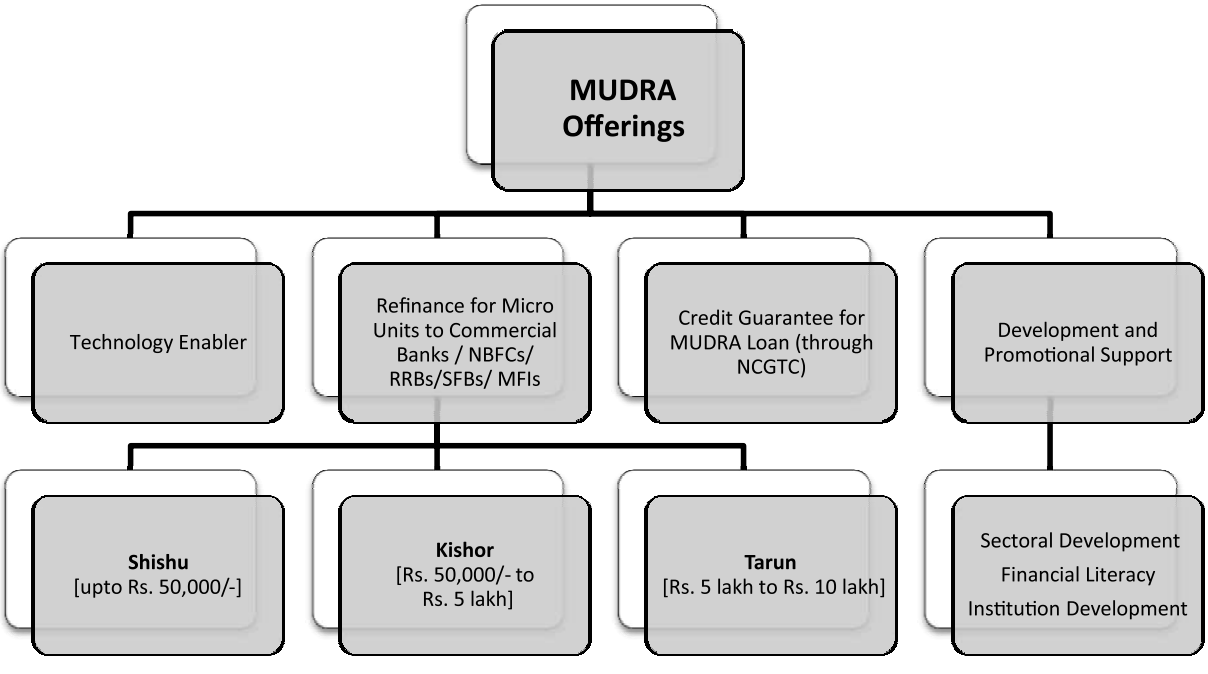
Kishore: Allowed loans up to Rs.5 lakh (US$7,800)

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

Those eligible to borrow from MUDRA bank are:

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

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



Source: https://www.mudra.org.in/offerings

Procedure for loan

Once the beneficiary identifies an idea and comes up with a business plan, he is supposed to select the business category under which he wishes to avail the loan (Shishu, Kishor or Tarun).

The beneficiary can contact the nearest Public/ Private sector bank where he/ she can apply for business under PMMY. The list of institutions partnering in the MUDRA initiative is available on the MUDRA portal.

An application form under this scheme will be available with each of the above listed institutions. This application form has to be submitted along with the following documents for the approval of the loan:

- Proof of Identity (Self attested Voter ID/Driving License/PAN Card/ Aadhaar Card/Passport/any other Photo ID issued by Government)
- 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)
- Applicant's recent photograph(not older than 6 months)
- Quotation of Machinery/other items to be purchases
- Name of the Supplier/Details of Machinery/Price of Machinery
- Proof of Identity/Address of the Business Enterprise(relevant licenses & certificates)
- Proof of Category (SC/ST/OBC/Minority etc.)

Apart from the above mentioned documents, individual banks could ask for other documents as needed. The Banks are not supposed to take any processing fee and are not supposed to ask for any collateral. The repayment period is also extended to 5 years. But it is also made clear that the applicant should not be a defaulter to any Bank or financial institution.

MUDRA Bank is not a separate bank (like SBI etc). It is a government financing scheme to provide business loan to new small businesses in India. To get business loan under PPMY the candidate has to contact the nearest Public/ Private sector bank. MUDRA will be operating as a refinancing institution through State / Regional level intermediaries.

MUDRA's delivery channel is conceived to be through the route of refinance primarily to NBFCs / MFIs, besides other intermediaries including Banks, Primary Lending Institutions etc. The rate of interest will be fixed by the institutions time to time based on guidelines from the RBI.

Mudra loan is extended for a variety of purposes which result in income generation and employment creation. The loans are extended mainly for:

- Business loan for Vendors, Traders, Shopkeepers and other Service Sector activities
- Working capital loan through MUDRA Cards
- Equipment Finance for Micro Units
- Transport Vehicle loans – for commercial use only
- Loans for agri-allied non-farm income generating activities, e.g. pisciculture. bee keeping, poultry farming, etc.
- Tractors, tillers as well as two wheelers used for commercial purposes only.

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

1) Transport Vehicle

Purchase of transport vehicles for transportation of goods and passengers such as auto rickshaws, small goods transport vehicles, 3 wheelers, e-rickshaws, taxis, etc. Tractors/Tractor Trolleys/Power Tillers used only for commercial purposes are also eligible for assistance under PMMY. Two Wheelers used for commercial purposes are also eligible for coverage under PMMY.

2) Community, Social & Personal Service Activities

Salons, beauty parlours, gymnasium, boutiques, tailoring shops, dry cleaning, cycle and motorcycle repair shops, DTP and Photocopying Facilities, Medicine Shops, Courier Agents, etc.

3) Food Products Sector

Activities such as papad making, achaar making, jam/jelly making, agricultural produce preservation at rural level, sweet shops, small service food stalls and day to day catering / canteen services, cold chain vehicles, cold storages, ice making units, ice cream making units, biscuit, bread and bun making, etc.

4) Textile Products Sector / Activity

Handloom, powerloom, khadi activity, chikan work, zari and zardozi work, traditional embroidery and hand work, traditional dyeing and printing, apparel design, knitting, cotton ginning, computerized embroidery, stitching and other textile non garment products such as bags, vehicle accessories, furnishing accessories, etc.

5) Business loans for Traders and Shopkeepers

Financial support for on lending to individuals for running their shops / trading & business activities / service enterprises and non-farm income generating activities with beneficiary loan size of up to 10 lakh per enterprise / borrower.

6) Equipment Finance Scheme for Micro Units

Setting up micro enterprises by purchasing necessary machinery / equipments with per beneficiary loan size of upto 10 lakh.

7) Activities allied to agriculture

'Activities allied to agriculture', e.g. pisciculture, bee keeping, poultry, livestock-rearing, grading, sorting, aggregation agro industries, diary, fishery, agri-clinics and agribusiness centres, food & agro-processing, etc. (excluding crop loans, land improvement such as canal, irrigation and wells) and services supporting these, which promote livelihood or are income generating shall be eligible for coverage under PMMY in 2016-17.

MUDRA Card

MUDRA Card is a debit card issued against the MUDRA loan account, for working capital portion of the loan. The borrower can make use of MUDRA Card in multiple drawals and credits, so as to manage the working capital limit in cost-efficient manner and keep the interest burden minimum. MUDRA Card also helps in digitalization of MUDRA transactions and creating credit history for the borrower. 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.

1. Micro Credit Scheme: It is offered mainly through Micro Finance Institutions (MFIs), which deliver the credit up to Rs.1 lakh, for various micro enterprise activities. Although, the mode of delivery may be through groups like SHGs/JLGs, the loans are given to the individuals for specific income generating micro enterprise activity. The MFIs for availing financial support need to enroll with MUDRA by complying to some of the requirements as notified by MUDRA, from time to time.

2. **Refinance scheme for Banks:** Different banks like Commercial Banks, Regional Rural Banks and Scheduled Cooperative Banks are eligible to avail of refinance support from MUDRA for financing micro enterprise activities. The refinance is available for term loan and working capital loans, up to an amount of 10 lakh per unit. The eligible banks, who have enrolled with MUDRA by complying to the requirements as notified, can avail of refinance from MUDRA for the loan issued under Shishu, Kishor and Tarun categories.

3. **Women Enterprise programme:** To encourage women entrepreneurs, the financing banks / MFIs may consider extending additional facilities, including interest reduction on their loan. At present, MUDRA extends a reduction of 25bps in its interest rates to MFIs / NBFCs, who are providing loans to women entrepreneurs.

4. **Securitization of loan portfolio:** MUDRA also supports Banks / NBFCs / MFIs for raising funds for financing micro enterprises by participating in securitization of their loan assets against micro enterprise portfolio, by providing second loss default guarantee, for credit enhancement and participating in investment of Pass Through Certificate (PTCs) either as Senior or Junior investor. PTC is a certificate that is given to an investor against certain mortgaged backed securities that lie with the issuer.

CHIT FUNDS

Section 2(b) of Chit Fund Act 1982 defines it as a rotating savings and credit association system, a popular practice in India. Chit fund schemes may be organized by financial institutions and unorganized money market industries or informally among friends, relatives, or neighbors. In some variations of chit funds, the savings are for a specific purpose. It's mostly popular in the areas where people have limited access to banking facilities therefore they prefer to invest their money in a Chit fund.

In a chit fund, a specific number of investors invest their money with a promise that their investment will be multiplied within a short span of time with surety and guaranteed return. Under this type of saving arrangement, a specific number of subscribers contribute payments in installment over a defined period of time.

A chit fund works in such a manner which comprises a group of members, called subscribers. An organizer, a company or a trusted relative or neighbor, brings the group together and administers the activities of the group. For their efforts, the organizer is either compensated each month or at withdrawal time. The fee may be omitted in informal situations.

Features of Chit Funds

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

Relevant Statute Governing Chit Funds

Chit funds companies in India are governed by various State or Central laws. Organized chit fund schemes are required to be registered with the Registrar of Firms, Societies, and Chits. The chit funds are governed according to the following laws:

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.

The Reserve Bank of India (RBI) is the regulator of banks and other non-banking financial companies, but it does not control the chit fund business. Despite the fact that chit funds are accepting deposits, the term 'deposit' as defined by the Reserve Bank of India Act, 1934 does not comprise the subscription to chits. However, the RBI can always guide State Governments on the regulatory aspects of the creation of rules or exemption of certain chit funds. The latest guidelines provided by the RBI regarding the Chit are given in RBI/2014-15/636.

Although, SEBI as the regulator and controller of the securities market regulates and manages collective investment schemes. But the SEBI Act, 1992 specifically precludes chit funds from their definition of collective investment schemes

Prevention of Money Laundering (Amendment) Act, 2012 has recognized Chit Funds in Section 2(l).

Under Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (PCMCS) 'Conventional Chit' i.e. the chit mentioned above has been defined in Section 2(a). In this act, another type of chit has also been defined under Section 2(e) named as 'Prize Chit' and it is banned in the territory of India. Prize chit is different from conventional chit as prize chit involves the sale of certificates, units, and other instruments and there is an admission fee also, whereas, conventional chit does not contain any of those features.

Chit Funds Act, 1982

Important definitions in the Act

- **Chit Agreement:** It is defined as a document which contains the articles of agreement between the foreman and the subscribers of the chit.
- **Gross Chit Amount:** It is the sum-total of all the subscriptions payable by all the subscribers for any instalment of a chit without any deduction of discount.
- **Discount:** It is the 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.

Types of Chit Funds

Chit funds are of different kinds. These are:

1. **Organized Chit Funds:** In northern India, a common type of chit fund is where small paper chits with each member's names are gathered in a box. When all the members come together for a monthly gathering, the person who is in charge in front of all the present members picks a chit from the box. The member so selected gets to take home the day's collection. Afterwards, that person's chit is removed from the box. The person who was previously selected comes to the meetings and pays his/her share, but his/her name will not be selected again.
2. **Special Purpose Funds:** Some chit funds are organized for a specific purpose. For example, Christmas gifts fund which has a very specific end date which is about a week before Christmas. Such a fund can reduce the cost and relieves the members from extra work in the busy festival season. Nowadays, such special purpose chit funds are conducted by, ladies wear shops, jewellers etc. to promote their goods.
3. **Online Chit Funds:** With the popularity of e-commerce, Chit funds are being organized online as well. Online chit funds are conducted online, and contributors can make their monthly contributions and receive the prize through online transactions including electronic funds transfer system. Each member gets his or her own online account to manage and circulate chit funds.
4. **Registered Chit Funds:** Registered chit funds are those funds which are registered with the state government under the Chit Funds Act,1982. There are over 10,000 registered chit funds in India.
5. **Unregistered Chit Funds:** Unregistered funds are those which are not registered with any state government. They are not regulated under any law.

Registration of Chit Funds

The Chit Fund Act, 1982 regulates the Chit Fund business in India. According to the 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 installments 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.

A transaction cannot be called as a chit unless the members will not subscribe and pay for it to be entitled for the prize money. If some alone, but not all, of subscribers get the prize amount without any liability to pay the future subscriptions or all the subscribers get the chit amount by turns with a liability to pay future subscriptions, it can't be a chit fund.

Though the chit fund companies are the type of a Non-Banking Financial Companies (NBFC), they are exempted from being registered with the Reserve Bank of India. The chit funds are a category of NBFC which are regulated by the other regulators and hence exempt from the requirement of registration under RBI Act.

To start this business in India, it is recommended that the promoters of the chit fund company should first incorporate a Private Limited Company with the objective of operating a chit fund business. Once a private limited company is constituted, the company then applies with the appropriate Chit Fund Registrar of the State to obtain the registration for operating a Chit fund company. A chit fund business can only be started after obtaining the chit fund business registration from the relevant Registrar of the State.

The registration will not be given to:

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
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.

Restrictions imposed by RBI on chit fund business

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

LESSON ROUND-UP

- The financial sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities.
- Over the years, Non Banking Finance Companies (NBFCS), Housing Finance Companies (HFCs), Asset Reconstruction Companies (ARCs), Micro Finance Institutions (MFIs), and Nidhi Companies have played a dominant role in mobilisation and disbursal of funds.

- 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.
- Different types of NBFCs are Asset Finance Company, Investment Company, Loan Company, Infrastructure Finance Company, Systemically Important Core Investment Company, Infrastructure Debt Fund: Non- Banking Financial Company (IDF-NBFC), Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI), Non-Banking Financial Company – Factors (NBFC-Factors), Mortgage Guarantee Companies (MGC), NBFC- Non-Operative Financial Holding Company (NOFHC).
- Banks and Non-Banking Financial Companies (NBFCs) are financial intermediaries and the services offered by them are pretty much the same as banks. However, the benefits of incorporating an NBFC and carrying on its activities are different.
- For incorporation of NBFCs, the process is same as that of any other company. Apart from incorporation process, it requires registration with RBI.
- 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).
- 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).
- A microfinance institution is an organization that offers financial services to low income populations. 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."
- A Nidhi Company, is one that belongs to the non-banking finance sector and is recognized under section 406 of the Companies Act, 2013.
- Payments banks is a new model of banks conceptualised by the Reserve Bank of India (RBI). These banks can accept a restricted deposit, which is currently limited to Rs. 1 lakh per customer and may be increased further.
- Payment Banks are regulated by the Reserve Bank of India. It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016.
- Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs. It was launched by Prime Minister Narendra Modi on 8 April 2015.
- In a chit fund, a specific number of investors invest their money with a promise that their investment will be multiplied within a short span of time with surety and guaranteed return. Under this type of saving arrangement, a specific number of subscribers contribute payments in installment over a defined period of time.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Explain the various types of Financial Services Organisations operating in India.
2. List and briefly explain the various categories of Non- Banking Financial Companies.
3. Explain the role of Asset Reconstruction Companies and how far they have been successful in resolving the issue of stressed assets of banks.
4. ARCs can maximize recovery value with minimum cost. Explain the benefits of incorporating an Asset Reconstruction Company (ARC).
5. What is a Payment Bank? What are the key issues to be kept in mind in the compliance requirement of a Payment Bank.
6. Shivani and her six more relatives & friends want to incorporate a Nidhi Company. They seek your advice on the following issues with respect to the formation of company:

   (i) Whether Nidhi Company can be formed as a private company? Is there any specific law for the Nidhi Companies?

   (ii) Whether the approval of Reserve Bank of India (RBI) is required?

   (iii) Whether Nidhi is allowed to raise funds through issue of equity shares and preference shares?

   (iv) Whether Nidhi is allowed to carry on business other than the business of borrowing or lending in its own name?

   As a practising Company Secretary, advise with reference to the provisions of the Companies Act, 2013.

LIST OF FURTHER READINGS

- ICSI Premier on Company Law
- Bare Act- Companies Act, 2013 and Rules made thereunder
- RBI Act, 1934
- National Housing Bank, 1987
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002
- Nidhi Rules, 2014

OTHER REFERENCES (Including Websites and Video Links)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==
- https://www.rbi.org.in/
- https://nhb.org.in/en/
- https://blog.ipleaders.in/need-know-chit-funds/

Business Collaborations

Lesson 9

KEY CONCEPTS

■ Foreign Collaboration ■ Business Collaboration ■ Joint Venture ■ Special Purpose Vehicle ■ Share-holder Agreement ■ Joint Venture Agreement

Learning Objectives

To understand:

- The meaning and features of Foreign Collaboration
- Joint Venture and its types
- Meaning of Special Purpose Vehicle

Lesson Outline

- Business Collaboration
- Foreign Collaboration
- Joint Venture
- Advantages of Joint Venture
- Disadvantages of Joint Venture
- Strategies of Joint Venture
- Modes of formation of Joint Ventures
- Restrictions under FDI Policy
- Essential Features of a Shareholders' Agreement (SHA)/ Joint Venture Agreement/ LLP Partnership Agreement (PA)
- Special Purpose Vehicle (SPV)
- Benefits and Purpose of Special Purpose Vehicles
- LLP as a Special Purpose Vehicle
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The Foreign Exchange Management Act, 1999
- The Limited Liability Partnership Act, 2008
- FDI Policy

BUSINESS COLLABORATION

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

Types of Business Collaboration

Horizontal Collaboration: When the businesses in the same set of functional area agree to collaborate in a way to improve their competencies is known as Horizontal Collaboration. For example: conducting research toward new or improved products and services requires monetary investment, time, and worker capacity.

Vertical Collaboration: Vertical Collaboration is a collaboration wherein the business collaborates with companies in its supply chain either upward and/or downwards (its suppliers and/or distributors). Vertical collaboration often allows businesses to minimize risk in the supply chain and obtain lower prices in exchange for long-term commitment. For example: Computers shipping with pre-installed third-party software, discounted airport transfers offered by airlines etc.

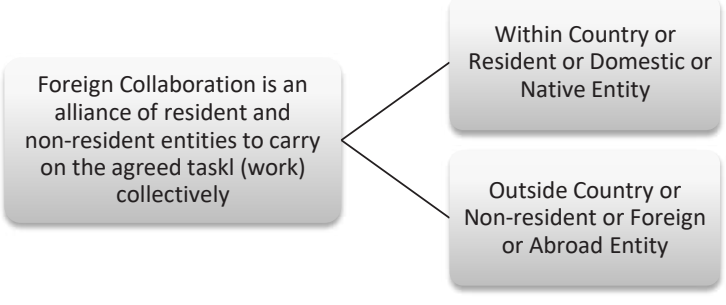
Intersectional Collaboration: When the Businesses from different functional areas agree to share their special knowledge for the advancement of all partners in collaboration is known as Intersectional Collaboration. For example: Manufacturing and Marketing collaborations, Referral rewards, tie-ups.

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

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

FOREIGN COLLABORATION

Meaning of Foreign collaboration



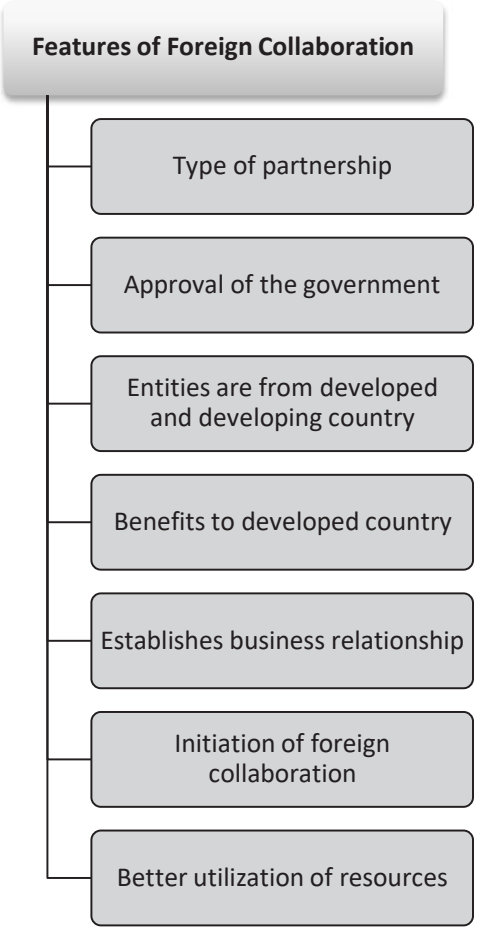
- Foreign collaboration is an alliance incorporated to carry on the agreed task collectively with the participation (role) of resident and non-resident entities. Foreign collaboration is an alliance of domestic (native) and foreign (non-native) entities like individuals, firms, companies, organizations, governments, etc., that come together with an intention to finalize a contract on some tasks or jobs or projects.
- Foreign collaboration is an alliance (a union or an association) formed for mutual benefit of collaborating parties.
- Foreign collaboration is a mutual co-operation between one or more resident and non-resident entities. In other words, for example, an alliance (a union or an association) between a foreign based company and a domestic company forms a foreign collaboration. It is a strategic alliance between one or more resident and non-resident entities. Only two or more resident (native) entities cannot make a foreign collaboration possible. For its formation and as per above definitions, it is mandatory that one or more non-resident (foreign) entities must always collaborate with one or more resident (domestic) entities.
- Before starting a foreign collaboration, both entities, for example, a resident and non-resident company must always seek approval (permission) from the Governmental Authority of the domestic country.
- During an ongoing process of seeking permission, the collaborating entities prepare a preliminary agreement.
- According to this preliminary agreement, for example, the non-resident company agrees to provide finance, technology, machinery, know-how, management consultancy, technical experts, and so on. On the other hand, resident company promises to supply cheap labour, low-cost and quality raw-materials, sufficient land for setting factories, etc.
- After obtaining the necessary permission, individual representative of a resident and non-resident entity signs this preliminary agreement. Signing the agreement acts as a written acceptance to each other's expectations, terms and conditions. After acceptance, a contract is executed, and foreign collaboration gets established. Contract is a legally enforceable agreement.
- After establishing foreign collaboration, resident and non-resident entity start business together in the domestic country.
- Collaborating entities share their profits as per the profit-sharing ratio mentioned in their executed contract.
- The tenure (term) of the foreign collaboration is specified in the written contract.

Examples of Foreign Collaboration

Some prominent examples of foreign collaboration between an Indian and Foreign entity are depicted below.

- ICICI Lombard GIC (General Insurance Company) Limited is a financial foreign collaboration between ICICI Bank Ltd., India and Fairfax Financial Holdings Ltd., Canada.
- ING Vysya Bank Ltd. is a financial foreign collaboration formed between ING Group from Netherlands and Vysya Bank from India.
- Tata DOCOMO is a technical foreign collaboration between Tata Teleservices from India and NTT Docomo, Inc. from Japan.
- Sikkim Manipal University (SMU) from India runs some academic programs through an educational foreign collaboration with abroad universities like Liverpool School of Tropical Medicine from UK, Loma Linda and Louisiana State Universities from USA, Kuopio University from Finland, and University of Adelaide from Australia.

Features of Foreign Collaboration



1. **Type of partnership**: Foreign collaboration is a type of partnership between a domestic entity and foreign based entity. In such an alliance, each partner plays some crucial role. Foreign entity generally provides support for finance, technology, engineering, management, etc. On the other hand, a domestic based entity provides cheap labour, high-quality raw materials, land and so on. Here, domestic and foreign entity share their profits as per profit-sharing ratio mentioned in their contract.
2. **Requires an Approval of the government:** Before initiating foreign collaboration, collaborating entities (domestic and foreign) must seek permission from the government of the domestic country. The government gives approval only when the contract of foreign collaboration is prepared in accordance with the industrial or foreign policy of its country.
3. **Entities are from developed and developing country**: In foreign collaboration, one or more abroad entities are generally from developed countries like U.S.A., Germany, Japan, etc. Whereas, a domestic entity is from a developing country or less-developed country (LDC). Some examples of developing countries are India, Sri-Lanka, Indonesia, and so on.
4. **Benefits to developed country**: The benefits of foreign collaboration to a developed country are as follows:
   - Foreign collaboration helps a developed country earn good returns on its overall investments made in a domestic country.

- It also aids a developed country earn a good reputation for providing financial and technical assistance (support) to the developing country.

5. **Benefits to developing country:** The benefits of foreign collaboration to a developing country are as follows:
   - Foreign collaboration helps a developing country to get finance, technology, machinery, know-how, management and technical expertise, etc. from a developed country.
   - It also assists a developing country to achieve a faster economic growth.
6. **Establishes business relationships**: Foreign collaboration establishes business (trade) relationships among different countries. It removes their economic gaps (hurdles) and brings them closer to each other.
7. **Initiation of foreign collaboration**: A foreign collaboration is initiated at the government and/or corporate level. At governmental level foreign collaboration, a government of some foreign country collaborates with the government of a domestic country. Similarly, at corporate level foreign collaboration, a company from some foreign country collaborates with the company from a domestic country. These companies may be either private or public in nature.
8. **Better utilization of resources:** Though developed countries are good with finance, technology, management and technical expertise, generally, they face difficulties to meet a continuous supply of low-cost labour and quality raw materials. On the other hand, generally, a developing country has more availability of low-cost labour and plenty of quality raw materials. Foreign collaboration brings developed and developing country together and helps them to satisfy each other's needs by exchanging their excess resources. Finally, this leads to a better utilization of available resources.
9. **Scope of foreign collaboration**: The scope of foreign collaboration is very wide. It covers core business activities such as: Finance, Production, Management and Technical consultancy, Advertising and Marketing, etc.
10. **Miscellaneous features**: Miscellaneous features of foreign collaboration are listed as follows:
    - Foreign collaboration reduces unemployment in a developing country.
    - It improves infrastructure in a developing country.
    - It helps to increase revenue of the governments in the form of taxes and duties.
    - It also aids to achieve economic growth in developed and developing country

Objectives of Foreign Collaboration

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

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

Types of Foreign Collaboration

1. **Financial collaboration**: In case of financial collaboration, the inflow of foreign investment takes place in the domestic (host) country. In this method, the foreign company lends finance by:
   - **Purchasing ownership shares:** Here, foreign company purchases ownership shares of the domestic company and in return gets the dividend for these shares.
   - **Giving long-term loans**: Here, foreign company gives long-term loans to the domestic company and in return gets interest from these loans.
   - **Giving credit facility**: Here, foreign company gives credit facility to the domestic (native) company. The native company uses this credit facility to purchase raw-materials, plant and machinery.

   Thus, in financial collaboration, there is an inflow of finance from developed countries to developing countries.
2. **Technical collaboration**: In case of technical collaboration, the inflow of foreign technology takes place in the domestic (host) country. Technical collaboration includes integration of foreign technology with domestic (indigenous) technology. In technical collaboration, the foreign company provides technological know-how, professional services and expertise, installs automated machineries, etc., in the domestic country. Here, an inflow of modern technology takes place from the developed country to the developing country. Technical collaboration helps to remove an existing technological gap. Therefore, the governments of developing countries encourage such collaborations. In developing countries, most of the foreign collaborations are technical in nature.
3. **Marketing collaboration**: In case of marketing collaboration, the inflow of foreign goods and services take place in the domestic (host) country. In marketing collaboration integration of domestic and foreign market takes place. In marketing collaboration, foreign company agrees to sell goods produced by the domestic company. The foreign company sells these goods in its own country and/or in the international market. It uses its distribution network to sell the goods. From the viewpoint of a developing country, marketing collaboration is very beneficial for increasing its exports of goods and services.
4. **Management consultancy collaboration**: In case of management consultancy collaboration, the inflow of foreign management consultancy takes place in the domestic (host) country. In management consultancy collaboration integration of domestic and foreign consultancy takes place. In management consultancy collaboration, foreign company provides management skills to the domestic company and teaches it everything about management. In other words, it gives advice and solves management problems of the domestic company. It teaches management skills for the following:
   - Production management.
   - Marketing management.
   - Personnel management.
   - Financial management.

The foreign company also helps the domestic company to modernize and diversify its business process. So, in management consultancy collaboration, the foreign company increases the management efficiency of the domestic company. This type of collaboration is found in both private and public sector.

Foreign Collaboration in India

In India there are basically two forms of foreign collaboration. The collaboration may be either financial collaboration or it may be technical. In case of financial collaboration the approving authority is the Reserve Bank of India and in the case of technical collaboration the approving authority is Department for Promotion of Industry and Internal Trade (DPIIT) in the Ministry of Commerce and Industry, Government of India.

The approach of the Government has been roughly the same since the year 1949 that is to allow foreign direct investment on preferential basis in sectors that will be beneficial for the country. The foreign or Indian undertakings will have to conform to the Industrial policy of the country. Foreign investors are in all cases considered equal to their Indian partners. The Government has enforced The Foreign Exchange Management Act 1999 (FEMA) with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

For setting up a foreign collaboration, approval from the government under the relevant foreign exchange laws in force and the requisite Government policy is required.

Under the Act now a foreign collaboration may be formed by a foreign company without the necessity of forming a company with an Indian counterpart. Any foreign collaboration which exceeds the minimum limited set out in the automatic route requires approval from the government.

The Government has set up a Foreign Investment Promotion board to encourage foreign investment in India. Some of the functions of the Board include:

- speed up clearance of proposals
- to review the collaborations cleared
- ear-marking and ascertaining of contacts to invest in India

JOINT VENTURE

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

It is an entity formed between two or more parties to undertake economic activity together. The parties agree to create a new entity to share in the revenues, expenses, and control of the enterprise. Joint Ventures are generally created for a single activity or project, and may have a limited time span. The use of a separate entity allows the parties to limit the liabilities associated with the relationship.

In India till recently, almost all equity-based ventures were structured in the form of a company. However, with the government permitting foreign investment in Limited Liability Partnership (LLP) Firms, there is significant interest in LLP firms.

Definition

Alternatively, we can define a joint venture is an association of two or more individuals or business entities who combine and pool their respective expertise, financial resources, skills, experience, and knowledge in the furtherance of a particular project or undertaking. As per the Indian Accounting Standard (Ind AS), a joint venture is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

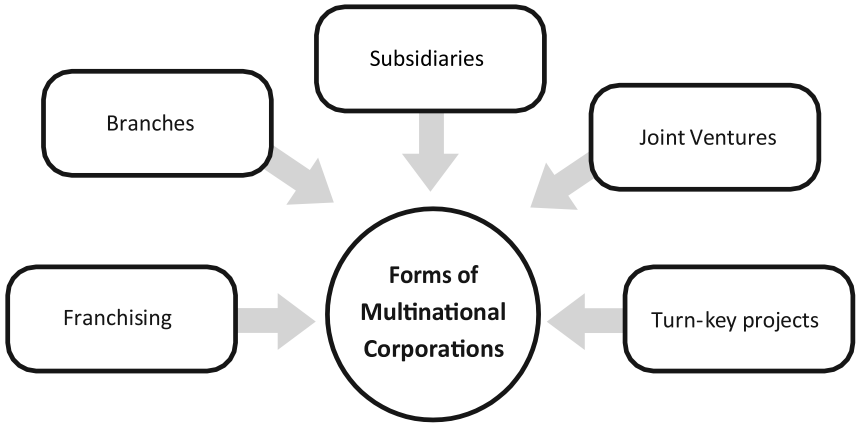
*A **Joint-ventures** can be defined as "an enterprise in which two or more investors share ownership and control over property rights and operation". The venture can be for one specific project only, or a continuing business relationship. Entering into a joint venture is a major decision. Businesses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

Joint Venture commonly referred to as a "JV", are typically formed either by individuals, business entities, corporations or partnerships. The contributions to the joint ventures are either in the form of money [capital], services, or physical asset(s), i.e. equipment or intellectual property [software, patents], etc., or a combination of all. Business entities, who do not individually have the capacity, in terms of resources finances and technical know-how etc. can benefit by forming Joint Venture for pooling of resources, sharing technical know-how and exploring larger markets for their goods and services.

JVs are also common in the manufacturing, mining, and service industries. A JV may be formed to conduct research and development work on a new product or technical application, to manufacture or produce various products, to market and distribute products and services in a specified geographic area, or to perform a combination of these functions.

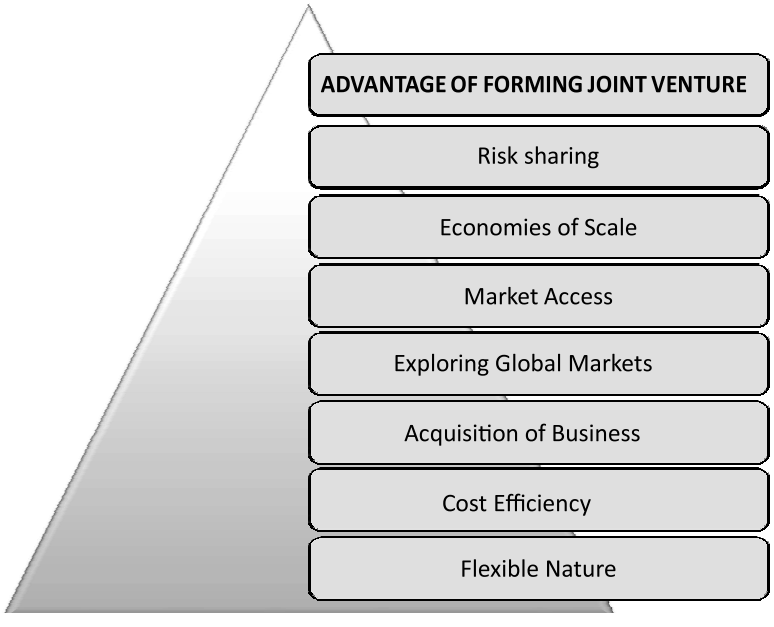
Examples of Joint Venture Companies in India are Indian Oil Skytanking Ltd. (between Holders -Ruchi Soya and Indian Oil), Ratnagiri Gas & Power Private Ltd. (between NTPC Ltd. and GAIL India Ltd.), Mahanagar GasLtd. (BG Group of U.K. and GAIL India Ltd.) and Petronet LNG Ltd. (between PSU's, namely, BPCL, GAIL India Ltd., ONGC and IOCL).

MNC's in different forms including Joint Ventures



Advantages of Forming Joint Venture

Various advantages of forming Joint Venture are as follows:



(i) **Risk Sharing**: Risk sharing is one of the biggest advantages of forming a Joint Venture, particularly, in those industries where the cost of product development and likelihood of failure of any particular product is very high.

(ii) **Economies of Scale**: Another advantage of forming a JV is for the industries which have high fixed costs, a JV with a larger company can provide the economies of scale necessary to compete locally or globally and can be an effective way by which two companies can pool resources and achieve critical mass.

(iii) **Market Access**: For companies that lack a basic understanding of customers and the relationship and infrastructure to distribute their products to customers, forming a JV with the right partner can provide instant access to established, efficient and effective distribution channels and receptive customer bases. This is important to a company because creating new distribution channels and identifying new customer bases can be extremely difficult, time consuming and expensive activities.

(iv) **Exploring the Global Market:** Formation of JV can be advantageous to those companies, which are foreseeing an attractive business opportunity in a foreign market. Partnering with foreign company would provide an ease to that Company for penetrating a foreign market, which can otherwise be difficult both because of a lack of experience in such market and local barriers to foreign-owned or foreign-controlled companies.

(v) **Easy acquisition of other entity or business:** When a company wants to acquire another, but cannot due to cost, size, or geographical restrictions or legal barriers, teaming up with a JV Partner can be an attractive option. The JV is substantially less costly and thus less risky than complete acquisitions, and is sometimes used as a first step to a complete acquisition with the JV Partner. Such an arrangement allows the purchaser the flexibility to cut its losses if the investment proves less fruitful than anticipated.

(vi) **Cost Efficiency:** For a small-scale company/ entity, sometimes it is difficult to set up the infrastructure and the machinery required product development. In the moment of need, joint venture is the perfect solution. For example, if a company has a plan for the perfect product, however, due to financial shortage there is not enough machinery or resources available. At such a time, if another company, which is equipped, lends a hand in the form of joint venture, by way of resource sharing and cost sharing it becomes easier to produce.

(vii) **Flexible nature**: The joint venture enterprises provide flexibility, each participant has the freedom to continue with their individual businesses. The joint venture participants can only interfere within the participated project. Thus, during the term of the contract participants can freely resume their business as long as they fulfil the needs mentioned in the agreement.

Disadvantages of Joint Venture

Disadvantages of forming Joint Venture are as follows:

(i) **Restricted flexibility where full concentration is required for JV Project:** Flexibility is important however, some projects require full concentration and thus the simultaneous work may become impossible. In times like such the participants need to focus on the product of the joint venture and the individual businesses suffer in the process. For example, company A requires technological assets thus in joint venture company B avails the facility. In the same time, if the company B requires those technical assets then he has to postpone the individual project for the time being.

(ii) **Lack of equal involvement:** An equal involvement from all the Joint Venture partners may not be possible. It is extremely unlikely for all the companies working together to share the same involvement and responsibilities.

(iii) **Cultural Differences:** Different cultures and management styles may result in poor co-operation and integration. People with different beliefs, tastes, and preferences can create hurdles.

(iv) **Extensive Research and planning required:** Joint venture can result in a frustrating experience and ultimately a failure if it lacks adequate planning and research.

(v) **Lack of clear communication:** A joint venture involves different companies from different horizons with different goals, there is often a severe lack of communication between partners.

(vi) **Unreliable partners:** Because of the separate nature of a joint venture, it is possible that the partner do not devote 100% of their attention to the project and become unreliable.

(vii) **Creation of competitor**: Another potential disadvantage of a JV is the possibility of the creation of a competitor or a potential competitor in the form of one's own joint venture partner.

Strategies of entering into a Joint Venture

Strategies of Joint Venture
• Identification of Prospective JV Partners
• Reliable Partners
• Strong JV Relationship
• Equal Contribution
• Written Agreement
• Limiting Scope of JV
• Defined Business Model
• Flexibility
• Exit Routes

Joint ventures can be very effective for growth and success of a business. If formed strategically Joint Ventures can be extremely valuable and chances of their failure can be reduced to a greater extent.

Following are the strategies for forming a successful Jointing Venture:

Identification of prospective Joint Venture Partner(s): The prospective partner should be strong in terms of business, technology and resources. One partner must be able to compliment the other partner especially in those areas where it lacks. For example, one entity's strength is economies of scale and another entity's strength is strong marketing and their brand value. Both the entities, if formed into JV can complement each other and they can have a larger market for their products.

Trustworthy: Joint Venture Partner should never be weak or untrustworthy partner, as it would definitely lead to failure of the joint venture. On the other hand, a JV with strong and trustworthy partner would generate enormous benefits for both the partners and the Joint Venture entity.

Development of Strong Joint Venture Relationship: Partners must strive to develop joint venture relationships that are easy to maintain, financially profitable, intellectually rewarding, and long-lasting. After a necessary period of negotiation and implementation, the Joint Venture relationship should grow well quickly and painlessly.

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

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

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

Well defined Business Model: The firms in a JV must clearly define the nature of the new venture including the proposition to the customer, the channels and relationship management, the value chain, the structure and roles, investments, income, costs and payments, success factors and the timetable for delivery. A well-defined business model provides a base for the legal and financial framework.

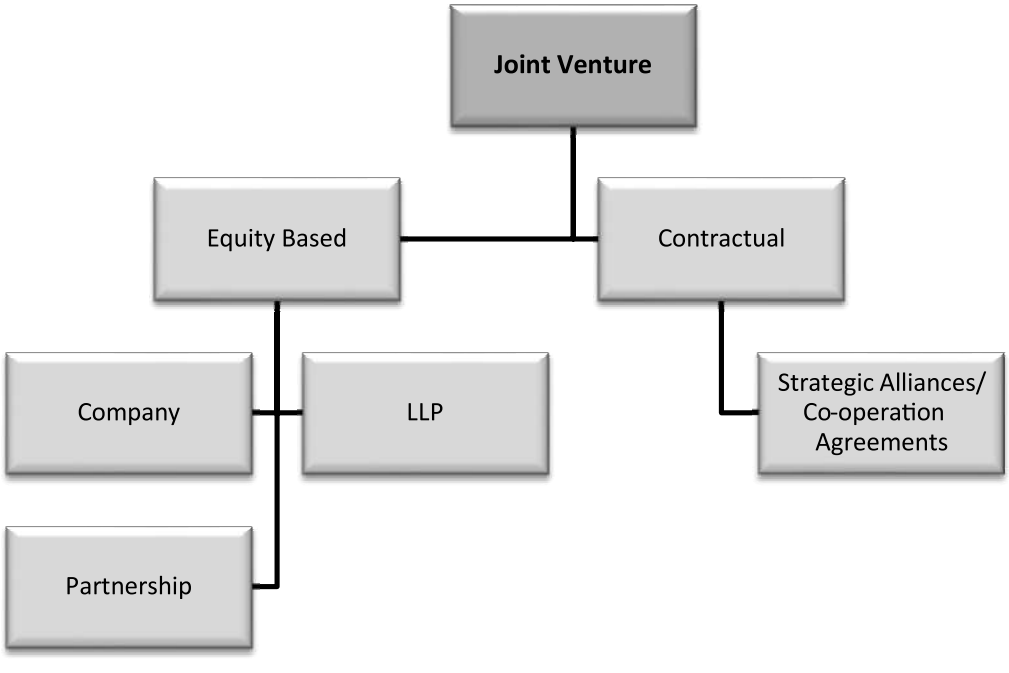
Flexibility: The partners in JV should try to be flexible and favour partners who demonstrate the same level of flexibility.

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

Formation of Joint Ventures

A Joint Venture can be of the following types :

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



(1) Equity based Joint Venture

The equity joint venture is an arrangement whereby a separate legal entity is created in accordance

with the agreement of two or more parties.

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

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

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

Generally speaking, in an equity based joint venture, the profits and losses of the jointly owned entity are distributed among the parties according to the ratio of the capital contributions made by them. However, the division of profits and losses is not the only characteristic of an equity-based joint venture. The key characteristics of equity-based joint ventures are as following:

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

(b) Shared Ownership by the parties involved.

(c) Shared management of the jointly owned entity.

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

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

Circumstances indicating SPV:

All the above five characteristics need not be fulfilled in every equity based joint venture. For example, one of the parties to the agreement may be providing investment but might not have any say in the management of the Joint Venture.

Again, a foreign company may want to exercise management control even though it is not investing in the JV company. Typically, if a foreign company is providing technology and other knowledge-based inputs, it may want to ensure that the JV company is managed as per its directions. In such cases, the foreign company may retain an option to invest in the JV Company on a later date. This may be done by a foreign company to create a foothold for itself in a sector where Foreign Direct Investment (FDI) is not allowed.

(2) Contractual Joint Venture

The contractual joint venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture.

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

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

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

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

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

(i) Two or more parties have a common intention – of running a business venture.

(ii) Each party will bring some inputs in the form of money, technology or materials.

(iii) Each party exercises certain degree of control on the venture.

(iv) The relationship is not a transaction-to-transaction relationship but has a character of relatively longer time duration.

The above four characteristics are the distinguishing features of a Contractual Joint Venture as opposed to an Equity based relationship.

It is important to note that a joint venture agreement, be it for the establishment of a limited liability company or not, and the different contracts must be concluded in accordance with laws and regulations applicable to such companies including tax laws concerning these companies or the laws relating to agency or partnership as well as other economic laws, in addition to laws relating to labour, sales of goods, insurance and foreign economic and trade contract.

Every equity based joint venture gives birth to a new entity. Government of India permits certain type of entities. Different types of entities are summed up below:

(1) **Company** – A limited liability company is the most preferred structure for joint venture entities in India.

Government also encourages investment being in the form of equity capital of a company incorporated in India. Companies in India are mainly of two types – private limited and public limited. There is no minimum share capital prescribed either for private limited company or public limited company.

A private limited company must have at least two shareholders, while a public limited company must have seven shareholders. The only exception to this is a one-person company. The shareholders may be foreign citizens or foreign companies. Companies Act 2013 makes it mandatory that at least one director of every company is resident of India.

(2) **Limited Liability Partnership (LLP) Firm** – LLP Firm structure is regulated in India by The Limited Liability Partnership Act, 2008. Government of India has now allowed foreign investments in LLP firms subject to certain restrictions.

LLP Firms are partnership firms with limited liability of partners. An LLP Firm combines the convenience of a partnership firm with the limited liability feature earlier found only in a company. An LLP Firm needs minimum two partners. It also requires minimum two Designated Partners out of which at least one should be resident of India. The two partners can also be appointed as Designated Partners. There is no requirement of minimum capital contribution to incorporate an LLP Firm.

(3) **Venture Capital Fund** – A duly registered Foreign Venture Capital Investor is allowed to contribute up to 100% in Indian Venture Capital Undertakings /Venture Capital Funds / other companies.

(4) **Trusts** – A foreign company is not allowed to use Trust as a form of a joint venture entity in India. SEBI has introduced regulations for some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds. Such funds are now permitted to receive foreign investment from a person resident outside India.

(5) **Other Entities** – Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based joint venture entities.

Restrictions under FDI Policy of the Government of India

Typically, any non-resident entity can set up an equity based joint venture in India. However, some entities face restrictions under FDI Policy of Government of India. The restrictions are as follows:

1. A Citizen or entity land border from India as per FDI Policy 2020 can invest only after the approval of the Government of India. Entity invest in defense, space, atomic energy and sectors prohibited for foreign investment.
2. NRI residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan can invest on repatriation basis subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.
3. A Foreign Institutional Investor (FII) can invest only under the Portfolio Investment Scheme with certain limits.
4. A Foreign Venture Capital Investor (FVCI) duly registered in India may contribute up to 100% of the capital of an Indian Company under the automatic route and may also set up a domestic asset management company to manage the fund. Such investments are subject to the relevant RBI Rules and Regulations and FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies.

Examples of Joint Venture (JV) Companies in India

- **Tata Starbucks**

  Tata Starbucks Private Limited, formerly known as Tata Starbucks Limited, is a 50:50 joint venture company, owned by Tata Consumer Products and Starbucks Corporation, that owns and manages Starbucks outlets in India. The outlets are branded Starbucks “A Tata Alliance”. India.

- **Bharti-AXA General Insurance Co Ltd.**

  Bharti AXA General Insurance Co Ltd is a JV between India’s leading business group Bharti Enterprises and an insurance major from France, AXA. This leading insurer in India’s initial operations. The company is licensed by (IRDAI) the Insurance Regulatory and Development Authority of India.

- **Fratelli Wines**

  Fratelli Wines is an Indo-Italian joint venture between Italy’s Secci brothers, Alessio and Andrea, the New Delhi-based Sekhri brothers, Kapil and Gaurav, and Mohite-Patil Ranjitsinh and Arjunsinh from Solapur Maharashtra.

- **Mahindra-Renault Ltd.**

  A Joint venture between Mahindra-Renault, brings together India’s largest automobile manufacturer Mahindra & Mahindra and world-renowned vehicle maker, Renault SA of France. This joint venture has launched several cars together.

- **ICICI Bank (Insurance & Investments)**

  ICICI Bank has two successful joint ventures to offer a variety of insurance and investment products to customers in India and Indian citizens residing in various parts of the world.

  1. ICICI Prudential Life Insurance Company Ltd is a joint venture between ICICI Bank and UK-based Prudential Corporation Holdings Limited.
  2. ICICI Lombard is a joint venture between ICICI Bank and Fairfax Financial Holdings Ltd of Canada.

- **AirAsia India**

  AirAsia India is a joint venture between Malaysia-based AirAsia Berhad and Tata Sons. The airline ranks as the fourth largest Low-Cost Carrier (LCC) in India. AirAsia India is also the second JV in the airline industry of Tata Sons.

  Source: https://www.thethrive.in/business-article/five-successful-joint-venture-companies-jvc-in-india/

Documents for Joint Ventures

Finalization of a joint venture goes through many stages. The first may be called the familiarisation stage when the two partners generally attempt to know each other.

The second may be called the engagement phase when there is a level of commitment but still it is not very firm or long-term. The final stage is when broad understanding has been reached on the terms of the Joint Venture.

At each stage, the documentation is different. The Indian companies preferred to have a Memorandum of Understanding (MOU) to define the relationship at the initial stage. The MOU is a brief document without much legal jargon. The MOU states the duties of both parties and lays down a road map for the future. During the engagement phase, a contractual Joint Venture may be envisaged. The parties are putting in relatively higher amount of resources at this stage. Hence, it is customary to have well-drafted legally binding contracts.

The contracts are generally of a fixed duration or are related to specific events like getting an order or achieving certain sales volumes. At the concluding stage, the parties have developed higher confidence in each other. So, an equity-based joint venture is considered. The documentation for an equity Joint Venture must take into account all possibilities that may arise over a fairly long period of time.

Hence, the Joint Venture Agreement or Shareholders' Agreement or LLP Agreement must be prepared carefully to avoid any confusion even many years down the line. Generally speaking, most equity Joint Ventures in India are structured in the form of private or public limited liability companies. In a company, Articles of Association is a very important document. Companies Act, 2013 gives the promoters freedom to draft the articles as per their requirements. It is hence, advisable to devote time and attention to the Articles and not depend on a standard off- the-shelf draft, especially in case of a joint venture company where one of the partners is a foreign national / company.

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

The SHA / PA is not a document for the government or the courts. SHA / PA is a working document and should be drafted with business essentials in focus. The key questions that an SHA / PA must address are common- sense ones that any entrepreneur is bound to ask when he / she joins hands with another entrepreneur.

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

(i) The business of the new company/LLP;

(ii) Manner and extent to which resources (financial, manpower, technology, etc) will be brought in;

(iii) Provisions relating to allotment and transfer of shares;

(iv) Constitution of the Board of Directors/Designated Partners;

(v) Manner in which decision making will take place (majority vote or consensus);

(vi) Decision regarding the Chairman and Managing Director of the entity; their rights, duties and responsibilities;

(vii) Persons responsible for managing finances, marketing, production, etc.;

(viii) Dividend distribution policy;

(ix) Term of office of the nominated directors, the manner of their appointment and changes among them;

(x) Valuation of the company at the time of separation;

(xi) Dispute resolution mechanism.

The above examples are indicative and are not exhaustive.

Essential components of a Joint Venture Agreement

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

(a) Description (Nature of the Agreement)

(b) Parties (full description of the parties to the Agreement)

(c) Recitals (states the situation as it existed prior to the execution of this Agreement; It is also used to convey the intention of the parties)

(d) Operative Part (defines the rules for the future; typically consists of name and constitution of the new entity being set up, equity investments, rules relating to loans by either party, activities to be undertaken, role of each party, constitution of the Board, names of the Chairman and Managing Director and their powers, duties, etc. matters to be decided by consensus, managerial remuneration, milestones to be reached and plan of action)

(e) Legal aspects:

  (i) Amendments of the JV Agreement

  (ii) Duration of the JV

  (iii) Termination

  (iv) Dispute resolution by amicable consultation and/or Arbitration mechanism/Alternate form of Dispute Resolution

  (v) Courts of particular State (in India) or Country (where the JV partner is foreign entity) that will have the jurisdiction in the event of dispute

  (vi) Confidentiality and Non-Disclosure Agreement

  (vii) Non-compete clause

  (viii) Indemnification

  (ix) Procedure for execution.

SPECIAL PURPOSE VEHICLE (SPV)

Meaning of Special Purpose Vehicle (SPV)

A Special Purpose Vehicle (SPV) or Special Purpose Entity (SPE) are generally formed for a special purpose. Scope of these kind of companies or entities are limited only to those activities which are required to be performed to attain that specific purpose. These companies/entities close their operations once the purpose is attained. The operations of these entities are limited to the acquisition and financing of specific assets. SPVs are generally a subsidiary company whose obligations are secured even if the parent company goes bankrupt.

An SPV can be formed for any lawful purpose. No SPV can be formed for an unlawful purpose, or for undertaking activities which are contrary to the provisions of law or public policy. An SPV is, primarily, a business association of persons or entities eligible to participate in the association.

A SPVs/SPEs may be formed through limited partnerships, trusts, corporations, limited liability corporations or other entities. An SPV/SPE may be designed for independent ownership, management and funding of a company or as protection of a project from operational or insolvency issues. SPVs help companies securitize assets, create joint ventures, isolate corporate assets or perform other financial transactions.

Thus, based on above meaning, we can conclude that a SPV is an entity which has distinct identity from its promoters or sponsors or constituents or shareholders.

To give an example, the implementation of the Mission (under the Smart Cities Mission Project of the Ministry of Housing & Urban Affairs, Government of India) at the City level will be done by a Special Purpose Vehicle (SPV) created for the purpose. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects. Each smart city will have a SPV which will be headed by a full time CEO and have nominees of Central Government, State Government and ULB on its Board. The SPV will be a limited company incorporated under the Companies Act, 2013 at the city-level.

Benefits of Special Purpose Vehicle (SPV)

The biggest advantage of SPV is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation. The SPV also allows securitisation of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secure assets can be securitised.

Model SPV:

(a) **Ownership of Assets** – An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.

(b) **Minimum Statutory Requirement** – Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.

(c) **Clarity of documentation** – It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.

(d) **Tax benefits** – SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.

(e) **Legal protection** – By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.

(f) **Accounting Reasons** – Debts raised through SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture and enhances the debt raising ability of the sponsor. Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.

(g) The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.

(h) The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

Purpose of Special Purpose Vehicle

The main purpose of a Special Purpose Vehicle is to allow the parent company to make highly leveraged or speculative investments without endangering the entire company. If the SPV goes bankrupt, it will not affect the parent company. SPVs are mostly formed to raise funds from the market or when Government Regulations specify creation of a separate vehicle for carrying out any specified activity.

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

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

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

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

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

SPVs are mostly formed to raise funds from the market. Technically, an SPV is a company. It has to follow the rules of formation of a company laid down in the Companies Act. Like a company, the SPV is an artificial person. It has all the attributes of a legal person. It is independent of members subscribing to the shares of the SPV. The SPV has an existence of its own in the eyes of law. It can sue and be sued in its name. The SPV has to adhere to all the regulations laid down in the Companies Act. Members of an SPV are mostly the companies and individuals sponsoring the entity. An SPV can also be a partnership firm.

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

How is an SPV established?

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

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

SPV as preferred vehicle for funds raising by Infrastructure Sector

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

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

LLP FIRM AS A SPECIAL PURPOSE VEHICLE

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

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

Foreign companies are not permitted to invest in partnership firms.

Moreover, consortium members do not want to be saddled with unlimited liability as is the case in a partnership firm under The Indian Partnership Act, 1932. Foreign Investment in some LLP firms has been allowed now.

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

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

(a) Low cost of incorporation of an LLP;

(b) Flexibility of rules of management and governance based on Agreement between the contracting Partners;

(c) Partners can be companies while management is by Designated Partners who are individuals. By this, there is divorce between ownership and management;

(d) Low annual maintenance cost;

(e) There may not be any necessity of getting the accounts audited before the project takes off;

(f) An LLP firm does not have to pay Dividend Distribution Tax (DDT) on share of profits transferred to the Partners, which makes it tax efficient;

(g) Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;

(h) Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

LESSON ROUND-UP

- Collaboration is when two or more entities work together through idea sharing and thinking to accomplish a common goal is known as Collaboration.
- Foreign collaboration is an alliance incorporated to carry on the agreed task collectively with the participation (role) of resident and non-resident entities.
- In India there are basically two forms of foreign collaboration. The collaboration may be either financial collaboration or it may be technical. In case of financial collaboration, the inflow of foreign investment takes place in the domestic (host) country. In case of technical collaboration, the inflow of foreign technology takes place in the domestic (host) country.
- A simply dictionary meaning of the word 'Joint Venture' is a commercial enterprise undertaken jointly by two or more parties which otherwise retain their distinct identities.
- There are various advantages of forming Joint Venture such as Risk Sharing, Economies of Scale, Market Access, Exploring the Global Market, Easy acquisition of other entity or business, Cost Efficiency, Flexible nature.
- There are two modes of formation of Joint Ventures: Equity Joint Venture and Contractual Joint Venture.
- Some entities face restrictions under FDI Policy of Government of India.
- Government of India permits certain type of entities. Different types of entities are: Company, Limited Liability Partnership, Venture Capital Fund, Trusts and other entities.
- Some of the key issues which must be kept in mind while drafting the shareholders' Agreement (SHA)/ Joint Venture Agreement/LLP Partnership Agreement (PA) are specified in the chapter.
- A special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for a special purpose. Scope of these kind of companies or entities are limited only to those activities which are required to be performed to attain that specific purpose.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. Explain the meaning and features of foreign collaboration.
2. Define a Joint Venture Company. What are its characteristics?
3. Distinguish between a Joint Venture Company and a Special Purpose Vehicle (SPV)
4. Explain, with reasons, why the concept of Special Purpose Vehicle (SPV) has gained prominence in India in recent times. Quote Examples.

LIST OF FURTHER READINGS

- ICSI Premier on Company Law
- Bare Act- The Companies Act, 2013
- Bare Act- The LLP Act, 2008
- Bare Act-The Foreign Exchange Management Act, 1999
- FDI Policy of the Government of India

OTHER REFERENCES (Including Websites and Video Links)

- https://www.mca.gov.in/content/mca/global/en/home.html
- https://www.rbi.org.in/
- https://dpiit.gov.in/

Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company

Lesson 10

KEY CONCEPTS

■ Foreign Company ■ Branch Office ■ Liaison Office ■ Project Office

Learning Objectives

To understand:

- How to establish branch and liaison office of Foreign Companies in India
- How to establish project office
- Procedure for establishment of Branch Office/Liaison Office/Project Office
- Procedure for closure of Branch Office/Liaison Office/Project Office

Lesson Outline

- Introduction
- Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India
- Eligibility, Registration, Permitted activities and Procedure of establishment of BO/ LO/ PO
- Closure of Branch Office/Liaison Office/Project Office
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 and Rules made thereunder
- 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

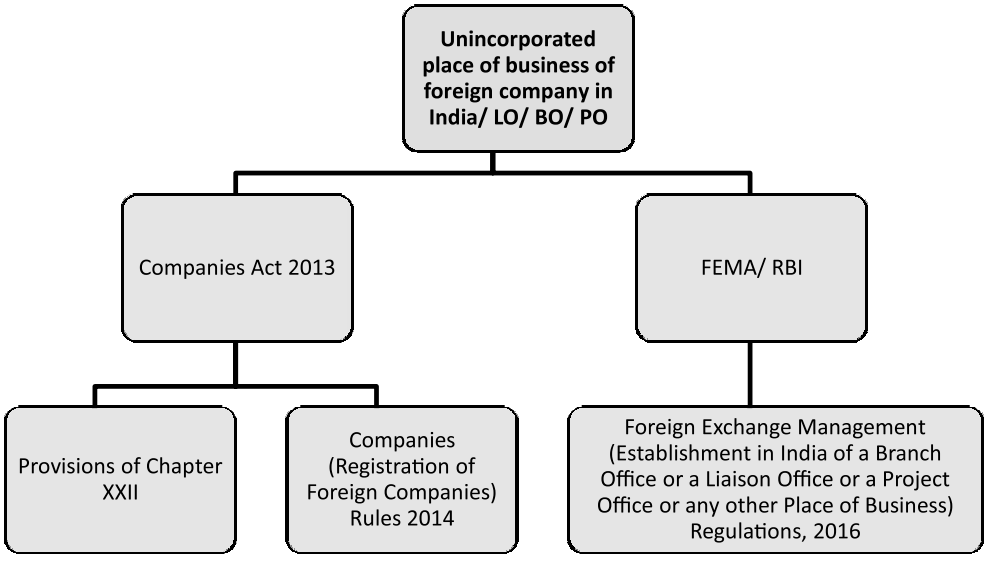
With India possessing vast natural and human resources and being among the fastest-growing economies in the world with a large market, it provides immense opportunities for foreign companies to grow and diversify their business. Therefore, there is a lot of interest among foreign companies and foreign nationals to open a wholly owned subsidiary, branch, liaison or project office in India or start a business in India.

Foreign company can also open an office in India without starting necessarily as a subsidiary company or associate company. There are basically three ways for a foreign company to conduct business/activities in India without starting a subsidiary company in India. Branch Office / Liaison Office allow for long-term functioning of a foreign company's office in India with approval from the Reserve Bank of India, while project offices can be started under General approval of the Reserve Bank of India if certain criteria are fulfilled.

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

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

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



Important Terms

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.

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.
- '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 sub-contract such activity to an Indian manufacturer.

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

(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.

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.

For other sectors, the form must be submitted to the Ministry of Finance. In this case, the application for establishing branch office must be forwarded by the foreign entity through a designated AD Category – I bank to the RBI.

If the foreign entity wishes to establish a branch office in more than one location in India, it must register the branch, or seek approval from the RBI for each of the location separately. The RBI approval is also necessary for each activity the branch office intends to undertake in India.

The procedures for registration requires 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

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.

The Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the Bar Council of India vs. A. K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India.

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category – I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice

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 bilateral or multilateral International Financing Agency" means the World Bank or the International Monetary Fund or similar other body.

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.

Cases in which RBI Approval is required for Setting up BO, PO and LO in India

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

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

A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The process of setting up is an easy one with minimal compliance requirements. The 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):

- **Automatic 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.

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.

   The validity period of an LO is generally for three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only. The validity period of the project office is for the tenure of the project.

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.

II. 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.

III. 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.

IV. 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.

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.

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.

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.

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	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
● that the remittable profit has been earned by undertaking permitted activities ● that the profits do not include any profit on revaluation of assets of the branch	(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:
      (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.

Checklist for BO/LO/PO

Sl. No.	*Particulars*	*Details*
1.	Register with the Registrar of Companies (ROC)	A BO/LO/PO or any other place of business to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
2.	Application to an Authorised Dealer Category I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profit making track record.
4.	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.
6.	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only.
8.	Annual Activity Certificate (AAC)	The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
9.	BO/LO/PO change their existing AD Category-I bank	BO/LO/PO can change their existing AD Category- I bank subject to both the AD banks giving consent in writing for the transfer and the transferring AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.
10.	Acquisition of property by BO/ PO	Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
11.	Carry out permitted/ incidental activities from leased property	As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/ LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.

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

Sl. No.	*Particulars*	*Details*
17.	Remittance of winding up proceeds	Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

LESSON ROUND-UP

- 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.
- 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.
- 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.
- Branch office in relation to a company, means any establishment described as such by the company.
- A BO/LO/PO or any other place of business by whatever name called is required to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
- The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
- The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.

GLOSSARY

AD Bank: Authorised Dealer (AD) Banks: Branches of banks authorised to deal in foreign exchange business.

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

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What are the permitted activities for a liaison office in India of a person resident outside India?
2. Discuss the procedure for establishment of branch office of foreign company in India?

3. What is Annual Activity Certificate and when the same is required to be submitted and to whom?
4. What procedure must be followed for making application for establishment of additional Branch Offices and Liaison Offices ?
5. State the check list for Project office in India.

LIST OF FURTHER READINGS

- Bare Act – Companies Act, 2013
- Foreign Exchange Management Act, 1999

OTHER REFERENCES (Including Websites/ Video Links)

- https://www.mca.gov.in/content/mca/global/en/home.html
- https://www.rbi.org.in/
- https://finmin.nic.in/

Setting up of Business outside India and Issues Relating Thereto

Lesson 11

KEY CONCEPTS

■ Overseas Direct Investment ■ Automatic Route ■ Approval Route ■ Foreign Investment

Learning Objectives

To understand:

- Regulatory framework under Foreign Exchange Management Act, 1999
- Eligibility, prohibitions, method of fundings, investment under automatic route and approval route
- Issues in choosing location outside India such as: Geographical location, economical aspects, political aspects, social aspects, technological aspects

Lesson Outline

- Introduction
- Regulatory framework under Foreign Exchange Management Act, 1999
- FEM (Overseas Investment) Rules, Regulations, 2022, FED Master Direction No.15/2024-25
- Eligibility
- Non-Applicability
- Prohibitions
- Automatic Route, Approval Route & No Objection Certificate
- Methods of Funding
- Issues in choosing location Outside India
- Geographical Location
- Economical Aspects
- Political Aspects
- Social Aspects
- Technological Aspects
- Procedure for Setting up business in other Countries
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Foreign Exchange Management Act, 1999
- FEM (Overseas Investment) Rules, 2022 (hereinafter referred as "OI" Rules)
- FEM (Overseas Investment) Regulations, 2022 (hereinafter referred as "OI" Regulations)
- FED Master Direction No.15/2024-25

INTRODUCTION

The year 1991 was the golden year for Indian economy. The foreign investment policies of the country changed and opened gates for foreign investments to enter the Indian Territory. This also made Indians eligible to set up business abroad or make an investment abroad as the case may be.

Prior to 1991, exports were a predominant way of expanding business abroad and hence the emphasis was on export promotion strategies with restrictions on cash outflows so as to conserve our foreign exchange reserves.

Till 1991, India's economic integration with the rest of the world was very limited. Business houses across industries realised that for expansion and growth of Indian companies, it is necessary that they increase their share in the world market not only by exporting their products but also by acquiring overseas assets and establishing their presence abroad. This meant that business had to be set up outside India in order to ensure their presence in the concerned markets. This requirement, paved the way to formulate regulations to make investments abroad. Accordingly, the policy for outward capital flows has evolved.

While India has traditionally been an attractive destination of FDI, it has also emerged as an important source of foreign investments for various countries particularly after the introduction of economic reforms in 1991. The policy on Indian investments overseas was first liberalised in 1992. Under this policy, an Automatic Route for overseas investments was introduced and cash remittances were allowed for the first time with restrictions on the total value. The basic intent for opening up the regime of Indian investments overseas had been the need to provide Indian industry access to new markets and technologies with a view to increase their competitiveness globally and help the country's export efforts.

The introduction of Foreign Exchange Management Act in the year 1999 changed the entire perspective on foreign exchange particularly those relating to investment abroad. This new change brought in more of management of "Foreign Exchange" and not "Regulation" unlike the earlier Act. This Act made sweeping changes in relaxing the norms for most of the policies including the overseas investments. It aimed to facilitate external trade and payments as well as to promote an orderly development and maintenance of foreign exchange market in India.

Overseas investment is a substantial way to enter the international market, and in the last decade, India has been successful to establish its presence felt in the global arena. India has been instrumental in signing various memorandum of understandings (MOUs), free trade agreements (FTAs) and Bilateral talks with other nations. Recently, India has signed various Free Trade Agreements (FTAs) with its trading partners, including agreements such as India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA) and India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA). This paves way for India to increase its economy's competitiveness on a global scale and allows Indian corporates to increase their overseas direct investments. The projections for overseas markets look promising in few realms. For instance, the Indian industry is expected to grow its revenue from Africa through IT services, infrastructure, agriculture, pharmaceuticals, and consumer products. According to the Ministry of External Affairs, India has initiated a move to set up a direct sea and air link between India and the Latin American region as Indian corporates plan significant investments in the mining, oil, IT and pharmaceutical sectors in that region. Overseas investment by Indian companies is anticipated to upsurge, backed by stable market conditions and the considerable impact of the investment on local economies.

According to the Reserve Bank of India, "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent of the paid-up equity capital of a listed foreign entity. Where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity.

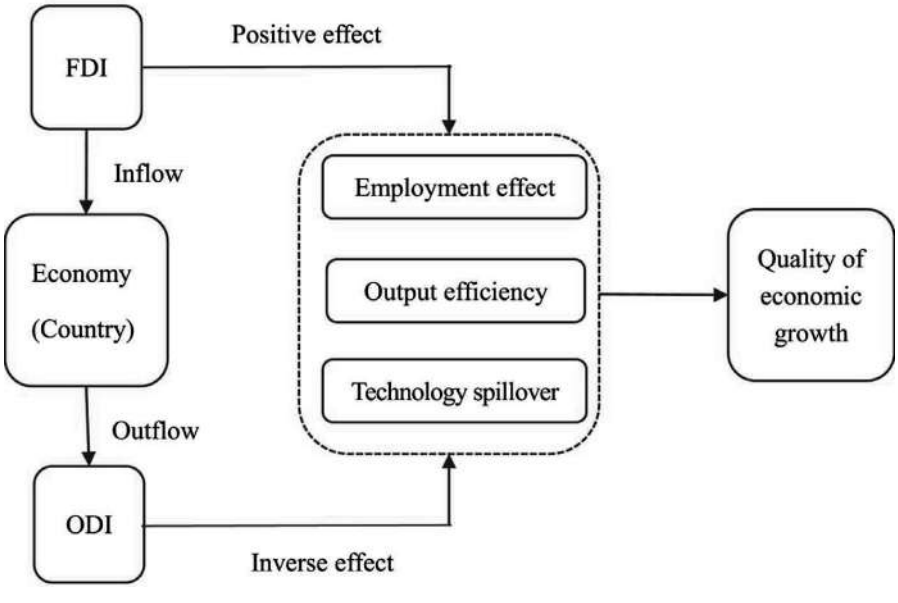
EVOLUTION

The origin of India's overseas investment can be traced back to the early 1960s. During that time, Sri Lanka and some African countries had emerged as attractive investment destinations for a selected number of Indian business conglomerates like Tata, Birla and Kirloskar, which sought to expand their production bases by investing in cross-border activities. Even though a few Indian enterprises had begun to assume a global foothold through direct overseas investments since the 1960s, Overseas Investment became a prominent feature of Indian businesses only in the aftermath of economic reforms of 1991.

The phenomenal upsurge in India's Overseas Investment flows in the 1990s and consecutive decades can, to a considerable degree, be attributed to a dramatic shift in India's domestic and foreign policy environment.

Prior to the 1990s, India's restrictive macroeconomic, trade and industrial policies were predominantly responsible for the inward-orientated nature of Indian businesses which often led them to seek protection from incoming FDI and imports. In the 1990s, however, significant reforms in trade policy like the abolition of import licensing system, gradual removal of non-tariff barriers (NTBs), major reductions in tariff rates, etc. led to an increased inflow of cheaper imports, which compelled Indian firms to become more competitive in the global market.

Post 1991, Overseas Investment has emerged as an important pathway for private as well as public enterprises to garner greater market access and gain global presence in the areas of mutual synergies and knowledge. Such investments have resulted in enhanced economic integration via business cooperation between India and the other countries, increased foreign trade and entitlements on such investments are an important source of foreign exchange earnings.



India's outbound investments have evolved dramatically, not only in terms of volume but also in terms of geographic distribution and sectoral makeup. A developing nation like India, constantly looks for opportunities to invest extensively outside India as it helps the economy as a whole. Overseas investments by Indian

companies also helps in improving the performance of the country's service and manufacturing sectors and aids in the battle against rising unemployment rates. With rising M&A activity, companies will get direct access to newer and more extensive markets and better technologies, enabling them to increase their customer base and achieve a global reach.

INVESTMENTS & DEVELOPMENTS

India is primarily a domestic demand-driven economy, with consumption and investments contributing to 70% of the economic activity. With an improvement in the economic scenario and the Indian economy recovering from the Covid-19 pandemic shock, India is relatively well placed than the rest of the world. Despite major headwinds that continue to pose risks in the short term, the Indian economy has remained strong owing to robust policy measures in place. This gives Indian businesses an advantage to make investments abroad and broaden their operational footprint in such nations. New innovations from abroad would be brought to India with the help of knowledge spillover, and India itself would contribute to the growth of other nations. In this manner, a mutual benefit is achieved. In this regard, there have been several overseas investments made by Indian companies.

The Government has reduced the restrictions on Indian companies investing overseas by removing the cap on raising funding through the pledge of shares, local assets, and foreign assets in order to encourage international investment. In addition to this, improving social and economic stability in the nation enables RBI to support foreign investments and other international collaborations. One of the key elements of economic progress in every nation is its robust foreign investments. It demonstrates the confidence and trust that one country has in another and also aids in domestic companies to explore better worldwide networks, markets, technology, talents, and resources while enhancing their brand image. In this view, the government has undertaken a number of steps to support Indian investments abroad.

LAWS /AUTHORITY GOVERNING SETTING UP OF BUSINESS OUTSIDE INDIA

Reserve Bank of India

The Reserve Bank of India has started issuing Master Directions on all regulatory matters beginning January 2016. The Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The process of issuing Master Directions involves issuing one Master Direction for each subject matter covering all instructions on that subject. Any change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. The Master Directions will be updated suitably and simultaneously whenever there is a change in the rules/ regulations or there is a change in the policy. All the changes will get reflected in the Master Directions available on the RBI website along with the dates on which changes are made. Explanations of rules and regulations will be issued by way of Frequently Asked Questions (FAQs) after issue of the Master Directions in easy to understand language wherever necessary.

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999.

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

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers

to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers conferred under the Act, the Reserve Bank, with effect from August 22, 2022, has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 ('erstwhile ODI regulations') and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 ('OI Rules') and FEMA (Overseas Investment) Regulations, 2022 ('OI Regulations') and the erstwhile regulations stand superseded.

RBI has also issued the compiled FEMA (Overseas Investment) Directions, 2022 ('OI Directions') which has been replaced by FED Master Direction No.15/2024-25 covering the OI Rules and OI Regulations grouping the requirements under four categories viz. Definition and Associated Details, General provisions, Specific provisions and Other operational instructions to the AD Banks. It also provides for certain compliance requirements from the erstwhile ODI Master Directions, which are not covered in OI Rules or Regulations.

A significant step has been taken with operationalisation of a new Overseas Investment regime. The new regime simplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

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

i. enhanced clarity with respect to various definitions;

ii. introduction of the concept of "strategic sector";

iii. dispensing with the requirement of approval for:

   a. deferred payment of consideration;

   b. investment/ disinvestment by persons resident in India under investigation by any investigative agency/ regulatory body;

   c. issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);

   d. write-off on account of disinvestment;

iv. introduction of "Late Submission Fee (LSF)" for reporting delays.

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

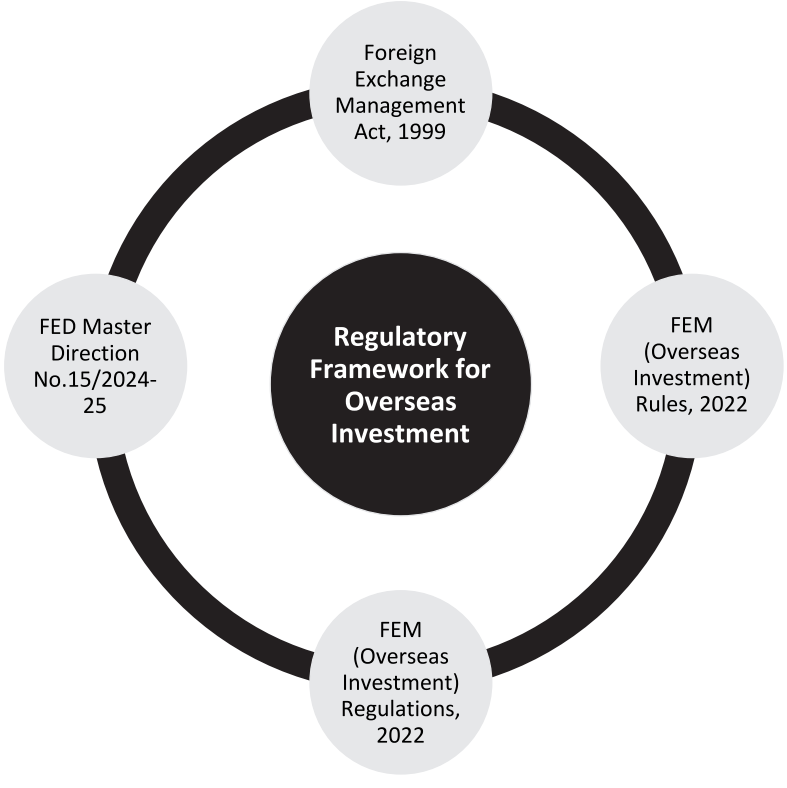
OI Rules v/s OI Regulations

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

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

OI Regulation, are issued by RBI under section 47 of FEMA, 1999. OI Regulations, on the other hand, provides only the operational part covering conditions for undertaking Financial Commitment ('FC'), other than by

investment in equity capital, consideration in case of acquisition or transfer of equity capital of a Foreign Entity ('FE'), mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.



OVERSEAS INVESTMENT

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

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

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

a) the Indian entity is eligible to make ODI;

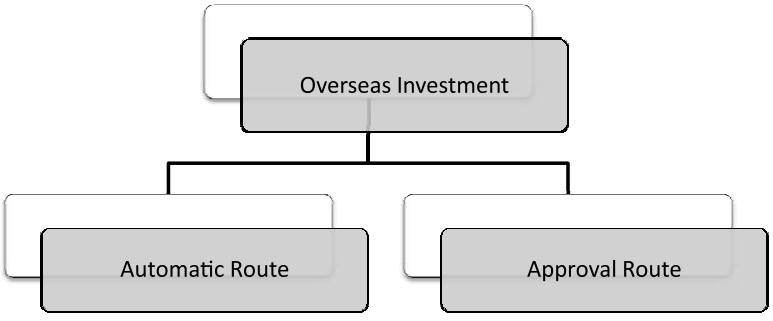
b) the Indian entity has made ODI in the foreign entity;

c) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

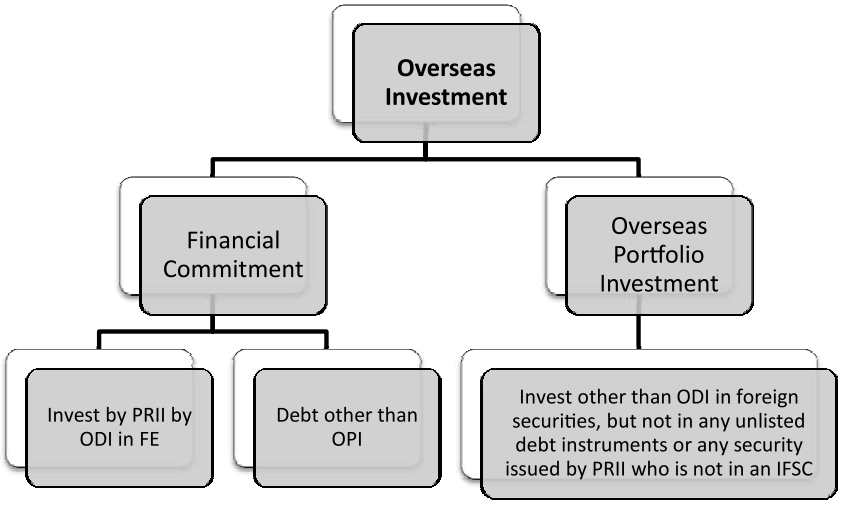
"Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

➔ OI = FC + OPI

Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route subject to the provisions contained in the OI Rules, OI Regulations and OI Directions.



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



ELIGIBILITY (ENTITIES ARE REFERRED TO AS "INDIAN ENTITY" AND FOREIGN ENTITY)

"Indian entity"

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

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

"Foreign Entity"

The extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

'Limited liability' would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited.

In case of a foreign entity being an investment fund or vehicle, duly regulated by the regulator for the financial

sector in the host jurisdiction and set up as a trust outside India, the liability of the person resident in India shall be clear and limited not exceeding the interest or contribution in the fund in any manner. Further, the trustee of such fund shall be a person resident outside India.

"Subsidiary"/ "step down subsidiary (SDS)" of a foreign entity means an entity in which the foreign entity has control and the structure of such subsidiary/SDS shall comply with the structural requirements of a foreign entity, i.e., such subsidiary/SDS shall also have limited liability where the foreign entity's core activity is not in strategic sector. The investee entities of the foreign entity where such foreign entity does not have control (as defined above) shall not be treated as SDSs and therefore need not be reported henceforth.

NON-APPLICABILITY

Rule 4 of the OI Rules states that nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–

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

The erstwhileODI Master Directions provided general permission for purchase/acquisition of securities by a person resident in India as bonus shares on existing holding of foreign currency shares and also for rights shares against holding of shares in accordance with provisions of law. The person resident in India, acquiring the rights, may renounce such rights in favour of a person resident in India or a person resident outside India. The OI Rules covers the same under Rule 7.

PROHIBITIONS

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

   The expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.
2. Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case maybe, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual. Further Master Direction 9 provides that any ODI in startups in accordance with rule 19(2) of OI Rules shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.

3. No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:

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

   a. a banking company as defined in the Banking Regulation Act, 1949;

   b. a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;

   c. an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and

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

AUTOMATIC ROUTE

Rule 9 of OI Rules, 2022 lays down the general rule for overseas investments under the automatic route. It states that subject to prescribed limits and conditions laid down in these rules and ODI Regulations 2022, any overseas investment by a person resident in India shall be made in a foreign entity engaged in bona-fide business activity, directly or through step-down subsidiary or the special-purpose vehicle. This is rule is subject to limitation stated as "Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

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

'Bona-fide business activity' has been defined as any business activity permissible under any law in force in India and the host country / host jurisdiction. Hence, the business activity must be permitted under the laws of India as well as the host country for it to qualify as 'bona-fide' business activity.

The definition of the term bona-fide business activity is a welcome move as it brings about a certain level of clarity. Having said that, confusion still prevails in terms of what is meant by permitted under laws of India (and also the laws of the host country). There may be activities, such as gambling, which are state subjects and may be permitted in some states whilst not being permitted in others. Additionally, whether a pure holding company will qualify as a bona-fide business activity also remains a question due to the manner in which the definition has been worded.

"Control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of

their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;

"Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity; Explanation.– For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity;

Accordingly, where a foreign entity is set up without any outward remittance of cash (for example in Delaware where a company can be incorporated without capital contribution), and the Indian resident has control of such entity, the transaction should qualify as an ODI. Similarly, a gift of controlling shares of a foreign entity from a non-resident to resident may also result in the resident having made ODI into the foreign entity.

APPROVAL ROUTE

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

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

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

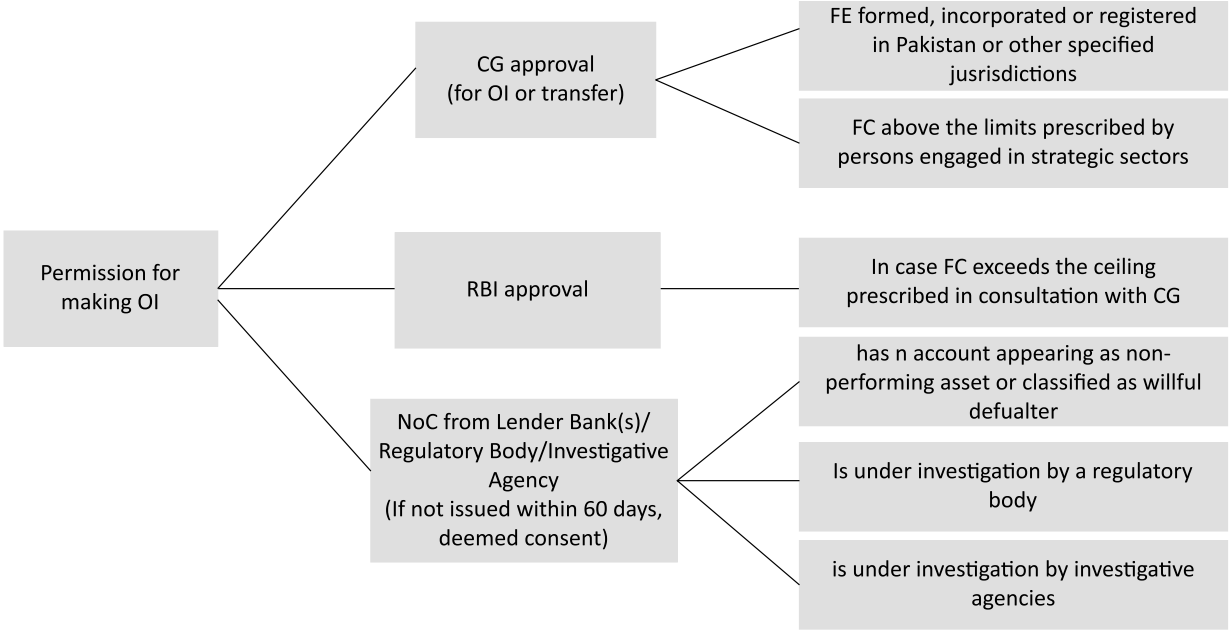
Approval from Reserve Bank: As set out under the Erstwhile Regime, the OI Rules also provide that financial commitment by an Indian entity, exceeding USD 1 billion (or its equivalent) in a financial year shall require prior approval from the RBI even when the total financial commitment of the Indian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

In essence, the Rule provides that approval with respect to investment in restricted geography / sector has to be obtained from the Central Government, whereas approval for investments beyond the monetary limit has to be obtained from the RBI.

The erstwhile ODI Master Directions prohibited an Indian Party from making direct investment in countries identified by Financial Action Task Force ('FATF') as 'non co-operative countries and territories' as per the list available on FATF website or as notified by RBI. The OI Rules do not expressly provide for such prohibition, however, empowers the CG to advise countries or jurisdictions where overseas investment shall not be made.

Further, as provided in the erstwhile ODI Master Directions for prior approval of RBI for any FC exceeding USD 1 billion or its equivalent in a financial year even when the total FC of the Indian Party was within the eligible limit under automatic route (i.e. within 400% of the net worth as per the last audited balance sheet), the requirement continues under the current regime as well. Procedure for seeking approval of RBI has been provided in the OI Directions.

Approval requirement has been dispensed for deferred payment of consideration, investment/ disinvestment by PRII under investigation by any investigative agency/ regulatory body, issuance of corporate guarantee to or on behalf of second or subsequent step down subsidiary and write-off on account of disinvestment.



No Objection Certificate

Rule 10 provides that if any person resident in India who –

i. has an account appearing as a non-performing asset (NPA); or

ii. is classified as a willful defaulter by any bank; or

iii. is under investigation by a financial services regulator or by investigative agencies in India such as the Central Bureau of Investigation (CBI), Directorate of Enforcement ("ED") or Serious Frauds Investigation Office ("SFIO").

shall obtain a No Objection Certificate (NOC) from the lender bank, regulator or investigative agency, as the case may be, by making an application in writing to such bank or regulatory body or investigative agency concerned before making any financial commitment or undertaking any divestment under the OI Rules Or OI Regulations.

Given that this requirement is only for financial commitment and disinvestment, it seems to not be applicable for making OPI investments.

It is provided that if the bank, regulator or investigative authority, as the case may be, fails to furnish the NOC within 60 days from the receipt of application, an NOC may be presumed to have been obtained.

The No Objection Certificate issued under Rule 10 shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

Further, the OI Directions clarify that where an Indian entity has already issued a guarantee in accordance with the OI Rules before an investigation has begun or account is classified as an NPA/ willful defaulter and is subsequently required to honour such guarantee, such remittance will not constitute fresh financial commitment and hence NOC shall not be required.

Pricing Guidelines

Master Direction 24-25 for Overseas Investment has provided for valuation in pricing guidelines follows:

(1) The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions contained in rule 16 of OI Rules (providing for "arm length pricing"). With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, inter alia, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. The AD bank shall put in place a board approved policy within two months from the date of these directions..

(2) Such policy may also provide for scenarios where the valuation may not be insisted upon, such as (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction or (ii) price is readily available on a recognised stock exchange, etc. The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

METHOD OF FUNDING

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

(i) by remittance made through banking channels;

(ii) from funds held in an account maintained in accordance with the provisions of the Act;

(iii) by swap of securities;

(iv) by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

It is further provided in the OI Directions that:

a. Overseas investment by way of cash is not permitted.

b. In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015, an Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/ office outside India for making any overseas investment.

c. A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

d. Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

Obligations of person resident in India.– OI Regulation 9 specifies following obligation of a person resident in India w.r,t, ODI i.e.

(1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

(2) A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number or "UIN" from the Reserve Bank for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD:

Provided that where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) A person resident in India having ODI in a foreign entity, wherever applicable, shall realise and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

(5) A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity:

Provided that in case of an open-ended bid bond guarantee, it shall be converted into a close-ended guarantee not later than three months from the date of award of the contract.

Reporting requirements

The OI Regulations provide for various reporting requirements for FC and OPI including in case of disinvestment and restructuring. Reporting is very crucial as the OI Directions provide for prohibition on further FC or any outward remittance to continue until any delay in reporting is regularized with payment of Late Submission Fees ('LSF') for an amount and in the manner as provided in the OI Directions. LSF amount is levied per return and the maximum amount for LSF will be limited to 100% of amount involved in the delayed reporting. The erstwhile ODI regulations restricted only in case of non-filing of Form APR. The format of forms has been provided in the Master Directions on Reporting under the FEMA Act. Incomplete filing will be considered as non-submission. The option of LSF shall be available up to three years from the due date of reporting/submission under OI Regulations.

In case a person resident in India responsible for submitting the evidence of investment or filing any forms/ returns/reports, etc. as per OI Regulations/earlier corresponding regulations, neither makes such submission/ filing within the specified time nor makes such submission/filing along with LSF as provided in regulation 11 of OI Regulations, such person shall be liable for penal action under the provisions of FEMA, 1999.

As per the OI Regulations, all reporting by a person resident in India, as specified, shall be made through the

designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank. A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely –

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

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

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

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end.

In case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

Annual Performance Report (APR): A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an APR with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year. No APR shall be required where–

i. a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or

ii. a foreign entity is under liquidation.

Explanation.– For the purposes of this sub-regulation–

(a) the APR shall be based on the audited financial statements of the foreign entity:

Provided that where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable;

(b) in case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake in the foreign entity shall be required to submit APR and in case of holdings being equal, APR may be filed jointly by such persons;

(c) the person resident in India shall report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

Filing of Annual Return: An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and Information Management, Reserve Bank of India.

ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

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

Geographical Location of the business

- Infrastructure (ports, airports, storage, specific storage types – such as cold-storage, secure storage)
- Access (transportation of goods, materials and personnel)
- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce
- Availability of talent pool for productions (labour), services and management
- Risks: The outbreak of COVID-19 highlights the pitfalls of global interdependency and the challenge for global governance. Epidemics and pandemics do not just come and go, they impact the economy and society as well. One should consider threats to the organization due to pandemic and other risks such as earthquake, tsunami etc.

Economic Aspects

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

  A complete picture of the local, regional, and state tax environment must be obtained in order to make certain that the business can operate profitably. In several areas of the country, states have made changes to their tax structures, and it is important to understand how these changes negatively or positively impact a company's project.
- Incentives: Local, regional, and/or state economic development incentives available to help the company lower project costs. Incentives should never drive site selection decisions, but they are important to ensure the economic feasibility of the project.

Political Aspects

- Friendly country, MFN status
- Long-standing and established legislative precedents with companies going through regulatory recourse
- Their relations with nearing countries and neighbours and your country
- Regulatory environment: Impact of local, regional, and state governmental regulations on business and project. Critical issues such as building plan approvals, environmental permits, utility connection

approvals, and waste disposal permits can have a significant financial and timing impact on a company's project.

Social Aspects

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

Technological Aspects

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress.
- Power, communication, telecom – availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

Setting up of a Business in New Zealand

Regulator: New Zealand Companies Office

After choosing business name, business structure, apply online for registration with the Companies Office including IRD number application, registration for GST and New Zealand Business Number (NZBN). To file an online application to incorporate a company with the Company's office, you must have:

- A RealMe Login
- an online services account with the Companies Register.

Secure your business name

Whether you're new to being self-employed or in business, a small investment now will mean you won't lose your ability to market and protect your name while getting other things in order. Use our ONECheck tool as your starting point to check if the name is available for a business name, trademark, web domain, and social media.

i. **Register a domain name**: Get a web address. This is a low cost, quick and easy process. Entrepreneurs can visit Domain Name Commission's list of authorised registrars.

ii. **Reserve your company name:** To reserve a company name online, entrepreneurs can visit the New Zealand Companies Office Web site (www. companies.govt.nz). A new company's name must be unique and can be reserved for up to 20 working days with the Companies Office. To be incorporated under the Companies Act 1993, a company must have a name reserved by the Registrar of Companies, at least one share, at least one shareholder, at least one director, a registered office, and an address for service.

The applicant(s) can apply for company registration online by completing forms on company details and paying the registration fee.

To register the company online, you can either click on the link in the email sent, when your company name reservation is approved, or log in to your account or follow these steps:

1. Select 'My unfinished business'

2. Select 'My tasks'
3. Find the 'Complete Coy Application' task
4. Progress through each screen (Directors, Shareholders, Tax Registration), entering the requested information
5. Select how you want to pay your application fee
6. Select 'Review' to check the information you've provided and then 'Submit'.

When the application is processed, the founder(s) will receive a notification within a few minutes by email along with the appropriate director and shareholder consent forms, which are generated by the Companies Office. The applicant must then fax the signed director and shareholder consent forms within 20 working days, after which the application will expire. The certificate of incorporation will be issued via email in a few minutes when the last consent form is accepted.

Promoters can apply online for a company IRD (Inland Revenue Department) number and register for the GST (Good and Service Tax) at the same time as incorporating a company online with the New Zealand Companies Office. The list of the information needed when applying for a company IRD number and registering for GST is as follows:

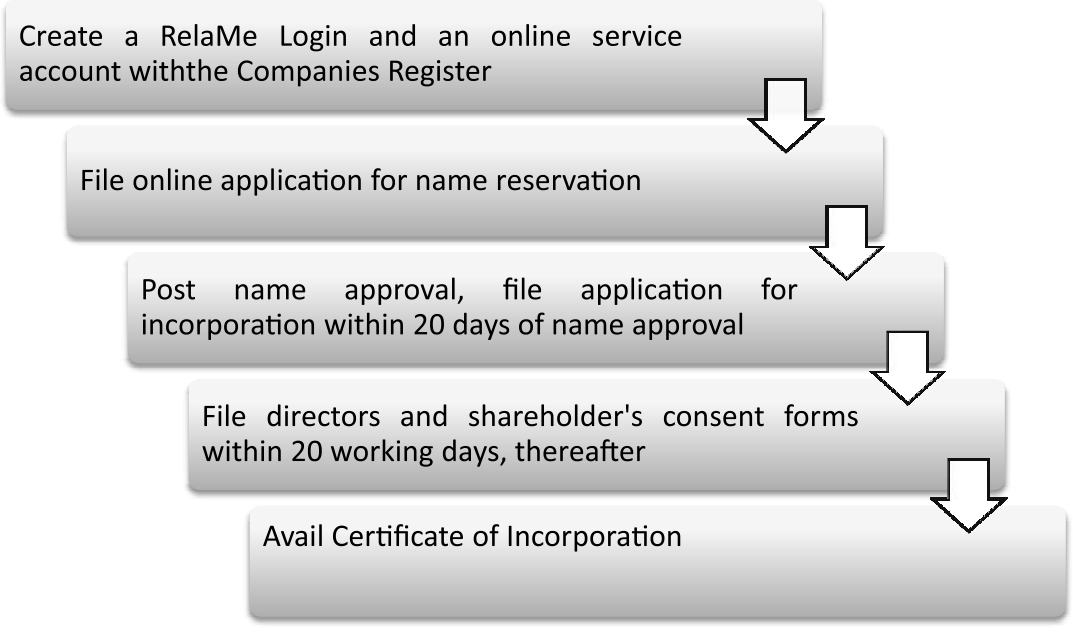
- Contact details
- The date the company will begin employing
- The number of employees and contractors (including the number of employees that will have a student loan)
- IRD number – The IRD number of each Director and all individual shareholders that are NZ residents, Main Business Activity, Place of Business and Postal Address, Trading Name of the company (if different from the Business Name), Company Contact details, a Business Industry Description and Code, and whether or not the Fringe Benefit Tax for employees is applicable.
- GST number – GST accounting method, frequency of filing returns, business activity code, details of how you would like refunds to be paid, whether or not the company will be making tax exempt supplies, Business Industry Description and Code, and whether or not the company will be making imports/ exports and ACC uses the business activity code to calculate levies for personal injury cover and residual claims *(www.businessdescription.co.nz).*
- The New Zealand Business Number (NZBN) is a unique identifier for a business in New Zealand. NZBN links to the information others need in order to work with the Company, like a trading name, phone number or email. An NZBN makes it easier to carry on the business because the same information doesn't need to be repeated when dealing with new clients or on occurrence of any new event. In case of a company, an NZBN is automatically issued. Sole traders, self-employed people or partnerships can register for an NZBN online and it's free of cost.

iii. **Check for trademarks:** Get an initial assessment report from the Intellectual Property Office (IPONZ) before you invest in applying for a registered trade mark. This can be done by applying online for a search and preliminary advice (SPA) report on the IPONZ website. It's low cost, easy and it will be received within five days. We can also search the trade mark register for free.

Before registering, make sure the business name has been given the green light from IPONZ SPA check.

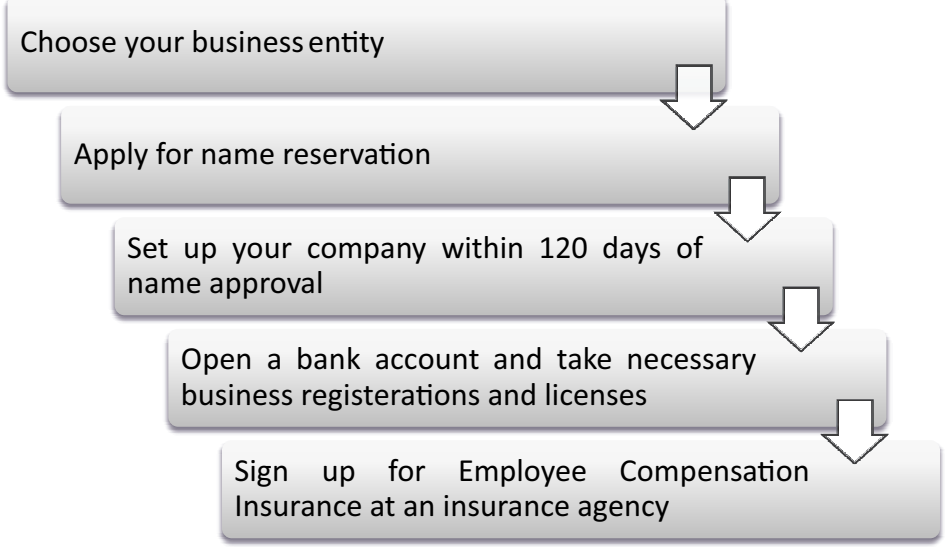
iv. **Regulatory Check:** Specific regulations might apply in the industry or region. For example, fair trading, consumer guarantees, privacy, health and safety, food licensing. Central and Local government regulations applicable to the business must be checked. At least one director must be a New Zealand resident, unless they are an Australian resident who is also a director of an Australian company.

Since July 1st 2008, it has been mandatory to file most documents with the Companies Office online. Starting in November 2014, clients had the ability to pay the incorporation prescribed fees using internet banking.



Setting up of Business in Singapore

Regulator: Accounting and Corporate Regulatory Authority (ACRA)



Guideline for choosing type of Business Entity

Entity type/ Description	Sole proprietor	Partnership or limited partnership	Limited liability partnership	Company
Definition	Owned by 1 person	Owned by 2 or more persons	Partnership where the partner's personal liability is limited	Separate legal entity from shareholders and directors
Ownership	Owned by 1 person	2 to 20 people for a partnership 2 or more for a limited partnership	2 or more	Varies based on entity type
Legal status	Not a separate legal entity from the owners	Not a separate legal entity from the partners	Separate legal entity from the partners	Separate legal entity from the owners and directors
Set up/ registration cost*	115 SGD for one year	115 SGD for one year	115SGD	315 SGD

**The registration cost includes government fees only and is subject to change after the publication of this article.*

Registration online with ACRA including company name search and filing the company incorporation and tax number (GST)

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore. Incorporation is done through Bizfile+, an electronic filing system.

BizFile+ is ACRA's online filing and information retrieval system. It enables the public to access a suite of over 300 electronic services ranging from the submission of statutory documents, and to retrieve and purchase information pertaining to business entities registered with ACRA. Currently, BizFile+ handles more than 1 million transactions each year. Since 2007, Bizfile platform (further enhanced to Bizfile+) has been providing one-stop business facilitation services to customers at the point of registration. These services include reserving domain names, goods and services tax (GST) registration, subscribing for the relevant e-newsletter and registering for e-service alerts on latest government procurement opportunities, activating Customs Account and application for a corporate bank account.

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application.

Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The lodger can proceed to register the business immediately after the name application is approved.

Once a name has been approved, it will be reserved for 120 days on payment of prescribed reservation fee.

As of 2 June 2017, every newly incorporated business receives a free copy of its Business Profile upon the successful filling up of the incorporation forms and paying the incorporation fee. The processing time is about 15 minutes from the time of successful submission of all documents and all information, and the registration fee payable is SGD 300. The ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the company together with the registration number of the company.

The registration with the Inland Revenue Authority of Singapore (IRAS) for the goods and services tax (GST) when (a) its annual taxable turnover exceeds SGD 1 million can be done using the same online forms.

Key Notes:

There are 7 types of companies which can be incorporated in Singapore. On submitting the company name application, the relevant company type must be specified. The available options are:

1. Exempt private company
2. Private company limited by shares
3. Public company limited by shares
4. Public company limited by guarantee
5. Unlimited private company
6. Unlimited exempt private company
7. Unlimited public company

The private limited company is governed by the Singapore Companies Act and must comply with its laws under ACRA and the Inland Revenue Authority of Singapore (IRAS). Designations include:

- Company name – Must be approved by the ACRA.
- Shareholders – Minimum of one.
- Directors – At least one director must reside in Singapore.
- Company Secretary – Also must be a Singapore resident.
- Paid-up capital – At least S$1
- Registered address – A physical office address is required

Business Structure	Key Features
Private Limited Company (Pte Ltd)	– Separate legal entity: can own property, sue/be sued – Limited liability for shareholders – Corporate tax rate of 17% with incentives – Perpetual succession
Exempt Private Company	– Same as Pte Ltd – Maximum of 20 shareholders – No corporate shareholders

Business Structure	Key Features
Public Company Limited by Shares	– Can raise capital from the public – No limit on number of shareholders – Typically listed on stock exchange
Public Company Limited by Guarantee	– Suitable for non-profits and charities – No shareholders; members guarantee liability – Profits reinvested into organizational activities
Foreign Subsidiary Company	– Independent legal entity – Greater operational flexibility – Subject to Singapore laws and tax
Foreign Branch Office	– Extension of parent company – Easier to set up – Not a separate legal entity
Representative Office	– Used for market research or liaison – Cannot engage in income-generating activities – No tax obligations

Sign up for Employee Compensation Insurance at an insurance agency:

Agency: Insurance Agency

Under Section 23(1) of the Work Injury Compensation Act (WICA), Chapter 354, of Singapore, every employer shall insure and maintain insurance under one or more approved policies with an insurer against all liabilities which the company may incur under the provisions of this Act in respect of any employee employed by the company unless the Minister, by notification in the Gazette, waives the requirement of such insurance in relation to any employer. The purchase of Workman Injury Compensation Insurance (WICI) has been incorporated into ACRA's online registration process as of November 2017. Business owners can now apply for WICI from NTUC Income (via ACRA's online Bizfile+ system) immediately after completing the online registration process. Time and cost may depend on the arrangement between the company and the insurance agency.

Work Injury Compensation Insurance (WICI) — Coverage Requirements in Singapore

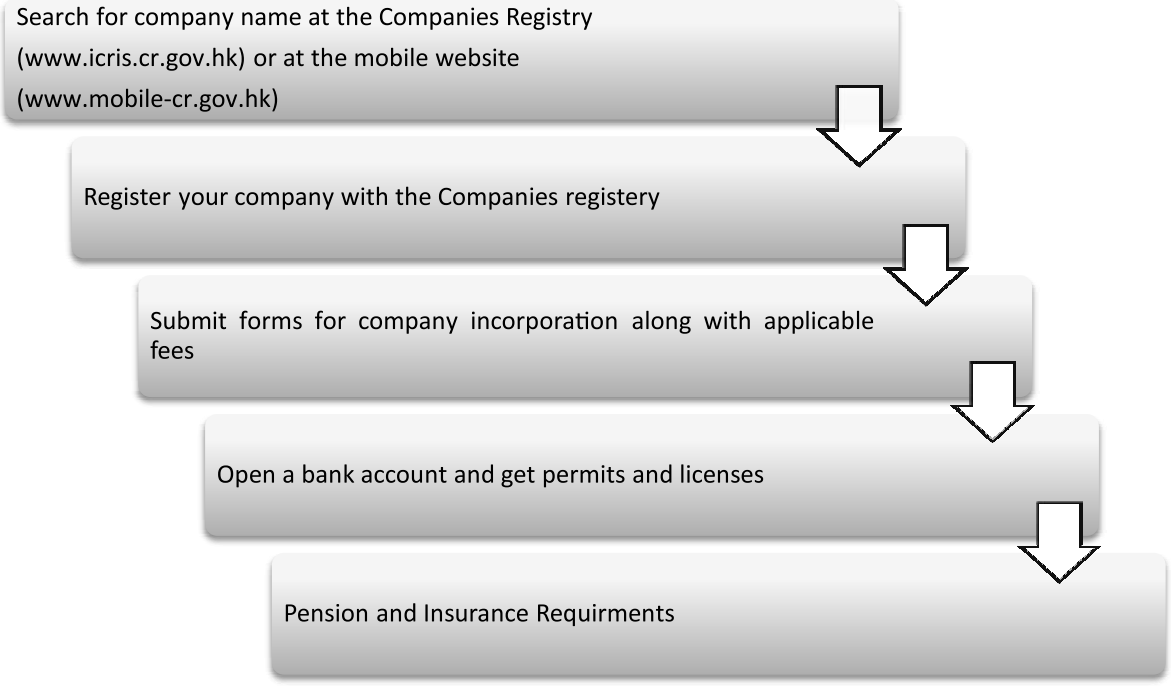
Coverage Type	Employee Category	Insurance Requirement	Employer Liability
Mandatory Coverage	Manual workers (any salary level)	☑ Required	☑ Employer liable under WICA
	Non-manual workers earning ≤ SGD 2,600/month	☑ Required	☑ Employer liable under WICA

Coverage Type	Employee Category	Insurance Requirement	Employer Liability
Optional Coverage	Non-manual workers earning > SGD 2,600/month	✗ Not mandatory	☑ Employer still liable under WICA

Compliance :

- Insurance must be purchased from MOM-approved insurers
- Coverage must be maintained throughout employment
- Failure to insure eligible employees may result in:
  - Fines up to SGD 10,000
  - Imprisonment up to 12 months
  - Or both

Setting up of a Business in Hong Kong SAR, China



Agency : Companies Registry

Choose a company name and obtain a certificate of incorporation and a business registration certificate

A company name (which may be in English, traditional Chinese or both) can be searched online free of charge at the Companies Registry (www.icris.cr.gov.hk) or at the mobile website (www.mobile-cr.gov.hk). When an application is delivered online at the e-Registry, the applicant will be informed of the acceptability of the company name before he/she proceeds with the payment process.

If there is no existing company registered with the name chosen by the applicant, a certificate of incorporation and a business registration certificate will be issued upon the filing of an incorporation form signed by the

founder member(s) (for companies limited by shares this is a Form NNC1), a copy of the articles of association and a Notice to Business Registration Office (IRBR1). The incorporation form contains comprehensive information on the address of the registered office and particulars of the first secretary and first directors of a company. Paper submissions for incorporation normally require approximately four working days for the certificates to be issued (excluding the day of submission of form NNC1).

With the implementation of the "e-Registry" in 2011, applicants can now complete the incorporation and business registration process by submitting electronic applications online to the Companies Registry (*www.eregistry.gov.hk*) or using the mobile application "CR eFiling". In straightforward cases, this enables registered users to complete the relevant procedures and download the electronic Certificate of Incorporation and Business Registration Certificate in less than a day. According to the performance pledge of the Companies Registry (at *www.cr.gov.hk/en/about/performance.htm*), the service standard for applications for registration of local companies which are submitted electronically is one hour.

At the moment of incorporation, the company will also be automatically registered with the Inland Revenue Department for registration for tax purposes.

Sign up Employee's Compensation Insurance and Mandatory Provident Fund (MPF) Schemes with a private company or a bank

Agency: Compensation Insurance and Mandatory Provident Fund (MPF) providers (banks/insurance firms)

Pursuant to the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) ("ECO"), an employer must take out insurance to cover liabilities for his employees (both full- and part-time) who experience accidents arising out of and in the course of employment, and resulting in injuries or fatalities.

In addition, under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), employers must enroll their regular employees (i.e. employees who are at least 18 but under 65 years of age and employed for 60 days or more) and where applicable, their casual employees (i.e. employees are at least 18 but under 65 years of age and employed in the construction or catering industry on a day-to-day basis or for a fixed period of less than 60 days) in an MPF scheme administered by an MPF approved trustee in Hong Kong and make MPF contributions accordingly. Scheme enrollment can be arranged through MPF registered intermediaries, which include banks and insurance companies. This requirement does not apply for persons exempted from joining a Mandatory Provident Fund ("MPF") scheme.

The newly incorporated company can apply for setting up the Employee's Compensation Insurance and MPF Scheme anytime after incorporation.

The procedure can be done online via various private insurance/MPF providers' web portals. However, most businesses prefer to have advisory meeting with insurance/MPF provider rather than reviewing all information online by themselves.

Setting up of Business in New York City

A limited liability company (LLC) is a hybrid, combining the most sought after characteristics of a corporation (credibility and limited liability) with those of a partnership (flexibility and pass-through taxation). Plus, an LLC is not saddled with many of the reporting and documentation formalities that a corporation faces. For example, an LLC does not have to hold regular, annual meetings. These characteristics make it an extremely popular business structure.



Agency: New York State Department of State, Division of Corporations

1. **Reserve the company's business name (optional), file the company's articles of organization and adopt the company's operating agreement**

   The company founders may reserve the name of the company with the New York State Department of State Division of Corporations prior to filing the company's articles of organization. To reserve a name, the founders should file an application for Reservation of Name and pay a fee of USD 20. The name reservation can be done online at the following: http://www.dos.ny.gov/corps/llccorp.html. The application holds the name for 60 days and may be extended twice for additional periods of 60 days. The fee to extend the reservation of name is also USD 20. The company name must contain the words "Limited Liability Company," "L.L.C.," or "LLC."

   The founders must file the company's articles of organization with the New York Department of State Division of Corporations. Forms can be purchased at a legal supply store or downloaded from the department's website. The application processing time is about seven business days. However, optional expedited processing is available according to the following fee schedule:

   - 2-hour turnaround: USD 150 (additional fee)
   - Same-day service: USD 75 (additional fee)
   - 24-hour turnaround: USD 25 (additional fee)

   New York State requires an LLC to have a written operating agreement but such agreement does not have to be filed with the state. The business members may enter into an operating agreement before, at the time of, or within 90 days after the filing of the articles of organization. Regardless of when

such an agreement was entered into, it may be effective upon the formation of the LLC or at a later date specified in the operating agreement (provided, however, that under no circumstances shall an operating agreement become effective prior to the formation of such company). Section 203(e) of NY LLC Law contains specific requirements as to what is required to be in the articles of incorporation.

2. Apply for federal identification number (EIN) for tax and employer purposes

Agency: US Internal Revenue Service

The company needs to apply for a federal Employer Identification Number ("EIN"), which is used for tax and employer purposes. Founders must file IRS Form SS-4 (available from the US Internal Revenue Service).

It is possible to apply online at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Employer-ID-Numbers-EINs (processing time: immediate), by telephone (processing time: immediate), by fax (processing time: 4 business days), or by mail (processing time: 4 weeks). If applicants apply online, they do not need fill out IRS Form SS-4.

3. Register to collect state sales tax

Agency: New York State Department of Taxation and Finance

Businesses that "sell taxable tangible personal property, perform taxable services, receive amusement charges, or operate a hotel or motel, and restaurants, taverns, or other establishments that sell food and drink" must register as a sales tax vendor and obtain a Certificate of Authority, as well as those businesses that buy and sell for resale (for example, a wholesale distributor).

To register, the founders must file Form DTF-17 or register online at the website of the New York State Department of Taxation and Finance (http://www.tax.ny.gov/) After the company has registered, it generally must file quarterly sales and use tax returns regardless of whether it has started or done any business.

If the company expects to make taxable sales in the State of New York, it must register with the Tax Department at least 20 days before it begins business. New York State will then send to the company a Certificate of Authority which must be displayed at your place of business at all times.

4. Register as an employer with the Unemployment Insurance Division at the State Labor Department

Agency: New York State Department of Labor

Founders must register as an employer by completing Form NYS-100 to determine whether or not the company is liable under the New York State Unemployment Insurance Law. If the company is determined liable, the Department of Labor will send the company quarterly combined withholding, wage reporting and unemployment insurance returns for reporting wages paid to the company's employees. General business employers may register online at the New York State Department of Labor website (https://applications.labor.ny.gov/eRegWeb/registerEmployer/uiEPMWelcomeMain.faces) or by completing Form NYS-100 and submitting it by mail or fax.

5. Arrange for workers' compensation and disability insurance

Agency: New York State Workers' Compensation Board

As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy from an authorized private insurance carrier or through the NYS Insurance Fund (or by self- insurance for workers' compensation).

The company's federal Employer Identification Number ("EIN") is the company's primary identification with respect to communications with the Workers' Compensation Board or by becoming a member of a group self- insurer authorized by the board. The company must give its EIN to its insurance carrier when obtaining or maintaining its workers' compensation or disability coverage. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.

Each "covered employer" must post and maintain at the place of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees. An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer" subject to the Disability Benefits Law after the expiration of four weeks following the 30th day of such employment (WCL §202). These 30 days of employment need not be consecutive days.

6. Arrange for publication and submit certificate and affidavits of publication

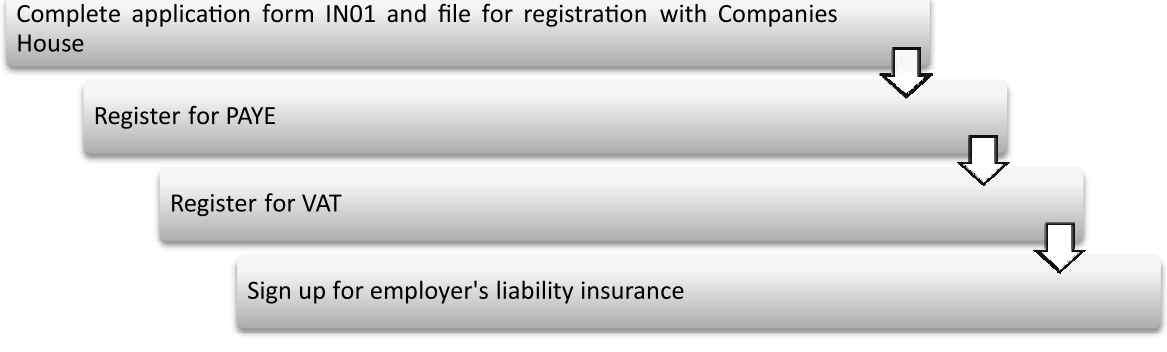
Agency: New York State Department of State, Division of Corporations

Section 206 of the New York State Limited Liability Company Law requires that within 120 days (after the effectiveness of the initial articles of organization), a limited liability company (LLC) must publish in two newspapers a copy of the Articles of Organization or a notice related to the formation of the LLC once a week for six successive weeks. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located, as stated in the Articles of Organization. One newspaper must be "printed daily" and the other "printed weekly".

The State of New York requires that within 120 days after the effectiveness of the Articles of Organization, a Limited Liability Company (LLC) must publish a notice of its formation once a week for six consecutive weeks in two newspapers — one daily and one weekly — designated by the county clerk of the county listed in the Articles of Organization as the LLC's office location. After publication, each newspaper will issue an Affidavit of Publication. These affidavits must be submitted along with a Certificate of Publication to the New York Department of State, Division of Corporations, located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The filing fee is USD 50.

To identify the appropriate county clerk for publication purposes, entrepreneurs should refer to the updated New York State County Directory available at: https://www.ny.gov/counties

Setting up of a Business in United Kingdom



Agency : Companies House

Complete application form IN01 and file for registration with Companies House

Founders of the Company have the option to check for unique company name and file for registration

themselves, or to retain incorporation professionals to do so. The option to complete registration is through paper application or electronically.

In case the company chooses to file for incorporation itself online, model articles of incorporation and company memorandum are generated automatically by the registration website www.gov.uk/register-a-company-online. In addition the above forms, all companies must provide the following information to the relevant Registrar of Companies (i.e., for England and Wales, Scotland, or Northern Ireland):

- Statement of compliance with all requirements of the 2006 Companies Act;
- Application form IN01, which includes:
  - proposed company name;
  - country of registration office (e.g. England and Wales (or Wales), Scotland or Northern Ireland);
  - Whether the liability of the members is to be limited and if so whether by shares or guarantee; and;
  - Whether the company is public or private;
- In the case of a company with a share capital, the application must also include a statement of the capital and initial shareholdings, including the name and address of the subscriber.
- A statement of the proposed officers, being the first director and company secretary (unless in the case of a private company, where the appointment of a company secretary is optional);
- A statement of the intended registered office address.

On completing the online form if the company name provided cannot be used the website will alert you to this and you have the option of selecting another name. Fees for filing incorporation documents are as follows: GBP 12 for a Web filed incorporation and GBP 40 for paper filers (or GBP 100 for a same day service). The standard digital registration fee through a third party agent is GBP 10 (or GBP 30 for a same day service). There is no requirement for a company to use a third party agent. Third party agents may charge additional fees as well as the standard registration fee.

In case the company chooses to retain incorporation agents to file for registration, in addition to the above documents, the application file must include the agents' name and address. Note that in case the company wants to amend model articles of association or company memorandum it cannot file for registration online via www.gov. uk/register-a-company-online. Instead, the company must use professionals to compose incorporation documents and submit them via specialized software to Companies House.

From 30 June 2016, new companies have to provide their People with Significant Control information as part of the incorporation process. The data on beneficial ownership will be accessible and searchable from the database of Companies House.

Register for PAYE

Agency: HMRC

The company must contact the HMRC to set up a contribution scheme for national insurance and pay-as-you-earn (PAYE) tax, which deducts tax from employee wages or salary. The company will be issued with an activation PIN within 5 business days – typically less - and will have to activate this PIN within 28 days (or else request a new PIN). The company will use the PIN to register and enroll online. For security reasons, a check is run on the data provided. A small percentage of registrations who fail the security check can take longer. Otherwise, activation is instant.

Since 6 April 2013, companies have to report their PAYE in real time. This means that companies must either report online or require their accountants to submit reports every time they pay their employees.

Register for VAT

Agency: HMRC

A business will need to register for VAT if its taxable goods and services supplied within the UK for the previous 12 months is more than the current registration threshold of GBP 85,000 or the business expects it to go over that figure in the next 30 days alone, it must register for VAT. However, the business may also voluntarily choose to register for VAT if its VAT taxable goods fall under the GBP 85,000 threshold.

Most businesses, including Limited Companies, can register for VAT account online at: *https://online.hmrc.gov.uk/* registration or send paper forms through the post. Most applications for VAT registration can be completed online but there are some circumstances where a business has to apply by post. To register online for VAT or use other VAT online services, a business will first need to sign up for HMRC Online Services or the Government Gateway.

Sign up for employer's liability insurance

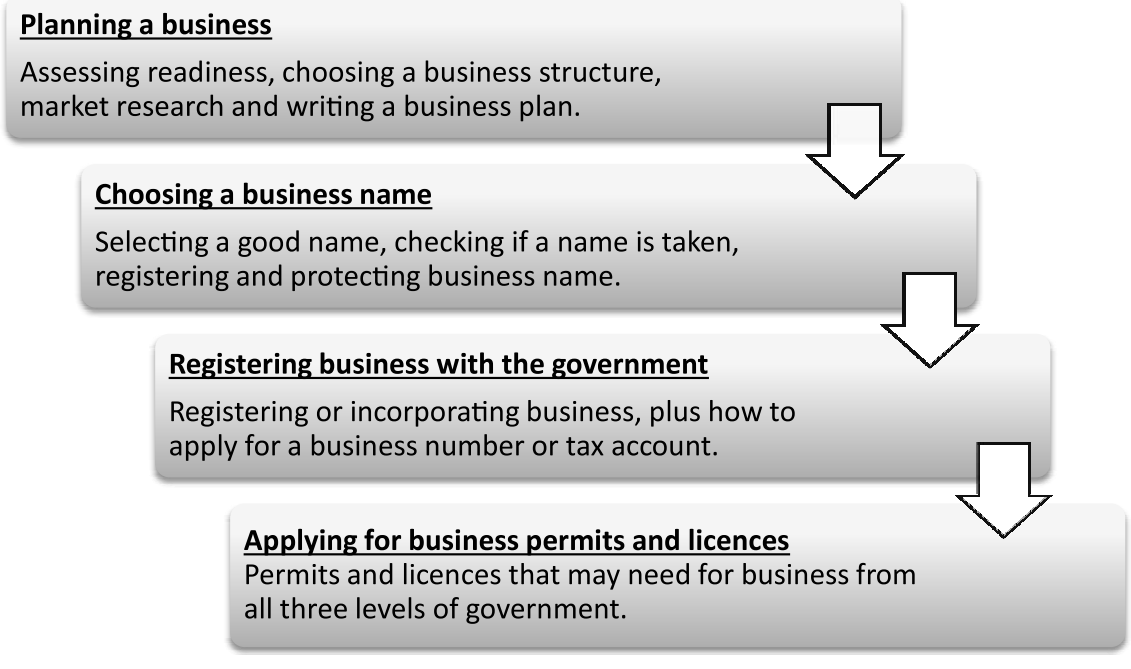
Agency: Insurance company

The Employers' Liability (Compulsory Insurance) Act of 1969 requires all employers in the United Kingdom to maintain employers' liability insurance from an approved insurance company. The minimum legal requirement for employers' liability insurance is a limit of indemnity of GBP 5,000,000. In addition, a fine of GBP 2,500 per day can be imposed if employer's liability insurance is not taken out.

The Employers' Liability (Compulsory Insurance) Act of 1969 requires that proof of insurance be posted at the workplace. Since October 1, 2008, it is possible to display this information electronically, although a company that wishes to do this will need to ensure that its employees know how and where to find the certificate and have reasonable access to it.

Setting up of a Business in Canada

Following are the steps involved in setting up of business in Canada:



Setting up of a Business in Australia

To run the business in Australia, one need to register the business. This makes sure that business gets taxed at the right rate, avoids penalties and protects brand and ideas. Following are the steps in brief for setting up of business in Australia:

Step	Description	Agency
1. Australian Business Number (ABN)	A unique 11-digit identifier used by customers, suppliers, and the ATO. Free to register.	Australian Business Register (ABR)
2. Business Name Registration	Distinguishes your business from others. Required unless trading under your own legal name.	Australian Securities & Investments Commission (ASIC)
3. Tax Registrations	Includes GST, PAYG, and other taxes depending on business type.	Australian Taxation Office (ATO)
4. Licences and Permits	Vary by industry and location (e.g., food, construction, retail).	Local councils, state/territory regulators
5. Company Registration	If choosing a company structure, register as a separate legal entity.	ASIC
6. Trade Mark Protection	Optional but recommended to protect brand and business name.	IP Australia

LESSON ROUND UP

- Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions.
- Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route
- All transactions relating to a JV / WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian Party.
- The mode of payment by a person resident in India for making overseas investment shall be in accordance with Regulation 8 of the OI Regulations.
- The Department of Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulation of the policy of the Government on Foreign Direct Investment (FDI).

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the different routes of overseas investment?
2. What are the major issues in choosing location outside India?
3. Explain how the political issue plays a vital role in taking the foreign investment decisions?

LIST OF FURTHER READINGS
• Bare Act - The Foreign Exchange Management Act, 1999 • FEM (Overseas Investment) Rules, 2022 • FEM (Overseas Investment) Regulations, 2022 • FED Master Direction No.15/2024-25

OTHER REFERENCES (Including Websites/ Video Links)
• https://www.indiacode.nic.in/ • https://www.business.govt.nz • https://www.acra.gov.sg/how-to-guides/setting-up-a-local-company • https://www.rbi.org.in/ • https://www.finmin.nic.in

Identifying Laws applicable to various Industries and their Initial Compliances

Lesson 12

KEY CONCEPTS

■ Business structure ■ Private Company ■ Public Company ■ Section 8 Company ■ SPICe+ ■ Business Licenses ■ Industrial and Labour Laws ■ Contract Management

Learning Objectives

To understand:

- Laws Applicable to Various Industries
- Laws Applicable to the Setting up of Various Industries
- Details of their Initial Compliances

Lesson Outline

- Introduction
- Formalizing and Deciding the Business Structure
- Parameters for Deciding Business Structure
- Formation of a Company including documentation
- Applying for Business Licenses
- Adherence to Laws relating to Intellectual Property
- Ensuring Effective Contract Management
- Laws relating to Industries in specific
- Lesson Round-Up
- Test Yourself

COMPLIANCE OF INDUSTRY SPECIFIC LAWS APPLICABLE TO AN ENTITY AT THE TIME OF SETTINGUP OF THE ENTERPRISE

Introduction

As of 2025, India stands three years into its transformative journey through Amrit Kaal—the 25-year period leading to the centenary of independence in 2047. This era marks a collective national mission to evolve into a fully developed, inclusive, and globally competitive nation. The Government of India's vision for 2047 encompasses economic prosperity, social equity, environmental sustainability, and tech-driven governance. Citizens are called to rise to the occasion, embracing their duties with full commitment and purpose. From digital innovation and green growth to global leadership and institutional reform, Amrit Kaal is not just a policy framework—it is a generational opportunity to shape India's destiny with vision, vigor, and unity.

By 2025, India has firmly established itself as a dynamic and influential emerging market, building on the transformative momentum of Vision New India 2022. This strategic shift has accelerated the nation's rise as one of the world's largest and fastest-growing economies, driven by robust reforms in infrastructure, digital innovation, entrepreneurship, and global trade. The achievements of the past three years have laid a strong foundation for the ongoing Amrit Kaal—a 25-year journey toward becoming a developed nation by 2047. India's economic trajectory is now intertwined with its commitment to inclusive growth, sustainability, and citizen-led progress, positioning the country as a key architect of the global future. Few of the major flagships including Make in India" coupled with "Ease of Doing Business in India" (EoDB), "Skill India", "Digital India", "Atmanirbhar Bharat", etc., were started to build the interest and ease among various domestic and overseas stake holders to set up and advance entrepreneurship in India.

Among the chosen 190 countries, India ranked 63rd in Ease of Doing Business 2020 according to the World Bank Report. In 2014, the Government of India launched an ambitious program of regulatory reforms aimed at making it easier to do business in India. The program represents a great deal of effort to create a more business-friendly environment. India as one of the top 10 improvers, for the 3rd time in a row, with an improvement of 67 ranks in 3 years.

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

Indeed, when the entrance and advancement to Indian business market would be of ultimate fortune, there are various laws which need to be abided for successfully setting up and taking forward an enterprise in India.

Certain concepts taught in Lesson 1 and Lesson 2 are recapitulated below to read the same in sync with industries specific laws. A quick understanding of setting up the enterprise along with the laws applicable to them could be learnt at below:

Formalizing and Deciding the Business Structure

The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be. For example, if it's a company, it would be governed under Companies Act, 2013; Limited Liability Partnership is governed by the LLP Act 2008; in case of Partnership, the Partnership Act, 1932 would be applicable; if it is an MSME, the MSME Act, 2006 would come into picture. It shows that there is a plethora of laws which need to be complied with the respective form of businesses.

Therefore, the first thing for starting any business is to determine the nature and type of the business. Founders need to incorporate the business as a specific business type - sole proprietorship, private limited, public limited, partnership, limited liability partnership etc. It is very essential to have this clarity at the very beginning as this will be integral to the business' overall vision and goals, both short term and long term.

Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before they are incorporated or registered.

Here is a quick look into the legal implications for the major business types in India

Legal Details	***Business Types***				
	Proprietorship	***Partnership***	***Limited Liability Partnership (LLP)***	***Public/Private Limited Company***	***One Person Company***
Registration	No formal registration required	Registration is optional	Has to be registered with the Ministry of Corporate Affairs under the LLP Act 2008	Has to be registered with the Ministry of Corporate Affairs under the Companies Act 2013	Has to be registered with the Ministry of Corporate Affairs under the Companies Act, 2013
Legal Status	Not recognised as a separate entity and promoter is personally responsible for all liabilities	Not recognised as a separate entity and promoters are personally responsible for all liabilities	Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP	Is a separate legal entity. The promoters of the company are not personally liable towards the company	Is a separate legal entity. The promoter of the company is not personally liable towards the company
Member Liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company.	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company
Number of Members Required	Can only have one person	Minimum of two persons required to start a Partnership (Max: 50)	Minimum of two persons required to start a LLP (Max: No limit)	Minimum of two persons required to start a Private Limited Company (Max: 200) and seven persons for a public limited company (No Max limit)	One person is required to start a One Person Company. Appointment of nominee is mandatory

Legal Details	*Business Types*				
	Proprietorship	***Partnership***	***Limited Liability Partnership (LLP)***	***Public/Private Limited Company***	***One Person Company***
Transfer-ability	Not transferable	Not transferable	Ownership can be transferred	Ownership can be transferred by means of share transfer	Ownership can be transferred by means of share transfer.
Taxation	Taxed as individual, based on total income of proprietor	Partnership profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable	LLP profits are taxed under Income Tax Act, 1961 plus surcharge and cess as applicable.	Profits of both Public and Private Limited Company are taxed under Income Tax Act, 1961 plus surcharge and cess as applicable	Profits of One Person Company are taxed as per the provisions of the Income Tax Act, 1961.
Annual / Statutory Meetings	No requirement for annual / statutory meetings	No requirement for annual / statutory meetings	No requirement for annual / statutory meetings	Board and General Meetings should be conducted periodically, as the case maybe	Board Meetings should be conducted twice a year
Annual Filings	No requirement to file annual report with the Registrar of Companies. Income tax return to be filed on the income of the proprietorship	No requirement to file annual report with the Registrar of Companies. Income tax return to be filed for the partnership	To file Statement of Accounts & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually	To file Balance Sheet, Profit and Loss and Annual Return with the Registrar every year. Tax returns must also be filed annually	To file Balance Sheet, Profit and Loss and Annual Return with the Registrar every year. Tax returns must also be filed annually
Legal Details	Proprietorship	Partnership	Limited Liability Partnership (LLP)	Public/Private Limited Company	One Person Company

Legal Details	*Business Types*				
	Proprietorship	***Partnership***	***Limited Liability Partnership (LLP)***	***Public/Private Limited Company***	***One Person Company***
Existence or Survivability	Proprietorship existence is dependent on proprietor	Partnership existence is dependent on partners. Can be dissolved at will or upon on the death of partner(s)	Existence not dependent on partners. Can be dissolved voluntarily or by order of the Company Law Board	Existence not dependent on directors or shareholders. Can be dissolved voluntarily or by Regulatory Authorities	Existence not dependent on directors or shareholder. Can be dissolved voluntarily or by Regulatory Authorities
Foreign Ownership	Foreigners are not allowed to be sole proprietors	Foreigners are not allowed to be part of a partnership	Foreigners are allowed in invest with/ without the approval of the Reserve Bank of India (RBI) and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are allowed to invest with/ without the approval of RBI and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are not allowed to be part of OPC

India is an emerging market with wide scope and opportunities for both Indian and foreign investors. The Government of India offers entrepreneurial friendly policies which makes invasion and growth of businesses in India easier. Before starting a business, it is very important to prepare a blueprint of the business. Other business structures are as follows:

Section 8 Company

A Section 8 Company, also called as a Non-profit Company, can be incorporated under the provisions of the Companies Act, 2013 having the status of limited company without the addition to its name of the word “Limited” or “Private Limited” for the purpose of promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and the Company shall use its profits or other income in promoting its objects only and prohibit the payment of any dividend to its members as well.

Section 8 company shall enjoy all the privileges and be subject to all the obligations of limited companies. A firm may also be a member of section 8 company.

Eligibility to apply for Section 8 Company License

An individual or an association of individuals are eligible to be registered as Section 8 Company if it has below-mentioned objectives. The objectives must be confirmed to the satisfaction of the Central Government.

- When the company intends to promote science, commerce, education, art, sports, research, religion, charity, social welfare, protection of the environment or alike other objectives;
- When the company holds an intention to invest all the profits (if any) or any other income generated after incorporation in the promotion of such objects only;
- When the company does not intend to pay any dividend to its members;
- Any failure to meet the prescribed norms formulated by the Central Government may lead to the closure of the Company on the orders of the Central Government.

The Companies registered under the Section 8 of Companies Act, 2013 enjoy the following advantages:

- *Access to Tax benefits*: Since Section 8 companies are charitable institutions, they have access to the various exemptions available under the Income Tax Act. Section 80G of the Income Tax Act renders plenty of tax-related benefits to these companies.
- *Zero Stamp Duty*: The Section 8 Companies are not liable to pay stamp duty on the Memorandum of Association (MOA) and Articles of Association (AOA), unlike other entities incorporated under the Companies Act, 2013.
- *Minimal share capital*: Unlike private limited, public limited, or OPC, a Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company.
- *Exempted from suffix/prefix of name*: Section 8 companies do not have the compulsion to affix the term like Limited or Private Limited in their name. These entities are registered with limited liability.
- *Separate legal entity*: Section 8 company possesses a distinct legal status which implies that entity's existence is independent of its members. The section 8 entity has perpetual existence.
- *Improved Credibility*: The flexible and transparent constitutional framework of Section 8 companies allows them to garner better credibility than other types of NGOs such as Society and trust.

Reliance Foundation, Infosys Foundation, TATA Foundation, Reliance Research Institute are some commendable examples of successful Section 8 companies registered in India.

Exemptions Granted to section 8 companies

- **General Meetings:** The Annual General Meetings (AGM) for the Companies can be convened after the short notice period of 14 days under section 101 of the Companies Act, 2013.
- **Minutes of the Meeting:** Recording of minutes of General Meetings, Board Meeting and other resolutions is not applicable. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.
- **Audited Financial Statements:** Copies of the audited financial statements and documents can be sent 14 days to the members instead of 21 days (SS-1).

- **Directorship:** The maximum limit of 15 directors and appointment of more than 15 directors by passing special resolution are not applicable to Section 8 Company. (Sec 149)
- **Appointment of Independent Director:** There is no requirement to appoint an independent director for Section 8 Company. (Sec 149)
- **Holding of Board Meetings:** The companies are required to hold one Board Meeting within six months. As the companies have to keep four board meetings annually will not apply.
- **Constitution of nomination and remuneration committee and related compliances:** Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee and nor a Stakeholders Relationship Committee.
- **No appointment of Company Secretary**: As per the new notification, they do not have to appoint a company secretary.
- **Power of Board to borrow, invest and grant loans :** Matters referred to in clause (d), (e) and (f) of section 179(3) may be decided by the Board by circulation instead of at a meeting i.e. instead of requirement of resolution passed at meeting of Board of Directors, it can be decided by Board by a resolution by circulation in case of exercising power d) to borrow monies; (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans;

Exemptions Granted to section 8 companies

General Meetings at shorter notice period
Recording of Minutes of the Meeting not required unless Articles states so
Audited Financial Statements can be sent before14 days to the members
No maximum limit of 15 directors
No Appointment of Independent Director
One Board Meeting within six months
No appointment of Company Secretary
Power of Board to borrow, invest and grant loans can be exercised by a resolution by circulation

PARAMETERS FOR DECIDING BUSINESS STRUCTURE

The business structure could be a decisive element in ensuring the success of the organization. Selecting the right structure from various structures can be an intimidating task for anyone but the clarity about the goal and

scale of business ease out the process to a considerable extend. The parameters for deciding the business structure are listed below:



- **Control & Management:** Single Business Owners who has the ownership of all the investments should rather go for a One Person Company. However, entrepreneurs with 2 or more proposed owners/directors looking to attract more investments into the firm should rather go for an LLP or a Public / Private Limited Company.
- **Capital Investments:** If you wish to obtain funds from an outside entity, such as an investor, bank, or venture capitalist, you must opt for an authentic business model such as private limited company. Unlike sole proprietorships, Corporations don't necessarily encounter any complication while raising funds from an outside source.

  Also, bigger companies have the liberty to escalate funds by selling shares of stock whereas, sole proprietors can only raise funds via their personal accounts or by taking on partners in case of partnership. An LLP can encounter identical issues, although, as its own entity, it is not always required for the owner to utilize their personal assets or credit.
- **Liability Threshold & Personal Risk:** Owners would want to safeguard their risk under financial pressure. The right business structure could limit exposure to such risks. In the case of partnerships, the partner shares the responsibility to confront risk individually. Certain business structures such as HUF, Sole Proprietors and Partnerships have unlimited liability. Therefore, in case there is any default in the repayment of loans, the money will be recovered from the members or partners in profit sharing ratios. In these cases, the risk to the personal assets of the owners is high.

  Meanwhile, the business models like LLP & Company provide comprehensive protection to the owner's liability with a few exceptions. Furthermore, one can also opt for a One Person Company if he/she wishes to mitigate the personal risk to a larger extend.

- **Tax Obligation:** A tax obligation for an LLP owner is more or less equal to the sole proprietor. The income generated from the business is considered personal income and taxed accordingly.

  Small business owners do not wish to confront double taxation in the early stages. The LLP structure prevents that mishap and allows the owner to reap more income. Individuals in a partnership claim their respective profits as a personal income.

  A corporation addresses their tax liability each year, paying taxes on profits after deducting the expenses and payroll. If you pay yourself from the company, you will be liable to pay personal taxes such as for medical care and social security, on your personal return.

- **Licenses, Permits, & Regulations:** Apart from getting legal registration for the business, specific permits and licenses may be required to obtain to operate. Depending on the type of activities and business nature, it may require to be licensed at the local, state, and central levels.

  States imposed distinctive requirements for different business models. Based on where the business is established, there could be different prerequisites at the municipal level as well. There is no such thing as "generalized structure", so the business must be observant of what applies to them. Liability, tax structure, and industry regulations are the few key parameters that one has to take into account before opting for a business structure.

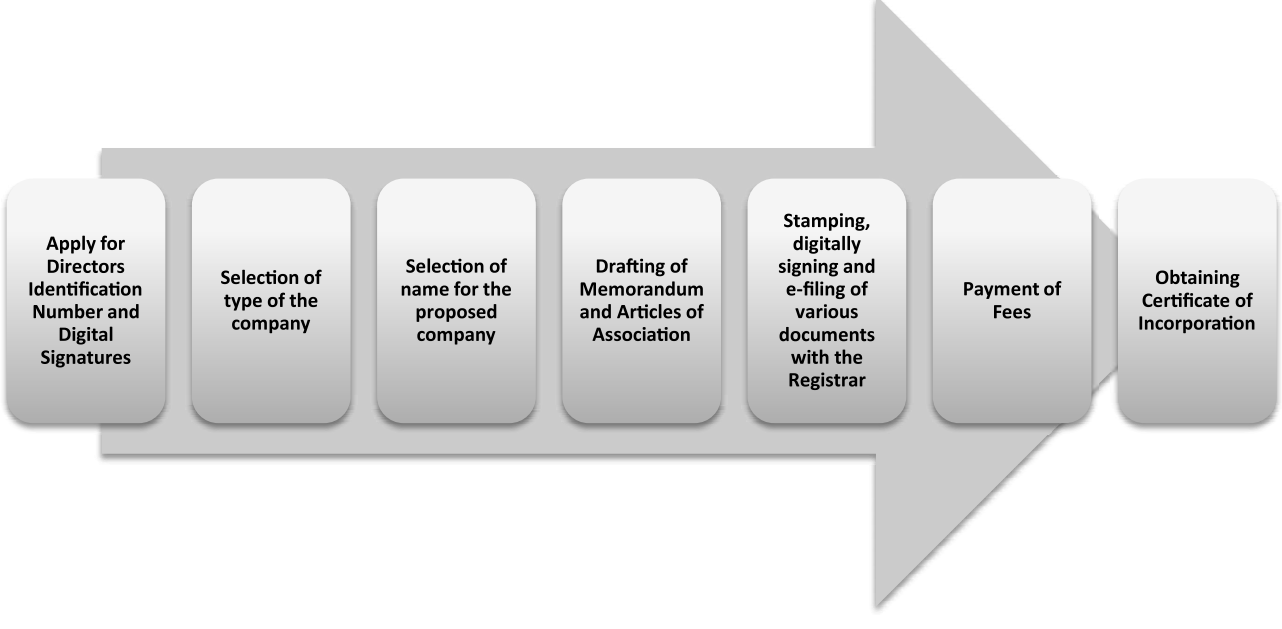
- **Attracting Investors:** Having an unregistered business structure can be a hindering obstacle to attract an investor to raise some capital for the business. Legally established business structures like OPC, Public Company, LLP etc. are much more likely to get the vote confidence from investors firm.

Among others, one important form of business is the Company which is governed under the Companies Act, 2013. The procedure for setting up an enterprise in the form of company could be seen as below:

FORMATION OF A COMPANY

Company registration is also referred to as incorporation of company or formation of a business. Registering the company makes it a distinguished entity and gives legal existence. The company registration process in India is done under the Ministry of Corporate Affairs.

It is crucial to be well informed by the registration process and a step-by-step guide to the company registration process in India is given below:



(i) Apply for Director Identification Number (DIN)

The first step towards the company registration process in India begins by obtaining the unique identification number. According to the Companies Amendment Act 2006, all directors in a company need to acquire their Director Identification Number (DIN). DIN is a unique 8-digit number that is issued under section 153 of the Companies Act. The requirements for DIN include full name, father's name, date of birth, identity proof, address with proof, PAN card copy and two photographs of all the directors proposed.

The application form is available online on the official website of the Ministry of Corporate Affairs (MCA Website) as the DIN-1 Form. The DIN-1 Form must be duly filled and uploaded after paying the applicable fees.

(ii) Apply for Digital Signature Certificate (DSC)

The authenticity of the documents and information provided in the DIN-1 Form can only be assured by getting a valid digital signature on all the documents submitted in the e-filing process.

The company registration process in India requires every business to acquire a Digital Signature Certificate (DSC) to ensure a secure way to get the documents submitted electronically. The requisites for application of digital signature includes proposed directors' full name, father's name, date of birth, address with proof, PAN card copy, identity proof and a photograph.

A DSC is distinguished for every business entity and should not be shared by businesses. Normally this digital certification is valid for a period of one or two years, and after expiry, it should be renewed by the Controller of Certification Agencies (CCA) again.

(iii) Filing for New User Registration

It is important to get registered on the MCA portal. A user account needs to be created for filing an e-Form carrying out different transactions and paying the prescribed fees. The Ministry of Corporate Affairs does not charge any fee for creating an account.

(iv) Application for Company Name

The proposed company name should be unique and descriptive of the products and services offered by the business. It provides them with a distinguished entity from their competitors in the same field.

The Ministry of Corporate Affairs (MCA) has a RUN (Reserve Unique Name) web service for incorporating a company. However, this service can be used only once. Due to a similarity in names or failure to abide by the Companies Incorporation Rules, once rejected, RUN cannot be re-used.

Hence, the proposed name must be unique and fulfils all the guidelines prescribed. In case of rejection, the applicant must re-file another RUN form after paying the prescribed fees.

(v) Filing for Charter Documents

In a company registration process, the applicants are required to create charter documents like Memorandum of Association (MOA) and Articles of Association (AOA).

Charter Documents of a Company

Before the registration of the company under the Companies Act 2013, the company should comply with the various charter documents made essential under the concerned law. These are:

Memorandum of Association

The MoA sets out the objects for which the company is proposed to be incorporated in the manner provided hereunder:

- The first and foremost clause in MoA shall be the name of the proposed company suffixed with the words limited or private limited, as the case may be;
- The second is the Registered Office Clause, stating the place where the registered office of the company shall be situated;
- The third clause contains the main objects for which the company is going to be formed / incorporated;
- The MoA binds the area of operation of the company in respect to the objects mentioned therein and any decision or actions taken in contravention of the MoA shall be void. A company cannot run any business contrary to the main objects mentioned in their MoA.

The MoA and AoA of a company can be modified post incorporation in accordance with the applicable provisions of the Companies Act.

Articles of Association

The articles of a company contain regulations for the management of the company. This document is confined to the applicability of the provisions of the Companies Act on private limited company or public limited company, as the case may be.

The Constitutional documents of the Company should be prepared diligently as in many cases, the authorization from Memorandum and Articles are required.

Example- Issuance of new class of shares, Buy-back of shares, Issue of Bonus Shares

(vi) Stamping of Company Documents

The Memorandum of Association and Articles of Association are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The Memorandum of Association is a document that states the constitution of the company, objectives, scope of activities of the company and also defines the relationship of the company with the outside world. The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. These documents should be stamped and submitted to the ROC along with relevant forms and registration fee.

(vii) Certificate of Incorporation

The ROC scrutinizes the documents and, if necessary, instructs the authorised person to make necessary corrections. Thereafter, a Certificate of Incorporation is issued by the ROC, from which date the company comes into existence. It takes one to two weeks from the date of filing of the Memorandum of Association and Articles of Association to receive a Certificate of Incorporation. Although a private company can commence business immediately after receiving the certificate of incorporation, a public company cannot do so until it obtains a Certificate of Commencement of Business from the ROC.

(viii) Register Other Details

The next step in the company registration process in India includes registering the company name & address and notice for appointment of directors, secretary and manager.

Following this, the company is required to register with the Office of Inspector, Shops and Establishment Act (State/Municipal). The form provides details about the manager's and employer's name, the establishment's name, postal address, the legitimate category. It should be sent to the office of the local shop inspector along with applicable fees. It is obligatory to register the Establishment Act within a month of the opening of your business.

Documents required for Company Registration

The general documents that are to be submitted for registration of LLP, One Person Company, Private Limited and Public Limited Company are as follows:

Documents of the Directors and Shareholders of the company/ Partners of the LLP

- Proof of identification of all the company's directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as proof of identification:
  - Pan card
  - Aadhar card
  - Driving license
  - Passport
- Proof of address of all the directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as address proof:
  - Latest telephone bill (not older than 2 months)
  - Latest electricity bill (not older than 2 months)
  - Bank account statement having address
- DIN (DPIN in case of LLP) and DSC of all the directors (partners in case of LLP)

Documents of the Company/LLP

- Proof of registered office of the company. The below documents must be submitted as address proof of the company:
  - Tenancy/rental agreement between the landlord and company/LLP.
  - Letter or NOC from the landlord of his/her permission to use the office/premises as the LLP's/ company's registered office.
  - Sale deed of the company/LLP office premises in the name of the company/LLP.
- The Memorandum of Association (MoA) which contains the objects of the company for which the company is going to be incorporated and the liability of the members of the company.
- The Articles of the Association (AoA) which lays down the by-laws on which the company will operate.

Reservation of name or change of name

An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any.

The SPICe+ is an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. This Form will also facilitate allotment of GSTIN wherever so applied for by the stakeholders. In case the applicant wants to apply for name, incorporation and other integrated services together, he can do so together by filling necessary information in Part A and Part B.

Features of Spice+ Form

Part A	*Part B*
Part A represents the section wherein all details with respect to name reservation for a new company has to be entered. Part A can either be submitted individually ONLY for name reservation or can be submitted together with SPICe+ Part B for both name reservation as well as incorporation. In case SPICe+ Part A is submitted individually for name reservation, Part B and all other linked forms shall be enabled only after the SRN of SPICE+ Part A is 'Approved' i.e. the name is reserved.	Part B represents the section wherein all remaining details required for incorporation of a company has to be entered. Part B of SPICe+ offers following services viz. (i) Incorporation (ii) DIN allotment (iii) Mandatory issue of PAN (iv) Mandatory issue of TAN (v) Mandatory issue of EPFO registration (vi) Mandatory issue of ESIC registration (vii) Mandatory issue of Profession Tax registration(Maharashtra) (viii) Mandatory Opening of Bank Account for the Company and (ix) Allotment of GSTIN (if so applied for).

An approved name is valid for a period of:

- 20 days from the date of approval (in case name is being reserved for a new company), or
- 60 days from the date of approval (in case of change of name of an existing company).

Users are permitted to apply for two proposed names and one Resubmission (RSUB) is permissible while Reserving Unique Names for companies through the Spice+ Form.

Guidelines to reserve a company name

The name of a company should be:

- Unique
- Contain a noun and an activity word that reflects its objectives
- Be in line with Company Name Guidelines issued by Ministry of Corporate Affairs.

The Company Name should not be:

- Be same, similar, identical or resembling to the name of an existing Company or LLP registered. Phonetically similar names are also to be avoided.
- Be similar to a registered trade mark or a trade mark for which an application has already been filed.
- The name chosen should not constitute an offence under any law and should not be undesirable in the opinion of the Central Government.
- The company name should not have any word or expression which is likely to give the impression that the company is in any way connected to the government central or state or any other local authority when it is actually not unless the approval from the respective government authority has been attained.
- If a company's name indicates any activities relating to financing, leasing, chit-fund, investment, securities etc., though the company's business activity is not related to any of such activities than such names shall not be allowed.
- Any descriptive name, wherein the name contains any commonly used words that describe any business activity.

Simplified Proforma for Incorporating Company [Electronically Plus (SPICe+)]

(Rule 38 of Companies (Incorporation) Rules, 2014)

(1) The Application for incorporation of a company shall be in [SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32)] along with e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of association (e-AOA) in Form no. INC-34.

Provided that in case of incorporation of a company falling under section 8 of the Act, SPICe+ shall be filed along with Form No. INC- 13 (Memorandum of Association) and Form No. INC-31 (Articles of Association) as attachments.

Provided further that in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India or in case of Section 8 Company, MOA/AOA shall be filed with SPICe+ in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34.

(2) The application for allotment of Director Identification Number upto three Directors, PAN/ TAN, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act shall be filed in SPICe+. with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules. 2014:

Provided that where an applicant has applied for reservation of a name and which has been approved therein, he may fill the reserved name as proposed name of the company.

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

(3) For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in SPICe+, and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in SPICe+ in case of proposed directors not having approved Director Identification Number.

(4) The promoter or applicant of the proposed company shall propose only one name in SPICe+ .

(5) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in Form No. INC-33 and Articles of Association (e-AoA) in Form no. INC-34.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA

(6) For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. Rule 9, and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply.

(7) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing SPICe+ in which case the company shall attach along with such Form No.INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.

(8) Form No.INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.

(9) Declaration by first subscribers and Directors inform INC-9 shall be generated in PDF and have to be submitted in electronic form except where total number of subscribers and / or directors is greater than 20 or any such subscribers and/ or directors does not have DIN/ PAN. (Rule 15 of the Companies (Incorporation) Rules, 2014)

(10) (a) Where the Registrar on examining SPICe+, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for re-submission of documents shall not exceed thirty days.

(11) The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.

Application for registration of Goods and Service Tax Identification Number (GSTIN). Employee State Insurance Corporation (ESIC) Registration, Employees' Provident Fund organisation (EPFO) Registration and Profession Tax Registration, Opening of Bank Account and Shops and Establishment Registration

Rule 38A of the Companies (Incorporation) Rules, 2014)

The application for incorporation of a company shall be accompanied by e-form [AGILE-PRO-S] (INC- 35) containing an application for registration of the following numbers, namely:-

- GSTIN - Optional
- EPFO - Mandatory
- ESIC - Mandatory
- Profession Tax Registration – Mandatory in Maharashtra
- Opening of Bank Account - Mandatory
- Shops and Establishment Registration – Mandatory

APPLYING FOR BUSINESS LICENSES

Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. Knowing the applicable licenses for the enterprises and obtaining them is always the best way to start a business. The lack of relevant licenses can lead to costly lawsuits and unwanted legal battles. Business licenses are the legal documents that allow a business to operate while business registration is the official process of listing a business (along with relevant information) with the official registering authority.

For instance, an e-commerce company may require additional licenses like GST Registration, Professional Tax etc. while a restaurant may require licenses like Food Safety License, Certificate of Environmental Clearance, FSSAI Act, Health Trade License etc. along with the above mentioned licenses.

There are many factors affecting authorizations of business licenses which may include the type of business ownership, such as partnership, sole proprietor or company, & the number of employees, location of business etc. Business licenses are not only required for new business entity but also required for already established Companies.

The common license that is applicable to all businesses is the Shop and Establishment Act which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry.

Tax Deduction and Collection Account Number (TAN) is a 10-digit alphanumeric identifier issued under Section 203A of the Income Tax Act, 1961. It is mandatory for all entities responsible for deducting or collecting tax at source (TDS/TCS). To obtain TAN, application must be made for allotment of TAN in Form 49B along with the required supporting documents. The form can be submitted online via TIN NSDL Portal and offline at authorized TIN facilitation centres. Based on the application, the TAN will be allotted to the entity and the entity must quote the TAN in all TDS/TCS returns, TDS/TCS payment challans and all TDS/TCS Certificates.

Employee's State Insurance Registration: Employee's State Insurance (ESI), governed by the ESI Act, 1948/ Code on Social Security, is a self-financing social security and health insurance scheme for Indian workers. It offers an economic & medical assurance to workers and its dependents. Besides providing medical benefits to workers and its dependents, it also insures worker from temporary or permanent disablement and sickness.

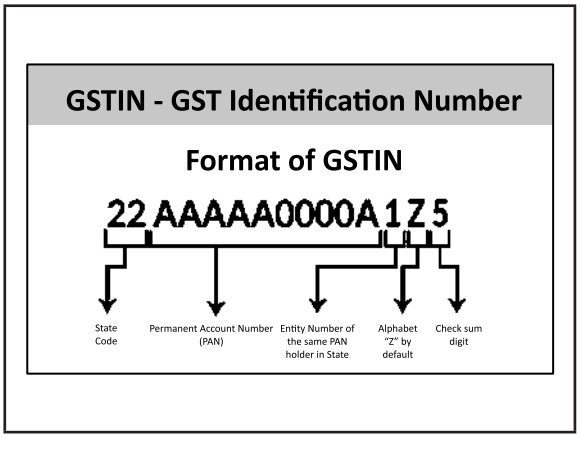
Any non-seasonal factory or establishment having more than 10 employees (in some states it is 20 employees) who have a maximum basic wages/salary of Rs. 21,000 per month (Rs.25,000 per month in the case of persons with disability) are covered under the ESI scheme and thus, they have to mandatorily register with the ESIC within 15 days from the date of its applicability. Under this scheme, the employer needs to contribute an amount of 3.25% of the total monthly wage payable to the employee whereas the employee needs to contribute only 0.75% of his monthly wage every month of the year. The only exemption to the employee in paying his contribution is whose daily wage is less than Rs.176/- per day. This compulsory insurance also helps employers to cover up their contingent liability of treatment and medical expenses, which may be incurred if any accident is happened at the business premises or factory.

EPF Registration: The Employees' Provident Fund & Miscellaneous Provisions Act, 1952/Code on Social Security is social security legislation for the retirement benefits and family pension of employees.

The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF & MP Act)/Code on Social Security which applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service. Every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and other establishment employing 20 or more persons notified by Central Government shall register with the Employees' Provident Fund Organization.

EPF Registration has to be done within one month from the date of reaching 20 employees. Any delay in EPF Registration may result in a penalty. Those establishments which do not have the prescribed number of employees but willing to register themselves to provide the benefits of Provident Fund to their employees can register voluntarily with the Regional Provident Fund Office, i.e. covered voluntarily registration.

GST Registration: GST Registration is mandatory for every business or corporation involved in buying and selling of goods or services. Those with an annual turnover of more than 20 lakh rupees for supply of services and 40 lakh rupees in case of supply of goods is the threshold limit (exemptions provided to special category states e.g. NE states). If a business is carried on without registering under GST, then it will be an offence under GST law. A casual taxable person/ Non-Resident Taxable Person, e-commerce aggregator, agents of supplier and input service distributor etc. are required to register under GST. Moreover, Every GST taxpayer is given a unique identification number called GSTIN during the registration process.



CATEGORY	*REGION*	*AGGREGATE ANNUAL TURNOVER (INR)*
Services	Special Category States- Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand & Himachal Pradesh.	10 Lakhs
Services	Rest of India	20 Lakhs
Goods	Special Category States- Assam, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Tripura, Sikkim, Uttarakhand & Himachal Pradesh	20 Lakhs
Goods	Rest of India	40 Lakhs

Udyam Registration: The Udyam online site handles India's small businesses, there are several advantages to registering, including government credit programmes, subsidies, etc. The requirements for Udyam registration are specified in terms of a composite criteria that takes into account business revenue (turnover) and investment in machinery and plants. This is applicable to enterprise falling under the definition of Micro, Small and Medium Enterprises under the Micro, Small and Medium Enterprises Development Act, 2006.

Revised MSME Classification (Effective 1 April 2025)

Category	Investment in Plant & Machinery / Equipment	Annual Turnover
Micro	Not more than ₹2.5 crore	Not more than ₹10 crore
Small	Not more than ₹25 crore	Not more than ₹100 crore
Medium	Not more than ₹125 crore	Not more than ₹500 crore

Applies to both manufacturing enterprises and service enterprises.

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



Classification of FSSAI Licenses

Under FSSAI, the license or registration is divided into three categories based on business scale and turnover namely:

FSSAI Central License – For large-scale Food Business Operators (FBOs) operating across multiple states or with turnover above ₹20 crore.

FSSAI State License – For medium-sized FBOs operating within a single state with turnover between ₹12 lakh and ₹20 crore.

FSSAI Registration – For petty food businesses with turnover below ₹12 lakh.

Comparative Table: FSSAI Licensing & Registration – Earlier vs Latest (2025)

Aspect	Earlier Provisions	Latest Provisions (2025)
Renewal Timeline	Renewal allowed up to expiry date; grace period often granted	Must renew 30 days before expiry; no grace period; blackout after 15 days post-expiry
Late Fee	₹100 per day post expiry	₹100 per day + ₹5,000 reactivation fee if blackout occurs
Mode of Application	Online and offline modes accepted	Only via FoSCoS portal; offline applications discontinued
Display Requirements	FSSAI license number to be displayed	QR code of "Food Safety Connect" app must be displayed for consumer verification
Business Categories	No specific category for Ayurveda-based food	New category: Ayurveda Aahara under FoSCoS with distinct licensing norms
Inspection Frequency	Periodic inspections based on risk profile	Increased inspections, especially for water, dairy, and e-commerce food businesses
E-commerce Compliance	Aggregators required to list licensed vendors	Stricter norms for online platforms; mandatory FSSAI compliance for all listed vendors
Labelling Norms	Basic nutritional and expiry info required	Front-of-pack labelling emphasized; clearer expiry and nutritional disclosures
Packaging Standards	No specific sustainability mandate	Encouragement of eco-friendly packaging (e.g., recycled PET)
License Categories	Central License, State License, State Registration	No change in structure, but renewal and enforcement rules tightened

Import Export Code

1. Introduction

In India, IEC is a unique identification number for international trade transactions.The Import Export Code (IEC) is a mandatory registration for any business entity engaged in the export or import of goods and services from India. It is issued by the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry.

2. Legal Basis

IEC registration is governed by the Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (FTP) issued periodically by DGFT. The current procedural framework is aligned with the FTP 2023–28, which emphasizes digital governance, ease of doing business, and trade facilitation.

3. Applicability

IEC is required for:

- All exporters and importers (including service exporters claiming benefits under FTP)
- Proprietorships, partnerships, LLPs, companies, trusts, and HUFs engaged in cross-border trade
- Entities availing benefits under schemes such as RoDTEP, SEIS, Advance Authorization, etc.

4. Registration Procedure

IEC registration is fully online and processed via the DGFT portal: https://dgft.gov.in

Required Documents:

- PAN Card of the applicant entity
- Identity proof with photograph and address (e.g., Aadhaar, Passport, Voter ID)
- Business address proof (e.g., utility bill, rent agreement, ownership document)
- Bank account proof (cancelled cheque or bank certificate)
- Digital Signature Certificate (DSC) or Aadhaar-based e-authentication

Key Features:

- No physical documentation required
- IEC is issued within 1–2 working days
- No renewal required; IEC remains valid for the lifetime of the entity unless surrendered or cancelled

5. Summary of latest updates

Provision	Latest Update (2025)
Application Mode	Only via DGFT portal; Aadhaar-based e-authentication enabled
Document Authentication	Integrated PAN–GST–Bank validation via API; DSC optional for Aadhaar holders
IEC Modification	Real-time modification enabled via DGFT portal dashboard
Suspension & Cancellation	Automated suspension for non-compliance with export obligations or FTP violations
Integration with Customs	Auto-integration with ICEGATE, GSTN, and SEZ portals for seamless trade operations
Deactivation Policy	Auto-deactivation if not used for 1 year; reactivation via online request

6. Practical Implications

Businesses must ensure:

- Timely registration and validation of IEC details
- Alignment of PAN, GST, and bank details across DGFT and Customs portals
- Regular monitoring of DGFT dashboard for compliance alerts and scheme eligibility
- Prompt updating of IEC in case of change in entity name, address, or bank account

Trade License for Indian Online Businesses: With the rise of digital entrepreneurship and MSME-friendly loan schemes, many small business owners are choosing the virtual medium to operate e-commerce, service, and content-based ventures. For such businesses, a sole proprietorship remains the most accessible structure due to minimal compliance requirements. However, even online businesses must obtain a Trade License under the Shop and Establishments Act, as long as they operate from a fixed physical location. A sole proprietorship can obtain a trading license in the same manner as a traditional shop under the Shop and Establishments Act.

The Shop and Establishments Act is a state-specific legislation that governs commercial establishments, including online businesses operating from homes, offices, or warehouses. Contrary to popular belief, online businesses are not exempt from local trade licensing. Even if customer interaction is entirely virtual, the physical base of operations triggers licensing requirements.

Following are the changes introduced in this respect as follows:

Provision	Earlier Practice	Latest Update (2025)
Application Mode	Offline or semi-digital in many states	Fully online via municipal portals; Aadhaar-based authentication enabled
Home-Based Businesses	Often overlooked or exempted	Explicitly included under commercial activity if space is used for business purposes
Documentation Requirements	Basic ID and address proof	Mandatory PAN, Aadhaar, business address proof, bank account proof
License Validity	Typically 1–3 years	Standardized to 1 year in most states; auto-reminder for renewal
Penalties for Non-Compliance	Rarely enforced	Active enforcement by municipal bodies; fines and closure notices issued
Integration with MSME Schemes	Not linked	Linked to Udyam Registration for loan eligibility and subsidy access

Procedure for Obtaining Trade License (Online Business)

1. Visit Municipal Portal (e.g., MCD Delhi, BBMP Bangalore)
2. Register with Aadhaar or PAN
3. Upload Documents:
    - PAN Card
    - Aadhaar or other ID proof
    - Business address proof (utility bill, rent agreement)
    - Bank account proof (cancelled cheque or certificate)
4. Pay Fee: Varies by state and business type
5. Receive License: Typically issued within 7–10 working days

Practical Implications of Trade Liecnce:

- Enables legal operation and access to MSME benefits
- Required for opening current bank accounts and payment gateways
- Mandatory for GST registration and FSSAI licensing (if applicable)
- Protects against local enforcement actions and penalties

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

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

Understanding Taxation and Accounting Laws

Taxes are part and parcel of every business. There are a broad variety of taxes, such as, GST state tax and even local taxes that may be applicable for certain businesses. Different business and operating sectors attract different taxes and knowing this beforehand can prove to be useful.

Adhering to Labour Laws

Labour Laws are needed to ensure that the workers in an organization are not exploited. It acts as a safety net for the weakest segment of society. Hence, the objective of the Labour Laws is to protect the employees and hold the employers accountable for their actions. Thus, these laws are only enforceable in the work environment. The main goal of the said labour law is to create a good atmosphere in the workplace so that people can be productive and can be ensured of their security, both physical and mental. If a company or organisation doesn't comply with the Labour Laws, punitive actions can be taken against them, i.e. they can be punished.

Adhering to labour laws is integral to every organization, small or big. When you are established as a company and have hired people to work for your organization, you are subject to several labour laws regardless of the size of the organization. Laws with regards to minimum wages, gratuity, PF payment, weekly holidays, maternity benefits, Prevention from sexual harassment, payment of bonus among others will need to be complied with.

Objective of the labour laws

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

- Productive Work & Adequate Earning
- Proper Working Hours
- Security to the Employees
- Work-Life Balance

- Secure Working Environment
- Sickness and Accident benefits to the employees
- Social Security
- Labour Welfare
- Fair Treatment in the Workplace
- Prevention of Children at Work
- Forced Labour.

Labour Codes

Reforms in labour laws are an ongoing process. The Government continuously works to modernize and streamline the legislative framework in line with the evolving economic and industrial landscape of the country. The codification of 29 existing labour laws into four Labour Codes was undertaken to address long-standing challenges and make the system more efficient and contemporary. The codification aims to enhance ease of doing business, promote employment generation, ensure safety, health, social & wage security for every worker.

In a historic decision, the Government of India has announced the implementation of the four Labour Codes - the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 with effect from **21st November 2025**, rationalising 29 existing labour laws. By modernising labour regulations, enhancing workers' welfare and aligning the labour ecosystem with the evolving world of work, this landmark move lays the foundation for a future-ready workforce and stronger, resilient industries driving labour reforms for Aatmanirbhar Bharat. This historic reform ensures that workers gain easier access to security, dignity, health, and welfare measures, reinforcing India's commitment to a fair and future-ready labour ecosystem.

Code 1: The Code of Wages, 2019

The Code on Wages, 2019 seeks to simplify, consolidate, and rationalize the provisions of four existing laws- The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. It aims to strengthen workers' rights while promoting simplicity and uniformity in wage-related compliance for employers.

Code 2: The Industrial Relations Code, 2020

The Industrial Relations Code (IR Code) has been prepared after amalgamating, simplifying and rationalizing the relevant provisions of the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947. The Code acknowledges the fact that survival of worker depends upon survival of industry. In this backdrop, it simplifies laws related to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Code 3: The Code on Social Security, 2020

The Code on Social Security incorporates existing nine Social Security Acts viz; The Employee's Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine-Workers Welfare Fund Act, 1981; The

Building and Other Construction Workers' Welfare Cess Act, 1996 and; The Unorganised Workers' Social Security Act, 2008. The Code extends social security to all workers- including unorganized, gig, and platform workers- covering life, health, maternity, and provident fund benefits, while introducing digital systems and facilitator-based compliance for greater efficiency.

Code 4: The Occupational Safety, Health and Working Conditions Code 2020

The Code has been drafted after amalgamation, simplification and rationalization of the relevant provisions of the 13 Central Labour Acts- The Factories Act, 1948; The Plantations Labour Act, 1951; The Mines Act, 1952; The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955; The Working Journalists (Fixation of Rates of Wages) Act, 1958; The Motor Transport Workers Act, 1961; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Contract Labour (Regulation and Abolition) Act, 1970; The Sales Promotion Employees (Conditions of Service) Act, 1976; The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981; The Dock Workers (Safety, Health and Welfare) Act, 1986 and; The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Adherence to Laws relating to Intellectual Property

The twenty-first century witnessed the emergence of "Intellectual Capital" as a key wealth driver of international trade between countries, thanks to rapid globalization and liberalization of economies the world over. Intellectual property rights have become an irreplaceable element of India's business fraternity, whether in terms of new statues or judicial pronouncements. India's consent of the WTO (World Trade Organization) agreement has paved the way for its compliance with TRIPS (Trade Related Aspects of Intellectual Property Rights).

> The TRIPS agreement has made way for the harmonization of Indian laws connected with Intellectual Property Rights. The agreement was implemented with the minimum standards for the protection of IPR. A time-frame has been specified within which the participating countries are required to effect changes in their respective laws to meet the requisite compliance standards. The rest of the article seeks to highlight the amendments brought forth by the agreement in intellectual property laws.
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> The Office of the Controller General of Patents, Designs and Trademarks controls all patents in India.

Further, Intellectual property is vital for most businesses in the contemporary regime of knowledge and innovation, especially for tech centric businesses. Codes, algorithms and research findings among others are some of the most common intellectual property owned by organizations. Therefore, one has to ensure strict adherence to the Laws relating to Intellectual Property in India as well as of International Application to which India is a signatory. For the effective implementation of the IP Laws, facilitators have been empanelled by the Controller General of Patents, Trademarks and Design. Such facilitators help the new enterprises in setting up their business under the vigil of IPRs by providing advisory services, assisting in patent filing and disposal of patent application among other services at a minimum charge.

The well-timed and careful examination of IP rights of third parties can prevent, or at least shorten, the infringement of rights and the associated long legal processes. For this reason, these processes are now considered as compliance for many companies. Patent attorneys can assist companies in developing tailored solution for its industry requirements and setting up corresponding IP guidelines.

"Recent amendments under the Jan Vishwas Act, 2023 have decriminalized several offenses under the Patents Act, replacing imprisonment with monetary penalties. Draft Patent Rules, 2025 introduce civil adjudication mechanisms and digital filing of complaints."

World Intellectual Property Organization (WIPO), international organization designed to promote the worldwide protection of both industrial property (inventions, trademarks, and designs) and copyrighted materials (literary, musical, photographic, and other artistic works). The organization, established by a convention signed in Stockholm in 1967, began operations in 1970 and became a specialized agency of the United Nations in December 1974. It is headquartered in Geneva.

WIPO cooperates with intellectual property (IP) offices, users and other stakeholders to develop shared IP tools, services, standards, databases and platforms. This technical infrastructure is designed to help IP institutions collaborate more effectively and deliver more efficient services to their users; as well as enabling innovators and information-seekers worldwide to freely access the knowledge contained in the IP system. WIPO provide human capacity building across the full spectrum of intellectual property (IP) rights: patents, trademarks, industrial designs, geographical indications and copyright. Training takes place through in-depth programs offered by the WIPO Academy or tailor-made technical workshops.

Ensuring Effective Contract Management

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

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time.

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

Details about winding up the business:

Closing a company is a difficult call to make for any entrepreneur. When a company decides to shut down, all the stakeholders from vendors to employees to customers and investors need to be informed in advance and the whole process must be properly planned and executed in order to make the exit easy on everyone.

It is the last stage of existence of a company and all its assets are used to pay off the creditors, shareholders and other liabilities.

LAWS RELATING TO INDUSTRIES SPECIFIC LAWS

Specific Laws and General Laws

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

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

Trading & Retail Industry

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

1. The Trade Marks Act, 1999;
2. The Patents Act, 1970;
3. The Indian Copyright Act, 1957;
4. Legal Metrology Act, 2009;
5. Shops and Establishment Act & Rule (State wise);
6. The Food Safety & Standard Act, 2006;
7. Local Municipal Corporation Act & Bye Laws (city-wise);
8. Acts prescribed related to Retail activities;
9. The Consumer Protection Act, 2019 and Rules & Regulations made thereunder;
10. Acts prescribed under prevention and control of Pollution;
11. Acts prescribed under Environmental protection;
12. Acts as prescribed under Direct Tax and Indirect Tax including GST and others;
13. Land Revenue laws of respective States;
14. Labour Welfare Act of respective States;
15. Local laws as applicable to various stores as per the respective Municipal Authority;
16. Whistle Blowers Protection Act, 2014;
17. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

IFSC & Bullion Exchange Industry

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

Act and Guidelines

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

Start-ups

List of laws that are specifically applicable to Startups:-

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

Non-Banking Financial Company (NBFC)

List of laws that are specifically applicable to NBFCs:-

1. The Reserve Bank of India Act, 1934 & Rules, Regulations, guidelines, circulars, directions, and notifications made there under;
2. Rules, regulations and guidelines issued by the Reserve Bank of India as are applicable to Deposit taking Non-Banking Financial Companies, Non-Deposit taking NBFC; Systematically Important NBFC;

3. Prevention of Money Laundering Act, 2002;
4. The Competition Act, 2002;
5. The Labour Codes.

Pharma Industry

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

1. The Food Safety and Standards Act, 2006;
2. The Narcotic Drugs and Psychotropic Substances Act, 1985;
3. The Drugs and Cosmetics Act, 1940 and Drugs Rules, 1945;
4. The Drugs and Cosmetics Act, 1940 and The New Drugs and Clinical Trials Rules, 2019;
5. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
6. The Essential Commodities Act, 1955 - Drug Price Control Order, 2013;
7. Pharmacy Act, 1948;
8. Drugs (Price Control) Order, 1995;
9. Uniform Code for Pharmaceutical Marketing Practices, 2014;
10. Bio Medical Waste (Management and Handling) Rules, 1998;
11. The Air (Prevention and Control of Pollution) Act, 1981;
12. The Water (Prevention and Control of Pollution) Act, 1974;
13. The Indian Standard Code of Practice for Selection, Installation and Maintenance of Portable First Aid Fire Extinguishers;
14. The Maharashtra Non-Biodegradable Garbage (Control) Act, 2006;
15. The Water (Prevention and Control of Pollution) Act, 1974;
16. The Environment (Protection) Act,1986 and allied rules;
17. The Electricity Act, 2003;
18. The Explosives Act read with the Gas Cylinder Rules, 2016;
19. The Explosives Act read with the Static and Mobile Pressure Vessels (Unfired) Rules, 2016;
20. The Petroleum Act, 1934;
21. The Boilers Act, 2025;
22. State Shop and Establishment Act (Respective States where Company has presence);
23. The Cigarette and Other Tobacco Products (Prohibition of Advertisement and the Regulation of Trade and commerce, Production, Supply and Distribution) Act, 2003;
24. The Rights of Persons with Disabilities Act, 2016;

25. The Industries (Development and Regulation) Act, 1951;
26. The Legal Metrology Act, 2009;
27. Trademarks Act, 1999;
28. The Patents Act, 1970;
29. The Sales Promotion Employees (Conditions of Service) Act, 1976.

Banking Industry

List of laws that are specifically applicable to Banking industries:-

1. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with The Banking Regulation Act, 1949;
2. Banking Regulation Act, 1949, Master Circulars, Notifications and Guidelines issued by the RBI from time to time;
3. The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970;
4. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
5. Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
6. Transfer of Property Act, 1882;
7. Negotiable Instruments Act, 1881;
8. Sale of Goods Act, 1930;
9. Foreign Contribution Regulation Act, 2010;
10. Prevention of Money Laundering Act, 2002;
11. Credit Information Companies (Regulation) Act, 2005;
12. Micro, Small and Medium Enterprises Development Act, 2006;
13. Public Liability Insurance Act, 1991;
14. Insurance Act, 1938 and Insurance Rules, 1939;
15. The Shops and Establishments Act, 1953;
16. Indian Stamp Act, 1899;
17. Indian Contract Act, 1872;
18. The Foreign Trade (Development and Regulation) Act, 1992;
19. The Reserve Bank of India Act, 1934 and Guidelines issued by RBI;
20. Limitation Act, 1963;
21. Indian Trusts Act. 1882;
22. Society Registration Act, 1860;
23. Information Technology Act, 2000;

24. Energy Conservation Act, 2001;
25. Right to Information Act, 2005;
26. Trade Marks Act, 1999;
27. Copyright Act, 1957;
28. Patents Act, 1970;
29. Labour Laws (Exemptions from furnishing returns and maintaining returns) by certain Establishments Act, 1988;
30. Weekly Holiday Act, 1942;
31. General Clauses Act, 1897.

Insurance Industry

List of laws that are specifically applicable to Insurance industries:-

1. Insurance Act, 1938 and Insurance Rules, 1939;
2. Insurance Regulatory and Development Authority (IRDAI) Act, 1999;
3. Anti-Money Laundering Regulation issued by IRDAI;
4. The State Shop and Establishment Act;
5. Indian Stamp Act, 1899 and the State Stamp Acts;
6. Copyright Act, 1957;
7. Prevention of Money Laundering Act, 2002;
8. Trademarks Act, 1999;
9. Indian Contract Act, 1872;
10. Negotiable Instruments Act, 1881;
11. Registration Act, 1908;
12. Limitation Act, 1963;
13. Information Technology Act, 2000;
14. The Labour Codes;

Housing Finance Companies

List of laws that are specifically applicable to Housing Finance Companies:-

1. National Housing Bank Act, 1987;
2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
5. Guidelines for Asset Liability Management System in Housing Finance Companies;

6. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;
7. Housing Finance Companies - Corporate Governance (National Housing Bank) Directions, 2016;
8. Housing Finance Companies - Auditor's Report (National Housing Bank) Directions, 2016;
9. Guidelines on Fair Practices Code for Housing Finance Companies; 10. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
11. Information Technology Framework for HFCs – Guidelines;
12. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
13. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015;
14. Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021.

Real Estate Companies

List of laws that are specifically applicable to Real Estate Companies:-

(A) Pre-constructions

1. Real Estates (Regulations & Development) Act, 1916
2. Environment (Protection) Act, 1986;
3. The Air (Prevention and Control of Pollution) Act, 1981;
4. The Water (Prevention and Control of Pollution) Act, 1974;
5. The Aircraft Act;
6. The Electricity Act, 2003;
7. The Control of National Highways (Land and Tariff) Act, 2002;
8. The Forest (Conservation) Act, 1980;
9. The Mines and Minerals (Development and Regulation) Act, 1957;
10. The Petroleum Act, 1934;
11. The Railways Act, 1989;
12. The Transfer of Property Act, 1882 and Registration Act, 1908;
13. The Wildlife Protection Act 1972;
14. The Works of Defence Act 1903;
15. The Ancient Monuments and Archaeological Sites and Remains Act, 1958;
16. The Special Economic Zones Act, 2005;
17. Housing Board Act, 1965.

(B) During the constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The OSHWC Code

3. The Electricity Act, 2003;
4. The Environment (Protection) Act, 1986;
5. The Explosives Act;
6. The Water (Prevention and Control of Pollution) Act, 1974;
7. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
8. The Emblems and Names (Prevention of Improper Use) Act, 1950;
9. The Food Safety and Standards Act, 2006;
10. The Forest (Conservation) Act, 1980;
11. The Motor Vehicles Act, 1988;
12. The Indian Wireless Telegraphy Act, 1933;
13. The Private Security Agencies (Regulation) Act, 2005;
14. The State municipal Corporation Act; The State Town & Country Planning Act; The State Building Bye-laws; The Development Control Regulations;
15. The Real Estate (Regulation and Development) Act, 2016 including rules & regulations made thereunder;
16. The Labour Codes;
17. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(C) Post constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Electricity Act, 2003;
3. The Emblems and Names (Prevention of Improper Use) Act, 1950;
4. The Environment (Protection) Act, 1986;
5. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
6. The OSHWC Code;
7. The Human Immunodeficiency Virus and Acquired immune Deficiency Syndrome (Prevention and Control) Act, 2017;
8. The Telecommunication Act, 2023;
9. The Motor Vehicles Act, 1988;
10. The Petroleum Act, 1934;
11. The Public Liability Insurance Act, 1991;
12. The Representation of the People Act, 1951;
13. The Rights of Persons with Disabilities Act, 2016;

14. The Water (Prevention and Control of Pollution) Act, 1974;
15. Transgender Persons (Protection of Rights) Act, 2019;
16. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Telecom Industry

List of laws that are specifically applicable to Telecom industries:-

1. The Telecommunication Act, 2023;
2. The Telecom Regulatory Authority of India Act, 1997 and Rules and Regulations made thereunder;
3. The Information Technology Act, 2000;
4. Guidelines on Corporate Governance by Department of Public Enterprises (DPE);
5. Department of Telecommunication guidelines and License Agreements.

Information & Technology Industry

List of laws that are specifically applicable to Information & Technology industries:-

1. The Information Technology Act, 2000;
2. The Digital Personal Data Protection Act, 2023;
3. The Special Economic Zones Act, 2005;
4. The Copy Rights Act, 1957;
5. The Patents Act, 1970;
6. The Trade Marks Act, 1999;
7. The Registration Act, 1908;
8. Indian Stamp Act, 1899 and amendments thereto;
9. Limitation Act, 1963;
10. Indian Contract Act, 1872;
11. Negotiable Instrument Act, 1881 and amendments thereto;
12. Sale of Goods Act, 1930;
13. Social Security Code, 2020;
14. Weekly Holidays Act, 1942;
15. The Telecom Regulatory Authority of India Act, 1997;
16. The Insurance Act, 1938;
17. Foreign Trade (Development and Regulation) Act, 1992;
18. Bureau of Indian Standards Act, 2016;
19. The Information Technology (Certifying Authorities) Rules, 2000;

20. The State Acts, rules, guidelines and regulations to the extent applicable to the Company based on the location of its offices across India.

Media and Communication Industry

1. List of laws that are specifically applicable to Media and Communication industries:-
2. The Right to Information Act, 2005;
3. The Information Technology Act, 2000;
4. The Telecom Regulatory Authority of India Act, 1997;
5. Copyright Act, 1957;
6. State Emblem of India (Prohibition of Improper Use) Act, 2005;
7. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007;
8. The Cable Television Networks (Regulation) Act, 1995;
9. The Delivery of Books and Newspapers (Public Libraries) Act, 1954;
10. The Newspaper (Prices and Pages) Act, 1956;
11. The Labour Codes;
12. Registration of Newspapers (Central) Rules, 1956;
13. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
14. The Emblems and Names (Prevention of Improper Use) Act, 1950;
15. The Parliamentary Proceedings (Protection of Publication) Act, 1977;
16. The Young Persons (Harmful Publications) Act, 1956;
17. The Dramatic Performances Act, 1876 (Relevant Provisions);
18. The Cinematograph Act, 1952;
19. The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;
20. The Cine-Workers Welfare Cess Act, 1981;
21. The Cine-Workers Welfare Fund Act, 1981;
22. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990;
23. The Press and Registration of Books Act, 1867;
24. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961;
25. The Press Council Act, 1978;
26. The Telecommunication Act, 2025;
27. The Post Office Act, 2023 (Relevant Provisions);
28. The Common Charter of Telecom Services, 2005;
29. The Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services, 2005.

Infra Industry

List of laws that are specifically applicable to Infra industries:-

1. OCHWC Code & Rules Regulation made thereunder.

Environment Laws

India's economic development propelled by rapid industrial growth and urbanization is causing severe 551 environmental problems that have local, regional and global significance. Recognizing the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

In response to growing environmental concerns and India's commitment to sustainable development, the Ministry of Environment, Forest and Climate Change (MoEFCC) introduced Extended Producer Responsibility (EPR) as a statutory obligation under the Plastic Waste Management (Amendment) Rules, 2022, further refined through notifications in 2023 and 2024. EPR shifts the responsibility of managing plastic waste from municipalities to producers, importers, and brand owners (PIBOs), making them accountable for the life cycle of plastic packaging.

Legal Framework India has an elaborate legal framework with number of laws relating to environmental protection. The key national laws include the following:

a. Water (Prevention and Control of Pollution) Act, 1974;

b. Water (Prevention and Control of Pollution) Cess Act, 1977;

c. Air (Prevention and Control of Pollution) Act, 1981;

d. Environment (Protection) Act, 1986;

e. The Public Liability Insurance Act, 1991;

f. The Biodiversity Act, 2002;

g. The National Green Tribunal Act, 2010;

h. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules;

i. Plastic Waste Management Rules;

j. Bio-Medical Waste Management Rules;

k. Construction and Demolition Waste Management Rules;

l. E-waste Management Rules, 2016;

m. The Batteries (Management and Handling) Rules made under the Act.

LESSON ROUND-UP

- The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be. For example, if it's a company, it would be governed under Companies Act, 2013; Limited Liability Partnership is governed by the LLP Act 2008; in case of Partnership, the Partnership Act, 1932 would be applicable; if it is an MSME, the MSME Act, 2006 would come into picture.
- Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before they are incorporated or registered.
- Among others, one important form of business is the Company which is governed under the Companies Act, 2013.
- Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. Knowing the applicable licenses for the enterprises and obtaining them is always the best way to start a business.
- The common license that is applicable to all businesses is the Shop and Establishment Act which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry.
- There are many factors affect for authorizations of business licenses which may include the type of business ownership, such as partnership, sole proprietor or company, & the number of employees, location of business etc. Business licenses are not only required for new business entity but also required for already established Companies.
- Taxes are part and parcel of every business. There are a broad variety of taxes, such as, GST state tax and even local taxes that may be applicable for certain businesses.
- Adhering to labour laws is integral to every organization, small or big. When you are established as a company and have hired people to work for your organization, you are subject to several labour laws regardless of the size of the organization.
- Intellectual property is vital for most businesses in the contemporary regime of knowledge and innovation, especially for tech centric businesses. Codes, algorithms and research findings among others are some of the most common intellectual property owned by organizations. Therefore, one has to ensure strict adherence to the Laws relating to Intellectual Property in India as well as of International Application to which India is a signatory.
- Contract management involves overseeing agreements made with suppliers, customers, partners and employees. Effective oversight is critically important because sales can be lost and regulatory penalties can ensue from poor contract management.
- There are several legislations which regulate the conditions of employment, work environment and other welfare requirements of certain specific industries. These enactments deal with factories and workshops; mines and minerals; plantations; shops and establishments as well as transportation.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Explain the various essential licenses applicable for starting a business.

2. What is the eligibility criteria to apply for Section 8 Company License?
3. Discuss the laws applicable for the registration of Company in India along with process of their registrations.
4. Shyam, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Prasad on the requirements of Industrial licensing based on category of Industries.
5. Manish wants to start a manufacturing business but he is not able to decide on the form of business (Type of Business Entity). He seeks your advice about the legal implications and requirements for the various business forms in India on the basis of the following parameters :
   (i) Registration
   (ii) Member's liability
   (iii) Number of members required
   (iv) Taxation
   (v) Legal Status.

Various Initial Registrations and Licenses

Lesson 13

KEY CONCEPTS

■ Initial Registration ■ Permanent Account Number (PAN) ■ Tax deduction Account Number (TAN) ■ Goods and Services Tax (GST) ■ Employee State Insurance (ESI) ■ Provident Fund (PF) ■ Import Export Code (IE Code) ■ Food Safety and Standards Authority of India (FSSAI) ■ Other Service Providers (OSP)

Learning Objectives

To understand:

- Various initial Registrations and Licenses Required for Setting up a Business
- Process of Registrations
- Laws/Rules/Regulations applicable on such Registrations

Lesson Outline

- Introduction
- Mandatory Registration – PAN/TAN
- GST Registration
- Registration under Shops & Establishments Act
- ESI Registration
- Employee Provident Fund meaning and Registration Procedure
- Pollution Control
- Sector based registrations
- IE Code
- Drug License
- FSSAI
- Requirement of NBFC License with RBI
- Banking
- IRDA (Insurance Regulatory and Development Authority)
- Industry Licensing Policy
- Telecom License
- State level Approval from the respective State Industrial Department
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References (Including Websites/Video Links)

REGULATORY FRAMEWORK

- Income Tax Act, 1961
- Goods and Services Tax Act, 2017
- The Shop and Establishment (S&E) Act
- OSHWC Code, 2020
- Drugs and Cosmetics Act, 1940
- Food Safety and Standards Act, 2006
- Reserve Bank of India Act, 1934
- Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000
- Industries (Development and Regulation) Act, 1951

INTRODUCTION

A business entity is required to secure various registration and licenses in order to set up its businesses in India. This chapter deals with the list of mandatory as well as additional initial registration requirements and the licenses along with their detailed procedures.

'Ease of doing business' refers to the regulatory environment in a country to set up and operate a business. Every year, the World Bank compares business environment in 190 countries in its Ease of Doing Business Report. Among the chosen 190 countries, India ranked 63rd in Doing Business 2020: World Bank Report. In 2014, the Government of India launched an ambitious program of regulatory reforms aimed at making it easier to do business in India. The program represents a great deal of effort to create a more business-friendly environment.

India has emerged as one of the most attractive destinations not only for investments but also for doing business. India jumps 79 positions from 142nd (2014) to 63rd (2019) in 'World Bank's Ease of Doing Business Ranking 2020.

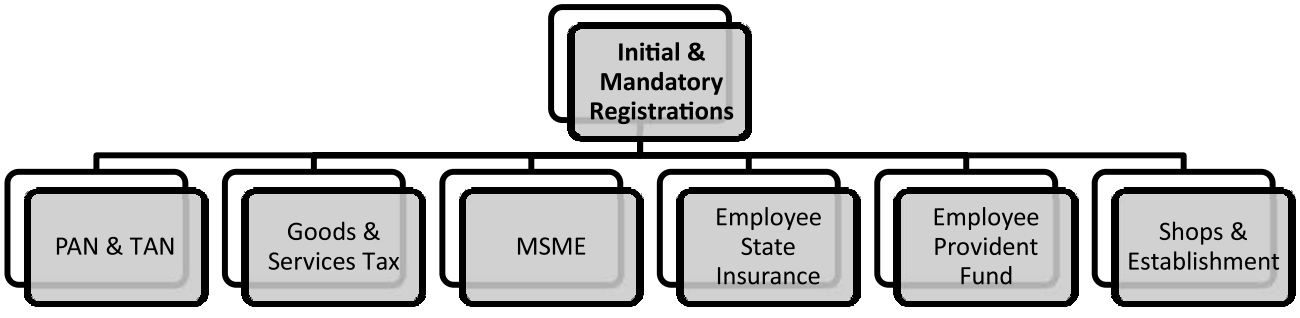
Business Entity Registration

To start a business, it is necessary for an entrepreneur to decide the form of business entity through which he wish to carry out his business. The business entity that he could seek for are following:

S.No.	*Form of Business Entity*	*Law under which Registration is required*
1.	Proprietorship	Not required
2.	Partnership	Not compulsory but can be registered under the the Partnership Act, 1932
3.	Private Company	The Companies Act, 2013
4.	Public Company	The Companies Act, 2013
5.	Limited Liability Partnership	The Limited Liability Partnership Act, 2008
6.	One Person Company	The Companies Act, 2013

The entity after registration needs to open Current Account in Bank before starting business transactions. However, proprietor and partnership firm can open Current Account in Bank and need not wait for registration certificate.

MANDATORY REGISTRATION



PAN

What is PAN?

PAN is a Permanent Account Number (in short called as PAN) and is a vital document for any taxpayer. It is a 10-character alphanumeric number consisting of letter and digits e.g. (AAAAA1234A). PAN card requirements are detailed in the Income Tax Act of 1961.

PAN is issued in two formats:

- **e-PAN**: A secure digital version with a QR code, sent to the applicant's email.
- **Physical PAN Card**: Optional, issued for a nominal fee.



Utility of PAN:

- This number is unique to each cardholder and helps identify the income tax payer.
- PAN enables the department to identify/ link all transactions of the PAN holder with the department. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence etc and so on.
- It facilitates easy retrieval of information of PAN holder and matching of various investments, borrowings and other business activities of PAN holder.
- It also serves as an identity proof for a large number of purposes e.g. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange for amount exceeding Rs. 1 lakh per transaction,
- Sale or purchase of any immovable property for an amount exceeding Rs. 10 lakh or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ten lakh rupees etc.
- **Digital integration:** PAN 2.0 now supports real-time verification across government platforms.

Significance of PAN for Setting up of Business

In India, a Permanent Account Number (PAN) is required for most financial transactions and is mandatory for those with a taxable income. The requirement extends beyond just individuals to include businesses and other entities.

Who is required to hold a PAN

A PAN card is mandatory for the following individuals and entities:

For individuals and families

- Any individual whose total income during a financial year exceeds the maximum amount not chargeable to tax.
- Anyone carrying on a business or profession with a total sales turnover or gross receipts likely to exceed ₹5 lakh in any previous year.
- All resident Indian citizens, including minors and students, who engage in financial transactions where a PAN is mandatory. Parents or legal guardians can apply on behalf of minors.
- Non-Resident Indians (NRIs) and foreign citizens who engage in financial activities in India, such as those with taxable income or involved in specified transactions.
- Every person who intends to enter into specified financial transactions in which quoting of PAN is mandatory.
- Any person who needs to file an income tax return for themselves or someone else they are assessable for.

For businesses and other entities

- Every non-individual resident persons and persons associated with them shall apply for PAN if the financial transaction entered into by them during the financial year exceeds Rs. 2,50,000.

Transactions that require quoting a PAN

A PAN is also mandatory for anyone intending to enter into the following specified financial transactions:

- Deposits or withdrawals of ₹50,000 or more in cash with a bank or post office.
- Opening a bank account, except for a Basic Savings Bank Deposit Account (BSBDA).
- Applying for a debit or credit card.
- Purchasing or selling an immovable property exceeding ₹10 lakh.
- Investing over ₹50,000 in mutual funds, debentures, or bonds.
- Purchasing or selling a motor vehicle (other than a two-wheeler).
- Depositing cash of ₹50,000 or more with a banking company or co-operative bank during a single day.
- Making a time deposit of ₹50,000 or more (or aggregating to more than ₹5 lakh in a financial year) with a bank, post office, or NBFC.
- Paying a life insurance premium exceeding ₹50,000 in a financial year.
- A contract for the sale or purchase of goods or services of more than ₹2 lakh per transaction.
- A cash payment of over ₹50,000 to a hotel or restaurant bill at any one time.

Exceptions to holding a PAN

Some individuals are not required to hold a PAN, but they must provide a declaration in Form 60 for transactions where a PAN is required. This applies to:

- Individuals without a taxable income who engage in specified transactions.
- Certain non-residents for specific transactions.
- Minors, if they don't have a taxable income, can use their parent's or legal guardian's PAN.

Application and Registration of PAN

The PAN (Permanent Account Number) card is an important document for conducting even the simplest of financial transactions like opening a savings bank account or applying for a debit/credit card.

Application for PAN can be made both online and offline as per the forms specified by the income tax department (i.e., form 49A for resident individual) together with the supporting documents as proof of identity, address and date of birth. Indian citizens will have to submit their 'Application for allotment of new PAN' in revised Form 49A only. Foreign citizens will have to submit their 'Application for allotment of new PAN' in newly notified Form 49AA only.

For New PAN applications, in case of Individual and HUF applicants, if address for Communication is selected as Office, then Proof of Office Address along with Proof of residential address is to be submitted with NSDL in respect of applications made on and after 1st November 2009.

Individual applicants will have to affix two recent, coloured photograph (Stamp size 3.5 cms x 2.5. cms) on PAN application form in case application are made physically.

Offline application for a PAN: An individual had to fill up physical forms specified by the income tax department (i.e., form 49A for resident individual) and provide supporting documents as proof of identity, address and date of birth.

Online Application for PAN: Online application can be made either through the portal of NSDL https://tin.tin.nsdl.com/pan/index.html) or the online portal of UTITSL (https://www.utiitsl.com/UTIITSL_SITE/pan/index.html).

Payment of Application fee for applying for PAN. Payment of application fee can be made through credit/debit card, demand draft or net - banking.

Once the application and payment is accepted, the applicant are required to send the supporting documents through courier/post to NSDL/UTITSL. Only after the receipt of the documents, PAN application would be processed by NSDL/UTITSL.

Linking of PAN with Aadhaar

As per Section 139AA, every person who is eligible to obtain Aadhaar is required to quote his Aadhaar number

in the PAN application form with effect from 1st day of July, 2017. W.e.f. 01-10-2024, the taxpayer is required to quote his Aadhaar number in PAN application Form. The requirement of Aadhaar is not applicable to foreign citizen and non-resident according to Income Tax Act,1961.

In case of an applicant, being a company, which has not been registered under the Companies Act, 2013, the application for allotment of a Permanent Account Number may be made in Spice +specified under sub-section (1) of section 7 of the said Act for incorporation of the company.

Instant PAN

Income-tax Dept. has launched a new functionality on the e-filing portal which allots a PAN to the assessee on basis of his Aadhaar Number. This facility can be used by an assessee only if the following conditions are fulfilled:

a) He has never been allotted a PAN;

b) His mobile number is linked with his Aadhaar number;

c) His complete date of birth is available on the Aadhaar card; and

d) He should not be a minor on the date of application for PAN

TAN

Tax Deduction Account Number or Tax Collection Account Number is a 10 -digit alpha-numeric number issued by the Income-tax Department. TAN (Tax Deduction and Collection Account Number) is to be obtained by all persons who are responsible for deducting tax at source (TDS) or who are required to collect tax at source (TCS).

Persons liable to apply for TAN

1. Every person liable to deduct tax at source or collect tax at source is required to obtain TAN. However, a person who is required to deduct tax under section 194-IA or section 194-IB or section 194M can use PAN in the place of TAN as such person is not required to obtain TAN.
2. Section 194IA provides for deduction of tax at source from payment on transfer of certain immovable property other than agricultural land.
3. As per section 194-IB any individual or HUF [whose books of account are not required to be audited under section 44AB in the immediately preceding financial year] is liable to deduct tax at the rate of 2% while making payment of rent of any land or building or both to a resident person if amount of rent exceeds Rs. 50,000 for a month or part of a month.
4. Section 194M provides for deduction of tax, at the rate of 2%, from the sum paid or credited to a resident, in a year on account of contractual work, commission (not being insurance commission as referred to in Section 194D), brokerage or professional fees, by an individual or a HUF [whose books of account are not required to be audited under Section 44AB], if aggregate of such sum exceeds Rs. 50 lakhs in a financial year.

Relevance of TAN

As per section 203A of the Income-tax Act, 1961, every person who deducts or collects tax at source has to apply for the allotment of TAN. Section 203A also makes it mandatory to quote TAN in following documents:

- TDS/ TCS statements i.e., return;
- Statement of financial transactions or reportable accounts;

- Challans for payment of TDS/TCS;
- TDS/TCS certificates;
- Other documents as may be prescribed.

The provisions relating to obtaining of TAN will not apply to a person deducting tax under section 194-IA (i.e., from sale consideration of land/building other than agricultural land)or Section 194IB or Section 194M and to such person, as may be notified by the Central Government in this behalf. They can quote PAN in place of TAN.

Summary Table

Section	Transaction Type	TAN Required?	PAN Allowed?
194-IA	Purchase of immovable property > ₹50 lakh (amount or stamp duty value)	X	√
194-IB	Rent payment > ₹50,000/month	X	√
194M	Payments for contract/professional/brokerage > ₹50 lakh/year	X	√

Procedure to Apply for TAN

There are two modes for applying for TAN:

- OFFLINE - An application for allotment of TAN is to be filed in Form 49B in duplicate and submitted to any TIN-Facilitation Centre (TIN-FC) of NSDL. Addresses of TIN FCs are available at NSDL TIN website (https:// www.tin-nsdl.com).
- ONLINE — Online application for TAN can be made from the website of NSDL TIN website.

Applicants should go through the instructions and guidelines provided in the application form before filling the Form. In case of an applicant being a company, which has not been registered under the Companies Act, 2013, the application for allotment of Tax Deduction Account Number may be made in Form SPICe+ specified under the Companies Act, 2013.

Where to get the Physical Application Forms

Places from where to obtain Form 49B are:

(1) Form 49B is freely downloadable from the website of Income-tax Department *(http://www.incometaxindia.gov.in)*

(2) It is also available at TIN-FCs.

(3) Legible photocopies of Form 49B or forms legibly printed exactly as per the format prescribed by Income-tax Department are also allowed to be used.

No separate TAN is required to be obtained for the purpose of TCS, if the person already holds TAN for the purpose of TDS.

Documents to be submitted along with TAN application

No documents are required to be submitted along with application for allotment of TAN. However, for online application, the signed acknowledgment which is generated after filling up the form is to be forwarded to NSDL.

Communication

These applications are digitized by NSDL and forwarded to Income Tax Department (ITD). ITD will issue the TAN which will be intimated to NSDL online. On the basis of this, NSDL will issue the TAN letter to the applicant.

Status track

The applicants may track the status of their TAN application using 14-digit unique Acknowledgment Number after three days of application using the status track facility. Alternatively, applicant may call TIN Call Centre on 020 – 2721 8080 to enquire about the status of their application. The status of the TAN application can also be tracked by sending an SMS - NSDLTAN to 57575. This facility can be accessed from the website of Income-tax Department too *(www.incometaxindia.gov.in)*.

Fee

Fee for filing the TAN application + GST as applicable (the application fees may change from time to time.

GST REGISTRATION

What are Goods and Services Tax (GST)?

Goods and Services Tax is an Indirect Tax levied on goods and services. It's a revolutionary change under the tax regime to create a One Nation, One Tax and One Market i.e. "One Nation One Tax". GST was rolled out on July 1st, 2017 replacing the Indirect taxes like excise duty, service tax, value added tax, central sales tax, purchase tax, entertainment tax, luxury tax and octroi that was levied by the central and states separately at different tax rates.

After the GST came into effect, only value addition is taxed eliminating the cascading effect or "TAX on TAX" and levied at similar rates on same products across the country that has been simplified in terms of single registration and completely digitalized.

GST in India is classified into four types:

Type of GST	*Who levies it?*	*Transactions on which SGST is levied*
SGST (State Goods and Service Tax)	State Government	Intra-State goods and service transactions
UGST (Union Territory Goods and Service Tax)	Union Government	Intra-union territory goods and service transactions
CGST (Central Goods and Service Tax)	Central Government	Intra-State goods and service transactions
IGST (Integrated Goods and Service Tax)	Levied by Central Government and revenue is shared both between Central Government and State Government	Inter-State goods and service transaction Import and Export

GST Registration

Registration of any business entity under the GST Law implies obtaining a unique number from the tax authorities for the purpose of collecting tax on behalf of the government and to avail Input tax credit for the taxes on his

inward supplies. GST being tax on the event of 'Supply' every supplier needs to get registered. Section 22 of Central Goods and Services Tax Act, 2017 mandates the Registration of every supplier of goods whose aggregate turnover exceeds the threshold (summarized in table below) n a financial year.

GST Registration Thresholds – Summary Table

Type of Supply	Standard Threshold	Lower Threshold (Special Category States)	States Included
Goods	₹ 40 lakh	₹ 20 lakh	Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand
Services	₹ 20 lakh	₹ 10 lakh	Assam, Arunachal Pradesh, Himachal Pradesh, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland, Tripura, Uttarakhand

- Businesses below the threshold may opt for voluntary registration.
- Thresholds apply to aggregate turnover across India, not state-wise.

Features of GST Registration

Feature	Description
PAN-Based & State-Specific	GST registration is linked to PAN and must be obtained separately for each State/UT where supply is made.
Territorial Coverage	Area up to 12 nautical miles from the coast is part of the nearest coastal State; area beyond 12 and up to 200 nautical miles is treated as a separate Union Territory.
No Cross-State Validity	A person registered in one State is considered unregistered in other States.
SEZ vs DTA Units	Separate registration is required for SEZ units and Domestic Tariff Area units, even within the same State.
Input Service Distributor (ISD)	A separate ISD registration is needed to distribute input tax credit to same-PAN entities.
No Centralized Registration	GST does not allow centralized registration for businesses operating in multiple States (unlike service tax regime).

Persons not liable to register

The following persons are not liable to registration as per section 23 of Central Goods and Services Tax Act, 2017.

Category	Description
1. Non-Taxable Supply Providers	Persons engaged exclusively in supplying goods or services (or both) that are not liable to GST under CGST or IGST.

Category	Description
2. Wholly Exempt Supply Providers	Persons engaged exclusively in supplying goods or services (or both) that are wholly exempt from GST.
3. Agriculturists	Individuals or HUFs supplying produce from land cultivation (as defined under Section 2(7)).
4. Notified Categories	Any other category of persons exempted by Government notification on GST Council's recommendation.

Compulsory registration

Generally, the liability to register under GST arises when a person is a "supplier" within the meaning of the term, and also if his Aggregate Annual Turnover in the financial year is above the specified exemption threshold. However, the GST law enlists certain categories of suppliers who are required to get compulsory registration irrespective of their turnover that is to say, the specified threshold exemption, as the case may be, is not available to them. Some of such suppliers who need to register compulsorily irrespective of the quantum of their turnover are :

- Inter State Suppliers: persons making any inter-State taxable supply;
- casual taxable persons;
- persons taxable under reverse charge;
- person who are required to pay tax under sub-section (5) of section 9;
- non-resident taxable persons;
- persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- Input Service Distributors; they need to separately register as ISD regardless of the turnover Suppliers who supply goods through electronic commerce operators;
- every electronic commerce operator who is required to collect tax at source under section 52)
- every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.
- In GST, if the supplier supplies outside the State, he is required to take registration irrespective of the size of his turnover. However, this compulsion is relaxed for certain categories of suppliers as per following table.

GST Registration Requirement for Interstate Suppliers

Supplier Category	Nature of Supply	Threshold Limit	Registration Required?	Remarks
General Supplier (Goods)	Interstate supply of taxable goods	No threshold exemption	√ Mandatory	Must register regardless of turnover

Supplier Category	Nature of Supply	Threshold Limit	Registration Required?	Remarks
Handicraft Goods Supplier	Interstate supply of notified handicraft goods	₹ 20 lakh (₹ 10 lakh for special category States)	X Not required if below threshold	Also exempt from registering as casual taxable person
Small Service Providers	Interstate supply of services	₹ 20 lakh (₹ 10 lakh for special category States)	X Not required if below threshold	Includes job workers, except those dealing in jewelry and precious metals
Service Providers via E-Commerce Operators	Services supplied through platforms like Amazon, Flipkart, etc.	₹ 20 lakh (₹ 10 lakh for special category States)	X Not required if below threshold	Exemption via Notification No. 65/2017 – Central Tax

Aggregate Turnover under the Act includes the aggregate value of all of the following supplies of a person having the same PAN.

- taxable supplies,
- exempt supplies,
- zero-rated supplies,
- interstate supplies,
- but doesn't include the inward taxable supplies under the Reverse Charge Mechanism.

If the person has taxable and exempt supplies as a part of the turnover, example, machine oil and petrol, the turnover from both would be added to determine whether the aggregate exceeds the threshold, and if it does, then registration becomes mandatory for such supplier.

The supplies by the agents on behalf of the principal would be included in the aggregate turnover of both, the principal and the agent. Registration is mandatory at every place of business from wherein a taxable supply has been made.

GSTIN

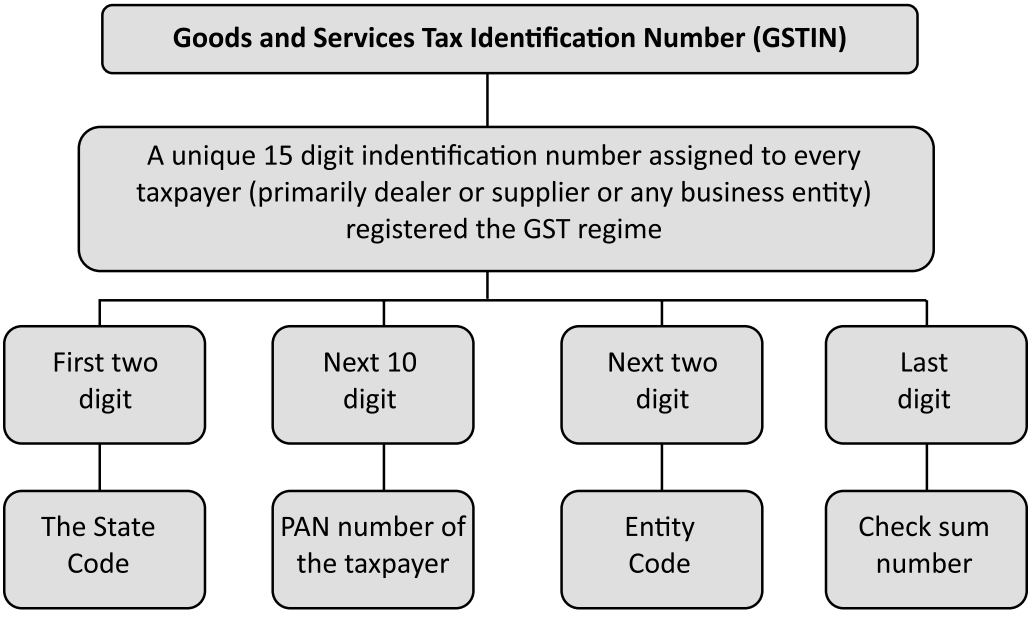
The registration in GST is based on Permanent Account Number and State specific. Supplier has to register in each of such State or Union territory from where he effects supply. In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.

- The first two digits of this number will represent the State code;
- The next ten digits will be the PAN number of the taxpayer;
- The thirteenth digit will be assigned based on the number of registrations within a State;
- The fourteenth digit will be Z by default;
- The last digit will be for check code (alphanumeric).

Registration under GST is not tax specific, which means that there is a single registration for all the taxes viz., CGST, SGST/UTGST, IGST and cesses.

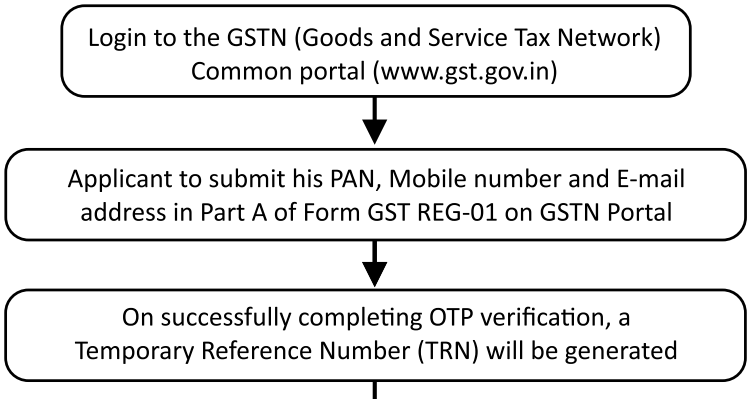
A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States. But within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business. However, a business entity having separate business verticals (as defined in section 2 (18) of the CGST Act, 2017) in a state may obtain separate registration for each of its business verticals.

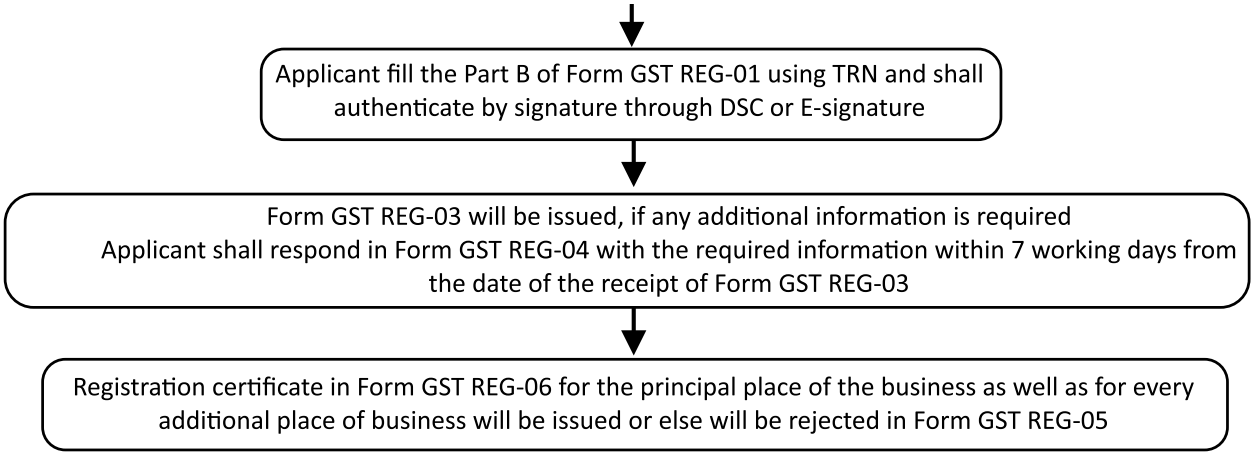
Further a unit in SEZ or a SEZ developer needs to necessarily obtain separate registration. Every registered person is required to display his certificate of registration in a prominent location at his principal place of business and at every additional place of business. He is also required to display his GSTIN on the name board exhibited at the said places.



Procedure for Registration

GST registration process will be online through a **portal** maintained by **GSTN** (Goods and Services Tax Network).
Steps for GST registration are:





Important points:

1. **Grant of Registration Without Aadhaar Authentication Issues:**

   The registration shall be granted to the applicant within a period of three working days from the date of submission of the application, if application along with the accompanying documents is found to be in order.

2. **Registration in Case of Aadhaar Authentication Failure (Applicable w.e.f. 21.08.2020):**

   Where a person fails to undergo authentication of Aadhaar number w.e.f. 21.08.2020, then the registration shall be granted only after physical verification of the principal place of business in the presence of the said person, not later than sixty days from the date of application, in the manner prescribed.

   The verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

3. **Deficiency in Application or Requirement of Clarification:**

   In case of deficiency in application documents or clarification submitted, the concerned officer may issue a notice electronically in FORM GST REG-03 within a period of three working days from the date of submission of the application.

   The applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

4. **Grant of Registration After Clarification:**

   Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.

5. **Rejection of Application:**

   Where no reply is furnished by the applicant in response to the notice so issued or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG- 05.

6. Deemed Approval of Registration:

If the proper officer fails to take any action, -

(a) within a period of three working days from the date of submission of the application; or

(b) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant,

the application for grant of registration shall be deemed to have been approved.

7. Effective date of registration:

Application Timing	Effective Date of Registration	Remarks
Within 30 days from the date of becoming liable	Date on which liability to register arose	Backdated to the date of liability
After 30 days from the date of becoming liable	Date of grant of registration	No retrospective effect; registration starts from approval date

8. Issuance of Registration Certificate:

Where the registration has been granted , the applicant shall be communicated the registration number, and the certificate of registration , duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period of deemed registration as stated above in point 6.

Registration as Composite Taxpayer

Composition Scheme under GST

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to Rs. 1.5 Crores (Rs. 75 lakhs in case of few States). The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is optional and the eligible person opting to pay tax under this scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.

Composition Scheme is now made available to service providers (32nd GST Council meeting) whose aggregate annual turnover does not exceed Rs. 50 lakhs. Both exclusive service providers and mixed service providers of goods and services can opt for this scheme.

Persons Not Eligible for Composition Scheme

Category	Reason for Ineligibility
Supplier of non-taxable goods	Supplies not liable to GST are excluded from the scheme.
Inter-State supplier of goods	Composition scheme is restricted to intra-State supplies only.
Supplier via e-commerce operators (Section 52)	Cannot opt if supplying through platforms required to collect TCS.
Manufacturer of notified goods	Certain goods (e.g., ice cream, pan masala, tobacco) are excluded by notification.

Category	Reason for Ineligibility
Casual taxable person	Temporary nature of business disqualifies them.
Non-Resident taxable person	Not eligible due to lack of permanent establishment.
Input Service Distributor (ISD)	Cannot opt as ISD deals with credit distribution.
TDS Deductor / Tax Collector	Entities registered under Section 51/52 are excluded.

Persons eligible for Composition Scheme

Under this scheme, a taxpayer will pay tax as a percentage of his/her turnover during the financial year without the benefit of Input Tax Credit. A taxpayer opting for composition scheme will not collect any tax from his/her customers and show only Bill of supply instead of invoice. The floor rate of tax for **CGST** and **SGST** are as follows:

Manufactures and Traders	(0.5% CGST + 0.5% SGST)
Restaurants not serving alcohol	(2.5% CGST + 2.5% SGST)
Other Service Providers	(3% CGST + 3% SGST)

Composition Scheme – Eligibility for Service Providers & Mixed Suppliers

Supplier Type	Eligibility	Threshold Limit	Tax Rate	Remarks
Pure Service Providers (not covered under restaurant or notified exclusions)	√ Eligible under Notification No. 2/2019 – Central Tax (Rate)	₹ 50 lakh (all-India aggregate turnover)	6% (3% CGST + 3% SGST)	Must not be supplying through e-commerce operators liable to collect TCS
Mixed Suppliers (goods + services)	√ Eligible if services are not more than 10% of turnover or ₹ 5 lakh (whichever is higher)	₹ 1.5 crore (₹ 75 lakh for special category States)	1% (traders), 5% (restaurants), etc.	Applies under Section 10(1) of CGST Act
Service Providers via E-Commerce Operators	X Not eligible	—	—	Excluded under Section 10(2)(d)
Notified Service Providers (e.g., legal, accounting, etc.)	√ Eligible under Notification No. 2/2019	₹ 50 lakh	6%	Must not be engaged in inter-State supply or notified exclusions

When the eligible taxpayer is opting for the Composition Scheme under GST, a taxpayer has to file a quarterly statement in Form CMP-08 and a return in Form GSTR -4 annually.

Process for GST registration as Composite taxpayer (Section 10):

A person who is applying for the fresh Registration under GST has to file FORM REG-01 and under Part B of the form, he has to select the option of Section 10 (Registration as composite taxpayer). The process is outlined as follows:

Step	Description
1. Access GST Portal	Visit www.gst.gov.in – GSTN Common Portal
2. File Form GST REG-01	Initiate registration by submitting Part A (PAN, mobile, email) and Part B
3. Select Composition Option	In Part B, choose Section 10 – Composition Scheme
4. Upload Documents	Provide business details, address proof, identity proof, and bank details
5. Verification & Approval	Application is verified by tax authorities; additional info may be requested via REG-03
6. Issue of GSTIN & Certificate	Upon approval, GSTIN and Form REG-06 (registration certificate) are issued
7. Composition Declaration	Taxpayer must also file Form GST CMP-01 (if migrating from regular scheme) or CMP-02 (for opting in subsequent years)

Registration under the Act in special cases:

(1) Person required to deduct tax at source or collect tax at source

- ***Electronic filing of application*** **:** Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in **FORM GST REG-07** for the grant of registration through the common portal.
- If the applicant is applying in a State or Union territory where he does not have a physical presence, he shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.
- ***Certificate of registration*** : After due verification, the proper officer may grant certificate of registration in FORM GST REG-06 within a period of three working days from the date of submission of the application.

(2) Non-resident taxable persons:

- Section 2(77) of Central Goods & Services Tax Act, 2017 defines “non-resident taxable person” as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. Hence, a non- resident taxable person is someone who has a business outside India, but comes to a different state for a business purpose temporarily. For example, a person from Paris, comes to participate in an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a non-resident taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

- A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least five days prior to the commencement of business at the common portal.
- In the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or it's Permanent Account Number, if available.
- A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax and the acknowledgement under shall be issued electronically only after the said deposit in his electronic cash ledger.
- The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.

(3) Person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient:

- electronically submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal.
- Registration is granted in FORM GST REG-06, subject to requisite conditions and restrictions.

(4) Suo moto registration:

- Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG-12.
- The registration so granted shall be effective from the date of such order granting registration.
- Every person to whom a temporary registration has been so granted shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration as required in the case of mandatory registration.
- Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.
- The Goods and Services Tax Identification Number assigned, pursuant to the verification, shall be effective from the date of the order granting such registration.

(5) Casual Taxable Person:

- Section 2(20) of Central Goods & Services Tax Act, 2017 defines "casual taxable person" as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. Thus, a casual taxable person

is someone who has a business in a different state, but comes to a different state for a business purpose temporarily.

- For example, a footwear dealer registered in Agra comes for an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a casual taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

Important points:

Registration must be taken state-wise. In case there are several branches within a single state, they can all operate under a single registration so long as one of the places are declared as Principle Place of Business (PPOB) and the remaining are Additional Places of Business (APOB).

- Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business provided such person has more than one place of business as defined in clause (85) of section 2. A registered person opting to obtain separate registration for a place of business shall submit a separate application in FORM GST REG-01 in respect of such place of business. Rest of the procedure is same as in case of mandatory registration.
- For composition levy, all businesses under a single PAN mandatorily either can be registered under composition levy or all of them under normal levy and there is no facility of choosing the Composition Scheme for only a few businesses under the Goods & Services Tax Act, 2017.
- ***Furnishing of Bank Account Details.***-After a certificate of registration in FORMGST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.
- ***Display of registration certificate and GSTIN on the name board:***
    1. Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.
    2. Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

REGISTRATION UNDER SHOPS & ESTABLISHMENTS ACT

One of the important regulations to which most businesses in India are subject to is the Shops and Establishments Act, enacted by every state in India. **The Shops and Establishments (S&E) Act** is applicable on all the commercial establishments; viz, business centers, offices, warehouses, stores, hotels, eateries, amusement parks, theatres, etc., nationwide. It is one of the most important regulations required to be complied with for any business. The Act is designed to regulate payment of wages, hours of work, leave, holidays, terms of service and other work conditions of people employed in shop and commercial establishments.

Purpose of Shop and Establishment Act

The Shop and Establishment Act in India is promulgated by the State and may slightly differ from state to state. However, as per the Act, all shops and commercial establishments operating within each state are covered by the respective Shop & Establishments Act.

Key Definitions:

- "Shop": Shop means any premises where

  (i) goods are sold, either by retail, wholesale, or

  (ii) services are rendered to customers.

  It includes an office, a store-room, godown, warehouse, or workplace, whether on the same premises or otherwise, used in connection with such trade/ business.

  A shop however does not include-

  - Factory (OSHWC Code)
  - Commercial establishment (defined separately under the Act)

- "Commercial Establishment": Commercial establishment means-

  (i) a premise where any trade, business, profession or any work is undertaken,

  (ii) which may include society, charitable or another trust, journalistic and printing establishments, contractors and auditors establishments, educational institutes, premises where the business of banking, insurance stocks, and shares, the brokerage is undertaken, restaurants and eating houses, residential hotels, clubs, theaters and other places of public amusement or entertainment.

Establishments are defined as shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment. Further, establishments as defined by the Act may also include such other establishments as defined by the Government by notification in the Official Gazette. *However, factories are not covered by the Shops & Establishments Act and are regulated by the Factories Act, 1948.*

License under Shop and Establishment Act

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for license under Shops and Establishments Act within the prescribed time.

The application for license in the prescribed form must contain:

- the name of the employer,
- address of the establishment,
- name of the establishment,
- category of the establishment,
- number of employees, and
- other relevant details as requested.

License Validity Varies by State – may be annual, multi-year, or lifetime depending on local rules. Renewal & Compliance Renewal must be done before expiry.

On submission of the application and review by the Chief Inspector, the shop or commercial establishment

will be registered and a registration certificate will be issued to the occupier. The registration certificate must be prominently displayed at the shop or commercial establishment and renewed periodically, as per the Act.

Registration of Shops & Establishments

As a business owner of a shop or establishment, you are compulsorily required to get the same registered under the Shops and Establishment Act. Here are the specific rules:

1. Submit an application in the prescribed form to the Inspector of the area within 30 days of starting any work in the shop/establishment. The application is to be submitted along with the prescribed fees and should contain the following information:
    a. Name of the employer and the name of a manager, if any;
    b. The postal address of your establishment;
    c. The name of establishment;
    d. Such other particulars as may be prescribed.
2. Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application. Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate for the establishment. This certificate will be valid for 5 years and has to be renewed thereafter.

It is important that the registration certificate has to be prominently displayed at the establishment.

The Labour Department of each state has authority for the registration process. Many States have a 100% online process, while some states are still following the manual procedure for filing.

The Registration certificate is required to be renewed periodically as mentioned in the state regulations.

ESI REGISTRATION

Employee State Insurance (ESI) is a social security scheme implemented by the Government of India under the provisions of the Employees' State Insurance Act, 1948/Code on Social Security. It is a self-financing contributory scheme, where both the employer and employee contribute a fixed percentage of the employee's wages towards a common fund.

The objective of the ESI scheme is to provide financial protection and medical benefits to employees and their dependents in the event of:

- Sickness
- Maternity
- Disablement (temporary or permanent)
- Death due to employment-related injury
- Occupational diseases
- Comprehensive medical care for insured persons and their families

Employees' State Insurance Corporation (ESIC):

The ESIC is an autonomous corporate body established under the ESI Act, 1948/ Code on Social Security. It is responsible for:

- Administering the ESI scheme
- Managing the ESI fund
- Ensuring compliance by employers
- Providing benefits to insured employees and their dependents.

Applicability

- Every establishment in which ten or more persons are Corporation employed other than a seasonal factory:
- Provided that Chapter IV shall also be applicable to an establishment, which carries on such hazardous or life-threatening occupation as notified by the Central Government, in which even a single employee is employed:
- Provided further that an employer of a plantation, may opt the application of Chapter IV in respect of the plantation by giving willingness to the corporation, where the benefits available to the employees under that Chapter are better than what the employer is providing to them:
- Provided also that the contribution from the employers and employees of an establishment shall be payable under section 29 on and from the date on which any benefits under Chapter IV relating to the Employees State Insurance Corporation are provided by the Corporation to the employees of the establishment and such date shall be notified by the Central Government.

ESI Registration Procedure for both Employer & Employee

Online Registration of Employers

The Ministry of Labour and employment, Central Government has launched Unified Shram Suvidha Portal to facilitate reporting of Inspections, and submission of Returns. The Unified Shram Suvidha Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions. Unique Labour Identification Number (LIN) is allotted to units to facilitate online registration. A common form for both ESIC and EPFO registration has been introduced under said portal. Registration of employers under ESI and EPF is fully online, without requirement of submission of any physical application documents either before the registration or after it. Government has dispensed away with all employer codes being issued by separate labour enforcement agencies such as ESIC, EPFO, CLC(C) and DGMS etc. and replaced them with new Labour Identification Number (LIN). LIN is a unique 10-digit number issued by the Ministry of Labour and Employment. The ID cards like Aadhaar Number, Driving License, Insured Person No., Pan, Passport No, UAN, and Voter Id No act as identifier.

- As of 8 October 2020, new Public & Private Limited Companies and One Person Companies do not get EPFO / ESIC registrations via Shram Suvidha; instead, they must obtain EPFO / ESIC registration at the time of incorporation via MCA (SPICe+/AGILE-PRO e-forms). registration.shramsuvidha.gov.in+1
- Also, ESIC has launched SPREE 2025 (Scheme for Promotion of Registration of Employers & Employees) from 1 July to 31 December 2025, under which unregistered employers / employees can voluntarily

register digitally through ESIC / Shram Suvidha / MCA portals without retrospective penalties or inspections/demands for past periods.

Registration of Employee

Detailed Step-by-Step: Registration Procedure

Stepwise procedure (employer / establishment side) for registration under the Act is detailed as follows:

1. **Create / Sign Up Account on Shram Suvidha**

   Visit the Shram Suvidha Registration portal. (registration.shramsuvidha.gov.in)

   Click Sign Up / Register (if not already registered). (registration.shramsuvidha.gov.in)

   Provide basic details: name (authorized signatory), email ID, mobile number, etc.

   OTP verification is done on mobile / email.

   Create a user ID and password.

   After account creation, login.

2. **Apply for EPFO / ESIC Registration**

   - Once logged in, go to "Registration for EPFO-ESIC" section on the left menu.
   - Select "Apply for New Registration" under EPFO / ESIC as applicable.
   - You will see a list of Acts.

3. **Fill Establishment / Employer Details**

   Following details are required to be filled:

   - Establishment name, address, contact details
   - E-contacts: official email, phone
   - Manager / responsible person details for the establishment
   - Branch / Division details (if multiple branches)
   - Identifiers: PAN, GSTIN, etc.
   - Employment details: number of employees, excluded employees, etc.
   - Nature of business / primary activity
   - Upload a specimen signature (in specified format) for authorized signatory.
   - Confirm all details and submit. (portal.esic.gov.in)

4. **Issuance of Registration Code / Certificate**

   - On successful submission, an ESIC registration code / number (C-11 code) is generated automatically and displayed.
   - A computer-generated Registration Letter (C-11) is made available for printing.

- The registration letter, user credentials (ID & password) are also emailed to the employer's email.
- The C-11 letter does not require physical signature from the issuing authority—digital generation is sufficient.

5. Post-Registration / Employee Linking

- After registration, the employer can log in via ESIC / Shram Suvidha to add / register individual employees (Insured Persons) under ESIC.
- Employee details (name, Aadhaar, date of birth, etc.) are captured via the portal.
- The system then tracks contributions, returns, etc., online.

Employee Registration / Linking (Insured Person)

While the employer handles the main registration, the key points regarding how employees become covered are:

- Once the employer is registered, each employee who is eligible (based on wage ceiling, etc.) is added as an Insured Person (IP) in the ESIC system.
- The employee's Aadhaar, name, date of birth, address, etc. are used to uniquely identify him/her.
- After registration, the ESIC system tracks contributions, benefits eligibility, and medical / social security coverage for that employee.
- The employee doesn't have to separately approach; the employer must enroll them via the portal.

EMPLOYEE PROVIDENT FUND MEANING AND REGISTRATION PROCEDURE

In order to provide financial stability and security in the form of post-retirement benefits and insurance to the employees engaged in organized sector when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS). A tri-partite Board known as the Central Board of Trustee, Employee's provident Fund consisting of representatives of government (both Central and State), Employers and Employees manages these funds, and employees are required to contribute a part of their salary to it every month during their employment tenure.

Compulsory Registration	Voluntary Registration
Registration under Employees Provident Fund, 1952 is mandatory for an establishment (i) which is a factory engaged in any industry having 20 or more persons, and (ii) to any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification specify on this behalf.	However, an establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits.

As an ease of doing business initiative, the Government of India launched a unified portal labour and employment "Shram Suvidha Portal " to facilitate Establishments, Contractors, Employers or Principal Employers to submit application for Registration/License under Labour Laws Online.

As part of the Ease of Doing Business reforms, the Government of India (Ministry of Labour & Employment) launched the Unified Shram Suvidha Portal to provide a single online platform for registration, licensing, and return filing under various central labour laws. The portal facilitates Establishments, Contractors, Employers, and Principal Employers to submit applications for registration or licenses online.

Each establishment is allotted a unique Labour Identification Number (LIN) for all future correspondence, inspection reporting, and return submissions. The registration process for employer for EPF is same as provided under ESI registration.

Universal Account Number (UAN)

Every employee covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is allotted a Universal Account Number (UAN) by the Employees' Provident Fund Organisation (EPFO).

- The UAN is a 12-digit unique number assigned to each employee contributing to the EPF.
- It acts as a permanent identification number and remains the same throughout the employee's lifetime, irrespective of the number of employers or job changes.

UAN allows Employee to connect all his provident fund accounts across the organisations on a single platform on UAN Login portal

Registration for EPFO & ESIC for new Public & Private Limited Companies and One Person Company has been stopped on Shram Suvidha Portal from 15.02.2020. With effect from 15.02.2020, new Public & Private Limited Companies and One Person Company shall get registration number for EPFO & ESIC on MCA portal (www.mca.qov.in through Spice+ and AGILE-PRO forms only at the time of incorporation.

POLLUTION CONTROL

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 39 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Forest and Climate Change, (MoEFCC) Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.

State Pollution Control Board is the concerned authority to obtain a pollution license/Certificate or a consent to establish such business. The permission is obtained in two stages:

(i) Consent to establish (CTE)
   - To be obtained prior to commencement of construction or any similar activities to start the business.
   - License valid for a period 1 to 7 years according to request made by Project Developers/ Designers/ Investors.

(ii) Consent to operate (CTO)
   - To be applied and obtained before starting production activity on the Unit.
   - CTO License valid for a period of 5 years, which may vary State to State.

The Central Pollution Control Board has specified list of industries as requiring a pollution license.

In November 2024, the Ministry of Environment, Forest and Climate Change (MoEFCC) exempted 39 categories of non-polluting 'white category' industries from the mandatory requirement of obtaining both Environmental Clearance (EC) and Consent to Establish (CTE) from State Pollution Control Boards. This move aims to reduce the dual compliance burden for industries that have minimal environmental impact.

As of the latest classification by the Central Pollution Control Board (CPCB) in April 2025, industries in India are categorized into five distinct categories based on their potential to pollute the environment. This classification aids in streamlining regulatory processes and ensuring appropriate environmental management.

Category	Pollution Index (PI) Range	Description
Red	≥ 80	Highly polluting industries requiring stringent regulatory measures and continuous monitoring.
Orange	55 ≤ PI < 80	Moderately polluting industries with moderate regulatory requirements.
Green	25 ≤ PI < 55	Low-polluting industries with minimal regulatory requirements.
White	PI < 25	Practically non-polluting industries exempt from regulatory requirements.
Blue	N/A	Newly introduced for zero-discharge sectors Essential Environmental Services (EES) sectors, such as waste management services.

Note: The Pollution Index (PI) is a cumulative score assessing water, air, and waste pollution potential.The Blue Category is newly introduced to recognize sectors with zero discharge and minimal environmental impact, such as solar panel assembly, dry warehousing, and biomining

Industries were categorized under red, orange and green category are covered under consent management for obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under Water Act, 1974 and Air Act, 1981. No Red category of industries shall normally be permitted in the ecologically fragile area / protected area.

Industries which fall under white category are exempted from environment clearance and obtaining consent under Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981. Industries and business under white category need to self-govern themselves and need to intimate various State Pollution Control Board (SPCB) within 30 days of commencement of their business.

Red category industries are generally prohibited from being established in ecologically sensitive areas, including Eco-Sensitive Zones (ESZs) around national parks, wildlife sanctuaries, and other protected areas.

The White Category of industries has to however satisfy these conditions to be eligible for this pollution license exemption:-

1. The industry is being established in the locality demarcated for them.
2. Their investment in the industry is not more than Rs. One Crore on plant and machinery.

3. There will not be any discharge of trade effluent from the industry into stream or well or sewer or onto land and/or that industry will not discharge any air pollution including noise into the atmosphere.
4. The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

The industry must intimate the relevant State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) in writing within 30 days of commencing operations.

Procedure for Obtaining NOC from the Pollution Control Board (SPCB/PCC):

1. Online Application: The application for Consent to Establish (CTE) and Consent to Operate (CTO) can be submitted online through the official website of the respective State Pollution Control Board (SPCB) or Pollution Control Committee (PCC).
2. Processing Timeline: The SPCB/PCC is required to process the application and provide a response within 4 months from the date of submission. During this period, the authorities may carry out due diligence inspections of the business premises to assess compliance with environmental norms.
3. Decision on Application:
    - If the application is approved, the SPCB/PCC issues a NOC/consent certificate to the business.
    - If the application is rejected, the applicant is informed in writing with detailed reasons for rejection.
4. Penalties for Non-Compliance: Failure to obtain the required CTE/CTO or pollution license is a punishable offense under the Water Act, 1974, and Air Act, 1981, which may include:
    - Imprisonment for 6 months to 1 year, extendable up to 6 years in severe cases.
    - Monetary fines, as prescribed under the applicable environmental laws.

COMPLIANCES UNDER ENVIRONMENT LAWS

Compliance under Environmental Laws:

1. EC – Environment Clearance: Clearance under the Environment Impact Assessment (EIA) Notification, 2006, required for projects listed under Schedule 1 of the notification.
2. FC – Forest Clearance: Clearance under the Forest (Conservation) Act, 1980, for diversion of forest land for non-forest purposes.
3. WC – Wildlife Clearance: Clearance under the Wildlife (Protection) Act, 1972, required if the project falls within or near protected areas or eco-sensitive zones.
4. CTE – Consent to Establish: Permission under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, required before setting up an industry.
5. CTO – Consent to Operate: Permission under the Water Act, 1974 and Air Act, 1981, required before starting operations.
6. Authorization under Hazardous & Other Wastes Rules: Required under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, for handling, storage, and disposal of hazardous wastes.
7. HSM – Hazardous Substance Management: Compliance under relevant rules and regulations for storage, transport, and management of hazardous substances as per the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (MSIHC Rules).

Environmental Laws & Applicable Regulatory Authorities

NOC / Permission	Regulatory Authority	Applicable Acts / Rules
EC – Environmental Clearance	MoEF&CC, SEIAA	Environment Protection Act, 1986; EIA Notification, 2006
FC – Forest Clearance / Tree Felling	MoEF&CC, Forest Department	Forest (Conservation) Act, 1980
WC – Wildlife Clearance	MoEF&CC, Wildlife Division	Wildlife (Protection) Act, 1972
CTE / CTO / Authorization / Battery / Plastic / Noise / BMW	CPCB / SPCB	Water (Prevention & Control of Pollution) Act, 1974; Air (Prevention & Control of Pollution) Act, 1981; Noise Pollution (Regulation & Control) Rules, 2000; Solid Waste Management Rules, 2016; Plastic Waste Management Rules, 2016; Batteries (Management & Handling) Rules, 2001; Biomedical Waste (Management & Handling) Rules, 2016
HSM – Hazardous Substance Management	MoEF&CC, DGFASLI	Manufacture, Storage and Import of Hazardous Chemical (MSIHC) Rules, 1989; updated provisions under Chemicals (Management & Safety) Rules
Water Abstraction / Dewatering	CGWA / CGWB / Ministry of Water Resources	Central Ground Water Authority (CGWA) Act, 1996; Ground Water (Regulation & Management) Rules, 2017

OTHER REGISTRATION AS PER REQUIREMENT OF SECTOR/ ACTIVITIES

Sector based registrations

Sector	*Registration/License*	*Authority*
Import and export for Goods and Services	IE Code	Director General for Foreign Trade
Setting up of Pharmacy Business	Drug License	Central Drugs Standard Control Organization and State Drugs Standard Control Organization
Regulating food Business	FSSAI	Food Safety and Standards Authority of India
For Non Bank Finance Activity	Non-Bank Finance Company Registration	Reserve Bank of India
Banking Activities	Banking Licence	Reserve Bank of India
Insurance Activities	IRDAI Registration	Insurance Regulatory and Development Authority of India
Industrial Activities	Industrial Activities	Department for Promotion of Industry and Internal Trade

Telecom Services	Telecom license	Ministry of Communications and Information Technology
MSME / Startup Recognition	Udyam Registration / Startup India Registration	Ministry of Micro, Small & Medium Enterprises (MSME), DPIIT

IMPORT EXPORT CODE

Import Export Code (IE Code) is a key business identification number which is mandatory for exporting or importing goods. It is a 10-digit alphanumeric code which is issued on the basis of PAN of an entity by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry. It is issued in electronic form (e-IEC). However, for services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

An IEC allotted to an applicant shall have permanent validity but it is mandatory to update the IEC annually so that the IEC is not deactivated. If the IEC is updated between April-June period each year, no fee shall be charged for updation of IEC.

Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.

The IE Code must be quoted by importers while clearing customs. Also, banks require the importers IE Code while sending money abroad. For exporters, IE Code must be quoted while sending shipments. And banks require the exporters IE Code while receiving money from abroad.

The nature of the firm obtaining an IEC may be any of the follows- "Proprietorship, Partnership, LLP, Limited Company, Trust, HUF and Society."

Under the post-GST regime (from 1 July 2017), the IEC is no longer a separate 10-digit numeric code; instead, it is now the same as the PAN (Permanent Account Number) of the applicant (individual or entity). However, IEC registration is still required and issued electronically (e-IEC) by DGFT.The IEC database continues to be managed by DGFT, and applicants must still apply on the DGFT portal for allotment and annual updation.

Application for IE Registration

Process to apply for Importer Exporter Code (IEC) on the DGFT portal (https://dgft.gov.in)

Step 1: Registration & Login

a) The applicant must register on the DGFT portal and obtain valid login credentials (User ID and Password).

b) Login to the portal using these credentials to access the IEC application module.

Step 2: PAN Verification

a) The applicant must have an active PAN (Permanent Account Number) of the firm/entity.

b) Details such as Name (as per PAN) and Date of Incorporation / Birth will be auto-validated with the Income Tax Department database.

Note: The system will not proceed unless PAN details match exactly with the Income Tax records.

Step 3: Preparation of Required Documents

All documents must be scanned in PDF format (maximum size: 5 MB per file) and uploaded in the online application.

A. Proof of Establishment / Incorporation / Registration (any one applicable):
   - Partnership Deed (for partnership firms)
   - Certificate of Incorporation (for companies / LLPs)
   - Registration Certificate (for registered societies)
   - Trust Deed (for trusts)
   - HUF Declaration (for Hindu Undivided Family)
   - Any other applicable document as proof of business establishment

B. Proof of Address (any one of the following):
   - Sale Deed / Rent Agreement / Lease Deed
   - Electricity Bill / Landline or Postpaid Mobile Bill / MoU / Partnership Deed
   - For Proprietorship: Aadhaar Card, Passport, or Voter ID
   - If address proof is not in the firm's name, a No Objection Certificate (NOC) from the premises owner along with address proof must be uploaded as a single PDF file.

C. Proof of Firm's Bank Account (any one):
   - Cancelled Cheque
   - Bank Certificate (in prescribed DGFT format)

Step 4: Digital Signature / Aadhaar Authentication

The application must be authenticated using either of the following:

a) Digital Signature Certificate (DSC) of the firm's authorized signatory, or

b) Aadhaar-based e-sign of the proprietor / managing partner / director / Karta.

Step 5: Payment and Submission

a) Provide active bank account details of the firm.

b) Pay the application fee of ₹ 500 online through Net Banking / Credit / Debit Card / NEFT.

c) Submit the form electronically.

Step 6: Issuance of IEC

Upon successful verification and processing by DGFT, the IEC is generated electronically (e-IEC) and can be downloaded from the DGFT portal.

No physical copy of IEC is issued. The e-IEC is digitally signed and valid for lifetime.

DRUG LICENSE

A Drug License is permission to start a pharmacy business. Drug comprises of medications and instruments used for diagnosis, treatment and prevention of any disorder or disease in animals and human beings. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license under Drugs and Cosmetics Act, 1940.

Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization. The applicant shall visit respective state website for obtaining such license.

Classification of Drug License

Types of Drug Licenses

The Drug Control Organization generally issues two types of licenses for operating a pharmacy business under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945:

Type of License	Purpose	Issued To / Applicability	Key Condition
Retail Drug License (RDL)	To sell drugs or medicines directly to end consumers through a chemist or pharmacy.	Individuals or entities intending to run a retail pharmacy outlet.	The applicant must possess a Degree/Diploma in Pharmacy from a recognized institute/ university and must employ a Registered Pharmacist.
Wholesale Drug License (WDL)	To sell, stock, or distribute drugs and medicines on a wholesale basis to retailers, hospitals, or other dealers.	Individuals, firms, or agencies involved in bulk distribution of medicines.	The qualification requirement of a pharmacist may be relaxed, but the premises and storage conditions must comply with prescribed norms.

Prerequisites for obtaining Drug License

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

- **Area**: The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required.
- **Storage Facility**: The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.
- **Technical Staff:**

  (a) *Wholesale* – The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4years experience in dealing in drugs, specially approved by the department of drug control for the purpose.

  (b) *Retail* – The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours.

Documents required for obtaining Drug License

The documents required for starting a pharmacy business varies from state to state. However, the following is an indicative list of documents required for obtaining drug license in India:

a. Application form in the prescribed format

b. Covering Letter with the intent of the application signed with name and designation of the applicant

c. Challan of fee deposited for obtaining drug license

d. Declaration form in the format prescribed

e. Key plan(Blue print) for the premises

f. Site plan (Blue print) for the premises

g. Basis of possession of the premises

h. Proof of ownership of the premises, if rented

i. Proof of constitution of the business (Incorporation Certificate / MOA / AOA / Partnership Deed)

j. Affidavit of non-conviction of proprietor / partners/ directors under Drugs and Cosmetics Act, 1940

k. Affidavit of registered pharmacist or competent person working full time

l. Appointment letter of registered pharmacist/competent person, if employed person.

FSSAI

FSSAI is an acronym for Food Safety and Standards Authority of India. Food Safety and Standards Authority of India (FSSAI), is an autonomous body created at central level to regulate food-related issues in India. FSSAI was established, in August 2011, to ensure the safety and wholesomeness of articles of food. FSSAI was created under the provisions of the Food Safety and Standards Act, 2006, with guidelines from the Ministry of Health and Family Welfare, and the Central government. The Preamble of the Act lays down its objective as an Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

As per section 31(1) of the Food Safety and Standards Act,2006, No person shall commence or carry on any food business except under a license except for petty manufacturers. All the manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration or a license number which must be printed on food packages and displayed at the business premises in accordance with the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

This 14-digit number provides information about the state, year of registration, and FBO identification, ensuring traceability and accountability across the food supply chain.

This step is taken by government's food licensing & registration system to ensure that food products undergo certain quality checks, thereby reducing the instances of adulteration, substandard products and improve accountability of manufacturers by issuing food service license.

To facilitate ease of doing business, the FSSAI Online Registration and Licensing process is conducted through the Food Safety Compliance System (FoSCoS) portal — *https://foscos.fssai.gov.in*

Through this system:

- Basic Registration, State License, and Central License applications can all be submitted online via the FoSCoS portal.
- The system is integrated with GST, PAN, MCA (for companies), and other government databases for seamless verification.

- Applicants can track application status, renew licenses, and file annual returns directly through the portal.
- Some states may still require physical verification or offline submission of documents at the State Food Safety Office, particularly for small or rural applicants, though the process is largely online nationwide.

The registration and licensing of food business in India is governed by the Food safety and Standards (Licensing and Registration of Food businesses) Regulation, 2011. As per the regulation, all food business operator in India must have a FSSAI registration or license if they are involved in the manufacturing, storage, transportation or distribution of food products. Based on the size a nature of business, FSSAI registration or FSSAI license may be required. Registration is meant for petty food manufacturers that includes petty retailer, hawker, itinerant vendor or a temporary stall holder or small or cottage scale industry having annual turnover up to 12 lacs. All food businesses having income more than this limit are required to take a license.

FSSAI Registration

FSSAI registration is required for all petty food business operators (FBOs) as defined under the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

Petty food business operator is any person or entity who:

(a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or

(b) Distributes foods including in any religious or social gathering except a caterer; or

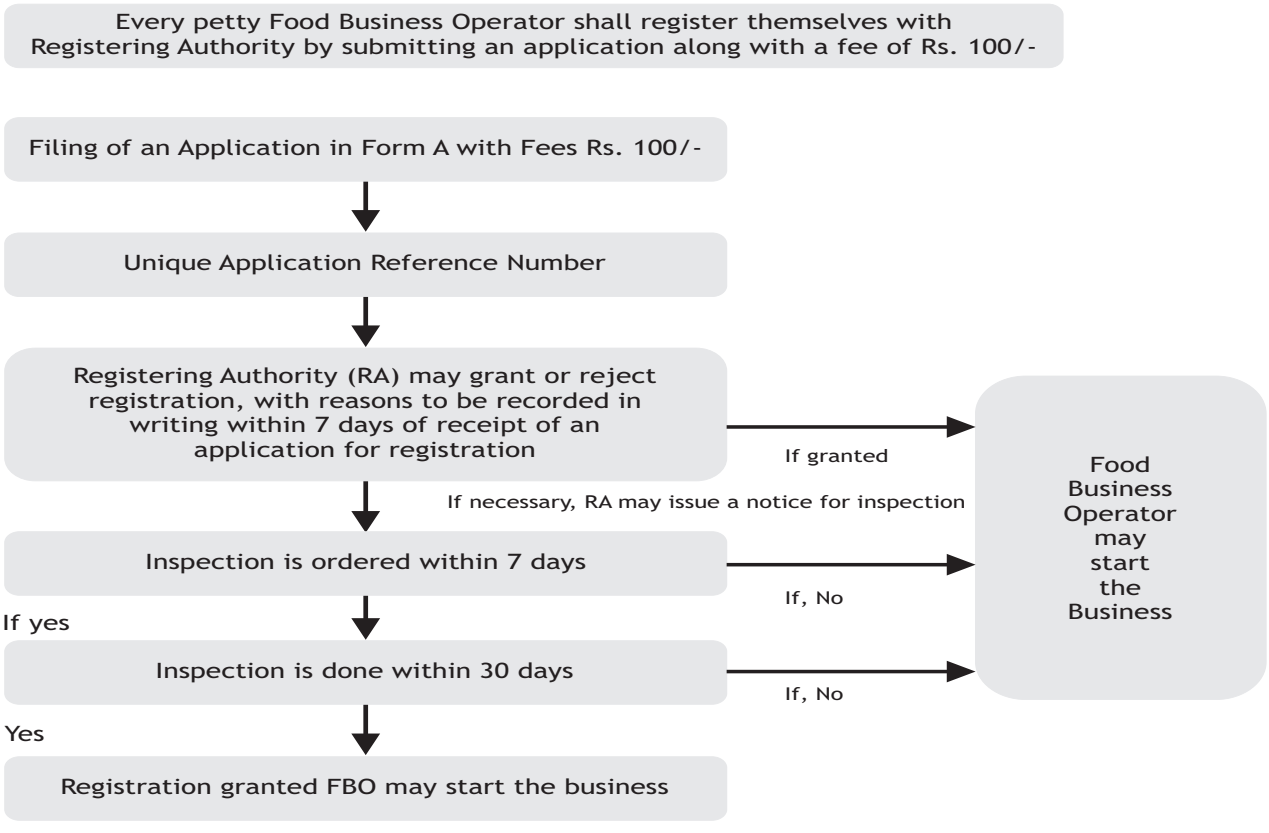
(c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and whose:

- Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
- Procurement or handling and collection of milk is up to 500 litres of milk per day or
- Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

A producer of milk who is a registered member of a dairy Cooperative Society registered under Cooperative Societies Act and supplies or sells the entire milk to the Society shall be exempted from for registration, provided the cooperative society itself holds a valid license.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A or by applying online on the FoSCoS portal. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority. The FoSCoS portal facilitates tracking of application status, submission of documents, and issuance of the 14-digit FSSAI registration number electronically.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.



Source: https://www.fssai.gov.in/cms/registration.php

FSSAI License

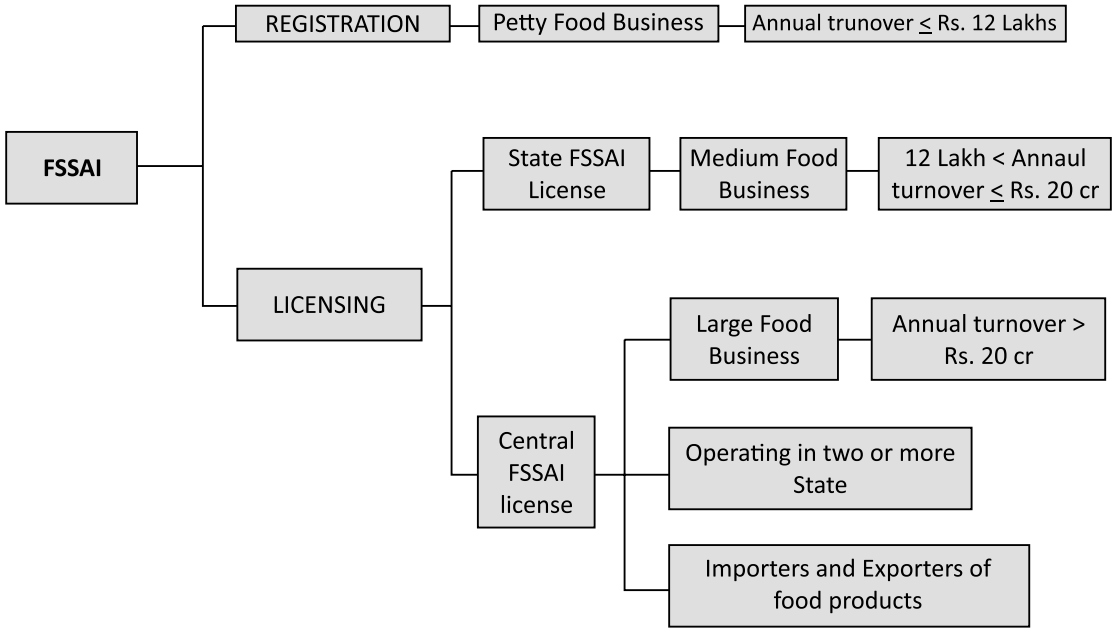
Any person or entity that is not classified as a petty food business operator is required to obtain a FSSAI license for operating a food business in India. FSSAI license is of two types:

(i) **State FSSAI License**. :FSSAI State License is needed for small to medium sized Food Companies which has an annual turnover of Rs 12 Lakhs – Rs 20 Crores. State FSSAI license is required for medium sized food manufacturers, processor and transporters.

(ii) **FSSAI Central License**: It is mandated for all Food giants with an annual turnover of more than Rs 20 Crores. Based on the size and nature of the business, the licensing authority would change. Large food manufacturer/ processors/transporters and importers of food products require central FSSAI license.

The fee and procedure for obtaining a FSSAI license is more extensive when compared to a FSSAI registration. FSSAI license application should be made in Form B by applying online on the FoSCoS portal along with the necessary self-attested declaration, affidavit and annexures, as applicable. Fee for the State is dependent on respective state rules.

FSSAI license in 'Form C' is granted for a period of 1 to 5 years as request by the food business operator. Higher fee would be applicable for obtaining FSSAI license for more years. If registration is obtained for one or two years, then the license can be renewed by making an application, no later than 30 days prior to the expiry date of the FSSAI license.



NON-BANK FINANCE COMPANY REGISTRATION

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act,2013 or previous company law of 1956 that is engaged in the business of loans and advances, receiving deposits (some NBFC's only), acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business. Therefore, NBFCs are doing functions similar to Banks but they differ from Banks which are as follows:

Differences between banks and NBFCs:

a) NBFC cannot accept demand deposits,

b) NBFCs cannot issue cheques drawn on itself, and

c) NBFC depositors are not covered by the Deposit Insurance and Credit Guarantee Corporation.

d) They cannot participate in payment and settlement systems like banks.

Requirement of NBFC License with RBI

In terms of Section 45-IA of the RBI Act, 1934, Non-Banking Financial Companies which are conducting financial activity as principal business which include lending or acquisition of shares, stocks, bonds, etc., or financial leasing or hire purchase or accepting deposits shall not commence or carry-on business of a non-banking financial institution without obtaining a certificate of registration from the Bank and without having a Net Owned Funds as specified by the Reserve Bank of India ("RBI") from time to time to commence the business of NBFC.

Prior to 2021, the minimum NOF requirement was INR 2 crore. However, in October 2021, RBI, vide its notification, now Master Direction – Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions, 2023 updated as on November 10, 2023, introduced 'scale-based regulation' for the NBFC sector as part of efforts to establish a robust and resilient financial system. The Scale-Based Regulation ("SBR") tailors the regulation and supervision of NBFCs according to their size, activities, and perceived level of risk.

Net Owned Fund (NOF) Requirement: The minimum NOF requirement for certain categories of NBFCs has been increased to ₹ 10 crore, with a phased implementation timeline.

Financial activity as principal business

- When a company's financial assets (cash and cash equivalents, debtors, securities, cash in bank etc.) constitute more than 50 per cent of the total assets

  (and) +

- income from financial assets constitute more than 50 percent of the gross income.

A company which fulfills both these criteria must have NBFC to be taken from RBI u/s 45-IA of the RBI Act of 1934.

This test for NBFC license is popularly known as the 50-50 test.

Exemption from NBFC Registration

Companies whose principal business is non-financial—such as:

- Agricultural operations
- Industrial activity
- Purchase and sale of goods
- Provision of services
- Purchase, sale, or construction of immovable property

and which engage in financial activities only incidentally or on a small scale, do not require registration as an NBFC under Section 45-IA of the RBI Act, 1934.

Financial Companies exempted from NBFC License

The following types of entities that are involved in the principal business of financial activity do not require NBFC License from RBI:

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

The above types of companies have been exempted from NBFC registration requirements and NBFC regulations of RBI as they are regulated by other financial sector regulators.

Mortgage Guarantee Companies have been notified as Non-Banking Financial Companies under Section 45 I(f) (iii) of the RBI Act, 1934. Core Investment Companies with asset size of less than Rs. 100 crore, and those with asset size of Rs. 100 crore and above but not accessing public funds are exempted from registration with the RBI.

Requirement for Obtaining NBFC License

To apply and obtain NBFC License, the following are the basic requirements:

- It shall be a company registered in India (Private Limited Company or Limited Company);
- The company must have minimum Net Owned Fund as specified by RBI from time to time

Calculating Net Owned Funds as per RBI Definition

Net Owned Funds Formula

- The Net Owned Funds would be calculated based on the last audited balance sheet of the Company.
- Net owned Fund will consist of paid-up equity capital, free reserves, balance in share premium account and capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets. From the aggregate of items will be deducted accumulated loss balance and book value of intangible assets, if any, to arrive at owned funds. Further, investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above will be deducted to arrive at the Net Owned Fund.

Net owned funds

= Paid up equity capital + free reserves+ balance in share premium account +capital reserves representing surplus arising out of sale proceeds of assets(not created by revaluation of assets)

(-) accumulated losses

(-) book value of intangible assets

(-) investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above

Types of NBFC License

Before applying for an **NBFC license**, the applicant must first determine the **type and category of NBFC** it qualifies for. NBFCs are categorized as follows:

A. By Type of Liabilities:

1. **Deposit-taking NBFCs (NBFC-D):**
   - Companies that **accept public deposits**.
2. **Non-Deposit-taking NBFCs (NBFC-ND):**
   - Companies that **do not accept public deposits**.

B. By Size (for Non-Deposit-taking NBFCs):

1. **Systemically Important NBFCs (NBFC-ND-SI):**
   - Non-deposit NBFCs with **asset size above ₹ 100 crore** (threshold as per RBI guidelines)
2. **Other Non-Deposit-taking NBFCs (NBFC-ND):**
   - Non-deposit NBFCs with **asset size below ₹ 100 crore**

C. By Nature of Activity:

- NBFCs are also classified **based on the principal financial activity they conduct**, such as:
  - **Asset Finance Companies (AFC)**
  - **Investment Companies (IC)**
  - **Loan Companies (LC)**
  - **Infrastructure Finance Companies (IFC)**
  - **Mortgage Guarantee Companies (MGC)**
  - **Micro Finance Institutions (NBFC-MFI)**
  - **Other specialized financial activity NBFCs**

Note: Determining the **correct type and category** is essential because it dictates the **minimum Net Owned Fund (NOF), regulatory requirements, and the applicable prudential norms** under the RBI framework.

Applying for NBFC License

The application for NBFC License must be submitted both

- online at XBRL website https://xbrl.rbi.org.in and
- offline with the necessary documents to the regional Office of the Reserve Bank of India having jurisdiction over the company's registered office.

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

- Information about the management.
- Certified copies of Certificate of Incorporation and Certificate of Commencement of Business in case of public limited companies.
- Certified copies of up-to-date Memorandum and Articles of Association of the company. Details of clauses in the memorandum relating to financial business.
- Copy of PAN/CIN allotted to the company.
- Directors' profile, separately filled up and signed by each director.
- Certificate from the respective NBFC/s where the Directors have gained NBFC experience.
- CIBIL Data pertaining to Directors of the company.
- Financial Statements of the last 2 years of unincorporated Bodies, if any, in the group where the directors may be holding directorship with/without substantial interest.
- Board Resolution specifically approving the submission of the application and its contents and authorizing signatory.
- Board Resolution to the effect that the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India in writing.
- Board resolution stating that the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/commence the same before getting registration from RBI.

- Certified copy of Board resolution for formulation of "Fair Practices Code".
- Statutory Auditors Certificate certifying that the company is/does not accept/is not holding public deposit.
- Statutory Auditors Certificate certifying that the company is not carrying on any NBFC activity.
- Statutory Auditors Certificate certifying net owned fund as on date of the application.
- Details of Authorized Share Capital and latest shareholding pattern of the company including the percentages.
- Copy of Fixed Deposit receipt & bankers' certificate of no lien indicating balances in support of Net Owned Funds.
- Details of the bank balances/bank accounts/complete postal address of the branch/bank, loan/credit facilities etc. availed.
- Last three years Audited balance sheet and Profit & Loss account along with directors & auditors report or for such shorter period as are available (for companies already in existence).
- Business plan of the company for the next three years giving details of its (a) thrust of business, (b) market segment and (c) projected balance sheets, cash flow statement, asset/income pattern statement without any element of public deposits.
- Source of the startup capital of the company substantiated with documentary evidence.
- Self-attested Bank Statement/IT returns etc.
- In addition to the above documents, more documents may be required as per the RBIs requirement for NBFC License.

BANKING

Licensing of Banking Companies is governed by Banking Regulation Act, 1949. To be registered as a banking company, the entity must be a company registered under the Companies Act, 2013 or previous company laws or a foreign company having the prescribed minimum paid up capital.

The minimum paid-up voting equity capital for a bank shall in compliance with the guidelines issued by RBI for universal bank as well as small finance banks.

According to Section 12 of the Banking Regulation Act, 1949, no banking company is allowed to carry on its business unless it satisfies the following conditions:

1. Its subscribed capital is not less than one-half of its authorized capital;
2. Its paid-up capital is not less than one-half of the subscribed capital;
3. The capital of the company consists of equity shares only or equity shares along with preference shares:

   Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares, and the terms and conditions subject to which each class of preference shares may be issued:
4. No person holding shares in a banking company shall have voting rights of above 10% of total voting rights on poll of all the shareholders;

5. Every managing executive of the bank needs to disclose, to the RBI, the extent and the amount of his shareholding in the bank.

Section 22 of the Act details on licensing of Banking Companies which states as below:

1. Save as hereinafter provided, no company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank and any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose.
2. Every company before commencing banking business shall apply in writing to the Reserve Bank for a license under this section.
3. Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:-
   (a) That the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
   (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;
   (c) That the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors;
   (d) That the company has adequate capital structure and earning prospects;
   (e) That the public interest will be served by the grant of a license to the company to carry on banking business in India;
   (f) That having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
   (g) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

IRDA (INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY)

Introduction

Till 1999 the insurance sector was controlled by Controller of Insurance as per the provisions of Insurance Act 1938 but after formation of the IRDA it was felt by the Authority that the most of the provisions of this Act were irrelevant in the present scenario of the country. Therefore, the Authority issued various regulations, as deemed

fit, to develop the insurance sector in the country. Registration of Insurance company in India is governed by the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2022.

Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2022

- The classes of business of insurance for which requisition for registration application may be made are:
  - (i) Life insurance business;
  - (ii) General insurance business;
  - (iii) Health insurance business exclusively;
  - (iv) Reinsurance business and
  - (v) any other class of business as specified by IRDAI may request for registration under the Registration Regulations.
- **"Applicant"** means a company as defined in sub-section (20) of section 2 of the Companies Act, 2013 or a statutory body established by an Act of Parliament or co-operative society to carry on insurance business;
- "**Indian promoter**" means -
  - (i) a company as defined in the Companies Act, 2013 (18 of 2013), which is not a subsidiary as defined in clause (87) of section 2 of that Act:

    Provided that a subsidiary company may be allowed to be a promoter of the applicant if it meets the following conditions:
    - a. The said company is listed on the stock exchange(s) in India;
    - b. The said company has its own source of funds, independent from its holding company;
    - c. The said company has a net worth of atleast Rs.500 crore as at the end of the financial year preceding the date of application; and
    - d. The holding company of the said company is not subsidiary of any other company.
- **Disqualifications for Applicant**: An applicant shall not be eligible to apply for the requisition in the following circumstances:
  - i. Where the requisition for registration application or the application for registration has been rejected by the Authority or withdrawn by the applicant at any time during two financial years preceding the date of application; or
  - ii. Where Certificate of Registration has been cancelled by the Authority at any time during two financial years preceding the date of application; or
  - iii. Where the name of the applicant does not contain the words 'insurance' or 'assurance' or 'reinsurance'.

l **Procedure for registration**

(1) No-objection Certificate

i. No company or co-operative society shall be incorporated in India with a name that contains words 'insurance' or 'assurance' or 'reinsurance' without obtaining a No-objection Certificate from the Authority.

ii. Upon request by the applicant to issue the No-objection Certificate in the specified format, the applicant may be issued the No-objection Certificate.

iii. The No-objection Certificate issued to the applicant shall be valid for a period of 6 months within which **the applicant shall file application for issuance of requisition for registration application i.e. Form IRDAI/R1**:

Provided that the validity of the No-objection Certificate may be extended by a further period of three months for the reasons to be recorded in writing provided the applicant submits a request to the IRDAI before the expiration of the initial six-month period.

(2) R1 Approval

i. The Authority, upon receipt of application for issuance of Form IRDAI/R1 and after examining the matters considered relevant to its satisfaction, shall issue the Form IRDAI/R1 which shall be valid for a period of three months within which the applicant shall submit the duly filled Form IRDAI/R1 to the Authority for its consideration:

Provided that the Authority, by recording the reasons in writing, may reject the application for issuance of Form IRDAI/R1:

Provided further that the Authority, by recording the reasons in writing, may extend the validity of the IRDAI/R1 Form by another three months.

Every application in the Form IRDAI/R1 as per the specified format shall be accompanied by:

a. The certificate of incorporation issued by Registrar of Companies in case of a company or Registration certificate in case of co-operative society;

b. a certified copy of the Memorandum of Association and Articles of Association, where the applicant is a company and incorporated under the Companies Act, 2013 ; or a certified copy of the legislation of Parliament setting up the statutory body to carry on insurance business;

c. In case of co-operative society, certified copy of bye-laws;

d. the name, address and the occupation of the directors of the promoter and the applicant;

e. a certified copy of the annual report of promoter(s) for up to the last five years, as applicable;

f. a certified copy of the shareholders' agreement, as applicable, between promoter(s) and investor(s) of the applicant;

g. Projection of business for five years duly approved by the Board of Directors of the applicant along with a certificate from a fellow actuary that the projections are reasonable and workable;

h. Proof in support of payment of non-refundable fee of rupees five lakh along with applicable taxes towards processing the form IRDAI/R1 through any of the recognised modes of electronic fund transfer.

iii. The Authority shall take into account such matters as may be considered relevant while processing the Form IRDAI/R1, including but not limited to the following:

a. the general track record of conduct and performance of each of the promoters and investors in the fields of business or profession they are engaged in;

b. the record of conduct and performance of the directors and persons in management of the promoters, investors and the applicant;

c. the financial strength of the promoters, investors and the applicant;

d. the capital structure of the promoters, investors and the applicant;

e. the sources of meeting the capital requirements of the applicant;

f. shareholding pattern of the applicant and its promoter(s);

g. the ability of the applicant and its promoters to meet the obligation to provide life insurance or general insurance or health insurance to the persons residing in the rural sector, workers in the unorganised sector or informal sector or for economically vulnerable or backward classes of the society and other categories of persons specified by the Authority;

h. the ability to meet the obligation to underwrite insurance business in third party risks of motor vehicles as specified by the Authority;

i. the planned infrastructure of the applicant;

j. the proposed business expansion plan for five succeeding years, including establishment of place of business in rural areas, to effectively carry out the insurance business; and

k. other relevant matters for carrying out the provisions of the Act.

iv. The Chairperson of the Authority, after examining the matters considered relevant and upon its satisfaction, shall issue the "R1" Approval subject to the conditions as may be specified in the said approval letter. **Along with the said approval letter, the applicant shall be issued the application for registration i.e. Form IRDAI/R2.**

v. The "R1" approval shall be valid for a period of three months from the date of the said approval within which the applicant shall submit duly filled Form IRDAI/R2 for **consideration of the** Authority:

Provided that the Chairperson, by recording the reasons in writing, may extend the validity of the "R1" approval by a period of another three months.

(3) R2 Approval

i. Every application in the Form IRDAI/R2 as per the specified format shall be accompanied by:

a. An affidavit by the applicant and its promoters that the paid-up share capital of the applicant, after deducting the preliminary expenses, shall be adequate to comply with the requirements of section 6 of the Act.

b. A statement indicating the shareholding pattern of the applicant as on the date of the application.

c. An affidavit by the managing director or chief executive officer or whole-time director of the promoters and the investors of the applicant certifying that the holding of foreign paid-up equity capital, referred to in sub-clause (b) of clause (7A) of Section 2 of the Act, is calculated in accordance with Indian Insurance Companies (Foreign Investment) Rules, 2015 read with these Regulation and does not exceed seventy four percent of the total paid-up capital of the applicant:

Provided that in case of the Indian promoter being a Limited Liability Partnership, such affidavit shall be signed by the Designated Partner:

Provided further that in case of applicant being a co-operative society, the affidavit shall certify that the holding of foreign capital, referred to in sub-clause (c) of clause (8A) of Section 2 of the Act, does not exceed twenty six percent of the total capital of the applicant.

d. In case the applicant has foreign investment, an affidavit by the managing director or chief executive officer or whole-time director and the promoter(s) of the applicant certifying that the requirement of regulation 8 shall be complied with.

e. In case the applicant has foreign investment exceeding forty nine percent, an affidavit by the managing director or chief executive officer or whole-time director and the promoters of the applicant certifying that the requirement of regulation 9 shall be complied with.

f. A certified copy of the standard forms of the applicant and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate by an actuary in case of life insurance business that such rates, advantages, terms and conditions are workable and sound.

g. A certified copy of the Memorandum of Understanding or Management Agreement or Shareholders Agreement or Voting Rights Agreements or any other agreements in whatsoever form entered into, between the promoters and the investors, if any, or amongst the promoters as a whole including copies of the support or comfort letters exchanged between the parties.

h. A certificate from a practicing-chartered accountant or a practicing company secretary certifying that all the requirements relating to registration fees, equity share capital, foreign investment limits and other requirements of laws for the time being in force including the Act have been complied with by the applicant.

i. Proof in support of payment of non-refundable fee of rupees five lakh along with applicable taxes towards processing the Form IRDAI/R2 through any of the recognised modes of electronic fund transfer.

ii. Upon completion of the processing of the Form IRDAI/R2 but prior to its approval by the Authority, the applicant shall submit:

a. Evidence of applicant having received equity share application money in accordance with section 6 of the Act and complied with conditions of R1 approval granted by the Authority.

b. An affidavit by the applicant, promoters and the investors that upon grant of Certificate of Registration, the said share application money shall be converted into paid-up equity share capital of the applicant.

iii. The Authority shall take into account the matters, as may be considered relevant while processing the form IRDAI/R2, including but not limited to the following:

a. the nature of insurance products proposed to be offered by the applicant;

b. the level of actuarial, accounting and other professional expertise within the management of the applicant;

c. the organisation structure of the applicant to carry on all functions in respect of the insurance business including management of the investments within its own organisation;

d. the applicant is eligible, and in its opinion, is likely to meet effectively its obligations imposed under the Act;

e. the financial condition of the promoters, investors and the general character of the management of the applicant are sound;

f. the volume of business likely to be available to, and the capital structure and earning prospects of the applicant will be adequate;

g. the interests of the general public will be served if the certificate of registration is granted to the applicant in respect of the class of insurance business specified in the application; and

h. the applicant has complied with the provisions of sections 2C, 5 and 31A of the Act and has fulfilled all the requirements of these sections applicable to it.

i. all other relevant matters for carrying out the provisions of the Act.

iv. The Authority, after examining the matters considered relevant and upon its satisfaction, shall, at its discretion, issue the "R2" Approval subject to the conditions as may be specified in the said approval letter.

(4) Grant of Certificate of Registration: After examining the matters considered relevant and upon its satisfaction, the applicant may be registered as an insurer for the class of business for which the applicant is found suitable and the chairperson of the Authority may grant the applicant the Certificate of **Registration in Form IRDAI/R3 subject** to the following conditions:

i. The applicant and its promoter(s) and investor(s) shall be "Fit & Proper" on a continuous basis;

ii. The promoter(s) and investor(s) shall comply with the specified lock in period, on their shareholding from the date of grant of Certificate of Registration;

iii. The promoter(s) and investor(s) of the applicant shall not create any encumbrance on the equity shares of the applicant during the lock in period as may be specified;

iv. the shareholders of the applicant shall not create any encumbrance on the equity shares of the insurer without the previous written approval of the Authority in accordance with sub section (4) of section 6A of the Act;

v. The applicant and promoter(s) shall be continuously bound by all the conditions and the investor(s) by such conditions as may be applicable subject to which the certificate in Form IRDAI/R3 has been issued;

vi. The applicant shall furnish, within 15 days, evidence of applicant having allotted shares to its promoters and investors in accordance with section 6 of the Act and having complied with the conditions as per R1 approval and R2 approval granted by the Authority; and vii. Such other conditions as may be deemed fit at the time of grant of Certificate of Registration.

(5) Commencement of Insurance Business: An applicant granted the Certificate of Registration under these Regulations shall commence insurance business, for which it has been authorised, **within 12 months from the grant of Certificate of Registration**. In case, the applicant fails to

commence business within the stipulated time, the certificate of registration shall not be valid after expiry of stipulated time:

Provided that in case the applicant is not in a position to commence the insurance business within the specified period of 12 months, it can before the time limit expires, seek an extension from the Authority through a written application. The said application shall highlight the reasons for not being able to commence business within the specified period of 12 months:

Provided further that no extension of time shall be granted by the Authority beyond 24 months from the date of grant of Certificate of Registration.

(6) Rejection of Application

i. The requisition for registration application or the application for registration may be rejected by the Authority, after giving the applicant a reasonable opportunity of being heard, in following cases:

   a. Where an application is not complete in all respects.

   b. Where the requirements under the provisions of the Act or the Regulations framed thereunder are not met at any stage of the process.

   c. For any other reasons to be recorded in writing.

ii. The order rejecting the application shall be communicated by the Authority to the applicant, in writing, within a period of thirty days of such rejection stating therein the grounds on which the application has been rejected.

iii. An applicant, whose application for registration has been rejected at any stage, shall not be entitled to a Certificate of Registration.

(7) Further Information and Clarification: The Authority may require the applicant, which makes an application under these regulations, to furnish further information or clarifications regarding the matters relevant for the consideration of the application at any stage of the process.

(8) The Authority may impose such conditions as may be deemed fit at the time of grant of No objection Certificate, R1 approval, R2 approval or the Certificate of Registration. The applicant shall be bound by the conditions subject to which the approvals and/or certificate of registration has been issued.

(9) Appeal to SAT: An applicant aggrieved by the decision of the Authority, at any stage under these regulations, may appeal before the Securities Appellate Tribunal as per the provisions of the Act.

INDUSTRY LICENSING POLICY

Section 11 of the Industries (Development and Regulation) Act, 1951 lays down condition of Licensing of new industrial undertakings as follows—

(1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a license issued in that behalf by the Central Government:

Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

(2) A license or permission under sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be

provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made under section 30.

Section 11A of the Act makes it mandatory to obtain license for producing or manufacturing new articles. According to the section, the owner of an industrial undertaking not being the Central Government in respect of which a license or permission has been issued under section 11 shall not produce or manufacture any new article unless- he has had the existing license or permission amended in the prescribed manner.

Since the liberalization and deregulation of the Indian economy in 1991, most industries have been exempted from obtaining an industrial license to start manufacturing in India. Government attention is reserved only for those industries that may impact public health, safety, and national security.

***At present, industrial license is made compulsory only for the following*:**

1. Industries retained under compulsory licensing: The following industries require compulsory license:
    - Alcoholics drinks
    - Cigarettes and tobacco products
    - Electronic aerospace and defense equipment
    - Explosives
    - Hazardous chemicals such as hydrocyanic acid, phosgene, isocynates and di-isocynates of hydro carbon and derivatives
    - Drugs and Pharmaceuticals industry
    - In case of the small units which employ less than 50 workers with power or less than 100 workers without power are not required to obtain any license under Compulsory Licensing Provisions.
2. The Government has reserved certain items for exclusive manufacture in the small-scale sector. Non-small-scale units can undertake the manufacture of items reserved for small scale sector, only after obtaining an industrial license. In such cases, the non-small-scale unit is required to undertake an obligation to export at least 50% of the production of SSI reserved items.
3. When the proposed location attracts locational restriction-

Locational restrictions

Industrial undertakings to be located within 25 kms of the standard urban area limit of 23 cities having a population of 1 million as per 1991 census require an industrial license. Industrial license even in these cases is not required if

(i) a unit is located in an area designated as an industrial area before 1991; or

(ii) it is non-polluting industries such as electronics, computer software, printing and other specified industries.

To create a business and Investor friendly environment, DPIIT has developed G2B Portal as a Single Window System for receiving application of Industrial Entrepreneurs to file an Industrial Entrepreneurs Memorandum (IEM) as well as Industrial License under Industries (Development and Regulation) Act, 1951. Online filing has been made mandatory with effect from 15th May 2014. The online portal has the required authentication mechanisms for submitting IEM and IL applications.

- Previously, the application for registration was made to the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP) along with a fee.

- Once the license is obtained, an industrial undertaking is eligible for the allotment of controlled commodities and for the issuance of an import license for goods required for its construction and operation.
- The validity of all industrial licenses has been extended to 15 years, whether issued before or after 21st July 2023, as per Press Note No. 1 (2023 Series). The licensee must apply for an extension of validity after 15 years, as applicable.

Procedure to apply for Industrial License

1. All applications for Industrial License under IDR Act, 1951 can now be applied online on G2B Portal in Form FC-IL/FORM FC-IL - Composite form for Foreign Collaboration and Industrial License.
2. The Applications are scrutinized for their completeness. Information in respect of incomplete applications is sought from the applicants.
3. If the applications for grant of license are complete in all respect with necessary documents, DPIIT circulates them to concerned administrative ministries, Ministry of Home Affairs, Concerned State Government and other concerned agencies for their comments.
4. After receipts of Comments from the concerned Ministries/Agencies, files are processed and submitted to the Licensing committee for consideration.
5. Licensing committee can recommend for grant of license/rejection of proposal/deferment of the proposal, based on the comments received and deliberations in the Committee. After recommendation, the approval of the Minister in charge of DPIIT is obtained for grant of licenses or otherwise.

Industrial Entrepreneur Memorandum (IEM)

As per the Gazette Notification S.O. 1364(E) dated 21st March 2025, issued by Ministry of Micro, Small, and Medium Enterprises (MSME) the eligibility criteria for classification of MSMES has been revised. This revision marks a significant step towards fostering industrial growth, encouraging higher investments, and strengthening India's position as a global manufacturing hub. In line with this notification, Department for Promotion of Industry and Internal Trade (DPIIT) has updated the eligibility criteria for issuance of Industrial Entrepreneur Memorandum (IEM) acknowledgment.

Revised Eligibility Criteria for IEM

W.e.f. 1st April, 2025, Enterprises meeting the following revised criteria shall be eligible for IEM acknowledgment:

- Investment in plant & machinery/equipment exceeding Rs.125 crore, or/and
- Annual turnover exceeding Rs.500 crore.

IEM acknowledgment is for:

- Large-scale industries operating in sectors not requiring compulsory industrial licensing under the Industries (Development & Regulation) Act, 1951.
- Companies having investment in plant and machinery, or/and annual turnover beyond the limits set for MSMEs.

Confirmation for receipt of such information by this Department is known as 'IEM Acknowledgement.:

All on-line applications filed through the portal are scrutinized in 'IEM Section' for verification related to

'Incorporation Certificate'; 'Memorandum of Article'; 'Article of Association', 'Master data', 'PAN' and 'Codes related to NIC & Administrative Ministry/Department etc. Once the above is verified and found correct; the Department electronically issues IEM Ack. to the applicant.

The Acknowledgement (Ack.) of the IEM which is given on the spot on prima facie evidence of not attracting the provisions of licensing, cannot, therefore, be construed as a clearance or approval to carry on an industrial activity contemplated in the IEM unless the provisions of statutes/regulations/notifications etc. issued by the Central or State Governments from time to time or any specific directions or Stay Orders issued by the Court/ competent authority relevant to such an activity, are also fully complied with, or in no way contravened, as the case may be.

All Industrial undertakings which had filed IEM are required to report commencement of commercial production and this is also filed on-line on the same portal by way of filing information as per prescribed form 'Part B' of the IEM after commencement of commercial production by the establishment; a copy of the related IEM Ack. is required to be attached while filing this information on the portal.

Like 'Part A' Ack. of IEM, the Department also issues Ack. for 'Part B' through its portal.

TELECOM LICENSE

Business entities which provide internet services or engaged in commercial communications i.e., call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services which are catogerised as **'Other Service Providers'**(OSP) under New Telecom Policy, 1999, must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications and Information Technology, Government of India. The telecom license entitles the entities to provide telecommunication services in India.

OSP license shall be categorized into two types:

1. Domestic OSP – OSP providing services to clients located within national boundaries of India
2. International OSP - OSP providing services to clients outside India

Process

A company registered under the Companies Act, 2013 or under any other previous law i.e., the Companies Act,1956 or LLP registered under Limited Liability Act,2008 or Partnership Firm or organisations registered under Shops and establishment Act are eligible to obtain OSP license.

- To Obtain a OSP license, the Company or LLP shall file an Application in Form - 1 to the DoT. The application is submitted online via the DoT portal.
- OSP license is location specific and can have multiple registrations for each such site.
- An entity shall inform the change, if any in the point of presence. Point of presence is a location where OSP places equipment like Private Automatic Branch Exchange, Interactive voice recording System etc. to act as an extension of its OSP center for collecting, converting, carrying and exchanging the telecom traffic related to its services.

Mandatory documents required for OSP License

For Companies:

- Certificate of Incorporation issued by ROC
- Memorandum and Articles of Association
- Board Resolution / Power of Attorney authorizing the authorized signatory with attested signature
- A note describing the nature of business or activities of the proposed OSP
- List of present directors
- Present shareholding pattern

For LLPs:

- Copy of LLP Agreement
- Resolution passed by all designated partners or partners as per provisions of LLP Act
- A note describing the nature of business or activities of the proposed OSP
- List of present designated partners
- Present shareholding pattern

Certification Requirements:

- Companies: All documents must be certified with seal by either a Company Secretary, one of the Directors, Statutory Auditor, or Public Notary.
- LLPs: All documents must be certified with seal by either a Designated Partner, all Partners, Statutory Auditor, or Public Notary.

Validity of OSP License:

- The OSP license is valid for 20 years.
- It can be extended for a further period of 10 years from the expiry of the initial 20 years.

State-Level Approval:

- Approval from the respective State Industrial Department is also required for issuance of the license.

STATE LEVEL APPROVAL FROM THE RESPECTIVE STATE INDUSTRIAL DEPARTMENT

Apart from the registration and licences listed above, one has to seek state level approval (s) wherever it is applicable to one's business from the respective State Industries Department.

Various State Government have formulated Industrial Policy to create a conducive environment through an enabling Policy and regulatory framework to drive sustainable industrial growth in the State. States committed to simplify the processes and procedures and expedite project approvals and clearances. The Policy focusses on providing quality industrial infrastructure, creation of a large land bank, financial assistance to the private sector for development of industrial infrastructure and sustainable environmental protection.

LESSON ROUND-UP

- A permanent account number known as PAN is a vital document for any taxpayer. It is a 10-character alphanumeric number consisting of letter and digits.
- Any entity body corporate doing business in India requires a PAN card whether it is registered in India or abroad.
- PAN Card is significant for Setting up of Business.
- Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail Input Tax Credit for the taxes on his inward supplies. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 40 Lacs in the relevant financial year, is liable to be registered under the Act. It must be noted that for North-Eastern states, the threshold is Rs 20 Lacs.
- For services, the limit for Normal category seats is 20 lacs & for special category seats is 10 lacs.
- North-eastern states would include Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura along with hilly areas of Himachal Pradesh and Uttarakhand. If a person has his place of business in different states, and one of the branches is in any of the states mentioned above (Jammu & Kashmir/ North Eastern), then the threshold limit for GST registration would be reduced to Rs 10 Lacs.
- One of the important regulations/statutes to which most businesses in India are subject to is the Shops and Establishment Act, enacted by every state in India. The Act is designed to regulate payment of wages, hours of work, leave, holidays, terms of service and other work conditions of people employed in shops and commercial establishments.
- Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shops and Establishment Act License within the prescribed time. The application for license in the prescribed form must contain the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested.
- Employee's State Insurance (ESI) is a self-financing scheme for Indian workers which covers health insurance and social security. ESI functions as an independent corporation and comes under Ministry of Labor and Employment in India. The ESI Corporation thus manages the funds.
- Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project. For 30 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.
- IEC registration is required by a person for exporting or importing goods. It is a 10-digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods are required to obtain the Import Export Code. IE code has a lifetime validity. Importers are not allowed to operate without obtaining this code and exporters cannot take benefit of exports from DGFT, customs, Export Promotion Council, if they do not have this code.

- To start a pharmacy business, a drug license is required. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license in India. Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization.
- FSSAI is an abbreviation used for Food Safety and Standards Authority of India. FSSAI license is mandatory before starting any food business. All the manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration or a license number which must be printed on food packages.
- A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act that is engaged in the business of loans and advances, receiving deposits (some NBFC's only), acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business. Therefore, NBFCs lend and take deposits similar to banks; however, there are a few differences a) NBFC cannot accept demand deposits, NBFCs cannot issue cheques drawn on itself and NBFC depositors are not covered by the Deposit Insurance and Credit Guarantee Corporation.
- Licensing of Banking Companies is governed by Banking Regulation Act, 1949. Section 22 of the Act details the requirements for Licensing of Banking Companies.
- To facilitate the regulatory regime of insurance business in India, IRDA is authorized to grant licenses and issue registration for setting up insurance business in India.
- The Industrial (Development and Regulations) Act 1951, popularly called as the IDRA, brings under Central control the regulation and development of certain important industries in India. Only Five Industries are mandated to obtain Industrial License and exempted Industrial undertakings shall make application for Industrial Entrepreneurs Memorandum (IEM) for acknowledgment of unit.
- 'Other Service Providers'(OSP) license shall be obtained to provide telecom services other than voice or SMS services by filing with Department of Telecommunications, the authority to issue such license.
- Apart from the registration and licences listed above, one has to seek state level approval (s) wherever it is applicable to one's business from the respective State Industries Department.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss the process of acquiring license under PAN, TAN Shops and Establishment in India.
2: Discuss the registration process of ESI and EPF.
3. What is OSP license? Discuss its types and registration process in detail.
4. Puran wants to open garment shop in a shopping mall. Is he required to get his shop registered under Shops and Establishment Act, 1948? If so, advise him the procedure.
5. PQ Pvt. Ltd., is engaged in the business of textile related products and employs 20 employees. Out of which, 11 employees draw a monthly salary of more than Rs. 25,000 each and 9 employees

draw a monthly salary of less than Rs. 20,000 each. Because of this the Management of the Company is of the view that the Company is not covered under Employee's State Insurance (ESI) Act, 1948. Referring to relevant provisions clarify whether the contentions of the Management of PQ Pvt. Ltd. is correct.

6. Nivasan, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Nivasan on the requirements of Industrial licensing based on category of Industries.
7. Write short notes on Industrial Entrepreneurs Memorandum (IEM).

LIST OF FURTHER READINGS

- Bare Act - Income Tax Act
- Bare Act - Goods and Services Tax Act, 2017
- Bare Act - The Shop and Establishment (S&E) Act
- Bare Act - OSHWC Code
- Bare Act - Drugs and Cosmetics Act, 1940
- Bare Act - Food Safety and Standards Act, 2006
- Bare Act - Reserve Bank of India Act, 1934
- Bare Act - Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000
- Bare Act - Industries (Development and Regulation) Act, 1951

OTHER REFERENCES (Including Websites/ Video Links)

- https://incometaxindia.gov.in/Pages/tax-services/apply-for-pan.aspx
- https://incometaxindia.gov.in/Pages/tax-services/online-tan-registration.aspx#:~:text=and%20mobile%20number.-,Go%20to%20https%3A%2F%2Fwww.tdscpc.gov.in%2F,tdscpc.gov.in%20%E2%80%8B%E2%80%8B
- https://reg.gst.gov.in/registration/
- https://labour.delhi.gov.in/content/online-registration-shop-and-establishment
- https://www.epfindia.gov.in/site_en/index.php
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- https://fsdaup.gov.in/OnlineLicensing/index.aspx
- https://www.foodlicenseportal.org/?gclid=CjwKCAiAs8acBhA1EiwAgRFdw3VigNpY76hlTc1ecgKesQo5rWs9Ae6aunSZDYBSYw0_pFsNeNUbPhoCrrlQAvD_BwE
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- https://trai.gov.in/online-registration?id=97828

Constitution and Labour Laws

Lesson 14

KEY CONCEPTS

■ Industrial Relations ■ Labour Relations ■ Constitutional Remedies ■ Fundamental Rights ■ Equality Before Law ■ Industrial Jurisprudence ■ Directive Principles of the State Policy ■ Social Justice ■ Socio-Economic Justice ■ Social Order ■ Living Wages

Learning Objectives

To understand:

- The relevance of the dignity of human labour
- The need for protecting and safeguarding the interest of labour
- The constitutional provisions which guarantee protection of labour laws
- Fundamental Rights and labour legislations
- Safeguards for the protection of labour

Lesson Outline

- Introduction
- Constitutional bearing on Industrial Laws and Industrial Relations
- Social Justice and Industrial Laws
- Constitutional Remedies
- Constitutional framework of Fundamental Rights and Industrial Relations
- Labour Laws and reference to Directive Principles of State Policy
- Social Security Provisions
- Working Conditions
- Living Wage
- Workers Participation in Management
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

REGULATORY FRAMEWORK

- Constitution of India

INTRODUCTION

The Constitution of a country is the fundamental law of the land. It is under this fundamental law that all other laws are made and executed. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the Constitution and there is no authority, no department or branch of the State, which is above the Constitution or has been vested with unfettered and unrestricted powers by the Constitution.

The trinity of Indian Constitution, the Preamble, the Fundamental Rights and Directive Principles of the State Policy embody the fundamental principles which provide guide to all legislations including the labour legislations.

CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS AND INDUSTRIAL RELATIONS

Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.

The extent of State control or intervention is determined by the stage of economic development. In developed economy, work stoppages to settle claim may not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, a state in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, and employment and so on.

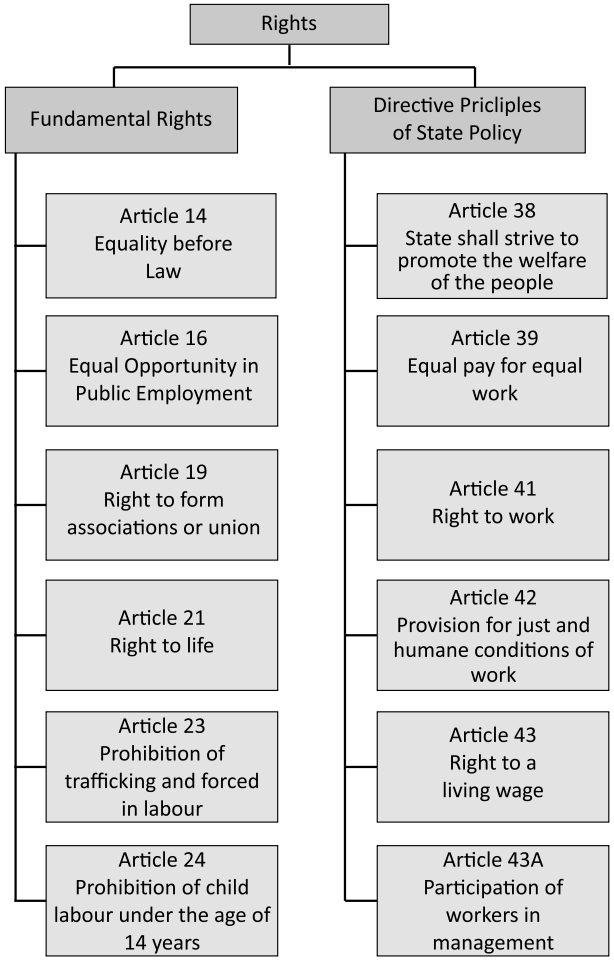
The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspect of social securities and welfare like employer's' liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective. Similarly, Section 29 and Section 30 of

the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards securing right to adequate means of livelihood, distribution of the material resources of the community to sub serve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923/OSHWC Code, 2020 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936/ Code on Wages, 2019 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.

Constitution and Labour



SOCIAL JUSTICE AND INDUSTRIAL LAWS

The Preamble of the Constitution highlights the concept of socio-economic justice, being the main objectives of the State required by the Constitution. Article 38 of the Constitution provides the concept of social justice by providing that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, social order in which justice, social, economic and political shall inform all institutions of the national life. Further, Article 39 says that it shall be the duty of the state to apply certain principles of social justice in making laws.

"The concept social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law, meaning and significance to the ideal of the welfare state." *(Justice Gajendragadkar in the State of Mysore* v. *Workers of Gold Mines, AIR 1958 SC 923).* In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their social and economic conditions. "It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally provision of basic minimum to all in response to life and living facilities for promoting one's own values and manner worth are the essential contents of social justice." *(K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97).* It is the responsibility of both the State and the citizens to work hand in hand for achieving social justice. "The State has constitutional responsibilities and the citizens have moral responsibility and the combination of the two types of responsibilities tend to create an ideal society worthy to live in". *(Chakradhar Jha, 'Judicial Review of Legislative Acts' (1974), p. 254.)*

Industrial laws are socio-economic justice oriented

The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.

The concept of social justice is though not limited to any particular branch of legislation although it is more prominent and conspicuous in industrial laws and relations. Its scope is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of social economic disparities and inequalities of birth and the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails among them which may further the growth and progress of nations. *(Mahesh Chandra, 'Industrial Jurisprudence' (1976), p. 47)*

Constitutional Limitations

The goals and values proclaimed under Part IV of the Constitution are to be effectuated consistent with the fundamental rights enshrined in Part III of the Constitution. The socio-economic reconstruction should not give scope to eat away the existence and worth of man. The fundamental rights are envisaged with the overall object of protecting individual liberty and democratic principles based on equality of all members of society. The State in its ebullience to evolve and streamline socio-economic reforms is bound to respect the dignity and worth of the citizens. Without these fundamental rights, the values of life may be stifled and annihilated. Therefore, the State cannot make laws inconsistent with the fundamental rights. Any law that contravenes fundamental rights will be void to the extent of inconsistency.

CONSTITUTIONAL REMEDIES

The Constitution also envisages remedies for violation of fundamental rights. Article 32 and 226 of the Constitution confers writ jurisdiction on Supreme Court and High Courts respectively for enforcement and protection of fundamental rights of an individual. Article 32 is itself a fundamental right. Apart from the writ

jurisdiction under Article 32, the Supreme Court is envisaged with discretionary jurisdiction to entertain appeal by special leave under Article 136 from decree, sentence, or order passed by any court or tribunal in India. High Courts are vested with writ jurisdiction under Article 226 and the power of superintendence over all courts and tribunals under Article 227. A person aggrieved by an award of the High Court can appeal to the Supreme Court under Article 132 if any constitutional question is involved or under Article 133 in civil appeal.

Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?

This issue was discussed by the Rajasthan High Court in *Jaipur Division Irrigation Employees Union* v. *State of Rajasthan and others (1994) IILLJ 26 Raj*. Here a large number of the employees of the irrigation department were declared surplus. The Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the union. On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case.

The traditional concept of *locus standi* underwent sweeping changes in the modern age of public action and public interest litigation. In the famous case of *S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149)* the question of locus standi was discussed and it was held that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantageous position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution of India or in the Supreme Court under Article 32 of the Constitution of India seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people. The Indian Constitution guarantees essential human rights in the form of Fundamental Rights under Part III and also Directive Principles of State Policy in Part IV which are fundamental in the governance of the country. Freedom and civil rights granted to all under Part III have been liberally construed by various pronouncements of the Supreme Court. The object has been to place citizens at a centre stage and make the State accountable. Fundamental Rights must not be read in isolation but together with directive principles and fundamental duties. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Article 14, 16, 19, 21, 23 and 24 giving an idea of the conditions under which labour had to be for work.

Article 14: Equality before law

Equality is one of the magnificent corner-stones of Indian Democracy. Article 14 of the Constitution of India reads as under:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 14 bars discrimination and prohibits discriminatory laws. The said Article is clearly in two parts — while it commands the State not to deny to any person 'equality before law', it also commands the State not to deny the 'equal protection of the laws'. Equality before law prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

In the case of the *Air India v. Nargesh Meerza (1981 AIR 1829)* Regulation 46 and 47 of Indian Airlines regulations was in question which provides that an air Hostess will retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy, whoever found earlier but the managing director had the discretion that he may extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit. It was held by the court that the clauses regarding retirement and pregnancy of the regulation as unconstitutional and therefore struck down. The retirement of air hostess on the ground of pregnancy was unreasonable and arbitrary and it was in violation of Article 14 of the constitution law of India.

In *D.S Nakara v. Union of India, (1983 AIR 130)* the supreme court held Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional and was struck down on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not depend upon the any rational principal and it is arbitrary and violates Article 14 of Indian constitution.

Article 16: Equality of opportunity in matters of public employment

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference is certain posts.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14. The concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the principle of equality under Articles 14 and 16 cannot be carried beyond a point. There is no bar of reasonable classification of various employees and there is no question of equality between separate and independent classes of employees. The court cannot interfere with a promotion policy unless it is vitiated by arbitrariness or discrimination; a court or Tribunal cannot issue directions in this regard.

In the case of *Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors. (AIR 1989 SC 1256),* the Court observed: "The doctrine of 'Equal Pay for Equal Work' is not an abstract one, it is open to the State to

prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal Pay for Equal Work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay.

Commenting on the principle of 'Equal Pay for Equal Work', the court has observed: "While considering the question of application of principle of 'Equal Pay for Equal Work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is rounded on unreal, and unreasonable basis it would be violative of Article 14 and 16 of the Constitution.

Article 19(1)(c) of the Constitution: Right to form Association & Union

Article 19(1)(c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In the case of *All India Bank Employees vs. National Industrial Tribunal* 1962 SCR (3) 269, the court held: "The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the reason for the existence of labour organizations. Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art. 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute."

In the case of *Damyanti Naranga v. The Union of India 1971 SCR (3) 840*, the court observed that: "The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association. The right guaranteed by Article 19(1)(c) cannot be confined to the initial stage of forming an association. If it were to be so confined, the right would be meaningless because as soon as an association is formed, a law may be passed interfering with its composition so that the association formed may not be able to function at all. The right can be effective only if it is held to include within, it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. And, Article 19(4), on the face of it, cannot be called in aid to claim validity for the Act."

Article 21 of the Constitution: Right to Life

Article 21 of the constitution of India reads as:

"No person shall be deprived of his life or personal liberty except according to a procedure established by law."

Article 21 assures every person right to life and personal liberty. The term 'life' has been given a very expansive meaning. The term 'personal liberty' has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

In course of time, Article 21 has come to be regarded as the heart of Fundamental Rights. Article 21 has enough of positive content in it and it is not merely negative in its reach. This liberal interpretation of Article 21 by judiciary has led to two very spectacular results within the last two decades, viz.:

(1) Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable.

   a) Right to livelihood

   b) Right to live with human dignity

   c) Right to medical care

   d) Health of labour

   e) Sexual harassment

   f) Right to health

   g) Economic Rights.

(2) The Supreme Court has implied a number of Fundamental Rights from Art. 21.

In the case of *Olga Tellis & Ors v. Bombay Municipal Corporation,* AIR 1986 SC 180, the Court held: "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities.

They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the village is that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to Live. Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey that the right to work is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois, (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed"

In the case of *D.K. Yadav v. J.M.A. Industries Ltd 1993 SCR (3) 930,* the court held: "Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426)*, a mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the various government hospitals, he filed a writ petition in the Supreme Court under Art. 32. The Court has ruled that: "the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them. Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance."

In the case of *Vishakha & Ors.* v. *State of Rajasthan (1997) 6 SCC 241* whereby a woman was assaulted and harassed at her workplace, the Supreme Court observed: "Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'."

Article 23 and Article 24: Right Against Exploitation

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits begar. 'To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.' *(Suraj v. State of Madhya Pradesh, AIR 1960 MP 303).*

The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted *ejusdem generis*. The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or begar. The prohibition against forced labour is made subject to one exception. Under Article 23(2), the State can impose compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Article 23(2).

The Supreme Court has given an expansive significance to the term "forced labour" used in Art. 23(1) in a series of cases beginning with the Asiad case in 1982. (*People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473).* The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

in *Sanjit Roy v. State of Rajasthan, 1983, SCR (2) 271* case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Article 24 of the Constitution of India states that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 24 is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

In *Peoples Union for Democratic Rights v. Union of India: (AIR 1982 SC 1473)* also known as the Asiad Workers case the Supreme Court observed that though the Employment of Children Act, 1938 did not include the construction work because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article .24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 is enforceable even in the absence of implementing legislation.

In *M.C. Mehta v. State of T.N.: (AIR 1997 SC 699)* the Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education.

Article 39(f) of the Constitution of India enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against 'forced labour' and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively.

LABOUR LAWS AND REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY

The makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of the masses. Today we are living in

an era of welfare state which seeks to promote the prosperity and well-being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. The Directive Principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.

The Courts however do not enforce a directive principle enshrined in Part IV of the Constitution unlike rights enshrined in Part III. The reason behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state. While taking positive action, government functions under several restraints, the most crucial of these being that of financial resources. The constitution-makers, therefore, taking a pragmatic view refrained from giving teeth to these principles. They believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfillment of these principles. Nevertheless, the Constitution declares that the Directive Principles, though not enforceable by any Court, are 'fundamental' in the governance of the country, and the 'state' has been placed under an obligation to apply them in making laws. The state has thus to make laws and use its administrative machinery for the achievement of these Directive Principles. Further, as reflected in its various recent judgements, the court is now more inclined in the integrative approach towards Fundamental Rights and Directive Principles; or that the both should be interpreted and read together. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view as the latter defines the scope and ambit of former. Mostly, Directive Principles have been used to broaden, and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights. Articles 38, 39, 41, 42 and 43 have a special relevance in the field of industrial legislation and adjudication. In fact, they are the substratum or rather 'magna carta' of industrial jurisprudence. They encompass the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

Social Order Based on Socio-Economic Justice

Article 38(1) directs the state to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Article 38(2) directs the state to strive "to minimise the inequalities in income," and endeavour "to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations".

Article 38 needs to be read along with Article 14. This directive reaffirms what has been declared in the Preamble to the Constitution, viz., the function of the Republic is to secure, inter alia, social, economic and political justice. On the concept of equality envisaged by Article 38, the Supreme Court has observed *in the case Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999:* "Equality before law is a dynamic concept having many facets. One facet--the most commonly acknowledged--is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]. For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution."

Reading Articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in *Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923),* that "right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right...to make the life of the workman

meaningful and purposeful with dignity of person." Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workmen.

Article 38 is always supplemented and must be read with Article 39 which seeks to lays down the guidelines and principles for achieving such social order.

Equal Pay For Equal Work

Article 39 requires the state, in particular, to direct its policy towards securing:

(a) that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal work for both men and women;

(e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In the case of *Randhir Singh v. Union of India (1982 AIR 879)* the Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

In the case of *Dhirendra Chamoli and Anr. v. State of U.P. (AIR 1982 SC 879),* the Court stated: "The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India (UOI) and Ors. (19.03.2018 - SC): (2018)5SCC607

In this case, petition was filed towards the non-implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other

Construction Workers' Welfare Cess Act, 1996 (the Cess Act) According to petitioner, non- implementation violates the provisions of Articles 15(3), 39(e) and (f) and also Articles 45 and 47 of the Constitution, which impose a primary responsibility on the State to ensure that all the needs of workers are met and that their basic rights are fully protected. Supreme Court held that -

"There can be no doubt that the BOCW Act and its sister legislation, the Cess Act are social justice legislations. They were enacted keeping in mind the Directive Principles of State Policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. In addition, Article 21 of the Constitution cannot be forgotten. A life of dignity is a fundamental right given to all persons and that includes construction workers. It is in this background that the two welfare and beneficent legislations must be understood and appreciated. The sanctity of laws enacted by Parliament must be acknowledged- laws are enacted for being adhered to and not for being flouted. The Rule of law must be respected and along with it the human rights and dignity of building and construction workers must also be respected and acknowledged, to avoid a complete breakdown of the BOCW Act compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights."

Bandhua Mukti Morcha and Ors. vs. Union of India (UOI) and Ors. (21.02.1997 - SC) : (1997)10SCC549

In this case, petitioner's main contention was that employment of the children in any industry or in a hazardous industry, is violative of Article 24, Articles 39(e) and 45 of the Constitution read with the Preamble. Court stated that -

"Court has considered the constitutional perspectives of the abolition of the child labour and the child below 14 years of age in industries. We are of the view that a direction needs to be given that the Government to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in M.C. Mehta's case; to evolve such steps consistent with the scheme laid down in M.C. Mehta's case, to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court."

SOCIAL SECURITY PROVISIONS

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Social security is guaranteed in our Constitution under Articles 39, 41 and 43. The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance. The Employees' State Insurance Scheme provides for benefits in cash except the medical benefit, which is in kind. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961 are also social security measures to help fulfill the objectives of directive principles of our Constitution. The Provident Fund Scheme aimed at providing substantial security and timely monetary assistance to industrial employees and their families. The Maternity Benefit Scheme is primarily designed to provide maternity leave with full wages and security of employment. The object of the Payment of Gratuity Act, 1972 is to provide a scheme for the payment of gratuity to employees employed in factories, mines, oil fields, plantations, ports, railways, shops and establishments. Besides social security benefits, efforts have also been made to provide ample opportunities for employment and for workers' education. The Apprentices Act, 1961 was enacted to supplement the programme of institutional

training by on-the-job training and to regulate the training arrangements in industry. Employment exchanges play an important role for the job seekers. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it obligatory on the employers to notify vacancies occurring in their establishments to the prescribed employment exchanges before they are filled. The voluntary workers education scheme was launched in our country in 1958 to educate the workers in trade union philosophy and methods, and to promote physical awareness of problems, privileges and obligations as workers and citizens.

WORKING CONDITIONS

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein "the right to live with human dignity".

LIVING WAGE

Article 43 requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A 'living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). *(Edward Mills Co. v. Ajmer, AIR 1955 SC* 25).

WORKERS PARTICIPATION IN MANAGEMENT

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.

CASE LAWS

Janapareddy Surya Narayana and Ors. vs. The Muncipal Administration and Urban Development and Ors. (16.04.2021 - APHC) : Writ Petition No. 25434 of 2020

In this case, petition was filed questioning the proceedings RC. No. 16394/P.O. (Balyam) dated 19.06.2017 as illegal, arbitrary and violative of Articles 14, 16, 21 & 39(d) of the Constitution of India and consequently set-aside the same and directed the respondents to regularise the services of the petitioners. Andhra Pradesh High Court stated that -

"When part time workers or NMRs are regularized, they are entitled to get minimum time scale of pay prescribed for the post they are discharging their duties for limited office hours, whereas, these petitioners are discharging their duties for eight hours as per the proceedings impugned in the writ petition. When these petitioners are discharging their duties for eight hours, they are entitled to get equal pay in terms of Article 39(d) of the Constitution of India, otherwise, it amounts to discrimination, which is prohibited under Article 14 of the Constitution of India. When the act of the State is arbitrary and exploiting the situation of unemployment by paying meagre amount as salary, engaging the services of these petitioners on outsourcing basis, such act can be described as discriminatory and arbitrary. Therefore, court find that it is a fit case to issue a direction to the respondents to extend minimum time scale of pay to the petitioners who are discharging their duties for eight hours in a day on par with regular employees of the same cadre. Accordingly, the point is decided partly in favour of the petitioners."

LESSON ROUND-UP

- Majority of the countries throughout the world have a basic document of Government called "Constitution". The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above the Constitution or has powers unfettered and unrestricted by the Constitution.
- The Constitution of India has conferred innumerable rights for the protection of labour. Article 14, 16, 19(1) (c), 21, 23, 24, 38, 39, 41, 42, 43 and 43A have a significantly influenced the labour legislations in India and form the 'magna carta' of industrial jurisprudence in Indian context.
- Under the Constitution of India, Labour is a subject in the Concurrent list and hence both the Parliament and states are competent to enact the laws in respect of same. Labour legislations are socio-economic justice oriented and aim to achieve social and economic equalities.
- Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.
- The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic quality and its aim is to assist the removal of socio-economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.

GLOSSARY

Industrial Relations: Industrial relations refers to the relationship the management and the workers of a company share.

Equality before law: Law treats everyone equal. It prohibits discrimination.

Constitutional Remedies: The remedies that guarantee the enforcement of Fundamental Rights.

Living Wage: Wage which enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.

Minimum Wage: It is wage which is just sufficient to cover the bare physical needs of a worker and his family.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss constitutional bearing on industrial laws and industrial relations.
2. Industrial laws are socio-economic justice oriented. Comment.
3. Discuss Labour laws with reference to directive principles of state policy.
4. With the help of case laws explain how Constitution assists Labour laws and work towards their upliftment.
5. Write a short note on 'living wages' as covered under Article 43 of Constitution of India.
6. Discuss the current scenario of labor laws in India with the help of recent case laws.

LIST OF FURTHER READINGS

- Constitution of India
- Dr. J.N Pandey's Constitutional Law of India

OTHER REFERENCES (Including Websites/ Video Links)

- https://labour.gov.in/industrial-relations
- https://legislative.gov.in/constitution-of-india
- https://www.indiacode.nic.in/

Evaluation of Labour Legislation and Need of Labour Code

Lesson 15

KEY CONCEPTS

■ Industrialization ■ Labour Movement ■ Labour rights ■ International Labour Organisation (ILO) ■ Labour legislation ■ Industrial Relations ■ Wages ■ Social Security ■ Occupational Safety, Health and Working Conditions ■ Trade Union

Learning Objectives

To understand:

- The law relating to labour and employment in India
- That industrialization is considered to be one of the key engines to support the economic growth of any country
- The history and emergence of labour laws all over the globe and in India as well
- The need to bring in new legislations to meet the rising labour demands
- The purpose, need and objective of New Labour Codes
- The codification of 29 central legislations into 4 main reforms to be known as New Labour Codes
- The features of new Labour Codes and acts subsumed by Four Labour Codes:
  - Industrial Relations (IR) Code, 2020
  - Occupational, Safety, Health and Working Conditions Code, 2020
  - Social Security Code, 2020
  - Code on Wages, 2019

Lesson Outline

- Introduction
- History of Labour Laws
- Need to Bring in New Legislations
- Purpose of labour legislation
- Classification of Labour Laws in India
- Objective of New Labour Codes
- Features of new Labour Codes
- Acts Subsumed by the Four Labor Codes
- Reforms Proposed by New Labour Codes
- Code on Social Security, 2020
- Occupational Safety, Health and Working Conditions Code, 2020
- Code on Wages 2019
- Industrial Relations Code, 2020
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Code on Wages 2019
- Code on Social Security, 2020
- Occupational Safety, Health and Working Conditions Code, 2020
- Industrial Relations Code, 2020

INTRODUCTION

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrialization is considered to be one of the key engines to support the economic growth of any country. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Reforms in labour laws are an ongoing process to update the legislative system to address the need of the hour so as to make them more effective, flexible and in sync with emerging economic and industrial scenario. The Second National Commission on Labour has recommended that the existing Labour Laws should be broadly grouped into four or five Labour Codes on functional basis. Accordingly, the Government has taken steps for drafting four Labour Codes on Wages, Industrial Relations, Social Security & Welfare and Occupation Safety, Health and Working Conditions respectively, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws.

HISTORY OF LABOUR LAWS

The need for better working conditions, the right to organise, and employer demands to limit employee rights in numerous groups and keep labour costs down led to the development of labour law. When employees band together to demand better pay, or when laws impose expensive requirements like equal opportunity or health and safety standards, employers' costs may rise. Trade unions and other worker organisations have the potential to become political forces, which some companies may find objectionable. Therefore, the situation of labour law at any one time is both a result of and a component of conflicts between various interests in society.

The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

International Labour Organisation (ILO) is one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley 4 Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world.

India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare. International Labour Organization which came into existence in 1919 and has been a permanent member of the ILO Governing Body since 1922. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers.

Even after 75 years of Independence, approximately 90% of workers work in the unorganized sector that do not have access to all the social securities. The total number of workers, comprising of organized and unorganized sectors, is more than 50 crores. Earlier, the working class was entangled in web of multiple labour legislations. The Central Government has taken a revolutionary step in the right direction to provide them freedom in true sense. For this, the Central Government has taken historical step of codifying 29 laws into 4 Codes, so that workers can get security along with respect, health and other welfare measures with ease.

NEED TO BRING IN NEW LEGISLATIONS

Labour is covered under the Concurrent List of the Constitution. Therefore, rules governing labour can be passed by both the Parliament and state legislatures. The resolution of labour disputes, working conditions, social security, and pay are only a few of the labor-related issues that are governed by more than 100 state and 40 federal laws, according to the central government. Labour Reforms also remained untouched during the economic reforms carried out in 1991.

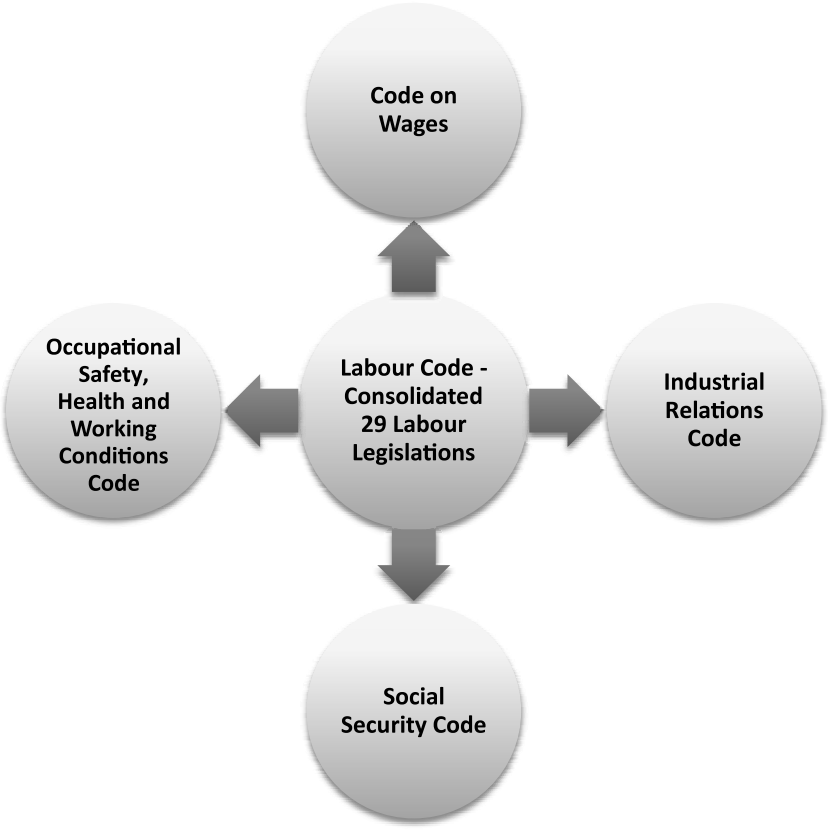
The Second National Commission of Labour had submitted its report in 2002 which said that there was multiplicity of Labour Laws in India and therefore, recommended that at the Central level multiple Labour Laws should be codified in 4 or 5 Labour Codes namely (a) Industrial relations; (b) Wages; (c) Social security; (d) Safety; and (e) Welfare and working conditions. While discussions were held on it, however, no serious initiative was taken in this direction during the time period from 2004 to 2014.

The brainstorming on Labour Codes were fast-tracked when the GST, as One Nation One Tax, was made applicable in the Country with consensus and aligned with motto “Sabka Sath Sabka Vikas aur Sabka Vishwas”.

By taking forward this progressive thinking, the reforms in Labour Laws were also speeded up. Extensive discussions were held before initiation of Labour Reforms by Ministry of Labour and Employment. Initially, as a part of Government’s pre-legislative consultative policy, the Ministry uploaded all the draft Labour Codes on its website for stakeholders and public consultation. During 2015 to 2019, the Ministry organized 9 tripartite discussions in which all the Central Trade Unions, Employers’ Associations and representatives of State Governments were invited to give their opinions/suggestions on Labour reforms. All the four Bills were also examined by the Parliamentary Standing Committee which gave its recommendations to the Government.

In order to codify 29 central legislations, the Ministry of Labour and Employment submitted four labour code bills in 2019. While the Code on Wages, 2019, was approved by Parliament, the Standing Committee on Labour was tasked with handling the three other bills. On all three Bills, the Standing Committee delivered its reports. In September 2020, the government repealed these Bills and enacted new ones. They broadly categorized labour codes into 4 different category-

1. Code on Wages
2. Industrial Relations Code
3. Social Security Code
4. Occupational Safety, Health and Working Conditions Code



PURPOSE OF LABOUR LEGISLATION

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

OBJECTIVE OF LABOUR CODES

For the sake of clarity, standardisation in terminology, and consistency in approach, the Commission emphasised the necessity to streamline and unify labour legislation. Consolidating labour laws would also enable more comprehensive labour coverage because separate labour rules apply to different employment classifications and across different thresholds. The four Codes on wages, industrial relations, social security, and occupational safety were introduced in Parliament as a result of NCL's recommendations.

While the Codes do a good job of combining and streamlining existing legislation, there are several areas where they fall short. For instance, the Codes on Social Security and Occupational Safety continue to include

specific provisions from each of the statutes that these Codes replace. For instance, even if the Occupational Safety Code includes provisions on leaves for all employees, sales promotion staff continue to be entitled to additional leave entitlements (such as earned medical leave for 1/18th of the period on duty). Similar to this, even if the definitions of various terms are largely rationalised by the Codes, they are not consistent throughout. For instance, the definition of "contractor" is the same in the Codes on Wages, Occupational Safety, and Social Security but not in the Code on Industrial Relations. Finally, after much discussions only 29 laws have been replaced by the four Codes.

Facilitating employment development while preserving employees' rights is the main problem of labour reforms. The coverage of small businesses, choosing cut off points for prior approval of layoffs, bolstering labour enforcement, enabling flexible forms of labour, and supporting collective bargaining are important topics of discussion. In addition, as time goes on, it is necessary to update and simplify the labour laws in order to include clauses that can accommodate new kinds of employment (e.g., gig work).

FEATURES OF LABOUR CODES

1. Most labour rules are applicable to businesses larger than a particular size (typically 10 or above). Thresholds based on company size could ease the burden of compliance for businesses. One would counter that all businesses should be subject to fundamental protections including pay, social security, and working conditions. Such size-based limits are still present in some codes.
2. Simple and accountable system will simplify the processes. One Registration one License, single return for all the Codes.
3. Government approval is required for establishments that employ 100 or more employees to close, lay off, or retrench. It has been suggested that this has made it harder for businesses to leave and has interfered with their capacity to change their staff to meet production demands. This number is increased to 300 by the Industrial Relations Code, and the government is permitted to raise it further by notification.
4. The complexity of labour laws has led to many compliances, which has increased the burden of compliance on businesses. On the other side, the labour enforcement apparatus has been unsuccessful due to weak enforcement, insufficient sanctions, and inspectors' rent-seeking behaviour. Some of these issues are covered by the Codes.
5. Contract labour is now used more frequently as a result of economic factors and labour compliance requirements. However, fundamental rights like guaranteed salaries have been denied to contract workers. These issues are not entirely addressed by the Codes. Fixed-term employment, however, is a new type of short-term labour that is introduced by the Industrial Relations Code.
6. There are many registered trade unions, but there are no standards by which to "recognise" unions that can formally bargain with employers. Provisions for recognition are created by the Industrial Relations Code.
7. The Codes greatly simplify labour rules, yet there are several areas where they fall short. Additionally, the Code on Social Security has enabling measures to notify programmes for "gig" and "platform" workers; nonetheless, these classifications lack precision.
8. The Codes delegate rule-making authority over a number of significant issues, including the applicability of social security programmes and health and safety regulations. The debate is on whether the legislature or the executive branch should decide these issues.
9. The law forbids discrimination based on gender when it comes to hiring new employees for similar or identical jobs and determining pay. Work of a similar kind is defined as work requiring the same level

of expertise, effort, responsibility, and experience.

10. The advisory boards will be made up of the federal and state governments. Employers, employees (equal in number to employers), independent individuals, and five state government representatives make up the Central Advisory Board. State Advisory Boards will be made up of independent individuals, employers, and workers. Women will make up one-third of both the central and state boards' overall membership. The Boards will give their respective governments advice on matters such as (i) setting minimum wages and (ii) expanding possibilities for women in the workforce.

11. The Code outlines punishments for offences committed by an employer, such as (i) underpaying required wages or (ii) violating any Code requirement. The maximum punishment is three months in prison and a fine of up to one lakh rupees. Penalties varies based on the type of offence.

ACTS SUBSUMED BY THE FOUR LABOUR CODES

Labour Codes	*Acts being subsumed*
Code on Wages, 2019	• Payment of Wages Act, 1936; • Minimum Wages Act, 1948; • Payment of Bonus Act, 1965; and • Equal Remuneration Act, 1976.
Occupational Safety, Health and Working Conditions Code, 2019	• Factories Act, 1948; • Mines Act, 1952; • Dock Workers (Safety, Health and Welfare) Act, 1986; • Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; • Plantations Labour Act, 1951; • Contract Labour (Regulation and Abolition) Act, 1970; • Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; • Working Journalist and other Newspaper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955; • Working Journalist (Fixation of Rates of Wages) Act, 1958; • Motor Transport Workers Act, 1961; • Sales Promotion Employees (Condition of Service) Act, 1976; • Beedi and Cigar Workers (Conditions of Employment) Act, 1966; • Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.

Labour Codes	*Acts being subsumed*
Industrial Relations Code, 2019	• Trade Unions Act, 1926; • Industrial Employment (Standing Orders) Act, 1946, and • Industrial Disputes Act, 1947.
Code on Social Security, 2019	• Employees' Provident Funds and Miscellaneous Provisions Act, 1952; • Employees' State Insurance Act, 1948; • Employees' Compensation Act, 1923; • Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; • Maternity Benefit Act, 1961; • Payment of Gratuity Act, 1972; • Cine-workers Welfare Fund Act, 1981; • Building and Other Construction Workers' Welfare Cess Act, 1996; and • Unorganised Workers Social Security Act, 2008.

LESSON ROUND-UP

- A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.
- In line with recommendations of Second National Commission on Labour, the Ministry has taken steps for formulating of four Labour Codes on (i) Wages; (ii) Industrial Relations; (iii) Social Security & Welfare; and (iv) Occupational Safety, Health and Working Conditions by amalgamating, simplifying, and rationalizing the relevant provisions of the existing Central Labour Laws.
- In order to codify 29 central legislation, the Ministry of Labor and Employment submitted four labour code bills in 2019. While the Code on Wages, 2019, was approved by Parliament, the Standing Committee on Labour was tasked with handling the three other bills. On all three Bills, the Standing Committee delivered its reports. In September 2020, the Government enacted new codes. There are following different category of Labour Codes:
  - Code on Wages
  - Industrial Relations Code
  - Social Security Code
  - Occupational Safety, Health and Working Conditions Code.
- Code on Social Security 2020, intends to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors or for matters connected therewith or incidental thereto. To ensure security for all workers, the Central Government has amalgamated 9 Labour Laws into the Social Security Code in order to secure the right of workers for insurance, pension, gratuity, maternity benefit etc.

- Occupational Safety, Health and Working Conditions Code, 2020, intends to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto. The security of interests of workers engaged in factories, mines, plantations, motor transport sector, bidi and cigar workers, contract and migrant workers has been ensured.
- Code on Wages, 2019 intends to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto. Four Labour Laws have been amalgamated into the Minimum Wages Code. Due to this, for the first time, all the workers have got the Right to Minimum Wages.
- Industrial Relations Code, 2020, intends to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto and Industrial employment standing order. By amalgamating 3 Labour Laws into the Industrial Relations Code the Central Government has taken steps for safeguarding the interests of Trade Unions as well as the workers.

GLOSSARY

Industrial Law: Labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

International Labour Organisation (ILO): ILO is one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I.

Social Security: Social Security for all workers means to secure the right of workers for insurance, pension, gratuity, maternity benefit etc. among other social conducts and requirements.

Industrial Relations: Means relation between employee and employer, management and workers. Includes Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. Explain the emergence of labour laws across the world and in India.
2. What prompted the Government to bring in new labour legislations?
3. What is the need and objective of bringing in new labour codes?
4. Enumerate the features of new Labour Codes.

5. Write a short note on:
    a) Code on Social Security, 2020
    b) Occupational Safety, Health and Working Conditions Code, 2020
    c) Code on Wages, 2019
    d) Industrial Relations Code, 2020.

LIST OF FURTHER READINGS

- The Code on Social Security, 2020
- The Industrial Relations Code, 2020
- The Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020

OTHER REFERENCES (Including Websites and Video Links)

- https://labour.gov.in/

The Occupational Safety, Health and Working Conditions Code, 2020

Lesson 16

KEY CONCEPTS

■ Introduction to the OSHWC Code, 2020 ■ Objectives and Need for Consolidation ■ Applicability and Scope of the Code ■ Key Definitions under the OSHWC Code ■ Registration of Establishments ■ Duties of Employers, Employees and Others ■ National and State OSHWC Advisory Boards ■ Safety Committee and Safety Officers ■ Reporting of Accidents, Dangerous Occurrences and Diseases ■ Welfare Provisions and Working Conditions ■ Penalties, Offences and Enforcement Mechanisms

Learning Objectives

To understand:

- Understand the purpose and significance of consolidating 13 labour laws into a single OSH Code.
- Explain the scope, applicability, and coverage of the Code across different sectors and establishments.
- Assess the enforcement mechanisms, penalties, and compliance framework under the Code.

Lesson Outline

- The Salient Features and Impact of the Code
- Registration
- Duties of Employer and Employees etc.
- Occupational Safety and Health
- Health, Safety and Working Conditions
- Welfare Provisions
- Hours of Work and Annual Leave with Wages
- Maintenance of Registers, Records and Returns
- Inspector-Cum-Facilitators and other Authority
- Special Provisions for Contract Labour Part & Factories
- Social Security Fund
- Lesson Round-Up
- Glossary
- Test Yourself

INTRODUCTION

The Occupational Safety, Health and Working Conditions Code, 2020 represents one of India's most significant labour reforms. Enacted to streamline and modernise the regulatory landscape, the Code consolidates 13 central labour laws into a single comprehensive statute, making compliance simpler, uniform, and more transparent across the country.

Pursuant to the recommendations of the Second National Commission on Labour and as a part of the Labour Reform Initiatives, 29 Labour Acts are being amalgamated, simplified and rationalised into four Codes viz. Code on Wages, Occupational Safety, Health and Working Conditions Code, Industrial Relations Code and Code on Social Security to make the existing Central Labour Acts in sync with the changing economic and industrial scenario, technological advancements and emerging need for wage security, social security and better working conditions for workers. As 18 Acts out of 29 Central Labour Acts are more than 50 years old and a few of them are even 70 years old, a need was felt to reduce the complexity, provide uniform definitions, minimise multiple authorities under various Acts so as to bring transparency and accountability in the enforcement of Labour Laws.

The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 which was introduced in Lok Sabha on 23rd July, 2019 by the Ministry of Labour & Employment after inter-ministerial consultations and suggestions received from the public/stakeholders, incorporates the essential features of the 13 enactments relating to Factories, Dock Workers, Building and other Construction Workers, Plantation Labour, Contract Labour, Inter-State Migrant Workers, Working Journalists and other News Paper Employees, Motor Transport Workers, Sales Promotion Employees, Beedi and Cigar Workers, Cine Workers and Cinema Theatre Workers. The OSHWC Code intends to simplify, rationalise and amalgamate the provisions of the following Labour Laws:

(i) The Factories Act, 1948;

(ii) The Mines Act, 1952;

(iii) The Dock Workers (Safety, Health and Welfare) Act, 1986;

(iv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;

(v) The Plantations Labour Act, 1951;

(vi) The Contract Labour (Regulation and Abolition) Act, 1970;

(vii) The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;

(viii) The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;

(ix) The Working Journalist (Fixation of Rates of Wages) Act, 1958;

(x) The Motor Transport Workers Act, 1961;

(xi) The Sales Promotion Employees (Conditions of Service) Act, 1976;

(xii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and

(xiii) The Cine Workers and Cinema Theatre Workers Act, 1981.

The Occupational Safety, Health and Working Conditions (OSHWC) Code, 2019 received Presidential assent on September 28, 2020, and was published in the e-Gazette on September 29, 2020. OSHWC Code notified by Central Government on 21st November 2025.

The Code balances the twin objectives of safeguarding worker rights and safe working conditions, and

creating a business-friendly regulatory environment. This will spur economic growth and employment thereby, making India's labour market more efficient, fair, and future-ready.

Preamble
Objectives of the Code is envisaged in the Preamble of the code as "An Act to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto."

The Salient Features and Impact of the Code

Salient Features of the Code	Impact of the Code
The Code provides basic broad legislative framework with enabling provisions for framing rules, regulations, standards, and bye-laws.	Reduction of sections in the Code. This would result in simple legislation with flexibility in changing the provisions in tune with emerging technologies and makes the legislation dynamic.
One registration for an establishment instead of multiple registrations.	Create a centralized data base. Promote ease of doing business. The provisions of online and deemed registration have been incorporated.
The Code is applicable to all establishments employing 10 or more workers except mine and dock where it is applicable on even 1 worker. The offices of Central and State Government have been kept out of the ambit of the Code.	Enhances the coverage of the safety and health provisions manifold as the establishments in service sector and other establishments would now be regulated by the safety, health and working conditions provisions of the Code.
Definition of Cine worker has been modified to include all audio-visual workers and definition of working journalist has also been modified to include journalists working in electronic media also. Further, the definition of interstate migrant worker has been modified on the basis of suggestions received to include those migrant workers who have been employed directly by the employer besides the migrant workers employed through a contractor.	This would enhance the coverage of the Inter State Migrant Workers for the purpose of benefits like housing, education, etc. There has been continuous demand from various quarters including from the Standing Committee to make the definition of 'cine worker' more inclusive.
The definition of a family extended to include dependent grand-parents of the worker.	Due to increase in life expectancy, the grand-parents who are part of family will also get welfare benefits like compensation in case of death of the workers and under the Plantation Act.
Employers to provide free of cost annual health check-up for employees above prescribed age for prescribed tests. Provision for appointment letter to every employee.	Employers to provide free of cost annual health check-up for employees above prescribed age for prescribed tests. Provision for appointment letter to every employee.

Salient Features of the Code	Impact of the Code
The multiple committees under five labour Acts have been substituted by one National Occupational Safety and Health Advisory Board. The National Board is of tripartite nature and has representation from employees, employers and State Governments.	Reduction in multiplicity of bodies/committees in various Acts. Results in simplified and coordinated policy-making.
Enabling provision for constituting a bi-partite Safety Committee in any class of establishment by appropriate government.	It will promote safe and healthy working conditions in an establishment. The participatory nature of the committee will encourage implementation of decisions taken by the management.
A part of the penalty (minimum 50 per cent) for contravention of provisions relating to duties of employer leading to death or serious bodily injury to any person may be given to the victim or the legal heirs of the victim by the Court.	The part of penalty would help in rehabilitation of injured worker or would provide financial support to the family of deceased.
Presently, different applicability thresholds exist for welfare provisions like crèche, canteen, first aid, welfare officer etc in different Acts. The Code has envisaged uniform threshold for welfare provisions for all establishment as far as practicably feasible.	The revised thresholds are – for canteen 100 employees (earlier ranged from 100 to 250), crèche 50 workers (earlier ranged from 20 to 50 female workers), first aid for all (earlier in selected establishment), welfare officer 250 for factory/ mines/ plantation (earlier ranged from 300 to 500).
Women permitted to work beyond 7 PM and before 6 AM subject to the safety, holidays, working hours or any other condition as prescribed by appropriate government subject to taking consent from the woman worker.	Promote gender equality and is in tune with demands from the various forums. At present, women are prohibited in night for mines, factories, plantation, beedi and cigar.
The concept of a single all India licence with 5 years validity de-linked with work order has been as an option available for contractors who undertake a project or are supplying human resources.	At present a number of licenses are being obtained by a contractor for each work order. Promotes ease of doing business. Reduces corruption and reduces paper work also.
The provision of one license has been for factory, contract labour and beedi and cigar establishments in the Code.	One license in place of multiple licenses.
The penalties have been rationalised, graded and the fine amount has been enhanced as an effective deterrent.	Penalty would act as an effective deterrent which would encourage compliance of the provisions of the Code.

Salient Features of the Code	Impact of the Code
At present, multiple returns and numerous registers have to be maintained under various labour laws, in addition to those returns and registers prescribed by State Government Rules	Reduces maintenance of Registers and filing of returns. Promotes e-governance.
The inspector cum facilitator may also be assigned of establishment outside his jurisdiction by the appropriate Government through randomised computer system. The inspector may also seek information and documents online from establishments.	Delinking of inspector from certain specific geographical region. Further, the online information sought by inspector cum facilitator may substitute physical inspection.

PRELIMINARY

Section 1 of the Code provides for title and applicability of the Code as follows:

This Act may be called the Occupational Safety, Health and Working Conditions Code, 2020.

The Code has vested power in the Central Government for notification w.r.t. commencement of the Code with different dates as may be considered appropriate. In exercise of the powers conferred by the sub-section (2) of section 1 of the Occupational Safety, Health and Working Conditions Code, 2020, the Central Government appointed the 21st day of November, 2025 as the date on which the provisions of the Code, shall come into force.

Where the Code is not applicable?

Sub section (3) of section 1 provides that the Code shall not apply to the offices of the Central Government, offices of the State Government and any ship of war of any nationality. Proviso of the section makes the Code applicable in case of contract labour employed through contractor in the offices of the Central Government or in the offices of the State Government, where, the Central Government or, as the case may be, the State Government is the principal employer.

Definitions

Section 2 (1) of the Code defines the following with opening words, ***"unless the context otherwise requires"***, —

"Adolescent" shall have the same meaning as assigned to it in clause (i) of section 2 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. {Section 2 (1) (a)}

"Adult" means a person who has completed his eighteenth year of age. {Section 2 (1) (b)}

"Agent" when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of such mine or of any part thereof. {Section 2 (1) (c)}

"Appropriate Government" means—

(i) the Central Government in relation to:

- establishments [other than those specified in sub-clause (*ii*)] carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified in this behalf by the Central Government or

- the establishment of railways including metro railways, mines, oil field, major ports, air transport service or telecommunication service, banking company or any insurance company (by whatever name called) established by a Central Act or a corporation or other authority established by a Central Act or a Central public sector undertaking or subsidiary companies set up by the Central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, Central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be,:

Provided that in the case of Central Public Sector Undertakings the appropriate Government shall continue to be the Central Government even if the holding of the Central Government reduces to less than fifty per cent. equity of the Central Government in that Public Sector Undertakings after the commencement of this Code; and

(*ii*) in relation to a factory, motor transport undertaking, plantation, newspaper establishment and establishment relating to beedi and cigar including the establishments not specified in clause (*i*), the concerned State Government where it is situated.

Explanation. —For the removal of doubts it is hereby clarified that State Government shall be the appropriate Government in respect of occupational safety, health and working conditions in a factory situated in that State. {Section 2 (*1*) (*d*)}

"Audio-Visual Production" means audio-visual produced wholly or partly in India and includes—

(i) animation, cartoon depiction, audio-visual advertisement;

(ii) digital production or any of the activities in respect of making thereof; and

(iii) features films, non-feature films, television, web-based serials, talk shows, reality shows and sport shows. {Section 2 (1) (e)}

"Audio-Visual Worker" means a person, who is employed, directly or through any contractor, in or in connection with the audio-visual production to work as an artist including actor, musician, singer, anchor, news reader, dancer, dubbing artist or stunt person or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise, and his remuneration with respect to such employment in or in connection with the production of audio-visual does not exceed, where remuneration is by way of monthly wages or where such remuneration is by way of lump sum, in each case, such amount as may be notified by the Central Government. {Section 2 (1) (f)}

"Building or other construction work" means the construction, alteration, repairs, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua-ducts, pipelines, towers, cooling towers, transmission towers.

This includes such other work and power to notify "other work" has been vested the Central Government, by notification, but does not include

- building or other construction work which is related to any factory or mine and the building or other construction work where such work is for own residential purposes of an individual or group of individuals for their own residence and

- the total cost of such work does not exceed rupees fifty lakhs or such higher amount and employing more than such number of workers as may be notified by the appropriate Government; {Section 2 (*1*) (h)}

"***Building worker"*** means a person who is employed to do any highly skilled, skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, in connection with any building or other construction work, *but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity;* {Section 2 (*1*) (i)}

"Chief Inspector-cum-Facilitator" means a Chief Inspector-cum-Facilitator appointed under sub-section (*5*) of section 34; {Section 2 (*1*) (k)}. The emphasis has been now that the Inspector should facilitate giving guidance to both the employer and the employee for better working relationship.

"Competent Person" means a person or an institution recognised as such by the Chief Inspector-cum-Facilitator for the purposes of carrying out tests, examinations and inspections required to be done in an establishment having regard to—

(*i*) the qualifications and experience of the person and facilities available at his disposal; or

(*ii*) the qualifications and experience of the persons employed in such institution and facilities available therein:

It is provided that in case of mines the competent person includes such other person who is authorised by the manager referred to in section 67 to supervise or perform any work, or to supervise the operation of machinery, plant or equipment and is responsible for such duties assigned to him and also includes a shot firer or blaster. {Section 2 (*1*) (l)}

"Contract Labour" has been defined as a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. The definition also includes inter-State migrant worker.

But the definition of "Contract Labour" has kept outside it's purview a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment. {Section 2 (1) (m)}

"Contractor", in relation to an establishment, means a person, who—

(*i*) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or

(*ii*) supplies contract labour for any work of the establishment as mere human resource, and includes a sub-contractor. {Section 2 (*1*) (n)}

"Controlled Industry" has been defined under section 2 (1) (o) to mean any industry the control of which by the Central Government has been declared under any Central Act in the public interest;

The strategically critical industries, especially those involved in the security of the nation has been kept under the regulation of the Central Government. Atomic Power Generation, Defence Equipment Production etc. are such of the examples.

"Core Activity of an Establishment" means any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity. It is provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely: —

(*i*) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of

waste;

(*ii*) watch and ward services including security services;

(*iii*) canteen and catering services;

(*iv*) loading and unloading operations;

(*v*) running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;

(*vi*) courier services which are in nature of support services of an establishment;

(*vii*) civil and other constructional works, including maintenance;

(*viii*) gardening and maintenance of lawns and other like activities;

(*ix*) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;

(*x*) transport services including, ambulance services;

(*xi*) any activity of intermittent nature even if that constitutes a core activity of an establishment. {Section 2 (1) (p)}

*"**Day"*** means a period of twenty-four hours beginning at mid-night; {Section 2 (*1*) (q)}

"*Dock Work"* means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes—

(i) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port;

(ii) all repairing and maintenance processes connected with any hold, tank structure or lifting machinery or any other storage area on board the ship or in the docks; and

(iii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area on board the ship or in the docks. {Section 2(1)(s)}

"Employee"

Section 2(1)(t) of the Code defines "Employee" to mean-

(i) in respect of an establishment, a person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied; and

(ii) a person declared to be an employee by the appropriate Government,

However, any member of the Armed Forces of the Union has been specifically excluded from the definition of employee under the Code.

With respect to mines, it is provided that notwithstanding anything contained in this clause, a person is said to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not—

(a) in any mining operation (including the concomitant operations of handling and transport of minerals up to the point of dispatch and of gatherings and transport thereof to the mine);

(b) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings,roads, wells and any building work not directly connected with any existing orfuture mining operations;

(c) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

(d) in operations, within the premises of the mine, of loading for dispatch of minerals;

(e) in any office of mine;

(f) in any welfare, health, sanitary or conservancy services required to be provided under this Code relating to mine, or watch and ward, within the premisesof the mine excluding residential area; or

(g) in any kind of work, whatsoever, which is preparatory or incidental to or connected with, mining operations;

According to section 2(1)(u) of the Code ***"Employer"*** means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any Department of the Central Government or the State Government, the authority specified, by the head of such Department, in this behalf or where no authority, is so specified, the head of the Department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority, and includes,—

(i) In relation to an establishment which is a factory,	The occupier of the factory;
(ii) In relation to mine,	The owner of the mine, agent or manager referred to in section 67;
(iii) Iin relation to any other establishment,	The person who, or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a manager or managing director, such manager or managing director;
(iv) Contractor; and	-
(v) Legal representative of a deceased employer;	-

"Establishment" has been defined on the basis of threshold of workers as —

(i) a place where any industry, trade, business, manufacturing or occupation is carried on in which *ten or more workers are employed*; or

(ii) motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, *in which ten or more workers are employed*; or

(iii) factory, for the purpose of Chapter II, in which ten or more workers are employed, notwithstanding the threshold of workers provided in clause (w); or

(iv) a mine or port or vicinity of port where dock work is carried out:

Provided that in sub-clauses (i) and (ii), the threshold of worker specified therein shall not be applicable in case of such establishment or class of establishments, in which such hazardous or life threatening activity is being carried on, as may be notified by the Central Government:

It is further provided that notwithstanding any threshold provided in the definition of factory in clause (w), for the

purposes of Chapter II, the establishment specified in sub-clause (i) or sub-clause (ii) or sub-clause (iii) shall be deemed to be the establishment within the meaning of this clause though the number of employees employed are ten or more; {Section 2(1)(v)}

"Factory" has been defined to mean any premises (*based on threshold of workers)* including the precincts thereof—

(i) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(ii) whereon forty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mobile unit belonging to the armed forces of the Union, railways running shed or a hotel, restaurant or eating place:

It is provided that where under any law for the time being in force in a State immediately before the commencement of this Code, the number of workers specified is more or less than the number specified in clause (i) or clause (ii), then, the number specified under the law of the State shall prevail in that State till it is amended by the competent Legislature.

Explanation I.—For computing the number of workers for the purposes of this clause all the workers (in different groups and relays) in a day shall be taken into account.

Explanation II. —For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof. *{Section 2(1)(w)}*.

"Family" when used in relation to a worker, means—

(i) spouse;

(ii) children including adopted children of the worker who are dependent upon him and have not completed the age of eighteen years; and

(iii) parents, grand-parents, widowed daughter and widowed sister dependent upon such worker.

Explanation. —For the purposes of this clause, such dependents shall not be included who are, for the time being, getting such income from such sources, as may be prescribed by the appropriate Government;

It is to be noted that widowed daughter and widowed sister has also been included in the definition of worker for the sake of ensuring them safety and security. {Section 2(1)(x)};

"Godown" means any warehouse or other place, by whatever name called, used for the storage of any article or substance required for any manufacturing process which means any process for, or incidental to, making, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal as finished products. *{Section 2(1)(y)}*:

Section 2(1)(z) defines ***"hazardous"*** which means involving danger or potential danger;

According to section 2(1)(za)),***"hazardous process"*** means any process or activity in relation to an industry or plantation specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, hazardous substances, wastes or effluents thereof or spraying of any pesticides, insecticides or chemicals used therein, as the case may be, would—

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment;

"Hazardous Substance" means any substance or such quantity of the substance as may be prescribed by the appropriate Government or preparation of which by reason of its chemical or physio-chemical properties or handling is liable to cause physical or health hazards to human being or may cause harm to other living creatures, plants, micro-organisms, property or the environment; *{Section 2(1)(zb)}*

"Industrial Premises" means any place or premises (not being a private dwelling house), including the precincts thereof, in which or in any part of which any industry, trade, business, occupation or manufacturing is being ordinarily carried on with or without the aid of power and includes a godown attached thereto; *{Section 2(1)(zc)}*

According to section 2(1) (zd) of the Code, ***"Industry"*** means any systematic activity carried on by co-operation between an employer and worker (whether such worker is 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, but does not include—

(a) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services; or

(b) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the Departments of the Central Government dealing with defence research, atomic energy and space; or

(c) any domestic service; or any other activity as may be notified by the Central Government;

"Inspector-cum-Facilitator" refers to an Inspector appointed under sub-section (1) of Section 34. In terms of Section 2(1)(ze), the role of the Inspector is no longer confined merely to conducting inspections and imposing penalties for non-compliance. Instead, the emphasis has been shifted towards enabling and facilitating employers in achieving compliance with the law.

"Machinery" means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy. (*Section 2(1)(zg))*

"Manufacturing Process": According to section 2(1) (zi) it means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing, printing, printing by letter press, lithography, offset, photogravure screen printing, three Dimensional or four-Dimensional printing, prototyping, flexography or other types of printing process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage; or

(vii) such other processes as the Central Government may notify

"Occupier"

According to Section 2(1)(zs) of the Code, "Occupier" of a factory means the person who has ultimate control over the affairs of the factory.

It is provided that the term *occupier* of a factory shall be construed as follows:

1. In the case of a firm or association of individuals	– Any one of the individual partners or members shall be deemed to be the occupier.
2.In the case of a company	– Any one of the directors shall be deemed to be the occupier, excluding any independent director as defined under Section 149(6) of the Companies Act, 2013.
3.In the case of a factory owned or controlled by the Central Government, State Government, or a local authority	– The person or persons appointed to manage the affairs of the factory by the respective Government or authority, or by such other authority as may be prescribed by the Central Government, shall be deemed to be the occupier

"*Principal Employer"*

According to Section 2(1) (zz) the term "principal employer", where the contract labour is employed or engaged, means—

(i) in relation to any office or Department of the Government or a local authority,	• The head of the office or department, or • Any other officer specified by the Government or local authority for this purpose.
(ii) in a factory	• The owner or occupier of the factory, or • The person named as the manager of the factory, where such a designation exists.
(iii) in a mine	• The owner or agent of the mine.
(iv) in relation to any other establishment	• Any person who is responsible for the supervision and control of the establishment.

"Serious Bodily Injury" means any injury which involves, or in all probability will involve, the permanent loss of any part or section of a body or the use of any part or section of a body, or the permanent loss of or injury to the sight or hearing or any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot; {Section 2(1)(zzg)}

"Standards", "Regulations", "Rules", "Bye-Laws" And "Orders" respectively means standards, regulations, rules, bye-laws and orders made or declared, as the case may be, under this Code. {Section 2(1) (zzh)}

"Wages"

The term **"**wages" shall mean all remuneration, whether by way of salaries, allowances, or otherwise, expressed in terms of money or capable of being so expressed, which would be payable to a person employed if the terms of employment (express or implied) were fulfilled, in respect of his employment or work done therein.

Inclusive Components:

(i) Basic pay

(ii) Dearness allowance

(iii) Retaining allowance, if any

Exclusions

The term "wages" shall not include:

(a) Any bonus payable under law, which does not form part of contractual remuneration.

(b) The value of house accommodation, supply of light, water, medical attendance, or other amenities excluded by order of the appropriate Government.

(c) Employer's contribution to pension or provident fund, and accrued interest thereon.

(d) Conveyance allowance or value of travelling concession.

(e) Any sum paid to defray special expenses arising from the nature of employment.

(f) House rent allowance.

(g) Remuneration payable under any award, settlement, or order of a court or tribunal.

(h) Overtime allowance.

(i) Commission payable to the employee.

(j) Gratuity payable upon termination of employment.

(k) Retrenchment compensation, retirement benefits, or ex gratia payments made upon termination.

Provisos

- For calculation of wages, if payments under exclusions (a) to (i) exceed one-half (or such percentage as notified by the Central Government) of the total remuneration, the excess shall be deemed remuneration and added to wages.
- For the purposes of equal wages across genders and for payment of wages, the emoluments specified in exclusions (d), (f), (g), and (h) shall be taken into account.

Explanation

Where an employee receives remuneration in kind in lieu of wages, the value of such remuneration shall be deemed part of wages, provided it does not exceed 15% of the total wages payable. {Section 2(1)(zzj)}

"Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector-cum-Facilitator; {Section 2(1) (zzk)}

"Worker"

The term "worker" means any person employed in any establishment to perform manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment are express or implied, and includes working journalists and sales promotion employees, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army 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 wage exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time. {*Section 2(1) (zzl)*}

REGISTRATION

Registration of Establishments (Section 3)

(1) ***Obligation to Register New Establishments****:* Every employer of an establishment—

(a) which comes into existence after the commencement of this Code; and

(b) to which this Code applies,

shall, within **sixty days** from the date of applicability, submit an electronic application to for the registration of such establishment the registering officer appointed by the appropriate Government (hereinafter referred to as the registering officer). It is provided that the registering officer may accept applications beyond this period upon payment of late fees as may be prescribed by the appropriate Government.

(2) ***Form and Particulars of Application****:* Every such application shall be submitted to the registering officer in such manner, in such form, containing such particulars including the information relating to the employment of inter-State migrant workers and shall be accompanied by such fees as may be prescribed by the appropriate Government**.**

(3) ***Grant of Registration Certificate:*** Upon receipt of the application, the registering officer shall register the establishment and issue an electronic certificate of registration in the prescribed form, within the prescribed time and subject to prescribed conditions as may be prescribed by the Central Government. It is provided that if the registering officer fails to act within the prescribed period, the establishment shall be **deemed registered** and under this Code immediately on the expiration of such period and the electronic certificate of registration shall be auto generated

(4) ***Intimation of Changes****:* Any post registration change in ownership, management, or particulars furnished in the application of registration shall be intimated electronically to the registering officer within **thirty days of such change** as may be prescribed by the Central Government. The registering officer shall amend the certificate electronically in such manner as may be prescribed by the Central Government.

(5) ***Closing of Establishments:*** Within **thirty days** of closure of the establishment, the employer shall—

(a) inform the registering officer of the closure; and

(b) certify payment of all dues to workers employed in such establishment.

Such information and certification shall be sent to the registering officer in such manner as may be prescribed by the Central Government. The registering officer shall, within **sixty days** of receiving such information and certificate, remove the establishment from the register of establishments maintained by him and cancel its certificate. It is provided that the registration certification of the establishment under this sub-section within such sixty days, then, the registration certificate of such establishment shall be deemed to have been cancelled under this Code immediately on the expiration of such period of sixty days and the cancellation of registration certificate shall be auto generated and the responsibility of such failure shall be on the registering officer.

(6) ***Misrepresentation or Fraudulent Registration:*** If an employer of an establishment—

(a) has obtained the registration of his establishment by misrepresentation or suppression of any material fact, or registration of certain establishments, then, such misrepresentation or suppression

of any material fact shall be deemed to be the contravention of the provisions of this Code for prosecution of the employer under section 94 without affecting the registration and running of the establishment

(b) has obtained the registration of his establishment so fraudulently or otherwise that the registration has become useless or ineffective to run the establishment, the registering officer may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration by an order and such process for revocation shall be completed by the registering officer within sixty days from coming into his notice the facts specified in clause (b).

(7) ***Prohibition on Employment Without Registration****:* No employer shall employ workers if—

(a) the establishment has not been registered under this section; or

(b) the employer has not preferred appeal under section 4 against the cancellation of the registration certificate of the establishment under sub-section (*5*) or revocation of the registration of the establishment under sub-section (*6*) or the appeal so preferred has been dismissed.

(8) ***Deemed Registration of Existing Establishments****:* Notwithstanding anything contained in this Code, where any establishment, to which this Code applies, has already been registered under any—

(*a*) Central Labour law; or

(*b*) any other law which may be notified by the Central Government and which applies to the establishment which is in existence at the time of the commencement of this Code,

shall be deemed to have been registered under the provisions of this Code, subject to the condition that the registration holder provides the details of registration to the concerned registering officer within such time and in such form as may be prescribed.

Appeal (Section 4)

An appeal may be preferred to an appellate officer, notified by the Appropriate Government, within thirty days from the date on which the order is communicated. if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Upon receipt of the appeal, the officer shall provide the appellant an opportunity of being heard and dispose of the appeal within thirty days from the date of receipt of such appeal.

Notice of Commencement and Cessation of Operations (Section 5)

Obligation of Employers*:* No employer of an establishment, whether it is a factory, mine, or one engaged in contract labour, building, or other construction work, shall commence the operation of any industry, trade, business, manufacturing activity, or occupation in such establishment without first sending a notice of such purpose.

- The notice shall be submitted in the prescribed form, manner, and within the time specified by the appropriate Government.
- Similarly, when operations in the establishment cease, the employer is required to intimate such cessation to the same authority, following the procedure prescribed.

Mode of Submission: The Code mandates electronic submission of such notices of commencement and cessation of establishment.'

DUTIES OF EMPLOYER AND EMPLOYEES

Duties of Employers – Safety, Health, and Welfare (Section 6)

General Duties of Employer:

(1) Every employer shall

(a) ensure that the workplace is free from hazards likely to cause injury or occupational disease to the employees;.

(b) comply with occupational safety and health standards declared under section 18 or the rules, regulations, bye-laws, or orders under this Code.

(c) provide such annual health examination or test free of costs to such employees of such age or such class of employees of establishments or such class of establishments, as may be prescribed by the appropriate Government;

(d) provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees;

(e) ensure the disposal of hazardous and toxic waste including disposal of e-waste;

(f) issue a letter of appointment to every employee on his appointment in the establishment, with such information and in such form as may be prescribed by the appropriate Government and where an employee has not been issued such appointment letter on or before the commencement of this Code, he shall, within three months of such commencement, be issued such appointment letter;

(g) ensure that no charge is levied on any employee, in respect of anything done or provided for maintenance of safety and health at workplace including conduct of medical examination and investigation for the purpose of detecting occupational diseases;

(h) relating to factory, mine, dock work, building or other construction work or plantation, ensure and be responsible for the safety and health of employees, workers and other persons who are on the work premises of the employer, with or without his knowledge, as the case may be.

Specific Duties of Employer:

(2) Without prejudice to the generality of the provisions of sub-section (1), the duties of an employer shall particularly in respect of factory, mines, dock, building or other construction work or plantation include—

(a) the provision and maintenance of plant and systems of work in the workplace that are safe and without risk to health;

(b) the arrangements in the workplace for ensuring safety and absence of risk to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all employees at work;

(d) the maintenance of all places of work in the workplace in a condition that is safe and without risk to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risk;

(e) the provision, maintenance or monitoring of such working environment in the workplace for the employees that is safe, without risk to health as regards facilities and arrangements for their welfare at work.

Notice of Certain Accident (Section 10)

1. ***Duty to Report Accidents**:* Where an accident occurs in any establishment that:
   - Causes death, or
   - Causes bodily injury preventing the injured person from working for 48 hours or more immediately following the accident, or
   - is of such nature as may be prescribed by the appropriate Government,

   then the following persons shall send notice of the accident to the prescribed authorities, in the prescribed manner and within the prescribed time:
   (a) In case of a mine: the employer, owner, agent, or manager (as referred to in Section 67).
   (b) In case of a factory or dock work: the employer or manager.
   (c) In case of a plantation, building/construction establishment, or any other establishment: the employer.
2. ***Inquiry in Case of Death**:* Where the notice relates to an accident-causing death in a plantation, construction establishment, or other establishment:
   - the authority receiving the notice shall conduct an inquiry into the occurrence within two months of receipt.
   - If no such authority exists, the Chief Inspector-cum-Facilitator shall direct the Inspector-cum-Facilitator to conduct the inquiry within the same period.

Notice of Certain Dangerous Occurrences (Section 11)

Where any dangerous occurrence takes place in an establishment—whether or not it causes bodily injury or disability—the employer shall send notice of the occurrence to the prescribed authorities, in the prescribed form, and within the prescribed time, as determined by the appropriate Government.

Notice of Certain Diseases (Section 12)

1. ***Employer's Duty:*** If any worker in an establishment contracts a disease specified in the Third Schedule, the employer shall send notice of the case to the prescribed authorities, in the prescribed form, and within the prescribed time, as directed by the appropriate Government.
2. ***Medical Practitioner's Duty:*** If any qualified medical practitioner attends to a person (currently or formerly employed in an establishment) who is suffering from, or suspected to be suffering from, a disease listed in the Third Schedule, the practitioner shall send a written report without delay, to the office of the Chief Inspector-cum-Facilitator, in the prescribed form, manner, and time.
3. ***Penalty for Non-Compliance:*** If any qualified medical practitioner fails to comply with the reporting duty under sub-section (2), they are liable to a penalty which may extend to 10,000.

Duties of Employees at the Workplace (Section 13)

Every employee at the workplace shall:

(a) take reasonable care for their own health and safety, and that of others who may be affected by their acts or omissions.

(b) comply with safety and health requirements specified in applicable standards.

(c) co-operate with the employer in fulfilling statutory obligations under this Code.

(d) report unsafe or unhealthy situations promptly to the employer, health and safety representative, or in case of mines: the agent, manager (Section 67), safety officers, or designated officials.

(e) not wilfully interfere with, misuse, or neglect any appliance, convenience, or facility provided for health, safety, and welfare.

(f) not wilfully, and without reasonable cause, do anything likely to endanger themselves or others.

(g) perform such other duties as may be prescribed by the appropriate Government.

Employee's Right to Information and Protection Against Imminent Danger (Section 14)

1. ***Right to Information and Representation****:* Every employee has the right to obtain from the employer information relating to health and safety at work or through a member of the Safety Committee as constituted undersection 22, if constituted by the employer for such purpose, regarding inadequate provision for protection of his safety or health in connection with the work activity in the workplace, and if not satisfied, to the Inspector-cum-Facilitator.
2. ***Reporting Imminent Danger****:* If an employee reasonably apprehends imminent serious injury, death, or danger to health in any workplace he may bring the same to the notice of his
   - Employer directly, or through a member of the Safety Committee, and
   - Simultaneously to the Inspector-cum-Facilitator.
3. ***Immediate Remedial Action:*** If the employer or employee is satisfied about the existence of imminent danger, immediate remedial action shall be taken. A report of the action taken shall be sent to the Inspector-cum-Facilitator in the prescribed manner.

Final Authority: If the employer is not satisfied about the existence of imminent danger, the matter shall still be referred to the Inspector-cum-Facilitator. The Inspector's decision on whether imminent danger exists shall be final.

OCCUPATIONAL SAFETY AND HEALTH

National Occupational Safety and Health Advisory Board (Section 16)

The Central Government shall, by notification, constitute **the National Occupational Safety and Health Advisory Board** (National Board) to discharge the functions conferred on it by or under this Code and to advise the Central Government on the matters relating to—

(a) standards, rules, and regulations under this Code.

(b) implementation of provisions of the Code and related standards.

(c)) the issues of policy and programme relating to occupational safety and health referred to it, from time to time, by the Central Government; and

(d) consider any other matter in respect of this Code referred to it, from time to time, by the Central Government.

State Occupational Safety and Health Advisory Board (Section 17)

The State Government shall constitute a Board to be called the State Occupational Safety and Health Advisory Board ("State Advisory Board") to advise the State Government on such matters arising out of the administration

of this Code as may be referred to it by the State Government. The constitution, procedure and other matters relating to State Advisory Board shall be such as may be prescribed by the State Government.

Occupational Safety and Health Standards (Section 18)

Declaration of Standards: The Central Government shall, by notification, declare OSH standards for workplaces relating to factory, mine, dock work, beedi and cigar, building and other construction work and other establishments.

Scope of Standards: In particular and without prejudice to the generality of the power to declare standards to be followed under sub-section (1), such standards shall relate to—

(a) **Hazard Control**: physical, chemical, biological and any other hazards to be dealt with for the working life of employee to ensure to the extent feasible on the basis of the best available evidence or functional capacity, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to such hazards;

(b) **Norms for Hazard Management**:

(i) Appraisal of hazards to employees and users.

(ii) Identification of symptoms, treatment, and safe-use precautions.

(iii) Monitoring and measuring exposure levels.

(iv) Medical examinations and tests, provided free of cost by employers.

(v) Hazard evaluation procedures (e.g., safety audits, hazard and operability studies, fault-tree analysis, event-tree analysis).

Medical Examination Post-Employment: Detection and reporting of occupational diseases shall extend even after cessation of employment, if the disease arises out of or during employment.

Reports of Designated Authorities: such aspects of occupational safety and health relating to workplaces which the Central Government considers necessary on the report of the authority designated by such Government for such purpose;

Sector-Specific Measures: Safety and health measures tailored to mines, factories, construction, beedi/cigar, dock work, or other establishments

Matters in the Second Schedule: Standards shall also cover items listed in the Second Schedule of the Code.

Safety Committee and Safety Officer (Section 22)

Section 22 is a practical compliance provision that institutionalizes Safety Committees and Safety Officers in establishments. The provisions of the section are as follows:

1. ***Safety Committee**:* The appropriate Government may, by general or special order, require any establishment or class of establishments to constitute a Safety Committee in the prescribed manner with the following composition:

   - Representatives of employers and workers.
   - The number of worker representatives shall be not less than the number of employer representatives.
   - Worker representatives shall be chosen in such manner and for such purposes as may be prescribed by the appropriate Government.

2. ***Safety Officers:*** In the following establishments, the employer shall also appoint such number of safety officers, who shall possess such qualifications and perform such duties, as may be prescribed by appropriate Government:
   (a) Factories with **500 or more workers**.
   (b) Factories carrying on **hazardous processes** with **250 or more workers**.
   (c) Building or construction work establishments with **250 or more workers**.
   (d) Mines, where **100 or more workers** are ordinarily employed.

HEALTH, SAFETY AND WORKING CONDITIONS

Responsibility of Employer for maintaining Health, Safety, and Working Conditions (Section 23)

Section 23 deals with the employer's responsibility for health, safety, and working conditions.

1. ***General Duty:*** Employers shall maintain health, safety, and working conditions in their establishments as prescribed by the Central Government.
2. ***Specific Matters Prescribed****:* The Central Government may prescribe standards relating to:
   (i) Cleanliness and hygiene.
   (ii) Ventilation, temperature, and humidity.
   (iii) Environment free from dust, noxious gases, fumes, and other impurities.
   (iv) Adequate humidification, ventilation, and cooling in workrooms.
   (v) Potable drinking water.
   (vi) Standards to prevent overcrowding and ensure sufficient space.
   (vii) Adequate lighting.
   (viii) Separate and hygienic latrine and urinal facilities for male, female, and transgender employees.

WELFARE PROVISIONS

Welfare Facilities in the Establishment (Section 24)

Section 24 is a comprehensive welfare provision that codifies the employer's responsibility to maintain health, safety, and decent working conditions**.**

1. ***Welfare Facilities****:* Employers shall provide and maintain welfare facilities as prescribed by the Central Government, including:
   (i) Adequate and suitable washing facilities for male and female employees separately.
   (ii) Bathing places and locker rooms for male, female, and transgender employees separately.
   (iii) Places for keeping clothing not worn during working hours and drying wet clothing.
   (iv) Sitting arrangements for employees obliged to work standing.
   (v) Canteen facilities in establishments with 100 or more workers (including contract labour).
   (vi) Medical examination of mine workers before employment and at prescribed intervals.
   (vii) Adequate first-aid boxes or cupboards accessible during all working hours.

(viii) Any other welfare measures considered necessary by the Central Government for decent living standards.

2. ***Additional Prescribed Matters****:* Without prejudice to the generality of the powers referred to under sub-section (1), the Central Government may also prescribe:

(i) Ambulance rooms in establishments with **500 or more workers** (factories, mines, construction).

(ii) Medical facilities at the operating centres and halting stations, uniforms, raincoats, and other like amenities for protection from rain or cold for motor transport workers.

(iii) Adequate, suitable, and separate shelters/rest-rooms and lunch-rooms for male, female and transgender employees and lunch-room in every factory and mine wherein more than fifty workers are ordinarily employed and in motor transport undertaking wherein employee is required to halt at night;

(iv) Appointment of welfare officers in factories, mines, or plantations where **250 or more workers** are ordinarily employed, with prescribed qualifications and duties and the such welfare officer;

(v) Temporary living accommodation for building workers, free of charge, within the work site or as near to it as may be possible, to all building workers employed by him and for causing removal or demolition of such temporary living accommodation and for returning by the employer the possession of any land obtained by him for such purpose from Municipal Board or any other local authority;

(vi) Employer's responsibility to reimburse contractors for accommodation expenses in construction work, where the building or other construction work is done through the contractor;

(vii) Any other matter as may be prescribed.

3. ***Crèche Facilities***: The Central Government may make rules to provide for the facility of creche having suitable room or rooms for the use of children under the age of six years of the employees at suitable location and distance either separately or along with common facilities in establishments wherein more than fifty workers are ordinarily employed. It is provided that crèches may be common facilities provided by Government, municipality, NGOs, or pooled by multiple establishments.

HOURS OF WORK AND ANNUAL LEAVE WITH WAGES

Daily and Weekly Working Hours, Leave (Section 25)

Section 25 is a foundational provision on daily and weekly working hours, leave entitlements, and special categories of workers.

General Working Hours*:* No worker shall be required or allowed to work in any establishment or class of establishment for more than:

i. 8 hours in a day; and

ii. the daily period of work shall be fixed with intervals and spread overs as notified by the appropriate Government.

Special Provisions for Mines: It is provided that in case of mines

a) Persons employed below ground shall not work for more than the hours in a day as notified by the Central Government.

b) Work below ground shall be arranged in shifts, each not exceeding the daily maximum hours notified in

(a).

c) No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under clause (a) of section 33.

Special Provisions for Motor Transport Workers*:* It is further provided that subject to clause (a) that the hours of work in case of motor transport worker shall include—

(i) Time spent during the running time of the transport vehicle.

(ii) Time spent in subsidiary work (accounts, ticket checking, garaging, upkeep, loading/unloading, etc.).

(iii) Period of mere attendance at terminals of less than 15 minutes.

Working hours for Working Journalist: Notwithstanding anything contained in sub-section (1), the hours of work for working journalist shall, subject to a maximum of one hundred and forty-four hours of work during any period of four consecutive weeks and a period of not less than twenty-four consecutive hours of rest during any period of seven consecutive days, be such as may be prescribed by the Central Government.

Sales Promotion Employees & Working Journalists – Leave Entitlements:

A sales promotion employee or the working journalist,

(i) in addition to such holidays, casual leave or other kinds of leave as may be prescribed by the Central Government, shall be granted, if requested for—

(a) Earned leave: At least 1/11th of duty period, on full wages.

(b) Medical leave: At least 1/18th of service period, on half wages.

(ii) Earned leave may be accumulated up to prescribed limits.

(iii) Earned leave may be encashed or availed, subject to prescribed limits.

(iv) On voluntary retirement, or termination (for any reason whatsoever other than punishment), entitled to cash compensation subject to such conditions and restrictions as may be prescribed by the Central Government (including conditions by way of specifying the maximum period for which such cash compensation shall be payable), in respect of the earned leave earned by him and not availed of;

(v) On death in service, his heirs shall be entitled to cash compensation for the earned leave earned by him and not availed of his heirs shall be paid the cash compensation in respect of any period of earned leave for which he or his heirs, is or are entitled to cash compensation under clause (*iv*) or clause (*v*), which shall be an amount equal to the wages due to him for such period.

Adolescent Workers: Notwithstanding anything contained in this section, working hours of an adolescent worker shall be regulated by the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

Weekly and Compensatory Holidays (Section 26)

Section 26 ensuring that workers receive weekly rest and, if deprived, compensatory holidays.

Weekly Holiday Rule: No worker shall be required or allowed to work in an establishment for more than six days in any one week**.**

Special Provision for Motor Transport Workers: It is provided that in any motor transport undertaking, an employer may, in order to prevent any dislocation of a motor transport service, require a worker to work on any day of weekly holiday which is not a holiday so arranged that the worker does not work for more than tendays consecutively without a holiday for a whole day intervening**.**

***Government Exemptions**:* The appropriate Government may, by notification, exempt certain workers from the weekly holiday requirement, subject to prescribed conditions.

***Compensatory Holidays**:* If workers are deprived of weekly holidays due to exemptions or rules, they shall be granted compensatory holidays equal to the number of weekly holidays lost within the same month, or within the following two months.

Extra Wages for Overtime (Section 27)

This provision ensures that overtime is both voluntary and fairly compensated

Overtime Pay:

- Workers who work beyond prescribed daily or weekly hours shall be paid at twice the rate of wages.
- Overtime is calculated on a daily or weekly basis, whichever is more favourable to the worker.

Consent Requirement: It is provided that a worker shall be required to work overtime by the employer subject to the consent of such worker for such work.

Government Regulation: It is further provided that the appropriate Government may prescribe the maximum number of overtime hours permissible**.**

Night Shifts (Section 28)

Where a worker in an establishment works on a shift which extends beyond midnight:

(a) for the purposes of section 26, a weekly holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

Prohibition of Overlapping Shift (Section 29)

The section provides for regulating arrangement of shifts in establishments to prevent overlapping relays of workers.

General Rule: Work in an establishment shall not be carried out by a system of shifts arranged in such a way that more than one relay of workers is engaged in the same kind of work at the same time.

Exemptions: For exemption from the prohibition in sub-section (1), the appropriate Government, or with its approval, the Chief Inspector-cum-Facilitator, may issue a written order exempting:

- Any establishment or class of establishments,
- Any department or section of an establishment, or
- Any category or description of workers.

Such exemptions shall specify reasons and may be subject to conditions deemed expedient.

Special Provision for Mines: *It is provided that the exemption power under sub-section (2) does not apply to mines.*

Restriction on Double Employment in Factory and Mine (Section 30)

The section provides that no worker shall be required or allowed to work in a mine or factory if he has already been working in any other such similar establishment within the preceding twelve hours, save in such

circumstances as may be prescribed by the appropriate Government.

Notice of Periods of Work (Section 31)

The section provides for procedural compliance ensuring transparency in work schedules. It mandates employers to formally display and notify periods of work, with oversight by the Inspector-cum-Facilitator.

***Display of Notice**:* Every establishment shall display and correctly maintain a notice showing, for each day, the periods during which workers may be required to work, in accordance with the Code.

***Form and Submission**:* The form of the notice, its manner of display, and the procedure for sending it to the Inspector-cum-Facilitator shall be prescribed by the appropriate Government.

***Changes in Work System**:* Any proposed change in the system of work that requires altering the notice shall be:

- Intimated to the Inspector-cum-Facilitator before implementation.
- Not made until one week has elapsed since the last change, unless sanctioned by the Inspector-cum-Facilitator.

Annual Leave with Wages (Section 32)

The section comprehensively provides for annual leave with wages, laying down eligibility, accrual, carry-forward, encashment, and special rules for mines.

Eligibility and Accrual: Every worker in an establishment shall be entitled to annual leave with wages if:

(i) They have worked one hundred and eighty days or more in a calendar year.

(ii) Leave accrual (in a calendar year):

- One day leave for every twenty days of work.
- Adolescent workers: One day for every fifteen days.
- Mine workers (below ground): One day for every fifteen days.

(iii) Periods of layoff, maternity leave, or annual leave count towards the one hundred- and eighty-days threshold but do not earn leave.

(iv) Holidays in a calendar Year/prefixed/suffixed to leave are excluded from the leave period.

(v) in case of such worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate specified in clause (ii), if he has worked for one-fourth of the total number of days in the remainder of the calendar year;

(vi) Leave on Separation**:** If a worker is discharged, dismissed, quits, retires, or dies, they (or their heirs/ nominees) are entitled to wages in lieu of the quantum of leave to which such worker was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated as specified in preceding clauses, even if such worker has not worked for the required period under this sub-section making such worker eligible to avail such leave, and such payment shall be made—

(a) where such worker is discharged or dismissed or quits employment before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

(b) where such worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death;

(vii) Carry Forward of Leave: Unused leave may be carried forward, subject to:

(a) Maximum 30 days carry forward.

(b) If leave was applied for but refused, it may be carried forward without limit.

(viii) Encashment of Leave: Without prejudice to clause (vi) such worker shall be entitled on his demand for encashment of leave at the end of calendar year.

(ix) Such worker shall be entitled, where his total number of leave exceeds thirty days under sub-clause (a) of clause (vii), to encash such exceeded leave.

Extension to Other Establishments: The appropriate Government may, by notification, extend these provisions to other establishments (except railways).

Special Provisions for Mines

- Existing rights under other laws, awards, or contracts remain protected.
- If such arrangements provide longer leave, they shall prevail.
- The Central Government may exempt mines if their leave rules are not less favourable than those in sub section (1).

MAINTENANCE OF REGISTERS, RECORDS AND RETURNS

Maintenance of Registers, Records, and Filing of Returns (Section 33)

An employer of an establishment shall—

(a) maintain register in prescribed form, electronically or otherwise, containing such particulars of workers as may be prescribed by the appropriate Government including, —

(i) work performed by them;

(ii) number of hours of work constituting normal working hours in a day;

(iii) day of rest allowed in every period of seven days;

(iv) wage paid and receipts given therefor;

(v) leave, leave wages, overtime work, attendance and dangerous occurrences; and

(vi) employment of adolescent;

(b) display notices at the work place of the workers in such manner and form as may be prescribed by the appropriate Government;

(c) issue wage slips to the workers, in electronic forms or otherwise; and

(d) file such return electronically or otherwise to the Inspector-cum-Facilitator in such manner

INSPECTOR -CUM-FACILITATORS AND OTHER AUTHORITY

Appointment of Inspector-cum-Facilitators (Section 34)

The section provides the framework for appointing and regulating Inspector-cum-Facilitators under the Code. It defines their appointment, jurisdiction, inspection schemes, hierarchy, and safeguards against conflicts of interest as follows:

(1) The appropriate Government may, by notification, appoint Inspector-cum- Facilitators for the purposes of this Code who shall exercise the powers conferred on them under this Code throughout their respective jurisdiction specified in the notification.

(2) The Inspector-cum-Facilitators appointed under sub-section (1) shall, apart from other duties to be discharged by them under this Code, conduct such inspections as specified in sub-section (3).

(3) The appropriate Government may—

(i) for the purposes of inspection referred to in sub-section (2), by notification, lay down an inspection scheme which may provide for the generation of web-based inspection and calling of information under this Code, electronically and such scheme shall, inter alia , have provisions to cater to special circumstances for assigning inspection and calling for information from establishment or any other person besides web-based inspections; and

(ii) without prejudice to the provisions of sub-section (2), by notification, under the scheme, provide for the randomised selection of establishment and theInspector-cum-Facilitator for inspection.

(4) Without prejudice to the powers of the appropriate Government under this section, the inspection scheme referred to in sub-section (3) may be designed taking into account, inter alia , the following factors, namely:—

(a) assignment of unique number, to each establishment (which will be same as the registration number allotted to the establishment registered under section 3), unique number to each Inspector-cum-Facilitator and to each inspection in such manner as may be notified by the appropriate Government;

(b) timely uploading of inspection reports in such manner and subject to such conditions as may be notified in the scheme;

(c) provisions for special inspections based on such parameters as may be notified by the appropriate Government; and

(d) the characteristics of employment, the nature of work, and characteristics of the workplaces based on such parameters as may be notified by the appropriate Government.

(5) The appropriate Government may, by notification, appoint any person or persons possessing the prescribed qualifications and experience to be Chief Inspector-cum-Facilitator for the purposes of such establishments or class of establishments and for such local limits of jurisdiction as may be specified in the notification:

It is provided that a Chief Inspector-cum-Facilitator may be appointed for the purposes of *a State or more than one States or for the purposes of the whole of the Country.*

(6) The appropriate Government may, by notification, appoint for the purposes of establishments as may be notified by that Government, as many Additional Chief Inspector-cum-Facilitators, Joint Chief Inspector-cum-Facilitators and Deputy Chief Inspector-cum-Facilitators or any other officer of any designation as it thinks appropriate, to exercise such powers of the Chief Inspector-cum-Facilitator within his jurisdiction, as may be specified in the notification.

(7) Every Additional Chief Inspector-cum-Facilitator, Joint Chief Inspector-cum- Facilitator, Deputy Chief Inspector-cum-Facilitator and every other officer appointed under sub-section (6) shall, in addition to the powers of a Chief Inspector-cum-Facilitator specified in the notification by which the officer is appointed, exercise the powers of an Inspector-cum-Facilitator within such local limits as may be specified in the notification.

(8) No person shall be appointed under this section or having been so appointed, shall continue to hold office, who is, or who becomes, directly or indirectly interested in aworkplace or work activity or in any process or business carried on in any workplace or inany plant or machinery connected therewith.

(9) The appropriate Government may also, by notification, appoint such public officersas it thinks fit to be Inspector-cum-Facilitators in addition to existing Inspector-cum-Facilitator for exercising the powers and discharging the duties of Inspector-cum-Facilitator for all or any of the purposes of this Code within such local limits as may be specified in such notification.

(10) Without prejudice to the other functions of the Inspector-cum-Facilitator under this Code, an Inspector-cum-Facilitator may in respect of any establishment or class of establishments in local area or areas of his jurisdiction where the Chief Inspector-cum-Facilitator with the approval of the appropriate Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing authorise the Inspector-cum-Facilitator to exercise such of the powers of the Chief Inspector-cum-Facilitator as may be specified in such order:

It is provided that the Chief Inspector-cum-Facilitator, with the approval of the appropriate Government, may by order in writing, prohibit the exercise, by any Inspector-cum- Facilitator or any class of Inspector-cum-Facilitators specified in such order, of any such power by such Inspector-cum-Facilitator or class of Inspector-cum-Facilitators.

(11) Every Chief Inspector-cum-Facilitator, Additional Chief Inspector-cum-Facilitator, Joint Chief Inspector-cum-Facilitator, Deputy Chief Inspector-cum-Facilitator, Inspector-cum-Facilitator and every other officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and shall be officially subordinate to such authority as the appropriate Government may specify in this behalf.

Powers of Inspector-cum-Facilitators (Section 35)

Sections 35 and 36 together define the powers of Inspector-cum-Facilitators and extend those powers to the District Magistrate in respect of mines. These provisions are central to enforcement under the Code, blending investigative authority with compliance facilitation**.** The provisions of the section are as follows:

(1) Subject to any rules made in this behalf, an Inspector-cum-Facilitator may—

(i) enter, with such assistance of persons, being persons in the service of the Government, or any local or other public authority, or with an expert, as he thinks fit, any place which is used, or which he has reason to believe, is used as a work place;

(ii) inspect and examine the establishment, any premises, plant, machinery, article, or any other relevant material;

(iii) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or death or not and take on the spot or otherwise statement of any person which he may consider necessary for such inquiry;

(iv) subject to any rules made by the State Government in this behalf, within his jurisdiction, examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Code, and take on the spot or otherwise statement of any person which he may consider necessary for carrying out the purposes of this Code relating to plantation;

(v) supply information and sensitise the employers and workers regarding the provisions of this Code and compliance thereof;

(vi) require the production of any register or any other document relating to the workplace or work activity;

(vii) search or seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Code, which he has reason to believe, has been committed;

(viii) direct the concerned occupier or employer that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any inspection or inquiry;

(ix) take measurements, photographs and videographs and make such recordings as he considers necessary for the purpose of any examination or inquiry;

(x) take samples of any articles or substances found in any establishment or premises into which he has power to enter and of the air of the atmosphere in or in the vicinity of any such establishment or premises in such manner as may be prescribed by the appropriate Government;

(xi) in case of any article or substance found in any establishment or premises, being an article or substance which appears to him as having caused or is likely tocause danger to the health and safety of the employees, direct it to be dismantled orsubject it to any process or test (but not so as to damage or destroy it unless the sameis, in the circumstances necessary, for carrying out the purposes of any provision ofthis Code) and take possession of any such article or substance or a part thereof, anddetain it for so long as is necessary for such examination;

(xii) issue show cause notice relating to safety, health and welfare provisions arising under this Code, rules, regulations and bye-laws made thereunder;

(xiii) prosecute, conduct or defend before any court any complaint or other proceeding arising under this Code, the rules and regulations made thereunder; and

(xiv) exercise such other powers and perform such other duties as may be prescribed by the appropriate Government.

(2) Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

(3) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

Third Party Audit and Certification (Section 37)

Section 37 of the Code introduces the concept of third-party audit and certification that shifts part of the oversight responsibility from government inspectors to empanelled experts.

Empanelment of Experts: The appropriate Government may, by notification, formulate a scheme to empanel experts with prescribed qualifications and experience. Such experts may be designated for start-up establishments or specified classes of establishments, as may be notified.

Duties of Empanelled Experts: The experts empanelled under sub-section (1), shall, —

(a) Assigned audits and certifications in a randomised manner through a web-based scheme.

(b) Carry out audits and certifications in the manner and for the purpose specified in the scheme.

(c) Perform duties as specified in the scheme and submit reports to both the employer and the Inspector-cum-Facilitator.

SPECIAL PROVISION RELATING TO EMPLOYMENT OF WOMEN

Employment of Women (Section 43)

The section is a progressive provision that affirms the right of women to be employed across all establishments and types of work, while balancing this entitlement with safeguards for safety and working conditions

Women shall be entitled to be employed in all establishments for all types of work under this Code and they may also be employed, with their consent before 6 a.m. and beyond 7 p.m. subject to such conditions relating to safety, holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government.

Adequate Safety of Employment of Women in Dangerous Operations (Section 44)

Section 44 complements Section 43 by focusing specifically on women's employment in hazardous or dangerous operations. It ensures that equality in employment is balanced with mandatory safeguards for health and safety.

If the appropriate Government considers that employment of women in an establishment, or a class of establishments, or any particular hazardous/dangerous process therein, is dangerous to their health and safety,

Then, the Government may, in the prescribed manner, require the employer to provide adequate safeguards before employing women in such operations.

SPECIAL PROVISIONS FOR CONTRACT LABOUR

Applicability of Part(I) {Section 45}

Section 45 of the Code is the gateway provision for the applicability of the Chapter XI (Part I) dealing with contract labour. It defines the threshold for coverage, exclusions, and clarifies what counts as "intermittent" or "casual" work.

Coverage*:* Part I applies to:

(i) Every establishment where 50 or more contract labour are employed (or were employed on any day in the preceding 12 months).

(ii) Every manpower supply contractor who has employed 50 or more contract labour on any day in the preceding 12 months.

Exclusion: This Part does not apply to establishments where work performed is only of an intermittent or casual nature.

Authority to Decide: If a dispute arises about whether work is intermittent or casual, the appropriate Government, after consulting the National Board or State Advisory Board, shall decide. Such decision shall be final.

It may be noted that work performed in an establishment shall not be deemed to be of an intermittent nature—

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months; or

(ii) if it is of seasonal character and is performed for more than sixty days in a year.

Appointment of Designated Authority (Section 46)

The appropriate Government may, by order:

- Appoint Gazetted officers of the Government as designated authorities under Section 119(1).
- Specify the limits of their jurisdiction.
- Vest them with powers and duties, including issuance of licences, revocation of licences and handling such functions electronically, as may be prescribed.

Licensing of Contractors (Section 47)

The section is a core compliance provision that regulates the licensing of contractors engaging contract labour. It ensures that contractors cannot operate without formal authorisation, and it introduces both general licences and work-specific licences.

General Rule: Except under and in accordance with a licence issued by the designated authority under Section 119(1), *n*o contractor covered by this Part shall:

(a) Supply or engage contract labour in any establishment; or

(b) Undertake or execute work through contract labour,

Licence shall be issued after verifying that the contractor meets qualifications/criteria prescribed by the Central Government. Such licence shall specify:

- Number of contract labour permitted.
- Amount of security to be deposited.

Work-Specific Licence: If contractor does not meet prescribed qualifications/criteria, the authority may issue a work-specific licence. Such licence:

- Is electronically renewable within prescribed period.
- Applies only to the concerned work order.
- Is subject to specified conditions.

Conditions of Licence: Subject to the provisions of this Part—

(a) Licence may include conditions relating to hours of work.
    - Fixation of wages.
    - Essential amenities for contract labour.

(b) Licence shall be obtained from:
    - Central Government authority (if establishment falls under Central jurisdiction).
    - State Government authority (if establishment falls under State jurisdiction).

It may be noted that contractors seeking licences for multiple States or whole of India must obtain licence from the referred to in sub-section (1) of section 119 designated by the Central Government for such purpose. It is further provided that before issuing such licence the authority so designated shall consult the concerned State or States authorities designated under sub-section (1) of section 119, electronically before issuing licence for the establishments for which the appropriate Government is the State Government.

Procedure for Issue or Renewal of Licence (Section 48)

Section 48 laying down the procedure for issue and renewal of contractor licences. It formalises the process, introduces electronic applications, and defines validity, amendment, and contractor responsibilities.

Electronic Application

a. Applications for licences under Section 119 (for purposes of Section 47(1) or 47(2)) shall be made electronically in form and manner as may be prescribed.

b. Application shall include particulars such as:

   i. Number of contract labour.

   ii. Nature of work for which contract labour is to be employed.

   iii. Other prescribed particulars, including information on inter-State migrant workers.

Prescribed Procedure: The designated authority under Section 119(1) shall follow the procedure prescribed by the appropriate Government for processing applications.

Validity and Amendment*:* Licence issued under Section 47(1) shall be valid for five years in respect of the number of contract labour specified therein.

If contractor wishes to increase the number of contract labour, he shall apply for amendment in prescribed manner. The authority may amend licence after deposit of additional security deposit for the balance period.

Contractor's Responsibilities: The licence so issued shall contain responsibilities of the contractor as prescribed by the appropriate Government.

No Fees or Commission or Any Cost to Workers (Section 49)

A contractor shall not charge, either directly or indirectly, in whole or in part, any fee, or commission, or any other cost from the contract labour.

Information Regarding Work Order to be given to the Appropriate Government (Section 50)

The section is a compliance and accountability provision that ensures transparency between contractors and the Government regarding contract labour engagements.

Mandatory Intimation: When a contractor receives a work order from an establishment:

- To supply contract labour, or
- To execute work through contract labour,

The contractor shall intimate the designated authority (under Section 119) within the prescribed time and manner.

Penalty for Non-Compliance: If the contractor fails to give intimation, the designated authority may suspend or cancel the licence in such manner as may be prescribed by the appropriate Government. Any such action of revocation or suspension shall be taken after giving the contractor an opportunity to show cause.

Revocation, Suspension and Amendment of Licence (Section 51)

Sections 51 and 52 together establish the disciplinary framework for contractor licences under the Code. They cover revocation, suspension, amendment, and appeals, ensuring both accountability and procedural fairness.

Grounds for Revocation or Suspension: The designated authority under Section 119(1) may revoke or suspend a licence if:

(a) The licence was obtained by misrepresentation or suppression of material facts.

(b) The licence holder has failed to comply with licence conditions or contravened provisions of this Part or rules.

This revocation or suspension is without prejudice to any other penalty to which the contractor may be liable under this Code.

Due Process: Action shall be taken only after giving the contractor an opportunity to show cause. Procedure for revocation/suspension is prescribed by the Central Government.

Amendment of Licence: Subject to any rules that may be made in this behalf, the authority referred to in sub-section (1) of section 119 may amend a licence granted for the purposes of this Part.

Appeals (Section 52)

Any person aggrieved by an order under Sections 47, 48, or 51 may appeal to the appellate authority prescribed by the appropriate Government under Section 119(6). Appeal shall be filed within 30 days of communication of the order. It is provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Disposal of Appeal:

On receipt of an appeal, the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal within thirty days from the date on which the appeal is preferred.

Liability of Principal Employer for Welfare Facilities (Section 53)

The principal employer of an establishment shall provide to contract labour employed therein the welfare facilities specified under Sections 23 and 24.

Effect of Employing Contract Labour from a Non-Licenced Contractor (Section 54)

If a principal employer engages contract labour through a contractor who is required to obtain a licence under this Part but has not obtained such licence, then, such employment shall be deemed to be in contravention of the provisions of this Code.

Responsibility for Payment of Wages (Section 55)

This section lays down the financial accountability framework for contractors and principal employers in relation to contract labour.

Contractor's Responsibility: A contractor shall be responsible for payment of wages to each contract labour employed by him and such wages shall be paid before the expiry of such period as may be prescribed by the appropriate Government.

Mode of Payment: Every contractor shall, make the disbursement of wages referred to in sub-section (1) through bank transfer or electronic mode and inform the principal employer electronically the amount so paid by such mode. It is provided that where it is not practicable to disburse payment in the mode specified in this section, then, the payment shall be made in such manner as may be prescribed by the appropriate Government.

Principal Employer's Liability*:* If the contractor fails to pay wages within the prescribed period or makes short payment, the principal employer shall be liable to pay wages in full or the unpaid balance to the contract labour. The principal employer may recover the amount from the contractor by deducting from any amount payable under any contract, or as a debt payable by the contractor.

If the contractor does not pay wages, the appropriate Government shall order payment from the security deposit deposited by the contractor under the licence. Payment shall be made in the manner prescribed by such Government.

Experience Certificate (Section 56)

This section ensures that contract labourers receive formal recognition of their work experience.

Every concerned contractor shall, on demand, issue an experience certificate to the contract labour. The certificate shall be in the form prescribed by the appropriate Government and contains the details of the work performed by the contract labour.

Prohibition of Employment of Contract Labour (Section 57)

The section establishes a general prohibition on employing contract labour in the core activities of an establishment, thereby protecting the integrity of essential operations and ensuring that permanent workers are not displaced. However, it also provides limited exceptions where contract labour may be engaged, and sets out a mechanism for determining whether an activity qualifies as "core."

General Prohibition: Notwithstanding anything contained in Part I, employment of contract labour in core activities of any establishment is prohibited.

Exceptions: It is provided that the principal employer may engage contract labour through a contractor to any core activity, if—

(a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or

(b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;

(c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

Determination of Core Activity:

(a) The appropriate Government may appoint, by notification, a designated authority to advise on whether an activity is core or not.

(b) if a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application in such form and manner as may be prescribed, to the appropriate Government for decision;

(c) the appropriate Government may refer any such question suo motu or refer the application to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as it deems fit, shall report to the appropriate Government, within such period and thereafter the appropriate Government shall decide the question within such period as may be prescribed.

FACTORIES

Approval and Licensing of Factories (Section 79)

(1) The Appropriate Government may make rules in respect of factory or class or description of factories for—

(a) the submission of plans including specifications, nature and certification thereof;

(b) the previous permission for the site on which the factory is to be situated and for the construction or extension thereof; and

(c) subject to the provision of sub-section 119, licensing and renewal thereof including fees to be

payable for such, licensing and renewal, if required, as the case may be.

(2) If on an application for permission referred to in clause (b) of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (a) of that sub-section, sent to the State Government or Chief Inspector-cum-Facilitator in the electronic mode, no order is communicated to the applicant within such period not exceeding thirty days, the permission applied for in the said application shall be deemed to have been granted.

Appeal to the Central Government: Where a State Government or a Chief Inspector-cum-Facilitator refuses to grant permission to the site, construction or extension of a factory and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

When shall factory not be deemed to be extended: Explanation of the section provides that a factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery or within such limits as may be prescribed, of the addition of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.

Liability of Owner of Premises in Certain Circumstances (Section 80)

Where any premises or separate buildings are leased to different occupiers for use as separate factories, the owner of the premises and occupiers of the factories utilising such common facilities which include safety and fire prevention and protection, access, hygiene, occupational health, ventilation, temperature, emergency preparedness and response, canteens, shelter, rest rooms and crèches shall jointly and severally be responsible for provision and maintenance of such common facilities and services as may be prescribed by the appropriate Government.

Power to apply Code to Certain Premises (Section 81)

The appropriate Government may, by notification, declare that all or any of the provisions of this Part shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is ordinarily carried on irrespective of the number of workers working in the factory.

After a place is so declared, it shall be deemed to be a factory for the purposes of this Code, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation. —For the purposes of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

Dangerous Operations. (Section 82)

The appropriate Government may by rules make the provisions relating to any factory or class or description of factories in which manufacturing process or operation is carried on which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease, for—

(a) specifying the manufacturing process or operation and declaring it to be dangerous;

(b) prohibiting or restricting the employment of pregnant women in the manufacturing process or operation;

(c) the periodical medical examination before, or at any time during the employment to ascertain the fitness of a worker or employee for such employment on the cost of the occupier; and

(d) welfare amenities, sanitary facilities, protective equipment and clothing, and

any other requirement necessary for dangerous operations.

Constitution of Site Appraisal Committee (Section 83)

The appropriate Government may, constitute one or more site appraisal committees consisting of a chairman and other members, for such purpose as may be prescribed including to consider and to give recommendations on an application for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of such factory.

The site appraisal committee shall make its recommendation within a period of thirty days of the receipt of the application for any of the purpose referred to in the said sub-section in such form, as may be prescribed.

Compulsory Disclosure of Information by Occupier (Section 84)

Information to be disclosed: The occupier of every factory involving a hazardous process shall disclose in the manner prescribed by the State Government all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes.

To whom disclosure shall be made:

- the workers employed in the factory,
- the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator,
- the local authority within whose jurisdiction the factory is situate and
- the general public in the vicinity.

Detailed policy to be laid down by the Occupier: The occupier shall, at the time of registering the factory involving a hazardous process,

- lay down a detailed policy with respect to the health and safety of the workers employed therein and
- intimate such policy to the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator and the local authority and,

thereafter, at such intervals as may be prescribed by the State Government, inform the Chief Inspector-cum-Facilitator or Inspector-cum-Facilitator and the local authority of any change made in the said policy.

Accurate information to be furnished: The information furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

***Onsite emergency plan*:** Every occupier shall,

- with the approval of the Chief Inspector-cum-Facilitator, draw up an on-site emergency plan and detailed disaster control measures for his factory and
- make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

Duty to disclose nature of hazardous process: Every occupier of a factory shall, if such factory proposes to engage in a hazardous process at any time after the commencement of this Code, inform the Chief Inspector-cum-Facilitator about the nature and details of the process in such form and in such manner as may be prescribed by the State Government. Such disclosure shall be made within a period of thirty days before the commencement of such process.

Penalty for contravention: Where any occupier of a factory contravenes the provisions of section 84(5) and

the licence issued under section 79 to such factory shall, notwithstanding any penalty to which the occupier of factory shall be subjected to under the provisions of this Code, be liable for cancellation.

Measures for handling hazardous substances: The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector-cum-Facilitator, lay down measures for the

- handling, usage, transportation and storage of hazardous substances inside the factory premises and
- the disposal of such substances outside the factory premises and
- publicise them in the manner prescribed by the State Government among the workers and the general public living in the vicinity.

Specific Responsibility of The Occupier in Relation to Hazardous Processes (Section 85)

Every occupier of a factory involving any hazardous process shall—

(a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed by the State Government;

(b) appoint persons who possess prescribed qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed by the State Government:

It is provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector-cum-Facilitator shall be final;

(c) provide for medical examination of every worker—

(i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance; and

(ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed by the State Government.

National Board to Inquire into Certain Situations (Section 86)

In the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, the Central Government may direct the National Board to inquire into the standards of health and safety observed in the factory with a view to finding out

- the causes of any failure or neglect in the adoption of any measures or standards prescribed by the State Government for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected due to such failure or neglect and
- for the prevention of recurrence of such extraordinary situations in future in such factory or elsewhere.

The recommendations of the National Board shall be advisory in the nature.

Emergency Standards (Section 87)

The Central Government may direct the Directorate General Occupational Safety and Health formerly known as the Directorate General of Factory Advice Service and Labour Institutes or any Institution authorised in matters relating to standards of safety in hazardous processes,

- to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes

Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate.

Enforceability of the emergency standards: The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Code, be enforceable and have the same effect as if they had been incorporated in the rules made under this Code.

Permissible Limits of Exposure of Chemicals and Toxic Substances (Section 88)

The maximum permissible limits of exposure of chemical and toxic substances in manufacturing process in any factory shall be of the value as may be prescribed by the State Government.

Right of Workers to Warn About Imminent Danger (Section 89)

Apprehension by the Workers: Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of

- the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and
- simultaneously bring the same to the notice of the Inspector-cum-Facilitator.

Duty of the Person Receiving Notice of Imminent Danger: It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to

- take immediate remedial action if he is satisfied about the existence of such imminent danger and
- send a report forthwith of the action taken to the Inspector-cum-Facilitator.

Reference of the matter in case imminent danger is not observed: If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the Inspector-cum-Facilitator whose decision on the question of the existence of such imminent danger shall be final.

Composition of Certain Offences (Section 114)

Any penalty under section 12(3) or section 94 or section 96 or section 97(1) or section 99 or section 106 or sub-section (3) or any offence under sub-section (2) of section 97 or sub-section (1) of section 100 or section 101 or clause (b) of sub-section (1) of section 103 or section 105 or sub-section (2) of section 113 may either before or after the holding the enquiry or, as the case may be, of institution of prosecution may be compounded by such officer of the appropriate Government as may be notified by that Government in the manner as may be prescribed by it—

(a) in a case of penalty for a sum of fifty per cent. of the maximum penalty provided for such penalty; and

(b) in a case of offence for a sum of seventy-five per cent. of the maximum fine provided for such offence.

Where a penalty or an offence has been compounded under sub-section (1), the person liable for penalty or the offender, as the case may be, shall be discharged of the penalty or offence and there shall be no further proceedings against him in respect of such penalty or offence.

Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be liable to pay a penalty equivalent to twenty per cent. of the maximum penalty or fine provided for the penalty or the

offence, as the case may be, in addition to the penalty or fine.

The amount of composition received under sub-section (1) shall be credited to the fund established under sub-section (1) of section 115 for the unorganised workers.

Nothing contained in sub-section (1) shall apply to a penalty or an offence committed by a person for a second or subsequent time within a period of three years from the date of penalty or offence, as the case may be, —

(a) which was earlier compounded; or

(b) for which such person was earlier convicted.

SOCIAL SECURITY FUND

Social security fund (Section 115)

There shall be established by the appropriate Government a social security fund for the welfare of the unorganised workers to which there shall be credited the amount received from

- composition of the offence as specified in sub-section (4) of section 114 and
- the amount of the penalty as specified in sub-section (6) of section 111.
- The fund may also be funded by such other sources as may be prescribed by the appropriate Government.

Administration and Expenditure of the fund: The fund shall be administered and expended for welfare of the unorganised workers in such manner as may be prescribed by the appropriate Government including the transfer of the amount in the fund to any fund established under any other law for the time being in force for the welfare of the unorganised workers.

Repeal and Savings (Section 143)

(1) The following enactments shall stand repealed on and from the dates the notification referred to in sub-section (2) of section 1 is issued, namely: —

(a) The Factories Act, 1948;

(b) The Plantations Labour Act, 1951;

(c) The Mines Act, 1952;

(d) The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;

(e) The Working Journalists (Fixation of Rates of Wages) Act, 1958;

(f) The Motor Transport Workers Act, 1961;

(g) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;

(h) The Contract Labour (Regulation and Abolition) Act, 1970;

(i) The Sales Promotion Employees (Conditions of Service) Act, 1976;

(j) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;

(k) The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;

(l) The Dock Workers (Safety, Health and Welfare) Act, 1986;

(m) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

(2) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed for the purposes under any of the provisions of the enactments repealed by this Code, shall be deemed to have been appointed under this Code for such purposes under this Code.

(3) Notwithstanding repeal under sub-section (1), anything done or any action taken under the enactments so repealed (including any rule, regulation, bye-laws, notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Code and shall remain in force to the extent they are not contrary to the provisions of this Code till they are repealed by the Central Government.

(4) Without prejudice to the provisions of sub-section (2), provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

LESSON ROUNDUP

- The OSH Code, 2020 was enacted by the Government of India as part of the major labour law reforms.
- It consolidates 13 existing Central labour laws relating to safety, health, and working conditions into a single comprehensive legislation.
- The Code is structured into 14 chapters, covering aspects such as:

  Duties of employers and employees

  Occupational safety and health standards

  Welfare provisions

  Working hours and leave

  Special provisions for women, contract labour, and inter-state migrant workers

  Licensing, registration, and regulation of establishments

  Enforcement mechanisms and penalties
- It aims to enhance workplace safety, health standards, and welfare across factories, mines, docks, plantations, construction sites and other establishments.
- The Code introduces uniform definitions, simplified procedures, and a single registration system to ease compliance for employers.
- Applicability is extended to establishments employing 10 or more workers, with specific provisions for mines and docks.
- The Code mandates free annual health check-ups for employees of prescribed age groups and compulsory issuance of appointment letters.
- It introduces a centralized database, including a digital portal for inter-State migrant workers with Aadhaar-based self-registration.

- Duties of employers are widened to include hazard-free workplaces, safe machinery, waste disposal, and no cost recovery for safety measures.
- Employees are obligated to maintain safety, report hazards, and avoid misuse of safety equipment.
- The Code introduces the right of workers to report imminent danger and provides for immediate remedial action.
- It establishes a National Occupational Safety and Health Advisory Board and State-level Boards for policy, standards, and oversight.
- OSH standards are to be declared by the Central Government covering hazard control, monitoring, medical examinations, and post-employment disease reporting.
- Safety committees and safety officers become mandatory in prescribed classes of establishments.
- Provisions for notice and inquiry apply to accidents, dangerous occurrences, and occupational diseases.
- Penalties are rationalised, with part of the penalty for serious accidents earmarked for victims or their families.
- Overall, the Code modernises India's labour safety regime by enhancing protections, digitising compliance, and ensuring uniformity across sectors.

GLOSSARY

Contract Labour: A worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. The definition also includes inter-State migrant worker.

Hazardous Substance: Any substance or such quantity of the substance as may be prescribed by the appropriate Government or preparation of which by reason of its chemical or physio-chemical properties or handling is liable to cause physical or health hazards to human being or may cause harm to other living creatures, plants, micro-organisms, property or the environment.

Industrial Premises: Any place or premises (not being a private dwelling house), including the precincts thereof, in which or in any part of which any industry, trade, business, occupation or manufacturing is being ordinarily carried on with or without the aid of power and includes a godown attached thereto.

Day: A Day means a period of twenty-four hours beginning at mid-night

TEST YOURSELF

1. Enumerate the salient features of the Occupational Safety, Health and Working Conditions Code, 2020
2. Define the term "Employer" under Section 2(1)(u) of the OSHWC Code, 2020, and explain the various categories of persons who are included within its scope
3. GreenTech Services, a new company, was established on August 1, 2025. The employer did not file for registration within 60 days but began hiring employees. Later, the employer submitted an application for registration after the deadline. A month after registration, the manager changed without informing the registering official.

i Is the employer permitted to hire employees before getting registration?

ii What should the employer have done following the change of management?

4. What are the rights of the employee's pertaining to Information and Protection Against Imminent Danger under OSHWC Code, 2020?

5. Explain the statutory requirements relating to the approval and licensing of factories under OSHWC Code, 2020.

LIST OF FURTHER READINGS

- https://labour.gov.in/sites/default/files/pib2192463.pdf
- https://labour.gov.in/sites/default/files/labour_code_eng.pdf

The Industrial Relations Code, 2020

Lesson 17

KEY CONCEPTS

■ Salient Features of the Code ■ Preliminary ■ BI-Partite Forums ■ Trade Unions ■ Voluntary Reference of Disputes to Arbitration ■ Strikes and Lock-Outs ■ Unfair labour practices ■ Offences and Penalties

Learning Objectives

To understand:

- Understand the scope, purpose and structure of the Industrial Relations Code, 2020.
- Explain the key definitions such as employer, employee, worker, industry, industrial dispute, lay-off, retrenchment, and strike.
- Analyse the statutory framework relating to Trade Unions, including registration, recognition, rights and duties.
- Examine the provisions regarding Standing Orders, certification process and obligations of employers.
- Describe the mechanism for resolution of industrial disputes—conciliation, arbitration, industrial tribunal.
- Interpret the rules relating to discipline, misconduct and subsistence allowance.
- Evaluate the statutory provisions on notice of change, strikes, lock-outs, lay-off, retrenchment and closure.
- Apply the Code's provisions to practical industrial dispute situations.

Lesson Outline

- Introduction
- Preliminary – Scope, Extent and Definitions
- Bi-Partite Forums – Works Committees and Grievance Redressal
- Trade Unions – Registration, Rights and Liabilities
- Standing Orders – Certification, Modification and Compliance
- Industrial Disputes – Conciliation, Arbitration and Adjudication
- Strikes and Lockouts – Restrictions and Procedures
- Lay-off, Retrenchment and Closure – Conditions and Compensation
- Negotiating Union / Negotiating Council – Recognition and Functions
- Voluntary Arbitration – Procedures and Legal Effect
- Re-skilling Fund – Purpose and Utilisation
- Offences and Penalties – Contraventions and Compounding
- Inspectors-cum-Facilitators – Powers and Duties
- Miscellaneous – Exemptions, Delegated Legislation and Repeals
- Lesson Summary
- Test Yourself

Preamble

An Act to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto.

INTRODUCTION

The Industrial Relations Code, 2020 is a landmark consolidation of India's labour laws, merging three major statutes—the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947—into a single, streamlined framework. Historically, these laws were enacted in different eras and addressed specific industrial concerns, resulting over time in fragmentation, inconsistent procedures, and delays in dispute resolution. To modernise and rationalise this framework, the Industrial Relations Code Bill, 2019 was introduced in the Lok Sabha and subsequently referred to the Parliamentary Standing Committee on Labour, which submitted a detailed report recommending clearer definitions, stronger worker safeguards, and simplified compliance requirements. Incorporating several of these recommendations, the revised Code was passed by Parliament in September 2020. Although the Code received Presidential assent on 28 September 2020. The Central Government has since notified the Code for enforcement with effect from 21st November 2025, bringing its provisions formally into operation across the country.

The Code reflects long-standing recommendations of the Second National Commission on Labour (2002) to consolidate labour laws into broad, comprehensive codes aimed at promoting industrial harmony. Designed with the objectives of simplifying procedures, strengthening collective bargaining, enhancing ease of doing business, enabling faster dispute resolution, and balancing flexibility with worker protection, the Code represents a forward-looking and technology-enabled framework for India's evolving industrial relations landscape.

Towards end to disputes by amalgamating 3 Labour Laws into the Industrial Relations Code the Central Government has taken steps for safeguarding the interests of Trade Unions as well as the workers. In this Code, all possible steps have been taken for industrial units and workers so that disputes do not arise in future.

The Industrial Relations Code, 2020 is structurally organised into 14 Chapters, comprising a total of 104 Sections and 3 Schedules. The Code begins with *Chapter I*, which contains preliminary provisions including the short title, extent, commencement, and key definitions. *Chapter II* introduces bipartite forums such as Works Committees and Grievance Redressal Committees. *Chapter III* deals with the registration, recognition, and functioning of Trade Unions, while *Chapter IV* lays down provisions relating to Standing Orders, including certification and modification. *Chapter V* addresses the law relating to industrial disputes, covering conciliation, arbitration, tribunals, and settlement mechanisms. *Chapter VI* contains restrictions and procedures regarding strikes and lockouts. *Chapter VII* governs lay-off, retrenchment, and closure, including compensation norms and procedural requirements. *Chapter VIII* introduces the framework for recognising a Negotiating Union or Negotiating Council. *Chapter IX* establishes the Re-skilling Fund for retrenched workers. *Chapter X* prescribes offences, penalties, and compounding provisions, while *Chapter XI* outlines the powers and duties of Inspectors-cum-Facilitators. The remaining chapters—*Chapters XII to XIV*—cover procedural matters, rule-making powers, exemptions, protection of actions, and repeal and savings clauses. The Three Schedules appended to the Code deal respectively with: matters to be included in Standing Orders, list of unfair labour practices, and transitional provisions related to prior enactments. Together, the structural arrangement ensures clarity, consolidation, and ease of compliance across India's industrial relations framework.

Salient Features of the Code

Fixed Term Employment (FTE): Allows direct, time-bound contracts with full parity in wages and benefits; gratuity eligibility after one year. The provision reduces excessive contractualization and offers cost efficiency

to employers.

Re-skilling Fund: To train retrenched employees, this fund has been set up from the contribution to be made by an industrial establishment for an amount equal to 15 days' wages for every worker retrenched. This is in addition to retrenchment compensation. The amount will be credited to the workers account within 45 days of retrenchment.

Trade Union Recognition: Unions with 51% membership get recognition as the Negotiating Union; otherwise, a Negotiating Council is formed from unions, not less than 20% membership of trade union. Such an arrangement strengthens collective bargaining.

Expanded Worker Definition: Covers sales promotion staff, journalists, and supervisory employees earning up to ₹18,000/month.

Broader Definition of Industry: Includes all systematic employer-employee activities, regardless of profit or capital, widening access to labour protections.

Higher Threshold for Lay-off/Retrenchment/Closure: Approval limit raised from 100 to 300 workers; States may enhance the limit further. The provision will simplify compliance and contribute to formalization.

Women's Representation: Ensures proportional representation of women in grievance committees for gender-sensitive redressal.

Standing Orders Threshold: Raised from 100 to 300 employees, easing compliance and enabling flexible workforce management.

Work-from-Home Provision: Permitted in service sectors by mutual consent, improving flexibility.

Industrial Tribunals: Two-member tribunals consisting of judicial and administrative member for quicker dispute resolution.

Direct Tribunal Access: Parties may approach tribunals directly after failed conciliation within 90 days.

Notice for Strikes/Lockouts: Mandatory 14-day notice for all establishments to promote dialogue and minimize disruptions.

Expanded Definition of Strike: Includes "mass casual leave also within its ambit" to prevent flash strikes and ensure lawful action.

Decriminalization & Compounding: Minor offences made compoundable with monetary penalties, promoting compliance over prosecution.

Digital Processes: Enables electronic record-keeping, registration, and communication for transparency and efficiency.

PRELIMINARY

Section 1 of the Code sets out the applicability of the Industrial Relations Code, 2020. It provides the name of the legislation, its territorial scope, and the manner of its commencement. The Code shall extend to the whole of India.

Enforcement of the Code:

- It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint; and
- different dates may be appointed for different provisions of this Code and
- any reference in any such provision to the commencement of this Code shall be construed as a

reference to the coming into force of that provision.

In exercise of the powers conferred by sub-section (3) of section 1 of the Industrial Relations Code, 2020 (35 of 2020), the Central Government hereby appoints the 21st day of November, 2025 as the date on which the provisions of the said Code, shall come into force.

Definitions

In this Code, unless the context otherwise requires, —

"Appellate Authority" means an authority appointed by the appropriate Government to exercise such functions in such area as may be specified by that Government by notification in the Official Gazette. {Section 2(a)}

Section 2(b) of the Code defines ***"Appropriate Government"*** as, —

(i) the Central Government.

- in relation to any industrial establishment or undertaking carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified in this behalf by the Central Government or
- the establishment of railways including metro railways, mines, oil fields, major ports, air transport service, telecommunication, banking and insurance company or
- a corporation or other authority established by a Central Act or a central public sector undertaking,
- subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment,
- corporation, other authority, public sector undertakings or any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, as the case may be, the Central Government.

Explanation: For the purposes of this clause, the Central Government shall continue to be the appropriate Government for Central Public Sector Undertakings even if the holding of the Central Government reduces to less than fifty per cent. equity in that public sector undertaking after the commencement of this Code;

(ii) the State Government in relation to any other industrial establishment, including

- State public sector undertakings,
- subsidiary companies set up by the principal undertaking and
- autonomous bodies owned or controlled by the State Government,

"Arbitrator" includes an umpire; {Section 2(c)}

"Average Pay" means the average of the wages payable to a worker, —

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

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

(iii) in the case of daily paid worker, in twelve full working days,

preceding the date on which the average pay becomes payable.

If the worker 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 worker during the period he actually worked; {Section 2(d)}

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Industrial Tribunal referred to in section 44 or National Industrial Tribunal referred to in section 46 and includes an arbitration award made under section 42; {Section 2(e)}

"Banking Company" means a banking company as defined in section 5 of the Banking Regulation Act, 1949 and includes

- the Export-Import Bank of India,
- the Industrial Reconstruction Bank of India,
- the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989,
- the Reserve Bank of India,
- the State Bank of India,
- a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970,
- a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. {Section 2(f)}

"Certifying Officer" means any officer appointed by the appropriate Government, by notification, to perform the functions of a certifying officer under the provisions of Chapter IV. {Section 2(g)}

"Closure" means the permanent closing down of a place of employment or part thereof. {Section 2(h)}

"Conciliation Officer" means a conciliation officer appointed under section 43. {Section 2(i)}

"Conciliation Proceeding" means any proceeding held by a conciliation officer under this Code. {Section 2(j)}

"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. {Section 2(k)}

"Employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union. {Section 2(l)}

"Employer" means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

(i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;

(ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;

(iii) contractor; and

(iv) legal representative of a deceased employer. {Section 2(m)}

"Executive", in relation to a Trade Union, means the body by whatever name called, to which the management of the affairs of a Trade Union is entrusted. {Section 2(n)}

"Fixed Term Employment" means the engagement of a worker on the basis of a written contract of employment for a fixed period:

Provided that—

(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;

(b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and

(c) he shall be eligible for gratuity if he renders service under the contract for a period of one year. {Section 2(o)}

"Industry" means any systematic activity carried on by cooperation between an employer and worker (whether such worker is 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,

but does not include—

(i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(iii) any domestic service; or

(iv) any other activity as may be notified by the Central Government. {Section 2(p)}

"Industrial Dispute" means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person and includes any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker. {Section 2(q)}

"Industrial Establishment or Undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, —

(i) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking which is not carrying on or aiding the carrying on of any such activity, such unit shall be deemed to be a separate industrial establishment or

undertaking;

(ii) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking. {Section 2(r)}

"Insurance Company" means a company as defined in section 2 of the Insurance Act, 1938. {Section 2(s)}

"Lay-Off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason, to give employment to a worker whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation. —Every worker 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 worker, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the 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. {Section 2(t)}

"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(u)}

"Major Port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908. {Section 2(v)}

"Metro Railway" means the metro railway as defined in sub-clause (i) of clause (1) of section 2 of the Metro Railways (Operation and Maintenance) Act, 2002. {Section 2(w)}

"Mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952. {Section 2(x)}

"National Industrial Tribunal" means a National Industrial Tribunal constituted under section 46. {Section 2(y)}

"Negotiating Union or Negotiating Council" means the negotiating union or negotiating council referred to in section 14. {Section 2(z)}

"Notification" means a notification published in the Official Gazette of India or the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variation and cognate expressions shall be construed accordingly. {Section 2(za)}

"Office-Bearer", in relation to a Trade Union, includes any member of the executive thereof, but does not include an auditor. {Section 2(zb)}

"Prescribed" means prescribed by rules made under this Code. {Section 2(zc)}

"Railway" means the railway as defined in clause (31) of section 2 of the Railways Act, 1989. {Section 2(zd)}

"Registered Office" means that office of a Trade Union which is registered under this Code as the head office thereof. {Section 2(ze)}

"*Registered Trade Union*" means a Trade Union registered under this Code. {Section 2(zf)}

"Registrar" means a Registrar of Trade Unions appointed by the State Government under section 5. {Section 2(zg)}

"Retrenchment" means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(i) voluntary retirement of the worker; or

(ii) retirement of the worker on reaching the age of superannuation; or

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

(iv) termination of service of the worker as a result of completion of tenure of fixed term employment; or

(v) termination of the service of a worker on the ground of continued ill-health. {Section 2(zh)}

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and worker 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 to the conciliation officer. {Section 2(zi)}

"Standing Orders" means orders relating to matters set-out in the First Schedule. {Section 2(zj)}

"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 and includes the concerted casual leave on a given day by fifty per cent. or more workers employed in an industry. {Section 2(zk)}

"Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions: *Provided that the provisions of Chapter III of this Code shall not affect—*

(i) any agreement between partners as to their own business; or

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft. {Section 2(zl)}

"Trade Union Dispute" means any dispute relating to Trade Union arising between two or more Trade Unions or between the members of a Trade Union inter se. {Section 2(zm)}

"Tribunal" means an Industrial Tribunal constituted under section 44. {Section 2(zn)}

"Unfair Labour Practice" means any of the practices specified in the Second Schedule. {Section 2(zo)}

"Unorganised Sector" shall have the same meaning as assigned to it in clause (l) of section 2 of the Unorganised Workers' Social Security Act, 2008. {Section 2(zp)}

"Wages" means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

(i) basic pay;

(ii) dearness allowance;

(iii) retaining allowance, if any,

but does not include—

(a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

(b) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(d) any conveyance allowance or the value of any travelling concession;

(e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(f) house rent allowance;

(g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

(h) any overtime allowance;

(i) any commission payable to the employee;

(j) any gratuity payable on the termination of employment; or

(k) any retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to him on the termination of employment:

Provided that, for calculating the wage under this clause, if any payments made by the employer to the employee under sub clauses (a) to (i) exceeds one half, or such other per cent. as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one half, or the per cent. so notified, shall be deemed to be remuneration and shall be accordingly added in wages under this clause:

Provided further that, for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in sub clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation: Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee. {Section 2(zq)}

"Worker" means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) 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 express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the

purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950, or the Army 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 wages exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time:

Provided that for the purposes of Chapter III, "worker"—

(a) means all persons employed in trade or industry; and

(b) includes the worker as defined in clause (m) of section 2 of the Unorganised Workers' Social Security Act, 2008. {Section 2(zr)}

BI-PARTITE FORUMS

Works Committee (Section 3)

In the case of any industrial establishment in which one hundred or more workers are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute a Works Committee, in such manner as may be prescribed, consisting of representatives of employer and workers engaged in the establishment. It is provided that the number of representatives of workers in such Committee shall not be less than the number of representatives of the employer.

The representatives of the workers shall be chosen, in such manner as may be prescribed, from among the workers engaged in the establishment and in consultation with their Trade Union, if any, registered in accordance with the provisions of section 9.

Duties of Works Committee: It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workers 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.

Constitution of Grievance Redressal Committee (Section 4)

Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal Committees for resolution of disputes arising out of individual grievances.

The Grievance Redressal Committee shall consist of equal number of members representing the employer and the workers to be chosen in such manner as may be prescribed.

The chairperson of the Grievance Redressal Committee shall be selected from among persons representing the employer and the workers alternatively on rotational basis every year.

The total number of members of the Grievance Redressal Committee shall not exceed ten.

Provided that there shall be adequate representation of women workers in the Grievance Redressal Committee and such representation shall not be less than the proportion of women workers to the total workers employed in the industrial establishment.

An application in respect of any dispute referred to in sub-section (1) may be filed before the Grievance Redressal Committee by any aggrieved worker in such manner as may be prescribed within one year from the date on which the cause of action of such dispute arises.

The Grievance Redressal Committee may complete its proceedings within thirty days of receipt of the application under sub-section (5).

The decision of the Grievance Redressal Committee on any application filed under sub-section (5) shall be made on the basis of majority view of the Committee, provided more than half of the members representing the workers have agreed to such decision; otherwise, it shall be deemed that no decision could be arrived at by the Committee.

The worker who is aggrieved by the decision of the Grievance Redressal Committee or whose grievance is not resolved in the said Committee within the period specified in sub-section (6), may, within a period of sixty days from the date of the decision of the Grievance Redressal Committee or from the date on which the period specified in sub-section (6) expires, as the case may be, file an application for the conciliation of such grievance to the conciliation officer through the Trade Union, of which he is a member, in such manner as may be prescribed.

Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual worker, any dispute or difference between that worker and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other worker nor any Trade Union is a party to the dispute.

Notwithstanding anything contained in this section or section 53, any worker as is specified in sub-section (5) may make an application directly to the Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute, and on receipt of such application the Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as the Tribunal has in respect of the application filed under sub-section (6) of section 53.

The application referred to in sub-section (10) shall be made to the Tribunal before the expiry of two years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (9).

TRADE UNIONS

Registrar of Trade Unions (Section 5)

This section establishes the administrative framework for registration and regulation of Trade Unions. It empowers the State Government to appoint Registrars and supporting officers, and clarifies their jurisdiction and authority in relation to Trade Unions.

Appointment of Registrar and Other Officers: The State Government may, by notification, appoint

- a person to be the Registrar of Trade Unions, and
- other persons as Additional Registrar of Trade Unions, Joint Registrar of Trade Unions and Deputy Registrar of Trade Unions,

who shall exercise such powers and perform such duties of the Registrar as the State Government may, by notification, specify from time to time.

Jurisdiction and Authority: Subject to the provisions of any order made by the State Government

- Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions, as the case may be, shall be deemed to be the Registrar in relation to that Trade Union for

the purposes of this Code where either of them exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated.

Criteria for Registration (Section 6)

- *Minimum number of members to apply for registration:* Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Code with respect to registration, apply for registration of the Trade Union under this Code.
- *Membership threshold for registration:* No Trade Union of workers shall be registered ***unless at least ten per cent. of the workers or one hundred workers, whichever is less,*** engaged or employed in the industrial establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.
- *Validity of Application in case of withdrawal of applicants*: Where an application has been made under sub-section (1) for registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.
- *Condition for continuing registration:* A registered Trade Union shall at all times maintain:

  a) At least **10% of the workers** or **100 workers**, whichever is less, as members.

Subject to a minimum of **seven members** engaged in the establishment/industry with which it is connected.

Provisions to be Contained in Constitution or Rules of Trade Union (Section 7)

A Trade Union shall not be entitled to registration under this Code, unless the executive thereof is constituted in accordance with the provisions of this Code, and the rules of the Trade Union provide for the following matters, namely: —

(a) the name of the Trade Union;

(b) the whole of the objects for which the Trade Union has been established;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Code;

(d) the maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;

(e) the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the industrial establishment, undertaking or industry, or units, branches or offices of an industrial establishment, as the case may be, with which the Trade Union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 21 to be office-bearers to form the executive of the Trade Union;

(f) the payment of a subscription by members of the Trade Union from such members and others, as may be prescribed;

(g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;

(h) the annual general body meeting of the members of the Trade Union, the business to be transacted at such meeting, including the election of office-bearers of the Trade Union;

(i) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected once in a period of every three years and removed, and filling of casual vacancies;

(j) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union;

(k) the manner in which the rules shall be amended, varied or rescinded; and

(l) the manner in which the Trade Union may be dissolved.

Application for Registration, Alteration of Name and Procedure thereof (Section 8)

Application for Registration of Trade Unions: Every application for registration of a Trade Union shall be made to the Registrar electronically or otherwise and be accompanied by—

(a) a declaration to be made by an affidavit in such form and manner as may be prescribed;

(b) copy of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;

(c) a copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and

(d) in the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

Explanation. — For the purposes of this clause, resolution adopted by the members of the Trade Union means, in the case of a Trade Union, being a federation or a central organisation of Trade Unions, the resolution adopted by the members of each of the member Trade Unions, meeting separately.

Additional documents by existing Trade Union before registration: Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars, as may be prescribed.

Power of Registrar to call for further information: The Registrar may call for further information for the purpose of satisfying himself that

- the application complies with the provisions of this Code and
- the Trade Union is entitled for registration under this Code, and

Registrar is vested with discretionary power to refuse to register the Trade Union until such information is furnished.

Resemblance of name of applicant Trade Union: The Registrar shall require the persons applying for altering the name of the Trade Union if the name under which the Trade Union is proposed to be registered is

- identical with that of an existing registered Trade Union or
- in the opinion of the Registrar so nearly resembles the name of an existing Trade Union that such name is likely to deceive the public or the members of either Trade Union.

The Registrar shall refuse to register the Trade Union until such alteration has been made.

Registration of Trade Union and Cancellation thereof (Section 9)

This section lays down the process for registration of Trade Unions, issuance of certificates, recognition of existing unions, and grounds for cancellation or withdrawal of registration. It ensures that registration is conclusive, continuity is maintained for unions already registered under earlier law, and cancellation is subject to due process and recorded reasons.

Registration by Registrar: The Registrar shall, on being satisfied that the Trade Union has complied with all the requirements of the provisions of this Chapter in regard to registration, register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Certificate of Registration: Where the Registrar makes an order for registration of a Trade Union, he shall issue a certificate of registration to the applicant Trade Union, in such form as may be prescribed. The sub section states the certificate of registration so issued, shall be the conclusive evidence that the Trade Union has been registered under this Code.

Entry in Register: If the Registrar has issued a certificate of registration to a Trade Union, he shall enter the name and other particulars of the Trade Union in a register maintained in this behalf in such form as may be prescribed.

Recognition of Existing Unions: Every Trade Union registered under the Trade Unions Act, 1926 having valid registration immediately before the commencement of this Code shall be deemed to have been registered under this Code.

It is provided that such Trade Union shall file with the Registrar a statement that the constitution of the executive of the Trade Union is in accordance with this Code along with the rules of the Trade Union updated in accordance with section 7, and the Registrar shall amend his records accordingly.

Withdrawal or Cancellation of Registration: The certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar—

(i) on the application of the Trade Union verified in such manner as may be prescribed; or

(ii) on the information received by him regarding the contravention by the Trade Union of the provisions of this Code or the rules made thereunder or its constitution or rules; or

(iii) if he is satisfied that the members in a Trade Union falls below ten per cent. of total workers or one hundred workers, whichever is less:

It is provided that-

Registrar shall give at least sixty days previous notice in writing specifying the grounds on which it is proposed to cancel the certificate of registration of a Trade Union before the certificate of registration is cancelled otherwise than on the application of the Trade Union.

Cancellation of registration by Registrar: A certificate of registration of a Trade Union shall be cancelled by the Registrar where a Tribunal has made an order for cancellation of registration of such Trade Union.

Reasoned order of cancellation: While cancelling the certificate of registration of a Trade Union, the Registrar shall record the reasons for doing so and communicate the same in writing to the Trade Union concerned.

Appeal against Non-Registration or Cancellation of Registration (Section 10)

This section vests right to appeal in cases where the Registrar either refuses registration or cancels a certificate of registration, with provisions for condonation of delay and fair hearing.

Right to Appeal: Any person may within such period as may be prescribed, prefer an appeal to the Tribunal, if aggrieved by

- the refusal of the Registrar to grant registration to a Trade Union under section 9 or
- the cancellation of a certificate of registration under sub-section (5) of the said section.

It is provided that the Tribunal may entertain the appeal after the limitation prescribed for preferring the appeal under this sub-section, if the appellant satisfies the Tribunal that such delay has been caused due to sufficient reason or unavoidable circumstances.

Powers of the Tribunal: The Tribunal may, after giving the parties concerned an opportunity of being heard,

- dismiss the appeal or
- pass an order directing the Registrar to register the Trade Union and to issue a certificate of registration or
- set aside the order of cancellation of certificate of registration, as the case may be, and

Copy of such order shall be forwarded to the Registrar.

Communication to Trade Union and Change in Its Registration Particulars (Section 11)

This section outlines the ongoing compliance responsibilities of registered Trade Unions by ensuring proper communication channels, continuous monitoring of membership thresholds, and timely reporting of changes in particulars or rules to the Registrar.

Communication and Notices: All communications and notices to a registered Trade Union shall be sent, in such manner as may be prescribed, to the address of the head office of the Trade Union as entered in the register maintained by the Registrar.

Membership Threshold Notification: The Trade Union shall inform the Registrar if the members of such Trade Union fall below ten per cent. of total workers or one hundred workers, whichever is less.

Notice of change to the Registrar: The Trade Union shall inform the Registrar of any change in the particulars given by it in its application for registration and in its constitution or rules, in such manner as may be prescribed.

Incorporation of Registered Trade Union (Section 12)

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Certain Acts not to apply to registered Trade Unions (Section 13)

The provisions of the following Acts, namely: —

(a) the Societies Registration Act, 1860;

(b) the Co-operative Societies Act, 1912;

(c) the Multi-State Co-operative Societies Act, 2002;

(d) the Companies Act, 2013; and

(e) any other corresponding law relating to co-operative societies for the time being in force in any State,

shall not apply to any registered Trade Union *and the registration of any such Trade Union under any of the aforementioned Acts shall be void.*

Recognition of Negotiating Union or Negotiating Council (Section 14)

This section provides for the framework for **collective bargaining in industrial establishments**. It has also laid down rules for recognition of a negotiating union or constitution of a negotiating council, depending on the number and strength of registered Trade Unions in the establishment. It ensures structured representation of workers and sets validity periods and facilities for effective negotiation

Negotiating union or council mandatory: There shall be a negotiating union or a negotiating council, as the case may be, in an industrial establishment having registered Trade Union for negotiating with the employer of the industrial establishment, on such matters as may be prescribed.

Recognition of Sole negotiating union of the workers in case of solo Trade union: Where only one Trade Union of workers registered under the provisions of this Chapter is functioning in an industrial establishment, then, the employer of such industrial establishment shall, subject to such criteria as may be prescribed, recognise such Trade Union as sole negotiating union of the workers.

Recognition of Sole negotiating union of the workers in case of multiple Trade union: If more than one Trade Union of workers registered under this Code are functioning in an industrial establishment, then,

- If there is Trade Union having fifty-one per cent. or more workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union shall be recognised by the employer of the industrial establishment, as the sole negotiating union of the workers.
- But if no such Trade Union has fifty-one per cent. or more of workers on the muster roll of that industrial establishment, verified in such manner as may be prescribed, supporting that Trade Union, then, there shall be constituted by the employer of the industrial establishment, a negotiating council for negotiation on the matters referred to in sub-section (1),

  (i) consisting of the representatives of such registered Trade Unions which have the support of not less than twenty per cent. of the total workers on the muster roll of that industrial establishment so verified and

  (ii) such representation shall be of one representative for each twenty per cent. and for the remainder after calculating the membership on each twenty per cent.

Decision-Making in Negotiating Council: Where any negotiation on the matters referred to in sub-section (1) is held between an employer and a negotiating council constituted under sub-section (4), consequent upon such negotiation, any agreement is said to be reached, if it is agreed by the majority of the representatives of the Trade Unions in such negotiating council.

Validity of Recognition: Any recognition made under sub-section (2) or sub-section (3) or the negotiating council constituted under sub-section (4) shall be valid for three years from the date of recognition or constitution. Such recognition can be further extended by such further period not exceeding five years, in total, as may be mutually decided by the employer and the Trade Union, as the case may be.

Facilities to Negotiating Body: The facilities to be provided by industrial establishment to a negotiating union or negotiating council shall be such as may be prescribed.

Objects of General Fund, Composition of Separate Fund and Membership Fee of Trade Union (Section 15)

Spending of general funds: The general funds of a registered Trade Union shall not be spent on any objects other than such objects as may be prescribed.

Separate funds for furthering civic and political interests of members: A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of such objects as may be prescribed.

Contribution to separate fund not mandatory:

- No member shall be compelled to contribute to the fund constituted under sub-section (2) and
- Contribution to the said fund shall not be made a condition for admission to the Trade Union. A member who does not contribute to the said fund shall not be
  - (i) excluded from any benefits of the Trade Union, or
  - (ii) placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund)

by reason of his not contributing to the said fund; and.

Quantum of subscriptions: The subscriptions payable by the members of the Trade Union shall be such as may be prescribed.

Immunity from Civil Suit in Certain Cases (Section 16)

This section provides legal immunities to registered Trade Unions and their members in respect of acts done during industrial disputes w.r.t. civil suits.

Immunity from Civil Suits: No suit or legal proceeding shall be maintainable in a civil court against:

- Any registered Trade Union, or
- Any office-bearer or member thereof,

For acts done in contemplation or furtherance of an industrial dispute to which a member of the Trade Union, merely because:

- It induces another person to break a contract of employment, or
- It interferes with trade, business, or employment of another person, or

It interferes with another person's right to dispose of capital or labour as he wills.

Limited Liability for Tortious Acts: A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of an industrial dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

A registered Trade Union shall not be liable in civil court for tortious acts committed in contemplation or furtherance of an industrial dispute by its agent, if it is proved that:

- The act was done **without the knowledge** of the union's executive, or
- The act was done **contrary to express instructions** of the union's executive.

Criminal Conspiracy in furtherance of Objects of Trade Union (Section 17)

Protection from Punishment

- No office-bearer or member of a registered Trade Union shall be liable to punishment under Section

120B (2) of the Indian Penal Code (criminal conspiracy) for any agreement made between members to further objects of the Trade Union specified in Section 15.

- Exception: This protection does not apply if the agreement is to commit an offence.

Enforceability of agreements (Section 18)

This section clarifies the legal status of agreements made between members of a registered Trade Union. It protects such agreements from being declared void merely because they involve restraint of trade, while also limiting their enforceability in civil courts.

Validity of Agreements: Notwithstanding anything contained in any other law for the time being in force, agreements between members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Limitation on Enforcement: It is provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

Right to Inspect Books of Trade Union (Section 19)

For an office-bearer or member of the Trade Union, following shall be open for inspection at such times as may be provided for in the rules of the Trade Union:

- The books of account of a registered Trade Union and
- the list of members thereof.

Rights of Minor to Membership of Trade Union (Section 20)

Any person who has attained the age of fourteen years and is employed in a non-hazardous Industry

- may be a member of a registered Trade Union subject to any rules of the Trade Union, and
- may, subject to as aforesaid enjoy all the rights of a member and execute all instruments and given all acquaintances necessary to be executed or given under the rules.

Disqualification of Office Bearers of Trade Unions (Section 21)

Grounds of disqualification: A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union, if—

(i) he has not attained the age of eighteen years;

(ii) he has been convicted by a court in India for any offence involving moral turpitude and sentenced to imprisonment unless a period of five years has elapsed since his release;

(iii) the Tribunal has directed that he shall be disqualified for being chosen or for being office-bearer of a Trade Union for a period specified therein.

Conflict of Interest Restriction: No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected) in the Union or a State shall be a member of the executive or other office-bearer of a Trade Union.

Adjudication of Disputes of Trade Unions (Section 22)

Application to the Tribunal: An application may be made in such manner as may be prescribed to the Tribunal having jurisdiction over the area where the registered office of the Trade Union or Trade Unions is located for adjudication of the disputes, where a dispute arises between—

(a) one Trade Union and another; or

(b) one or more workers who are members of the Trade Union and the Trade Union regarding registration, administration or management or election of office bearers of the Trade Union; or

(c) one or more workers who are refused admission as members and the Trade Union; or

(d) where a dispute is in respect of a Trade Union which is a federation of Trade Unions and office-bearer authorised in this behalf by the Trade Union.

Only Tribunal has power to entertains such civil suit: No civil court other than the Tribunal shall have power to entertain any suit or other proceedings in relation to any dispute referred to in sub-section (1).

Proportion of Office-Bearers to be Connected with Industry (Section 23)

This section ensures that the leadership of registered Trade Unions remains closely connected to the industry or establishment they represent, thereby preventing domination by outsiders and maintaining genuine worker representation.

Minimum number of office bearers to be actually employed: Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganised sector shall be persons actually engaged or employed in an establishment or industry with which the Trade Union is connected.

It is provided that the Appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation: For the purposes of this sub-section, "unorganised sector" means any sector which the appropriate Government may, by notification, specify.

Save as otherwise above:

- All office-bearers of a registered Trade Union shall be persons actually engaged or employed in the connected establishment or industry.
- Exception: Not more than one-third of office-bearers or five (whichever is less) may be outsiders.

Explanation: Retired or retrenched employees are not considered outsiders for the purpose of holding office in a Trade Union.

Change of Name, Amalgamation, Notice of Change and Its Effect (Section 24)

This section governs the process of changing the name of a registered Trade Union or amalgamating two or more registered Trade Unions. It ensures that such changes are democratic, legally valid, and do not prejudice existing rights or obligations.

Change of Name: Any registered Trade Union may, with the consent of not less than two-third of the total number of its members and subject to the provisions of sub-section (3), change its name. *{Sub-section (1)}*

Amalgamation of registered Trade Union: Any two or more registered Trade Unions may be amalgamated in such manner as may be prescribed. *{Sub-section (2)}*

Notice to Registrar: Notice in writing of every change of name and of every amalgamation signed—

(a) in the case of a change of name, by the secretary and by seven members of the Trade Union changing its name; and

(b) in the case of an amalgamation, by the secretary and by seven members of each and every Trade Union which is a party thereto,

shall be sent to the Registrar and, where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State in such manner as may be prescribed. *{Sub-section (3)}*

Registrar's Power to Refuse: If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name. *{Sub-section (4)}*

Effect of Registration of Change of Name: Save as provided in sub-section (4), the Registrar shall, if he is satisfied that the provisions of this Code in respect of change of name have been complied with, register the change of name in the register referred to in sub-section (3) of section 9, and the change of name shall have effect from the date of such registration. *{Sub-section (5)}*

Effect of Registration of Amalgamation: The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Code in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 9, register the Trade Union and the amalgamation shall have effect from the date of such registration. {*Sub-section (6)}*

Continuity of Rights and Proceedings: The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name. *{Sub-section (7)}*

Protection of Rights in Amalgamation: An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Unions or any right of a creditor of any of them. {Sub-section (8)}

Dissolution (Section 25)

This section governs the procedure and consequences of dissolving a registered Trade Union. It ensures that dissolution is carried out in accordance with union rules, properly notified to the Registrar, and that funds are fairly distributed if rules are silent on the matter.

Notice of Dissolution: When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the secretary of the Trade Union shall,

- within fourteen days of the dissolution, be sent to the Registrar, and
- shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and

the dissolution shall have effect from the date of such registration.

Distribution of Funds: Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

Annual Returns (Section 26)

This section lays down the **reporting and transparency obligations** of registered Trade Unions. It ensures that unions maintain proper financial accountability, keep their rules updated with the Registrar, and remain subject to inspection for compliance.

Every registered Trade Union shall forward to the Registrar—

- forward **annually** to the Registrar, on or before such date, in such form, audited in such manner and by such person, as may be prescribed,

  (i) a general statement containing particulars of all receipts and expenditure of such registered Trade Union during the year **ending on the 31st day of December** next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December; {**Sub-section (1) (a)**}

  (ii) along with the general statement referred to in clause (a), forward to the Registrar a **statement showing changes of office-bearers** made by the Trade Union during the year to which such general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of dispatch thereof to the Registrar. {**Sub-section (1)(b)**}

- A copy of every alteration made in the rules of a registered Trade Union *within fifteen days of the making of the alteration*. {**Sub-section (2)**}

  Registrar's Power of Inspection: For the purpose of examining the documents referred to in clauses (a) and (b) of sub-section (1), and sub-section (2), the Registrar or any officer authorised by him, by general or special order, may at all reasonable times

- inspect the certificate of registration, account books, registers and other documents, relating to a Trade Union, at its registered office or

- may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such Trade Union. {**Sub-section (3)**}

Recognition of Trade Unions at Central and State level (Section 27)

This section provides the framework for **official recognition of Trade Unions or federations of Trade Unions** at both the Central and State levels.

Recognition at Central Level: Where the Central Government is of the opinion that it is necessary or expedient that a Trade Union or federation of Trade Unions is to be recognised as Central Trade Union at the Central level, it may recognise such Trade Union or federation of Trade Unions as Central Trade Union in such manner and for such purpose, as may be prescribed. If any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the Central Government. {**Sub-section (1)**}

Recognition at State Level: Where the State Government is of the opinion that it is necessary or expedient that a Trade Union or federation of Trade Unions is to be recognised as State Trade Union at the State level, it may recognise such Trade Union or federation of Trade Unions as State Trade Union in such manner and for such purpose, as may be prescribed. Iff any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the State Government. {**Sub-section (2)**}

STANDING ORDERS

Application of Chapter IV (Standing Order) (Section 28)

This section defines the **scope of applicability** of the Chapter IV (Standing Order), clarifying which industrial establishments are covered and which are excluded due to the application of specific service rules or regulations.

General Applicability: The provisions of this Chapter shall apply to every industrial establishment wherein three

hundred or more than three hundred workers are employed, or were employed on any day of the preceding twelve months. {**Sub-section (1)**}

Establishment excluded from applicability of the Chapter: Notwithstanding anything contained in sub-section (1), the provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) 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, apply. {**Sub-section (2)**}

Making of model standing orders by Central Government and temporary application (Section 29)

This section lays the **framework for model standing orders** prepared by the Central Government which shall serve as a default set of service conditions for industrial establishments until their own certified standing orders come into effect

Model Standing Order by the Central Government: The Central Government shall make model standing orders relating to conditions of service and other matters incidental thereto or connected therewith.

Temporary Adoption of Model Standing Orders: Notwithstanding anything contained in sections 30 to 36, for the period commencing on the date on which this section becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Code come into operation under section 33 in that establishment, the model standing order referred to in sub-section (1) shall be deemed to be adopted in that establishment and the provisions of sub-section (2) of section 33 and section 35 shall apply to such model standing orders as they apply to the standing orders so certified.

Preparation of Draft Standing Orders by Employer and Procedure for Certification (Section 30)

This section lays down the **procedure for employers to prepare, consult, and certify standing orders** for their industrial establishments. It ensures that service conditions are codified, fair, and consistent with the Code, while involving trade unions and workers in the process.

Preparation of Draft Standing Orders:

- The employer shall prepare draft standing orders based on the model standing orders referred to in section 29 in respect of the matters specified in the First Schedule and on any other matter considered necessary by him for incorporation of necessary provisions in such standing orders for his industrial establishment or undertaking, considering the nature of activity in his industrial establishment or undertaking. It is provided that such provision shall not be inconsistent with any of the provisions of this Code and covers every matter set out in the First Schedule.
- The draft standing order shall be prepared within a period of six months from the date of commencement of the Code. {Sub-section (1)}

Matters to be Provided in Standing Orders Under IR Code

1. Classification of workers, whether permanent, temporary, apprentices, probationers, badlis or fixed term employment.
2. Manner of intimating to workers 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.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workers.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be specified by the appropriate Government by notification.

Consultation with Unions:

- The employer shall consult the Trade Unions or recognised negotiating union or members of the negotiating council relating to the industrial establishment or undertaking, as the case may be, in respect of the draft of the standing order and
- thereafter the draft of the standing order shall be forwarded electronically or otherwise to the certifying officer for certification. {Sub-section (2)}

Adoption of Model Standing Orders:

- Where an employer adopts a model standing order of the Central Government referred to in section 29 with respect to matters relevant to his industrial establishment or undertaking, then, such model standing order shall be deemed to have been certified under the provisions of this section and
- the employer shall forward the information in this regard to the concerned certifying officer in such manner as may be prescribed:

It is provided that if the certifying officer has any observation, he may direct such employer to amend the standing order so adopted within such period as may be prescribed. {Sub-section (3)}

Draft Modifications:

- The employer shall prepare the draft of the modifications required in the standing order, if any, in accordance with the provisions of this Code
- The employer shall forward such draft electronically or otherwise to the certifying officer for certification of those modifications.
- The draft shall be forwarded only within a period of six months from the date the provisions of this Chapter become applicable to his industrial establishment. {Sub-section (4)}

Certification Procedure:

On receipt of the drafts referred to in sub-section (1) and sub-section (4), the certifying officer shall issue notice to—

(i) the Trade Union or negotiating union of the industrial establishment or undertaking, or members of the negotiating council; or

(ii) where there is no Trade Union operating, to such representatives of the workers of the industrial establishment or undertaking chosen in such manner as may be prescribed.

The notice is issued for seeking their comments in the matter and after receipt of their comments give an opportunity of being heard to the negotiating union or negotiating council, or as the case may be, to the Trade Unions or the representatives of the workers, The certifying officer shall then decide as to whether or not any modification or addition to such draft standing order is necessary to render the draft standing order certifiable, and shall make an order in writing in this regard:

It is provided that the certifying officer shall complete such procedure for certification referred to in sub-sections (4) and (5) in respect of—

(a) the draft standing order so received within a period of sixty days from the date of the receipt of it; and

(b) the draft modifications in the standing order so received within a period of sixty days from the date of the receipt of such modifications,

failing which such draft standing orders or, as the case may be, the modifications in the standing order shall be deemed to have been certified on the expiry of the said period. {Sub-section (5)}

Conditions for certification of standing orders:

The standing orders shall be certifiable under this Code, if—

(a) provision is made therein for every matter set out in the First Schedule which is applicable to the industrial establishment; and

(b) such orders are otherwise in conformity with the provisions of this Code. {Sub-section (6)}

Adjudication upon Fairness and Reasonableness:

It shall be the function of the certifying officer or the appellate authority referred to in section 32 to adjudicate upon the fairness or reasonableness of the provisions of any standing orders keeping in view the provisions of the model standing orders referred to in section 29. {Sub-section (7)}

Certification and communication:

The certifying officer shall certify the draft standing orders or the modifications in the standing orders referred to in sub-section (5), and shall within seven days thereafter send copies of the certified standing orders or the modifications in the standing orders, authenticated in such manner as may be prescribed, to the employer and to the negotiating union or negotiating council or the Trade Union or other representatives of the workers referred to in clause (ii) of sub-section (5). {Sub-section (8)}

Accompanying Statement with prescribed particulars: The draft standing orders under sub-section (1) or draft of the modifications proposed in the standing orders under sub-section (5) shall be accompanied by a statement giving such particulars, as may be prescribed, of the workers employed in the industrial establishment, the Trade Union to which they belong, and the negotiating union or negotiating council, if any. {Sub-section (9)}

Joint Drafts by employers in similar establishment: Subject to such conditions as may be prescribed, a group of employers in similar establishments may submit a joint draft of standing orders under this section and

For the purposes of proceedings specified in sub-sections (1), (5), (6), (8) and (9), the expressions "employer", "Trade Union" and "negotiating union or negotiating council" shall respectively include all the employers, Trade Unions and negotiating unions or negotiating council of such similar establishments, as the case may be. {Sub-section (10)}

Continuity of Existing Standing Orders and deemed certification: Without prejudice to the foregoing provisions of this section, the standing orders relating to an industrial establishment or undertaking existing on the date of commencement of the relevant provisions of this Code shall, in so far as is not inconsistent with the provisions of this Code or rules made thereunder, continue and be deemed to be the standing orders certified under sub-section (8) and accordingly the provisions of this Chapter shall apply thereon. {Sub-section (11)}

Certifying Officer and Appellate Authority to Have Powers of Civil Court (Section 31)

The section provides for powers of certifying officer and appellate authority.

Civil powers of certifying officer and the appellate authority: Every certifying officer and the appellate authority referred to in section 32 shall have all the powers of a civil court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Rectification of clerical or arithmetical mistakes: Clerical or arithmetical mistakes in any order passed by a certifying officer, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that officer or successor in office of such officer.

Appeals (Section 32)

Right to Appeal: If following are not satisfied with the order of the certifying officer given under sub-section (5) of section 30, they may file appeal:

- An employer or
- Trade Union or
- the negotiating union or negotiating council, or
- where there is no negotiating union or negotiating council in an industrial establishment or undertaking, any union or such representative body of the workers of the industrial establishment or undertaking

Time of filing appeal: Such appeal shall be filed within sixty days of receipt of the order of the certifying officer to the appellate authority appointed by the appropriate Government, by notification, and such authority shall dispose of the appeal in such manner as may be prescribed.

Date of Operation of Standing Orders and Its Availability (Section 33)

This section specifies **when certified standing orders come into effect** and the employer's duty to maintain them for workers' information.

Commencement of Standing Orders:

(i) *Where no appeal is preferred under section 32,* the standing orders or modified standing orders, as the case may be, shall come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (8) of section 30, or

(ii) *Where an appeal as aforesaid is preferred,* on the expiry of seven days from the date on which copies of the order of the appellate authority are sent in such manner as may be prescribed.

Maintenance of Certified Standing Orders: The text of a standing order as finally certified under this Code shall be maintained by the employer in such language and in such manner for the information of the concerned workers as may be prescribed.

Register of Standing Orders (Section 34)

The certifying officer shall

- file copy of all standing orders as finally certified under this Code in a register maintained for the purpose or uploaded in electronic form or such other form as may be prescribed, and

- furnish a copy thereof to any person applying therefor on payment of such fee as may be prescribed.

Duration and Modification of Standing Orders (Section 35)

This section lays down the **procedure and limitations for modifying certified standing orders**. And ensures stability in service conditions while allowing changes through agreement or prescribed procedure.

*Minimum Time Before Modification***:** Certified standing orders (under Section 30(8)) shall not be to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

Exception: They may be modified earlier if there is an **agreement between the employer and workers**, or with a negotiating union/Trade Union/representative body of workers. {Sub-section (1)}

Application for Modification:

- An employer or worker or a Trade Union or other representative body of the workers may apply to the certifying officer to have the standing orders modified in such application as may be prescribed s*ubject* to the provisions of sub-section (1),
- Such an application shall be accompanied by such copies of the modifications proposed to be made, and where the modifications are proposed to be made by agreement between the employer and the workers or a Trade Union or other representative body of the workers, a certified copy of that agreement shall be filed along with the application. {Sub-section (2)}

Procedure for Certification: The foregoing provisions of this Code shall apply in respect of an application under sub-section (2) as they apply to the certification of the first-time standing orders. {Sub-section (3)}

Oral Evidence in Contradiction of Standing Orders not Admissible (Section 36)

No oral evidence having the effect of adding to or otherwise varying or contradicting standing order as finally certified under this Chapter shall be admitted in any Court.

Interpretation of Standing Orders (Section 37)

This section provides a **mechanism for resolving disputes about the application or interpretation of certified standing orders**.

Subject matter of Disputes: If any question arises as to the application, or interpretation, of the standing orders certified under sub-section (8) of section 30 or the modification made therein by an agreement entered into under sub-section (5) of that section, then application to Tribunal can be made.

Who may make such application?

- the employer or
- any worker or workers concerned or the Trade Union in relation to the workers employed in the industrial establishment or undertaking, wherein the question has arisen,

may apply to the Tribunal, within the local limits of whose territorial jurisdiction such establishment or the office, section or branch of the undertaking is situated, to decide the question.

Such Tribunal shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and its decision shall be final and binding on the concerned employer and the workers.

Time-limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance. (Section 38)

This section ensures that disciplinary proceedings against suspended workers are completed within a reasonable time and that workers are financially supported during suspension through subsistence allowance.

Time-limit for Proceedings: Where any worker is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, such investigation or inquiry, or where there is an investigation followed by an inquiry, both the investigation and inquiry shall be completed ordinarily within a period of ninety days from the date of suspension. {Sub-section (1)}

Provision in Standing Orders:

The standing orders certified under section 30(8) or modified under section 35 shall provide that where a worker is suspended as referred to in sub-section (1), the employer in relation to an industrial establishment or undertaking shall pay to such worker employed in such industrial establishment or undertaking subsistence allowance at the rates specified in sub-section (3) for the period during which such worker is placed under suspension pending investigation or inquiry into complaints or charges of misconduct against such worker. {Sub-section (2)}

Rates of Subsistence Allowance: The amount of subsistence allowance payable under sub-section (2) shall be—

(a) at the rate of fifty per cent. of the wages which the worker 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 worker is not directly attributable to the conduct of such worker. {Sub-section (3)}

Power to Exempt (Section 39)

The appropriate Government may, by notification, exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Chapter.

NOTICE OF CHANGE

Notice of Change (Section 40)

This section mandates employers to give prior notice of change of service conditions to the workers and protects them from sudden or unilateral changes, except in specific circumstances.

General Rule: No employer, who proposes to effect any change in the conditions of service applicable to any worker in respect of any matter specified in the Third Schedule, shall effect such change, —

(i) without giving to the workers likely to be affected by such change a notice in such manner as may be prescribed of the nature of the change proposed to be effected; or

(ii) within twenty-one days of giving such notice:

Exception: It is provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award;

(b) where the workers likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (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;

(c) in case of emergent situation which requires change of shift or shift working, otherwise than in accordance with standing orders, in consultation with the Grievance Redressal Committee;

(d) if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.

Conditions of Service for Change of Which Notice is to be Given:

1. Wages, including the period and mode of payment.
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workers under any law for the time being in force.
3. Compensatory and other allowances.
4. Hours of work and rest intervals.
5. Leave with wages and holidays.
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders.
7. Classification by grades.
8. Withdrawal of any customary concession or privilege or change in usage.
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workers.
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

Power of Appropriate Government to Exempt (Section 41)

Where the appropriate Government is of the opinion that the application of the provisions of section 40 to any class of industrial establishments or to any class of worker employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workers employed in any industrial establishment.

VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

Voluntary Reference of Disputes to Arbitration. (Section 42)

This section provides a special arbitration mechanism for resolving industrial disputes under the Code.

Reference to Arbitration: Where any industrial dispute exists or is apprehended and the employer and the workers agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration, and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement.

Appointment of umpire in case of even number of arbitrators: 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. Such 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 Code.

Form and Signature: An arbitration agreement shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

Forwarding Agreement: A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer.

Notification by Government: 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 issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workers 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:

It is provided that—

(i) where such industrial dispute is the industrial dispute other than the termination of individual worker by way of discharge, dismissal, retrenchment or otherwise, the workers shall be represented before the arbitrator, —

  (a) where there is negotiating union or negotiating council, by the negotiating union or negotiating council, as the case may be; or

  (b) where there is no negotiating union or negotiating council, by the Trade Union; or

  (c) where there is no Trade Union, by such representatives of the workers chosen in such manner as may be prescribed;

(ii) where such industrial dispute relates to termination of individual worker by way of discharge, dismissal, retrenchment or otherwise, the concerned workers shall be represented in person or through a representative authorised by him.

Arbitration award submission: The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

*Prohibition of strike or lockout: T*he 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, where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (5). **{Sub-section (7)}**

Non applicability of the Arbitration and Conciliation Act, 1996: Nothing in the Arbitration and Conciliation Act, 1996, shall apply to arbitrations under this section. **{Sub-section (8)}**

MECHANISM FOR RESOLUTION OF INDUSTRIAL DISPUTES

Conciliation Officer (Section 43)

This section lays down the framework for appointing conciliation officers, who play a crucial role in mediating and promoting the settlement of industrial disputes.

Appointment of conciliation officers: The Appropriate Government may, by notification, appoint such number of persons, as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

Area and tenure of appointment:

- A 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
- He may be appointed either permanently or for a limited period.

Industrial Tribunal (Section 44)

This section provides for constitution of the Industrial Tribunals as adjudicatory bodies for industrial disputes.

Constitution of Tribunals:

The appropriate Government may, by notification, constitute one or more Industrial Tribunals for

(i) the adjudication of industrial disputes and

(ii) for performing such other functions as may be assigned to them under this Code and

the Tribunal so constituted by the Central Government shall also exercise the jurisdiction, powers and authority conferred on the Tribunal, as defined in clause (m) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 by or under that Act.

Composition of the Tribunal: Every Industrial Tribunal shall consist of two members to be appointed by the appropriate Government out of whom

- one shall be a Judicial Member and
- the other, an Administrative Member.

Benches: A bench of the Tribunal shall consist of

- a Judicial Member and an Administrative Member or
- single Judicial Member or
- single Administrative Member.

Qualifications & Service Conditions of Central Government Tribunal members: The qualifications for appointment, method of recruitment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Judicial Member and the Administrative Member of the Tribunal constituted by the Central Government shall be in accordance with the rules made under section 184 of the Finance Act, 2017.

Ineligibility for appointment as an administrative member of the Tribunal: It is provided that a person who has held a post below the rank of Joint Secretary to the Government of India or an equivalent rank in the Central Government or a State Government, shall not be eligible to be appointed as an Administrative Member of the Tribunal.

Service Conditions of State Government Tribunal members: The term of office of the Judicial Member and the Administrative Member of a Tribunal constituted by the State Government , their salaries and allowances, resignation, removal and other terms and conditions of service shall be such as may be prescribed by the State Government.

Protection of Service Conditions: The salary and allowances and the terms and conditions of service of the Judicial Member or Administrative Member referred to in sub-section (2) and appointed by a State Government shall not be varied to his disadvantage after his appointment.

Composition of benches for deciding various cases: The procedure of the Tribunal (including distribution of cases in the benches of the Tribunal) shall be such as may be prescribed.

It is provided that a bench consisting of a Judicial Member and an Administrative Member shall entertain and decide the cases only relating to—

(a) the application and interpretation of standing order;

(b) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen dismissed;

(c) illegality or otherwise of a strike or lockout;

(d) retrenchment of workmen and closure of establishment; and

(e) Trade Union disputes,

The remaining cases shall be entertained and decided by the bench of the Tribunal consisting either a Judicial Member or an Administrative Member of the Tribunal.

Who shall preside the Tribunal: The Judicial Member shall preside over the Tribunal where the bench of the Tribunal consists of one Judicial Member and one Administrative Member.

Filling of vacancy: If, for any reason, a vacancy (other than a temporary absence) occurs in a National Industrial Tribunal or a Tribunal, then, such vacancy shall be filled up in such manner as may be prescribed, without prejudice to the provisions of sub-section (4) or sub-section (5), as the case may be, and the proceeding shall be continued before such National Industrial Tribunal or Tribunal, as the case may be, from the stage at which the vacancy is filled.

Appointment of other officers and staff: The appropriate Government may provide such number of officers and other staff as it thinks fit in consultation with the Judicial Member of the Tribunal which may be required for the due discharge of the functioning of the Tribunal.

Finality of constitution of Tribunal (Section 45)

The section provides that only on the ground mainly of the existence of any vacancy in, or defect in the constitution of such Tribunal:

- No notification of the appropriate Government appointing any person as a Judicial Member or an Administrative Member of a Tribunal shall be called in question in any manner; and
- no act or proceeding before the Tribunal shall be called in question in any manner

National Industrial Tribunal (Section 46)

The section provides for constitution of the National Industrial Tribunals (NITs), which are special adjudicatory bodies constituted by the Central Government to deal with industrial disputes of national importance or those affecting industrial establishments across multiple States

Constitution of the National Industrial Tribunals: The Central Government may, by notification, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government,

- involve questions of national importance or
- 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.

Composition of a National Industrial Tribunal: A National Industrial Tribunal shall consist of two members to be appointed by the Central Government out of whom

- one shall be a Judicial Member and
- the other, an Administrative Member.

Qualification for Judicial member: A person shall not be qualified for appointment as the Judicial Member of a National Industrial Tribunal unless he is, or has been, a Judge of a High Court.

Qualification for Administrative member: A person shall not be qualified for appointment as Administrative Member of a National Industrial Tribunal unless, he is or has been

- Secretary to the Government of India or
- holding an equivalent rank in the Central Government or State Government, having adequate experience of handling the labour related matters.

President of the Tribunal: The Judicial Member shall preside over a National Industrial Tribunal.

Service Conditions: The procedure of selection of Judicial Member and Administrative Member of the National Industrial Tribunal, their salaries, allowances and other terms and conditions of service shall be such as may be prescribed.

Appointment of supporting officers and staff: The Central Government may provide such number of officers and other staff as it thinks fit in consultation with the Judicial Member of the National Industrial Tribunal which may be required for the due discharge of the functioning of the National Industrial Tribunal.

Decision of Tribunal or National Industrial Tribunal (Section 47)

This section lays down the **procedure for decision-making** in Industrial Tribunals and National Industrial Tribunals.

Consensus Rule: The decision of a Tribunal or a National Industrial Tribunal, as the case may be, shall be by consensus of the members.

Difference of Opinion: If the members of a Tribunal or a National Industrial Tribunal differ in opinion on any point, they shall

- state the point or points on which they differ, and
- make a reference to the appropriate Government.

Resolution of Differences:

- On receiving the reference, the appropriate Government shall appoint a Judicial Member from another Tribunal or National Industrial Tribunal.
- That Judicial Member shall hear the disputed point(s) himself
- The point(s) shall then be decided according to the majority opinion of:
    a) The original members who first heard the case, and
    b) The Judicial Member appointed to resolve the difference.

Procedure and Powers of Arbitrator, Conciliation Officer, Tribunal and National Industrial Tribunal (Section 49)

This section outlines the procedural flexibility, investigative powers, and legal status of arbitrators, conciliation officers, Tribunals, and National Industrial Tribunals.

Procedural Flexibility: Subject to the provisions of this Code and the rules that may be made in this behalf, an arbitrator, conciliation officer, Tribunal or National Industrial Tribunal shall follow such procedure as the arbitrator, conciliation officer, Tribunal or National Industrial Tribunal may deem fit. {

Right of Entry: A conciliation officer or an officer authorised in this behalf by the Tribunal or National Industrial Tribunal may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

Powers of Civil Court: The conciliation officer, Tribunal and National Industrial Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by Tribunal or National Industrial Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Additional Powers of Conciliation Officer: A conciliation officer may

- enforce the attendance of any person for the purpose of examination of such person or
- call for and inspect any document which he has ground for considering
  - (i) to be relevant to the industrial dispute or
  - (ii) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Code, and

for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

Appointment of assessors or experts: The appropriate Government may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessors or experts to advise a Tribunal or National Industrial Tribunal, as the case may be, in respect of any proceeding before either of the said Tribunals.

Deemed public servants: All conciliation officers and the members of a Tribunal or National Industrial Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Costs of Proceedings: Subject to any rules made under this Code, the costs of, and incidental to, any proceeding before a Tribunal or National Industrial Tribunal shall be in the discretion of such Tribunal or National Industrial Tribunal.

That Tribunal or National Industrial Tribunal, as the case may be, shall have full powers to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid. Such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

Deemed Civil Court: Every Tribunal or National Industrial Tribunal shall be deemed to be civil court for the purposes of sections 345, 346, and 348 of the Code of Criminal Procedure, 1973.

Execution of award, order or settlement: Every award made, order issued or settlement arrived at by or before a Tribunal or a National Industrial Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a civil court under Order XXI of the Code of Civil Procedure, 1908 and for that purpose such Tribunal or National Industrial Tribunal shall be deemed to be a civil court.

Conciliation and Adjudication of Dispute (Section 53)

This section lays down the procedure, time limits, and outcomes of conciliation proceedings conducted by conciliation officers. It ensures disputes are investigated promptly, settlements are documented, and unresolved matters can move to adjudication before a Tribunal.

Initiation of Conciliation: Where any industrial dispute exists or is apprehended or a notice under section 62 has been given, the conciliation officer shall hold conciliation proceedings in such manner as may be prescribed.

It is provided that the conciliation officer shall not hold any such proceedings relating to the industrial dispute after two years from the date on which such industrial dispute arose.

Role of Conciliation Officer: The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

Conciliation report and Memorandum of settlement: If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send

- a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government.
- Such report shall be accompanied with a memorandum of the settlement signed by the parties to the dispute.

Report: If no such settlement is arrived at, the conciliation officer shall, as soon as practicable, after the close of the investigation, send to

- the concerned parties and
- the appropriate Government

a full report, in the electronic or other form as may be prescribed, setting forth the steps taken by him for

(i) ascertaining the facts and circumstances relating to the dispute and

(ii) bringing about a settlement thereof.

The report shall be sent together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

Time Limits for Reports: The conciliation officer shall send the report to the concerned parties and the appropriate Government within forty-five days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

It is provided that where a conciliation officer receives notice under section 62, he shall send the report to the concerned parties and to the appropriate Government within fourteen days of the commencement of the conciliation proceedings.

It is provided further that subject to the approval of the conciliation officer; the time may be extended by such period as may be agreed upon in writing by the concerned parties to the dispute.

Application to Tribunal: Any concerned party may make application in the prescribed form to the Tribunal

- in the matters not settled by the conciliation officer under this section
- within ninety days from the date on which the report is received to the concerned party and the Tribunal shall decide such application in the prescribed manner.

STRIKES AND LOCK-OUTS

Prohibition of Strikes and Lock-Outs (Section 62)

This section lays strict conditions and prohibitions on strikes by workers and lock-outs by employers in industrial establishments and ensures industrial peace.

No person employed in an industrial establishment shall go on strike, in breach of contract—

(a) without giving to the employer notice of strike, as hereinafter provided, within sixty days before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or

(e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or

(f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or

(g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

No employer of an industrial establishment shall lock-out any of his workers—

(a) without giving them notice of lock-out as hereinafter provided, within sixty days before locking-out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or

(e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or

(f) during the pendency of arbitration proceedings before an arbitrator and sixty days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or

(g) 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.

Notice or intimation of strike or lockout: The employer shall send to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of services–

- The notice of strike or lock-out under this section
- intimation of such lock-out or strike where there is already in existence a strike or, as the case may be, lock-out,

Such notice or intimation shall be sent on the day on which it is declared.

Delivery of notice of strike: The notice of strike shall be given by such number of persons to such person or persons and in prescribed manner.

Delivery of notice of lock out: The notice of lock-out shall be given in such manner as may be prescribed.

Time period of reporting: If on any day an employer

- receives from any person employed by him any such notices or
- gives to any person employed by him any such notices,

he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe and to the conciliation officer, the number of such notices received or given on that day.

Illegal Strikes and Lock-Outs (Section 63)

This section defines when strikes and lock-outs are considered illegal under the Code along with exceptions

(i) *Illegal Strikes/Lock-outs:* A strike or lock-out shall be illegal, if it is commenced or declared in contravention of section 62; or

(ii) continued in contravention of an order made under section 42(7).

Continuance of Existing Strikes/Lock-outs:

- If a strike or lock-out was not at its commencement in contravention of the provisions of the Code or the continuance thereof was not prohibited under section 42(7) and
- Such a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the filing of the application relating to such industrial dispute in the Tribunal or of the reference of such industrial dispute to an arbitrator or a National Industrial Tribunal,

The continuance of such strike or lock-out shall not be deemed to be illegal.

Consequential Strikes/Lock-outs: A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Prohibition of Financial Aid to Illegal Strikes or Lock-Outs (Section 64)

No person shall knowingly spend or apply any money in direct furtherance or support of any illegal strike or lock-out.

LAY-OFF, RETRENCHMENT AND CLOSURE

Application of Sections 67 to 69 (Section 65)

This section defines the **scope and exclusions** for the application of provisions relating to lay-off, retrenchment, and closure (Sections 67–69).

Exemptions from Sections 67–69: Sections 67 to 69 (both inclusive) shall not apply to industrial establishments

- to which Chapter X applies (in which not less than three hundred workers, or such higher number of

workers as may be notified by the appropriate Government, were employed on an average per working day in the preceding twelve months.; or

- in which less than fifty workers on an average per working day have been employed in the preceding calendar month; or
- which are of a seasonal character or in which work is performed intermittently.

Government's Final Authority: If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Explanation: In this section and in sections 67, 68 and 69, industrial establishment shall mean a—

(i) factory as defined in clause (m) of section 2 of the Factories Act, 1948; or

(ii) mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; or

(iii) plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

Definition of Continuous Service (Section 66)

This section defines continuous service for workers, clarifying what counts as uninterrupted service and when workers are deemed to be in continuous service even if they fall short of the full period.

Continuous Service in relation to a worker, means the uninterrupted service of such worker, including his service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the worker.

Deemed Continuous Service: Where a worker is not in continuous service for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the worker during a period of twelve months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—

  (i) one hundred and ninety days in the case of a worker employed below ground in a mine; and

  (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the worker during a period of six months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—

  (i) ninety-five days in the case of worker employed below ground in a mine; and

  (ii) one hundred and twenty days, in any other case.

Counting Actual Work Days: The number of days on which a worker has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by or under this Code or any other law applicable to the industrial establishment for the time being in force; or

(ii) he has been on leave on full wages earned in the previous years; or

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; or

(iv) in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed the period as specified in the Maternity Benefit Act, 1961.

Rights of Workers Laid Off for Compensation (Section 67)

This section provides the rights of workers to compensation during lay-off and the conditions under which employers may limit or offset such payments.

Eligibility for Compensation: A worker (other than a badli worker or a casual worker) shall be paid by the employer for all days during which he is so laid-off if-

- his name is borne on the muster rolls of an industrial establishment and
- who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently,

he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid-off.

It is provided that if during any period of twelve months, a worker is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the worker and the employer.

It is provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the worker in accordance with the provisions contained in section 70 at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the worker for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

It may be noted that "***badli worker"*** means a worker who is employed in an industrial establishment in the place of another worker whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such, if he has completed one year of continuous service in the establishment.

Duty of an Employer to Maintain Muster Rolls of Workers (Section 68)

The section provides that notwithstanding that worker in any industrial establishment have been laid-off, it shall be the duty of every employer

- to maintain a muster roll, and
- to provide for the making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours.

Workers not Entitled for Compensation in Certain Cases (Section 69)

This section specifies the **exceptions to compensation during lay-off**, ensuring that workers are not entitled to payment if they fail to cooperate with reasonable alternatives or if the lay-off arises from collective worker action in another part of the establishment

No Compensation Payable: Compensation shall not be paid to a worker who has been laid-off—

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of eight kilometres from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the worker, provided that the wages which would normally have been paid to the worker are offered for the alternative employment also

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workers in another part of the establishment.

Conditions Precedent to Retrenchment of Workers (Section 70)

Worker shall not employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the worker has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice;

(b) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in such manner as may be prescribed is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification.

Procedure for Retrenchment (Section 71)

The section provides that where any worker in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workers in that establishment, then, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other worker.

Reemployment of Retrenched Worker (Section 72)

The section states that where any worker is retrenched and the employer proposes to take into his employment any person within one year of such retrenchment, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for re-employment and such retrenched workers who offer themselves for re-employment shall have preference over other persons.

Compensation to Workers in Case of Transfer of Establishment (Section 73)

The section makes provisions for compensation to workers in case of transfer of establishment.

Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer, every worker who has been in continuous service for not less than one year in that establishment immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 70 as if the worker had been retrenched:

It may be noted that this section shall not apply to a worker in any case where there has been a change of employers by reason of the transfer, if—

(a) the service of the worker has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the worker after such transfer are not in any way less favourable to the worker than those applicable to them immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

Sixty Days' Notice to Be Given of Intention to Close Down Any Undertaking (Section 74)

Mandatory Notice Requirement: An employer who intends to close down an undertaking shall serve a notice, in such manner as may be prescribed, on the appropriate Government. The notice shall be served at least sixty days before the date on which the intended closure is to become effective. The notice shall state clearly the reasons for the intended closure of the undertaking.

It may be noted that this section shall not apply to—

i. an industrial establishment in which less than fifty workers are employed or were employed on any day in the preceding twelve months;

ii. an industrial establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

Exceptions: The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as

- accident in the undertaking or
- death of the employer or
- an extraordinary situation such as natural calamities or the like,

it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period, as may be specified in the order.

Compensation to Workers in Case of Closing Down of Undertakings (Section 75)

This section governs the rights of workers to compensation when an undertaking is closed down. *General Rule of Compensation:* Where an establishment is closed down for any reason whatsoever, every worker who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 70, as if the worker had been retrenched.

It is provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the worker under clause (b) of section 70, shall not exceed his average pay for three months.

Explanation: An industrial establishment which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of un-disposed stocks; o

(iii) the expiry of the period of the lease or license granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

Special Rule for Mining Closures: Where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no worker referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 70, if—

a) the employer provides the worker, at the place located within a radius of twenty kilometres from such

undertaking engaged in mining operation is closed down, with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

b) the service of the worker has not been interrupted by such alternative employment; and

c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

Special Rule for Construction Undertakings:

- No worker employed therein shall be entitled to any compensation under clause (b) of section 70, where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up
- If the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

Application (Section 77)

This section defines the scope of applicability of Section 77 to 88 to lay-off, retrenchment, and closure in larger establishments.

Applicability Threshold: The provisions of Section 77 to 88 shall apply to an industrial establishment in ***which not less than three hundred workers were employed on an average per working day in the preceding twelve months***. The appropriate Government may notify higher number of workers for this purpose.

However, this applicability threshold is not applicable to an industrial establishment of a seasonal character or in which work is performed only intermittently.

Government's Final Authority: If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Definition of Industrial Establishment:

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948;

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

Prohibition of Lay-Off (Section 78)

This section governs the procedure and conditions for lay-off in industrial establishments with more than 300 workers.

Prior Permission Requirement: No worker (*other than a badli worker or a casual worker*) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government, obtained on an application made in this behalf except when such lay-off is due to

- shortage of power,
- natural calamity, and
- the case of a mine, such lay-off is due to fire, flood, excess of inflammable gas or explosion. {Sub-section (1)}

Application for Permission: An application for permission under sub-section (1) shall be made by the employer electronically or otherwise in the prescribed manner. The application shall state clearly the reasons for the intended lay-off. A copy of such application shall also be served simultaneously on the workers concerned in such manner as may be prescribed. {Sub-section (2)}

Special Rule for Mines: Where the workers (other than badli workers or casual workers) of industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, apply, in such manner as may be prescribed, to the appropriate Government for permission to continue the lay-off. The application shall be made within a period of thirty days from the date of commencement of such lay-off. {Sub-section (3)}

Government's Decision: Where an application for permission under sub-section (1) or sub-section (3) has been made, the Appropriate Government shall

- make such enquiry as it thinks fit and
- give a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such lay-off.

Thereafter, the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission. The appropriate Government shall, while making such order, have regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workers and all other relevant factors. A copy of such order shall be communicated to the employer and the workers. {Sub-section (4)}

Deemed Permission:

Where an application for permission under sub-section (1) or sub-section (3) has been made and the Appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made,

- the permission applied for shall be deemed to have been granted as applied for on the expiration of the said period of sixty days and
- the application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (5)}

Order of the appropriate Government to be final and binding: An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (7),

- be final and binding on all the parties concerned and
- remain in force for one year from the date of such order. {Sub-section (6)}

*Review of order or reference to Tribunal: T*he appropriate Government may

- review its order granting or refusing to grant permission under sub-section (4) within the prescribed time from the date on which such order is made or
- refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

The appropriate Government may do so either on its own motion or on the application made by the employer or any worker. It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (7)}

Illegal Lay-off: Lay-off shall be deemed to be illegal from the date on which the workers had been laid-off-

- Where no application for permission under sub-section (1) is made, or
- where no application for permission under sub-section (3) is made within the period specified therein, or
- where the permission for any lay-off has been refused.

The workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off. {Sub-section (8)}

Exemption in exceptional circumstances: Notwithstanding anything contained in the foregoing provisions of this section, if the appropriate Government is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, it may, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order. {Sub-section (9)}

Application of Section 67: The provisions of section 67 (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section. {Sub-section (10)}

Explanation (Alternative Employment): For the purposes of this section, a worker shall not be deemed to be laid-off by an employer if such employer offers any alternative employment

- in the same establishment from which he has been laid-off or
- in any other establishment belonging to the same employer,
  - situated in the same town or village, or
  - situated within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the worker having regard to the facts and circumstances of his case.

Conditions for alternative employment to fall in exception:

- The alternative employment, in the opinion of the employer does not call for any special skill or previous experience and can be done by the worker.
- The wages which would normally have been paid to the worker are offered for the alternative appointment also. {Sub-section (11)}

Conditions Precedent to Retrenchment of Workers (Section 79)

This section governs retrenchment in establishments with ≥300 workers.

Conditions Precedent to Retrenchment: These provisions of retrenchment are applicable to workers employed in any industrial establishment with ≥300 workers and who has been in continuous service for not less than one year under an employer. Such worker shall not be retrenched by that employer until—

(a) the worker has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government has been obtained on an application made in this behalf. {Sub-section (1)}

Application for permission of retrenchment: An application for permission under sub-section (1) shall be made by the employer electronically or otherwise in the prescribed manner stating clearly the reasons for the intended

retrenchment. A copy of such application shall also be served simultaneously on the workers concerned in such manner as may be prescribed. {Sub-section (2)}

Reasoned order by the Appropriate Government: Where an application for permission under sub-section (1) has been made, the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission. Such an order shall be made by the appropriate Government only after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such retrenchment. The Government shall have regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workers and all other relevant factors. A copy of such order shall be communicated to the employer and the workers. {Sub-section (3)}

Deemed permission: Where an application for permission has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days and the application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (4)}

Enforcement and duration of the order of Appropriate Government: An order of the Appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. {Sub-section (5)}

Review or reference of order: The Appropriate Government may, either on its own motion or on the application made by the employer or any worker,

- review its order granting or refusing to grant permission under sub-section (3) within the prescribed time from the date on which such order is made or
- refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication.

It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (6)}

Illegal Retrenchment: The retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the worker-

- where no application for permission under sub-section (1) is made, or
- where the permission for any retrenchment has been refused

The worker shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. {Sub-section (7)}

Exemption to establishment: Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order. {Sub-section (8)}

Rights of worker retrenched: Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every worker who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive compensation at the time of retrenchment.

Quantum of retrenchment compensation: Such retrenchment compensation shall be equivalent to fifteen days average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof, in excess of six months. {Sub-section (9)}

Procedure for Closing Down an Industrial Establishment (Section 80)

This section regulates closure of undertakings in industrial establishments with ≥300 workers.

Prior Permission Requirement: An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, electronically or otherwise, apply in such manner as may be prescribed, for prior permission. Such an application shall be made at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. The application shall clearly state the reasons for the intended closure of the undertaking. A copy of such application shall also be served simultaneously on the representatives of the workers in such manner as may be prescribed.

Exception: It is provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work. {Sub-section (1)}

Reasoned order by the appropriate Government: Where an application for permission has been made under sub-section (1), the Appropriate Government may, by order and for reasons to be recorded in writing, grant or refuse to grant such permission.

The Appropriate Government shall make such order only

- after making such enquiry as it thinks fit and
- after giving a reasonable opportunity of being heard to the employer, the workers and the persons interested in such closure
- after having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors.

A copy of such order shall be communicated to the employer and the workers. {Sub-section (2)}

Deemed Permission: Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted. It is deemed to be granted as on the expiration of the said period of sixty days. The application shall be deemed to have been disposed of accordingly by the appropriate Government. {Sub-section (3)}

Duration and finality of the order of the appropriate Government: An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties. Such an order shall remain in force for one year from the date of such order. {Sub-section (4)}

Review or reference of the order to Tribunal: The Appropriate Government may-

- review its order granting or refusing to grant permission under sub-section (2) within the prescribed time from the date on which such order is made or
- refer the matter to a Tribunal for adjudication.

Such a move may be made by the appropriate Government either on its own motion or on the application made by the employer or any worker.

It is provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. {Sub-section (5)}

Illegal closure: The closure of the undertaking shall be deemed to be illegal from the date of closure

- where no application for permission under sub-section (1) is made within the period specified therein, or
- where the permission for closure has been refused.

The workers shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. {Sub-section (6)}

Exemption to establishment owing to exceptional circumstances: Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. {Sub-section (7)}

Right of compensation: Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every worker who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation. Such compensation shall be equivalent to fifteen days average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof in excess of six months. {Sub-section (8)}

Duty of an Employer to Maintain Muster Rolls of Workers (Section 81)

It shall be the duty of every employer to maintain a muster roll, and to provide for the making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours.

Certain provisions of Chapter IX to apply to industrial establishment to which this Chapter applies. (Section 82)

The provisions of sections 66, 71, 72, 73 and section 76 also applicable to an industrial establishment with ≥300 workers.

WORKER RE-SKILLING FUND

Worker Reskilling Fund (Section 83)

This section introduces the Worker Reskilling Fund, a statutory mechanism to support workers who are retrenched.

Establishment of Fund: The appropriate Government shall, by notification, set up a fund to be called the worker re-skilling fund.

Sources of the Fund: The fund shall consist of—

(a) the contribution of the employer of an industrial establishment an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment, or such other number of days as may be notified by the Central Government, for every retrenched worker in case of retrenchment only;

(b) the contribution from such other sources as may be prescribed by the appropriate Government.

Utilisation of the Fund: The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment, in such manner as may be prescribed.

UNFAIR LABOUR PRACTICES

Prohibition of Unfair Labour Practice (Section 84)

No employer or worker or a Trade Union shall commit any unfair labour practice specified in the Second Schedule. This prohibition is applicable irrespective of the fact whether they are registered under Industrial Relation Code, or not,

Unfair Labour Practices

I. On the Part of Employers and Trade Unions of Employers

(1) To interfere with, restrain from, or coerce, workers in the exercise of their right to organise, form, join or assist a Trade Union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say,—

(a) threatening workers with discharge or dismissal, if they join a Trade Union;

(b) threatening a lock-out or closure, if a Trade Union is organised;

(c) granting wage increase to workers at crucial periods of Trade Union organisation, with a view to undermining the efforts of the Trade Union organisation.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any Trade Union, that is to say,—

(a) an employer taking an active interest in organising a Trade Union of his workers; and

(b) an employer showing partiality or granting favour to one of several Trade Unions attempting to organise his workers or to its members, where such a Trade Union is not a recognised Trade Union.

(3) To establish employer sponsored Trade Unions of workers.

(4) To encourage or discourage membership in any Trade Union by discriminating against any worker, that is to say,—

(a) discharging or punishing a worker, because he urged other workers to join or organise a Trade Union;

(b) discharging or dismissing a worker for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Code);

(c) changing seniority rating of workers because of Trade Union activities;

(d) refusing to promote workers to higher posts on account of their Trade Union activities;

(e) giving unmerited promotions to certain workers with a view to creating discord amongst other workers, or to undermine the strength of their Trade Union;

(f) discharging office-bearers or active members of the Trade Union on account of their Trade Union activities.

(5) To discharge or dismiss workers, —

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a worker in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped-up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the worker, thereby leading to a disproportionate punishment.

(6) To abolish the work of a regular nature being done by workers, and to give such work to contractors as a measure of breaking a strike.

(7) To transfer a worker mala fide from one place to another, under the guise of following management policy.

(8) To insist upon individual workers, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

(9) To show favouritism or partiality to one set of workers regardless of merit.

(10) To employ workers as badli workers, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.

(11) To discharge or discriminate against any worker for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

(12) To recruit worker during a strike which is not an illegal strike.

(13) Failure to implement award, settlement or agreement.

(14) To indulge in acts of force or violence.

(15) To refuse to bargain collectively, in good faith with the recognised Trade Unions.

(16) Proposing or continuing a lock-out deemed to be illegal under this Code.

II. On the Part of Workers and Trade Unions of Workers

(1) To advise or actively support or instigate any strike deemed to be illegal under this Code.

(2) To coerce workers in the exercise of their right to self-organisation or to join a Trade Union or refrain from, joining any Trade Union, that is to say—

(a) for a Trade Union or its members to picketing in such a manner that non-striking workers are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workers or against managerial staff.

(3) For a recognised union to refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as wilful, "go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

Explanation 1.—For the removal of doubts, it is clarified that "go-slow" shall mean an occasion when more than one worker in an establishment conjointly work more slowly and with less effort than usual to try to persuade the employer of the establishment to agree to higher pay or better service condition or such other demand.

Explanation 2.—For the purposes of Explanation 1, the expression "usual" shall mean,—

(i) where the standard has been specified for a worker for his work either daily, weekly or monthly basis, such work; and

(ii) where no such standard has been specified such rate of work which is the average of work in the previous three months calculated on daily or weekly or monthly basis, as the case may be.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

(7) To incite or indulge in wilful damage to employer's property connected with the industry.

(8) To indulge in acts of force or violence or to hold out threats of intimidation against any worker with a view to prevent him from attending work.

Offences by Companies (Section 88)

This section provides for the liability framework for offences committed by companies under the Code.

General Liability: If the person committing an offence under the Code is a company-

- every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the
- company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Defence: It is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that

- the offence was committed without his knowledge and
- he exercised all due diligence to prevent the commission of such offence.

Specific Liability for Consent, Connivance, or Neglect: Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, —

(a) "company" means any body corporate and includes-

(i) a firm; or

(ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or

(iii) other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Composition of Offences (Section 89)

This section provides a mechanism for compounding offences under the Code, allowing certain offences to be settled by payment of a prescribed sum instead of undergoing full prosecution.

Compounding of Offences:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under the Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine may be compounded. For compounding, an application has to be made by the accused person, either before or after the institution of any prosecution. The Appropriate Government may, by notification, specify any Gazetted

Officer as a compounding authority. Such an offence may be compounded, in the manner as may be prescribed, for a sum of

- fifty per cent. of the maximum fine provided for such offence punishable with fine only and
- seventy-five per cent. provided for such offence punishable with imprisonment for a term which is not more than one year or with fine,

It may be noted that such amount of composition shall be credited to the Social Security Fund established under section 141 of the Social Security Code, 2020.

Compounding not permissible: An offence committed by a person for the second time or thereafter within a period of three years from the date—

(a) of commission of a similar offence which was earlier compounded;

(b) of commission of similar offence for which such person was earlier convicted.

Supervisory control of the Appropriate Government: It is stated that such compounding Officer shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Appropriate Government.

Manner of application: Every application for the compounding of an offence shall be made in such prescribed manner.

Compounding before institution of prosecution: Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

Compounding after institution of prosecution: Where the composition of any offence is made after the institution of any prosecution-

- such composition shall be brought by the compounding officer in writing, to the notice of the adjudicating officer appointed under section 85(1) before whom the prosecution is pending and
- on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

Consequences of failure to comply with compounding order: Any person who fails to comply with an order made by the compounding officer shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

Restrictive provision: Offence punishable under the provisions of the Code shall be compounded in accordance with the provisions of this section.

LESSON ROUNDUP

- The Industrial Relations Code, 2020 consolidates and streamlines three major labour laws into a single modern framework.
- It aims to promote industrial harmony, reduce litigation, and simplify compliance for employers and workers.
- The Code replaces the Trade Unions Act, Industrial Employment (Standing Orders) Act, and Industrial Disputes Act.
- It introduces uniform definitions for employer, employee, industry, wages, and industrial dispute.

- Registration and recognition of trade unions are formalised, including the concept of a "Negotiating Union/Council."
- The Code strengthens collective bargaining by creating a single representative union in establishments.
- Works committees and grievance redressal mechanisms are mandated to promote bipartite dialogue.
- Certification of Standing Orders becomes mandatory for establishments employing 300 or more workers.
- Strikes and lockouts now require prior notice, ensuring predictability and industrial continuity.
- The Code reforms the dispute-resolution process through conciliation, voluntary arbitration, and industrial tribunals.
- Lay-off, retrenchment, and closure thresholds are increased to 300 workers for prior government approval.
- Compensation provisions for retrenched workers are standardised and legally enforceable.
- A re-skilling fund is introduced to support workers who face retrenchment.
- Employers must deposit 15 days' wages for each retrenched worker into this fund.
- Inspectors are replaced by "Inspectors-cum-Facilitators" to encourage compliance over penalties.
- Digital tools and web-based procedures are introduced for ease of doing business.
- Penalties are rationalised to ensure graded enforcement for different categories of violations.
- Many offences are compoundable, promoting faster resolution and reducing prosecution.
- The Code provides flexibility for the government to exempt certain establishments in public interest.
- Overall, the Code modernises India's industrial relations landscape by balancing employer flexibility with worker protection.

TEST YOURSELF

1. Explain the legal framework governing Standing Orders under the Industrial Relations Code, 2020.
2. Discuss the rights, liabilities, and registration requirements of Trade Unions under the Industrial Relations Code, 2020.
3. The Industrial Relations Code brings major reforms in the law relating to lay-off, retrenchment, and closure. Critically examine these provisions, including the revised threshold, compensation norms, and notice requirements
4. Elaborate on the provisions relating to strikes and lockouts under the Industrial Relations Code, 2020.
5. Discuss the dispute-resolution mechanisms provided under the Industrial Relations Code, 2020, with specific reference to conciliation, voluntary arbitration, and the role of Industrial Tribunals. Explain how the Code aims to expedite adjudication of industrial disputes.

LIST OF FURTHER READING

- https://labour.gov.in/sites/default/files/ir_gazette_of_india_0.pdf
- https://prsindia.org/billtrack/the-industrial-relations-code-2020
- https://www.pib.gov.in/FactsheetDetails.aspx?Id=150483&reg=3&lang=2

Code on Wages, 2019

Lesson 18

KEY CONCEPTS

■ Wages ■ Worker ■ Floor wage ■ Intermittent employment ■ Overtime work ■ Timeframes for Payment ■ Bonus ■ Central Advisory Board ■ Inspector-cum-Facilitators

Learning Objectives

To understand:

- Payment of minimum rate of wages
- Prohibition of Discrimination on Ground of Gender
- Components of minimum wages
- Power of Central Government to fix floor wage
- Mode of payment of wages
- Deductions which may be made from wages
- Eligibility for bonus
- Central Advisory Board and State Advisory Boards
- Payment of Dues, Claims and Audit
- Payment of various undisbursed dues in case of death of employee
- Appointment of Inspector-cum-Facilitators and their powers

Lesson Outline

- Introduction
- Chapter I – Preliminary
- Chapter II – Minimum Wages
- Chapter III – Payment of Wages
- Chapter IV – Payment of Bonus
- Chapter V – Advisory Board
- Chapter VI – Payment of Dues, Claims and Audit
- Chapter VII – Inspector-Cum-Facilitator
- Lesson Round-up
- Glossary
- Self-Test Questions

PREAMBLE

An Act to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

INTRODUCTION

The Code on Wages, 2019 seeks to simplify, consolidate, and rationalize the provisions of four existing laws- The Payment of Wages Act, 1936; The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965; and The Equal Remuneration Act, 1976. It aims to strengthen workers' rights while promoting simplicity and uniformity in wage-related compliance for employers.

Salient Features of the Code on Wages

Universal Minimum Wages: The Code establishes a statutory right to minimum wages for all employees across both organized and unorganized sectors. Earlier, the Minimum Wages Act applied only to scheduled employments covering ~30% of workers.

Introduction of Floor Wage: A statutory floor wage shall be set by the Government based on minimum living standards, with scope for regional variation. No state can fix minimum wages below this level, ensuring uniformity and adequacy nationwide.

Criteria for Wage Fixation: Appropriate Governments will determine minimum wages considering workers' skill levels (unskilled, skilled, semi-skilled and highly skilled), geographic areas, and job conditions such as temperature, humidity, or hazardous environments.

Gender Equality in Employment: Employers shall not discriminate on the basis of gender, including transgender identity, in recruitment, wages, and employment conditions for similar work.

Universal Coverage for Wage Payment: Provisions ensuring timely payment and preventing un-authorized deductions will apply to all employees, irrespective of wage limits (currently applicable only to employees earning up to ₹24,000/month).

Overtime Compensation: Employers must pay all employees overtime wages at least twice the normal rate for any work done beyond the regular working hours.

Responsibility for Wage Payment: Employers, including companies, firms, or associations, shall pay wages to employees employed by them. Failure to do so makes the proprietor/ entity liable for unpaid wages.

Inspector-cum-Facilitator: The traditional role of "Inspector" is replaced with "Inspector-cum-Facilitator," emphasizing guidance, awareness, and advisory roles alongside enforcement to improve compliance.

Compounding of Offences: First-time, non-imprisonable offences can be compounded by paying a penalty. Repeat offences within five years, however, cannot be compounded.

Decriminalization of Offences: The Code replaces imprisonment for certain first-time offences with monetary fines (up to 50% of the maximum fine), making the framework less punitive and more compliance-oriented.

CHAPTER I – PRELIMINARY

Section 1 of the Code provides for title and applicability of the Code as follows:

This Act may be called the Code on Wages, 2019.

The Code extends to the whole of India.

The Code has vested power in the **Central Government** for notification with respect to commencement of the Code, and different dates may be appointed for different provisions as may be considered appropriate. In exercise of these powers, the Central Government may, by notification in the Official Gazette, appoint the date(s) on which the provisions of the Code shall come into force.

In exercise of the powers conferred by sub-section (3) of section 1 of the Code on Wages, 2019, the Central Government appointed 21st day of November, 2025 as the date on which the following provisions of the said Code, to come into force, namely: -

Sections 1 to 41
Sub-sections (4) to (9) of section 42
Sections 43 to 66
Sub-Section (1) And Clauses (A) to (R) and (U) TO (ZC) of sub-section (2) and Sub-Sections (3) to (5) of section 67
Section 68
Section 69, except the provisions of the code mentioned at serial number 3 of S.O. 4604 (E), dated the 18TH December, 2020

Definitions

Section 2 of the Code provides for definitions with the opening words *"unless the context otherwise requires"* as follows:

"Accounting Year" means the year commencing on the 1st day of April. **{Section 2(a)}**

"Advisory Board" means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42. **{Section 2(b)}**

"Agricultural income tax law" means any law for the time being in force relating to the levy of tax on agricultural income. **{Section 2(c)}**

"Appropriate Government" means—

Establishment Type	Appropriate Government
Establishment carried on by or under the authority of the **Central Government**	Central Government
Establishment of **railways, mines, oil fields, major ports, air transport service, telecommunication, banking, insurance companies**	Central Government
Corporation or authority established by a Central Act	Central Government
Central public sector undertakings (PSUs), their **subsidiary companies**, or **autonomous bodies owned/controlled by the Central Government**	Central Government
Contractors engaged for the purposes of such establishments, corporations, PSUs, subsidiaries, or autonomous bodies	Central Government
Any other establishment	State Government

{Section 2(d)}

"Company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013.**{Section 2(e)}**

"Contractor", in relation to an establishment, means a person, who—

(i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or
(ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

Therefore, contractor does not include mere supplier of goods or articles of manufacture through contract labour. The definition focus on those persons who are actually undertaking to give results for an establishment through contract labour or source workforce for any work of establishment. **{Section 2(f)}**

"Contract Labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer, and includes inter-State migrant worker. But this definition specifically exclued a worker (other than part-time employee) who—

(i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis); and

(ii) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment. {Section 2(g)}

The Code provides a detailed definition of ***"contract labour"*** *to distinguish between workers engaged through contractors for specific work and those who are permanently employed by contractors under regulated employment conditions.*

"Co-Operative Society" means a society registered or deemed to be registered under the *Co-operative Societies Act, 1912* or any other law for the time being in force relating to co-operative societies in any State. **{Section 2(h)}**

"Corporation" means any body corporate established by or under any Central Act, or State Act, but does not include a company or a co-operative society. **{Section 2(i)}**

"Direct Tax" means—

(i) any tax chargeable under the—

(A) Income-tax Act, 1961;

(B) Companies (Profits) Surtax Act, 1964;

(C) Agricultural income tax law;

(ii) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code. **{Section 2(j)}**

"Employee" means any person employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

The definition includes a person declared to be an employee by the appropriate Government.

The definition of employee specifically exclude-

- an apprentice engaged under the Apprentices Act,1961.

- any member of the Armed Forces of the Union**. {Section 2(k)}**

"Employer" means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by-

- Central/State Government departments: authority specified by the head of the department, or if none specified, the head of the department.
- Local authority establishments: the chief executive of that authority.

Specific inclusions:

(i) Factory: the *occupier* as defined in section 2(n) of the Factories Act, 1948, or , where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;

(ii) Other establishments: the person/authority with *ultimate control* over affairs, or the *manager/managing director* if entrusted.

(iii) Contractor.

(iv) Legal representative of a deceased employer. **{Section 2(l)}**

"Establishment" means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment. **{Section 2(m)}**

"Factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948. **{Section 2(n)}**

"Government Establishment" means any office or department of the Government or a local authority. **{Section 2(o)}**

"Income-tax Act" means the Income-tax Act, 1961. **{Section 2(p)}**

"Industrial dispute" means—

(i) any dispute or difference between employers and employers, or between employers and workers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and

(ii) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

{Section 2(q)}

"Inspector-cum-Facilitator" means a person appointed by the appropriate Government under sub-section (1) of section 51. **{Section 2(r)}**

"Minimum Wage" means the wage fixed under section 6. **{Section 2(s)**

"Notification" means a notification published in the Gazette of India or in the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly. **{Section 2(t)}**

"Prescribed" means prescribed by rules made by the appropriate Government. **{Section 2(u)}**

"Same work or work of a similar nature" means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees, If there is any difference between the skill, effort, experience and responsibility required for employees of any gender, the difference is practically of no importance in relation to the terms and conditions of employment. **{Section 2(v)}**

"State" includes a Union territory. **{Section 2(w)}**

"Tribunal" shall have the same meaning as assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947. **{Section 2(x)}**

"Wages"- The term *"wages"* under the Code is defined broadly to encompass all monetary remuneration payable to an employee in respect of employment or work done, whether under express or implied terms of employment. This ensures that the statutory scope of wages is not confined merely to salary but extends to allowances and other forms of compensation expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

The definition explicitly includes—

(i) basic pay;

(ii) dearness allowance; and

(iii) retaining allowance, if any,

Followings are explicitly excluded from the definition —

a)	any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
b)	the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
c)	any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
d)	any conveyance allowance or the value of any travelling concession;
e)	any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
f)	house rent allowance;
g)	remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
h)	any overtime allowance;
i)	any commission payable to the employee;
j)	any gratuity payable on the termination of employment;
k)	any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment.

Special Provisions:

- **Ceiling on Exclusions**: If payments under clauses (a) to (i) exceed **50% (or such percentage notified by the Central Government)** of total remuneration calculated under this clause, the excess shall be deemed as remuneration and accordingly added in wages under this clause. This prevents employers from artificially structuring pay to minimize statutory wage obligations.
- **Gender Equality Clause**: For the purpose of equal wages and payment of wages, certain excluded emoluments specified in clauses (d), (f), (g) and (h) (conveyance allowance, HRA, remuneration under awards/settlements, overtime allowance) shall be taken for computation of wage. This ensures parity across genders and prevents discriminatory wage practices.
- **Remuneration in Kind**: Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.

{Section 2(y)}

"Worker": The definition of the worker under the Code is both inclusive and exclusive. It means any person 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 express or implied. An apprentice as defined under clause (aa) of section 2 of the *Apprentices Act, 1961 is specifically excluded from purview of worker under the Code.*

Following are specifically included in the definition of worker—

- working journalists as defined in clause (f) of section 2 of the *Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;* and
- sales promotion employees as defined in clause (d) of section 2 of the *Sales Promotion Employees (Conditions of Service) Act, 1976;* and
- for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,

The following persons are specifically excluded from the definition of worker-

- who is subject to the *Air Force Act, 1950,* or the *Army Act, 1950* or the *Navy Act, 1957;* or
- who is employed in the police service or as an officer or other employee of a prison; or
- who is employed mainly in a managerial or administrative capacity; or
- who is employed in a supervisory capacity drawing wages exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time. **{Section 2(z)}**

Prohibition of Discrimination on Ground of Gender

Section 3 of the Code provides for **Prohibition of Discrimination on Ground of Gender** as follows:

- *Equal Wages for Equal Work*: There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.

- *Safeguards Against Wage Reduction and Recruitment Bias*-No employer shall—

(i) for the purposes of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and	(ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment. However, such a discrimination is allowed under Code where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Decision as to disputes with regard to same or similar nature of work

Section 4 of the Code provides for **decision as to Disputes with Regard to Same or Similar Nature of Work** as follows:

Where any dispute arises as to whether a work is of the same or similar nature for the purposes of Section 3, such dispute shall be decided by the authority as may be notified by the appropriate Government.

CHAPTER II – MINIMUM WAGES

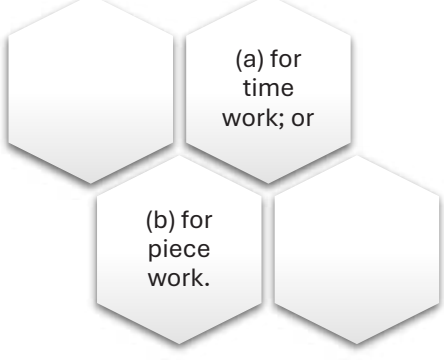
Payment of minimum rate of wages

Section 5 of the Code makes it mandatory for every employer to pay to any employee wages at least equal to the minimum rate of wages notified by the appropriate Government.

Fixation of minimum wages

Section 6 of the Code provides for Fixation of Minimum Rate of Wages as follows:

- *Fixation of minimum rate of wages by the appropriate Government:* The appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of this section. But this power is subject to the provisions of section 9. {Sub-section (1)}
- *Types of minimum wages:* For the purposes of sub-section (1), the appropriate Government shall fix a minimum rate of wages—



- *Minimum rate of wages for piece work based employee:* Where employees are employed on piece work, for the purpose of sub-section (1), the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.

- *Basis of fixation of time work basis employees:* The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—

  (i) by the hour; or

  (ii) by the day; or

  (iii) by the month.

- *Manner of calculating wages:* Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

- *Criteria for Fixation of Minimum Wages:* For the purpose of fixation of minimum rate of wages under this section, the appropriate Government—

  (a) shall primarily take into account **the skill of workers** required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and

  (b) may, in addition to such minimum rate of wages for certain category of workers, take into account their **arduousness of work** like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and

  (c) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.

- *Minimization of Wage Categories:* The appropriate Government shall keep the number of minimum rates of wages to be fixed under this section, as far as possible, at minimum.

Components of minimum wages

The section 7 of the Code provides for the components of minimum wages as follows-

1. Any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of—

   (a) Basic rate plus Cost of Living Allowance: a basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as "cost of living allowance"); or

   (b) Basic rate plus cash value of concessions: a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

   (c) All-inclusive rate: an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

2. *Computation of cost of living allowance and cash value of concessions:* The cost-of-living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

The section lays the **structure of minimum wages** that may be fixed or revised by the appropriate Government under Section 8. The provision ensures that minimum wages are not a flat figure but a **composite package**, reflecting both basic remuneration and adjustments for cost of living.

Procedure for fixing and revising minimum wage

Section 8 lays down the procedural framework for fixing minimum wages for the first time or revising them thereafter.

- *Modes of Action by the Appropriate Government:* In fixing minimum rates of wages for the first time or in revising minimum rates of wages under this Code, the appropriate Government shall either—

  (a) *Committee Method*: appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or

  (b) *Notification Method:* by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration. {Sub-section(1)}

- *Tripartite Constitution of the Committee:* Every committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons—

  (a) representing employers;

  (b) representing employees, equal in number to the members specified in clause (a); and

  (c) independent persons, not exceeding one-third of the total members of the committee.

- *Notification of minimum rates of wages:*

  - After considering the recommendation of the committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall notify its decision.
  - The appropriate Government shall, by notification, fix, or as the case may be, revise the minimum rates of wages.
  - The notification shall come into force on the expiry of three months from the date of its issue unless such notification otherwise provides,:
  - *It is also made mandatory for the appropriate Government of consult the concerned Advisory Board constituted under section 42 where the appropriate Government proposes to revise the minimum rates of wages in the manner specified in clause (b) of sub-section (1).*

- *Periodic review or revision:* The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

Power of Central Government to fix floor wage

Section 9 empowers the **Central Government** to fix a *floor wage*, which serves as the **baseline wage standard** across the country. It provides the same as follows: -

- *Fixation of floor wage:* The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed:

  The Central Government is also vested with discretionary power to fix different floor wage for different geographical areas.

- *Floor wage to meet threshold of minimum wage:* The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage. Simultaneously vice versa is safeguarded by providing that if the minimum rates of wages fixed by the appropriate Government

earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

- *Advisory and Consultation procedure:* Before fixing the floor wage under the section, the Central Government is given discretionary power to
  - obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42 and
  - consult State Governments in such manner as may be prescribed.

Wages of employee who works for less than normal working day

Section 10 safeguards employees as it provides that if a worker is employed for less than the requisite hours of a normal working day, they are still entitled to receive **full day's wages**, thereby protecting them from loss of income due to factors beyond their control.

- *Minimum Wages for employment less than normal working hours:* If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:
- *Exception: It has been provided that he shall not be entitled to receive wages for a full normal working day—*

in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and
in such other cases and circumstances, as may be prescribed.

Wages for two or more classes of work

Section 11 addresses situations where an employee performs multiple classes of work within the same employment period, each attracting a different minimum wage rate. According to the section-

- *Minimum wage rate threshold to be met for each class of work:* Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

So the provisions ensures payment of minimum wage rate proportionate to the time devoted for each class of work.

Minimum time rate wages for piece work

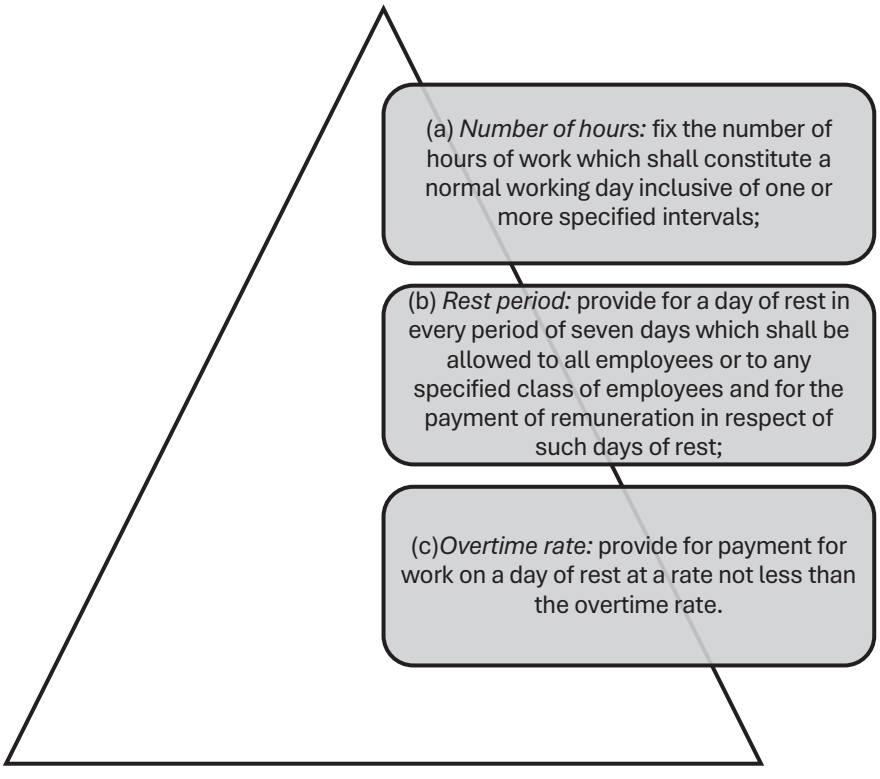
Section 12 ensures minimum time rate wages where minimum piece rate is also fixed by providing-

- Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

Fixing hours of work for normal working day

Section 13 empowers the appropriate Government to regulate the **hours of work** constituting a normal working day.

- *Power of the appropriate Government to fix working hours:* Where the minimum rates of wages have been fixed under this Code, the appropriate Government may—



- *Modification and extent of application of above provisions in specific class of work:* The above provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed, namely:—

(a) employees engaged in any emergency which could not have been foreseen or prevented;
(b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
(c) employees whose employment is essentially intermittent;
(d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

- *What is intermittent employment:* For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent -
  - *Declaration by the appropriate Government:* when it is declared to be so by the appropriate Government that the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.
  - Such a declaration can be made by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee,

Wages for overtime work

Section 14 ensures that any work performed beyond the prescribed hours of a normal working day attracts enhanced remuneration.

Applicability of the provisions: Applicable to an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed.

Wages for overtime work: When such an employee works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

CHAPTER III – PAYMENT OF WAGES

Mode of payment of wages

Section 15 prescribes the acceptable modes of wage payment, ensuring transparency, accountability, and ease of access for employees.

Permissible mode of payments	All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode
Online mode of payment mandatory	It is provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

Fixation of wage period

Section 16 requires every employer to fix a wage period for employees.

Fixation of wage period: The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month.

It is provided that different wage periods may be fixed for different establishments.

Time limit for payment of wages

Section 17 ensures that employees receive their wages **promptly and within defined timelines**, thereby safeguarding their right to timely remuneration and preventing undue hardship caused by delayed payments.

- *Timeframes for Payment:* The employer shall pay or cause to be paid wages to the employees, engaged on-

(i) daily basis, at the end of the shift;
(ii) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
(iii) fortnightly basis, before the end of the second day after the end of the fortnight;
(iv) monthly basis, before the expiry of the seventh day of the succeeding month.

- *Payment of wages on removal/termination:* Where an employee has been—

(i) removed or dismissed from service; or

(ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

➢ the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

- *Power vested in the appropriate Government:* Notwithstanding anything contained in this section above, the appropriate Government may provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
- *Provisions of other laws for time limit to be not affected:* Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

Deductions which may be made from wages

Section 18 establishes a **closed list of permissible deductions** from wages, prohibiting employers from making arbitrary or unauthorized deductions.

- *Only authorized deductions from wages:* Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorized under this Code.

  What is deemed to be deduction and what does not: It is explained that for the purposes of this sub-section:-

  (a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;

  (b) Following shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf-

  any loss of wages to an employee, for a good and sufficient cause, resulting from—

  (i) the withholding of increment or promotion, including the stoppage of an increment; or

  (ii) the reduction to a lower post or time-scale; or

  (iii) the suspension,

- *Permissible Deductions:* Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be made only for the following purposes, namely:—

  (a) fines imposed on him;

  (b) deductions for his absence from duty;

  (c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

  (d) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;

(e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise, and such deduction shall not exceed an amount equivalent to the value of such amenities and services. It is provided via explanation that for the purposes of this clause, the expression "services" does not include the supply of tools and raw materials required for the purposes of employment;

(f) deductions for recovery of—

(i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;

(ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;

(g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

(h) deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;

(i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;

(j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;

(k) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926 (16 of 1926);

(l) deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;

(m) deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;

(n) deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;

(o) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.

- *Maximum ceiling on quantum of deduction:* Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made as stated above in any wage period from the wages of an employee shall not exceed fifty per cent of such wages.
- *Recovery of excess deduction:* Where the total deductions authorised under above provisions exceed fifty per cent of the wages, the excess may be recovered in such manner, as may be prescribed.

- *Consequences of failure to deposit deductions:* Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

Fines

Section 19 regulates the **imposition of fines on employees**, ensuring that fines are not arbitrary but subject to **government approval, procedural safeguards, and strict limits**. The provisions are as follows:-

- *Mandatory approval before imposing fine:* No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).
- *Display of notice:* A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
- *Reasonable opportunity of being heard:* No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- *Maximum ceiling on fine:* The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
- *Age ceiling on fine:* No fine shall be imposed on any employee who is under the age of fifteen years.
- *Time period and one time recovery of fine:* No fine imposed on any employee shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.
- *Enforcement of fine:* Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- *Register of fines and utilization of realisations:*
  - All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and
  - all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

Deductions for absence from duty

Section 20 provides for the circumstances under which deductions from wages may be made for **absence from duty**. It ensures that deductions are proportionate, lawful, and not misused by employers, while also addressing collective absenteeism and strike-related conduct. The provisions of the section are as follows:-

- *Conditions for Deductions*: Deductions may be made under clause (b) of sub-section (2) of section 18 only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work. Such absence may be for the whole or any part of the period during which he is so required to work.
- *Proportionate time deduction*: The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work.

Deductions in case of collective absenteeism: It is provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

It is further explained that for the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Deductions for damage or loss

Section 21 regulates deductions from wages where an employee has caused **damage or loss** to the employer. It ensures that such deductions are **fair and procedurally safeguarded as follows-**

Limitations on Deductions: A deduction under clause (c) or clause (n) of sub-section (2) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

Procedure to be followed before deduction: A deduction shall not be made under sub-section (1) until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

Recording of deductions and realisations thereof: All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

Deductions for services rendered

Section 22 regulates deductions from wages in respect of house accommodation, amenities, or services provided by the employer. The provisions of the section are as follows-

Mandatory acceptance of amenities by employee before deduction:

- A deduction under clause (d) or clause (e) of sub-section (2) of section 18 shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise, and
- such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

Deductions for recovery of advances

Section 23 provides for deductions from wages for the recovery of advances made to employees as follows:-

Pre conditions of deductions: Deductions under clause (f) of sub-section (2) of section 18 for recovery of advances given to an employee shall be subject to the following conditions, namely:-

(a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;
(b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;
(c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

Deductions for recovery of loans

Section 24 of the Code provides for deductions from wages for recovery of loans as follows:-

Scope of Application:

- The section applies to deductions under **Section 18(2)(g)**, which permits recovery of loans granted for house-building or other approved purposes.
- The provision covers both:
  - The **extent to which loans may be granted**.
  - The **rate of interest payable** on such loans.

Chapter not to apply to Government establishments

Section 25 provides that the provisions of this Chapter shall not automatically apply to Government establishments. It states that-

General law is that the Government establishments are excluded from the scope of this Chapter.

The appropriate Government may, however, extend the provisions to specified Government establishments through a notification.

CHAPTER IV – PAYMENT OF BONUS

Eligibility for bonus, etc.

Section 26 provides for the framework for **bonus entitlement** of employees, linking it to wages, allocable surplus, and the profitability of establishments. It ensures that employees receive a **minimum statutory bonus** regardless of the employer's financial performance, while also providing for higher bonuses when surplus profits exist.

Eligibility of employee to receive bonus:

- Every employee fulfilling following twin condition shall be paid bonus by the employer:-
  - who is drawing wages not exceeding such amount per mensem, as determined by notification by the appropriate Government **and**
  - who has put in at least thirty days' work in an accounting year.
- Minimum Bonus Payable*: A*n annual minimum bonus calculated at the rate of eight and one-third per cent of the wages earned by the employee or one hundred rupees, whichever is higher, shall be payable whether or not the employer has any allocable surplus during the previous accounting year. {Sub-section(1)}

Bonus for Higher Wage Employees: For the purpose of calculation of the bonus where the wages of the employee exceed such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount which is higher of the following:

- so determined by the appropriate Government or
- the minimum wage fixed by the appropriate Government.

Bonus Linked to Allocable Surplus:

- Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus.
- Such bonus shall be an amount in proportion to the wages earned by the employee during the accounting year, **subject to a maximum of twenty per cent of such wages.**

Amount to be set off in computing allocable surplus: It is provided that in computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

Productivity-Linked Bonus: Any demand for bonus beyond the statutory minimum determined under sub-section (1), either based on **production or productivity in an accounting year**, shall be determined by an agreement or settlement between the employer and the employees. However, the total bonus, including minimum bonus, shall not exceed twenty per cent of the wages earned by the employee in the accounting year.

Special Provisions for New Establishments: The bonus is computed as follows in newly set up establishment following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment:

- **In the first five accounting years**-
  - bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment.
  - such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.
- **For the sixth and seventh accounting years**, the provisions of section 36 shall apply subject to the following modifications, namely:—
  - *for the sixth accounting year*, set on or set off, as the case may be, shall be made in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
  - *for the seventh accounting year*, set on or set off, as the case may be, shall be made in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.
  - From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

When are profits deemed to be derived: Explanation 1 provides that for the purpose of this section, an employer shall not be deemed to have derived profit in any accounting year, unless—

(a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Sale of trial production not to be considered:

- Explanation 2 provides that **f**or the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration.
- Where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

Applicability of provisions of newly set up establishment: The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

Proportionate reduction in bonus in certain cases

Section 27 provides for the proportionate reduction of the minimum bonus in cases where an employee has not worked for all the working days in an accounting year as follows-

Proportionate Reduction: Where an employee has not worked for all the working days in an accounting year-

- the minimum bonus, under sub-section (1) of section 26, shall be proportionately reduced.
- This provision of proportionate reduction is applicable only if such bonus is higher than eight and one-third per cent of the salary or wage of the days such employee has worked in that accounting year,

Computation of number of working days

Section 28 clarifies how the number of working days is computed for the purposes of Section 27 (proportionate reduction in bonus) as follows-

Deemed Working Days: An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which—

He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

He has been on leave with salary or wages;

He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

The employee has been on maternity leave with salary or wages, during the accounting year.

Disqualification for bonus

Section 29 sets out the circumstances under which an employee is disqualified from receiving bonus under the Code as follows-

Grounds of disqualification: Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

(a) fraud; or	(b) riotous or violent behaviour while on the premises of the establishment; or	(c) theft, misappropriation or sabotage of any property of the establishment; or	(d) conviction for sexual harassment.

Establishments include departments, undertakings and branches

Section 30 provides for how bonus is to be computed when an establishment consists of multiple departments, undertakings, or branches, whether located in the same place or spread across different places as follows:-

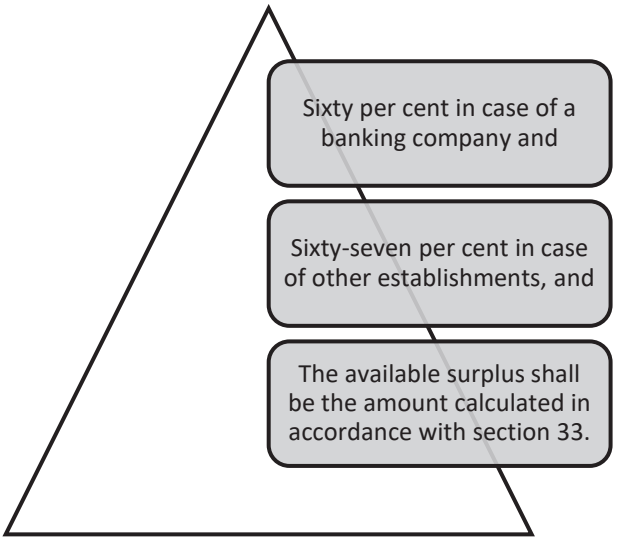
Treatment of multiple branches of establishment for bonus: Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code.

Exception: It is provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Code for that year. This separate treatment shall be applicable only if such department or undertaking or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

Payment of bonus out of allocable surplus

Section 31 provides for bonus to be payable out of the **allocable surplus** as follows:-

What is allocable surplus: The bonus shall be paid out of the allocable surplus which shall be an amount equal to following per cent of the available surplus:-



Reliability of audited accounts: Audited accounts of companies shall not normally be questioned.

Resolution of dispute: -Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

Computation of gross profits

Section 32 of the Code provides for computation of gross profits as follows-

The gross profits derived by an employer from an establishment in respect of the accounting year shall—

In the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;
In any other case, be calculated in the manner as may be prescribed by the Central Government.

Computation of available surplus

Section 33 defines how the available surplus is computed for the purpose of bonus distribution as follows-

Computation of available surplus: The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and

(b) an amount equal to the difference between—

(i) the direct tax, calculated in accordance with the provisions of section 35 in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

Sums deductible from gross profits

Section 34 of the Code provides for sums deductible from gross profits as prior charges as follows-

The following sums shall be deducted from the gross profits as prior charges, namely:—

(a) *Depreciation:* any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;

(b) *Direct Tax:* subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(c) *Other prescribed sum:* such further sums in respect of the employer as may be prescribed by the Central Government.

Calculation of direct tax payable by employer

Section 35 of the Code provides for calculation of direct tax payable by the employer as follows:-

For the purposes of this Code, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

(a) *Exclusions:* in calculating such tax no account shall be taken of—

(i) *Carried forward loss:* any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) *Arrears of depreciation:* any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;

(b) *Definition of a company in which public is substantially interested:* where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(c) *Individuals and Hindu Undivided Families:* where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(d) *Export profits rebate:* where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(e) *Other rebates and deductions:* no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

Set on and set off of allocable surplus

Section 36 introduces the mechanism of set on and set off in relation to allocable surplus for bonus computation so that bonus payments remain equitable and stable across accounting years**,** balancing fluctuations in profitability by carrying forward excesses or deficiencies as follows:-

- *Set On (Excess Surplus)* **:**
  - Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, be carried forward.
  - It can be set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.
  - The carried forward is subject to a ceiling limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year,
- *Set Off (Deficiency in Surplus):*Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in such manner as may be prescribed by the Central Government.

Rules prescribed by the Central Government: The principle of set on and set off as may be provided in rules by the Central Government under this Code shall apply to all other cases not covered in above provisions for the purpose of payment of bonus under this Code.

Carried forward amount to be considered first: Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Adjustment of customary or interim bonus against bonus payable under this Code

Section 37 of the Code provides for adjustment of customary or interim bonus against bonus payable under this Code as follows:-

The employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of any accounting year where he

(a) has paid any *puja bonus* or other customary bonus to an employee; or

(b) has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

The employee shall be entitled to receive only the balance.

Deduction of certain amounts from bonus payable

Section 38 of the Code provides for deduction of certain amounts on account of misconduct of employee from bonus payable as follows:-

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only, and the employee shall be entitled to receive the balance, if any.

Time limit for payment of bonus

Section 39 of the Code provides for the time limit within which bonus shall be paid as follows:-

- Time limit and payment of bonus through banking channels:
  - The employer shall pay all amounts payable to an employee by way of bonus under this Code by crediting it in the bank account of the employee within a period of eight months from the close of the accounting year.
  - It is provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit. However, the total period so extended shall not in any case exceed two years.
- *Time limit for payment of disputed bonus:*
  - Notwithstanding anything contained above, where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
  - It is provided that if there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

Application of this Chapter to establishments in public sector in certain cases

- *Applicability of Chapter in competitive cases:* Section 40 of the Code provides that the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector where in any accounting year-
  - an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, **and**
  - the income from such sale or services or both is not less than twenty per cent of the gross income of the establishment in public sector for that year.
- *Non applicability of chapter in other PSUs:* Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

Section 40 provides for the limited circumstances under which bonus provisions apply to public sector establishments. It distinguishes between public sector entities engaged in competitive commercial activity and those functioning primarily for public service, thereby balancing employee rights with the unique nature of public enterprises.

Non-applicability of this Chapter

Section 41 of the Code provides for non-applicability of bonus provisions to certain categories of employees and establishments as follows:-

- *Where Chapter is not applicable:-* Nothing in this Chapter shall apply to—
  - (a) employees employed by the Life Insurance Corporation of India;
  - (b) seamen as defined in clause (42) of section 3 of the *Merchant Shipping Act, 1958*
  - (c) employees registered or listed under any scheme made under the *Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)*, and employed by registered or listed employers;
  - (d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
  - (e) employees employed by—
    - (i) the Indian Red Cross Society or any other institution of a like nature including its branches;
    - (ii) universities and other educational institutions;
    - (iii) institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit;
  - (f) employees employed by the Reserve Bank of India;
  - (g) employees employed by public sector financial institutions other than a banking company, which the Central Government may, by notification, specify, having regard to—
    - (i) its capital structure;
    - (ii) its objectives and the nature of its activities;
    - (iii) the nature and extent of financial assistance or any concession given to it by the Government; and
    - (iv) any other relevant factor;

(h) employees employed by inland water transport establishments operating on routes passing through any other country; and

(i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

Establishments where provisions of the Chapter are applicable: Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

CHAPTER V – ADVISORY BOARD

Central Advisory Board and State Advisory Boards

Section 42 of the Code provides for the constitution, composition, and functions of the Central Advisory Board and State Advisory Boards as follows:-

- *Central Advisory Board:*
  - *Appointing authority and constitution:* The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

Representing employers;
Representing employees, equal in number to the members specified in clause (a);
Independent persons, not exceeding one-third of the total members of the Board; and
Five representatives of such State Governments as may be nominated by the Central Government.

  - *Women representative and Chairperson:* One-third of the members referred above shall be women, and a member specified in clause (c) above shall be appointed by the Central Government as the Chairperson of the Board.
- *Advisory role of the Central Advisory Board:* The Central Advisory Board so constituted shall, from time to time, advise the Central Government on reference of issues relating to—
  (a) fixation or revision of minimum wages and other connected matters;
  (b) providing increasing employment opportunities for women;
  (c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and
  (d) any other matter relating to this Code.
- *Directions by the Central Government:* On such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.
- *Appointing authority and constitution of State Advisory Board:* Every State Government shall constitute a State Advisory Board for advising the State Government—
  (a) in fixation or revision of minimum wages and other connected matters;

(b) for the purpose of providing increasing employment opportunities for women;

(c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and

(d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified above.

Composition of State Advisory Board: The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons—

(a) representing employers;

(b) representing employees, equal in number to the members specified in clause (a);and

(c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.

- *Women composition and Chairperson of State Advisory Board:* One-third of the members referred to in sub-section (6) shall be women, and one among the members specified in clause (c) of the said sub-section shall be—

  (a) appointed by the State Government as the Chairperson of the Board;

  (b) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.

- *Factors to be considered in advisory role:* In tendering its advice in the matters specified in clause (b) or clause (c) above, the State Advisory Board shall have regard to

  - the number of women employed in the concerned establishment or employment,
  - the nature of work,
  - hours of work,
  - suitability of women for employment,
  - the need for providing increasing employment opportunities for women (including part-time employment), and s
  - Such other relevant factors as the Board may think fit.

- *Issue of Directions by the State Government:* The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishments, employees, or any other person which that Government thinks fit, issue such directions as may be deemed necessary.

- *Regulation of Procedure:* The Central Advisory Board and the State Advisory Board shall respectively regulate their own procedure, including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.

- *Terms of the Advisory Board:* The terms of office of the Central Advisory Board and the State Advisory Board including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

CHAPTER VI – PAYMENT OF DUES, CLAIMS AND AUDIT

Responsibility for payment of various dues

Section 43 of the Code provides for principal responsibility of employers in payment of dues as follows: -

Obligation of employer: Every employer shall pay all amounts required to be paid under this Code to every employee employed by him.
Consequences of failure to pay: It is provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

Explanation— For the purposes of this section the expression "firm" shall have the same meaning as assigned to it in the *Indian Partnership Act, 1932*.

Payment of various undisbursed dues in case of death of employee

Section 44 provides for those undisbursed dues of an employee—such as wages, bonus, or other payments under the Code—to be properly settled in the event of the employee's death or when the employee's whereabouts are unknown. The provisions of the section are as follows: -

To whom payment is to be made: Subject to the other provisions of this Code, all amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known—

(a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or

(b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with such authority as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

Discharge of employer: Where in accordance with above provisions of the section, all amounts payable to an employee under this Code—

(a) are paid by the employer to the person nominated by the employee; or

(b) are deposited by the employer with the authority referred to in clause (b) above

then, the employer shall be discharged of his liability to pay those amounts.

Claims under Code and procedure thereof

Section 45 provides for the mechanism for adjudication of claims arising under the Code as follows:

- *Appointment of authorities:* The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arise under the provisions of this Code.
- Compensation and Timelines:
  - The authority so appointed, while deciding the claim, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined.
  - Such compensation may extend to ten times the claim determined,
  - The authority shall endeavour to decide the claim within a period of three months.

- *Recovery Mechanism:*
  - If an employer fails to pay the claim determined and compensation ordered to be paid under the section, the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located.
  - The Collector or District Magistrate, then, shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.
- *Who can file application for claim:* Any application before the authority for claim referred above may be filed by—
  (a) the employee concerned; or
  (b) any Trade Union registered under the *Trade Unions Act, 1926* of which the employee is a member; or
  (c) the Inspector-cum-Facilitator.
- *Single application for collective claims:* Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.
- *Limitation Period for filing application*: Such application may be filed within a period of three years from the date on which claims referred in the section arise. Discretionary power is also vested in the authority entertain the application after three years on sufficient cause being shown by the applicant for such delay.
- *Powers of Civil Court*: The authority appointed the section for determining claim and compensation and the appellate authority appointed under sub-section (1) of section 49 shall have all the powers of a civil court under the *Code of Civil Procedure, 1908* for the purpose of
  - taking evidence and
  - of enforcing the attendance of witnesses and
  - compelling the production of documents.

Every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973* .

Reference of disputes under this Code

Section 46 of the Code provides for reference of disputes under this Code as follows-

Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to—

(a) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or
(b) the application of this Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the *Industrial Disputes Act, 1947.*

Presumption about accuracy of balance sheet and profit and loss account of corporations and companies

Section 47 of the Code provides for presumption about accuracy of balance sheet and profit and loss account of corporations and companies as follows: --

- *Presumption of accuracy of financial statements:* Where, in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), are produced during the course of proceedings before—

  (a) the authority under section 45; or

  (c) the appellate authority under section 49; or

  (d) a Tribunal; or

  (d) an arbitrator referred to in clause (aa) of section 2 of the *Industrial Disputes Act, 1947*,

  then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate if such financial statements are -

  - duly audited by the Comptroller and Auditor-General of India or
  - by auditors duly qualified to act as auditors of companies under section 141 of the *Companies Act, 2013*.

  Then, it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode.

- *Measures in case of inaccuracy of financial statements:* It is provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

- *Directions by the authority in case of clarification sought by Trade Union or employees to dispute:*

  - *Subject and parties to the application for clarification:* Following can make application requiring any clarification relating to any item in the balance sheet or the profit and loss account:-

    (i) any Trade Union being a party to the dispute or an appeal, as the case may be and

    (ii) where there is no Trade Union, by the employees being a party to the dispute or an appeal, as the case may be.

  - *To whom application is to be made:* An application in this respect shall be made to the authority, appellate authority, Tribunal or arbitrator, before whom the dispute or appeal is pending, as the case may be.

  - *Directions by the concerned authority: S*uch authority, appellate authority, Tribunal or arbitrator may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction. The corporation or, as the case may be, the company, shall comply with such direction.

Audit of account of employers not being corporations or companies

Section 48 of the Code provides for audit of accounts of employers not being corporations or companies as follows:

Application of section 47 for non-corporate employer: If the accounts of a non-corporate employer are audited by an auditor qualified under Section 141 of the Companies Act, 2013, and produced before the authority, appellate authority, Tribunal, or arbitrator, as the case may be, dealing with any claim, dispute or appeal with respect to bonus payable under this Code between such a non- corporate employer, and his employees , then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

Direction to such employer to get accounts audited: The authority, appellate authority, Tribunal or arbitrator may, by order, direct the employer to get his accounts audited when

- it finds that the accounts of such employer have not been audited by any such auditor **and**
- it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it,

Thereupon the employer shall get the accounts audited within such time as may be specified in the direction or within such further time as it may allow, by such auditor or auditors as it thinks fit and comply with such direction.

Failure to get accounts audited: Where such employer fails to get the accounts audited in pursuance of directions stated above, the authority, appellate authority, Tribunal or arbitrator referred above may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

Applicability of section 47: When the accounts are audited under this section, the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

Expenses of audit: The expenses of, and incidental to, any audit under sub-section (3), including the remuneration of the auditor or auditors, shall be determined by the authority, appellate authority, Tribunal or arbitrator referred to in sub-section (1), and paid by the employer; and in default of such payment, shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

Appeal

Section 49 provides the framework for appeals against orders passed by the authority under Section 45 reinforcing principles of natural justice and procedural fairness as follows: -

- *Right to Appeal:*
  - Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal to the appellate authority having jurisdiction, appointed by the appropriate Government by notification for such purpose.
  - Such an appeal shall be made within ninety days from the date of such order, in such form and manner as may be prescribed.
  - It is provided that the appellate authority may entertain the appeal after ninety days if it is satisfied that the delay in filing the appeal has occurred due to sufficient cause.
- *Appointment of appellate authority:* The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.
- *Disposal of Appeals:* The outstanding dues under the orders of the appellate authority shall be

recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.

Records, returns and notices

Section 50 of the Code provides for maintenance of records, returns, and notices by employers as follows: -

- *Maintenance of Register by employer:* Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages, and such other details in such manner as may be prescribed.
- *Display of notice:* Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Inspector-cum-Facilitator having jurisdiction.
- *Issue of wage slip:* Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
- *Exemption for Small Employers:* The above provisions of sub-sections shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose.

It is provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

It is also explained that for the purposes of this sub-section, the expression “domestic purpose” means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.

CHAPTER VII – INSPECTOR-CUM-FACILITATOR

Appointment of Inspector-cum-Facilitators and their powers

Section 51 of the Code provides for the appointment of Inspector-cum-Facilitators and the powers conferred upon them as follows: -

- *Appointment of Inspector-cum- Facilitators:*
  - The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code.
  - He shall exercise the powers conferred on them under this section throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.
- *Inspection Scheme:* The appropriate Government may, by notification, lay down an inspection scheme which may also provide for
  - generation of a web-based inspection and
  - calling of information relating to the inspection under this Code electronically.
- *Randomised Selection:* Without prejudice to the above provisions, the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
- *Deemed public servant:* Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the *Indian Penal Code*.

- *Role of the Inspector-cum-Facilitator:* The Inspector-cum-Facilitator may—
  (a) advise employers and workers relating to compliance with the provisions of this Code;
  (b) inspect the establishments as assigned to him by the appropriate Government, subject to the instructions or guidelines issued by the appropriate Government from time to time.
- *Powers:* Subject to the above provisions, the Inspector-cum-Facilitator may—
  (a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe is a worker of the establishment;
  (b) require any person to give any information, which is in his power to give, with respect to the names and addresses of the persons;
  (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
  (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
  (e) exercise such other powers as may be prescribed.
- *Obligation to comply with orders of the Inspector-cum-Facilitator:* Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the *Indian Penal Code*.
- *Application of provisions of CrPC:* The provisions of the *Code of Criminal Procedure, 1973* shall, so far as may be, apply to the search or seizure under the section as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

Offences by Companies

Section 55 lays the framework for corporate liability under the Code as follows:-

- Who is liable in case of offence committed by a company under the Code:
  - If the person committing an offence under this Code is a company, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of business of the company, as well as the company itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
  - *Defence for officer in charge:* It is provided that the above provision shall not render any such person liable to any punishment if he proves that
    - the offence was committed without his knowledge or
    - he exercised all due diligence to prevent the commission of such offence.

  Liability for connivance, consent or negligence in committing an offence: In addition to general liability of officer in charge, the director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly-
  - where an offence under this Code has been committed by a company and
  - it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, such director, manager, secretary or other officer of the company.

Explanation.— For the purposes of this section—

(a) "company" means any body corporate and includes—

(i) a firm; or

(ii) a limited liability partnership registered under the *Limited Liability Partnership Act, 2008*; or

(iii) other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Composition of Offences

Section 56 of the Code provides for the composition of offences as follows:-

- *Requisites of compounding of offence under the Code*:
  - Notwithstanding anything contained in the *Code of Criminal Procedure, 1973*, an application may be made for compounding of any offence punishable under this Code, not being an offence punishable with
    - imprisonment only, or
    - with imprisonment and also with fine
  - For such compounding of offence, the accused person shall file an application either before or after the institution of any prosecution, to a Gazetted Officer, as the appropriate Government may, by notification, specify.
  - Such offences may be compounded by a Gazetted Officer for a sum of fifty per cent of the maximum fine provided for such offence, in the manner as may be prescribed.
- *Compounding not permissible:* Nothing contained above shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—

(i) of commission of a similar offence which was earlier compounded;

(ii) of commission of similar offence for which such person was earlier convicted.

- *Exercise of compounding power:* Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.
- *Application for compounding:* Every application for the compounding of an offence shall be made in such manner as may be prescribed.
- *Consequences after compounding of offence:*
  - Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
  - Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred above in writing, to the notice of the court in which the prosecution is pending; and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
- *Punishment for failure to comply with order of officer:* Any person who fails to comply with an order made by the officer under the section shall be punishable with a sum equivalent to twenty per cent of the maximum fine provided for the offence, in addition to such fine.

- *Offence under the code to be compounded only in accordance with above provisions:* No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.

LESSON ROUND-UP

- The Code on Wages, 2019 consolidates and rationalises laws relating to wages, minimum wages, payment of wages, and bonus, with the objective of ensuring fair remuneration and timely payment to employees across India .
- It applies uniformly to all employments, whether in the organised or unorganised sector, subject to specified exclusions.
- The Code defines key terms such as wages, employee, employer, worker, and establishment, and introduces a uniform definition of "wages" to prevent artificial splitting of salary structures.
- It mandates equal wages for men and women for the same or similar work and prohibits gender-based discrimination in recruitment and service conditions.
- The appropriate Government is empowered to fix and revise minimum wages based on skill levels, geographical areas, and working conditions.
- The Central Government may notify a floor wage, below which no minimum wage can be fixed by States.
- Employers are required to pay wages at least at the notified minimum rates and within prescribed time limits.
- The Code regulates permissible deductions from wages and places a cap on the total quantum of deductions.
- It provides detailed provisions on working hours, rest days, and payment of overtime at enhanced rates.
- The Code lays down a comprehensive framework for payment of statutory bonus, including eligibility, minimum and maximum limits, and computation based on allocable surplus.
- Special provisions exist for newly established undertakings and public sector establishments.
- Central and State Advisory Boards are constituted to advise governments on wage-related matters and employment of women.
- An Inspector-cum-Facilitator mechanism is introduced to ensure compliance through facilitation rather than only enforcement.
- The Code provides a clear claims, recovery, and appellate mechanism for employees to enforce their rights.
- Overall, the Code seeks to promote transparency, uniformity, and social justice in wage regulation across India.

GLOSSARY

1. **Accounting Year:** The year commencing on the 1st day of April.
2. **Company:** A company as defined in clause (20) of section 2 of the Companies Act, 2013.
3. **Establishment:** Any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment.
4. **Factory:** A factory as defined in clause (m) of section 2 of the Factories Act, 1948.
5. **Government Establishment:** Any office or department of the Government or a local authority.
6. **Inspector-cum-Facilitator:** A person appointed by the appropriate Government under sub-section (1) of section 51.
7. **Tribunal:** Shall have the same meaning as assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947.

SELF-TEST QUESTIONS

1. Explain the appellate mechanism provided under Section 49 of the Code.
2. Discuss the compounding mechanism under Section 56. How does it promote efficiency in enforcement while restricting habitual offenders?
3. Critically examine the definition of "employee" under the Code. How does its inclusive nature affect coverage of different categories of workers?
4. Analyse the definition of "wages" under the Code. What components are included and excluded, and how does this definition impact calculation of entitlements?
5. Explain the statutory duties imposed on employers under the Code to ensure the safety, health, and working conditions of employees. How do these obligations reflect the principle of "safe workplace as a fundamental right"

Code on Social Security, 2020

Lesson 19

KEY CONCEPTS

■ Employees' Provident Fund (EPF) ■ Employees' State Insurance (ESI) ■ Gratuity ■ Maternity Benefit ■ Social security for unorganised workers ■ Social security for gig and platform workers ■ Cess and welfare funds for specific sectors

Learning Objectives

To understand:

- Understand the Objective and Need for the Code
- Grasp the Structure and Scope of the Code
- Apply Key Definitions Accurately
- Understand Coverage and Applicability
- Explain Major Social Security Schemes
- Understand Registration & Compliance Processes
- Analyze the Powers and Functions of Authorities
- Interpret Finance, Audit & Accounting Provisions
- Evaluate Enforcement, Recovery & Penalty Provisions

Lesson Outline

- Chapter I – Preliminary
- Chapter II – Registration
- Chapter III – Employees' Provident Fund
- Chapter IV – Employees State Insurance Corporation
- Chapter V – Gratuity
- Chapter VI – Maternity Benefit
- Chapter VII – Employee Compensation
- Chapter VIII – Unorganised Workers, Gig And Platform Workers
- Chapter IX – Social Security Funds
- Chapter X – Finance, Accounts & Audit
- Chapter XI – Authorities, Assessment, Compliance
- Chapter XII- Offences And Penalties
- Chapter XIV- Miscellaneous

INTRODUCTION

The Code on Social Security incorporates existing nine Social Security Acts viz; *The Employee's Compensation Act, 1923; The Employees' State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; The Maternity Benefit Act, 1961; The Payment of Gratuity Act, 1972; The Cine-Workers Welfare Fund Act, 1981; The Building and Other Construction Workers' Welfare Cess Act, 1996 and; The Unorganised Workers' Social Security Act, 2008*. The Code extends social security to all workers- including unorganized, gig, and platform workers- covering life, health, maternity, and provident fund benefits, while introducing digital systems and facilitator-based compliance for greater efficiency. The Code on Social Security, 2020 represents a significant reform in India's labour welfare framework, aimed at ensuring comprehensive and inclusive social protection for all sections of the workforce.

Salient Features of Social Security Code

Expanded ESIC (Employees' State Insurance) Coverage: ESIC now applies pan-India, eliminating the criteria of "notified areas." Establishments with fewer than 10 employees may voluntarily opt in with mutual consent of employers and employees. Coverage would be mandated for hazardous occupation and extended to plantation workers.

Time-bound EPF (Employees' Provident Fund) Inquiries: A five-year limit has been set for initiating EPF inquiries and recovery proceedings, to be completed within two years (extendable by one). Suo-moto reopening of cases has been abolished, ensuring timely resolution.

Reduced EPF Appeal Deposit: Employers appealing EPFO orders now need to deposit only 25% of the assessed amount (down from 40–70%), reducing financial burden and ensuring ease of business and access to justice.

Self-assessment for Construction Cess: Employers can now self-assess cess liabilities in respect to Building and Other Construction Work, previously assessed by the notified Government authority. It reduces procedural delays and official intervention.

Inclusion of Gig and Platform Workers: New definitions are included- "aggregator," "gig worker," and "platform worker" to enable social security coverage. Aggregators to contribute 1- 2% of annual turnover (capped at 5% of payments to such workers).

Social Security Fund: A dedicated fund to finance schemes for unorganised, gig, and platform workers, covering life, disability, health, and old-age benefits has been proposed. The amount collected through the compounding of offences will be credited to this Fund and used by the Government.

Expanded Definition of Dependents: Coverage extended to maternal grandparents and in case of female employees it also includes dependent parents-in-law, broadening family benefit access.

Uniform Definition of Wages: "Wages" now include basic pay, dearness allowance, and retaining allowance; 50% of the total remuneration (or such percentage as may be notified) shall be added back to compute wages, ensuring consistency in calculating gratuity, pension, and social security benefits.

Commuting Accidents Covered: Accidents during travel between home and workplace are now deemed employment-related, qualifying for compensation.

Gratuity for Fixed-Term Employees: Fixed-term employees become eligible for gratuity after one year of continuous service (earlier five years).

Inspector-cum-Facilitator System: Introduces randomized web-based, algorithm-driven inspections for transparency and wider compliance. Inspectors now act as facilitators to support adherence and reduce harassment.

Decriminalization & Monetary Fines: The code has replaced imprisonment with monetary fines for certain offences. The employer will be given mandatory 30 days' notice for compliance before taking any legal action.

Compounding of Offences: First-time offences punishable with fines are compoundable- for fine-only: 50% of maximum fine and for fine/imprisonment cases: 75% of maximum fine- reducing litigation and improving ease of doing business.

Digitization of Compliance: Mandates electronic maintenance of records, registers, and returns, cutting costs and improving efficiency.

Vacancy Reporting: Employers shall report vacancies to specified career centres before recruitment, promoting transparency in employment opportunities

Preamble

An Act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised or unorganised or any other sectors and for matters connected therewith or incidental thereto.

Preliminary

Section 1(3) states that the Code on Social Security shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

The Central Government vide its notification dated **21 November 2025** notified the commencement of:

- Sections 1 to 14
- Sections 15 (1) & (2)
- Section 16(1)(c)
- Sections 17 to 141
- Section 143 (with exception)
- Sections 144 to 163
- Specified parts of Section 164

According to the Section 1(4) of the Code the applicability of the Chapters specified in columns (1) and (2) of the First Schedule mentioned below shall, without prejudice to the applicability of the other provisions of this Code, be such as is specified in corresponding entry in column (3) of that Schedule.

The First Schedule [See sections 1(4), (8) and 152 (1)]

Applicability

Chapter No.	Chapter Heading	Applicability
(1)	(2)	(3)
III	Employees' Provident Fund	Every establishment in which twenty or more employees are employed.

Chapter No.	Chapter Heading	Applicability
(1)	(2)	(3)
IV	Employees' State Insurance	Every establishment in which ten or more persons are Corporation employed other than a seasonal factory: Provided that Chapter IV shall also be applicable to an establishment, which carries on such hazardous or life-threatening occupation as notified by the Central Government, in which even a single employee is employed: Provided further that an employer of a plantation, may opt the application of Chapter IV in respect of the plantation by giving willingness to the corporation, where the benefits available to the employees under that Chapter are better than what the employer is providing to them: Provided also that the contribution from the employers and employees of an establishment shall be payable under section 29 on and from the date on which any benefits under Chapter IV relating to the Employees State Insurance Corporation are provided by the Corporation to the employees of the establishment and such date shall be notified by the Central Government.
V	Gratuity	(a) every factory, mine, oilfield, plantation, port and railway company; and (b) every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time.
VI	Maternity Benefit	(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and (b) to every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government.
VII	Employee's Compensation	Subject to the provisions of the Second Schedule, it applies to the employers and employees to whom Chapter IV does not apply.
VIII	Social Security and Cess in respect of Building and Other Construction Workers	Every establishment which falls under the building and other construction work.

Chapter No.	Chapter Heading	Applicability
(1)	(2)	(3)
IX	Social Security for Unorganised Workers'	Unorganised sector, unorganised workers', gig worker, platform worker.
XIII	Employment Information and Monitoring	Career centres, vacancies, persons seeking services of career centres and employers.

Section 1(5) provides that notwithstanding anything contained in sub-section (4), where it appears to the Central Provident Fund Commissioner, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter III (Employees' Provident Fund) should be made applicable to that establishment, the Central Provident Fund Commissioner, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement.

It may be noted that where the employer of an establishment to which the provisions of Chapter III(Employees' Provident Fund) applied under this sub-section desires to come out of such applicability, he may make an application to the Central Provident Fund Commissioner and the Central Provident Fund Commissioner shall, if satisfied that there is an agreement between the employer and majority of the employees to this effect, make the provisions of that Chapter inapplicable to such establishment, in such manner and subject to such conditions as may be prescribed by the Central Government.

Section 1(6) states that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification, apply the provisions of this Code to any establishment employing not less than such number of persons as may be specified in the notification.

According to Section 1(7) of the Code notwithstanding anything contained in sub-section (4), where it appears to the Director General of the Corporation, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter IV (Employees' State Insurance) should be made applicable to that establishment, the Director General of the Corporation, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement: Provided that where the employer of an establishment to which the provisions of Chapter IV(Employees' State Insurance) applied under this sub-section desires to come out of such applicability, he may make an application to the Director General of the Corporation and Director General of the Corporation shall, if satisfied that there is an agreement between the employer and majority of the employees to this effect, make the provisions of that Chapter inapplicable to such establishment, in such manner and subject to such conditions as may be prescribed by the Central Government.

Section 1(8) of the Code states that notwithstanding anything contained in sub-section (4), an establishment to which any Chapter of the Code on Social Security applies at the first instance shall continue to be applied thereafter even if the number of employees therein at any subsequent time falls below the threshold specified in the First Schedule in respect of that Chapter.

Key Definitions

According to Section 2 (1) of the Code ***"Agent"*** when used in relation to an establishment, means every person, whether appointed as such or not, who acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of such establishment or part thereof.

Section 2(2) defines ***Aggregator*** as a digital intermediary or platform that connects customers with service providers working independently.

Examples: Uber, Ola, Zomato, Swiggy, Urban Company.

Section 2(3) defines "***Appropriate Government***" as

(a) in relation to, an establishment carried on by or under the authority of the Central Government or concerning any such controlled industry as may be specified by notification in this behalf, by the Central Government or the establishment of railways including metro railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or the central public sector undertaking or subsidiary companies set up by the central public sector undertakings, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies or any company in which not less than fiftyone per cent. of the paid up share capital is held by the Central Government, as the case may be, or in relation to an establishment having departments or branches in more than one State, as the case may be, the Central Government; and

(b) in relation to any other establishment, the State Government.

Explanation 1.–For the purposes of this clause, the expression "metro railway" means the metro railway as defined in sub-clause (*i*) of clause (*1*) of section 2 of the Metro Railways (Operation and Maintenance) Act, 2002.

Explanation 2.–For the purposes of this clause, the Central Government shall continue to be the appropriate Government for the central public sector undertakings even if the holding of the Central Government reduces to less than fifty per cent. equity in that public sector undertaking after the commencement of this Code;

"Building or Other Construction Work" means the construction, alteration, repairs, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua ducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the Central Government, by notification, but does not include any building or other construction work which is related to any factory or mine or any building or other construction work employing less than ten workers in the preceding twelve months or where such work is related to own residential purposes of an individual or group of individuals for their own residence and the total cost of such work does not exceed fifty lakhs rupees or such higher amount and employing more than such number of workers as may be notified by the appropriate Government. {Section 2(6)}

"Building Worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward, whether the terms of such employment are express or implied, in connection with any building or other construction work, but does not include any such person who is employed mainly in a managerial or supervisory or administrative capacity. {Section 2(7)}

"Career Centre" means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing such career services (including registration, collection and furnishing of information, either by the keeping of registers or otherwise, manually, digitally, virtually or through any other mode) as may be prescribed by the Central Government, which may,

inter alia, relate generally or specifically to–

(i) persons who seek to employ employees;

(ii) persons who seek employment;

(iii) occurrence of vacancies; and

(iv) persons who seek vocational guidance and career counselling or guidance

to start self-employment. {Section 2(9)}

"Completed Year of Service" means continuous service for twelve months; {Section 2(17)}

"Confinement" means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead. {Section 2(18)}

"Contract Labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include an employee (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment.{Section 2(19)}

"Contractor", in relation to an establishment means a person, who–

(i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment through contract labour; or

(ii) supplies contract labour for any work of the establishment as mere human resource, and includes a sub-contractor. {Section 2(20)}

"Contribution" means the sum of money payable by the employer, under this Code, to the Central Board and to the Corporation, as the case may be, and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Code. {Section 2(21)}

"Dependant" means any of the following relatives of deceased employee, namely:–

(a) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother:

Provided that for the purposes of Chapter IV, a legitimate adopted son, who has not attained the age of twenty-five years, shall be dependant of the deceased employee;

(b) if wholly dependant on the earnings of the employee at the time of his death, a legitimate or adopted son or a daughter who has attained the age of eighteen years and who is infirm; except for the purposes of Chapter IV wherein the word "eighteen" occurring in this sub-clause shall be deemed to have been substituted by the word "twenty-five";

(c) if wholly or in part dependent on the earnings of the employee at the time of his death,–

(i) a widower;

(ii) a parent other than a widowed mother;

(iii) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor;

(iv) a minor brother or an unmarried sister or a widowed sister if a minor;

(v) a widowed daughter-in-law;

(vi) a minor child of a pre-deceased son;

(vii) a minor child of a pre-deceased daughter where no parent of the child is alive, or;

(viii) a grandparent if no parent of the employee is alive.

Explanation.–For the purposes of sub-clause (*b*) and items (*vi*) and (*vii*) of sub-clause (c), references to a son, daughter or child include an adopted son, daughter or child, respectively; {Section 2(24)}

"Employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union: Provided that for the purposes of Chapter III, except in case of the Employees' Provident Fund Scheme and Chapter IV, the term "employee" shall mean such employee drawing wages less than or equal to the wage ceiling notified by the Central Government and includes such other persons or class of persons as the Central Government may by notification, specify to be employee, for the purposes of those Chapters:

Provided further that for the purposes of counting of employees for the coverage of an establishment under Chapter III and Chapter IV, as the case may be, the employees, whose wages are more than the wage ceiling so notified by the Central Government, shall also be taken into account:

Provided also that for the purposes of Chapter VII, the term "employee" shall mean only such persons as specified in the Second Schedule and such other persons or class of persons as the Central Government, or as the case may be, the State Government may add to the said Schedule, by notification, for the purposes of that Government. {Section 2(26)}

Section 2(27) of the Code defines ***"Employer"*** means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority is so specified, the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,–

(a) in relation to an establishment which is a factory, the occupier of the factory;

(b) in relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine as such;

(c) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;

(d) contractor; and

(e) legal representative of a deceased employer;

Section 2 (28) states that "***Employment Injury***" means a personal injury to an employee, caused by accident or an occupational disease, as the case may be, arising out of and in the course of his employment, –

(i) for the purposes of Chapter IV, if the employee is an insured or insurable employee under section 28 whether such accident occurs or the occupational disease is contracted within or outside the territorial limits of India; and

(ii) for the purposes of Chapter VII, whether such accident occurs or the occupational disease is contracted within or outside the territorial limits of India;

Section 2 (29) refers to ***"Establishment"*** as–

(a) a place where any industry, trade, business, manufacture or occupation is carried on; or

(b) a factory, motor transport undertaking, newspaper establishment, audiovisual production, building and other construction work or plantation; or

(c) a mine, port or vicinity of port where dock work is carried out.

Explanation.–For the purposes of Chapter III, where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment;

Section 2 (30) defines ***"Executive Officer"*** means such officer of the appropriate Government as may be notified by that Government for the purposes of Chapter XIII or an officer authorised in writing by such executive officer to discharge his duties under that Chapter;

Section 2 (31) defines ***"Exempted Employee"*** for the purposes of Chapter III, means an employee to whom any of the schemes referred to in section 15, but for the exemption granted under this Code, would have applied and for the purposes of Chapter IV, means an employee, whose wage is specified in the notification by the Central Government and who is not liable to pay employee's contribution;

As per Section 2 (32) of the Code, "***Factory"*** means any premises including the precincts thereof–

(a) whereon ten or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(b) whereon twenty or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine, or a mobile unit belonging to the Armed Forces of the Union, railways running shed or a hotel, restaurant or eating place.

Explanation 1.–For computing the number of employees for the purposes of this clause, all the employees in (different groups and relays) a day shall be taken into account.

Explanation 2.–For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof;

"Family" means all or any of the following relatives of an employee or an unorganised worker, as the case may be, namely: –

(a) a spouse;

(b) a minor legitimate or adopted child dependent upon the employee or an unorganised worker, as the case may be;

(c) a child who is wholly dependent on the earnings of the employee or an unorganised worker, as the case may be, and who is–

(i) receiving education, till he attains the age of twenty-one years; and

(ii) an unmarried daughter;

(d) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent

on the earnings of the employee or an unorganised worker, as the case may be, so long as the infirmity continues;

(e) dependent parents (including father-in-law and mother-in-law of a woman employee), whose income from all sources does not exceed such income as may be prescribed by the Central Government;

(f) in case the employee or an unorganised worker, as the case may be, is unmarried and his parents are not alive, a minor brother or sister wholly dependent upon the earnings of the Insured Person. {Section 2(33)}

"Fixed Term Employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period:

Provided that–

(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and

(b) he shall be eligible for all benefits, under any law for the time being in force, available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment; {Section 2(34)}

"Gig Worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship. {Section 2(35)}

"Home-Based Worker" means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs. {Section 2(35)}

"Inter-State Migrant Worker" means a person who is employed in an establishment and who–

(i) has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State; or

(ii) has come on his own from one State and obtained employment in an establishment of another State (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and drawing wages not exceeding eighteen thousand rupees per month or such higher amount as may be notified by the Central Government from time to time; {Section 2(41)}

"Manufacturing Process" means any process for–

(i) making, altering, repairing, ornamenting, finishing, oiling, washing, cleaning, breaking up, demolishing, refining, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing, offset printing, printing by letter press, lithography, photogravure screen printing, three or four dimensional printing, prototyping, flexography or other types of printing process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage; or

(vii) such other activities as the Central Government may notify. {Section 2(42)}

"Occupier" in respect of a factory means the person who has ultimate control over the affairs of the factory:

Provided that–

(a) in the case of a firm or other association of individuals, any one of the individual partners or members thereof;

(b) in the case of a company, any one of the directors, except any independent director within the meaning of sub-section (6) of section 149 of the Companies Act, 2013;

(c) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority or such other authority as may be prescribed by the Central Government, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier for all purposes except the matters as may be prescribed by the Central Government which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier. {Section 2(52)}

"Organised Sector" means an enterprise which is not an unorganised sector. {Section 2(54)}

"Permanent Partial Disablement" means, where the disablement is of a permanent nature, such disablement as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement: Provided that every injury specified in Part II of the Fourth Schedule shall be deemed to result in permanent partial disablement. {Section 2(55)}

"Permanent Total Disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement: Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of the Fourth Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. {Section 2(56)}

"Pension Fund" means the Pension Fund established under clause (b) of sub-section (1) of section 16. {Section 2(57)}

"Pension Scheme" means the Employees' Pension Scheme framed under clause (b) of sub-section (1) of section 15. {Section 2(58)}

"Platform Work" means a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment. {Section 2(60)}

"Platform Worker" means a person engaged in or undertaking platform work. {Section 2(61)}

"Seasonal Factory " means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of ground-nuts, the manufacture of indigo, lac, sugar (including gur) or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year in a manufacturing process as the Central Government may, by notification, specify. {Section 2(74)}

"Self-Employed Worker" means any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government, as the case may be, from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government. {Section 2(75)}

"Shop" in respect of a State, means a shop as defined in any law for the time being in force dealing with the shop in that State. {Section 2(76)}

"Sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical ground. {Section 2(77)}

"Social Security" means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code. {Section 2(78)}

"Social Security Organisation" means any of the following organisations established under this Code, namely:–

(a) the Central Board of Trustees of Employees' Provident Fund constituted under section 4;

(b) the Employees' State Insurance Corporation constituted under section 5;

(c) the National Social Security Board for Unorganised Workers constituted under section 6;

(d) the State Unorganised Workers' Social Security Board constituted under section 6;

(e) the State Building and other Construction Workers' Welfare Boards constituted under section 7; and

(f) any other organisation or special purpose vehicle declared to be the social security organisation by the Central Government. {Section 2(79)}

"Superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service, as the age on the attainment of which the employee shall vacate the employment: Provided that for the purposes of Chapter III, the age of superannuation shall be fifty-eight years. {Section 2(82)}

"Temporary Disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury. {Section 2(83)}

"Unorganised Sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten. {Section 2(85)}

"Unorganised Worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code. {Section 2(86)}

"Wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,–

(a) basic pay;

(b) dearness allowance; and

(c) retaining allowance, if any,

but does not include–

(a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

(b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(d) any conveyance allowance or the value of any travelling concession;

(e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(f) house rent allowance;

(g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

(h) any overtime allowance;

(i) any commission payable to the employee;

(j) any gratuity payable on the termination of employment;

(k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment, under any law for the time being in force:

Provided that for calculating the wages under this clause, if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in sub-clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation. –Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee. {Section 2(88)}

"Wage Worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government, as the case may be. {Section 2(90)}

Registration and Cancellation of an Establishment (Section 3)

Every establishment to which this Code applies shall be **electronically or otherwise**, registered within such time and in such manner as may be prescribed by the Central Government.

It may be noted that the establishment which is already registered under any other Central labour law for the time being in force shall not be required to obtain registration again under this Code and such registration shall be deemed to be registration for the purposes of this Code:

Any establishment to which Chapter III or Chapter IV applies, and whose business activities are in the process of closure, may make an application for cancellation of registration granted under this section.

The manner of making application for cancellation of the registration, the conditions subject to which the registration shall be cancelled and the procedure of cancellation and other matters relating thereto, shall be such as may be prescribed by the Central Government.

CHAPTER II - SOCIAL SECURITY ORGANISATIONS

Constitution of Board of Trustees of Employees' Provident Fund (Section 4)

(*1*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Board of Trustees of the Employees' Provident Fund to be called the Central Board, for the purposes of Chapter III and the provisions of this Code relating to that Chapter, for the administration of the funds vested in it in such manner as may be prescribed by the Central Government, consisting of the following members, namely: –

(*a*) a Chairperson and a Vice-Chairperson to be appointed by the Central Government;

(*b*) not more than five persons appointed by the Central Government from amongst its officials;

(*c*) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, to be appointed by the Central Government;

(*d*) ten persons representing employers of the establishments to which the schemes referred to in sub section (*1*) of section 15 applies, to be appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf;

(*e*) ten persons representing employees in the establishments to which schemes referred to in sub-section (*1*) of section 15 applies, who shall be appointed by the Central Government after consultation with such organisations of employees as may be recognised by that Government in this behalf; and

(*f*) the Central Provident Fund Commissioner, *ex officio*.

(*2*) The Central Board shall be a body corporate by the name of Board of Trustees of the Employees' Provident Fund, having perpetual succession and a common seal and shall by the said name sue and be sued.

(*3*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Executive Committee from amongst the members of the Central Board to assist the Central Board in performance of its functions in such manner as may be prescribed by the Central Government.

(*4*) The Central Board may, by order, constitute one or more committees of such composition as may be specified in the order to assist it in the discharge of its functions.

(*5*) The Central Board may, by order, delegate to its Chairperson or to its Executive Committee or to any of its officers and a State Board constituted under section 12 may, by order, delegate to its Chairperson or to any of its officers, subject to such conditions and limitations, if any, as it may specify in such order, such of its powers and functions under this Code as it may deem necessary for efficient administration of the schemes referred to in sub-section (*1*) of section 15.

(*6*) The terms and conditions, including tenure of office, subject to which a member of the Central Board and Executive Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Central Board shall, notwithstanding the expiry of the tenure of his office, continue to hold office until his successor is appointed.

(*7*) The Central Board, apart from the functions specified in this Code, shall also perform such other functions in such manner as may be prescribed by the Central Government.

Constitution of Employees' State Insurance Corporation (Section 5)

(*1*) The Central Government may, by notification, constitute with effect from such date as may be specified therein, the Employees' State Insurance Corporation to be called the Corporation, for the purposes of Chapter IV and the provisions of this Code relating to that Chapter and the administration thereof, in such manner as may be prescribed by the Central Government, consisting of the following members, namely: –

(a) a chairperson to be appointed by the Central Government;

(b) a Vice-Chairperson to be appointed by the Central Government;

(c) not more than five persons to be appointed by the Central Government from amongst its officials;

(d) one person representing each of such States in such manner, as may be prescribed by the Central Government;

(e) one person to be appointed by the Central Government to represent the Union territories;

(f) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be

(g) recognised for the purpose by the Central Government; ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government;

(h) two persons representing the medical profession to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government;

(i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and

(j) the Director General of the Corporation, *ex officio.*

(2) The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation, having perpetual succession and a common seal and shall by the said name sue and be sued.

(*3*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Standing Committee from amongst the members of the Corporation, in such manner as may be prescribed by the Central Government.

(*4*) Subject to the general superintendence and control of the Corporation, the Standing Committee–

(a) shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation in such manner as may be prescribed by the Central Government;

(b) shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf; and

(c) may, in its discretion, submit any other case or matter for the decision of the Corporation.

(*5*) (a) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Medical Benefit Committee of such composition as may be specified therein, to assist the Corporation and the Standing Committee in performance of its functions relating to administration of medical benefits.

(b) the Medical Benefit Committee shall perform such duties and exercise such powers as may be prescribed by the Central Government.

(*6*) The Corporation may, by order, constitute one or more committees of such composition as may be specified in the regulations to assist it in the discharge of its functions.

(*7*) The terms and conditions, including tenure of office, subject to which a member of the Corporation and Standing Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Corporation shall, notwithstanding the expiry of the tenure of his office, continue to hold office until his successor is appointed.

National Social Security Board and State Unorganised Workers' Board (Section 6)

(*1*) The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers to exercise the powers conferred on, and to perform the functions assigned to, it under this Code, in such manner as may be prescribed by the Central Government.

(*2*) The National Social Security Board shall consist of the following members, namely:–

(*a*) Union Minister for Labour and Employment as Chairperson;

(*b*) Secretary, Ministry of Labour and Employment as Vice-Chairperson;

(*c*) forty members to be nominated by the Central Government, out of whom–

(*i*) seven members representing unorganised sector workers;

(*ii*) seven members representing employers of unorganised sector;

(*iii*) seven members representing eminent persons from civil society;

(*iv*) two members representing the Lok Sabha and one from the Rajya Sabha;

(*v*) ten members representing Central Government Ministries and Departments concerned;

(*vi*) five members representing State Governments;

(*vii*) one member representing the Union territories; and

(*d*) the Director General Labour Welfare, as Member-Secretary, *ex officio*.

(*3*) All members except Chairperson of the National Social Security Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(*4*) The manner in which members shall be nominated from each of the categories specified in clause (*c*) of sub-section (*2*), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Social Security Board shall be such as may be prescribed by the Central Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(*5*) The term of the National Social Security Board shall be three years.

(*6*) The National Social Security Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the Central Government.

(*7*) The National Social Security Board shall perform the following functions, namely: –

(*a*) recommend to the Central Government for framing suitable schemes for different sections of unorganised workers, gig workers and platform workers;

(*b*) advise the Central Government on such matters arising out of the administration of this Code as may be referred to it;

(*c*) monitor such social welfare schemes for unorganised workers, gig workers and platform workers as are administered by the Central Government;

(*d*) review the record keeping functions performed at the State level;

(*e*) review the expenditure from the fund and account; and

(*f*) undertake such other functions as are assigned to it by the Central Government from time to time.

(*8*) The Central Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the Central Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the Central Government may refer to it for advice.

(*9*) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) Unorganised Workers' Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Code, in such manner as may be prescribed by the State Government.

(*10*) Every State Unorganised Workers' Board shall consist of the following members, namely: –

(*a*) Minister of Labour and Employment of the concerned State as Chairperson, *ex officio;*

(*b*) Principal Secretary or Secretary (Labour) as Vice-Chairperson;

(*c*) one member representing the Central Government in the Ministry of Labour and Employment;

(*d*) thirty-one members to be nominated by the State Government, out of whom–

(*i*) seven representing the unorganised workers;

(*ii*) seven representing employers of unorganised workers;

(*iii*) two members representing the Legislative Assembly of the concerned State;

(*iv*) five members representing eminent persons from civil society;

(*v*) ten members representing the State Government Departments concerned; and

(*e*) Member-Secretary as notified by the State Government.

(11) All members except Chairperson of the State Unorganised Workers' Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(*12*) The manner in which members shall be nominated from each of the categories specified in clause (*d*) of sub-section (*10*), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board shall be such as may be prescribed by the State Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(*13*) The term of the State Unorganised Workers' Board shall be three years.

(*14*) The State Unorganised Workers' Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the State Government.

(*15*) The State Board shall perform the following functions, namely: –

(*a*) recommend the State Government for framing suitable schemes for different sections of the unorganised sector workers;

(*b*) advise the State Government on such matters arising out of the administration of this Code as may be referred to it;

(*c*) monitor such social welfare schemes for unorganised workers as are administered by the State Government;

(*d*) review the record keeping functions performed at the district level;

(*e*) review the progress of registration and issue of cards to unorganised sector workers;

(*f*) review the expenditure from the funds under various schemes; and

(*g*) undertake such other functions as are assigned to it by the State Government from time to time.

(*16*) The State Government may, by notification, constitute with effect from such date as may be specified therein, one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the State Government may refer to it for advice.

Constitution of State Building Workers' Welfare Boards (Section 7)

(*1*) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the.....(name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this section and Chapter VIII.

(*2*) The Building Workers' Welfare Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(*3*) The Building Workers' Welfare Board shall consist of a chairperson to be nominated by the State Government, one member to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Building Workers' Welfare Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(*4*) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Building Workers' Welfare Board, and the manner of filling of casual vacancies of the members of the Building Workers' Welfare Board, shall be such as may be prescribed by the State Government.

(*5*) (*a*) The Building Workers' Welfare Board shall appoint a Secretary and such officers and employees as it considers necessary for the efficient discharge of its functions under this Code.

(*b*) The Secretary of the Building Workers' Welfare Board shall be its chief executive officer.

(*c*) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Building Workers' Welfare Board shall be such as may be prescribed by the State Government.

(*6*) The Building Workers' Welfare Board shall perform the following functions, namely: –

(*a*) provide death and disability benefits to a beneficiary or his dependants;

(*b*) make payment of pension to the beneficiaries who have completed the age of sixty years;

(*c*) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;

(*d*) frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;

(*e*) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed by the appropriate Government;

(*f*) make payment of maternity benefit to the beneficiaries;

(*g*) frame skill development and awareness schemes for the beneficiaries;

(*h*) provide transit accommodation or hostel facility to the beneficiaries;

(*i*) formulation of any other welfare scheme for the building worker beneficiaries by State Government in concurrence with the Central Government; and

(*j*) make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.

(*7*) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to building workers and such other matters as the State Government may refer to it for advice.

Disqualification and removal of a member of any Social Security Organisation (Section 8)

(*1*) No person shall be chosen as, or continue to be, a member of a Social Security Organisation, or any Committee thereof who, –

(*a*) is or at any time has been adjudged an insolvent; or

(*b*) is found to be a lunatic or becomes of unsound mind; or

(*c*) is or has been convicted of any offence involving moral turpitude; or

(*d*) is an employer in an establishment and has defaulted in the payment of any dues under this Code;

(*e*) is a member of a Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, when he ceases to be such member of the Parliament or State Legislative Assembly, as the case may be; or

(*f*) is a member of Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, and he becomes a–

(*i*) Minister of Central or State Government; or

(*ii*) Speaker or Deputy Speaker of House of the People or a State Legislative Assembly; or

(*iii*) Deputy Chairman of the Council of States.

Explanation 1. –If any question arises whether any person is disqualified under clause (*d*), it shall be referred to the appropriate Government and the decision of the appropriate Government on any such question shall be final.

Explanation 2. – Clause (*f*) shall not apply in case of persons who are members of the Social Security Organisation *ex officio*, by virtue of being a Minister.

(*2*) The Central Government, in case of the Central Board, the Corporation and the National Social Security Board and the State Government in case of the State Unorganised Workers' Board and the Building Workers' Welfare Board, may remove any member of such Social Security Organisation from his office, who, –

(*a*) is or has become subject to any of the disqualifications mentioned in sub-section (*1*); or

(*b*) is absent without leave of the Social Security Organisation of which he is a member for more than three consecutive meetings of the Social Security Organisation or a Committee thereof;

(*c*) in the opinion of such Government, has so abused the position of his office as to render that member's continuation in the office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such member in the opinion of such Government:

Provided that no person shall be removed under clauses (*b*) and (*c*), unless that person has been given an opportunity to show cause as to why he should not be removed:

Provided further that a member of the Executive Committee of the Central Board or the Standing Committee of the Corporation shall cease to hold office if he ceases to be a member of the Central Board or the Corporation, as the case may be.

(*3*) Any member of a Social Security Organisation or a Committee thereof may at any time resign from his office in writing under his hand addressed to the Central Government or the State Government, as the case may be, which had made his appointment and on acceptance of such resignation, his office shall become vacant.

(*4*) If in a Social Security Organisation or a Committee thereof, the Central Government or the State Government, as the case may be, is of the opinion that–

(*a*) any member thereof representing employers or the employees or the unorganised workers, as the case may be, ceases to adequately represent so; or

(*b*) any member thereof representing to be an expert in a specified area, is later on found not to possess sufficient expertise in that area; or

(*c*) having regard to exigencies of circumstances or services in such Government, the member thereof representing such Government cannot continue to represent the Government, then, such Government may, by order, remove such member from his office:

Provided that no person shall be removed under clause (*a*) or clause (*b*), unless that person has been given an opportunity to show cause as to why he should not be removed.

(*5*) If any member of a Social Security Organisation or a Committee thereof, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration of the Social Security Organisation or a Committee thereof, then, he shall, as soon as may be possible after such fact of interest has come to his knowledge, disclose the nature of the interest and such disclosure shall be recorded in the proceedings of the Social Security Organisation or the Committee thereof, as the case may be, and such member, thereafter, shall not take part in any proceeding or decision of the Social Security Organisation, or a Committee thereof relating to that matter.

Procedure for transaction of business of Social Security Organisation (Section 9)

(1) A Social Security Organisation or any Committee thereof shall meet at such intervals and observe such procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed by the Central Government.

(*2*) All orders and decisions of the Social Security Organisation shall be authenticated by the Central Provident Fund Commissioner, Director General, Director General Labour Welfare, State Principal Secretary or Secretary

(Labour) of the respective Social Security Organisations or such other officer as may be notified by the appropriate Government and all other instruments issued by the Social Security Organisation shall be authenticated by the signature of such officer as may be authorised by an order by the respective Social Security Organisations.

(*3*) No act done or proceeding taken by a Social Security Organisation or any Committee thereof shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Social Security Organisation or the Committee thereof, as the case may be.

(*4*) Such members of a Social Security Organisation or any Committee thereof shall be entitled for such fee and allowances as may be prescribed by the Central Government

Executive Heads of Central Board and Corporation (Section 10)

The Central Provident Fund Commissioner and the Director General shall be the whole-time officer of the Central Board and the Corporation, respectively, and such officer shall not undertake any work unconnected with his office without the prior approval of the Central Government.

Supersession of Corporation, Central Board, National Social Security Board or State Unorganised Workers' Board or the Building Workers' Welfare Board (Section 11)

(*1*) If the Central Government in case of the Central Board, the Corporation or the National Social Security Board and the State Government, in case of the State Unorganised Workers' Board or the Building Workers' Welfare Board, is of the opinion that the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board or any of the Committee thereof, as the case may be, is unable to perform its functions, or, has persistently made delay in the discharge of its functions or has exceeded or abused its powers or jurisdiction, then such Government may, by notification, supersede the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board, or any of the Committees thereof, as the case may be, and reconstitute it in such manner as may be prescribed by the Central Government:

Provided that, before issuing a notification under this sub-section on any of the grounds specified herein, such Government shall give an opportunity to the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers' Board or the Building Workers' Welfare Board or any Committee thereof, as the case may be, to show cause as to why it should not be superseded and shall consider the explanations and objections raised by it and take appropriate action thereon.

(*2*) After the supersession of the Corporation, or the Central Board or the National Social Security Board, the State Unorganised Workers' Board or the Building Workers' Welfare Board, or any of the Committee thereof, as the case may be, and until it is reconstituted, the Central Government or the State Government, as the case may be, shall make such alternate arrangements for the purpose of administration of the relevant provisions of this Code, as may be prescribed by the Central Government.

(*3*) The Central Government or the State Government, as the case may be, shall cause, a full report of any action taken by it under this section and the circumstances leading to such action, to be laid before each House of Parliament or the State Legislature, as the case may be, at the earliest opportunity and in any case not later than three months from the date of the notification of supersession issued under sub-section (*1*).

CHAPTER III: EMPLOYEES' PROVIDENT FUND

Appointment of Officers of Central Board (Section 14)

(1) The Central Government may appoint a Central Provident Fund Commissioner who shall be the Chief Executive Officer of the Central Board and shall also function as head of the Employees' Provident Fund Organisation.

Explanation: –For the purposes of this Code, the expression "Employees' Provident Fund Organisation" means the organisation consisting of officers and employees of the Central Board.

(2) The Central Provident Fund Commissioner shall be subject to the general control and superintendence of the Central Board in the discharge of his functions under this Code.

(3) The Central Government shall also appoint a Financial Advisor and Chief Accounts Officer to assist the Central Provident Fund Commissioner in the discharge of his duties.

(4) The Central Board may appoint, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Provident Fund Scheme, the Pension Scheme and the Insurance Scheme or other responsibilities assigned to the Central Board from time to time by the Central Government.

(*5*) No appointment to the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government shall be made except after consultation with the Union Public Service Commission:

Provided that no such consultation shall be necessary in regard to any such appointment–

(*a*) for a period not exceeding one year; or

(*b*) if the person to be appointed is, at the time of his appointment, –

(*i*) a member of the Indian Administrative Service, or

(*ii*) in the service of the Central Government or the Central Board in a Group 'A' or Group 'B' post.

(*6*) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner and the Financial Adviser and Chief Accounts Officer shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Provident Fund.

(*7*) (*a*) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant

Provident Fund Commissioners and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government:

Provided further that the salary and allowances of the officers specified in this clause shall not exceed the scale of pay respectively provided in the Provident Fund Scheme.

(*b*) In determining the corresponding scales of pay of officers and employees under clause (*a*), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

Schemes (Section 15)

The Central Government may, by notification–

(*a*) frame a scheme to be called the Employees' Provident Fund Scheme for which the provident funds shall be established under this Chapter for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply;

(*b*) frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for–

(*i*) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies;

(*ii*) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees; and

(*iii*) nominee pension;

(*c*) frame a scheme to be called the Employees' Deposit Linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Chapter applies;

(*d*) frame any other scheme or schemes for the purposes of providing social security benefits under this Code to self-employed workers or any other class of persons; and

(*e*) modify any scheme referred to in clauses (*a*), (*b*), (*c*) and (*d*) by adding thereto, amending or varying therein, either prospectively or retrospectively.

(*2*) Subject to the provisions of this Chapter, the schemes referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) may provide for all or any of the matters respectively specified in Part A, Part B and Part C of the Fifth Schedule.

(*3*) The schemes may provide that all or any of its provisions shall take effect either prospectively or retrospectively on and from such date as may be specified in that behalf in the scheme.

Funds (Section 16)

(*1*) The Central Government may, for the purposes of–

(*a*) the Provident Fund Scheme, establish a Provident Fund where the contributions paid by the employer to the fund shall be ten per cent. of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent. of the wages, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification, specify, this section shall be subject to the modification that for the words "ten per cent." at both the places where they occur, the words "twelve per cent." shall be substituted:

Provided further that the Central Government, after making such inquiry as it deems fit, may, by notification, specify rates of employees' contributions and the period for which such rates shall apply for any class of employee

(*b*) the Pension Scheme, establish a Pension Fund in the manner specified in that scheme by that Government into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,–

(*i*) such sums from the employer's contribution under clause (*a*) not exceeding eight and one-third per cent. of the wages or such per cent. of wages as may be notified by the Central Government;

(*ii*) such sums payable as contribution to the Pension Fund, as may be specified in the Pension Scheme, by the employers of the exempted establishments under section 143 to which the pension scheme applies;

(*iii*) such sums as the Central Government after due appropriation by Parliament by law in this behalf, specify;

(*c*) the Insurance Scheme, establish a Deposit-Linked Insurance Fund in the manner specified in that scheme by that Government into which there shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent. of the wages or such per cent. of wages as may be notified by the Central Government for the time being payable in relation to such employee:

Provided that the employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under this clause, as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under the Insurance Scheme.

(*2*) The Provident Fund, the Pension Fund and the Insurance Fund shall vest in, and be administered by, the Central Board in such manner as may be specified in the respective schemes.

Contribution in respect of Employees and Contractors (Section 17)

(*1*) The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charge for meeting the cost of administering the fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(*2*) A contractor from whom the amounts mentioned in sub-section (*1*) may be recovered in respect of any employee employed by or through him may recover from such employee, the employee's contribution under any scheme by deduction from the wages payable to such employee.

(*3*) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (*1*) from the wages payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Fund to be recognised under Act 43 of 1961(Section 18)

For the purposes of the Income-tax Act, 1961, the Provident Fund shall be deemed to be a recognised provident fund within the meaning of clause (*38*) of section 2 of that Act:

Provided that nothing contained in the said Act shall operate to render ineffective any provision of the Provident Fund Scheme (under which the Provident Fund is established) which is repugnant to any of the provisions of that Act or of the rules made thereunder.

Priority of Payment of Contributions Over Other Debts (Section 19)

Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

Chapter III not to apply to Certain Establishments (Section 20)

(1) Chapter III shall not apply–

(*a*) to any establishment registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

(*b*) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(*c*) to any other establishment set up under any Central or State or any other law for the time being in force and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that law governing such benefits; or

(*d*) to the employees who, immediately before the commencement of this Code, were receiving benefits of Provident Fund under any Central or State enactment.

(*2*) If the Central Government is of the opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by notification and subject to such conditions, as may be specified in the notification, exempt, whether prospectively or retrospectively, that class of establishments from the operation of this Chapter for such period as may be specified in the notification.

Authorising Certain Employers to Maintain Provident Fund Accounts (Section 21)

(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment, in such manner as may be prescribed by the Central Government and subject to such terms and conditions as may be specified in the Provident Fund Scheme:

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Code during the three years immediately preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Provident Fund Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Code:

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

Transfer of accounts (Section 22)

Where an employee, –

(*a*) employed in an establishment to which this Chapter applies, relinquishes his employment therefrom and obtains employment in any other establishment to which Chapter III applies or not; or

(*b*) employed in an establishment to which this Chapter does not apply, relinquishes his employment there from and obtains employment in an establishment to which this Chapter III applies, then, his accumulated amount in provident fund account or pension account, as the case may be, shall be transferred or dealt with in the manner as may be specified in the Provident Fund Scheme or the Pension Scheme, as the case may be.

Appeal to Tribunal (Section 23)

(1) Any person aggrieved by an order passed by any authority in regard to the following matters may prefer an appeal to the Tribunal constituted by the Central Government, namely: –

(*a*) determination and assessment of dues under section 125 relating to Chapter III; and

(*b*) levy of damages under section 128 relating to Chapter III.

(*2*) Every appeal under sub-section (*1*) shall be filed in such form and manner, within such time and accompanied by such fees as may be prescribed by the Central Government.

(*3*) No appeal under clause (*a*) of sub-section (*1*) by the employer shall be entertained by the Tribunal unless he has deposited with Social Security Organisation concerned twenty-five per cent. of the amount due from him as determined by an officer under section 125.

(*4*) The Tribunal shall endeavour to decide the appeal within a period of one year from the date on which the appeal has been preferred.

CHAPTER IV-EMPLOYEES' STATE INSURANCE FUND (SECTION 25)

(*1*) All contributions and user charges paid under Chapter IV and all other moneys received on behalf of the Corporation shall be paid into a fund (hereinafter referred to as the Employees' State Insurance Fund) which shall be held and administered by the Corporation for the purposes of this Code:

Provided that the user charges collected from the other beneficiaries referred to in section 44 shall be deemed to be contribution and shall form part of Employees' State Insurance Corporation.

(*2*) The Corporation may accept grants, donations, Corporate Social Responsibility Fund and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Chapter.

(*3*) Subject to the other provisions contained in this Code and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be deposited in such bank or banks as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(*4*) The Employees State Insurance Fund or any other money which is held by the Corporation shall be deposited or invested in the manner prescribed by the Central Government and the account referred to in sub-section (*3*) shall be operated by such officers as may be authorised by the Committee constituted under sub-section (*3*) of section 5 (hereinafter referred to as the Standing Committee) with the approval of the Corporation.

Purposes for which Employees' State Insurance Fund may be Expended (Section 26)

Subject to the provisions of Chapter IV and the rules and regulations relating thereto, made under this Code, the Employees' State Insurance Fund shall be expended only for the following purposes, namely: –

(*a*) payment of benefits and provision of medical treatment and attendance to Insured Persons referred to in section 28 and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Chapter and the rules and regulations relating thereto and defraying the charges and costs in connection therewith;

(*b*) payment of fees and allowances to members of the Corporation, the Standing Committee, the Medical Benefit Committee or other Committees thereof;

(*c*) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and staff of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Code relating to this Chapter;

(*d*) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of Insured Persons referred to in section 28 and, where the medical benefit is extended to their families;

(*e*) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to Insured Persons referred to in section 28 and, where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

(*f*) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

(*g*) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Chapter;

(*h*) payment of any sums under any contract entered into for the purposes of this Code by Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;

(*i*) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or staff for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

(*j*) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Code relating to this Chapter;

(*k*) defraying expenditure, within the limits prescribed by the Central Government after consultation with the Corporation, on measures for the improvement of the health and welfare of Insured Persons and for the rehabilitation and re-employment of Insured Persons referred to in section 28 who have been disabled or injured; and

(*l*) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

All employees to be Insured (Section 28)

(1) Subject to the provisions of the Code, every employee in an establishment to which this Chapter applies shall be insured in such manner whether electronically or otherwise, as may be prescribed by the Central Government.

(2) An employee whether insured or insurable under sub-section (1) in respect of whom contributions are or were payable and who is by reason thereof, entitled to any of the benefits provided under this Chapter, shall be called "Insured Person".

Contributions (Section 29)

(*1*) The contribution payable under Chapter IV in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(*2*) The contributions (employer's contribution and the employee's contribution both) shall be paid at such rates as may be prescribed by the Central Government.

(*3*) The wage period in relation to an employee shall be the unit as specified in the regulations (hereinafter referred to as the wage period) in respect of which all contributions shall be payable under this Chapter.

(*4*) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

Provisions as to Payment of Contributions by Employer (Section 31)

(*1*) The employer shall pay in respect of every employee, whether directly employed by him or by or through a contractor, both the employer's contribution and the employee's contribution.

(*2*) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of the Code and the rules and regulations, if any, made thereunder in this behalf, the employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relates to the period or part of the period in respect of which the contribution is payable or in excess of the sum representing the employee's contribution for the period.

(*3*) Notwithstanding any contract to the contrary, neither the employer nor the contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(*4*) Any sum deducted by the employer from wages under Chapter IV shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(*5*) The employer shall bear the expenses of remitting the contributions to the Corporation.

(*6*) An employer, who has paid contribution in respect of an employee employed by or through a contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the contractor, either by deduction from any amount payable to him by the employer under any contract, or as a debt payable by the contractor.

(*7*) The contractor shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the employer before the settlement of any amount payable under sub-section (*6*).

(*8*) In the case referred to in sub-section (*6*), the contractor shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to such conditions as specified in the proviso to sub-section (*2*).

(*9*) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Chapter.

Benefits (Section 32)

Subject to the provisions of this Code, the Insured Persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely: –

(*a*) periodical payments to any Insured Person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by the regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(*b*) periodical payments to an Insured Person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(*c*) periodical payments to an Insured Person suffering from disablement as a result of an employment injury sustained by him as an employee for the purposes of this Chapter and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(*d*) periodical payments to such dependants of an Insured Person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);

(*d*) periodical payments to such dependants of an Insured Person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);

(*e*) medical treatment for and attendance on Insured Persons (hereinafter referred to as medical benefit); and

(*f*) payment to the eldest surviving member of the family of an Insured Person who has died, towards the expenditure on the funeral of the deceased Insured Person, or, where the Insured Person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased Insured Person (to be known as funeral expenses):

Provided that the amount of payment under this clause shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the Insured Person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(*2*) The Corporation may, subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an Insured Person.

(*3*) The qualification of a person to claim sickness benefit, maternity benefit, disablement benefit and dependants' benefit and the conditions subject to which such benefit may be given and the rate and period thereof, shall be such as may be prescribed by the Central Government.

(*4*) Subject to the provisions of this Code and the rules made thereunder relating to this Chapter, the Corporation may make regulations for any matter relating or incidental to the accrual and payment of benefits payable under this Chapter.

Corporation's Power to Promote Measures for Health of Insured Persons (Section 33)

The Corporation may, in addition to the benefits specified in Chapter IV, promote measures for the improvement of the health and welfare of Insured Persons and for the rehabilitation and re-employment of Insured Persons who have been disabled or injured and may incur in respect of such measures, expenditure from the Employees' State Insurance Fund within such limits as may be prescribed by the Central Government.

Presumption as to Accident Arising in Course of Employment (Section 34)

(*1*) For the purposes of Chapter IV, an accident arising in the course of an employee's employment shall be presumed, in the absence of evidence to the contrary, to have arisen out of that employment.

(*2*) An accident happening to an employee in or about any premises at which he is for the time being employed

for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

(*3*) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.

(4) An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if–

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle–

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and

(ii) is not being operated in the ordinary course of public transport service.

Explanation. – In this section, "vehicle" includes a vessel and an aircraft.

Accidents Happening while Acting in Breach Of Law (Section 35)

An accident shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if–

(a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(b) the act is done for the purpose of and in connection with the employer's trade or business.

Occupational Disease (Section 36)

(1) If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify by regulations in respect of each such employment, contracts any disease specified in such Part C as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury ", arising out of and in the course of employment.

(2) Save as provided by sub-section (1), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

3) The provisions of sub-section (1) of section 34 shall not apply to the cases to which this section applies.

References to Medical Board (Section 37)

(1) Any question–

(a) whether the relevant accident has resulted in permanent disablement; or

(b) whether the extent of loss of earning capacity can be assessed provisionally or finally; or

(c) whether the assessment of the proportion of the loss of earning capacity is provisional or final; or

(d) in the case of provisional assessment, as to the period for which such assessment shall hold good, shall be determined by a medical board constituted in accordance with the provisions of the regulations (hereinafter referred to as medical board) and any such question shall hereafter be referred to as the "disablement question".

(2) The case of any Insured Person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement in question and if, on that or any subsequent reference, the extent of loss of earning capacity of the Insured Person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(3) Any decision under Chapter IV of a medical board may be reviewed at any time by the medical board if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact whether the non-disclosure or misrepresentation was or was not fraudulent.

(4) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

Provided that an assessment shall not be reviewed under this sub-section unless the medical board is of the opinion, having regard to the period taken into account by the assessment and the probable duration of the aggravation aforesaid, that substantial injustice will be done by not reviewing it.

(5) Except with the leave of a medical appeal tribunal constituted by regulations, an assessment shall not be reviewed under sub-section (4) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(6) Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final and the provisions of sub-section (2) shall apply to an application for review under this sub-section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that sub-section and to a decision of the medical board in connection with such case.

(7) (a) If the Insured Person or the Corporation is aggrieved by any decision of the medical board, the Insured Person or the Corporation, as the case may be, may appeal in such manner and within such time as may be prescribed by the Central Government to–

(i) the medical appeal tribunal constituted in accordance with the provisions of the regulations; or

(ii) the Employees' Insurance Court directly:

Provided that no appeal by an Insured Person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefits:

Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.

(b) Where the Insured Person or the Corporation preferred appeal to the medical appeal tribunal under sub-clause (i) of clause (a) instead of to the Employees' Insurance Court under sub-clause (ii) of that clause, then, he or it, as the case may be, shall have the further right to file second appeal to the Employees' Insurance Court in such manner and within such time as may be prescribed by the appropriate Government.

Dependants' Benefit (Section 38)

(1) If an Insured Person dies as a result of an employment injury sustained as an employee under this Chapter (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury), dependants' benefit shall be payable to his dependants specified in sub-clause (a) and sub-clause (b) of clause (24) of section 2 at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(2) In case the Insured Person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(3) Any decision awarding dependants' benefit under this Chapter may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Chapter due to any birth or death or due to the marriage, re-marriage, or ceasing of infirmity, or attainment of the age of twenty-five years by, a claimant.

(4) Subject to the provisions of this Chapter IV , the Corporation may, on such review under sub-section (3), direct that the dependants' benefit be continued, increased, reduced or discontinued.

Medical Benefit (Section 39)

(1) An Insured Person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the Insured Person or treatment as in-patient in a hospital or other institution.

(3) The qualification of an Insured Person and (where such medical benefit is extended to his family) his family, to claim medical benefit and the conditions subject to which such benefit may be given, the scale and period thereof shall be such as may be prescribed by the Central Government:

Provided that a person in respect of whom contribution ceases to be payable under this Chapter may be allowed medical benefit for such period and of such nature as may be provided by the regulations:

Provided further that an Insured Person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be specified in the regulations:

Provided also that an Insured Person who ceases to be in insurable employment on account of permanent disablement caused due to employment injury shall continue to receive medical benefits, subject to payment of contribution and other conditions as may be prescribed by the Central Government:

Provided also that the conditions for grant of medical benefits to the Insured Person during employment injury shall be as specified in the regulations.

(4) (a) The Corporation may establish medical education institutions, including colleges, dental colleges, nursing colleges and the training institutes for its officers and staff with a view to improve the quality of their services.

(b) The medical education institutions referred to in clause (a) shall require its students to furnish a bond for serving the Corporation for such time and in such manner, as may be specified in the regulations.

(5) The medical education institutions and training institutes referred to in sub-section (4) may be run by the Corporation itself or on the request of the Corporation, by the Central Government, any State Government, Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Explanation. –For the purposes of this sub-section, the expression "other body" means any such organisation of persons which the Central Government considers capable to run colleges and training institutions referred to in sub-section (4).

(6) The Corporation may, in order to take preventive and curative measures for welfare of the Insured Persons, carry out such occupational and epidemiological surveys and studies for assessment of health and working conditions of Insured Persons in such manner as may be specified in the regulations.

Provision of Medical Treatment by State Government or by Corporation (Section 40)

(1) The State Government shall provide for Insured Persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment:

Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to Insured Persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the State Government.

(3) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to Insured Persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines, and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to Insured Persons between the Corporation and the State Government.

(4) In default of agreement between the Corporation and any State Government as aforesaid, the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator who shall be appointed by the Central Government in consultation with the State Government.

(5) The State Government may, in addition to the Corporation under this Code, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury:

Provided that any reference to the State Government in this Code relating to this Chapter shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in sub-section (5) shall have such structure, discharge functions, exercise powers and undertake such activities as may be prescribed by the Central Government.

(7) The Corporation may establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of Insured Persons and (where such medical benefit is extended to their families), their families.

(8) The Corporation may enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for Insured Persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

(9) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to Insured Persons and (where such medical benefit has been extended to their families), to their families.

(10) Notwithstanding anything contained in any other provision of this Chapter, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to Insured Persons and (where such medical benefit is extended to their families), to the families of such Insured Persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation.

(11) In the event of the Corporation exercising its power under sub-section (10), the provisions relating to medical benefit under this Chapter shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.

(12) Notwithstanding anything contained in this Code, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government.

General Provisions as to Benefits (Section 41)

(1) Save as may be provided in the regulations, no person shall be entitled to commute for a lump sum any disablement benefit admissible under this Chapter IV.

(2) Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.

(3) A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement) –

(a) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Chapter, and shall carry out the instructions given by the medical officer or medical attendant in-charge thereof;

(b) shall not while under treatment do anything which might retard or prejudice his chances of recovery;

(c) shall not leave the area in which medical treatment provided by this Chapter is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and

(d) shall allow himself to be examined by any duly appointed medical officer or other person authorised by the Corporation in this behalf.

(4) An Insured Person shall not be entitled to receive for the same period–

(a) both sickness benefit and maternity benefit; or

(b) both sickness benefit and disablement benefit for temporary disablement; or

(c) both maternity benefit and disablement benefit for temporary disablement.

(5) Where a person is entitled to more than one of the benefits mentioned in sub-section (4), he shall be entitled to choose which benefit he shall receive.

(6) If a person dies during any period for which he is entitled to a cash benefit under this Chapter, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.

(7) (a) Any person eligible for availing dependant or disablement benefit under this Chapter shall not be entitled to claim Employees' Compensation from his employer under Chapter VII.

(b) Any women employee eligible for availing maternity benefit under this Chapter shall not be entitled to claim maternity benefit from her employer under Chapter VI.

(8) Where any person has received any benefit or payment under this Chapter when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of death, his legal representative shall be liable to repay the same from the assets of the deceased devolved on him.

(9) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.

(10) The amount recoverable under this section may be recovered in the manner specified under sections 129 to 132.

Corporation's Rights when an Employer Fails to Register (Section 42)

(1) If any employer, –

(a) fails or neglects to insure under section 28, an employee at the time of his appointment or within such extended period as may be prescribed by the Central Government, as a result of which the employee becomes disentitled to any benefit under this Chapter IV; or

(b) insures under section 28, an employee on or after the date of accident which resulted in personal injury to such employee which has the effect of making such employee disentitled to receive any dependant benefit or disablement benefit from the Corporation; or

(c) fails or neglects to pay any contribution which under this Chapter IV he is liable to pay in respect of any employee and by reason thereof such employee becomes disentitled to any benefit or becomes entitled to a benefit on a lower scale, then, the Corporation may, on being satisfied in the manner prescribed by the Central Government that the benefit is payable to the employee, pay to the employee benefit at such rate to which he is entitled or would have been entitled if the failure or neglect would not have occurred, and the Corporation shall be entitled to recover from the employer, subject to the employer being given an opportunity of being heard, the capitalised value of the benefit paid to the employee, to be calculated in such manner as may be prescribed by the Central Government:

Provided that the capitalised value to be calculated may be adjusted for the payment of any contribution and interest or damages that the employer is liable to pay for delay in the payment of or non-payment of such contribution.

(2) The amount recoverable under this section may be recovered as if it were an arrear of land revenue or recovered in the manner specified under sections 129 to 132.

Liability of Owner or Occupier of Factories for Excessive Sickness Benefit (Section 43)

(1) Where the Corporation considers that the incidence of sickness among Insured Persons is excessive by reason of–

(a) insanitary working conditions in a factory or other establishment or the neglect of the owner or occupier of the factory or other establishment to observe any health regulations enjoined on him by or under any enactment for the time being in force, or

(b) insanitary conditions of any tenements or lodgings occupied by Insured Persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactments for the time being in force, then, the Corporation may send to the owner or occupier of the factory or other establishment or to the owner of the tenements or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit; and if the claim is not settled by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate Government.

(2) If the appropriate Government is of the opinion that a prima facie case for inquiry is made out, it may appoint a competent person or persons to hold an inquiry into the matter referred under sub-section (1).

(3) If upon inquiry under sub-section (2), it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the Insured Persons is due to the default or neglect of the owner or occupier of the factory or other establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine, the amount of the extra expenditure incurred as sickness benefit as well as the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

(4) A determination under sub-section (3) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.

(5) For the purposes of this section, "owner" of tenements or lodgings shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

Scheme for other Beneficiaries (Section 44)

Notwithstanding anything contained in this Chapter IV, the Central Government may, by notification, frame, amend, vary or rescind scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges, and prescribe the terms and conditions subject to which the scheme may be operated.

Explanation. – For the purposes of this section, –

(a) "other beneficiaries" means persons other than employees insured under section 28;

(b) "underutilised hospital" means any hospital not fully utilised by the employees insured under section 28; and

(c) "user charges" means the amount which is to be charged from other beneficiaries for medical facilities as may be specified in the regulations after prior approval of the Central Government.

Schemes for Unorganised Workers, Gig Workers and Platform Workers (Section 45)

(1) Notwithstanding anything contained in this Chapter IV, the Central Government may, by notification, frame scheme for unorganised workers, gig workers and platform workers and the members of their families for providing benefits admissible under this Chapter by the Corporation.

(2) The contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions subject to which the scheme may be operated shall be such as may be specified in the scheme.

Exemption of factories or other establishments belonging to Government or any local authority (Section 46)

The appropriate Government may, after consultation with the Corporation, by notification and subject to such conditions as may be specified in the notification, exempt any factory or other establishment belonging to the Government or any local authority, from the operation of this Chapter if the employees in any such factory or other establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Chapter IV.

Contributions, etc., due to Corporation to have priority over other debts (Section 47)

Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter IV shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

Constitution of Employees' Insurance Court (Section 48)

(1) The State Government shall, by notification, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Employees' Insurance Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Employees' Insurance Courts for the same local area.

(5) Where more than one Employees' Insurance Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

Matters to be decided by Employees' Insurance Court (Section 49)

(1) If any question or dispute or claim arises as to–

(a) whether any person is an employee within the meaning of this Code relating to this Chapter or whether he is liable to pay the employee's contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of this Chapter; or

(c) the rate of contribution payable by an employer in respect of any employee under this Chapter; or

(d) the person who is or was the employer in respect of any employee for the purposes of this Chapter; or

(e) the right of any person to any benefit under this Chapter and as to the amount and duration thereof; or

(f) any direction issued by the Corporation on a review of any payment of dependants' benefit under this Chapter; or

(g) any other matter which is in dispute between an employer and the Corporation relating to this Chapter, or between an employer and a Contractor relating to this Chapter or between a person and the Corporation relating to this Chapter or between an employee and an employer or Contractor relating to this Chapter, in respect of any contribution or benefit or other dues payable or recoverable under this Code relating to this Chapter; or

(h) claim for the recovery of contributions from the employer under this Code relating to this Chapter; or

(i) claim under sub-section (8) of section 41 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; or

(j) claim against an employer under section 42; or

(k) order of the appellate authority under section 126 in respect of Chapter IV; or

(l) claim by an employer to recover contributions from any contractor under this Code relating to this Chapter; or

(m) any other claim for the recovery of any benefit admissible under this Chapter, such matter shall be decided by the Employers' Insurance Court.

(2) No matter which is in dispute between an employer and the Corporation in respect of any contribution or any other dues under this Chapter shall be raised by the employer in the Employees' Insurance Court unless he has deposited with that Court fifty per cent. Of the amount due from him as claimed by the Corporation:

Provided that the Employees' Insurance Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as specified in sub-section (1) or to adjudicate on any liability which by or under this Code relating to this Chapter is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

Powers of Employees' Insurance Court (Section 50)

(1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of that court.

(4) An order of the Employees' Insurance Court shall be enforceable by it as if it were a decree passed in a suit by a Civil Court.

Proceedings of Employees' Insurance Courts (Section 51)

(1) The manner of commencement of proceedings before the Employees' Insurance Court, fees and procedure thereof shall be such as may be prescribed by the appropriate Government:

Provided that the limitation for initiating the proceedings by the aggrieved person in the Employees' Insurance Court shall be three years from the date on which the cause of action arises:

Provided further that the "arising of cause of action" in respect of a claim by the Insured Person or dependants; by the Corporation for recovering contribution (including interests and damages) from the employer; and the claim by the employer for recovering contributions from a Contractor and the time within which such claims, recovery or contribution, from employer by the Corporation and recovery of contribution by the employer from the Contractor, shall be as specified in the regulations.

(2) Any application, appearance or act required to be made or done by any person to, or before, an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness)

may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of that Court, by any other person so authorised.

(3) An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

Appeal to High Court (Section 52)

(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court, if it involves a substantial question of law.

(3) The appeal shall be filed under this section within a period of sixty days from the date of the order made by the Employees' Insurance Court.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section.

(5) Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court, shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

CHAPTER V- GRATUITY

Payment of Gratuity (Section 53)

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, –

(a) on his superannuation; or

(b) on his retirement or resignation; or

(c) on his death or disablement due to accident or disease; or

(d) on termination of his contract period under fixed term employment; or

(e) on happening of any such event as may be notified by the Central Government:

Provided that in case of working journalist as defined in clause (f) of section 2 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955, the expression "five years" occurring in this sub-section shall be deemed to be three years:

Provided further that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government:

Provided also that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the competent authority as may be notified by the appropriate Government who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed by the appropriate Government, until such minor attains majority.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages or such number of days as may be notified by the Central Government, based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season:

Provided also that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1)–

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited–

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.

Explanation 1. – For the purposes of this Chapter V, employee does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Explanation 2. – For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease, resulting in such disablement.

Explanation 3. – For the purposes of this section, it is clarified that in the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

Continuous Service (Section 54)

For the purposes of this Chapter V–

(A) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating

the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Code;

(B) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (A), for any period of one year or six months, he shall be deemed to be in continuous service under the employer–

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than–

(i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than–

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case.

Explanation. – For the purposes of this clause, the number of days on which an employee has actually worked under an employer shall include the days on which–

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twenty-six weeks;

(C) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (A), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during such period.

Nomination (Section 55)

(1) Each employee, who has completed one year of service, shall make, a nomination within such time, in such form and in such manner, as may be prescribed by the appropriate Government.

(2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Chapter amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed by the appropriate Government, a fresh nomination in favour of one or more members of his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written intimation in such form and in such manner as may be prescribed by the appropriate Government, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the form prescribed by the appropriate Government, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

Determination of Amount of Gratuity (Section 56)

(1) A person who is eligible for payment of gratuity under this Chapter or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed by the appropriate Government, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(4) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the competent authority for the delayed payment on this ground.

(5) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Chapter or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the competent authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the competent authority in the form prescribed by the appropriate Government for deciding the dispute.

(c) The competent authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the competent authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The competent authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the competent authority shall pay the amount of the deposit–

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the competent authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(6) For the purpose of conducting an inquiry under sub-section (5), the competent authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely: –

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(7) Any inquiry under this section shall be a judicial proceeding within the meaning of section 193, section 228 and for the purpose of section 196 of the Indian Penal Code.

(8) Any person aggrieved by an order under sub-section (5) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf: Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the competent authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (5), or deposits with the appellate authority such amount.

(9) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the competent authority.

Compulsory Insurance (Section 57)

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed by the Central Government, for his liability for payment towards the gratuity under this Chapter, from any insurance company regulated by the Authority as defined under clause (b) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999:

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed by the Central Government, exempt any employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed by the Central Government from the provisions of sub-section (1).

(3) For the purposes of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed by the Central Government get his establishment registered with the competent authority in the manner prescribed by the appropriate Government and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the competent authority of the amount of the gratuity payable to an employee from the insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund, in such manner as may be prescribed.

(5) Where an employer fails to make any payment by way of premium in respect of the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Chapter (including interest, if any, for delayed payments) forthwith to the competent authority.

Explanation. – In this section, "approved gratuity fund" shall have the same meaning as assigned to it in sub-section (5) of section 2 of the Income-tax Act, 1961.

Competent Authority (Section 58)

(*1*) The Appropriate Government may, by notification, appoint any officer of that Government having such qualifications and experience as may be prescribed by that Government to be a competent authority for implementation of any provision of this Chapter for such area as may be specified in the notification.

(2) Where more than one competent authority has been appointed for any area, the appropriate Government may, by general or special order, regulate the distribution of business among them.

(3) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under reference to assist him in holding the inquiry relating thereto.

CHAPTER VI- MATERNITY BENEFIT

Employment of, or Work by, Women Prohibited During Certain Period (Section 59)

(*1*) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(3) Without prejudice to the provisions of section 62, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do, during the period specified in sub-section (4), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be–

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62.

Explanation. – For the purposes of this section, the expression "any work of arduous nature" shall mean any work which involve or require strenuous effort or is difficult and tiring in nature.

Right to Payment of Maternity Benefit (Section 60)

(1) Subject to the other provisions of Wage Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

Explanation. –For the purposes of this sub-section, "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Explanation. – For the purposes of calculating the period under this sub-section, the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during the period of twelve months immediately preceding the expected date of her delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Explanation: For the purposes of this sub-section, "child" includes a stillborn child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Continuance of Payment of Maternity Benefit in Certain Cases (Section 61)

Every woman entitled to the payment of maternity benefit under this Chapter VI, shall, notwithstanding the application of Chapter IV to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 32.

Notice of Claim for Maternity Benefit and Payment Thereof (Section 62)

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Chapter may give notice in writing in such form as may be prescribed by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Chapter may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than eight weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after her delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed by the Central Government that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed by the Central Government that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter if she is otherwise entitled to such benefit or amount and in any such case an Inspector-cum-Facilitator may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Payment of Maternity Benefit in Case of Death of a Woman (Section 63)

If a woman entitled to maternity benefit or any other amount under this Chapter VI, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 60, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 62 and in case there is no such nominee, to her legal representative

Payment of Medical Bonus (Section 64)

Every woman entitled to maternity benefit under this Chapter VI shall also be entitled to receive from her employer a medical bonus of three thousand five hundred rupees or such amount as may be notified by the Central Government, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Leave for Miscarriage (Section 65)

(1) In case of miscarriage, or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.

(2) In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

(3) A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy shall, on production of such proof as may be prescribed by the Central

Government, be entitled, in addition to the period of absence allowed to her under section 62, or, as the case may be, under sub-section (1), to leave with wages at the rate of maternity benefit for a maximum period of one month.

Nursing Breaks (Section 66)

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of such duration as may be prescribed by the Central Government, for nursing the child until the child attains the age of fifteen months.

Creche Facility (Section 67)

(1) Every establishment to which this Chapter V applies, in which **fifty employees** or such number of employees as may be prescribed by the Central Government, are employed shall have the facility of crèche within such distance as may be prescribed by the Central Government, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her:

Provided further that an establishment may avail common crèche facility of the Central Government, State Government, municipality or private entity or provided by non-Governmental organisation or by any other organisation or group of establishments who may pool their resources for setting up of common crèche in the manner as they may agree for such purpose.

(2) Every establishment to which this Chapter applies shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under this Chapter.

Dismissal for Absence During Pregnancy (Section 68)

(1) When a woman absents herself from work in accordance with the provisions of this Chapter VI, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service:

Provided that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus under this Chapter, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided further that where the dismissal is for any gross misconduct as may be prescribed by the Central Government, the employer may, by order in writing, communicated to the woman, deprive her of the maternity benefit or medical bonus, or both.

(2) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed under sub-section (1), may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to the competent authority, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed, shall be final.

No deduction of Wages in Certain Cases (Section 69)

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Chapter shall be made by reason only of–

(a) the nature of work assigned to her by virtue of the provisions contained in section 59; or

(b) breaks for nursing the child allowed to her under the provisions of section 66.

Forfeiture of maternity benefit (Section 70)

A woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing the maternity benefits provided under this Chapter VI shall not be entitled to receive maternity benefit for such period.

Duties of Employer (Section 71)

An abstract of the provisions of this Chapter VI and the rules relating thereto in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed

Power of Inspector cum- Facilitator to Direct Payments to be Made (Section 72)

(1) Any woman claiming that, –

(a) maternity benefit or any other amount to which she is entitled under this Chapter VI and any person claiming that payment due under this Chapter has been improperly withheld;

(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Chapter, may make a complaint to the Inspector-cum-Facilitator.

(2) The Inspector-cum-Facilitator may, on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that–

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his order in writing;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Chapter, may pass such orders as he deems just and proper according to the circumstances of the case.

(3) Any person aggrieved by the order of the Inspector-cum-Facilitator under sub-section (2) may, within thirty days from the date on which such order is communicated to such person, appeal to the authority prescribed by the appropriate Government.

(4) The decision of the authority referred to in sub-section (3), where an appeal has been preferred to it under that sub-section or of the Inspector-cum-Facilitator where no such appeal has been preferred, shall be final.

CHAPTER VII- EMPLOYEE'S COMPENSATION

Reports of Fatal Accidents and Serious Bodily Injuries (Section 73)

(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the competent authority giving the circumstances attending the death or serious bodily injury:

Provided that where the State Government has so specified, the person required to give the notice may instead of sending such report to the competent authority send it to the authority to whom he is required to give the notice.

Explanation. – For the purposes of this sub-section, ***"serious bodily injury"*** means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent

loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

(2) The State Government may, by notification, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the competent authority.

(3) This section shall not apply to establishments to which Chapter IV, relating to Employees' State Insurance Corporation, applies.

Employer's Liability for Compensation (Section 74)

(1) If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter VII:

Provided that the employer shall not be so liable–

(a) in respect of such injury which does not result in the total or partial disablement of the employee for a period exceeding three days; and

(b) in respect of such injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to–

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

(2) An accident or an occupational disease referred to in sub-section (1) shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident or at the time of contracting the occupational disease, referred to in that sub-section, acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if–

(a) such accident or contracting of such occupational disease would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(b) the act is done for the purpose of, and in connection with, the employer's trade or business.

(3) If an employee employed in any employment specified in the Second Schedule contracts any disease specified in the Third Schedule, being an occupational disease peculiar to that employment whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months, then, such disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment.

(4) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and his employment is established.

(5) The Central Government or the State Government, after giving, by notification, not less than three months' notice of its intention so to do, may, by a like notification, modify or add any description of employment to the

employments specified in the Second Schedule, and occupational diseases specified in the Third Schedule and shall specify in the case of employments so modified or added, the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Code extends or, in case of a notification by the State Government, within that State as if such diseases had been declared by this Code to be occupational diseases peculiar to those employments.

(6) Save as provided by sub-sections (2), (3) and (4), no compensation shall be payable to an employee in respect of any accident or disease unless the accident or disease is directly attributable to a specific injury by accident or disease arising out of and in the course of his employment.

(7) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any accident or disease if he has instituted in a civil court a suit for damages in respect of the accident or disease against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect, of such accident or disease–

(a) if he has instituted a claim to compensation in respect of the accident or disease before a competent authority; or

(b) if an agreement has been made between the employee and his employer providing for the payment of compensation in respect of the accident or disease in accordance with the provisions of this Chapter

Compensation in case of Death of Or Injury in Plantation (Section 75)

If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation under section 76 and the Sixth Schedule, so far as may be applicable.

Explanation. – For the purposes of this section, the expression "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, and includes a person employed on contract for more than sixty days in a year, but does not include–

(i) a medical officer employed in the plantation;

(ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed the amount as determined by the appropriate Government, by notification, from time to time;

(iii) any person employed in the plantation primarily in a managerial or administrative capacity, notwithstanding that his monthly wages do not exceed the amount as determined by the appropriate Government, by notification, from time to time;

(iv) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals.

Amount of Compensation (Section 76)

(1) Subject to the provisions of this Chapter VII, the amount of compensation shall be,–

(a) where death results from the injury, an amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more;

(b) where permanent total disablement results from the injury, an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more:

Provided that the Central Government may, by notification, from time to time, enhance the amount of compensation specified in clauses (a) and (b).

Explanation. – For the purposes of clauses (a) and (b), "relevant factor", in relation to a employee means the factor specified in column (3) of the Sixth Schedule relating to factors against the corresponding entry in column (2) thereof, specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due;

(c) where permanent partial disablement results from the injury, –

(i) in the case of an injury specified in Part II of the Fourth Schedule, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in the Fourth Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the medical practitioner) permanently caused by the injury.

Explanation 1– For the purposes of this clause, where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation 2– In assessing the loss of earning capacity under sub-clause (ii), the medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in the Fourth Schedule;

(d) where temporary disablement, whether total or partial, results from the injury, a half-monthly payment of the sum equivalent to twenty-five per cent. Of monthly wages of the employee, to be paid in accordance with the provisions of sub-section (4).

(2) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to an employee in respect of an accident which occurred outside India, the competent authority shall take into account the amount of compensation, if any, awarded to such employee in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country.

(3) The Central Government may, by notification, specify for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.

(4) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day–

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or

(ii) after the expiry of a waiting period of three days from the date of disablement, where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever is shorter:

Provided that–

(a) there shall be deducted from any lump sum or half-monthly payments to which the employee is entitled, the amount of any payment or allowance which the employee has received from the employer by way of compensation during the period of disablement prio to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and such payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation;

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.

(5) The employee shall be reimbursed, the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, by his employer.

(6) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionates to the duration of the disablement in that half-month.

(7) If the injury of the employee results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the competent authority a sum of not less than fifteen thousand rupees or such amount as may be prescribed by the State Government, for payment of the same to the eldest surviving dependant of the employee towards the expenditure of the funeral of such employee or where the employee did not have a dependant or was not living with his dependant at the time of his death, to the person who actually incurred such expenditure:

Provided that the Central Government may, by notification from time to time, enhance the amount specified in this sub-section.

Compensation to be Paid When Due and Damages for Default (Section 77)

(1) Compensation under section 76 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the competent authority or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Chapter within one month from the date it fell due, the competent authority shall–

(a) direct that the employer shall, in addition to the amount of the arrears, pay interest at such rate as may be prescribed by the Central Government, on the amount due; and

(b) if in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount of arrears by way of damages: Provided that an order for the payment of damages shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.

(4) The interest and the damages payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be.

Method of Calculating Monthly wages for Purposes of Compensation (Section 78)

For the purposes of this Chapter VII, the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely: –

(a) where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality;

(c) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period

Explanation. –For the purposes of this section, "a period of service" shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review (Section 79)

(1) Any half-monthly payment payable under this Chapter VII, either under an agreement between the parties or under the order of a competent authority, may be reviewed by the competent authority, on the application either of the employer or of the employee accompanied by the certificate of a medical practitioner that there has been a change in the condition of the employee or, subject to such conditions as may be prescribed by the State Government, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Chapter, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half monthly payments.

Commutation of Half Monthly Payments (Section 80)

Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the competent authority be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the competent authority, as the case may be.

Distribution of Compensation (Section 81)

(1) No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the competent authority, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased employee, an employer may make to any dependant, advances on account of compensation of an amount equal to three months' wages of such employee and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the competent authority from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than five thousand rupees which is payable as compensation may be deposited with the competent authority on behalf of the person entitled thereto.

(3) The receipt of the competent authority shall be a sufficient discharge in respect of any compensation deposited with him.

(4) (a) On the deposit of any money under sub-section (1) as compensation in respect of a deceased employee, the competent authority shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation.

(b) If the competent authority is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid.

(c) The competent authority shall, on an application by the employer, furnish a statement showing in detail all disbursements made.

(5) The compensation deposited in respect of a deceased employee shall, subject to any deduction made under sub-section (1), be apportioned by order by the competent authority among the dependants of the deceased employee or any of them in such proportion as the competent authority thinks fit, or may, in the discretion of the competent authority, be allotted to any one dependant:

Provided that the competent authority shall not make any order under this sub-section without hearing the dependants and shall record reasons in the order for the apportionment of such compensation among dependants or any of them, as the case may be.

(6) Where any compensation deposited with the competent authority is payable to any person, other than a woman or a person under legal disability, the competent authority may pay the compensation to the person entitled thereto.

(7) Where any lump sum deposited with the competent authority is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the competent authority may direct; and where a half-monthly payment is payable to any person under a legal disability, the competent authority may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the employee or to any other person, whom the competent authority thinks fit to provide for the welfare of the employee.

(8) Where, on application made to him in this behalf or otherwise, the competent authority is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the competent authority as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the competent authority may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause as to why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the competent authority varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner as specified in sub-section (10).

(10) The competent authority may recover as an arrear of land revenue any amount referred to in sub-section (9), and for such purpose the competent authority shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890

Notice and Claim (Section 82)

(1) No claim for compensation shall be entertained by a competent authority unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (3) of section 74 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer:

Provided also that if an employee who, having been employed in an employment for a continuous period specified under sub-section (3) of section 74 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.

(2) The want of or any defect or irregularity, in a notice given under sub-section (1), shall not be a bar to the entertainment of a claim–

(a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided that the competent authority may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided under sub-section (1), if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(3) Every such notice shall give the name and address of the person injured and shall state the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

(4) The appropriate Government may require that any class of employers as may be prescribed by that Government shall maintain, at their premises at which employees are employed, a notice-book, in such form as may be prescribed by that Government, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(5) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or where possible, electronically or, where a notice-book is maintained, by entry in the notice-book.

Special Provisions Relating to Accidents Occurring Outside Indian Territory (Section 83)

(1) The provisions of this section shall, subject to the modifications specified in this section, apply in case of employees who are–

(a) masters of ships or seamen; or

(b) captain and other members of crew of aircraft;

(c) persons recruited by companies registered in India and working as such abroad;

(d) persons sent for work abroad along with motor vehicles registered under the Moto Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other employees.

(2) The notice of the accident and the claim for compensation by a person injured may be served on the following persons, as if they were the employer–

(a) in case of accident where the person injured is a seamen, but not the master of the ship, on the master of the ship;

(b) in case of accident where the person injured is a member of crew of an aircraft, but not the captain of the aircraft, on the captain of the aircraft;

(c) in case of persons recruited by companies registered in India and working as such abroad, on the local agent of the company;

(d) in case of persons sent for work abroad along with motor vehicles as drivers, helpers, mechanics, cleaners or other employees, on the local agent of the owner of the motor vehicle, in the country of the accident:

Provided that where the accident happened and the disablement commenced on board, the ship or aircraft, as the case may be, then, it shall not be necessary for any seaman or members of the crew of aircraft to give any notice of the accident.

(3) The claim of compensation shall be made–

(a) in the case of the death of an employee referred to in sub-section (1), one year after the news of the death has been received by the claimant;

(b) in the case where the ship or the aircraft as the case may be, has been or is deemed to have been lost with all hands, eighteen months of the date on which the ship or the aircraft was, or is deemed to have been, so lost:

Provided that the competent authority may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(4) Where an injured employee referred to in sub-section (1) is discharged or left behind in any part of India or in any foreign country, then, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence–

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made

in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(5) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law for the time being in force relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this section shall not be a bar to the maintenance of proceedings under this Chapter in respect of any personal injury, if such proceedings under this Chapter are commenced within one month from the date on which the certificate of the State to that effect Government was furnished to the person commencing the proceedings.

Medical Examination (Section 84)

(1) Where an employee has given notice of an accident, he, shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a medical practitioner, submit himself for such examination, and any employee who is in receipt of a half-monthly payment under this Chapter shall, if so required, submit himself for such examination from time to time:

Provided that an employee shall not be required to submit himself for examination by a medical practitioner at more than such frequent interval as may be prescribed by the State Government.

(2) If an employee, on being required to do so by the employer under sub-section (1) or by the competent authority at any time, refuses to submit himself for examination by a medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If an employee, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves the vicinity of the place in which he was employed without having been so examined, his right to compensation shall be suspended until he returns and offers himself for such examination:

Provided that where such employee proves before the medical practitioner that he could not so submit himself for medical examination due to the circumstances beyond his control and he was also handicapped to communicate such information in writing, the medical practitioner may after recording such reasons in writing, condone the delay and his right to compensation shall be revived as if no such suspension was made. (4) Where an employee, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the competent authority may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.

(5) Where under sub-section (2) or sub-section (3), a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (ii) of sub-section (4) of section 76, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured employee has refused to be attended by a medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a medical practitioner or having been so attended has deliberately failed to follow his instructions

and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

Contracting (Section 85)

(1) Where any employer in the course of or for the purposes of his trade or business contracts with a contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the employer, the employer shall be liable to pay to any employee employed in the execution of the work any compensation, which he would have been liable to pay if that employee had been immediately employed by him; and that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the employer is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered the compensation and where a contractor who is himself an employer is liable to pay compensation or to indemnify an employer under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered the compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the competent authority.

(3) Nothing in this section shall be construed as preventing an employee from recovering compensation referred to in sub-section (2) from the contractor instead of the employer.

(4) The provisions of this section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the employer has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of Employer Against Stranger (Section 86)

Where an employee has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 85 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Insolvency of Employer (Section 87)

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Chapter to any employee, then, in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer.

(2) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the burden of proof shall lie on the employee for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1), the contract of the employer with the insurers is

void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premium), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee:

Provided that the provisions of this sub-section shall not apply in any case in which the employee fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under the Insolvency and Bankruptcy Code, 2016 or under the provisions of the Companies Act, 2013 are in the distribution of the assets of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation, the liability accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and the provisions of that Code and Act shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if applications were made for that purpose under section 80, and a certificate of the competent authority as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) The provisions of this section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Power to require from Employers' Statements Regarding Fatal Accidents (Section 88)

(1) Where a competent authority receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post or where possible, electronically a notice to the employee's employer requiring him to submit, within thirty days of the service of the notice, a statement, in such form as may be prescribed by the State Government, giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death and a copy of such notice shall also be sent by the competent authority in the same manner to the dependants of such employee ascertained by the competent authority.

(2) If the employer is of the opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of the opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the competent authority, after such inquiry as he may think fit, may inform any of the dependants of the deceased employee, that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

(5) Where in the opinion of the competent authority, a dependant of the deceased employee is not in a position to engage an advocate to file a claim for compensation, the competent authority may provide an advocate to such dependant, from the panel of advocates maintained by the State Government.

Registration of Agreements (Section 89)

(1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability, a memorandum thereof shall be sent by the employer to the competent authority, who shall, on being satisfied as to its genuineness, record the memorandum in a register, electronically or otherwise, in such manner as may be prescribed by the Appropriate Government:

Provided that–

(a) no such memorandum shall be recorded before seven days after communication by the competent authority of notice to the parties concerned;

(b) the competent authority may at any time rectify the register;

(c) where it appears to the competent authority that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, the competent authority may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as the competent authority thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Code notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

(3) Where a memorandum of any agreement, the registration of which is required under this section, is not sent to the competent authority as required by this section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Chapter VII, and notwithstanding anything contained in the proviso to sub-section (1) of section 76, shall not, unless the competent authority otherwise directs, be entitled to deduct more than half of any amount paid to the employee by way of compensation whether under the agreement or otherwise.

Reference to Competent Authority (Section 90)

(1) If any question arises in any proceedings under this Chapter VII as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a competent authority.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by a competent authority or to enforce any liability incurred under this Chapter.

Appointment of Competent Authority (Section 91)

(1) The State Government may, by notification, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development, industrial relations and legal affairs or such other experience and qualifications as may be prescribed by the appropriate Government to be a competent authority for the purposes of this Chapter and for such area as may be specified in the notification.

(2) Where more than one competent authority has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business amongst them.

(3) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Venue of Proceedings and Transfer (Section 92)

(1) Where any matter under this Chapter VII is to be done by or before a competent authority, the same shall, subject to the provisions of this Chapter and in the manner prescribed in this behalf by the State Government, be done by or before the competent authority for the area in which–

(a) the accident took place which resulted in the injury; or

(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a competent authority, other than the competent authority having jurisdiction over the area in which the accident took place, without his giving notice electronically or otherwise in the manner prescribed by the Central Government to the competent authority having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India, any such matter may be done by or before a competent authority for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(2) If a competent authority, other than the competent authority with whom any money has been deposited under section 81, proceeds with a matter under this Chapter, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(3) If a competent authority is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other competent authority, whether in the same State or not, he may, subject to rules made under this Code relating to this Chapter, order such matter to be transferred to such other competent authority either for report or for disposal, and, if he does so, shall forthwith transmit to such other competent authority all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the manner as may be prescribed by the Central Government any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the competent authority shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

(4) The competent authority to whom any matter is so transferred shall, subject to rules made under this Code relating to this Chapter, inquire therein to and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(5) On receipt of a report from a competent authority to whom any matter has been transferred for report under sub-section (3), the competent authority by whom it was referred shall decide the matter referred to in conformity with such report.

(6) The State Government may transfer any matter from any competent authority appointed by it to any other competent authority appointed by it.

Form of Application (Section 93)

(1) Where an accident occurs in respect of which liability to pay compensation under this Chapter arises, a claim for such compensation may, subject to the provisions of this Chapter, be made before the competent authority.

(2) Subject to the provisions of sub-section (1), no application for the settlement of any matter by competent authority, other than an application by a dependant or joint application by dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(3) An application to a competent authority for claim under sub-section (1) or settlement under sub-section (2) may be made electronically or otherwise in such form and in such manner accompanied by such fee, if any, as may be prescribed by the Central Government.

(4) The time-limit for the disposal of applications under this section and the costs incidental to the proceedings under this section to be imposed by the competent authority shall be such as may be prescribed by the State Government.

Power of Competent Authority to require Further Deposit in Cases of Fatal Accident (Section 94)

(1) Where any sum has been deposited by an employer as compensation payable in respect of an employee whose injury has resulted in death, and in the opinion of the competent authority such sum is insufficient, the competent authority may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the competent authority, the competent authority may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Appeal against order of Competent Authority (Section 99)

(1) An appeal shall lie to the High Court from the following orders of a competent authority under this Chapter VII, namely: –

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(b) an order awarding interest or damages under section 77;

(c) an order refusing to allow redemption of a half-monthly payment;

(d) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person alleging himself to be such dependant;

(e) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 85; or

(f) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order referred to in clause (c), unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification, specify

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the competent authority, or in which the order of the competent authority gives effect to an agreement arrived at by the parties:

Provided also that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the competent authority to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days from the date of passing of the order.

(3) The provisions of section 5 of the Limitation Act, 1963, shall be applicable to appeal under this section.

CHAPTER IX – SOCIAL SECURITY FOR UNORGANISED WORKERS, GIG WORKERS AND PLATFORM WORKERS

Framing of Schemes for Unorganised Workers (Section 109)

(1) The Central Government shall frame and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to–

(i) life and disability cover;

(ii) health and maternity benefits;

(iii) old age protection;

(iv) education; and

(v) any other benefit as may be determined by the Central Government.

(2) The State Government shall frame and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to–

(i) provident fund;

(ii) employment injury benefit;

(iii) housing;

(iv) educational schemes for children;

(v) skill upgradation of workers;

(vi) funeral assistance; and

(vii) old age homes.

(3) Any scheme notified by the Central Government under sub-section (1), may be–

(i) wholly funded by the Central Government; or

(ii) partly funded by the Central Government and partly funded by the State Government; or

(iii) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or

(iv) funded from any source including corporate social responsibility fund within the meaning of the Companies Act, 2013 or any other such source as may be specified in the scheme.

(4) Every scheme notified by the Central Government under sub-section (1) shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to all or any of the following, namely: –

(i) scope of the scheme;

(ii) authority to implement the scheme;

(iii) beneficiaries of the scheme;

(iv) resources of the scheme;

(v) agency or agencies that will implement the scheme;

(vi) redressal of grievances; and

(vii) any other relevant matter,

and a special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of any such scheme.

Funding of State Government Schemes (Section 110)

(1) Any scheme notified by the State Government under sub-section (2) of section 109 may be–

(a) wholly funded by the State Government; or

(b) partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the State Government; or

(c) funded from any source including corporate social responsibility fund referred to in clause (iv) of sub-section (3) of section 109 or any other such source as may be specified in the scheme.

(2) The State Government may seek financial assistance from the Central Government for the schemes framed by it.

(3) The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

Record Keeping (Section 111)

The Government formulating and notifying the scheme under this Chapter shall provide therein the form and manner of keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained:

Provided that such records shall, as far as may be possible, bear continuous number for the purpose of proper management of the scheme and for avoiding any duplication and overlapping in records.

Helpline, Facilitation Centre for Unorganised Workers, Gig Workers and Platform Workers (Section 112)

The appropriate Government may set up a toll-free call centre or helpline or such facilitation centres as may be considered necessary from time to time to perform any or more of the following functions, namely: –

(a) to disseminate information on available social security schemes for the unorganised workers, gig workers and platform workers;

(b) to facilitate filing, processing and forwarding of application forms for registration of unorganised workers, gig workers and platform workers;

(c) to assist unorganised workers, gig workers and platform workers to obtain registration; and

(d) to facilitate the enrolment of the registered unorganised workers, gig workers and platform workers in the social security schemes.

Registration of Unorganised Workers, Gig Workers and Platform Workers (Section 113)

(1) Every unorganised worker, gig worker or platform worker shall be required to be registered for the purposes of this Chapter, subject to the fulfilment of the following conditions, namely: –

(a) he has completed sixteen years of age or such age as may be prescribed by the Central Government;

(b) he has submitted a self-declaration electronically or otherwise in such form and in such manner containing such information as may be prescribed by the Central Government.

(2) Every eligible unorganised worker, gig worker or platform worker referred to in sub-section (1) shall make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government and such worker shall be assigned a distinguishable number to his application:

Provided that the system of electronic registration maintained by the appropriate Government shall also provide for self-registration by any such worker in such manner as may be prescribed by the Central Government.

(3) A registered unorganised worker, gig worker or platform worker shall be eligible to avail the benefit of the concerned scheme framed under this Chapter.

(4) The Central Government, or as the case may be, the State Government shall make such contribution in a scheme as may be specified therein.

Explanation. –For the purposes of this section, the term "Aadhaar" shall have the same meaning as is assigned to it in section 142.

Schemes for Gig Workers and Platform Workers (Section 114)

(1) The Central Government may frame and notify, from time to time, suitable social security schemes for gig workers and platform workers on matters relating to–

(a) life and disability cover;

(b) accident insurance;

(c) health and maternity benefits;

(d) old age protection;

(e) crèche; and

(f) any other benefit as may be determined by the Central Government.

(2) Every scheme framed and notified under sub-section (1) may provide for–

(a) the manner of administration of the scheme;

(b) the agency or agencies for implementing the scheme;

(c) the role of aggregators in the scheme; (d) the sources of funding of the scheme; and

(e) any other matter as the Central Government may consider necessary for the efficient administration of the scheme.

(3) Any scheme notified by the Central Government under sub-section (1), may be–

(a) wholly funded by the Central Government; or

(b) partly funded by the Central Government and partly funded by the State Government; or

(c) wholly funded by the contributions of the aggregators; or

(d) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the aggregators, as may be specified in the scheme framed by the Central Government; or

(e) funded from corporate social responsibility fund within the meaning of Companies Act, 2013; or

(f) any other source.

(4) The contribution to be paid by the aggregators for the funding referred to in clause (ii) of sub-section (1) of section 141, shall be at such rate not exceeding two per cent., but not less than one per cent., as may be notified by the Central Government, of the annual turnover of every such aggregator who falls within a category of aggregators, as are specified in the Seventh Schedule.

Classification of Aggregator as per Seventh Schedule are as under:

1. Ride sharing services
2. Food and grocery delivery services
3. Logistic services
4. e-Market place (both market place and inventory model) for wholesale/ retail sale of goods and/or services (B2B/B2C)
5. Professional services provider
6. Healthcare
7. Travel and hospitality
8. Content and media services
9. Any other goods and services provider platform

Provided that the contribution by an aggregator shall not exceed five per cent. of the amount paid or payable by an aggregator to gig workers and platform workers.

Explanation. –For the purposes of this sub-section, the annual turnover of an aggregator shall not include any tax, levy and cess paid or payable to the Central Government.

(5) The date of commencement of contribution from aggregator under this section shall be notified by the Central Government.

(6) The National Social Security Board constituted under sub-section (1) of section 6 shall be the Board for the purposes of the welfare of gig workers and platform workers under the provisions of this Code: Provided that while such Board serves the purposes of welfare of, or matters relating to, gig workers and platform workers, the following members shall constitute the Board instead of the members specified in clauses (c) and (d) of sub-section (2) of section 6, namely: –

(a) five representatives of the aggregators as the Central Government may nominate;

(b) five representatives of the gig workers and platform workers as the Central Government may nominate;

(c) Director General of the Corporation;

(d) Central Provident Fund Commissioner of the Central Board;

(e) such expert members as the Central Government may consider appropriate;

(f) five representatives of the State Governments by such rotation as the Central Government may consider appropriate;

(g) Joint Secretary to the Government of India in the Ministry of Labour and Employment, who shall be the Member Secretary to the Board.

(7) (i) The Central Government may provide that–

(a) the authority to collect and to expend the proceeds of contribution collected;

(b) the rate of interest to be paid by an aggregator in case of delayed payment, less payment or non-payment of contribution;

(c) self-assessment of contribution by aggregators;

(d) conditions for cessation of a gig worker or a platform worker; and

(e) any other matter relating to smooth functioning of the social security scheme notified under this section, shall be such as may be prescribed by that Government.

(ii) The Central Government may by notification, exempt such aggregator or class of aggregators from paying of contribution under sub-section (4), subject to such conditions as may be specified in the notification.

Explanation.–For the purposes of this section, an aggregator having more than one business shall be treated as a separate business entity or aggregator.

Maintenance of Records, Registers, Returns (Section 123)

An employer of an establishment shall–

(a) maintain records and registers in the form prescribed by the appropriate Government, electronically or otherwise, containing such particulars and details with regard to persons employed, muster roll, wages and such other particulars and details, in such manner, as may be prescribed by the appropriate Government including–

(i) number of days for which work performed by employees;

(ii) number of hours of work performed by the employees;

(iii) wage paid;

(iv) leave, leave wages, wages for overtime work and attendance;

(v) employees identification number, by whatever nomenclature it may be called;

(vi) number of dangerous occurrences, accidents, injuries in respect of which compensation has been paid by the employer and the amount of such compensation relating to Chapter IV and Chapter VII, respectively;

(vii) statutory deductions made by employer from the wages of an employee in respect of Chapter III and Chapter IV;

(viii) details as to cess paid in respect of building and other construction work;

(ix) total number of employees (regular, contractual or fixed term employment) on the day specified;

(x) persons recruited during a particular period;

(xi) occupational details of the employees; and

(xii) vacancies for which suitable candidates were not available during the specified period.

(b) display notices at the workplaces of the employees in such manner and form as may be prescribed by the appropriate Government;

(c) issue wage slips to the employees, in electronic forms or otherwise; and

(d) file such return electronically or otherwise to such officer or authority in such manner and during such periods as may be prescribed by the appropriate Government.

Provided that matters to be provided under the rules required to be made under this section relating to Chapter III shall, instead of providing them in rules to be made by the Central Government, be provided in the Provident Fund Scheme or the Pension Scheme or the Insurance Scheme, as the case may be.

Provided further that the forms of records and registers and that of the returns to be filed under Chapter IV shall be specified in the regulations instead of providing them in the rules.

Offences by Companies (Section 135)

(1) Where an offence has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, secretary or other officer of the company, such director, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. –For the purposes of this section, –

(a) "company" means any body corporate, and includes a firm or other association of individuals; and (b) "Director", in relation to a firm, means a partner in the firm.

Compounding of Offences (Section 138)

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed for the first time, punishable under this Chapter, being an offence–

(i) punishable with fine only; or

(ii) punishable with imprisonment for a term which is not more than one year and also with fine,

may, on an application made, either before or after the institution of any prosecution, be compounded by an officer authorised by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, in

such manner as may be prescribed by the Central Government on payment by the offender to the appropriate Government the amount–

(i) in the case of an offence punishable with fine only, the half of the maximum fine provided for that offence; and

(ii) in the case of an offence punishable with imprisonment for a term which is not more than one year and also with fine, the three-fourth of the maximum fine provided for that offence.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of three years from the date–

(i) of commission of a similar offence which was earlier compounded; or

(ii) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed by the appropriate Government.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought to the notice of the court in which the prosecution is pending in writing by the officer referred to in sub-section (1), and on such notice of the compounding of the offence being given to the court, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with the order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

LESSON ROUNDUP

- The **Social Security Code, 2020** represents India's most significant labour reform, consolidating **nine central labour laws** into a unified and modern social-security framework. Its core mission is to extend social protection to **all categories of workers–**including organized employees, unorganized labour, gig workers, platform workers and interstate migrant workers.
- The Code strengthens traditional schemes such as Employees' Provident Fund (EPF), Employees' State Insurance (ESI), Gratuity, and Maternity Benefits, while simultaneously expanding the safety net through Social Security Funds and digitised registration mechanisms. A significant innovation is the formal recognition of gig and platform economy workers, bringing them into India's social security architecture for the first time.
- Administrative governance is streamlined through statutory bodies such as the Central Board, ESI Corporation, and National & State Social Security Boards. Compliance is simplified through a single Inspector-cum-Facilitator system, paperless record-keeping, Aadhaar-based identification, and digital filing.

- The Code emphasises transparency, reduced litigation, and universal access. Benefits such as medical care, sickness benefit, maternity assistance, disability compensation, pension, and gratuity are now linked to a more robust and technology-driven delivery system. Strict offences and penalties ensure timely contributions and safeguard worker rights.
- Overall, the Code modernises India's welfare structure, aligns it with global best practices, and ensures that every worker–whether on a factory floor or a digital platform–has access to core social-security protections.

GLOSSARY

- ***Aggregator***: A digital intermediary or platform that connects customers with independent service providers (e.g., Uber, Ola, Swiggy).
- ***Building Worker:*** A person employed for skilled, semi-skilled or unskilled work in building or construction activities, excluding managerial or supervisory roles.
- ***Career Centre***: An office, exchange, or digital portal providing career services such as registration, vacancy information, and vocational guidance.
- ***Completed Year of Service***: Continuous service of twelve months.
- ***Executive Officer***: An officer notified by the appropriate Government to discharge functions under specified chapters of the Code.
- ***Home-based Worker:*** A person producing goods or services from home or a place of choice for remuneration.
- ***Inter-State Migrant Worker***: A worker recruited in one State for employment in another State or who migrates and obtains employment there.

TEST YOURSELF

1. Discuss the Gratuity payable to an employee employed on fixed term employment.
2. A manufacturing unit employs 12 workers and carries out its operations with the aid of power. The employer contends that the unit does not qualify as a factory. Guide the employer on the basis of the definition of factory under the Social Security Code.
3. Mr. John is an employee who have resigned from an establishment covered under the Provident Fund provisions and joined another covered establishment. He is unsure about his accumulated PF balance. As a PCS guide Mr. John with regards to the provisions related to accumulated PF balance under the Social Security Code.
4. Discuss the non-applicability of provisions of Chapter III: Employees' Provident Fund to certain establishments under the Social Security Code.
5. State the Purposes for which Employees' State Insurance Fund may be expended as per the Social Security Code.
6. Discuss the maternity benefits as per Chapter VI of the Code with regards to the following:
   (a) Right to payment of maternity benefit
   (b) Notice of claim for Maternity benefit and payment thereof

(c) Creche facility

7. Mr. Kunjilal works as an employee in Mahakal Coal Limited. He has incurred injury while operating the factory machines. Discuss the provisions related to Employer's liability for compensation under the Social Security Code.

LIST OF FURTHER READING

- https://labour.gov.in/sites/default/files/ss_code_gazette.pdf
- https://www.pib.gov.in/FactsheetDetails.aspx?Id=150473&reg=3&lang=2
- https://prsindia.org/billtrack/the-code-on-social-security-2020

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

Lesson 20

KEY CONCEPTS

■ Appropriate Government ■ Adolescent ■ Establishment ■ Occupier ■ Workshop ■ Artist ■ Family Enterprise ■ Child Labour

Learning Objectives

To understand:

- The legal frame work provided for law regulating Child and Adolescent Labour practices in India.
- The law on working abolition and prohibition of Child Labour practices
- The provisions relating to employment of adolescent in non-hazardous occupations and processes
- The important definitions and concepts
- The need for protecting and safeguarding the interest of Child Labour and Adolescents.
- To familiarize the students with the legal frame work stipulated under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

Lesson Outline

- Object, scope of the Act
- Definitions
- Prohibition of employment of children in any occupations
- Prohibition of employment of adolescent in any occupations
- Prohibition of employment of adolescent in certain hazardous occupations and processes
- Regulation of Conditions of Work of adolescent
- Hours and Period of work
- Weekly holidays
- Maintenance of register
- Penalties
- Lesson Round-Up
- Glossary
- Test Yourself

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments.

REGULATORY FRAMEWORK

- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

Introduction

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

Appropriate Government means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Day means a period of twenty-four hours beginning at midnight.

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

Occupier in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

Workshop means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Prohibition of Employment of Children in any Occupations and Processes

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However no such work shall effect the school education of the child.

It may be noted that the *expression:*

(a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;

(b) "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) "artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2)."

Prohibition of Employment of adolescents in hazardous Occupations and Processes

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

(1) Mines.

(2) Inflammable substances or explosives.

(3) Hazardous process.

Explanation. – For the purposes of this Schedule, "hazardous process" has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

Hours and Period of Work

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that :

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

Weekly Holidays

As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to inspector

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

- The name and situation of the establishment;
- The name of the person in actual management of the establishment;

- The address to which communications relating to the establishment should be sent; and
- The nature of the occupation or process carried on in the establishment.

Maintenance of Register

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- the name and date of birth of every adolescent so employed or permitted to work;
- hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- the nature of work of any such adolescent; and
- such other particulars as may be prescribed

Display of Notice Containing Abstract of Sections 3A and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

Penalties

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

District Magistrate to Implement the Provisions

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such

duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

LESSON ROUND-UP

- The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.
- Adolescent shall not permit to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- Every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- Every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice.
- Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment.
- Contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.
- Contravention of the provisions of Section 3A of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

GLOSSARY

Appropriate Government: It means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

Adolescent: Means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Child: A child is a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Establishment: It includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

Occupier: In relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

Workshop: It means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Enumerate the constitutional provisions on Child Labour Prohibition.
2. State the provisions regarding prohibition of employment of adolescent in certain occupations and processes under the Act.
3. Write short notes on “workshop” and “establishment”.

Apprentices Act, 1961

Lesson 21

KEY CONCEPTS

■ Apprentice ■ Apprenticeship Training ■ Designated trade ■ Industry ■ Graduate or technician apprentice ■ Technician (vocational) Apprentice ■ Worker ■ Trade Apprentice ■ Optional trade

Learning Objectives

To understand:

- The legal frame work provided for law regulating regulate and control the programme of training of apprentices in India.
- The legal machinery for employers both in public and private sector establishments having requisite training infrastructure
- The important definitions and concepts
- To familiarize the students with the legal frame work pertaining to apprentice training under the Apprentices Act, 1961

Lesson Outline

- Introduction
- Important Definitions
- Qualification for being engaged as an apprentice
- Contract of apprenticeship
- Obligations of Employers
- Obligations of apprentices
- Records and Returns
- Authorities under the Act
- Authority under the Act
- Offences and Penalties
- Lesson Round-Up
- Glossary
- Test Yourself

REGULATORY FRAMEWORK

- Apprentices Act, 1961

The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.

INTRODUCTION

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of "establishment", "worker", number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provision relating to penalty create fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

Definitions

Section 2 of the Act defines various terms used in the Act; Some of the definitions are given here under:

Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. (Section 2(aa)}

Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. (Section 2 (aaa)}

Appropriate Government means —

(1) in relation to —

(a) the Central Apprenticeship Council, or

(aa) the Regional Boards, or

(aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;

(b) any establishment of any railway, major port, mine or oilfield, or

(bb) any establishment which is operating business or trade from different locations situated in four or more States, or

(c) any establishment owned, controlled or managed by —

(i) the Central Government or a department of Central Government,

(ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government on partly by that Government and partly by one or more State Governments,

(iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government;

the Central Government;

(2) in relation to —

(a) a State Apprenticeship Council, or

(b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; {Section 2(d)}.

Designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act. [Section 2(e)}.

Employer means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. [Section 2 (f)}

Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment. [Section 2 (g)}

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade. {Section 2(j)}

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both. {Section 2(k)}

Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act. {Section 2(ll)}

Portal-site means a website of the Central Government for exchange of information under this Act. [Section 2(lll)]

Technician (vocational) apprentice means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-lndia Council and undergoes apprenticeship training in designated trade. [Section 2(pp)]

Trade **Apprentice** means an apprentice who undergoes apprenticeship training in any designated trade. [Section 2(q)]

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa). [Section 2(r)].

Qualifications for being engaged as an apprentice

Section 3 of the Act provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he —

(a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and

(b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

Contract of apprenticeship

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

(1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.

(4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.

(4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.

(4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Novation of contracts of apprenticeship

Section 5 of the Act provides that where an employer with whom a contract of apprenticeship has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.

Regulation of optional trade

Section 5A of the Act provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

Engagement of apprentices from other States

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

Period of apprenticeship training

As per section 6 of the Act the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows —

(a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council , the period of apprenticeship training shall be such as may be prescribed.

(aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;

(b) in the case of other trade apprentices , the period of apprenticeship training shall be such as may be prescribed;

(c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

Number of apprentices for a designated trade and optional trade

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

Practical and basic training of apprentices

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

– Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.

– The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser

authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.

- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne –
  (i) If such employer employs two hundred and fifty workers or more, by the employer;
  (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

Obligations of employers

Every employer shall have the following obligations in relation to an apprentice, namely: –

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

Obligations of apprentice

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely :-

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
- to attend practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment; and
- to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

Hours of work, overtime, leave and holidays

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

(1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.

(2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.

(3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

Apprentices are trainees and not workers

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

Records and returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

Settlement of disputes

As per section 20 of the Act any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, within thirty days from the date of

communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose. The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

Holding of test and grant of certificate and conclusion of training

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and acceptance of employment

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

Authorities under the Act

In addition to the Government, there are the following authorities under the Act, namely : –

(a) The National Council,

(b) The Central Apprenticeship Council,

(c) The State Council,

(d) The State Apprenticeship Council,

(e) The All India Council,

(f) The Regional Boards,

(g) The Boards or State Councils of Technical Education

(h) The Central Apprenticeship Adviser,

(i) The State Apprenticeship Adviser.

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall be

affiliated to the Central Apprenticeship Council. Every Board or State Council of Technical Education and every Regional Board shall be affiliated to the Central Apprenticeship Council.

Each of the authorities specifies above shall, in relation to apprenticeship training under the Act, perform such functions as are assigned to it by or under the Act or by the Government. However, a State Council shall also perform such functions as are assigned to it by the National Council and the State Apprenticeship Council and the Board or State Council of Technical Education shall also perform such functions as are assigned to it by the Central Apprenticeship Council.

Offence and penalties

Section 30 deals with offences and penalties. Section 30 provides that-

(1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

(2) If any employer or any other person –

(a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or

(b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(d) employs an apprentice on any work which is not connected with his training, or

(e) makes payment to an apprentice on the basis of piece-work, or

(f) requires an apprentice to take part in any output bonus or incentive scheme.

(g) engages as an apprentice a person who is not qualified for being so engaged, or

(h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.

(2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.

LESSON ROUND-UP

- The Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices and for matters connected therewith.
- The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.
- The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
- Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
- The Act makes it obligatory on part of the employers both in public and private sector establishments having requisite training infrastructure as laid down in the Act, to engage apprenticeship training.
- No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such a person or, if he/ she is a minor, his/ her guardian has entered into a contract of apprenticeship with the employer.
- Every employer shall have the obligations in relation to an apprentice to provide the apprentice with training in his/ her trade in accordance with the provisions of this Act, and the rules made there under.
- Every trade apprentice undergoing apprenticeship training shall have the obligations, to learn his/ her trade conscientiously and diligently and endeavour to qualify himself/ herself as a skilled craftsman before the expiry of the period of training.

GLOSSARY

Apprentice: The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

Apprenticeship Training: It means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.

Technician (vocational) Apprentice: It means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-lndia Council and undergoes apprenticeship training in designated trade.

Graduate or Technician Apprentice: It means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade.

Trade Apprentice: It means an apprentice who undergoes apprenticeship training in any designated trade.

Optional trade: It means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss the Apprentices (Amendment) Act, 2014?
2. Write short notes on Apprentice and Apprenticeship training.
3. What are the obligations of Employer under a contract of apprenticeship?
4. What are the obligations of Apprentice under a contract of apprenticeship?
5. Write the rules w.r.t. Canteens under the Contract Labour (Regulation and Abolition) Central Rules, 1971.
6. Who is responsible for payment of wages under the Act if contractor fails to make payment of wages to contract labour?
7. Briefly discuss case of "Steel Authority of India v. National Union of Water Front Workers and others"?
8. Explain the provisions of registration of establishment under the Act.
9. State the penal provision under of the Apprentices Act, 1961?

Labour Laws
(Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

Lesson 22

KEY CONCEPTS

■ Employer ■ Form ■ Schedule Act ■ Small Establishment ■ Very Small Establishment ■ Exemption from maintenance of Register and Return ■ Penalty ■ Establishment ■ Registers ■ Returns

Learning Objectives

To understand:

- The legal frame work provided for law regulating the furnishing of returns and maintenance of registers by Certain Establishmnets in India
- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988
- The legal machinery for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws
- The important definitions and concepts
- To familiarize the students with the legal frame work stipulated under the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988

Lesson Outline

- Introduction
- Definitions
- Schedule Act
- Small Establishment
- Very Small Establishment
- Exemption from maintenance of Register and Return
- Penalty
- Lesson Round-Up
- Glossary
- Test Yourself

REGULATORY FRAMEWORK

- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988

The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.

INTRODUCTION

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

Definitions

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes — (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936 ; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

Form

Form means a Form specified in the Second Schedule (Section 2 (c)}. Following forms are specified in the second schedule. They are as under:

– Form I -Annual Return(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)

– Form II -Register of persons employed-cum-employment card

– Form III- Muster roll-cum-wage register

Scheduled Act

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder{Section 2 (d)}.

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Small establishment

Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months(Section 2 (e)}.

Very small establishment

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.{Section 2 (f)}.

Exemption from furnishing or maintaining of returns and registers required under certain labour laws

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small

establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

(a) furnishes, in lieu of such returns, annual return in Form I; and

(b) maintains at the work spot, in lieu of such registers, –

(i) registers in Form II and Form III, in the case of small establishments, and

(ii) a register in Form III, in the case of very small establishments.

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

Penalty

As per section 6 of the Act , any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand ; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both

LESSON ROUND-UP

- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.
- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

- Small establishment means an establishment in which not less than ten and not more forty persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.
- Any employer who fails to comply with the provisions of the Act, shall, on conviction, be punishable in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty- five thousand, or with both.

GLOSSARY

Employer: In relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act.

Scheduled Act: It means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder.

Small Establishment: It means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months.

Very small establishment: It means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. State Establishment under the Act.
2. Distinguish between Small Establishment and Very Small Establishment
3. What do you mean by Schedule Act and list out the Act Specified under Schedule Act?
4. List out the Return and Register Specified under Second Schedule to the Act.
5. State the provision under the Act regarding exemption from maintenance of Register and Return by small and very small establishment.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Lesson 23

KEY CONCEPTS

■ Sexual Harassment ■ Workplace Sexual Harassment ■ Vishaka Guidelines ■ Internal Complaints Committee ■ Local Complaints Committee ■ Redressal of Complaints ■ Hostile Work Environment ■ Quid Pro Quo ■ Aggrieved Women ■ Conciliation ■ Inquiry Report

Learning Objectives

To understand:

- The legal framework provided for Sexual Harassment of Women at Workplace
- Important definitions
- Guidelines laid down by the Supreme Court in its landmark *judgement, Vishakha v. State of Rajasthan*
- The working and constitution of an Internal Complaints Committee (ICC) and Local Complaints Committee (LCC)
- The need of recognising the sensitivity attached to matters pertaining to sexual harassment

Lesson Outline

- History of the Legislation
- Object of the Act
- Forms of Workplace Sexual Harassment
- Applicability
- Definitions
- Complaints Committees
- Complaint of sexual harassment
- Conciliation
- Appeal
- Duties of employer
- Duties and powers of District Officer
- Miscellaneous
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

An Act for provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of 'sexual harassment and or matters connected therewith or incidental thereto.

REGULATORY FRAMEWORK

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

HISTORY OF THE LEGISLATION

Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

"...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree" Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013.

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011* ("Vishaka Judgment"), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment ("Vishaka Guidelines") which were being followed by employers until the enactment of the Act.

The Vishaka Judgement: In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment,

'Sexual Harassment' includes such unwelcome sexually determined behavior (whether directly or by implication) as:

a. Physical contact and advances;

b. A demand or request for sexual favours;

c. Sexually coloured remarks;

d. Showing pornography;

e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.'

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra, (1999) 1 SCC 759.* In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her."

In light of the above judgment, the very first efforts, towards implementing a law for protection of women from sexual harassment at workplace, were taken in 2007 when the Protection of Women against Sexual Harassment at Workplace Bill, 2007, was introduced in the Parliament. However, this Bill never saw the light of the day. On December 7, 2010, the Protection of Women against Sexual Harassment at Work Place Bill, 2010 (the "Original Bill") was introduced in Lok Sabha and was referred to a Parliamentary Standing Committee on Human Resource Development, led by Shri Oscar Fernandes ("Standing Committee"), on December 30, 2010 for examination, and the Standing Committee came out with its report in December, 2011.

Further to the report, subsequent changes were made to the Original Bill, including to the title of the Bill, which was changed to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 (the "Bill"). The change of title clearly reflects the objective of the Ministry for passing this legislation i.e. to not just focus on redressal of complaints of sexual harassment but also focus on prevention and prohibition of sexual harassment.

As already stated above, since several bills related to prevention of sexual harassment, one after the other,

were always pending in either of the Houses of the Parliament (the Lok Sabha or the Rajya Sabha), Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women filed a petition in the Supreme Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. The Supreme Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the Vishaka Guidelines or not.

The Supreme Court then, *in Medha Kotwal Lele vs. Union of India, AIR 2013 SC 93* stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. Further, the Court held that a number of states were falling short in this regard and reiterated that there is an obligation to prevent all forms of violence. It stated that "lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population — the women".

This case further stated that States governments must make the necessary amendments to the Central Civil Services (Conduct) Rules, 1964 and Standing Orders within two months of the date of judgment and entrusted a responsibility upon the Bar Council of India to ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka Guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes were required to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka Guidelines.

The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

So, it was expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, India in 2013 — after 16 years of the Supreme Court judgment in the case of Vishaka & Ors. vs. State of Rajasthan & Ors. (1997 (7) SCC 323). The Act came into force w.e.f. 9th December, 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("POSH Rules"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which has criminalized offences such as sexual harassment, stalking and voyeurism.

OBJECT OF THE ACT

The Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

The Preamble of the Act reads as under:

"An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace."

What is Workplace Sexual Harassment?

Workplace sexual harassment is sexual, unwelcome and the experience is subjective. It is the impact and not intent that matters and it almost always occurs in a matrix of power. The impact of sexual harassment at workplace is far reaching and is an injury to equal right of women. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally workplace sexual harassment refers to Mo common forms of inappropriate behaviour:

- Quid Pro Quo (literally 'this for that') - Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status.
- Hostile Work Environment - Creating a hostile, intimidating or an offensive work environment - Humiliating treatment likely to affect her health or safety.

APPLICABILITY

The Act applies to both the organized and unorganized sectors (self-employed or having less than 10 workers) in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

DEFINITIONS (SECTION 2)

"Aggrieved woman" means—

i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house. [Section 2(a)]

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, ad-hoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

"Appropriate Government" means —

i. in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly —

   a. by the Central Government or the Union territory administration, the Central Government;

   b. by the State Government, the State Government

ii. in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government; i.e. for the private sector, appropriate Government is the concerned State Government. [Section 2(b)]

"Domestic worker" means

- a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or ful1 time basis;
- but does not include any member of the family of the employer.

[Section 2(e)]

"Employee" means

- a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and
- includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

[Section 2(f)]

"Employer" means:' —

i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

ii. in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

   Explanation. — For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of polices for such organisation;

iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

[Section 2(g)]

"Respondent" means a person against whom the aggrieved woman has made a complaint under section 9.

[Section 2(m)]

"Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: –

i. physical contact and advances; or

ii. a demand or request for sexual favours; or

iii. making sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

[Section 2(n)]

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishaka Judgment. The definition of 'sexual harassment' under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. The definition also includes reference to creating an 'intimidate, offensive or hostile working environment'. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

The Act has defined what constitutes sexual harassment under Section 2 (n) and under Section 3, has further widened the definition of sexual harassment by providing that any of the following circumstances, related to sexual harassment, may also amount to Sexual Harassment: (1) implied or explicit promise of preferential treatment in the victim's employment; (2) implied or explicit threat of detrimental treatment in the victim's employment; (3) implied or explicit threat about the victim's present or future employment status; (4) interferes with the victim's work or creating an intimidating or offensive or hostile work environment for her and (5) humiliating treatment likely to affect the victim's health or safety.

The definition is very wide, as it provides for direct or implied sexual conduct, which may mean that what is "implied" sexual behaviour for one person, may not be the same for another person. Hence, the implied behaviour will depend only upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said "... come close to me, you will start feeling hot", can also be construed to be sexual harassment [*Albert Davit Limited vs. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)*].

According to section 2(o) **"workplace**" includes –

a. any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

b. any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;

c. hospitals or nursing homes;

d. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

e. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

f. a dwelling place or a house;

Workplace [section 2 (o)] has been defined as private sector organisation / private venture / undertaking / enterprise / institution / establishment/ society/trust/ non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation or during a lunch meeting at a restaurant, the same will be covered under the Act.

As such, a logical meaning should be given to the expression "workplace" so that the purpose for which those guidelines have been framed, is not made unworkable. Workplace cannot be given a restricted meaning so as to restrict the application of the said guidelines within the short and narrow campus of the school compound. Workplace should be given a broader and wider meaning so that the said guidelines can be applied where its application is needed even beyond the compound of the workplace for removal of the obstacle of like nature which prevents a working woman from attending her place of work and also for providing a suitable and congenial atmosphere to her in her place of work where she can continue her service with honour and dignity.

In the case of *Saurabh Kumar Mallick* v. *Comptroller & Auditor General of India,* WP(C) No. 8649/2007, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no 'favour' could be extracted by the respondent from the complainant and thus the alleged act would not constitute 'sexual harassment'. The Delhi Court while considering this matter held this as 'clearly misconceived'. The Delhi Court observed that 'the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term 'workplace' by confining the meaning to the commonly understood expression "office". It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace' but at his 'residence' and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

"Unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

[Section 2(p)]

COMPLAINTS COMMITTEE

The Act provides for two kinds of complaints mechanisms:

(i) Internal Complaints Committee (ICC); and

(ii) Local Complaints Committee (LCC).

Constitution Internal Complaints Committee

According to section 4 the Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The section provides for the following regarding the ICC:

1. **Mandatory constitution of Internal Complaints Committee by order in writing:**

   Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

   Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

2. **Composition of the ICC:** The Internal Committee shall consist of the following members to be nominated by the employer, namely: —

   a. **Presiding Officer:** a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. However, in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section.

      Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

   b. **Members**: not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

   c. **External member:** one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

   Provided that at least one-half of the total Members so nominated shall be women.

3. **Tenure of office:**

   The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

4. **Fees of external members:**

   The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

5. **Casual vacancy in the office of Presiding Officer or any member of Internal Committee:** Where the Presiding Officer or any Member of the Internal Committee-

   a. contravenes the provisions of section 16; or

b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be,

shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

In *Vidya Akhave ("Petitioner")* v. *Union of India and Ors,* Writ Petition 796 of 2015, The Bombay High Court ("Court") ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee ("ICC") in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

Constitution of Local Complaints Committee

At the district level, the Government is required to set up a 'Local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The provisions of the Act w.r.t. LCC are as follows:

(i) Notification of District Officer.

According to section 5, the Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

(ii) Constitution and jurisdiction of Local Committee

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

(iii) Composition, tenure and other terms and conditions of Local Committee

Pursuant to section 7, the Local Committee shall consist of the following members to be nominated by the District Officer, namely:- —

a. a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

b. one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

c. two Members, of whom at least one shall be a woman, to be nominated from amongst such non- governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge. It is provided further that at least one of the nominees shall be a woman belonging

to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio. [Section 7(1)]

The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer. Where the Chairperson or any Member of the Local Committee commits any of the following acts, he shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section:

a. contravenes the provisions of section 16; or

b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

c. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be.

The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and Audit

In accordance with section 8, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in section 7.

The State Government may set up an agency and transfer the grants so made to that agency. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to section 7.

The accounts of such agency shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

COMPLAINT

Complaint of Sexual harassment

Section 9 of the Act provides for the procedure for filing and hearing of complaints under the Act as follows:

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

   Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

2. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated.

In *Manjeet Singh vs. lndraprastha Gas Limited 236 (2017) DLT 396,* the Delhi High Court observed that anonymous complaints under the Act are bound to be rejected.

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

CONCILIATION

According to section 10, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. It is provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been so arrived, the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement so recorded to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be in case where such settlement is arrived.

Inquiry into Complaint

Section 11 of the Act states the procedure for conducting inquiry into the complaint made under the Act. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

It is provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

It is provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:-

a. summoning and enforcing the attendance of any person and examining him on oath;

b. requiring the discovery and production of documents; and

c. any other matter which may be prescribed.

Such an inquiry shall be completed within a period of ninety days.

Action during pendency of inquiry.

Section 12 provides for the relief that can be given by IC to the aggrieved woman during pendency of inquiry. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to —

a. transfer the aggrieved woman or the respondent to any other workplace; or

b. grant leave to the aggrieved woman up to a period of three months; or

c. grant such other relief to the aggrieved woman as may be prescribed.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

On such recommendation of the Internal Committee or the Local Committee, as the case may be, the employer shall implement the recommendations so made and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry Report

Section 13 of the Act provides for the action report to be submitted by IC or LC after conducting inquiry under the Act. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period often days from the date of completion of the inquiry and such report be made available to the concerned parties.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.

It is provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman. It is provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Punishment for false or malicious complaint and false evidence

There are strict provisions under section 14 of the Act for false or malicious complaint and false evidence under the Act. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Determining of Compensation

Section 15 provides that for the purpose of determining the sums to be paid to the aggrieved woman section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; (e) feasibility of such payment in lump sum or in installments.

Prohibition of publication or making known contents of complaint and inquiry proceedings

According to section 16, Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

It is provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

Penalty for publication or making known contents of complaint and inquiry proceedings

According to section 17, where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

APPEAL

Section 18 provides for the appeal by aggrieved person under the Act. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (1) of section 13 or subsection (I) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. Such appeal shall be preferred within a period of ninety days of the recommendations.

DUTIES OF EMPLOYER

The law has provided for several duties of the employer under section 19 of the Act. Such duties begin at the time when an employer has to set up an internal complaints committee to ensure that aggrieved can file their complaints and seek redressal to such complaints and end at the time when the employer has provided certain data, in accordance with the provisions of the law, in relation to sexual harassment in its annual report. According to the section, every employer shall —

a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (I) of section 4;

c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being. in force;

h. cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

j. monitor the timely submission of reports by the Internal Committee.

Duties and Powers of Districts Officer

Section 20 cast upon the following mandatory duties on the District Officer who shall, —

a. monitor the timely submission of reports furnished by the Local Committee;

b. take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

MISCELLANEOUS

Committee to submit annual report

According to section 21, the Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

The District Officer shall forward a brief report on the annual reports so received to the State Government.

Employer to include information in annual report

According to section 22, the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 23, the appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Appropriate Government to take measures to publicise the Act

In accordance with section 24, the appropriate Government may, subject to the availability of financial and other resources, — (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace, (b) formulate orientation and training programmes for the members of the Local Committee.

Poser to call for information and inspection of records

Section 25 lists out the power of the appropriate Government under the Act. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing, —

a. call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

b. authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

Penalty for non-compliance with provisions of Act

Section 26 provides for a penalty with a fine up to rupees fifty thousand where the employer fails to-

a. constitute an Internal Committee under sub-section (1) of section 4;

b. take action under sections 13, 14 and 22; and

c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under.

If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

In addition to above, he shall be liable for cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, by the Government or local authority ,as the case may be, for carrying on his business or activity.

Cognizance of offence by courts

According to section 27, every offence under this Act are non-cognizable which means one cannot be arrested without a warrant. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Act not in derogation of any other law

Section 28 states that the purpose of the Act is to provide additional safeguard to women at work. According to the section, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Power of appropriate Government to make rules

Section 29 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the fees or allowances to be paid to the Members under sub-section (4) of section 4;

b. nomination of members under clause (c) of sub-section (l) of section 7;

c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

d. the person who may make complaint under sub-section (2) of section 9;

e. the manner of inquiry under sub-section (l) of section 11;

f. the powers for making an inquiry under clause (c) of sub-section (2) of section l l;

g. the relief to be recommended under clause (c) of sub-section (l) of section 12;

h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;

i. the manner of action to be taken under sub-sections (1) and (2) of section 14;

j. the manner of action to be taken under section 17;

k. the manner of appeal under sub-section (1) of section 18;

l. the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and

m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (l) of section 21.

In 2019, POSH saw an amendment. In general notification issued by Women Development and Child Welfare Department it stated that all businesses in Telangana with ten or more employees are required to register their IC with the State Shebox portal by no later than July 15, 2019. This was done in an effort to help officials better monitor local firms' compliance levels, this is being done.

Maharashtra government also mandated all companies to complete and submit to the Sub-Divisional Magistrate by July 20, 2019, a form explaining their compliance status and internal committee.

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

CASE LAWS

***Binoy Jacob* vs. *State of Kerala and Ors.* (01.11.2022 - KERHC): Crl.MC No. 847 of 2022**

In this case, petition has been filed to quash the proceedings on the ground that since the very same complaint raised by the 2nd respondent considered by the Internal Complaints Committee and found to be not proved, the criminal prosecution on same set of facts before a court will not stand. Court held that

"Section 28 of the Act of 2013 stipulates that provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Thus, it is clear that the action under the Act of 2013 by the employer and a complaint registered at the instance of the employee for the offence under the Indian Penal Code is independent to each other. Two fold actions are permissible for the sexual harassment complaint. Hence, both actions are independent and permissible under law. There is absolutely no bar in proceeding with the criminal prosecution initiated against the petitioner."

***Rayala Satyanarayana* vs. *SBI Funds Management Pvt. Ltd. and Ors.* (19.10.2022 - APHC) : Writ Petition No. 8042 of 2019**

In this case, Andhra Pradesh High Court decided on whether the termination of services is, in fact, a major punishment, which cannot be imposed without conducting a separate departmental enquiry or without affording an opportunity of hearing or issuing a separate charge memo. Court held that Conclusions by Committee cannot be the basis for imposing a major penalty of removal from service, because it is a finding/ report in an enquiry into the misconduct of the delinquent and cannot be treated as a mere preliminary investigation or inquiry leading to a disciplinary action. Court stated-

"the conclusions arrived at by the Committee cannot be the basis for imposing a major penalty of removal from service, mainly on the ground that the conclusions arrived at by the Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action, but shall be treated as a finding/ report in an enquiry into the misconduct of the delinquent. The impugned proceedings further suffer from severe illegality as the said proceedings were issued without there being any regular departmental enquiry and without giving any opportunity as per the Service Rules, which mandate that initiation of disciplinary proceedings is a mandatory requirement and without conducting any enquiry, no employee can be imposed any major penalties."

LESSON ROUND-UP

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Act") has been introduced to curb sexual harassment at workplace.
- 'Sexual harassment' is defined as any advances to establish physical contact with a woman, a demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other form of physical, verbal or non-verbal conduct of sexual nature.
- The Act will ensure that women are protected against sexual harassment at all work places, be it public or private, organised sector or even the unorganised sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in hospital as well as a woman working in a dwelling place or a house.
- The Act creates a mechanism for redressal of complaints and safeguards against false or malicious charges. Under the Act, employers who employ 10 employers or more and local authorities will have to set up grievance committees to investigate all complaints.
- Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If, however, they still fail to form a Committee, they can be held liable for a greater fine and may even lead to cancellation of their business license.
- Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as 'Internal Complaints Committee'(ICC) to look into all complaints of sexual harassment at the workplace. Further, in every district, a public official called the District Officer will constitute a committee known as the 'Local Complaints Committee' (LCC) to receive complaints against establishments where there is no Internal Complaints Committee or there being a complaint against the employer himself. This committee would further handle all complaints of sexual harassment in the domestic sphere as well as those coming from the unorganised sector.
- An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident.
- The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.
- Before initiating action on a complaint, the ICC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement.

GLOSSARY

Aggrieved Woman: It means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Unorganised Sector: It means in relation to a workplace means an enterprise owned by individuals or self- employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Quid Pro Quo: It is a Latin phrase meaning 'this for that' Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status.

Hostile Work Environment: It means creating a hostile, intimidating or an offensive work environment or any humiliating treatment likely to affect her health or safety.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. Highlight the importance of "*Vishaka* Judgment" in enactment of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".
2. Write a note on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
3. Write a brief note on constitution of Internal Complaints Committee under the Act.
4. Briefly explain the powers of Local Complaints Committee.
5. Explain sexual harassment at workplace.
6. Write a note on evolution of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with the help of case laws.

LIST OF FURTHER READINGS

- Bare Act - Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013

OTHER REFERENCES (Including Websites and Video Links)

- http://www.shebox.nic.in/home/notification

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

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EXECUTIVE PROGRAMME

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

GROUP 1 • PAPER 3

(This test paper is for practice and self-study only and not to be sent to the Institute)

TEST PAPER

Time allowed: 3 hours ***Maximum Mark: 100***

Total number of questions: 6

NOTE: *Answer* ***ALL*** *Questions*

PART-I: SETTING UP OF BUSINESS (60 MARKS)

1(a) Launched on 16th January, 2016, the Startup India Initiative has rolled out several programs with the objective of supporting entrepreneurs, building a robust startup ecosystem and transforming India into a country of job creators instead of job seekers. To reduce the regulatory burden on Startups thereby allowing them to focus on their core business and keep compliance cost low, detailed Regulatory formalities requiring compliance with various labour and environment laws that are time consuming and difficult in nature have been mostly done away with.

Often, new and small firms are unaware of nuances of the issues and can be subjected to intrusive action by regulatory agencies. In order to make compliance for Startups friendly and flexible, simplifications are required in the regulatory regime. Accordingly, the process of conducting inspections have been made more meaningful and simpler. Startups have been allowed to self-certify compliance (through the Startup mobile app) with labour and environment laws. In case of the labour laws, no inspections will be conducted for a period of 3 years. Startups may be inspected on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer. In case of environment laws, Startups which fall under the 'white category' [as defined by the Central Pollution Control Board (CPCB)] would be able to self-certify compliance and only random checks would be carried out in such cases.

In view of the above, answer the following with reasons:

(i) Whether a foreign company is eligible to get recognised as a Startups by Department for Promotion of Industries & Internal Trade (DPIIT) to avail tax benefits and ease of compliance from relevant laws or regulations?

(ii) Whether Startup India Hub is a one-stop platform for all stakeholders in the Startup ecosystem?

(iii) Whether Government of India flagship Schemes such as Startup India Seed Fund Scheme and Fund of Funds for Startups (FFS) Scheme etc. under Startup India initiative are fruitful.

(iv) Whether investors particularly Venture Capitalists (VCs) add value to startups in a lot of ways?

(3 Marks Each)

(b) XYZ Corporation Limited, is a resident company in India carrying on business for the last 20 years. The company is operating in various sectors e.g., power, infrastructure, ports, oil, telecommunications and IT etc. Now, the company is planning to make an investment of ₹ 10,000 crore in Brazil's solar power projects through the joint venture in Amazon Forest. The latest audited financial statements of the company revealed the following data as on 31st March, 2023:

Paid up Share Capital: ₹ 5,000 crore

Reserve & Surplus: ₹ 5,000 crore

Long-term Borrowings: ₹ 5,500 crore

Creditors: ₹ 300 crore

Referring to the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022, advise whether the company can make desired investment under the automatic route.

(3 Marks)

2(a) XYZ Pvt. Ltd., comprises of two members rest of which, one member left on 1st November, 2022. Seven months since then, company had only one member and the company were carrying on business. Discuss the consequences?

(b) XYZ Limited is a company registered under the Companies Act 2013 in the year 2018. Now, XYZ Limited contemplates to convert itself into a Limited Liability Partnership. As a Company Secretary in Practice, advise XYZ Limited the procedure for conversion from the public limited company to a Limited Liability Partnership.

(c) Mr. A desire to obtain an NBFC license (as Core Investment Company) from Reserve Bank of Indi (RBI). Mr. A approaches you. Considering yourself as a Practising Company Secretary advise Mr. A regarding due diligence process applicable to a Core Investment Company form of NBFC.

(5 Marks Each)

3(a) XYZ Inc. incorporated in United States of America involved in trading activities, established its branch office in New Delhi. The permission in this regard has been obtained from the RBI under the Foreign Exchange Management Act 1999. Discuss the permitted activities by the Reserve Bank of India for operating branch office in India.

(b) The promoters of ABC Ltd. and XYZ Ltd. met for developing the Supply Chain Management System for packaged food items in specific geographical areas. ABC Ltd. is in logistic and marketing, however, XYZ Ltd. is a packaged food manufacturer. Both the promoters concluded that a separate Company be formed for running the business and an experienced manager shall be hired for promotion of the business. Mr. W is the friend of one of the promoters of ABC Ltd., and he advised for setting up a Contractual Joint Venture for a period of 25 years. Briefly explain the key characteristics of Contractual Joint Venture.

(c) Mr. P has an expertise in the field of motor vehicle facilitation field, he possesses requisite qualification and experience in this field. Now in order to start his business venture, he consulted Mr. CS (Practicing Company Secretary) for knowing of various forms of organizations and to select the best form, keeping in view their merits and demerits. In the capacity of Company Secretary, make Mr. P conversant of various forms of business organisations with their merits and demerits.

(5 Marks Each)

Attempt all parts of either Q.No.4 or Q.No.4A

4(a) XYZ Pvt. Ltd., is engaged in manufacture of engineering components. The Company has investment of ₹ 5 Crore and Turnover of ₹ 25 Crore. The Company wants to know their category as per definition of

MSME. In case XYZ Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover, then will there be any difference in the answer?

(b) Discuss the essential clauses of Limited Liability Partnership Agreement as enumerated in Schedule I of the LLP Act, 2008.

(c) Nidhi Companies can provide loans to its members' subject to certain limits as per Nidhi Rules, 2014. Mr. S being a member of a Nidhi Company wants to know the limits mentioned under Nidhi Rules, 2014 and also seek your advice whether a second loan can be granted within limits specified, if first loan is overdue and remains unpaid.

(5 Marks Each)

OR (Alternate question to Q.No.4)

4A(i) ABC Charity is registered under a Section 8 of the Companies Act, 2013 with the object of promoting elementary education by arranging introductory courses at district levels. ABC Charity has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. A member decided to make a complaint with the Registrar of Company to curb the fraudulent activities by cancelling the licence of the company. In the meantime, the board of the company mulled over the option of merging with Stick Private Limited, a company engaged in the business of e-commerce.

(a) Is there any provision under the Companies Act, 2013 to revoke the license? If so, state the provisions.

(b) Whether the ABC Charity can be merged with Stick Private Limited, a company engaged in the business of e-commerce?

(ii) PQR Pvt. Ltd. is having paid up share capital of ₹ 50 Lakh and annual turnover of ₹ 200 Lakh. It is a wholly owned subsidiary of XYZ Ltd. a listed company. In the given situation, can PQR Pvt. Ltd. be called a Small Company as per the provisions of the Companies Act, 2013.

(iii) Entrepreneurs are required to obtain Statutory Clearances under various environment protection legislations for setting up an industrial project. Enumerate the legislations enacted for the protection of environment in India.

(5 Marks Each)

PART-II: INDUSTRIAL AND LABOUR LAWS (40 MARKS)

5(i) Maternity leave cannot be compared or equated with any other leave as it is the inherent right of every woman employee which cannot simply be denied on technical grounds. It would be preposterous to hold otherwise as it would militate against the very process designed by nature. If a woman employee is denied this basic human right it would be an assault on her dignity as an individual and thereby offend her fundamental right to life guaranteed under Article-21 of the Constitution, which has been interpreted to mean life with dignity.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Social Security Code, 2020 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood

honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.

In view of the above facts, answer the following with reasons:

(a) Discuss the provisions relating to Nursing Break available under the Social Security Code, 2020.

(b) Explain the right to maternity benefit under the Social Security Code, 2020. Also state the eligibility of such benefits.

(c) Does an employer has to necessarily provide Crèche? *Whether the crèche facility applies to the criteria of 50 employees in each branch or company as a whole?*

(d) Explain the provisions related to Notice of claim for maternity benefit and payment thereof under the Social Security Code, 2020.

(2 Marks Each)

(ii) (a) Briefly Explain the provisions regarding labour as enumerated in Seventh Schedule to the Constitution of India.

(b) What is a "fixed term employment"? State the rights available to the fixed term employed workers under the Industrial Relation Code, 2020.

(c) Explain the provisions relating to floor wages under Code on Wages, 2019.

(d) Explain the General and Specific Duties of Employer under the Occupational Safety, Health and Working Conditions Code, 2020.

(3 Marks Each)

Attempt all parts of either Q. No. 6 or Q. No.6A

6(i) Explain "Sexual Harassment" as defined under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

(ii) Draft a specimen Model Standing Order as per Industrial Relation Code, 2020, for your organization where you are employed as a Company Secretary.

(iii) Who is responsible for payment of wages under the Contract Labour (Regulation and Abolition) Act, if contractor fails to make payment of wages to contract labour?

(iv) Discuss the legal obligation of a "Very Small Establishment" under Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

(5 Marks Each)

OR (Alternate question to Q. No. 6)

6A (a) Discuss the eligibility criteria for receiving Gratuity under the Social Security Code, 2020.

(b) How the contract employees are protected and given their Provident Fund when the contractor is not paying the dues to the principal employer?

(c) Discuss the benefits available to Gig & Platform worker under Social Security Code, 2020.

(d) Can the Internal Complaint Committee (ICC) or Local Complaint Committee (LCC) recommend compensation payment of an amount to the aggrieved woman under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013? If yes, who will pay the compensation, on what basis and how?

(5 Marks Each)