



CS EXECUTIVE CHART BOOK

QUICK REVISION GUIDE

SETTING UP OF BUSINESS, INDUSTRIAL AND LABOUR LAWS

MODULE - I

Summarised Tabular
Chart Format for
revising the subject
matter in an
easy-to-learn format

Point-wise
Summaries of each
chapter are provided
in a nutshell

Full-coverage of
the New Syllabus
for CS-Executive
Dec 2025 exams

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PART-I SETTING UP OF BUSINESS

INTRODUCTION

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.

DIFFERENT KINDS OF BUSINESS ORGANIZATION OR ENTITIES OR FORMS

Sole Proprietorship

Partnership Firm

Hindu Undivided Family (HUF) or Joint Family Business (JFB)

Limited Liability Partnership (LLP)

Co-operative society

Section 8 Company

Company

- ❖ One Person Company
- ❖ Private Company
- ❖ Public Company

FEATURES OF THE DIFFERENT TYPES OF BUSINESS ORGANISATION ARE DISCUSSED BELOW**Sole Proprietorship**

- ❖ Sole ownership with full control.
- ❖ unlimited personal liability for debts.
- ❖ The ability to retain all profits, and minimal legal formalities.

Partnership Firm

- ❖ Agreement between two or more persons for lawful business.
- ❖ Sharing of profits based on agreed proportions Unlimited liability.
- ❖ Joint ownership and management with equal rights for partners.
- ❖ Principal-agent relationship where each partner acts as both principal and agent.

Hindu Undivided Family (HUF) or Joint Family Business (JFB)

- ❖ HUFs can have assets that come from ancestral property, a gift, a property acquired from the sale of joint family property, a will, or property donated to the common pool by members of HUF.
- ❖ Membership - by virtue of birth.

Limited Liability Partnership

- ❖ It is the combination of both Partnership firm and a Company where liability is limited.

Co-operative societies

- ❖ Cooperative societies exhibit key features such as voluntary membership, legal status, separate legal entity, limited liability, and a service motive.
- ❖ These societies emphasize mutual help, democratic management, and limited liability for members, operating under state control with a focus on service rather than profit.

Section 8 Company

- ❖ It is formed for promoting commerce, art, science, sports, education, research, social welfare, religion,
- ❖ Charity, protection of environment or any such other object.

Companies

- (i) One Person Company
 - ◆ In One Person Company – One person is a member there must be a nominee.
 - ◆ Various exemptions has been given by the Central Government to OPC.
- (ii) Private Company
 - ◆ 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.
- (iii) Public Company
 - ◆ 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.

FACTORS GOVERNING THE DECISIONS FOR SUITABLE FORM OF ORGANIZATION**Nature of Business Activity**

- ❖ In small trading businesses, professions, and rendering of personal services, sole-proprietorship is Predominant.
- ❖ 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.

Scale of Operations

1. **Small:** Sole Proprietor or OPC
2. **Medium:** Partnership Or LLP
3. **Large:** Company

Scale of Operations

1. **Small:** Sole Proprietor or OPC
2. **Medium:** Partnership Or LLP
3. **Large:** Company

Capital Requirement

- ❖ Enterprises requiring small investment (like retail business stores, Personal service enterprises, etc.) can be best organized as sole Proprietorships or even as Partnerships.
- ❖ Companies are usually best able to attract capital because Investors are assured that their liability will be limited, their Operations are in public domain in the transparent manner.

**Marginal Ability**

- ❖ It is difficult for a sole proprietor to have expertise in all functional areas of business.
- ❖ In 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.

Degree of Control And Management

- ❖ In sole proprietorship and OPC, ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.
- ❖ In partnership, management and control of business is jointly shared by the partners and their specific Rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed.
- ❖ In a company, however, there is divergence between ownership and management, the management And control of the company business is entrusted to the Board.

Degree of Risk And Liability

- ❖ In the sole proprietor is personally liable for all the debts of the business to the Extent of his entire property.
- ❖ 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.

Stability of Business

- ❖ From this point of view, sole proprietorships are not stable, although No time limit is placed on them bylaw.
- ❖ In 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.

Flexibility of Administration

- ❖ The internal organization of a sole proprietary business, for instance, is very simple, and therefore, Any change in its administration can be effected with least inconvenience and loss.
- ❖ To the large Extent, the case is the same in a partnership business also.
- ❖ In case of company, administration is not that flexible because its activities are conducted on a Large scale and they are quite rigidly structure.

Division of Profit

- ❖ An entrepreneur desiring to pocket all the profits of business - prefer sole Proprietorship.
- ❖ In company organization the profits (whenever the Board of Directors decides) are Distributed among shareholders in proportion to their shareholding.
- ❖ In case of listed companies, the equity shares are tradeable on the stock exchanges, enabling the shareholders to exit the company At any time as per their own discretion.

Flexibility of Administration

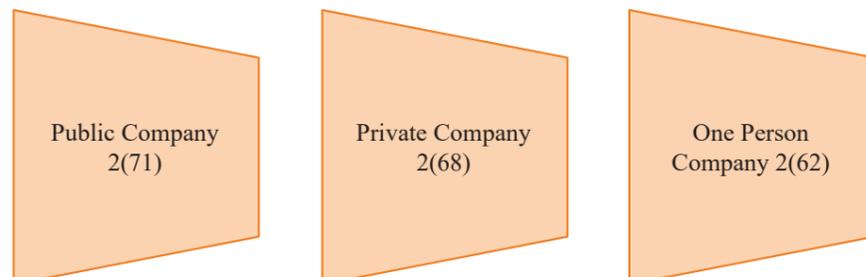
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TYPES OF COMPANIES UNDER THE COMPANIES ACT 2013



TO BE FORMED AS PRIVATE LIMITED COMPANY

Various types of Companies

On the basis of Statute (STATUTORY COMPANIES)

- ❖ These are constituted by a special Act of Parliament. Provisions of Companies Act are not applicable to them. Examples are reserve Bank Of India, Life insurance Corporation of India.

On the basis on Registration (REGISTERED COMPANIES)

- ❖ The companies which are incorporated under Companies Act 2013 or under any other company law with ROC under this category.

On the basis of Liability

- ❖ Unlimited Liability Companies
- ❖ Company limited by Liability
- ❖ Company limited by Shares

OTHER FORMS OF COMPANIES

Section 8 Companies

Foreign Companies

Producer Companies

Nidhi Company

Listed Company

Small Company

1. PRIVATE COMPANY

- ❖ Minimum paid up share capital as the case may be (Rs 10 Lakhs)
- ❖ Restriction on the right to transfer its shares.
- ❖ 2 or more person can form a private company subject to a limit of maximum 200 members except in case of one person company.
- ❖ Right to transfer its shares is restricted.

Characteristic

- ❖ Limited Liability, Perpetual Succession, Index of Members, Prospectus, Minimum Subscription

2. PUBLIC COMPANY

Public company means a company which

- ❖ Is not a private company;
- ❖ Has a minimum paid-up share capital, as may be prescribed.

7 or more person can form a public Company

Any subsidiary of Public company shall be treated as public company even if such subsidiary company has obtained the status of a private company.

Characteristic

- ❖ Board of Directors, Limited Liability, Life Span, Financial Privacy, Capital

3. ONE PERSON COMPANY

To be formed as Private Limited Company and must be resident.

OPC is a one shareholder corporate entity, where legal and financial liability is limited to the company only.

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.

Characteristic

- ❖ Limited Liability, Separate Legal Entity, Sole Decision Making, Minimal Compliance, Tax Flexibility and Savings, Perpetual Succession, Single Owner, Credit Rating, Benefits under Income Tax Law.
- ❖ Nominee of an OPC shall be mentioned in the memorandum of OPC and such nomination details along with the consent of such nominee shall be filled in Form No. INC-32.

4. NIDHI COMPANY

It is Non-Banking Financial Company (NBFC) in India, primarily focused on borrowing and lending money to its members, promoting the habit of saving and thrive.

They are registered as public limited companies with a minimum paid-up share capital 5 lakh rupees.

Nidhi Companies are required to have a minimum 200 person.

They are not allowed to issue preference shares, debentures, or any other debt instruments.

Features of nidhi Company:

1. Registered as a Public Limited Company.
2. Main Objective is to encourage Savings.
3. Accepts deposits from and lends only to its members.
4. Must have minimum 7 members and minimum capital required is Rs.10 Lakh.
5. Mostly offers unsecured loans to members.

5. PRODUCER COMPANY

It was introduced to allow cooperatives to function as a corporate entity under the Ministry of Corporate Affairs.

These companies deal primarily with the produce of their active members and must have an object that relates to the production, harvesting, procurement, grading, pooling, handling, marketing, selling, export, or import of primary produce.

The main aim of Farmer Producer Companies (FPCs) is to ensure better income for producers through an organization of their own, providing them with better bargaining power and economies of scale.

6. FOREIGN COMPANY

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.

A foreign company must comply with statutory requirements, including tax filings, audits, and annual financial statements.

They need to open a designated bank account following RBI guidelines for capital repatriation.

Hiring local talent, establishing a physical presence, and adhering to labour laws are crucial.

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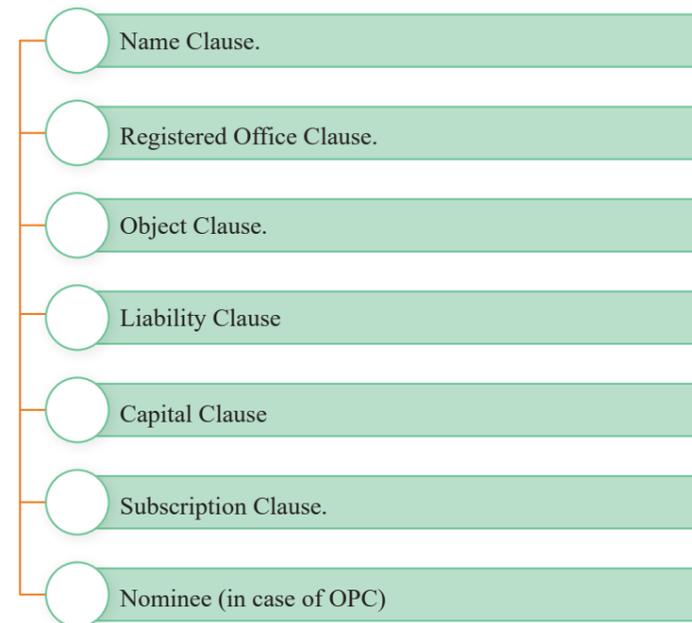
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MEMORANDUM OF ASSOCIATION

- ❖ Memorandum of Association (MoA) is a legal document that outlines a company’s identity, objectives, and operational framework.

- ❖ It defines the company’s purpose, powers, and limitations, guiding its operations within a legal framework.
- ❖ It serves as a charter for the company’s formation, ensuring transparency for stakeholders.

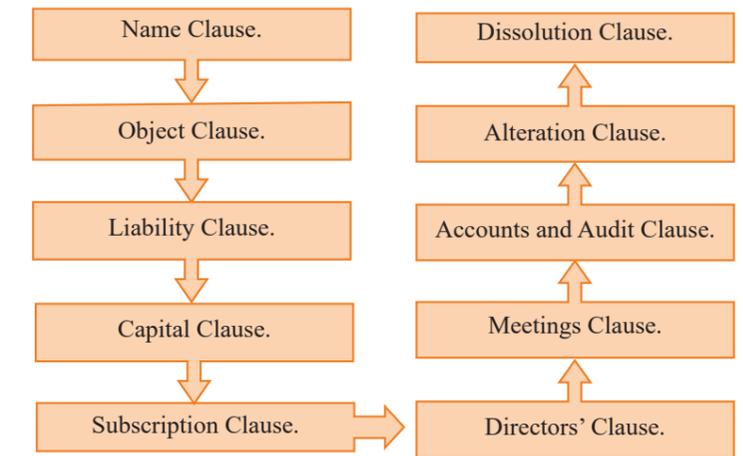
CONTENTS OF MEMORANDUM OF ASSOCIATION



ARTICLE OF ASSOCIATION

- ❖ It outlining its internal rules and regulations.
- ❖ It the company’s management and administration, setting out the relationship between the company, its shareholders, directors, and other stakeholders.
- ❖ Directors’ powers and duties are also defined, ensuring a clear hierarchy within the company.

CONTENTS OF ARTICLE OF ASSOCIATION



ENTRENCHMENT OF AOA:

- ❖ Entrenchment refers to making changes more difficult than usual by requiring more stringent procedures or conditions for their alteration.

LIMITED LIABILITY PARTNERSHIP

Limited liability partnerships (LLPs) allow for a partnership structure where each partner's liabilities are limited to the amount they put into the business.

Limited liability means that if the partnership fails, then creditors cannot go after a partner's personal assets or income.

LLPs are common in professional businesses like law firms, accounting firms, medical practices, and wealth management companies.

SMALL LIMITED LIABILITY PARTNERSHIP

Small LLP means a limited liability partnership having:

The contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed.

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

Which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

FEATURES

Separate legal existence.

Flexible management.

Limited liability.

Perpetual succession.

LLP agreement.

REGISTRATION PROCESS OF LIMITED LIABILITY PARTNERSHIP**Requirements**

- ❖ Minimum Number of Partners – 2, and atleast 1 DP
- ❖ Nationality- one partner should be resident of India
- ❖ Age.
- ❖ Mental Capacity.
- ❖ Skills and Experience.
- ❖ Digital Signature Certificate (DSC).
- ❖ Partnership Agreement

INCORPORATION OF LLP**For a LLP to be Incorporated**

Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document.

The incorporation document shall be filed with the Registrar of the State in which the registered office of the LLP is to be situated; and Statement to be filed:

- ❖ A statement along with the incorporation document shall be 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 LLP 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.

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.

The incorporation document shall–

- ❖ state the name of the LLP;
- ❖ state the proposed business of the LLP;
- ❖ state the address of the registered office of the LLP;
- ❖ state the name and address of each of the persons who are to be partners of the LLP on incorporation;
- ❖ state the name and address of the persons who are to be designated partners of the LLP on incorporation;
- ❖ contain such other information concerning the proposed LLP as may be prescribed.

INCORPORATION BY REGISTRATION

When the requirement of Section 11 have been complied with, registrar shall, within a period of 14 days:

- ❖ register the incorporation document; and
- ❖ give a certificate that the LLP 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 LLP is incorporated by the name specified therein.

LIMITED LIABILITY PARTNERSHIP AGREEMENT

LLP agreement is akin to the partnership deed of a partnership Firm.

The LLP agreement specifies the rights, duties, powers and other terms and conditions of the LLP. The partners have total freedom to decide about the various terms and conditions to be set out in the LLP agreement.

- ❖ Filing of LLP Agreement (Form-3): Submit Form-3 within 30 days of incorporation. This form includes details about the LLP agreement and any changes made.

Registered office of LLP and change therein [Section 13]

Every LLP 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 LLP 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 at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

A LLP may change the place of its registered office and file the notice of such change with the Registrar.

WHISTLE BLOWING

- ❖ Court/Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if such partner provides useful information during investigation or provides the information which is sufficient for the conviction of any employee, partner etc.

EFFECT OF REGISTRATION [SECTION 14]

- ❖ On Registration, a LLP shall by its name, be capable of:
- ❖ Suing and being sued;

- ❖ Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- ❖ Having a common seal, if it decides to have one; and
- ❖ Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.
- ❖ Compounding of Offences: The offences which are punishable with Fine only, can be compounded under this Act, by paying the Fine not more than the maximum amount of fine which can be imposed

ANNUAL COMPLIANCE OF LLP

- ❖ To file LLP annual compliance, the following steps are involved:

Maintain proper bookkeeping:

- ❖ This includes keeping accurate financial records, including details of the LLP's financial transactions, profits, expenses, assets, and liabilities.
- ❖ LLP shall have to maintain a register at registered office from the date of incorporation and within 30 days (old Incorporations) . Register shall contain following information:
 1. Name, address, PAN of partner
 2. Date of appointment, cessation
 3. Change in contribution, details of partner.

File an annual return with the Ministry of Corporate Affairs (MCA):

- ❖ This is done using Form 11, which provides essential information about the LLP, including the total number of designated partners, comprehensive partner information, contributions received by partners, and a summary of all partners involved.

Submit Form 11 within 60 days after the conclusion of the financial year:

- ❖ This means that Form 11 should be filed by May 30th each year.

Annual Compliances:

1. Annual Return (Form-11): Within 60 days of the close of the financial year.
2. Statement of Accounts and Solvency (Form 8): On or before 30th October every year.
3. Other Compliances (if applicable)

GST Returns:

- a. If the LLP is registered under GST.
- b. TDS Returns: If LLP is liable to deduct TDS.
- c. MCA Filings for Events: E.g., change in partners, registered office, capital, etc.

Audit in LLP.

- ❖ LLP 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.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY CONTRIBUTION

1. Registered Partner:-
 - (i) Name mentioned in register but no beneficial interest in contribution.
 - (ii) File Form 4B to LLP within 30 days specifying particulars of person who is holding beneficial interest.
2. Beneficial Partner
 - (i) BP will file Form 4C to LLP within 30 days with a declaration that he has beneficial interest.
 - (ii) After receipt of FORM- 4B/4C
3. LLP shall intimate to ROC in Form 4 D within 30 days and also make a record in the register.

CONCEPT OF STARTUPS

A startup company (startup or start-up) is an entrepreneurial venture which is typically an emerging, fast growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, process or a platform.

DEFINITION OF START-UP "START UP"

An entity shall be considered as a Startup:

Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a Private limited company or a limited liability partnership) in India.

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

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

- ❖ An entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

RECOGNITION AS STARTUPS

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

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

Govt company

- ❖ A copy of Certificate of Incorporation or Registration, and a write-up about the nature of business

The DPIIT may, after calling for such documents or information and making such enquires, may either

- ❖ Recognise the eligible entity as Startup; or
- ❖ Reject the application by providing reasons.

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

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 can claim tax benefits in three out of the first ten years under Section 80-IAC

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:

- ❖ **Conditions:**

It has been recognised by DPIIT under para 2(iii)(a) or as per any earlier notification on the subject.

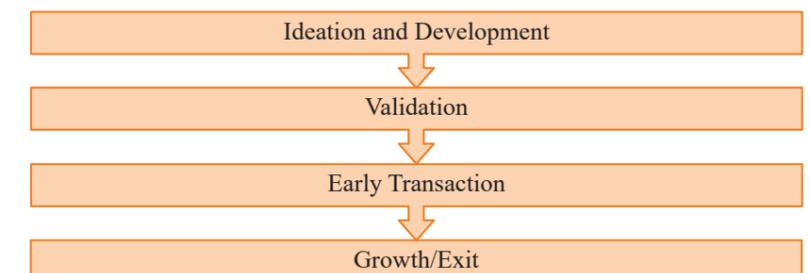
Aggregate amount of paid up share capital and share premium of the startup after issue or proposed issue of share, if any, does not exceed, twenty five crore rupees:

- ❖ In computing the aggregate amount of PSC and share premium of twenty five crore rupees
- ❖ Following persons shall not be included –
- ❖ A non-resident; or
- ❖ A venture capital company or a venture capital fund;

It has not invested in any of the following assets,—

- ❖ 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;
- ❖ Land or building, or both, not being a residential house, other than that occupied by the Startup;
- ❖ 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;
- ❖ Capital contribution made to any other entity;
- ❖ Shares and securities;
- ❖ 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;
- ❖ Jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;
- ❖ 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;

LIFE CYCLE OF START-UP**REGISTRATION PROCESS OF STARTUP**

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.

- ❖ Formation of a Company in India
- ❖ Types of Companies in India – Private, Public, OPC
- ❖ Charter documents of a Company – MOA & AOA
- ❖ Legal formalities for incorporation of a company - pre & post incorporation

Register with Start-up India: Once the entity is incorporated . Register as a startup. Which online - visit the Startup India website and click on the 'Register' button.

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).

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.

Documentation required for Registration.

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

Founder agreements :

- ❖ It is the most valuable tool to establish the relationship between the founders of a startup.

Employment contracts:

- ❖ enter into clear employment contracts detailing terms and conditions of employment with their employees.

Employee Stock Option Pool (ESOP):

- ❖ ESOP's are incentives given to employees/directors of a company to attract talent and retain employees by bearding them. ESOPs create a sense of ownership amongst employees. It is important to note that ESOPs are not shares.

Investment structuring:

- ❖ 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.

Compliance management:

- ❖ There are multiple laws applicable to specific entity structures under which separate event based and annual compliance is mandated.

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- ❖ 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.

Compliance management:

- ❖ There are multiple laws applicable to specific entity structures under which separate event based and annual compliance is mandated.

FINANCING OPTIONS AVAILABLE FOR START UPS

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.

Equity Financing

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

Venture Capitalist/Private Equity

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

Funding Procedure

- ❖ 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.
- ❖ The contracting parties will enter into a Share Subscription Agreement/ Debenture Subscription agreement.

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.

Bridge Round

- ❖ Bridge round is a sort of financing option that helps startups "bridge" the gap between larger funding rounds.

Series Funding

- ❖ 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.

SOURCES OF FUNDS

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.

Things to Know When Raising a 'Series A Round

- ❖ Be Series A Ready
- ❖ Start Early
- ❖ Leverage Your Network
- ❖ Practice your "Pitch"
- ❖ Create a Fundraise Momentum
- ❖ Know the "standard market practice"
- ❖ Get the deal terms right
- ❖ Engage a Professional
- ❖ Paperwork in place
- ❖ Raise 10-15% more than budgeted for

Debt Financing

- ❖ **Loan from Banks & NBFCs:** Loans from banks and NBFCs help finance the purchase of inventory and equipment, besides securing operating capital and funds for expansion. More importantly, unlike a VC or angels, which have an equity stake, banks do not seek ownership in your venture.
- ❖ **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).
- ❖ **CGTMSE Loans:** Under the Credit Guarantee Trust for Micro and Small Enterprises scheme launched by Ministry of Micro, Small & Medium Enterprises (MSME), Government of India to encourage entrepreneurs, one can Get loans of up to 1 crore without collateral or surety. Any new and existing micro and small enterprise.

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

Crowd Funding:

- ❖ Small amounts collected from a large number of people (crowd), usually through the Internet.

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%.

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.

CHARACTERISTICS OF AN ENTREPRENEUR

Mental Ability:

- ❖ entrepreneur must have creative thinking and must be able to analyse problems and situations. He should be able to anticipate changes.

Business Secrecy:

- ❖ He should guard his business secrets from his competitors.

Clear Objectives:

- ❖ He must have clear objectives as to the exact nature of business or the nature of goods to be produced.

Human Relation:

- ❖ He must maintain good relations with his customers, employees etc.

Communication Ability:

- ❖ He should have good communication skills.

INTRODUCTION**Constitution of Board**

The Minister in charge of the Ministry or Department of the CG having administrative control of the MSME who shall be the ex officio Chairperson of the Board;

The Minister of State or a Deputy Minister or Department of the Central Government having administrative control shall be ex officio Vice-chairperson of the Board, and where there is no such Minister of State or Deputy Minister.

6 Ministers of the State Governments having administrative control of the departments of small scale industries;

3 Members of Parliament of whom 2 shall be elected by the House of the People and one by the council of States;

The Administrator of a Union territory to be appointed by the Central Government, ex officio;

The Secretary to the Government of India having administrative control of the micro, small and medium enterprises, ex officio;

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;

The Chairman of the Board of Directors of the National Bank, ex officio;

The Chairman and Managing Director of the Board of Directors of the Small Industries Bank, ex officio;

The Chairman, Indian Banks Association, ex officio;

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;

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;

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;

2 representatives of Central Trade Union Organizations, to be appointed by the Central Government; and

1 officer not below the rank of Joint Secretary to the Government of India in the Ministry or having administrative control of MSME to be appointed by CG.

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

FUNCTIONS

(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 MSME

Micro Enterprise: Investment does not exceed ₹1 crore and turnover does not exceed ₹5 crore;

Small Enterprise: Investment does not exceed ₹10 crore and turnover does not exceed ₹50 crore

Medium Enterprise: Investment does not exceed ₹50 crore and turnover does not exceed ₹250 crore.

REGISTRATION PROCESS OF MSME

❖ Registration process is fully online, paperless, and based on self-declaration through the Udyam Registration Portal of the Government of India.

There will be no fee for filing Udyam Registration.

Aadhaar number shall be required for Udyam Registration.

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).

In case of a Company or a Limited Liability Partnership or a Co-operative Society or a Society or a Trust, provide its GSTIN and PAN along with its Aadhaar Number.

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.

It may be Noted that:

- ❖ After completion of the process of registration, a certificate will be issued online.
- ❖ certificate will have a dynamic QR Code
- ❖ no need for renewal of Registration

The certificate issued on Udyam Assist Portal (UAP) to Informal Micro Enterprises (IMEs) shall be treated at par with Udyam Registration Certificate for the purpose of availing Priority Sector Lending benefits.

BENEFITS OF TAKING UDYAM REGISTRATION

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.

Specified companies which are having payments pending to any micro or small enterprises for more than 45 days from the date of acceptance or the date of deemed acceptance of the goods or services shall furnish the information in MSME Form-I.

Note: All companies with a turnover of more than Rs. 250 crore and all Central Public Sector Enterprises shall be required to get themselves onboard on the Trade Receivables Discounting System platforms, set up as per the notification of the Reserve Bank of India. It shall be completed by 31st March, 2025.

BENEFITS EXTENDED TO MSES HAVING VALID REGISTRATION

An individual eligible for receiving the benefits shall be required to possess Aadhaar Number and if not possesses Aadhar, it shall be enrolled for Aadhaar.

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.

MSME SCHEMES

There are various schemes available for MSMEs (Micro, Small, and Medium Enterprises) in India, implemented by the Ministry of MSME and its organizations. These schemes aim to empower Indian businesses and contribute to the country's GDP, manufacturing output, and employment. Some of the notable MSME schemes include:

Prime Minister Employment Generation Programme (PMEGP):

- ❖ This scheme aims to generate employment opportunities in rural and urban areas by setting up new micro-enterprises.

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 and provide RAM financial assistance.

Credit Guarantee Fund Scheme for Micro and Small Enterprises (CGS):

- ❖ This scheme provides collateral-free credit to micro and small enterprises, enabling them to expand their businesses and create jobs.

Credit Guarantee Scheme For Micro & Small Enterprises (CGTMSE):

- ❖ 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).

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

- ❖ It supports MSEs and addressing common issues such as improvement of technology, skills & quality, market access, etc and to create/upgrade infrastructural facilities in the new/ existing Industrial Areas/Clusters of MSEs.

Scheme Of Fund For Regeneration Of Traditional Industries (SFURTI):

- ❖ to organize traditional industries and artisans into collectives by increasing production and increase income of artisans providing sustainable employment.

Assistance To Training Institutions (ATI) Scheme:

- ❖ The scheme targets to create and strengthen infrastructure and assistance for entrepreneurship and skill development training programmes.

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.

Coir Vikas Yojana – Umbrella Scheme (Skill Upgradation and Mahila Coir Yojna):

- ❖ 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.

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.

International Cooperation (IC) Scheme:

- ❖ For entering export market by facilitating their participation in international exhibitions / fairs / conferences / seminar / buyer-seller meets abroad.

National SC-ST Hub Scheme:

- ❖ To provide professional support to Scheduled Caste and Scheduled Tribe entrepreneurs to fulfill the obligations under the Central Government Public Procurement Policy.

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

- ❖ To set up a network of Livelihood Business Incubation centers predominantly in the rural and underserved areas, to promote innovation and accelerate entrepreneurship.

Credit Guarantee Scheme for Subordinate Debt (CGSSD) for Stressed MSMES:

- ❖ To provide Subordinate debt. Subordinate debt will provide a substantial help in sustaining and reviving the MSMEs which have either become NPA or are on the brink of becoming NPA.

Self reliant India (SRI) Fund:

- ❖ This scheme is yet to be launched. For the path of self-reliant economic growth of India.

MSME FACILITATION COUNCIL

- ❖ The objective of Setting this council is to conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services
- ❖ Composition of Micro and Small Enterprises Facilitation Council

Composition of Micro and Small Enterprises Facilitation Council

- ❖ The Micro and Small Enterprise Facilitation Council shall consist of not less than 3 but not more than 5 members to be appointed from amongst the following categories, namely:
- ❖ Director of Industries 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.
- ❖ One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State.
- ❖ One or more representatives of banks and financial institutions lending to micro or small enterprises.
- ❖ One or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

1. CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY**Calling of Board Meeting for:**

- ❖ Issue a notice and agenda for BM and pass BR for conversion & increase in no. of directors if less than 3.

Issue of Notice of General Meeting:

- ❖ Issue Notice of the General meeting to all Members, Directors and the Auditors of the company.

Holding of General Meeting:

- ❖ Pass Special Resolution, Along with alteration in MOA & AOA.

Filing of e-form MGT-14:

- ❖ To ROC within 30 days of passing SR.
- ❖ Following documents are required to be attached with e-form MGT-14.
 - Notice of general meeting along with copy of explanatory statement under section 102.
 - Certified true copy of special resolution.
 - Altered MOA & AOA.
 - Certified true copy of board resolution - an optional attachment.

Filing of e-form INC-27:

- ❖ For conversion of a private company into a public company, the Application shall be filed in Form No. INC-27 with fee.

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

- ❖ Registrar on being satisfied, issue a certificate of incorporation in the same manner as its first registration.

2. CONVERSION OF A PUBLIC LIMITED COMPANY INTO A PRIVATE COMPANY**Holding a Board Meeting:**

- ❖ Pass BR for conversion and reduce total no. of members upto 200.

Issue of Notice of General Meeting:

- ❖ Notice shall be given atleast 21 clear days before the actual date of General Meeting.

Holding of General Meeting:

- ❖ Pass SR, Along with alteration in MOA & AOA.

Filing of e-form MGT-14:

- ❖ To ROC within 30 days of passing SR.

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 Form INC-25A

File an Application with the Regional Director for Conversion of Public Company into Private Company: in form RD-1 within sixty days from the date of Passing of Special Resolution along with the following attachments

- ❖ E-Memorandum of Association and e-Articles of Association, with proposed alterations.
- ❖ Copy of minutes of General Meeting.
- ❖ Copy of Board resolution dated not earlier than thirty days.
- ❖ Declaration by a Key Managerial Personnel that company limits the number of its members to 200 and also stating that no deposit has been accepted by the Company.
- ❖ Declaration by a Managerial Personnel that there has been compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules.
- ❖ Declaration by a Managerial Personnel and if no such authority then by 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.
- ❖ 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 proper documents.

- ❖ 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.

Approval by RD:

- ❖ Where no objection has been received from any person, within 30 days.

Filing of e-form INC-28 with the registrar of Companies:

- ❖ Within 15 days from the date of receipt of approval.

Filing of e-form INC-27 with the Registrar of Companies:

- ❖ Service Request Number (SRN) of Form No. RD-1 order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 along with altered e-MOA and e-AOA should be filed to ROC within 15 days from the date of receipt of the order from the Regional Director.

Issuance of fresh Certificate of Incorporation by ROC**3. CONVERSION OF A SECTION 8 COMPANY INTO ANY OTHER COMPANY****Holding a Board Meeting:**

- ❖ Pass BR

Issue of Notice of General Meeting:

- ❖ Issue 14 days prior notice of the General meeting to all Members, Directors and the Auditors of the company.

Holding of General Meeting:

- ❖ Pass SR

Filing of e-form MGT-14

- ❖ To ROC within 30 days of passing SR.

Documents 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 copy of Special Resolutions passed in General Meeting along with explanatory statement.

Filing of e-form INC-18 with the Regional Director and Registrar:**Publication of an Advertisement:**

- ❖ In the newspaper at least once in a vernacular language and one in English newspaper and on the website of the company, if any.

Order of Conversion by Regional Director:**Issuance of fresh Certificate of Incorporation:**

- ❖ Registrar of companies will Issue Fresh Certificate of Incorporation. 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.

4. CONVERSION OF COMPANY INTO LIMITED LIABILITY COMPANY**Holding a Board Meeting:**

- ❖ Pass BR

Holding of General Meeting:

- ❖ Pass the necessary Special Resolution.

Application for Name Availability on LLP Portal:

- ❖ by filing web based form 'RUN-LLP' with ROC along with the board resolution passed by the Company.

Filing of incorporation documents in LLP Portal: LLP must file its incorporation in web based form FiLLip along with the following 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.

Application for Conversion of company into LLP:

- ❖ For converting the existing Company into LLP, FiLLip Form 18 must be duly filled.

Requirements for Form filling

- Statement of shareholders
- Statement of Assets and Liabilities
- List of all the Secured creditors
- NOC from Income Tax authorities
- Particulars of pending proceedings from any court/Tribunal etc.

Drafting of limited liability partnership agreement:

- ❖ Details of the same needs to filed in e-form 3 within 30 days of incorporation along with COI.

Issuance of fresh Certificate of Incorporation

- ❖ Registrar of LLP will issue a Certificate of Registration in Form no. 19.

5. CONVERSION OF LLP INTO COMPANY**Approval of Name:**

- ❖ Hold a meeting of the partners to take assent of majority of its members. Apply for name reservation in form RUN in V3 portal.

Securing DSC and DIN:

- ❖ an application form must be filed on MCA portal.

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.
- ❖ List of the members with various details.
- ❖ List of the first directors of the private company with various details.
- ❖ An affidavit from every person proposed as first directors.
- ❖ List including the names & addresses of partners of LLP and a copy of LLP agreement & certificate.
- ❖ 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.

Filing of SPICe, SPICe MOA and SPICe AOA:

- ❖ Similar to incorporation of new company.

6. CONVERSION OF OPC INTO COMPANY**Holding of Board Meeting:**

- ❖ Pass BR

Issue of Notice of General Meeting:

- ❖ Issue Notice of the General meeting to all Members, Directors and the Auditors.

Holding of General Meeting:

Pass SR along With alteration in Memorandum of Association and Articles of Association.

Filing of e-form MGT-14:**Filing of e-form INC-6:**

- ❖ For its conversion with altered e-MOA and e-AOA

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 in Form INC-25.

7. CONVERSION OF COMPANY INTO ONE PERSON COMPANY

Holding of Board Meeting:

- ❖ Pass BR

Issue of Notice of General Meeting:

- ❖ Issue Notice of the General meeting to all Members, Directors and the Auditors.

Holding of General Meeting:

- ❖ Pass SR along With alteration in Memorandum of Association and Articles of Association.
- ❖ Take No Objection Certificate (NOC) in writing from the existing shareholders and creditors.

Filing of e-form MGT-14:

Filing of e-form MGT-14:

Filing of e-form INC-6:

- ❖ for its conversion with altered e-MOA and e-AOA, copy of NOC, affidavit of directors confirming consent from all members for conversion.

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.

PARTNERSHIP

As per Section 4 of Indian Partnership Act, 1932 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

FEATURES OF PARTNERSHIP

(i) Existence of an agreement:

(ii) Engagement in business:

(iii) Sharing of profits and losses:.

(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 also can act on behalf of other partners as their agent.

(v) Unlimited Liability:

(vi) Common Management

(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:

❖ Not compulsory to register

(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.

TYPES OF PARTNERSHIP

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

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

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

TYPES OF PARTNER

(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: Partners 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.

(iii) **Others: Such partners may include the following:**

❖ Nominal Partners: Nominal partners 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.

❖ 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.

❖ Minor Partner: 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.

ADVANTAGES OF PARTNERSHIP

(i) ❖ Ease in formation

(ii) ❖ Pooling of financial resources

(iii) ❖ Pooling of managerial stalls:

(iv) ❖ Balanced business decisions: decisions are taken unanimously after considering all the major aspects of a problem.

(v) ❖ Sharing of risks

(vi) ❖ Division of work

(vii) ❖ Privacy: It is not required for a partnership firm to publish its accounts.

LIMITATIONS OF PARTNERSHIP

(i) ❖ Uncertainty of existence

(ii) ❖ Unlimited Liability.

(iii) ❖ Risks of disharmony: There may arise situations when some partners may adopt rigid attitudes and make it impossible to arrive at a commonly agreed decision.

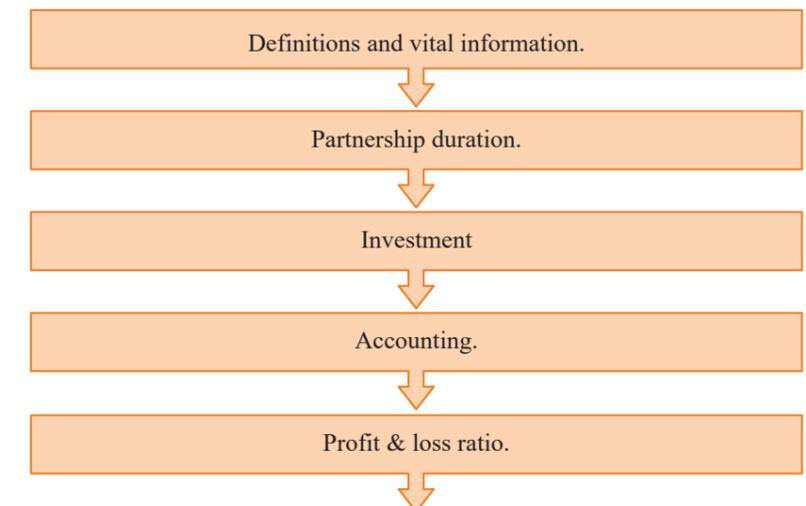
(iv) ❖ Difficulty in withdrawal or Blocking of Capital: Investment in a partnership can be easily made but cannot be easily withdrawn.

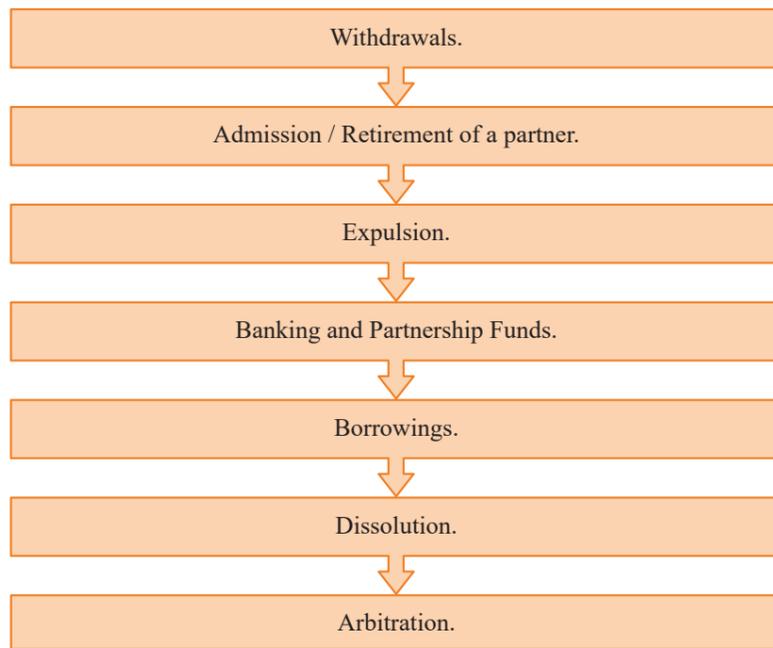
(v) ❖ Lack of institutional confidence: the nature of its activities is not disclosed at public and the Agreement among partners is not regulated by any law.

(vi) ❖ Lack of Public Trust: The public has less confidence in partnership firms. Therefore, the public does not trust their dealings.

(vii) ❖ Lack of a Control

(viii) ❖ Difficulties of expansion: It is difficult for a partnership firm to undertake modernization of expansion of its operations.

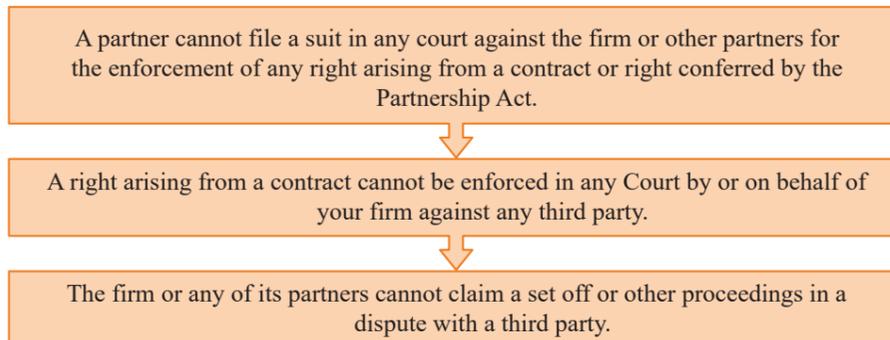
KEY INGREDIENTS OF A PARTNERSHIP DEED



BENEFITS OF 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 amount invested.

CONSEQUENCES OF NON-REGISTRATION



HINDU UNDIVIDED FAMILY (HUF)

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 controlled and managed by one person - 'Karta' or 'Manager'.

CHARACTERISTICS OF A JOINT HINDU FAMILY BUSINESS

1. Governed by Hindu Law:
 - ❖ Dayabhaga: It prevails in West Bengal & Assam and allows both the male and female members to be co-parceners.
 - ❖ Mitakshara: It allows only male members to be co-parceners.
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.
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.
4. Liability:
 - ❖ Except the Karta, the liability of all other members is limited to their shares in the business.
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

- Easy to Start: ❖ No legal formalities are required.
- Efficient Management & Control: ❖ Karta takes all decisions and gets them implemented with the help of other member.

- Secrecy: ❖ 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.
- Prompt Decision: ❖ The Karta is the only person who exercises control.
- Economy: ❖ The Karta of family spends money with great caution and economy.
- Credit Facilities: ❖ 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.
- Expanded loyalty & co-operation: ❖ It is the natural love and affection between the members helps to run the business more efficiently and smoothly.
- Freedom regarding Selection of Business: ❖ The Karta is at freedom to select any business of his choice. He has not to depend on others.
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LIMITATIONS OF HUF



Misuse of Power:

Management of a Joint Hindu Family Business is centered in the hands of the family's Karta.

Limited Membership:

The membership with only family members exclusively. No one from outside the Joint Hindu Family Business can join the business.

NDU UNDIVIDED FAMILY HUF FORMATION

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, coparceners, address and source of funds in the corpus.

1. A HUF deed is a written formal document on a stamp paper specifying the name of Karta and Coparceners of HUF.

2. The eldest male member of HUF becomes Karta of HUF.

3. 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.

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

5. HUF Deed also states the capital with which the HUF has been initiated.

6. A declaration is also provided by each member of family which state that –
♦ **Karta** has the authority of the accounts vested in his hand.
♦ **Karta** holds the right to govern all the transactions of the HUF accounts on behalf of the members.

7. A rubber stamp of HUF will be prepared.

8. It is recommended that the Deed should be notarised.
♦ **Register** the Deed.
♦ **Obtain** PAN.
♦ **Once** the declaration deed is made, the karta should apply for a permanent account number (PAN) for the HUF.
♦ **Open** bank account.

SOLE PROPRIETORSHIP

The sole proprietorship is a form of business that is owned, managed and controlled by an individual.

MERITS OF SOLE PROPRIETORSHIP

Easy formation.

Swift Decisions

Sole beneficiary of profits.

Benefits of small-scale operations.

Inexpensive Management.

Confidentiality.

Lesser paperwork

Simple tax calculations.

Lower business fees

LIMITATIONS

- Limitation of management skills.
- Limitation of Resources.
- Unlimited liability
- Lack of continuity
- Selling the business is a challenge.
- Risk in decision-making.
- No economies of scale.

Procedure for Formation of Sole Proprietorship Firm

Choose a Business Name:

❖ Select a name that aligns with your brand identity and check its availability.

Register the Business Name:

❖ If using a name other than your legal one, file a DBA name at the state or local level.

Conduct Market Research:

❖ Understand your target market, customer needs, and competition.

Define Your Target Market:

❖ Identify a specific customer group for personalized marketing.

Craft a Unique Selling Proposition (USP):

❖ Develop a compelling USP to differentiate your business.

Create a Business Plan:

❖ Outline your vision, goals, marketing strategies, and financial projections.

Secure Financing:

❖ Explore funding options like loans, grants, or investments.

MULTI STATE CO-OPERATIVE SOCIETY

Registered under the Multi-State Cooperative Societies Act of 2002. They aim for the social and economic betterment of their members, operating on principles of self-help and mutual aid.

BENEFITS OF MULTI STATE CO-OPERATIVE SOCIETY

MSCS provides loans at reasonable rates of interest to the poor.

MSCS can function pan India as they can start branches in different districts and states.

MSCS have low compliance costs.

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.

FORMATION OF MULTI STATE CO-OPERATIVE SOCIETY

1. An application in Form -1 filled with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

- ❖ A certificate from the bank stating credit balance.
- ❖ A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.
- ❖ Four copies of bye-laws in original.
- ❖ Proposed area of operation for registration shall initially be permitted for two contiguous states only.
- ❖ List of at least 50 members from each state.
- ❖ Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters.
- ❖ Contact number and e-mail address of the Chief Promoter or Society on cover page.

2. 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 above.

- ❖ No Objection Certificate from the Registrar of Cooperative Societies of the States/U.T.
- ❖ 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.

TRUST

It 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.

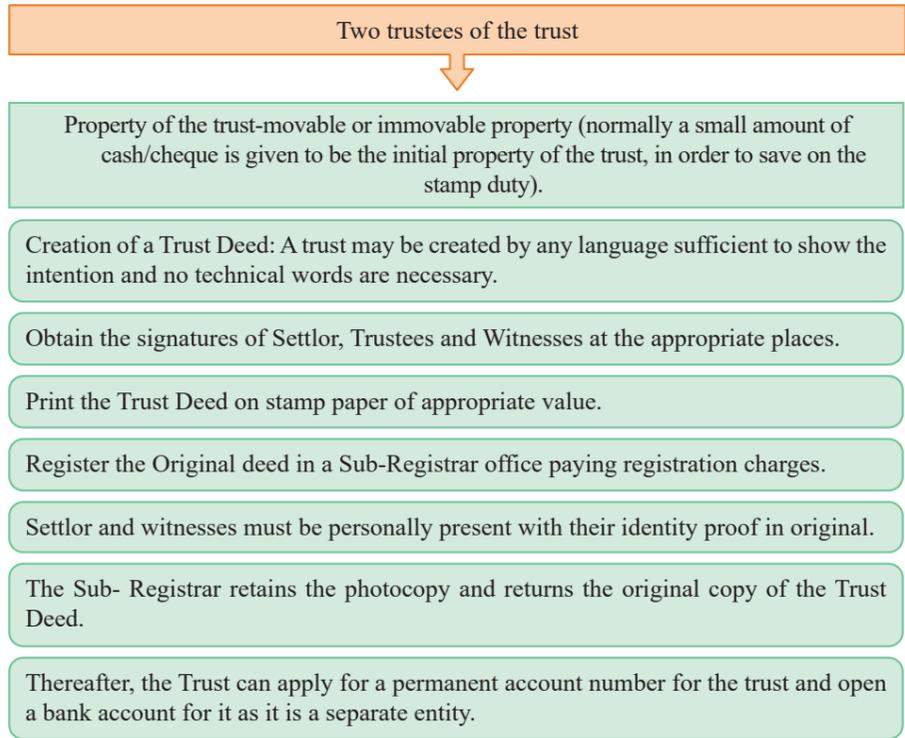
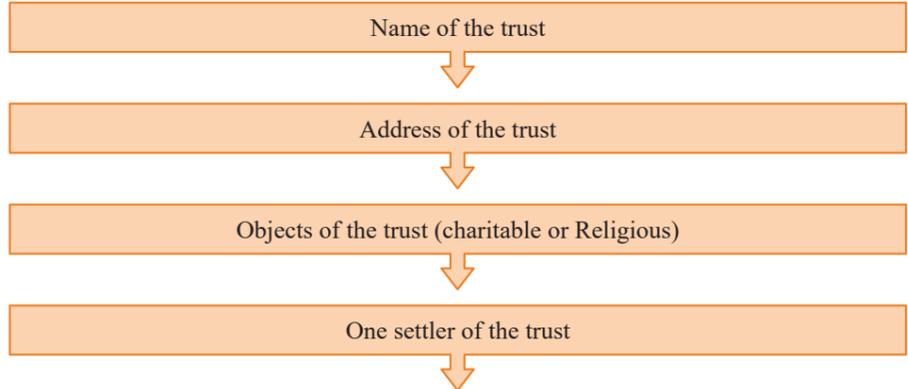
WHO CAN CREATE A TRUST

- A Company
- Women
- Associations of person
- Hindu Undivided Family (HUF)
- Every person capable of forming Contract as per Section 11 of Indian Contract Act
- Minor with the permission of Principal civil Judge

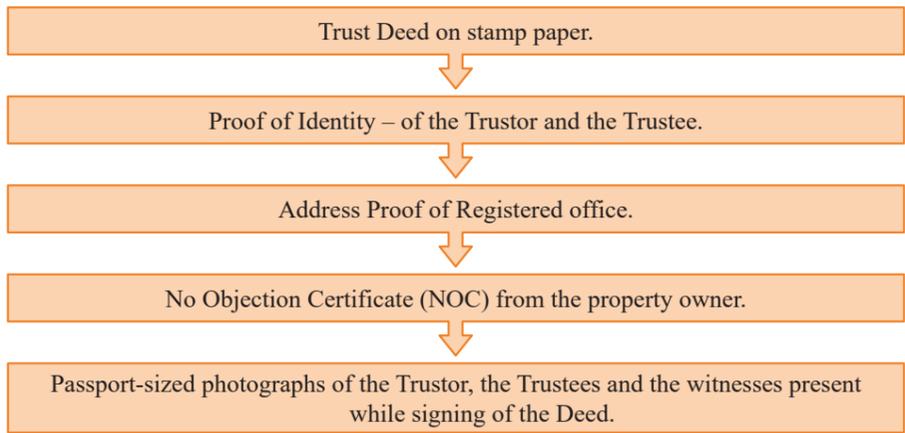
As per Section 10 of the Indian Trust Act, 1882, any person who is capable of holding property may be a trustee.

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:



REGISTRATION OF TRUST: REQUIREMENTS



DIFFERENCE BETWEEN PUBLIC TRUST AND PRIVATE TRUST

- If the beneficiaries make up a large or substantial body of public, then it is a public trust and if the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.
- In a Public Trust, the interest is vested in an uncertain and fluctuating body whereas in a Private Trust, beneficiaries are definite and ascertained individuals.
- Public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

SOCIETY

A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose. The Societies Registration Act, 1860 governs the law relating to society in India.

PURPOSES OF FORMATION

- Charitable societies;
- The military orphan funds or societies establishment.
- For the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge;
- The diffusion of political education;
- The foundation or maintenance of libraries or reading-rooms etc.

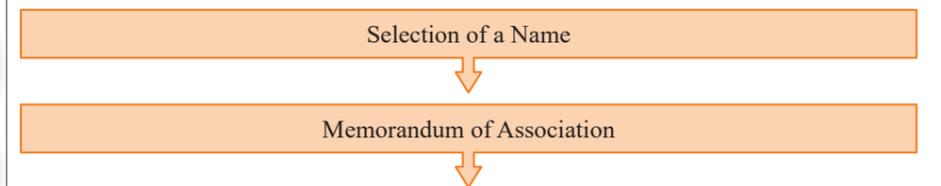
ADVANTAGES OF SOCIETY

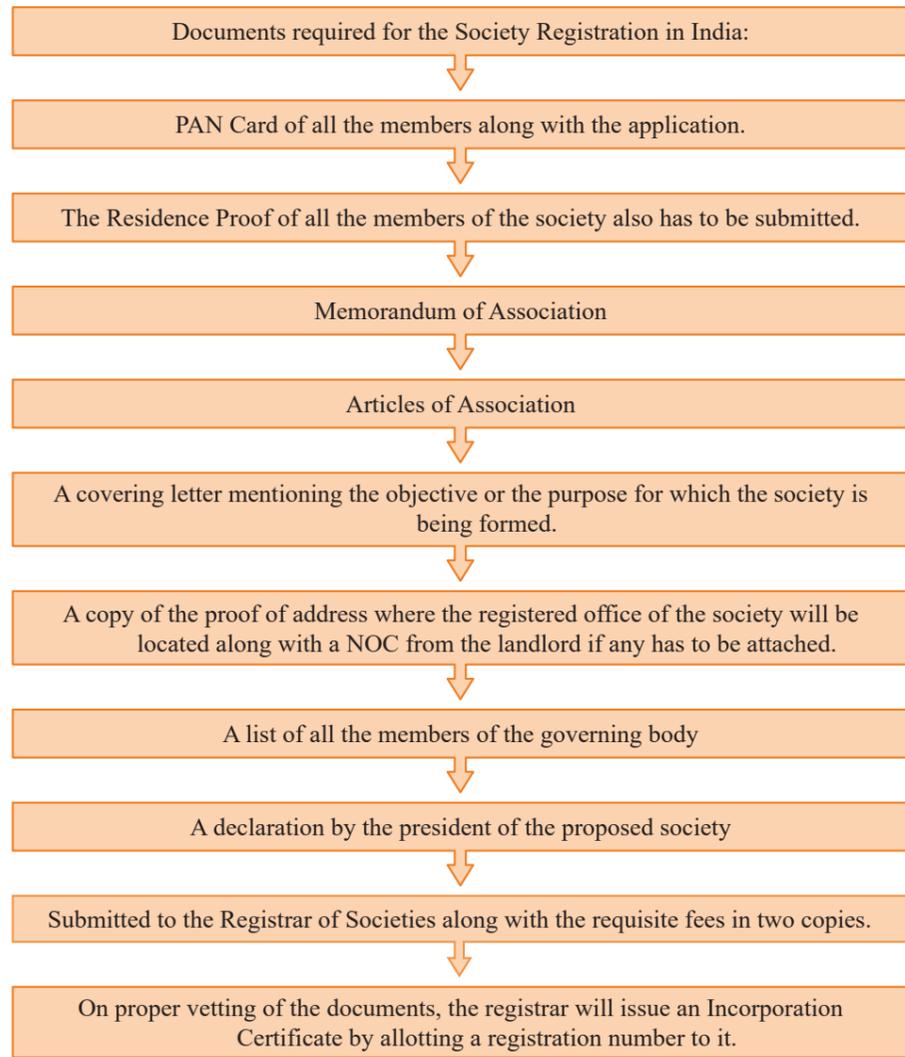
- Process of formation and registration is simple.
- Record-keeping requirements are minimum and compliance with regulations is easy.
- Cost of compliance is low.
- Least possibility of interference by the regulator.
- Exemption from tax due to charitable nature of operations.

DISADVANTAGES OF SOCIETY

- Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable;
- An inappropriate form of a commercial venture;
- The concept of equity investment or ownership is virtually absent.
- Commercial investors regard the investments in such entities as risky mainly on account of their lack of professionalism and managerial practices and political leanings.

REGISTRATION OF A SOCIETY IN INDIA





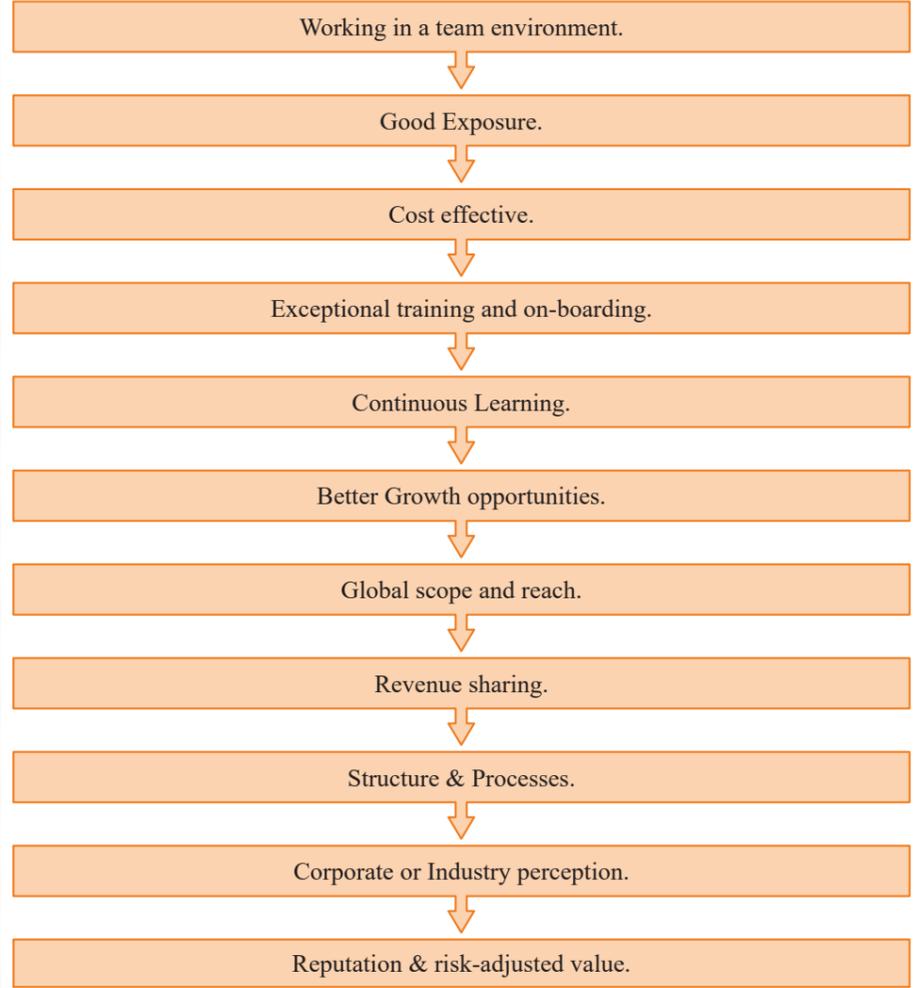
MEGA FIRM

It is a Partnership firm with more than twenty-five Partners. 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".

PRE-REQUISITES

- All minds should work together and in unison;
- Say go to ego;
- Mutual faith and respect lays strong foundation;
- Unanimity shall be the rule on important policy decisions;
- Financial discipline is a must;
- Founder partners shall be given equal status;
- Income of the firm shall be distributed at short regular intervals;
- 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



NON-BANKING FINANCIAL COMPANY

It is a company registered under the Companies Act, 2013 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.

TYPES OF NBFCS**In Term of Liabilities**

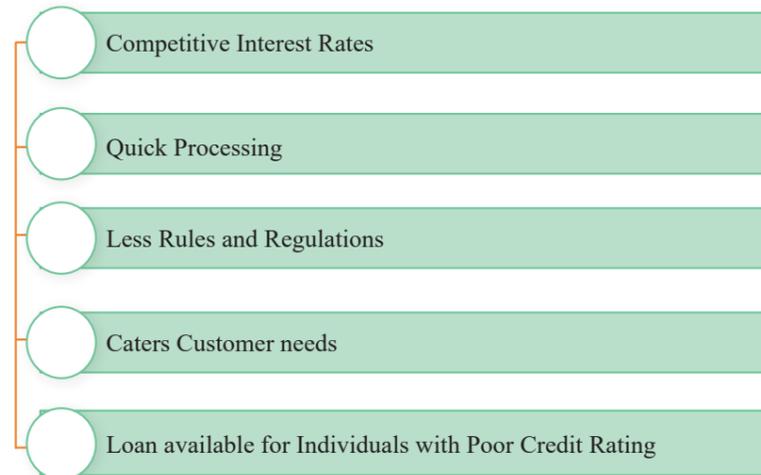
- Deposit Accepting
- None Deposit Accepting

In Term of Size

- Systematically important and other non- deposit Holding Company.

In Term of activity

- Asset Finance Company (AFC)
- Investment Company (IC)
- Loan Company (LC)
- Infrastructure Finance Company (IFC)
- Systemically Important Core Investment Company (CIC-ND-SI)
- 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)
- Systemically important non-deposit taking non-banking financial company.

BENEFITS OF INCORPORATING AN NBFC**DIFFERENCE BETWEEN BANKS AND NBFCS**

Banks are licensed financial institutions regulated by the government, while NBFCs are companies registered under the Companies Act that provide financial services without a full banking license.

Banks can accept demand deposits and issue checks/drafts, while NBFCs cannot accept demand deposits and do not have check-issuing capabilities.

Banks are part of the payment and settlement system, while NBFCs are not.

Bank deposits are insured by the Deposit Insurance and Credit Guarantee Corporation, but NBFC deposits are not insured.

Banks can create credit, while NBFCs are not involved in credit creation.

Banks provide a wider range of services like loans, investments, payment services etc., while NBFCs focus more on lending and investment activities.

INCORPORATION OF NBFCS

The procedure for incorporating a NBFC is the same as any other company through web form SPICE+.

Their principal business, to be stated in the MOA.

REGISTRATION PROCEDURE

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

- ❖ It should have minimum one director from NBFC background or senior Bankers as full-time director in the company.
- ❖ Clean CIBIL record.
- ❖ Understanding of NBFC / Finance business.

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:-

- 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;
- 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;
- 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;
- That the non-banking financial company has adequate capital structure and earning prospects;
- 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;
- 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
- Any other condition, as may be necessary.

The Bank may 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—

- ❖ Ceases to carry on the business of a non-banking financial institution in India.
- ❖ has failed to comply with any condition subject to which the certificate of registration had been issued to it.
- ❖ at any time fails to fulfil any of the conditions referred to in clauses (d) to (g) of sub-section (4).

(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 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.

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. 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.

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,

HOUSING FINANCE COMPANIES

It is a non-banking financial institution which is primarily engaged in the business of providing home loans and other related products.

"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 COMPANY: REGISTRATION PROCESS

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. This must be submitted in the Head Office of the NHB along with Demand Draft.

The NBH would check the authenticity of the application and 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.

HFC is or shall be in a position to pay its present or future depositors in full as and when their claims accrue.

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.

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.

HFC has adequate capital structure and earning prospects.

Public interest shall be served by the grant of certificate of registration to the HFC to commence or carry on the business in India;

Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and

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.

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.

The Reserve Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled.

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

CONDITIONS PERTAINING TO THE CANCELLATION OF THE HOUSING FINANCE COMPANY LICENSE

The Certificate of registration granted to a housing finance company may be cancelled in some of the circumstances subject to certain provisions, if such company:

Ceases to carry on the business of financing in India; or

HFC has not complied with the below-mentioned terms and condition prescribed by the NHB:

- ❖ to comply with any direction issued by the National Housing Bank.
- ❖ To maintain accounts in accordance with the requirement of any law or any direction or order issued by the National Housing Bank.

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)

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.

- 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

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.

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.

The transfer should help restore depositor and investor confidence by ensuring the lender's financial health.

ARCs also helps building industry expertise in loan resolution and restructuring management.

ARCs play an important role in developing capital markets through secondary asset instruments.

ASSET RECONSTRUCTION COMPANY – THE REGISTRATION PROCESS DOCUMENTS REQUIRED

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.
4. Information and profiles related to the sponsors of the company.
5. Information related to the management of the company. The management of the company would include the shareholders and directors of the company.
6. Certified Copy related to the certificate of audit by the auditor of the company.
7. Copy of the audited balance sheet of the company.
8. Copy of the directors and auditor's report of the company.
9. Net Owned Funds of the Company.
10. Detailed Information on Related Party Transactions (RPT).

PROCESS OF REGISTRATION

Every ARC shall apply for registration in the form of application by the RBI and obtain a certificate of registration from the Bank.

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.

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.

MICRO FINANCE INSTITUTIONS (MFI)

Microfinance institutions are bankers and lenders who provide microfinance services, such as deposits, loans, payment services, money transfers, and insurance. It's aim to offers financial services to low income populations. Almost all give loans to their members, and many offer insurance, deposit and other services.

CHARACTERISTICS OF A MICRO FINANCE INSTITUTION

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

NIDHI COMPANY

Characteristics of a Nidhi Company

1. It is allowed to transact business only with its members and with nobody else.
2. Nidhi shall not 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.

INCORPORATION OF A NIDHI COMPANY

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 with the following conditions, namely:-

- ❖ It has not less than two hundred members; and
- ❖ It has Net Owned Funds of twenty lakh rupees or more.

The company shall also attach, alongwith Form NDH-4, the declaration with regard to fulfilment of fit and proper person criteria.

Central Government, shall notify in the Official Gazette, declaring it as a Nidhi or Mutual Benefit society.

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).

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 Rules.

PAYMENT BANKS

It 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.

Regulations: It is regulated by the Reserve Bank of India.

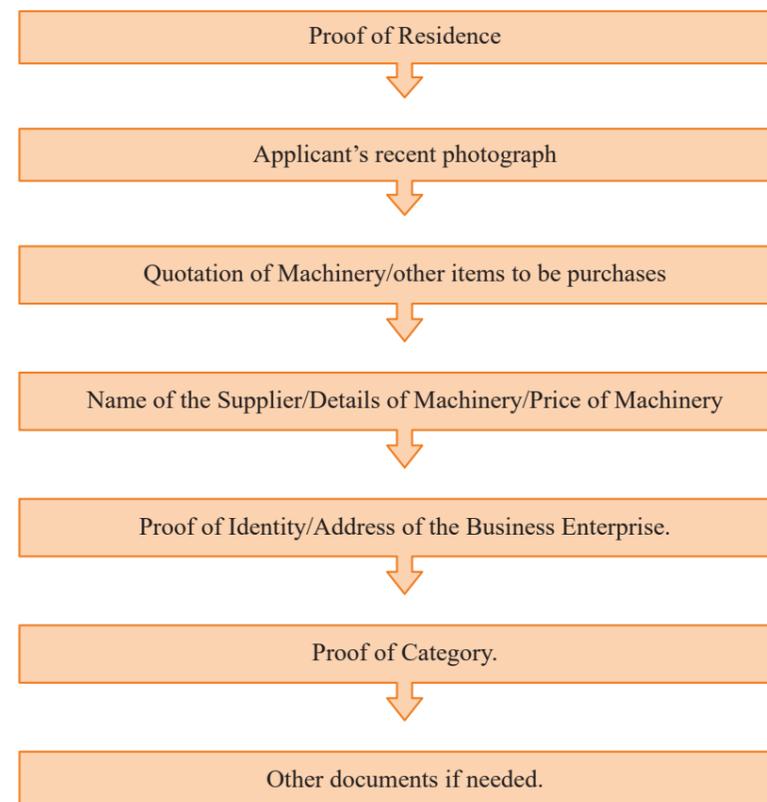
MUDRA BANKS

It is a public sector financial institution which aims provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs up to Rs. 10 lakh.

PROCEDURE FOR LOAN

The beneficiary can contact the nearest Public/ Private sector bank where he/ she can apply for business under PMMY. Form has to be submitted along with the following documents for the approval of the loan:

Proof of Identity



MUDRA OFFERINGS

Technology Enabler

Refinance for Micro Units to Commercial Banks / NBFCs / RRBs etc.

- ❖ Shishu: Allowed loans up to Rs. 50,000
- ❖ Kishore: Allowed loans up to Rs. 5 lakh
- ❖ Tarun: Allowed loans up to Rs. 10 lakh

Credit Guarantee for Mudra Loan (Through NCGTC).

Development and Promotional Support.

- ❖ Development, Financial Literary, Institutional Development.

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 drawls and credits, so as to manage the working capital limit in cost-efficient manner and keep the interest burden minimum. It also helps in digitalization of MUDRA transactions and creating credit history for the borrower.

TYPES OF FUNDING SUPPORT FROM MUDRA

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.

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.

Women Enterprise programme:

- ❖ To encourage women entrepreneurs, the financing banks / MFIs may consider extending additional facilities, including interest reduction on their loan.

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.

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 neighbours.

FEATURES OF CHIT FUNDS

They have a predetermined value and duration.

They work like microfinance institutions.

They combine both, credits and savings in a single scheme.

They cater to the financial needs of low income households.

They allow the deposits made by the contributors to be turned into a lump sum. This is done by three mechanisms.

Safe Deposits

Loans

Insurance.

They offer loan at a lower interest rate than moneylenders.

3. Online Chit Funds: here Contributors can make their monthly contributions and receive the prize through online transactions including electronic funds transfer system.

4. Registered Chit Funds: Registered with the state government under the Chit Funds Act,1982.

5. Unregistered Chit Funds: Unregistered funds are those which are not registered with any state government. They are not regulated under any law.

RESTRICTIONS IMPOSED BY RBI ON CHIT FUND BUSINESS

Chit fund business can be conducted only by a registered company.

Chit companies must register with the Registrar of Chit Company in respective states.

The maximum discount that could be taken in a bid was restricted to 30% of the total chit 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.

TYPES OF CHIT FUNDS

1. Organized Chit Funds: It is a type of chit fund 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.

2. Special Purpose Funds: Some chit funds are organized for a specific purpose. For example, Christmas gifts fund.

BUSINESS COLLABORATION

MEANING: Collaboration is when two or more entities work together through idea sharing and thinking to accomplish a common goal is known as Collaboration.

Types of Business Collaboration

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

Vertical Collaboration: Vertical Collaboration is a collaboration wherein the business collaborates with companies in its supply chain either upward and/or downwards (its suppliers and/or distributors).

Intersectional Joint Collaboration: When the Businesses from different functional areas.

Venture: Two or more businesses form a new company.

Equity: A company acquires a minor equity stake in another business in exchange for a monetary investment.

FOREIGN COLLABORATION

Foreign Collaboration is an alliance of resident and non-resident entities to carry on the agreed task (work) collectively

- Within Country or Native Entity
- Outside Country or Non-resident or Foreign or Abroad

Features of Foreign Collaboration

- ❖ Type of partnership
- ❖ Approval of the government
- ❖ Entities are from developed and developing country
- ❖ Benefits to developed country
- ❖ Establishes business relationship
- ❖ Initiation of foreign collaboration
- ❖ Objectives of Foreign Collaboration

Types of Foreign Collaboration

- Financial collaboration:** In this method, the foreign company lends finance by:
 - ♦ Purchasing ownership shares.
 - ♦ Giving long-term loans.
 - ♦ Giving credit facility.
- Technical collaboration:** The inflow of foreign technology takes place in the domestic (host) country.
- Marketing collaboration:** The inflow of foreign goods and services take place in the domestic (host) country.
- Management consultancy collaboration:** Inflow of foreign management consultancy takes place in the domestic (host) country.

'JOINT VENTURE'

'Joint Venture' is a commercial enterprise undertaken jointly by two or more parties which otherwise retain their distinct identities.

ADVANTAGES OF FORMING JOINT VENTURE:

- Risk sharing
- Economies of scale
- Market access
- Exploring global market
- Acquisition of business
- Cost efficiency
- Flexible nature

DISADVANTAGES OF JOINT VENTURE

Restricted flexibility where full concentration is required for JV Project

Lack of equal involvement, Cultural Difference, Creation of competitor, Unreliable partners, Lack of clear communication

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

Formation of Joint Ventures

- An Equity based Joint Venture
- Contractual Joint Venture

1. Equity based Joint Venture: a separate legal entity is created in accordance with the agreement of two or more parties.

Characteristics:

- Create a new entity**
- Shared Ownership**

(iii) Shared Management

(iv) Shared Responsibilities

(v) Shared profit and losses

2. Contractual Joint Venture: where the establishment of a separate legal entity is not needed.

Characteristics:

- Two or more parties have a common intention.**
- Each party will bring some inputs in the form of money, technology or materials.**
- Each party exercises certain degree of control on the venture.**
- Longer time duration.**

DOCUMENTS FOR JOINT VENTURES

- ❖ The first may be called the familiarization 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 at each stage is when broad understanding has been reached on the terms of the Joint Venture.

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

(i) The business of the new company/LLP; (ii) Manner and extent to which resources (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; (vi) Persons responsible for managing finances, marketing, production, etc.; (vii) Dividend distribution policy; (viii) Term of office of the nominated directors (ix) Valuation of the company.

Essential Components of A Joint Venture Agreement

- ❖ Description (nature of the Agreement)
- ❖ Parties (full description of the parties to the Agreement)
- ❖ 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)
- ❖ Operative Part (defines the rules for the future; typically consists of name and constitution of the new entity being set up, etc.)
- ❖ LEGAL ASPECTS - (i) Amendments of the JV Agreement (ii) Duration of the JV (iii) Termination (iv) Dispute resolution (v) Courts of particular State (vi) Confidentiality and Non-Disclosure Agreement (vii) Non-compete clause (viii) Indemnification (ix) Procedure for execution.

Special Purpose Vehicle (SPV)

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

Purpose of Special Purpose Vehicle

- ❖ 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 Securitization.
- ❖ The SPV is allowed to raise debt which will be backed by these receivables and their future cash flows.
- ❖ Indirect acquisition of assets
- ❖ Government also forms SPVs for special projects
- ❖ Benefits of Special Purpose Vehicle (SPV)
- ❖ The biggest advantage is - it helps in separating the risk and freeing up the capital.

Benefits of Special Purpose Vehicle (SPV)

Ownership of Assets: An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.

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 – 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.
- (e) Legal protection – the sponsor may limit legal liability in the event that the underlying project fails.
- (f) Accounting Reasons - 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.

LLP AS A SPV

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.

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.
 1. How an SPV is established
 2. Difference between SPV and a Company

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. Foreign company can also open an office in India without starting necessarily as a subsidiary company or associate company:

INCORPORATION OF A PRIVATE LIMITED COMPANY

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.

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.

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.

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.

'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.

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

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. The profits from these are easily remittable from India, subject to the taxes applicable.

ELIGIBILITY FOR SETTING UP A BRANCH OFFICE

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

The name of the Indian branch office must be the same as the parent company (if the branch office does).

Not have revenue from India operations, its expenses must be met by the head office);

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

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

PERMITTED ACTIVITIES

Export/import of goods.

Rendering professional or consultancy services.

Carrying out research work in which the parent company is engaged.

Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

Rendering services in Information Technology and development of software in India.

Rendering technical support to the products supplied by parent/group companies.

Representing a foreign airline/shipping company.

REGISTRATION OF A BRANCH OFFICE IN INDIA

Steps

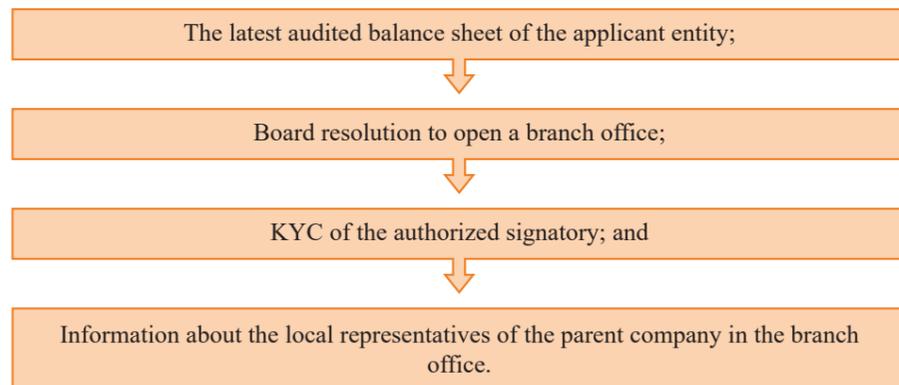
FNC form duly signed by AR;

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;



FUNDING OF THE BO BY THE FOREIGN COMPANY

Equity Share Capital:

- ❖ In the usual way Indian companies are financed.

Preferred Share Capital:

- ❖ Such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).

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.

PERMISSIBLE ACTIVITIES

- Representing the parent company/group companies in India.
- Promoting export/import from/to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

EXTENSION OF THE VALIDITY PERIOD FOR LIAISON OFFICE

A person resident outside India may establish a liaison office for a period of three years.

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.

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.

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.

PROJECT OFFICE

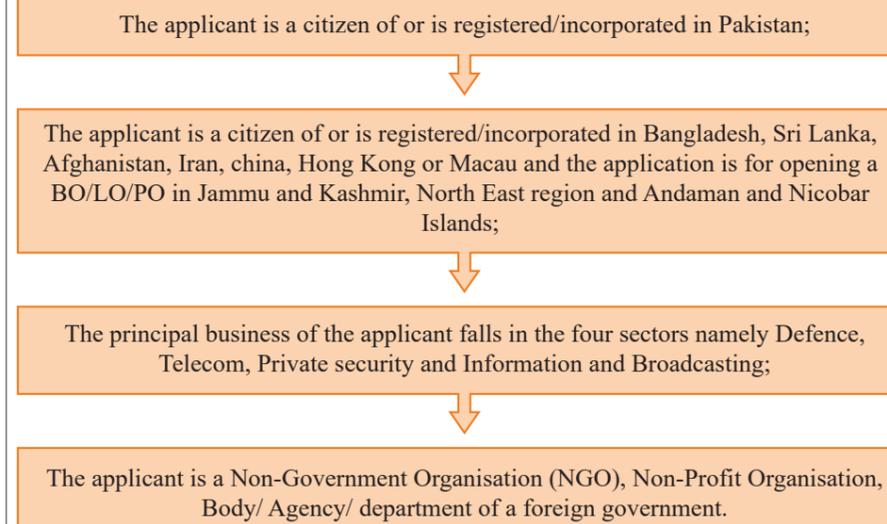
Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

PARAMETERS OF PROJECT OFFICE

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

- ❖ The project is funded directly by inward remittance from abroad; or
- ❖ The project is funded by a bilateral or multilateral International Financing Agency; or
- ❖ The project has been cleared by an appropriate authority; or
- ❖ A company or entity in India awarding the contract has been granted term loan by a Public Financial.

CASES IN WHICH RBI APPROVAL IS REQUIRED FOR SETTING UP BO, PO AND LO IN INDIA



MASTER DIRECTION – ESTABLISHMENT OF BRANCH OFFICE (BO) / LIAISON OFFICE (LO) / PROJECT OFFICE (PO)

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.

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.

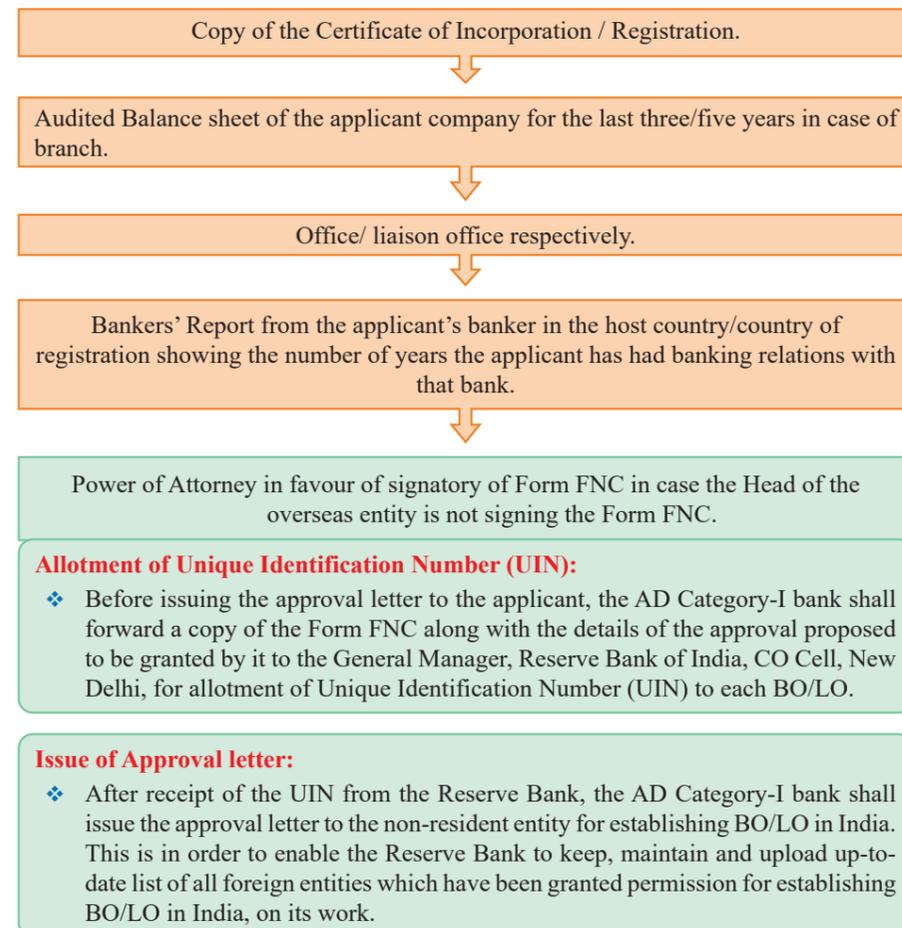
The Government Route:

- ❖ 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.

PROCEDURE FOR ESTABLISHMENT OF BO/LO/PO

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



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.

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.

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.

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.

EXTENSION OF VALIDITY PERIOD OF THE APPROVAL OF LO AND PO

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 LO should have submitted the Annual Activity Certificates for the previous years; and
- The account of the LO maintained with the designated AD Category-I bank is being operated in

Further, entities engaged in construction and development sectors and Non-Banking Finance companies are permitted to open a liaison office for two years only.

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.

CLOSURE OF BO/PO/LO

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:

- Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
- Auditor's certificate:
 - ❖ Indicating the manner in which the 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;
 - ❖ 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
 - ❖ Confirming that no income accruing from sources outside India (including proceeds of exports) has remained to India.
- Confirmation from the applicant/parent company that no legal proceedings in any Court of India.
- A report from the Registrar of Companies regarding compliance with the provisions of the companies Act, 2013.
- The designated AD Category – I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
- Any other document/s.

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.

LAWS/AUTHORITY GOVERNING SETTING UP OF BUSINESS OUTSIDE INDIA

Reserve Bank of India

Foreign exchange Management Act, 1999

OVERSEAS INVESTMENT

“Overseas Investment” or “OI” means financial commitment and Overseas Portfolio Investment by a person resident in India. Overseas Investment (or financial commitment) can be made under two routes viz.

1. Automatic Route and
2. Approval Route.

PROHIBITIONS

No person resident in India shall make ODI in a foreign entity engaged in–

- (a) real estate activity;
- (b) gambling in any form; and
- (c) In dealing with financial products linked to the Indian Rupee without specific approval of the Reserve Bank.

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.

No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India.

AUTOMATIC ROUTE

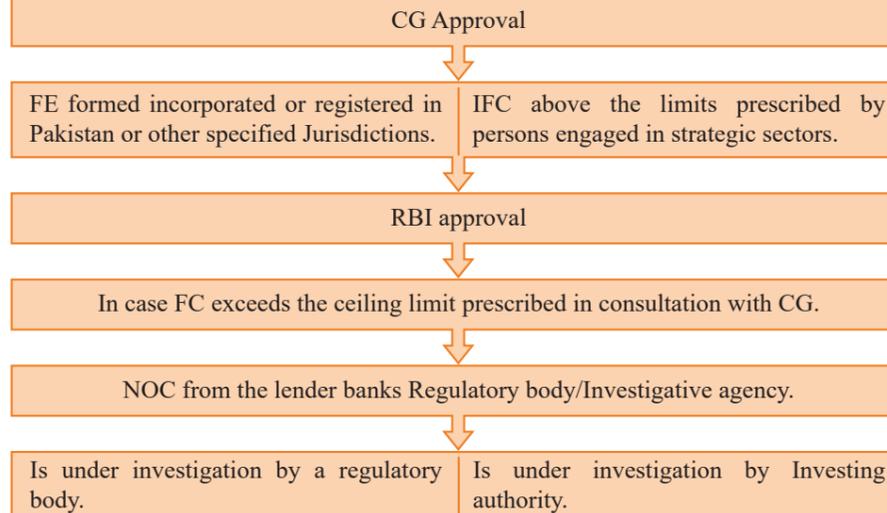
Any overseas investment by a person resident in India shall be made in a foreign entity engaged in bona-fide business activity, directly or through step-down subsidiary or the special-purpose vehicle.

APPROVAL ROUTE

Approval from Central Government.

Approval from Reserve Bank

PERMISSION FOR MAKING OI



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–

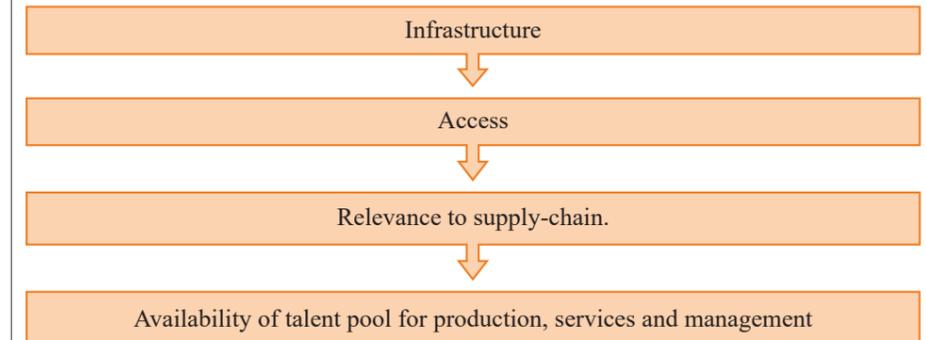
1. By remittance made through banking channels;
2. From funds held in an account maintained in accordance with the provisions of the Act;
3. By swap of securities;
4. By using the proceeds of American Depository Receipts or Global Depository Receipts or stock-swap of such receipts or external commercial borrowings.

FOREIGN DIRECT INVESTMENT POLICY

The FDI policy is reviewed on an ongoing basis, with a view to making it more investor-friendly. With a view to attracting higher levels of FDI, Government has put in place a liberal policy on FDI, under which FDI up to 100% is permitted under the automatic route in most sectors/activities. Significant changes have been made in the FDI Policy regime in recent times to ensure that India remains an increasingly attractive investment destination. The DPIIT plays an active role in the liberalization and rationalization of the FDI policy and has been constructively engaged in extensive stakeholder consultations on various aspects of the FDI Policy.

ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

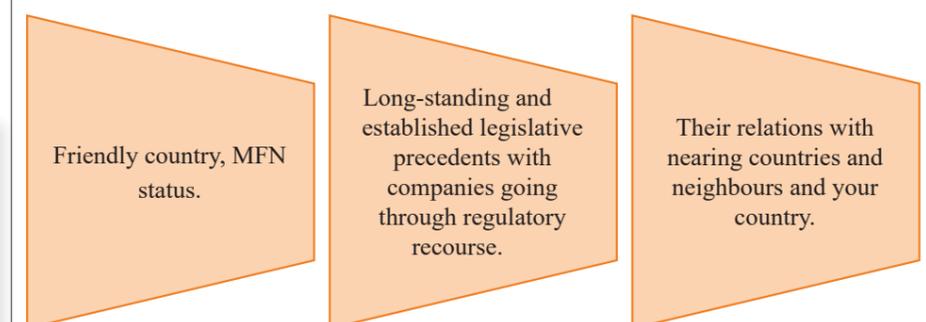
Geographical Location of the Business



ECONOMIC ASPECTS

- Ease of doing business.
- Cost of doing business:
- Laws relating to labour and Quality of labour force
- Management
- Laws relating to taxation:
- Incentives.

POLITICAL ASPECTS



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.

SETTING UP OF A BUSINESS IN NEW ZEALAND

Regulator: New Zealand Companies Office after choosing business name, business structure, apply online for registration. 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.

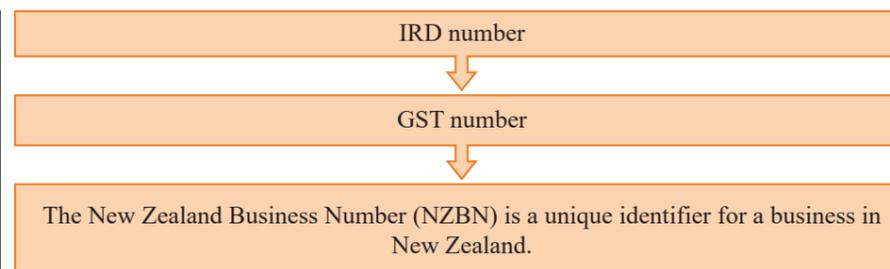
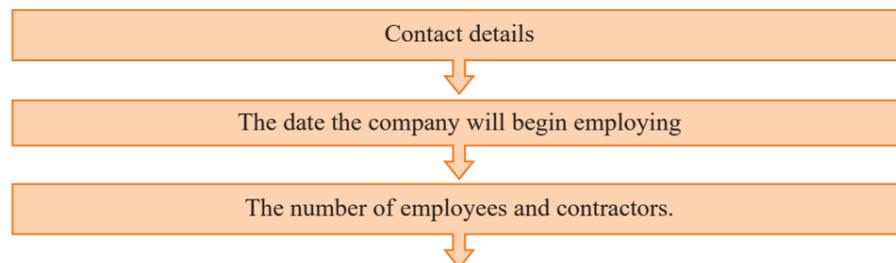
- ❖ Secure your business name.
- ❖ Register a domain name.
- ❖ Reserve your company name.

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:

- (a) Select 'My unfinished business'
- (b) Select 'My tasks'
- (c) Find the 'Complete Coy Application' task.
- (d) Progress through each screen (Directors, Shareholders, Tax Registration), entering the requested Information.
- (e) Select how you want to pay your application fee.
- (f) 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 list of the information needed when applying for a company IRD Number and registering for GST is as follows:



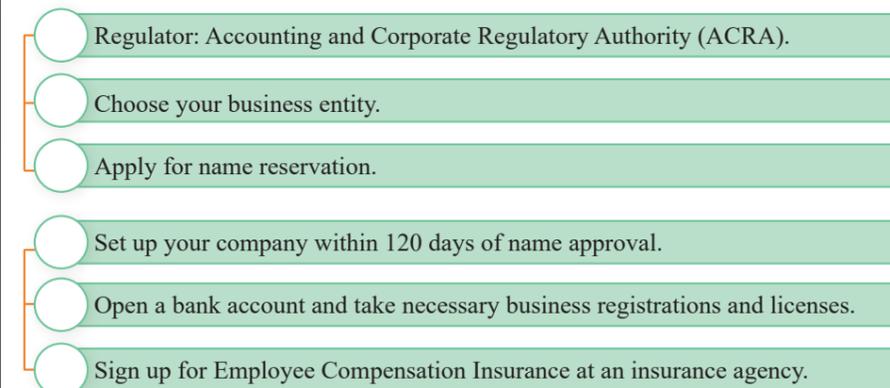
Check for trademarks:

- ❖ 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.

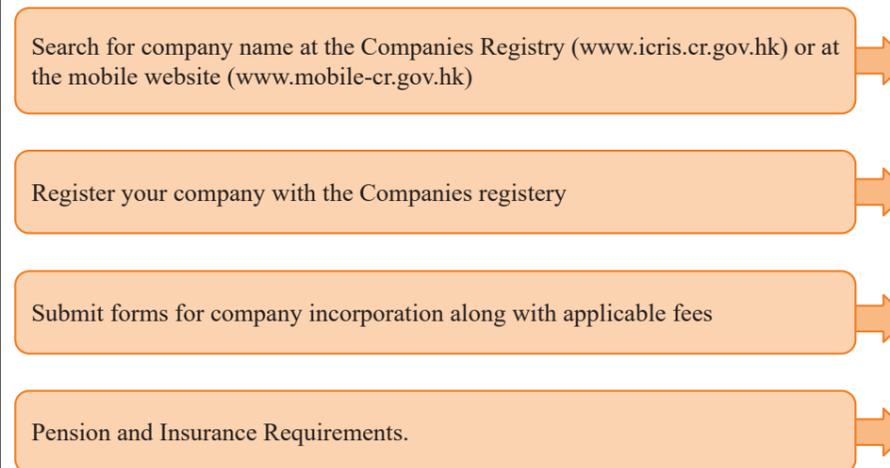
Regulatory Check:

- ❖ Specific regulations might apply in the industry or region. For example, fair trading, consumer guarantees, privacy, health and safety, food licensing.

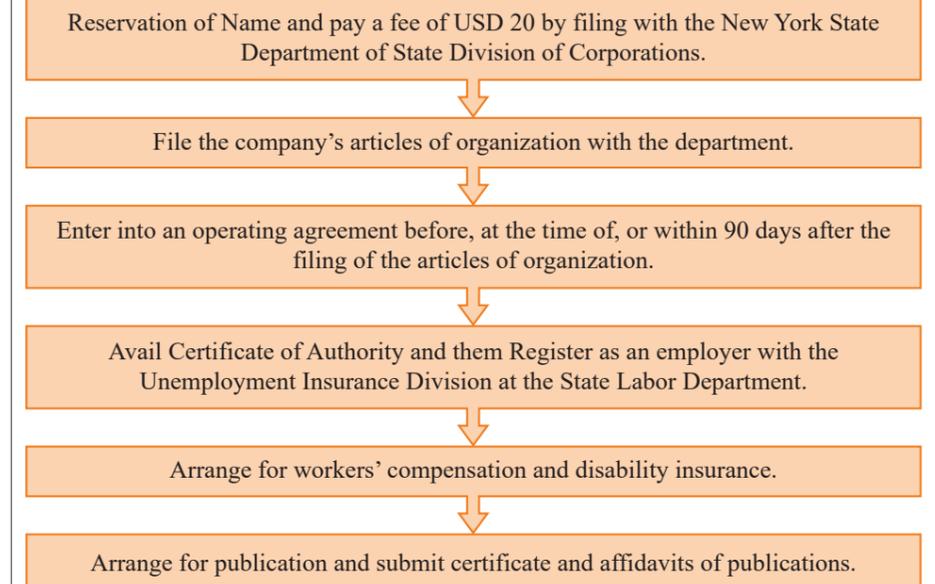
SETTING UP OF BUSINESS IN SINGAPORE



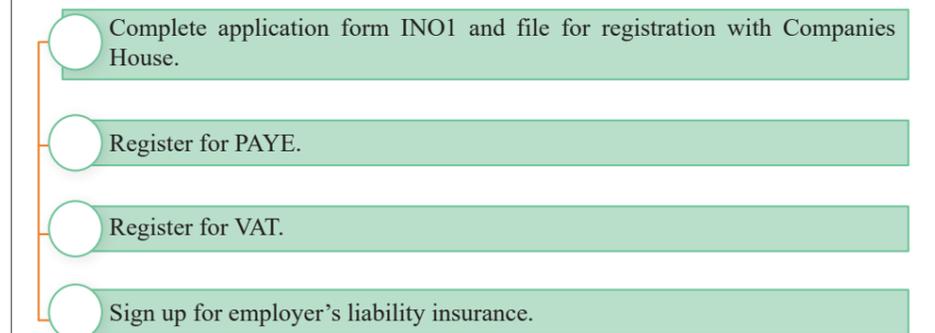
SETTING UP OF A BUSINESS IN HONG KONG SAR, CHINA



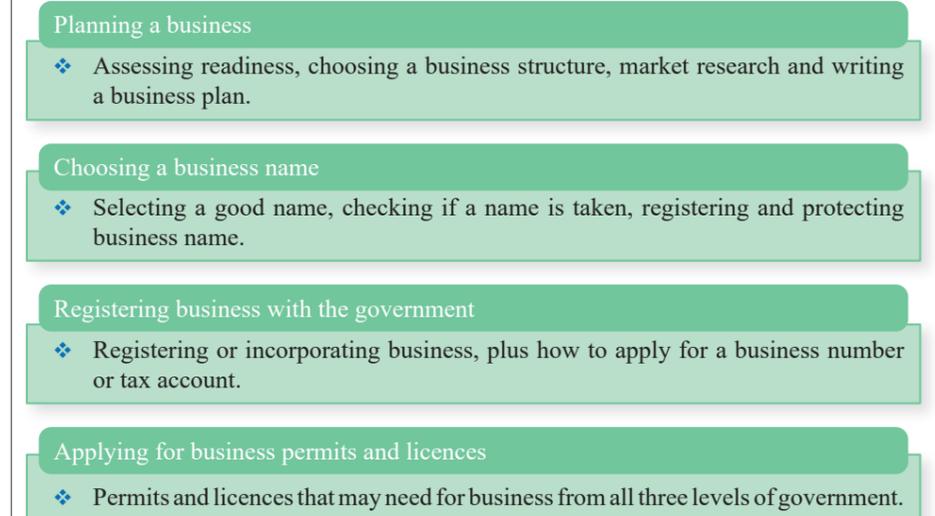
SETTING UP OF BUSINESS IN NEW YORK CITY



SETTING UP OF A BUSINESS IN UNITED KINGDOM



SETTING UP OF A BUSINESS IN CANADA



SETTING UP OF A BUSINESS IN AUSTRALIA

Australian business number (ABN):

An Australian business number (ABN) is unique to business. Customers, suppliers and the Australian Taxation Office (ATO) use this number to help identify business. An ABN is free to register.

Business name:

A business name helps customers identify business from others.

Tax registrations for business:

Not all taxes will apply to business. It depends on the type of business a person starting.

Licences and permits:

From zoning laws to a food licence, the licences and permits will vary. They often depend on the location of the business and the industry.

Company:

A company is a legal entity in its own right. If a person has decided a company is the right business structure for the business, this need to register.

Trade mark:

Register the business as a trade mark to protect the business name and brand from being used by others.

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. 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.

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 Persons Company |
| Registration | No formal registration require | 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 the LLP | Limited Liability to the extent of shore 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 |
| Transferability | 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 as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable. | Profits of both Public and Private Limited Company are taxed as per the slabs provided 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 Annual Accounts & Returns & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually | To file Annual Accounts & Returns and Annual Return with the Registrar every year. Tax returns must also be filed annually | To file Annual Accounts & Returns 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 |
| Existence or Survivability | Proprietorship existence is dependent on proprietor | Partnership existence is dependent on partners. | Existence not dependent on partners. Can be dissolved voluntarily | Existence not dependent on directors or shareholders | Existence not dependent on directors or shareholder. |
| | | Can be dissolved at will or upon the death of partner(s) | or by order of the Company Law Board | . Can be dissolved voluntarily or by Regulatory Authorities | 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 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. |

SECTION 8 COMPANY

It is also called as a Non-profit Company. It 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.

ADVANTAGES TO A COMPANY REGISTERED UNDER THE SECTION 8

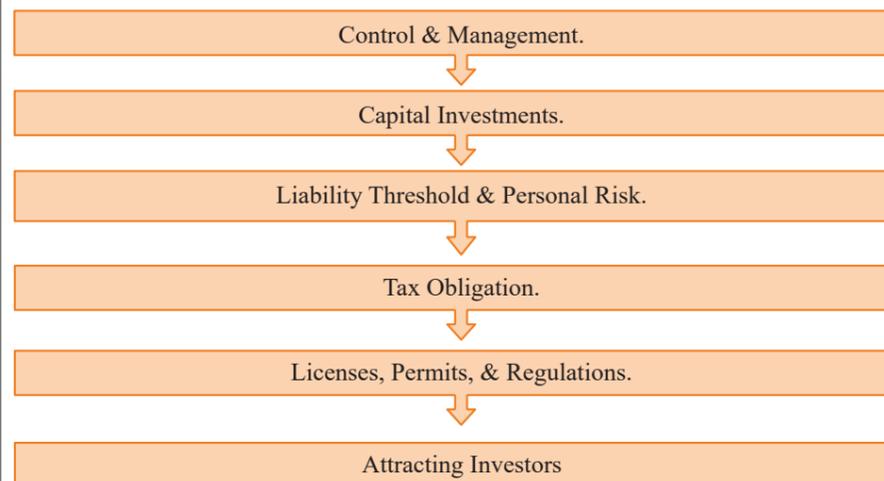
- Access to Tax benefits
- Zero Stamp Duty
- Minimal share capital.
- Exempted from suffix/prefix of name.
- Separate legal entity.
- Improved Credibility

EXEMPTIONS GRANTED TO SECTION 8 COMPANIES

- General Meetings:** Only notice period of 14 days required.
- Minutes of the Meeting:** The minutes of meetings may be recorded within 30 days of conclusion.
- Audited Financial Statements:** Copies of the audited financial statements and documents can be sent 14 days to the members instead of 21 days.
- Directorship:** The maximum limit of 15 directors.
- Appointment of Independent Director:** There is no requirement to appoint an independent director.
- Holding of Board Meetings:** The companies are required to hold one Board Meeting within six months.
- Constitution of nomination and remuneration committee and related compliances.

No appointment of Company Secretary. →

PARAMETERS FOR DECIDING BUSINESS STRUCTURE



FORMATION OF A COMPANY

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. Registration process in India is given below:

- (i) Apply for Director Identification Number (DIN).
- (ii) Apply for Digital Signature Certificate (DSC)
- (iii) Filing for New User Registration
- (iv) Application for Company Name.
- (v) Filing for Charter Documents.
 - a. Charter Documents of a Company
 - b. Memorandum of Association
 - c. Articles of Association
- (vi) Stamping of Company Documents
- (vii) Certificate of Incorporation
- (viii) Register Other Details.

DOCUMENTS REQUIRED FOR COMPANY REGISTRATION

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).

APPLYING FOR BUSINESS LICENSES

Licenses are integral to run any 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.

EMPLOYEE'S STATE INSURANCE REGISTRATION

ESI Registration is mandatory for employers having 10 or more employees.

All employees earning Rs.25,000 or less per month as wages.

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

To future benefit of employees & their dependents, in case of unfortunate incidents occurring in the future. 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.

IMPORT EXPORT CODE

The Registration can be obtained online at the DGFT website by submitting the mandatorily required documents. The necessary documents are a PAN card, identity card with address proof, business residence proof, current Bank account proof, etc.

TRADE LICENSE FOR INDIAN ONLINE BUSINESSES

With many easy online business loans available for MSMEs, many small entrepreneurs are looking toward the virtual medium as a preferred business mode.

LICENSES NEEDED FOR AN INDIAN FACTORY

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

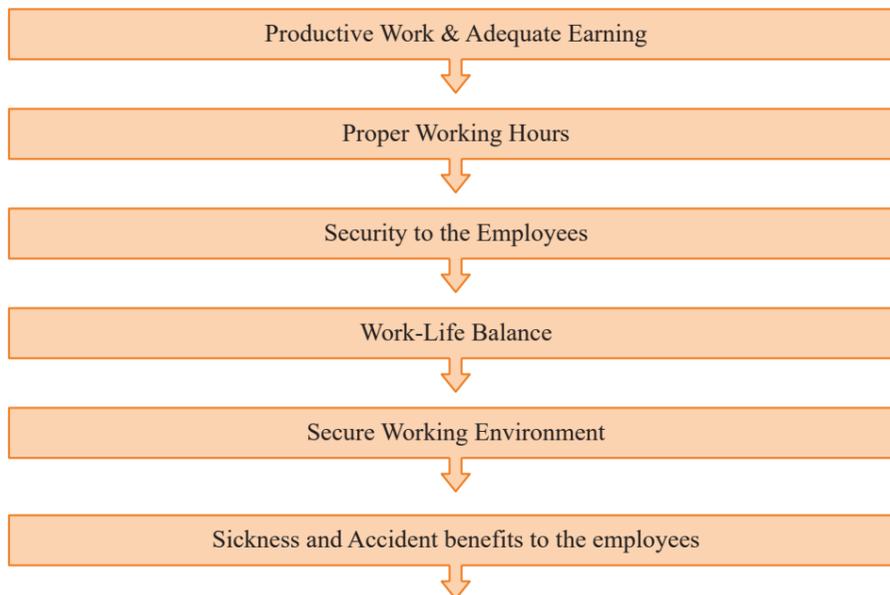
The government requires licenses and permits to guarantee the welfare of the public and the environment.

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

Objective of the Labour Laws



RECENT DEVELOPMENT IN LABOUR LAWS

- Latest telephone bill (not older than 2 months)
- Latest electricity bill (not older than 2 months)
- Bank account statement having address

ADHERENCE TO LAWS RELATING TO INTELLECTUAL PROPERTY

IPR have become an irreplaceable element of India's business fraternity, whether in terms of new statutes or judicial pronouncements.

India's consent of the WTO agreement has paved the way or its compliance with TRIPS (Trade Related Aspects of Intellectual Property Rights). 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 If the IP Laws, facilitators have been empanelled the TRIPS agreement has made way for the harmonization of Indian laws with IPR.

TRADING & RETAIL INDUSTRY

- The Trade Marks Act, 1999;
- The Patents Act, 1970;
- The Indian Copyright Act, 1957;
- Legal Metrology Act, 2009;
- Shops and Establishment Act & Rule (State wise);
- The Food Safety & Standard Act, 2006;

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;

START-UPS

List of laws that are specifically applicable to Startups:-

1. Shop and Establishment Act, (State-wise);
2. Environment and Protection Act, 1986;
3. Competition Act, 2002;
4. The Trade Unit Act, 1926;
5. The Inter-State Migrant Workmen (Regulation of Employment and Service) Act, 1979;

PHARMA INDUSTRY

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. Pharmacy Act, 1948;
5. Drugs (Price Control) Order, 1995;

6. Uniform Code for Pharmaceutical Market

BANKING INDUSTRY

1. Transfer of Property Act, 1882;
2. Negotiable Instruments Act, 1881;
3. Sale of Goods Act, 1930;
4. Foreign Contribution Regulation Act, 2010;
5. Prevention of Money Laundering Act, 2002;
6. Credit Information Companies (Regulation) Act, 2005;
7. Trade Union Act, 1956;
8. Micro, Small and Medium Enterprises Development Act, 2006;

INSURANCE INDUSTRY

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;

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;
4. Guidelines for Asset Liability Management System in Housing Finance Companies;
5. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis

REAL ESTATE COMPANIES

List of laws that are specifically applicable to Real Estate Companies:-

(A) Pre-constructions



(B) During the constructions

1. The Electricity Act, 2003;
2. The Environment (Protection) Act, 1986;
3. The Explosives Act, 1884;
4. The Food Safety and Standards Act, 2006;
5. The Forest (Conservation) Act, 1980;

- 6. The Motor Vehicles Act, 1988;
- 7. The Indian Wireless Telegraphy Act, 1933;
- 8. The Private Security Agencies (Regulation) Act, 2005;

(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. Syndrome (Prevention and Control) Act, 2017;
- 6. The Indian Wireless Telegraphy Act, 1933;
- 7. The Motor Vehicles Act, 1988;
- 8. The Petroleum Act, 1934;
- 9. The Public Liability Insurance Act, 1991;
- 10. The Representation of the People Act, 1951;
- 11. The Rights of Persons with Disabilities Act, 2016;

TELECOM INDUSTRY

- 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;

MEDIA AND COMMUNICATION INDUSTRY

List of laws that are specifically applicable to Media and Communication industries:-

- 1. The Right to Information Act, 2005;
- 2. The Information Technology Act, 2000;
- 3. The Telecom Regulatory Authority of India Act, 1997;
- 4. Copyright Act, 1957;
- 5. State Emblem of India (Prohibition of Improper Use) Act, 2005;

LIST OF LAWS THAT ARE SPECIFICALLY APPLICABLE TO INFRA INDUSTRIES

- 1. Building and other Construction Workers (Regulation of Employment And Conditions of Service) Act, 1996;
- 2. Building and other Construction Workers' Welfare Cess Act, 1996;
- 3. Contract Labour (Regulation and Abolition) Act, 1970 and the Rules thereunder;
- 4. Inter State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979.

ENVIRONMENT LAWS

- 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; etc.

MANDATORY REGISTRATION PAN

It is a 10-character alphanumeric number consisting of letter and digits .

PAN is issued in the form of a laminated plastic card. PAN card requirements are detailed in the Income Tax Act of 1961.

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.

SIGNIFICANCE OF PAN FOR SETTING UP OF BUSINESS

In the absence of the PAN, the Government will charge withholding tax which can be at the rate of more than 30% of the total invoiced payment.

It serves as a reference number of its holder for the Income Tax Department to track the financial

Transactions carried out by it. In respect of certain transactions, the person is now required to quote his PAN as also deposit certain income tax documents.

Even if one is not required to pay income tax, it is mandatory for him to hold a PAN if he is earning Money.

Companies, regardless of whether they are registered abroad or in India, are required to pay tax for businesses carried out in India. Without the PAN, the government has the mandate to deduct tax at the highest possible rate.

PAN helps an individual to pay for his invoices, remittances, and is also required to be mentioned in the income tax return.

Just like individuals, companies are required to provide their Tax Registration Number (TRN) to whomever Is paying them. A TRN can be obtained only when the company holds a PAN.

APPLICATION AND REGISTRATION OF PAN

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 or the online portal of UTITSL.

Once the application and payment is accepted, the applicant is required to send the supporting documents through courier/post to NSDL/UTITSL.

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 is required to send the supporting documents through courier/post to NSDL/UTITSL. Only per the receipt of the documents, PAN application would be processed by NSDL/UTITSL.

TAN

Tax Deduction Account Number or Tax Collection Account Number is a 10 -digit alpha-numeric number issued by the Income-tax Department. TAN 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).

RELEVANCE OF TAN

- 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.

PROCEDURE TO APPLY 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](https://www.tin-nsdl.com)).

ONLINE — Online application for TAN can be made from the website of NSDL TIN website.

Compulsory Registration

- ❖ Section 24 of Central Goods and Services Tax Act,2017 provides for compulsory registration for certain category of persons irrespective of their turnover that is to say, the threshold exemption of 40 lakh rupees or 20 lakh.

Rupees as the case may be is not available to them.

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.

Suppliers who supply goods through electronic commerce operators;

Every electronic commerce operator who is required to collect tax;

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.

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.

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:

Login into SGSTN Common Portal.

Applicant has to submit his PAN, Mobile Number, E-mail in part A of the form.

On successful completion of OTP verification a temporary reference number will be generated.

Applicant fill the part B of the form using TRN and shall authenticate the signature through DSC or E-signature.

Form GST RE-03 will be issued if any additional information is required applicant shall respond in GST RE-04 with the required information within 7 working days from the date of receipt of form GST RE-03.

Registration certificate in Form GST REG -06 for the principal place of the business as well as for every additional place of business will be issued or else will be rejected in Form GST REG-05.

COMPOSITION SCHEME UNDER GST

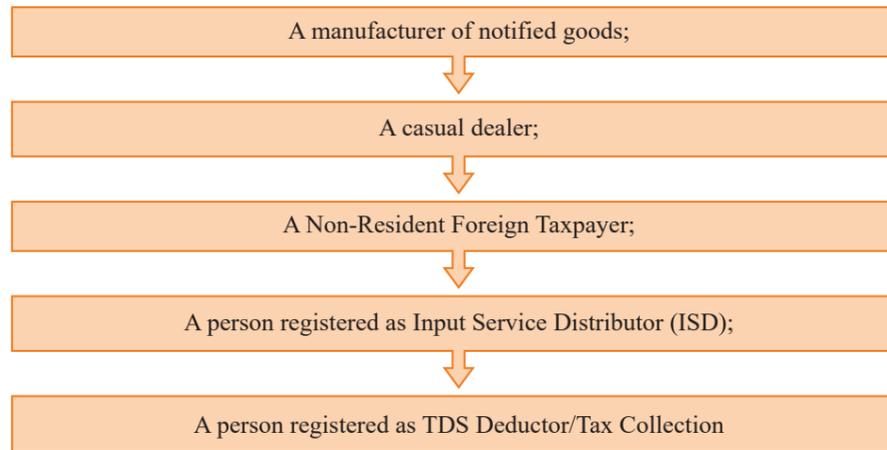
The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to Rs. 1.5 Crores (Rs. 75 lakhs in case of few States). The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is 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.

PERSONS NOT ELIGIBLE FOR COMPOSITION SCHEME

Any supply of goods which are not liable to be taxed under this Act;

Inter-State outward supplies of goods;

Supplies through electronic commerce operators who are required to collect tax under section 52;



REGISTRATION UNDER SHOPS & ESTABLISHMENTS ACT

One of the important regulations to which most businesses in India are subject to is the Shop and Establishment Act, enacted by every state in India. The Shop and Establishment (S&E) Act is applicable on all the commercial establishments.

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.

LICENSE UNDER SHOP AND ESTABLISHMENT ACT

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act License within the prescribed time.

The application for license in the prescribed form must contain:

- Challans for payment of TDS/TCS;
- TDS/TCS certificates;
- Other documents as may be prescribed.
- Challans for payment of TDS/TCS;
- TDS/TCS certificates;
- Other documents as may be prescribed.

REGISTRATION OF SHOPS AND ESTABLISHMENT PROCESS

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:

- ❖ Name of the employer and the name of a manager, if any;
- ❖ The postal address of your establishment;
- ❖ The name of establishment;
- ❖ Such other particulars as may be prescribed.

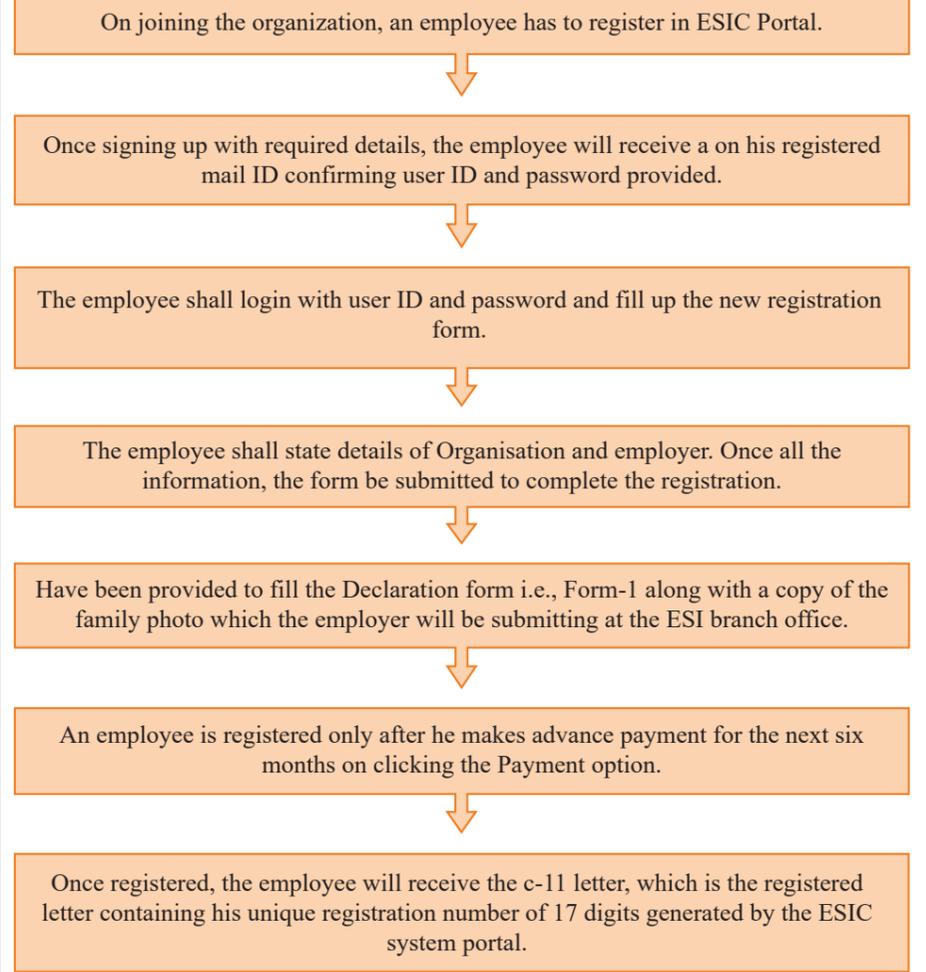
Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application. Once suitably satisfied, he shall enter the details in the Register of establishments and issue a registration certificate for the establishment.

This certificate will be valid for 5 years and has to be renewed thereafter.

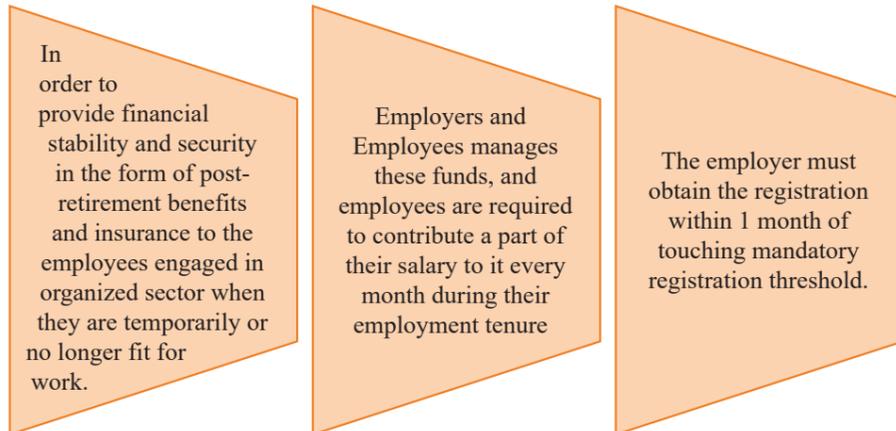
ESI REGISTRATION

Employee State Insurance (ESI) is a social security scheme offered by the Government of India as per the employees' State Insurance Act, 1948. It is a self-financing scheme i.e. in the form of contribution from both employees and Employers for the protection of Employees against the impact of incidences of sickness, maternity, disablement and death due to employment injury and to provide medical care to insured persons and their families.

REGISTRATION OF EMPLOYEE



EMPLOYEE PROVIDENT FUND



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.

PROCEDURE FOR OBTAINING NOC FROM POLLUTION CONTROL BOARD

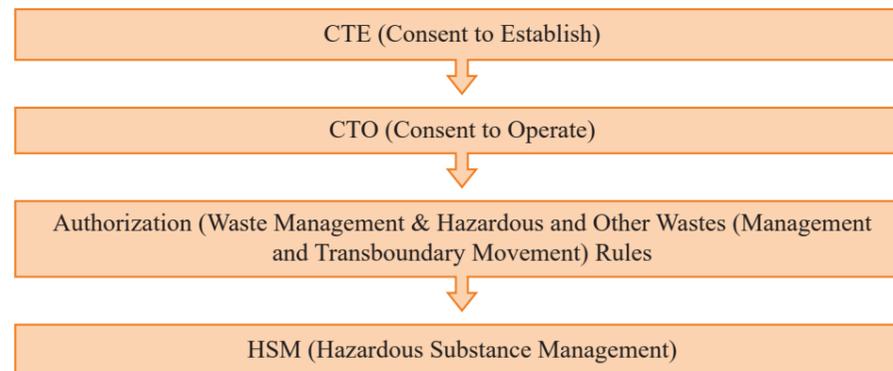
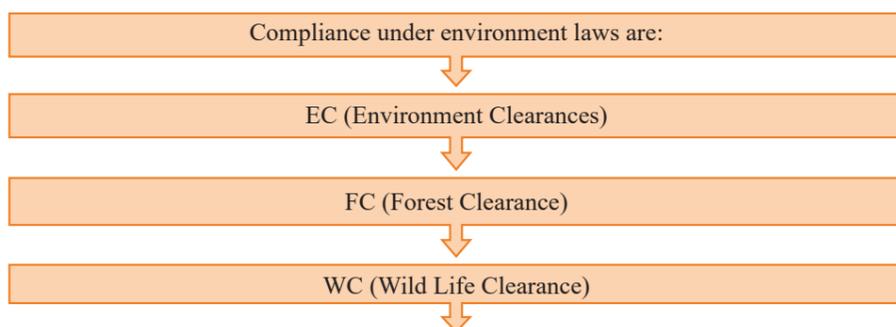
The application for consent to establish (CTE) and consent to operate (CTO) can now be made online by logging onto concerned State's pollution control board's website.

State pollution control board need to reply within 4 months.

NOC application is either accepted or rejected. If application is accepted for NOC, then a certificate is issued to business. However, if application is rejected by pollution control board, then applicant need to be intimate with reason for the same.

If an individual fails to obtain a CTE/CTO or Pollution license, they will be subject to 6 months to 1 year of imprisonment, with chances of a 6-year extension and penalty charges.

COMPLIANCES UNDER ENVIRONMENT LAWS



IMPORT EXPORT CODE

It is a 10-digit code which is issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry.

For services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

IE code has lifetime validity.

Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.

APPLICATION FOR IE REGISTRATION

Process to apply for Importer Exporter Code (IEC) on the DGFT portal.

(a) Valid Login Credentials to DGFT Portal (After Registering on DGFT Portal).

(b) User should have an active Firms Permanent Account Number (PAN) and its details like Name as per pan, Date of Birth or Incorporation.

Note: These details will be validated with the Income Tax Department site.

(c) Scanned Documents for Upload in the System (PDF Only and Max file size of 5 MB).

(a) Proof of establishment/incorporation/registration. Like Partnership, Registered Society, Trust, HUF or others.

(b) Proof of Address can be any one of the following documents:
Sale Deed, rent agreement, lease deed, electricity bill, telephone land line bill, mobile, Postpaid bill, MoU, Partnership deed;
Other acceptable documents (for proprietorship only): Aadhar card, passport, voter id;
In case the address proof is not in the name of the applicant firm, a no objection certificate.
Proof of Firm's Bank Account
Cancelled Cheque
Bank Certificate

(d) User should have an active DSC or Aadhaar of the firm's member for submission.

(e) Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee.

DRUG LICENSE

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.

TYPES OF DRUGS

1. One is the Retail Drug License (RDL) issued to run a general chemist shop.
2. The other is the Wholesale Drug License (WDL) issued to persons or agencies engaged in drugs and Medicines.

PREREQUISITES FOR OBTAINING DRUG LICENSE

Area: The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet.

Storage Facility: The store must have refrigerator & air conditioner in the premises.

Technical Staff:

Wholesale— A competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4 years experience in dealing in drugs.

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.

FSSAI

FSSAI is an acronym for Food Safety and Standards Authority of India.

FSSAI REGISTRATION

FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- (a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or

(b) Distributes foods including in any religious or social gathering except a caterer; or

(c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and whose:

- ❖ Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
- ❖ Procurement or handling and collection of milk is up to 500 litres of milk per day.
- ❖ Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

FSSAI LICENSE

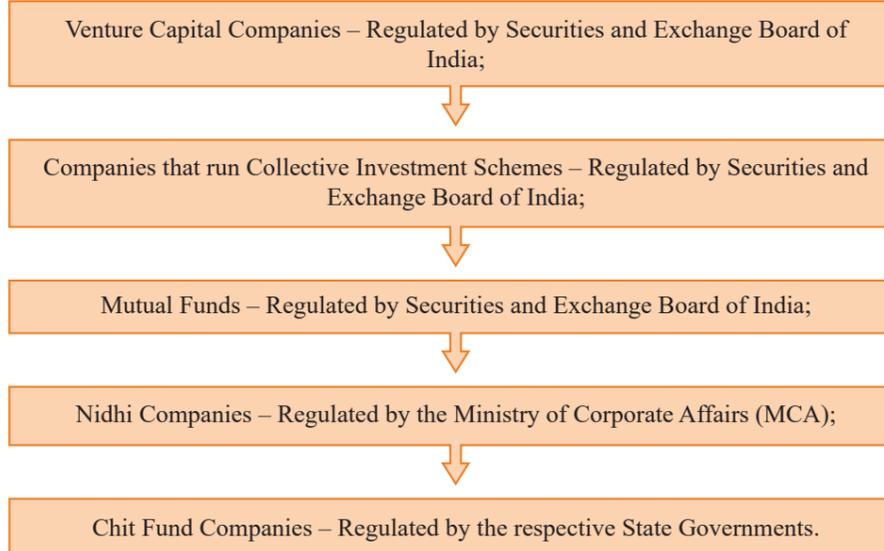
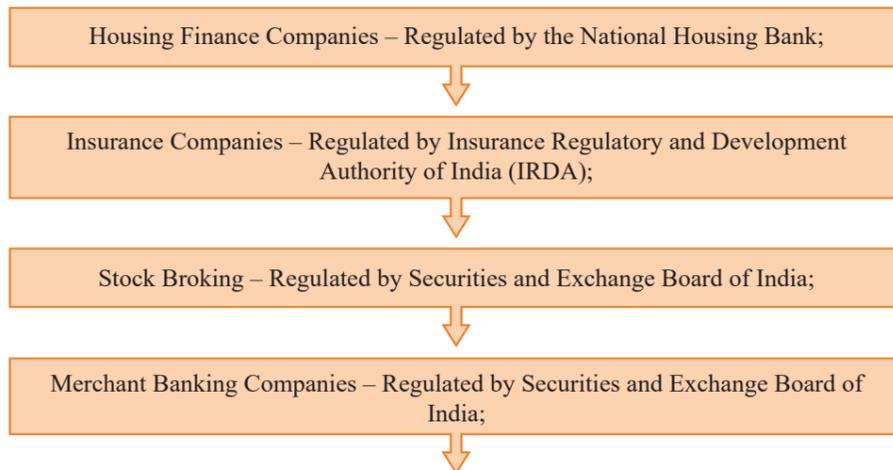
Any person or entity that is not classified as a petty food business operator is required to obtain a FSSAI license for operating a food business in India. FSSAI license is of two types:

- (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.

NON-BANK FINANCE COMPANY REGISTRATION

Therefore, companies engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, sale or construction of immovable property as their principal business and are doing some financial activity in a small way, will not require NBFC registration.

FINANCIAL COMPANIES EXEMPT 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.

According to Section 12 of the Banking Regulation Act, 1949, no banking company is allowed to carry on its business unless it satisfies the following conditions:

1. Its subscribed capital is not less than one-half of its authorized capital;
2. Its paid-up capital is not less than one-half of the subscribed capital;
3. The capital of the company consists of ordinary shares, equity shares and preference shares: Preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions Subject to which each class of preference shares may be issued;
4. No person holding shares in a banking company shall have voting rights of above 10% of total voting Rights of all the shareholders;
5. Every managing executive of the bank needs to disclose, to the RBI, the extent and the amount of his Shareholding in the firm.

IRDA (INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY)

After formation of the IRDA it was felt by the Authority that the most of the provisions of this Act were irrelevant in the present scenario of the country. Therefore, the Authority issued various regulations, as deemed Fit, to develop the insurance sector in the country.

Registration of Insurance company in India is governed by the insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000.

PROCEDURE FOR REGISTRATION OF INSURANCE COMPANY

1. Applying for NOC from IRDAI for using word “Insurance” in the name of the Company.
2. Register as a public Company with the registrar of the company.
3. Submit “certificate of Incorporation” to IRDAI and R1 Application from the website of the authority.
4. Submit R1 Application alongwith other documents to IRDAI.
5. On approval of R1 submit R2 application with prescribed documents to the IRDAI.

TELECOM LICENSE

Business entities which provide internet services or engaged in commercial communications i.e., call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services who are Categorised as ‘Other Service Providers’(OSP).

It must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications and Information Technology, government of India.

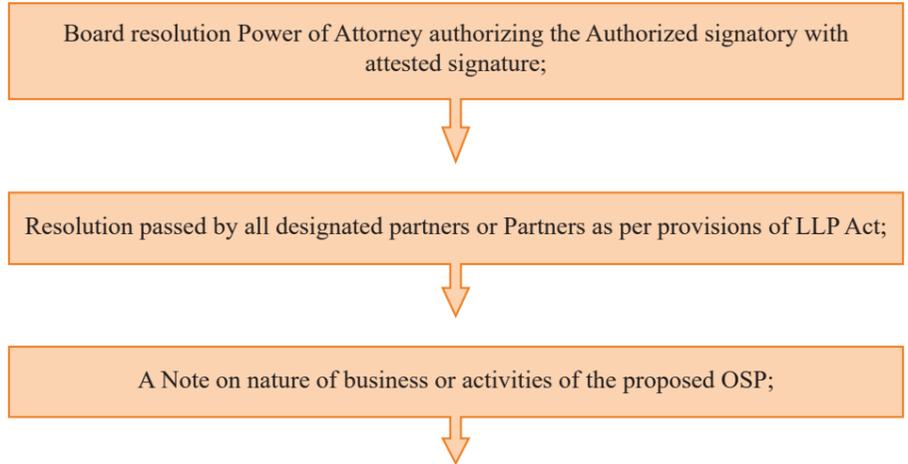
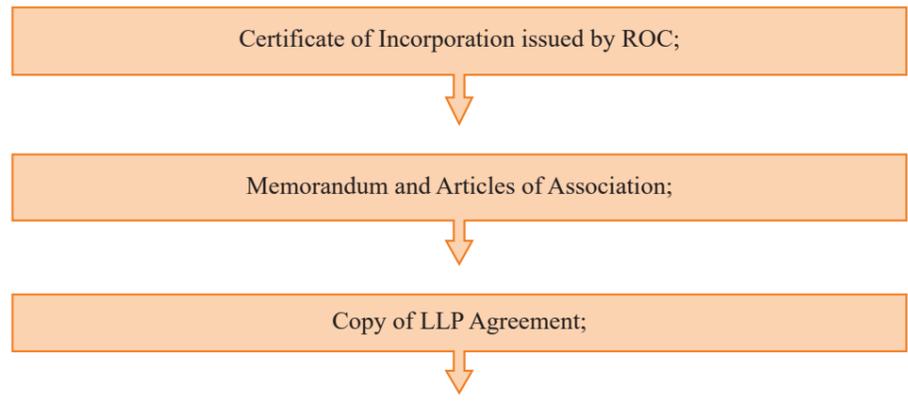
OSP LICENSE SHALL BE CATEGORIZED INTO TWO TYPES

1. Domestic OSP–
 1. OSP providing services to clients located within national boundaries of India
2. International OSP–
 1. OSP providing services to clients outside India

PROCESS OF REGISTRATION

- To Obtain a OSP license, the Company or LLP shall file an Application in Form – 1 to the DoT through online on DoT portal.
- OSP license is a location specific and can have multiple registrations for each such site.
- An entity shall inform the change, if any in the point of presence. Point of presence is a location where OSP places equipment.
- To act as an extension of its OSP centre for carrying and exchanging the telecom traffic related to its services.

MANDATORY DOCUMENTS REQUIRED FOR OSP LICENSE



PART-II INDUSTRIAL AND LABOUR LAWS

CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS & INDUSTRIAL RELATIONS

Entries about labour relations are represented in all the three lists in the Constitution. Yet most important LABOUR 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.

CONSTITUTIONAL REMEDIES

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.

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.

FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people.

Article 14: Equality before law—
“The State shall not deny to any person equality before the law or the equal protection of the laws within the Territory of India.”

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.

ARTICLE 16: EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

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 in certain posts.

In the case of Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors, 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.”

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., 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.

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.

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.

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, the Court held: “, 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.

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.

The term ‘begar’ means compulsory work without any payment. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.’ (Suraj v. State of Madhya Pradesh.

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”.

LABOUR LAWS AND REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY

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”.

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.

SOCIAL SECURITY PROVISIONS

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.

WORKING CONDITIONS

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Include therein “the right to live with human dignity”.

LIVING WAGE (ARTICLE 43)

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 pay.

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.

HISTORY OF LABOUR LAWS

- ❖ 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.

- Industrial relations;
- Wages;
- Social security;
- safety;
- Welfare and working conditions

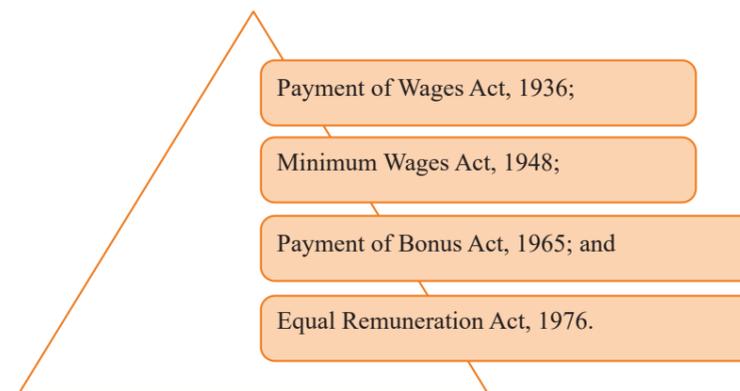
OBJECTIVE OF NEW LABOUR CODES

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.

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.

ACTS SUBSUMED BY THE FOUR LABOUR CODES

Code on Wages, 2019



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;
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Etc

INDUSTRIAL RELATIONS CODE, 2019

- Trade Unions Act, 1926;
- Industrial Employment (Standing Orders) Act, 1946, and
- Industrial Disputes Act, 1947.

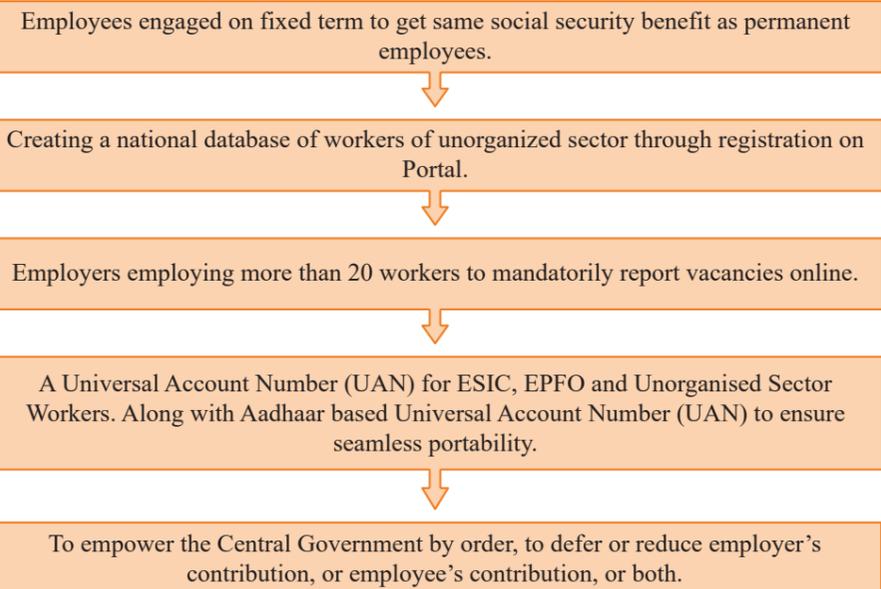
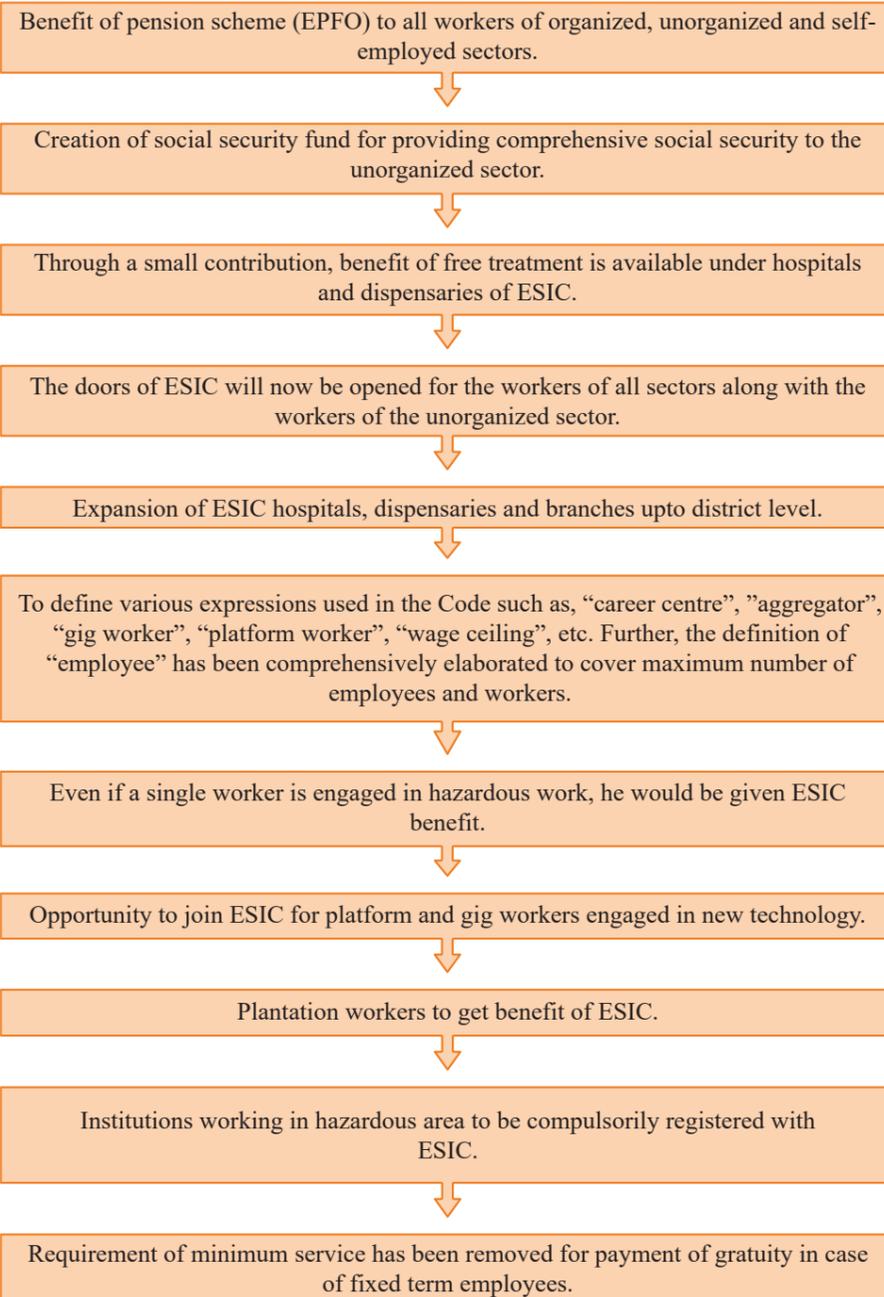
CODE ON SOCIAL SECURITY, 2019

- 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 Etc.

CODE ON SOCIAL SECURITY, 2020

A Code 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.

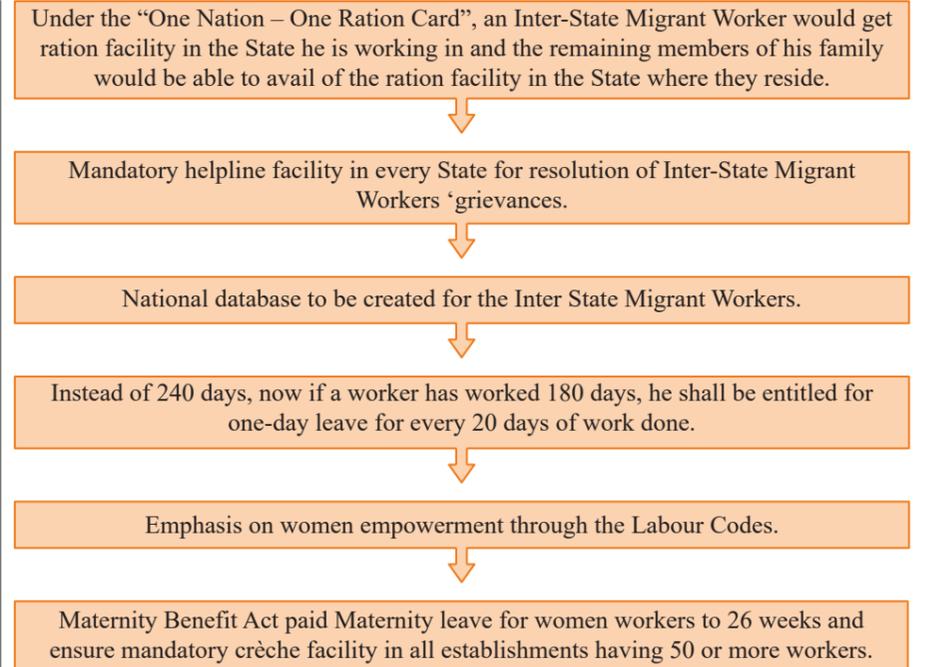
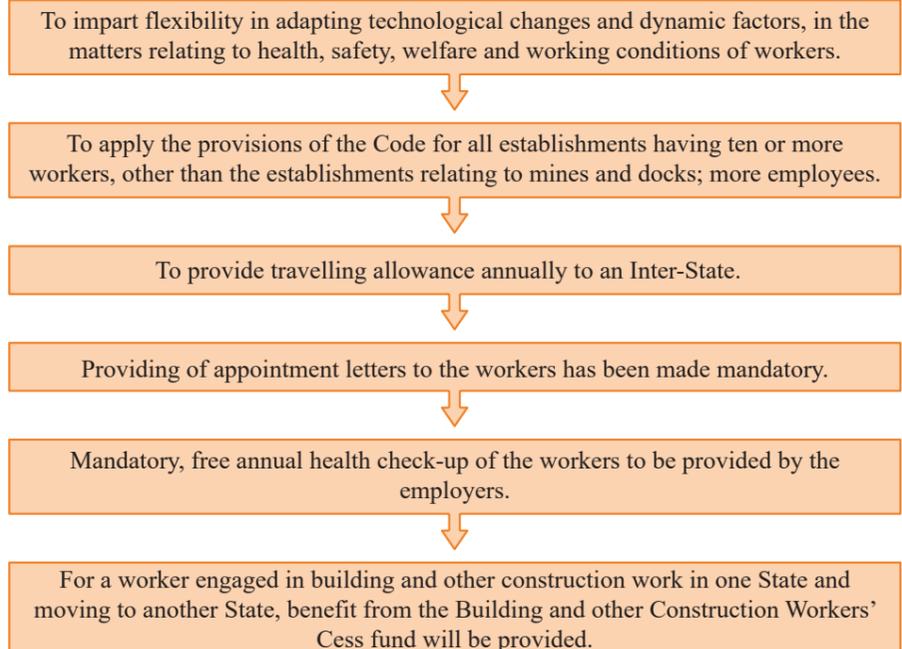
THE SALIENT FEATURES OF THE CODE ON SOCIAL SECURITY, 2020 ARE



OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

A Code to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment for workers engaged in factories, mines, plantations, motor transport sector, bidi and cigar workers, contract and migrant workers has been ensured.

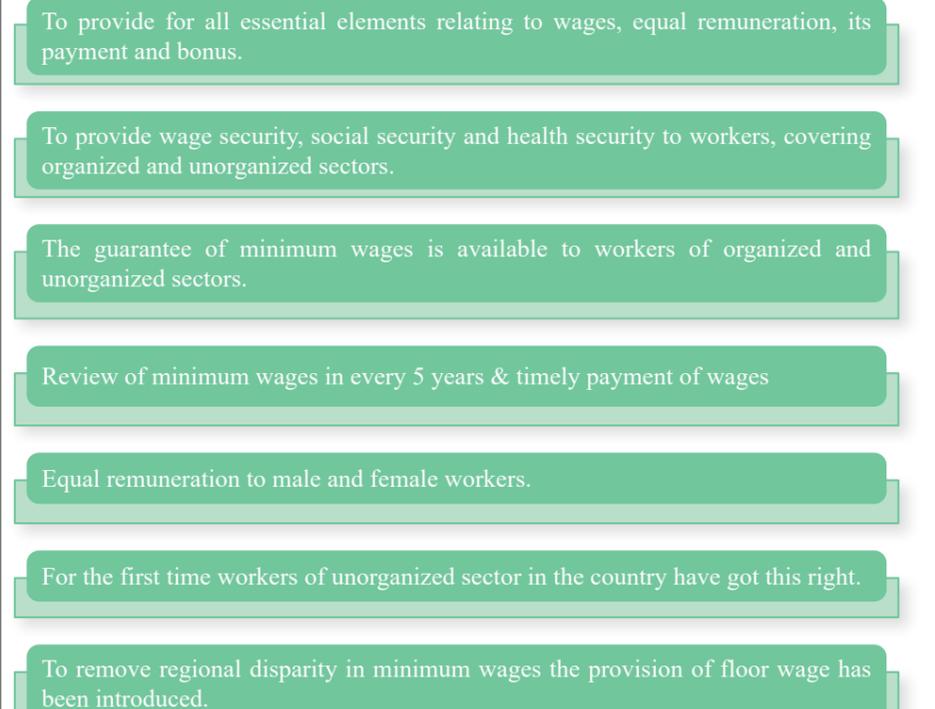
THE SALIENT FEATURES OF THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 ARE



CODE ON WAGES, 2019

A Code to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

THE SALIENT FEATURES OF THE CODE ON WAGES, 2019 ARE



The appropriate Government may extend the coverage of wage ceiling to the Government establishments.

The minimum wage decided by the government should be higher than the floor wage.

It provides for graded penalty for different types of contraventions of the provisions of the legislation.

It provides for compounding of those offences which are not punishable with imprisonment.

It enables the appropriate Government to constitute Advisory Boards at Central and State level to advise the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.

INDUSTRIAL RELATIONS CODE, 2020

In this Code, all possible steps have been taken for industrial units and workers so that disputes do not arise in future.

THE SALIENT FEATURES OF THE INDUSTRIAL RELATIONS CODE, 2020 ARE

To define “workers” which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.

The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector.

To bring concerted casual leave within the ambit of the definition of strike.

To provide the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment.

Under the Atal Bimit Vyakti Kalyan Yojna, a worker of organized sector who loses his job gets financial aid from the Government. This is a type of unemployment allowance, the benefit of which is admissible to the workers covered under the ESI Scheme.

In case of job loss, a worker will get benefit under the Atal Bimit Vyakti Kalyan Yojna.

At the time of retrenchment a worker would be provided 15 days’ wages for re-skilling. The wages would be credited directly into the bank account of the worker so as to enable him to learn new skills.

To provide for appeal against non-registration or cancellation of registration of Trade Union before the Industrial Tribunal.

To empower the Central Government and the State Governments to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or State Trade Unions, respectively.

To provide for applicability of threshold of three hundred or more workers for an industrial establishment to obtain certification of standing orders, if the standing order differ from the model standing order made by the Central Government.

Faster justice to the workers through the Tribunal.

Workers disputes to be resolved within a year in the Tribunal.

To set up Industrial Tribunals in the place of existing multiple adjudicating bodies like the Court of inquiry, Board of Conciliation and Labour Courts.

To remove the reference system for adjudication of Industrial Disputes, except the reference to the National Industrial Tribunal for adjudication.

To prohibit strikes and lock-outs in all industrial establishments without giving notice of fourteen days.

Unit-1 Factories Act, 1948

FACTORIES ACT, 1948

Factories Act, 1948 is an Act to consolidate and amend the law regulating labour in factories.

OBJECT OF THE ACT

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

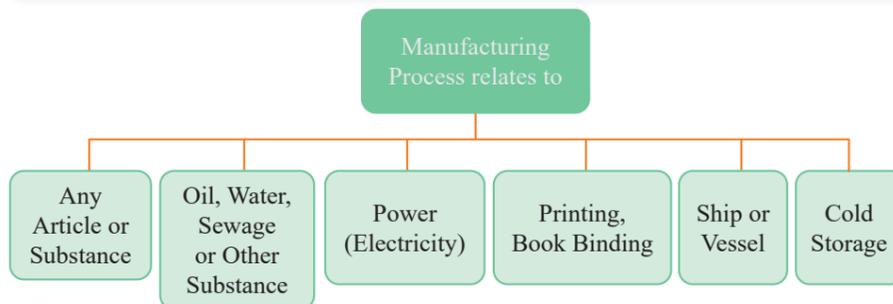
The Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises.

APPLICABILITY OF THE ACT

It extends to the whole of India.

It applies to factories as defined under the Act. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months. But it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act.



WORKER

Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

FACTORY

Manufacturing Process relates to

Essential elements of a Factory

(1) There must be a premises.

(2) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.

(3) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

The followings are not covered by the definition of factory

- (i) railway running sheds,
- (ii) mines,
- (iii) mobile units of armed forces,
- (iv) hostels, eating places or restaurants.

OCCUPIER

Occupier of a factory means the person who has ultimate control over the affairs of the factory;

STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THE ACT

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them.

REFERENCE TO TIME OF DAY

Power to declare different departments to be separate factories or two or more factories a single factories.

Power to exempt during public emergency: It is provided that no such notification shall be made for a period exceeding three months at a time.

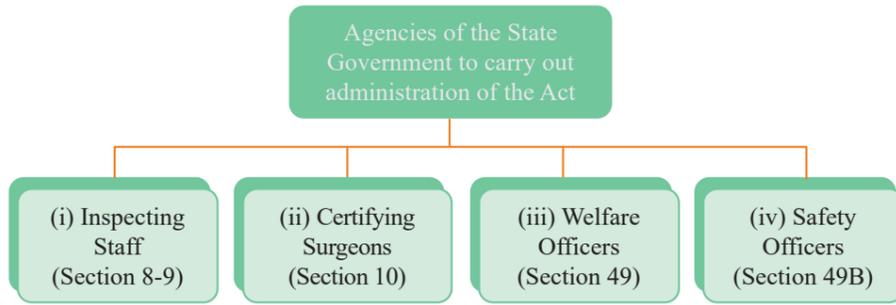
Power of the State Government to make rules with reference to approval, licensing and registration of factories:

- (a) Requiring, for the purposes of the Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;
- (b) Requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;
- (c) Requiring for the purpose of considering applications for such permission the submission of plans and specifications;
- (d) Prescribing the nature of such plans and specifications and by whom they shall be certified;
- (e) Requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licenses;
- (f) Requiring that no license shall be granted or renewed unless the notice specified in section 7 has been given.

DEEMED APPROVAL

If on an application for permission sent to the State Government or Chief Inspectors by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

APPEAL TO THE CENTRAL GOVERNMENT



POWERS OF INSPECTORS

- a. Enter, with such assistants, being persons in the service of the government,
- b. Make examination of the premises, plant, machinery, article or substance;
- c. Inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not,
- d. Require the production of any prescribed
- e. Seize, or take copies of, any register, record or other document
- f. Take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination.

CERTIFYING SURGEONS

State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act.

The certifying surgeon shall carry out such duties as may be prescribed in connection with-

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—
 - (i) cases of illness have occurred
 - (ii) by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

WELFARE OFFICER

Statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed.

SAFETY OFFICER

An occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein.

DUTIES OF OCCUPIER / MANUFACTURER

(i) **Notice by occupier:** A written notice shall be sent by the occupier at least fifteen days before he begins to occupy or use any premises as a factory, to the Chief Inspector. The notice shall contain following details:-

- (a) The name and situation of the factory;
- (b) The name and address of the occupier;
 - ❖ The name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;
- (c) The address to which communications relating to the factory may be sent;
- (d) The nature of the manufacturing process-
 - ❖ Carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and
 - ❖ To be carried on in the factory during the next twelve months in the case of all factories;
- (e) The total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;
- (f) The name of the manager of the factory for the purposes of this Act;
- (g) The number of workers likely to be employed in the factory;
- (h) The average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act.
- (i) Such other particulars as may be prescribed.

NOTICE OF APPOINTMENT OF NEW MANAGER

Where a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

MANAGER, DEEMED OCCUPIER

Any person found acting as a manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

GENERAL DUTIES OF THE OCCUPIER

- The provision and maintenance of plant and systems of work in the factory
- The provision of such information, instruction, training and supervision
- The maintenance of all places of work in the factory in a condition that is safe
- The provision, maintenance or monitoring of such working environment in the factory for the workers that is safe,

GENERAL DUTIES OF MANUFACTURERS, ETC., AS REGARDS ARTICLES AND SUBSTANCES FOR USE IN FACTORIES

| CLEANLINESS (Section 11) | | | | Inside walls / partitions/ceilings / passages and staircases | | | |
|--------------------------|------------|--------------------------------|------------------|--|--|----------------------------|-------------------|
| Sweeping/ Dusting | Floor Wash | Wet Floor due to Manufacturing | Doors/ Windows | Varnish | Washable Water Paint | Smooth Impervious surfaces | Any other case |
| Daily | Every Week | Proper Damage | Paint in 5 Years | Once in 5 Years | Wash in 6 months + paint in 3 years (1 coat) | Clean once in 14 Months | Once in 14 Months |

| Disposal of wastes (Section 12) | Ventilation and temperature (Section 13) | Dust and fume (Section 14) | Artificial humidification (Section 15) |
|--|--|----------------------------|--|
| effective arrangements for the treatment of wastes and effluents | adequate ventilation temperature reasonable Measures to reduce excessive/y high temperature walls and roofs of such material that reduce temperature In excessively high temperatures, adequate measures | exhaust in open air | as per standards |

| Overcrowding (Section 16) | Lightening (Section 17) | Drinking water (Section 18) | Latrines and urinals (Section 19) |
|--|---|----------------------------------|--|
| 14.2 cubic meters of space per worker space more than 4.2 meters above the level of the floor, will not be taken into consideration | sufficient and suitable lighting, natural or artificial Windows kept clean | Convenient points legibly marked | 6 meter away from drinking water 1 seat for 20 workers separate for male and female workers washed once in 7 days with detergents |

SAFETY

| | | | |
|--|---|---|--|
| Fencing of machinery (Section 21) | moving part of a prime mover | Pits, sumps, opening In floors, etc. (Section 33) | source of danger shall be either securely covered or securely fence |
| Work on or near machinery in motion (Section 22) | No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover if risky for them | Excessive weights (Section 34) | no person shall lift, carry or make any load as to be likely to cause him injury |
| Employment of young persons on dangerous machines (Section 23) | Young person only allowed to work on dangerous machine if received training under supervision | Protection of eyes (Section 35) | effective screens or suitable goggles for the protection |

| | | | |
|---|---|--|--|
| Striking gear and devices for cutting off power (Section 24) | suitable striking gears shall be provided and maintained and used to move driving belts to and from fast and loose pulleys | Precautions against dangerous fumes, gases, etc. (Section 36) | special measures have been taken under the Factories Act |
| Self-acting machines (Section 25) | No traversing part of a self-acting machine in any factory be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine. | Precautions regarding the use of portable electric light (Section 36-A) | prohibits use of portable electric light or any other electric appliance of voltage exceeding 24 volts |
| Casing of new machinery (Section 26) | all machinery driven by power and installed in any factory encased or otherwise effectively guarded as to prevent danger | Explosive or inflammable dust, gas, etc. (Section 37) | measures to prevent any such explosion |
| Prohibition of employment of women and children near cotton-openers (Section 27) | No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work | Precautions in case of fire (Section 38) | measures shall be taken to prevent outbreak of fire and its spread |
| Hoists and lifts (Section 28) | good mechanical construction, adequate strength properly maintained examined once in 6 months sufficiently protected by an enclosure fitted with gates | Power to require specifications of defective parts or tests of stability (Section 39) | If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, inspector serve order on the occupier or manager or both of the factory to furnish such drawings & conduct test. |
| Lifting machines, chains, ropes and lifting tackles (Section 29) | lifting machine shall be of good construction, adequate strength and free from defects; properly maintained; and thoroughly examined | Safety of buildings and machinery (Section 40) | If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, Inspector serve order on the occupier or manager or both of the factory specifying the measures, which in his opinion should be adopted |
| Revolving machinery (Section 30) | placing a notice in every factory in which process of grinding is carried on | Maintenance of buildings (Section 40-A) | If Inspector feels that any building is in a state of disrepair, he may serve on the occupier or manager or both of the factory an order of maintenance |
| Pressure plant (Section 31) | atmospheric pressure, does not exceed the limits | Safety Officers (Section 40-B) | wherein 1000 or more workers are employed |
| Floors, stairs and means of access (Section 32) | sound construction and properly maintained and shall be kept free from obstruction | Power to make rules to supplement this Chapter (Section 41) | State Government has authority to make rules |

CONSTITUTION OF SITE APPRAISAL COMMITTEES (SECTION 41A)

The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process appoint a Site Appraisal Committee.

The Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

COMPULSORY DISCLOSURE OF INFORMATION BY THE OCCUPIER (SECTION 41B)

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed, 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 the workers employed in the factory, the Chief Inspector, the local authority, within whose jurisdiction the factory is situated, and the general public in the vicinity.

Every occupier of a factory shall inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed if

- ❖ such factory is engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and
- ❖ if such factory purposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process.

SPECIFIC RESPONSIBILITY OF THE OCCUPIER IN RELATION TO HAZARDOUS PROCESSES

Such occupier shall provide for medical examination of every worker 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.

Power of Central Government to appoint Inquiry Committee

The Committee so appointed shall consist of a Chairman and two other members and the terms of reference of the Committee.

The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory.

The recommendations of the Committee shall be advisory in nature.

RIGHT OF WORKERS TO WARN ABOUT IMMINENT DANGER

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.

WELFARE

Washing Facilities: In every factory, there shall be provided—

- ❖ adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein;
- ❖ separate and adequately screened facilities shall be provided for the use of male and female workers;
- ❖ such facilities shall be conveniently accessible and shall be kept clean.

Facilities for storing and drying clothing:

- ❖ Suitable place for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting:

- ❖ There shall be suitable arrangements for sitting in every factory and they shall be maintained for all workers obliged to work in a standing position.

First-aid appliances:

- ❖ In every factory, there shall be provided and maintained so as to be readily accessible during all working hours' first-aid boxes or cupboards equipped with the prescribed contents. At least one such box or cupboard shall be provided and maintained for every one hundred and fifty workers ordinarily employed at any one time in the factory.

Canteens:

- ❖ The occupier shall provide and maintain a canteen or canteens for the use of the workers in any specified factory wherein more than two hundred and fifty workers are ordinarily employed.

Shelters, rest-rooms and lunch-rooms:

- ❖ It is mandatory to provide and maintain adequate and suitable shelters or rest-rooms and a suitable lunch-room, with provision for drinking water, where workers can eat meals brought by them in every factory wherein more than one hundred and fifty workers are ordinarily employed.

Creches:

- ❖ It is compulsory to provide and maintain a suitable room or rooms for the use of children under the age of six years of women in every factory wherein more than thirty women workers are ordinarily employed.

Unit-II

The Contract Labour (Regulation and Abolition) Act, 1970

To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

The Act extends to the whole of India. It applies–

To every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour;

To every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

The appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

“CONTRACT LABOUR”

A workman shall be deemed to be employed as “contract labour” 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 ADVISORY BOARDS

Central Advisory Board

Function of the Central Board:

Advising the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

Composition of the Central Board: The Central Board shall consist of-

a Chairman to be appointed by the Central Government; the Chief Labour Commissioner (Central), ex officio; such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen an any other interests which, in the opinion of the Central Government ought to be represented on the Central Board.

STATE ADVISORY BOARD

To advise the State Government on such matters arising out of the administration of this Act.

Composition of the State Board: The State Board shall consist of-

a Chairman to be appointed by the State Government;

the Labour Commissioner, ex officio, or in his absence any other officer nominated by the State, Government in that behalf;

such numbers, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

POWER TO CONSTITUTE COMMITTEES

The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

THE REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

Appointment of Registering Officers.

Registration of certain establishment.

Revocation of registration in certain cases: The registration of any establishment has been obtained by mis-representation or suppression of any material fact, or- that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked,

Prohibition of employment of contract labour: The appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

Act contains provisions for licensing of contractors.

APPOINTMENT OF LICENSING OFFICERS

Appropriate Government may, by an order notified in the Official Gaz officersette,

- appoint such persons, being Gazetted Officers of Government
- define the limits, within which a licensing officer shall exercise the powers.

LICENSING OF CONTRACTORS

No contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer.

WELFARE AND HEALTH OF CONTRACT LABOUR

Canteens: The appropriate Government may provide rules for-

- the date by which the canteens shall be provided;
- the number of canteens that shall be provided,
- the foodstuffs which may be served therein and the charges which may be made therefore.

Rest-rooms.

- It is mandatory for the contractor to provide and maintain for the use of the contract labour such number of rest-rooms shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

OTHER FACILITIES

- A sufficient supply of wholesome drinking water for the contract labour at convenient places;
- A sufficient number of latrines and urinals of the prescribed types.
- First-aid facility
- Liability of principal employer in certain cases: All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction.
- Responsibility for payment of wages: A contractor statutorily responsible for payment of wages to each worker employed by him as contract labour.

INSPECTING STAFF

An inspector may, within the local limits for which he is appointed–

- Enter, at all reasonable hours, with such assistance
- Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
- Require any person giving out work and any workman, to give any information.
- Seize to take copies of such register, record of wages or notices or portions, thereof as he may consider.
- Exercise such other powers as may be prescribed.

REGISTERS AND OTHER RECORDS TO BE MAINTAINED

According to section 29, every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars.

Unit- III

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

OBJECTIVE

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.

ADOLESCENT

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

CHILD

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

Day means a period of twenty-four hours beginning at midnight.

PROHIBITION OF EMPLOYMENT OF CHILDREN IN ANY OCCUPATIONS AND PROCESSES

No child shall be employed or permitted to work in any occupations or process except:-

- ❖ helps his family or family enterprise, which is other than any hazardous.
- ❖ 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.

However, no such work shall effect the school education of the child.

PROHIBITION OF EMPLOYMENT OF ADOLESCENTS IN HAZARDOUS OCCUPATIONS AND PROCESSES

No adolescent shall be employed or permitted to work in any of the hazardous occupation or processes.

The hazardous occupations or processes set forth in the Schedule are as under:

- ❖ Mines.
- ❖ Inflammable substances or explosives.
- ❖ Hazardous process.

HOURS AND PERIOD OF WORK

- ❖ 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

Every adolescent employed in an establishment is entitled in each week, a holiday of one whole day,

NOTICE TO INSPECTOR

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;
- Law of Welfare & Working Condition
- 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

Maintain 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

Unit-I Industrial Disputes Act, 1947

OBJECT

Promotion of measures of securing and preserving amity and good relations between the employer and workmen

Relief to workmen in the matter of lay-off and retrenchment.

Prevention of illegal strikes and lock-outs.

Promotion of collective bargaining.

INDUSTRY

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

- (i) Any capital has been invested for the purpose of carrying on such activity; or
- (ii) Such activity is carried on with a motive to make any gain or profit, and includes:
 - (a) Any activity of the Dock Labour Board
 - (b) Any activity relating to the promotion of sales or business or both carried on by an establishment,

But does not include the following:

1. Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one;
2. Hospitals or dispensaries.
3. Educational, scientific, research.
4. Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service.
5. Khadi or village industries.

6.

Any activity of the Government relating to the sovereign functions of the Government.

7.

Any domestic service.

8.

Any activity, being a profession practised by an individual or body of individuals.

9.

Any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals.

INDUSTRIAL DISPUTE

Any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

STRIKE

It means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

- ❖ Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.
- ❖ A general strike is one when there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike.
- ❖ The striking workman, must be employed in an "industry" which has not been closed down.

TYPE OF STRIKE AND THEIR LEGALITIES

(a) Stay-in, sit-down, pen-down or tool-down strike:

- ❖ In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so.

(b) Go-slow

- ❖ Go-slow does not amount to strike, but it is a serious case of misconduct.

(c) Sympathetic strike

- ❖ Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike.

(d) Hunger strike

- ❖ Some workers may resort to fast on or near the place of work or residence of the employer.

(e) Work-to-rule

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

LEGALITY OF STRIKE

The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.

If the strike is illegal or unjustified, strikers will not be entitled to the wages for the strike period unless considerate circumstances constraint a different cause.

If the strike is followed by lockout and vice versa, and both are unjustified.

LOCK-OUT

"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.

LAY-OFF

"Lay-off" means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched;

- a. shortage of coal, power or raw materials.
- b. accumulation of stocks.
- c. break-down of machinery.
- d. natural calamity
- e. for any other connected reason.

DIFFERENCE BETWEEN LAY-OFF AND LOCK-OUT

1. In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
2. In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.
3. In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
4. Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
5. Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

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

RETRENCHMENT

The definition contemplates following requirements for retrenchment:

- (i) There should be termination of the service of the workman.
- (ii) The termination should be by the employer.
- (iii) **The termination is not the result of punishment inflicted by way of disciplinary action.**
- (iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

WORKS COMMITTEE

Duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen.

CONCILIATION OFFICERS

The Conciliation Officer may be appointed for a specified area or for specified industries. They help in promoting the settlement of Disputes.

BOARDS OF CONCILIATION

Boards of Conciliation For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation.

COURTS OF INQUIRY

It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry.

LABOUR COURTS

Appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes.

INDUSTRIAL TRIBUNALS

- (1) The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial Disputes.
- (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:
 - (a) He is, or has been, a Judge of High Court,
 - (b) he has, for a period of not less than three years, been a District Judges or an Additional District Judge.
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.

NATIONAL TRIBUNALS

- (1) Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes.

- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government;

- (3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless: he is, or has been, a Judge of a High Court; or

- (4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

REFERENCE OF DISPUTES

A. Reference of Disputes to Various Authorities.

- (A) ❖ It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute.
- (B) ❖ It may refer any matter appearing to be connected with or relevant to the dispute to a Court inquiry.
- (C) ❖ It may refer the dispute, or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication.
- (D) ❖ It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute.
- (E) ❖ Specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication.

The Industrial Disputes Act provides for no appeal or revision as against the awards so made nor any such remedy is specifically provided for by any other statute.

B. Reference of Dispute to National Tribunal Involving Question of Importance, etc.

- (a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and
- (b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

C. Reference on Application of Parties

Where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly and shall specify the time limit (not exceeding three months) to submit the award, such time limit may be extended if required.

D. Time Limit for Submission of Awards

“An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

Provided that where such dispute is connected with an individual workman, no such period shall exceed three months:

E. Prohibition of Strike or Lock-out

Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. It is necessary that the Government makes an order prohibiting strike or lock-out. If no order is made, continuance of strike or lock-out is not illegal.

F. Subject-Matter of Adjudication

The appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal.

G. Powers of the Government to Add Parties

VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

(i) Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators.

(ii) A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(iii) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate.

(iv) Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute.

STRIKES AND LOCK-OUTS

(i) General Prohibition of Strikes and Lock-Outs

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

(a) during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and MO months after the conclusion of such proceedings;
❖ during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of Section 10A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(ii) Prohibition of Strikes and Lock-Outs in Public Utility Service

(1) To person employed in a public utility service shall go on strike in breach of contract.

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or

(b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen:

(a) without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or

(b) within 14 days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conciliation of such proceedings. The employer shall send intimation of such lock-out or strike on the day on which it is declared.

(iii) Illegal Strikes and Lock-Outs

1. ❖ Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal.

2. ❖ A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Unit-II

The Industrial Employment (Standing Orders) Act, 1946

INTRODUCTION

The Industrial Employment (Standing Orders) Act, 1946 requires employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

The Act extends to the whole of India and applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.

EMPLOYER

It means the owner of an industrial establishment to which this Act applies and also includes the following persons:

- (i) A manager so named under Section 7(1)(f) of the Factories Act, 1948.
- (ii) The head of the department or any authority appointed by the Government in any industrial establishment under its control.
- (iii) Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of Government.

CERTIFICATION OF DRAFT STANDING ORDERS

Submission of draft Standing Orders by employers to the certifying officer

- ❖ Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.
- ❖ The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment.

CERTIFICATION OF STANDING ORDERS

Procedure to be Followed by the Certifying Officer

- ❖ On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any,
- ❖ Objections are required to be submitted to him within 15 days from the receipt of the notice.
- ❖ A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

EFFECT OF CERTIFICATION

These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.

REGISTER OF STANDING ORDERS

The Certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form.

APPEALS

The order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives.

DATE OF OPERATION OF STANDING ORDERS

Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or

Where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.

DURATION AND MODIFICATION OF STANDING ORDERS

❖ Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen.

❖ Such modification will not be affected until the expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be.

Unit-I Payment of Wages Act, 1936

The Payment of Wages Act, 1936 regulates the payment of wages of certain classes of employed persons.

OBJECT

To eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorized deductions.

WAGES

It 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—

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include —
 - (1) any bonus
 - (2) the value of any house-accommodation or of the supply of light water medical attendance or other amenity;
 - (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
 - (4) any travelling allowance or the value of any travelling concession;
 - (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
 - (6) any gratuity payable on the termination of employment in cases other than those specified in sub- clause (d). {Section 2(vi)}

RESPONSIBILITY FOR PAYMENT OF WAGES

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid. It may be noted that as per section 2(ia) “employer” includes the legal representative of a deceased employer.

WHO IS SUPPOSED TO PAY THE WAGES

- Persons employed in factories – Manager
- Persons employed in industrial or other establishments- Person Employed for supervision
- Persons employed upon railways- Railway Administration
- Persons employed in the work of contractor- person designated by such contractor who is directly under his charge

FIXATION OF WAGE PERIOD

Every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable.

No wage-period shall exceed one month.

TIME PAYMENT OF WAGES

Person employed upon or in any railway, factory, industrial, other establishment upon or in which less than one thousand persons are employed shall be paid before the expiry of the seventh day.

Where a person is terminated by or on behalf of employer - before the expiry of the second working day from the day on which his employment is terminated.

All payments of wages shall be made on a working day.

NOTE- Wages to be paid in current coin or currency notes or by cheque or crediting in bank account.

DEDUCTIONS FROM THE WAGES OF AN EMPLOYEE

1. fines
2. Absence from duty
3. Damage to or loss of good entrusted to the employee
4. Dousing accommodation and amenities provided by the employer
5. Recovery of advances or adjustment of over-payments of wages
6. Recovery of loans made from any fund constituted for the welfare of labour
7. Subscriptions to and for repayment of advances from any provident fund
8. income-tax
9. Payments to co- operative
10. Deductions made with authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

FINES

No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or of the prescribed authority may have specified by notice. →

A notice specifying such acts and omissions shall be exhibited in the prescribed manner. →

No fine shall be imposed on any employed person until he has been given an opportunity of showing cause to employee. →

The total amount of fine shall not exceed equal to three per cent of the wages payable to him.

No fine shall be imposed on any employed person who is under the age of fifteen years.

No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.

All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages.

MAINTENANCE OF REGISTERS AND RECORDS

Maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them.

CLAIMS ARISING OUT OF DEDUCTIONS FROM WAGES OR DELAY IN PAYMENT OF WAGES AND PENALTY FOR MALICIOUS OR VEXATIOUS CLAIMS

It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

(a) any Commissioner for Workmen's Compensation; or

(b) any officer of the Central Government exercising functions as,-

- ❖ Regional Labour Commissioner.
- ❖ Assistant Labour Commissioner with at least two years' experience.

(c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

(d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State.

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority Law of Wages.

Unit-II Minimum Wages Act, 1948

OBJECTIVE

To provide for fixing minimum rates of wages in certain employments. the employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.

EMPLOYEE

It means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed.

FIXATION OF MINIMUM RATES OF WAGES

Appropriate Government shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

Appropriate Government may fix minimum rate of wages for:

- time work, known as a Minimum Time Rate;
- piece work, known as a Minimum Piece Rate;
- Guaranteed Time Rate
- Over Time Rate

Minimum rates of wages may be fixed for-

- different scheduled employments;
- different classes of work in the same scheduled employments;
- adults, adolescents, children and apprentices;
- different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

(i) by the hour,

(ii) by the day,

(iii) by the month,
or

(iv) by such other large wage periods as may be prescribed.

MINIMUM RATE OF WAGES

Minimum rate of wages fixed or revised by the appropriate Government may consist of —

- ❖ A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals.
- ❖ A basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or
- ❖ An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the Concessions.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES

The appropriate Government can follow either of the two methods :-

- Committee Method:-** The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be.
- Appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

CENTRAL ADVISORY BOARD

It is appointed for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards.

Payment of minimum wages is obligatory on employer:- Payment of less than the minimum rates of wages notified by the appropriate Government is an offence.

FIXING HOURS FOR A NORMAL WORKING DAY

Appropriate Government may—

- ❖ Fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- ❖ Provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- ❖ Provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- ❖ Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- ❖ Employees engaged in work in 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;
- ❖ Employees whose employment is essentially intermittent;
- ❖ Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- ❖ Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

PAYMENT OF OVERTIME

The employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed.

MAINTENANCE OF REGISTERS AND RECORDS

The employer is required to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed.

AUTHORITY AND CLAIMS

The appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

- ❖ Commissioner for Workmen's Compensation
- ❖ Officer of the Central Government exercising functions as Labour Commissioner for any region.
- ❖ Officer of the State Government not below the rank of Labour Commissioner
- ❖ Other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

Unit III Payment of Bonus Act, 1965

OBJECTIVE

To provides for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

APPLICATION OF THE ACT

This Act extends to the whole of India.

It shall apply to :-

- ❖ Every factory.
- ❖ Every other establishment in which twenty or more persons are employed on any day during an accounting year.

SALARY OR WAGES

It means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living).

CALCULATION OF AMOUNT PAYABLE AS BONUS

- (i) Computation of gross profits
- (ii) Deductions from gross profits
- (iii) Calculation direct tax payable by the employer
- (iv) Computation of available surplus.

ELIGIBILITY FOR BONUS AND ITS PAYMENT

- (i) Eligibility for bonus:
 - ❖ Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- (ii) Disqualification for bonus:
 - ❖ Disqualification for bonus An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:
 - ❖ fraud; or
 - ❖ riotous or violent behaviour while on the premises or the establishment; or
 - ❖ theft, misappropriation or sabotage of any property of the establishment
- (iii) Payment of minimum bonus:
 - ❖ Every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher.

(iv) Maximum bonus:

- ❖ bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(v) Calculation of bonus with respect to certain employees:

- ❖ Where the salary or wages of an employee exceeds seven thousand rupees or the minimum wage for the scheduled employment. Bonus shall be calculated as if his salary or wages were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government. whichever is higher.

(vi) Proportionate reduction in bonus in certain cases:

- ❖ Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced.

(vii) Computation of number of 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
- ❖ he has been on leave with salary or wage;
- ❖ 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 wage, during the accounting year.

(viii) Set on and set off of allocable surplus

(ix) Adjustment of customary or interim bonus:

- ❖ Where in any accounting year any puja bonus or other customary bonus has been paid to an employee; or an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus.

(x) Deductions of certain amounts from bonus:

- ❖ the employer shall be entitled to deduct puja or customary bonus from the amount of bonus payable by him to the employee.

(xi) Time limit for payment of bonus: If 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

- ❖ Where there is a dispute regarding payment of bonus pending before any authority -- all amounts payable to an employee by way of bonus shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- ❖ In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.

(xii) Recovery Set on and set off of allocable surplus:

- ❖ Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, every such application shall be made within one year from the date on which the money become due to the employee from the employee.

Unit IV

Equal Remuneration Act, 1976

There is equal pay for equal work for both men and women. To give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976.

ACT TO HAVE OVERRIDING EFFECT

The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service.

DUTY OF EMPLOYER TO PAY EQUAL REMUNERATION TO MEN AND WOMEN WORKERS FOR SAME WORK OR WORK OF A SIMILAR NATURE

- ❖ No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

DISCRIMINATION NOT TO BE MADE WHILE RECRUITING MEN AND WOMEN

- ❖ While making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women.

- ❖ However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons.

AUTHORITIES FOR HEARING AND DECIDING CLAIMS AND COMPLAINTS

Claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature.

Define the local limits within which each such authority shall exercise its jurisdiction.

MAINTENANCE OF REGISTERS

- ❖ It is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

Unit-I

Employees' State Insurance Act, 1948

OBJECTIVE

To provide an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity.

It also guarantees reasonably good medical care to workers and their immediate dependents.

DEPENDENT

It means any of the following relatives of a deceased insured person namely:

A widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter and a widowed mother,

If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;

If wholly or in part dependent on the earnings of the insured person at the time his death.

- (i) Parent other than a widowed mother,
- (ii) Minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
- (iii) Minor brother or an unmarried sister or a widowed sister if a minor,
- (iv) A widowed daughter-in-law
- (v) Minor child of a pre-deceased son,
- (vi) Minor child of a pre-deceased daughter where no parent of the child is alive or,
- (vii) Paternal grand parent if no parent of the insured person is alive.

EMPLOYMENT INJURY

It means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

INJURY

It does not mean only visible injury in the form of some wound.

PRINCIPAL EMPLOYER

It includes:-

In a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory.

An any establishment under the control of any department of any Government in India,

Any other establishment, any person responsible for the supervision and control of the establishment.

REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

Every factory or establishment to which this Act applies shall be registered within time and in manner as may be specified in the regulations.

EMPLOYEES' STATE INSURANCE

All the employees in factories or establishments to which this Act applies shall be insured.

These insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own Contribution.

These persons are entitled to get certain benefits from that fund which shall be administered by the Corporation.

ADMINISTRATION OF EMPLOYEES' STATE INSURANCE SCHEME

Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted.

ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

EMPLOYEES' STATE INSURANCE CORPORATION

It is established by Central Government for administration of the Employees' State Insurance Scheme.

These Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

CONSTITUTION

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession.

Three members of the parliament and the Director General of the Corporation are its ex-officio members.

POWERS AND DUTIES OF THE CORPORATION

To acquire and hold property both movable and immovable, sell or otherwise transfer the said property.

It can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments

It can raise loans and discharge such loans with the previous sanction of Central Government.

It may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit.

APPOINTMENT OF REGIONAL BOARDS, ETC.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions.

WINGS OF THE CORPORATION

Standing Committee

Powers: The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation.

Medical Benefit Council

Duties :-

- ❖ Advise the Corporation and the Standing Committees.
- ❖ To investigate in relation to complaints against medical practitioners in connection with medical treatment and attendance
- ❖ Other duties as specified in the regulations.

EMPLOYEES' STATE INSURANCE FUND

Creation of Fund

All contributions paid and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund.

The Corporation may accept grants, Gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not.

Purposes for Which the Fund may be Expended

Fund shall be expended only for the following purposes:

Payment of benefits and provisions of medical treatment and attendance to insured persons.

Payment of fees and allowances to members of the Corporation.

Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, Gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund.

Payment of contribution to any State Government, local authority or any private body or individual.

Defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;

Defraying the cost (including all expenses) of Employees Insurance Courts.

Payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing committee.

CONTRIBUTIONS

Principal employer to pay contributions in the first instance

Recovery of contribution from immediate employer

Method of payment of contribution.

BENEFITS

Periodical payments in case of sickness certified by medical practitioner;

Periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;

Periodical payment to an insured person suffering from disablement as a result of employment injury;

Periodical payment to dependants of insured person;

Medical treatment and attendance on insured person;

Payment of funeral expenses on the death of insured person at the prescribed rate.

EMPLOYEES' INSURANCE COURT

Constitution

State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification.

Adjudication of Disputes

The Employees' Insurance Court has jurisdiction to adjudicate disputes.

Adjudication of Claims

The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution.

Exemptions

The appropriate Government may exempt any factory/establishment as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act.

Unit-II

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

OBJECTIVE

To provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments.

BASIC WAGES

It means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case, but does not include:

- The cash value of any food concession;
- Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment of work done in such employment.
- Any presents made by the employer.

CONTRIBUTION

It means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

CONTROLLED INDUSTRY

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

SCHEMES UNDER THE ACT

Employees Provident Fund Scheme

Central Government has to frame this scheme.

Contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, employees' Pension Scheme employees' Deposit-Linked Insurance Scheme.

Advance withdrawal: Under certain urgent circumstances provident fund can be withdrawn.

Final withdrawal: Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad.

EMPLOYEES PENSION SCHEME

- ❖ Minimum 10 years contributory service is required for entitlement to pension.
- ❖ The Scheme provides for payment of monthly pension in the following contingencies.

- a. Superannuation on attaining the age of 58 years
- b. Retirement
- c. Permanent total disablement
- d. Death during service
- e. Death
- f. Children Pension
- g. Orphan pension.

EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME

Determination of Moneys Due

Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary.

Mode of Recovery of Moneys Due from Employee

In the same manner as an arrear of land revenue.

Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment.

Recovery of Moneys by Employers and Contractors

Section 8A lays down that the amount of contribution, 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.

Measures for Recovery of Amount Due from Employer

The authorised officer shall issue a certificate for recovery of amount due from employer to the recovery Officer.

The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery.

Priority of Payment of Contributions Over Other Debts

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made.

EMPLOYER NOT TO REDUCE WAGES

An employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment.

TRANSFER OF ACCOUNTS

Where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed.

PROTECTION AGAINST ATTACHMENT

Statutory protection is provided to the amount of contribution to Provident Fund from attachment to any Court decree.

Unit III Maternity Benefit Act, 1961

OBJECTIVE

To regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits.

To protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.

EMPLOYMENT OF OR WORK BY WOMEN PROHIBITED DURING CERTAIN PERIODS

That 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.

RIGHT TO PAYMENT OF MATERNITY BENEFITS

If a pregnant-women makes request to her employer, she shall not be given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.

RIGHT TO PAYMENT OF MATERNITY BENEFITS

Every woman shall be entitled to maternity benefit at the rate of the average daily wage for the period of her actual absence.

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.

Maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks.

NOTICE OF CLAIM FOR MATERNITY BENEFIT

A woman employed in an establishment and entitled to maternity benefit may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and it may be paid to her or to such person as she may nominate in the notice.

On receipt of the notice, the employer shall permit such woman to absent herself from the s establishments.

NURSING BREAKS

Every woman delivered of a child who returns to duty after such delivery shall be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

CRECHE FACILITY

Every establishment having fifty or more employees shall have the facility of creche either separately or along with common facilities.

ABSTRACT OF ACT AND RULES THERE UNDER TO BE EXHIBITED

As per section 19 an abstract of the provisions of this Act and the rules made there under 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.

REGISTERS

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner.

PENALTY

Any employer contravenes the provisions of the Act or the rules made thereunder, he shall, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Unit IV Payment of Gratuity Act, 1972

OBJECTIVE

To provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

APPLICATION OF THE ACT

According to Section 1(3), the Act applies to:

- ❖ Every factory, mine, oilfield, plantation, port and railway company;
- ❖ Every shop or establishment, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.
- ❖ Other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months.

WHEN IS GRATUITY PAYABLE

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:

- ❖ On his superannuation.
- ❖ On his retirement or resignation.
- ❖ On his death or disablement due to accident or disease.

Note: Time period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act.

TO WHOM IS GRATUITY PAYABLE

Normally to the employee himself. However, in the case of death of the employee, to his nominee and 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 controlling authority who shall invest the same for the benefit of such minor.

AMOUNT OF GRATUITY PAYABLE

Gratuity is calculated on the basis of continuous service for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn.

NOMINATION

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death.

FORFEITURE OF GRATUITY

Gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused.

Case where the services of an employee have been terminated:

- ❖ For riotous and disorderly conduct or any other act of violence on his part.
- ❖ For any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited.

EXEMPTIONS

The appropriate Government may exempt any factory or establishment covered by the Act or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable.

THE CONTROLLING AUTHORITY AND THE APPELLATE AUTHORITY

Appropriate Government may by notification appoint any officer to be a controlling Authority who shall be responsible for the administration of the Act.

Appropriate government or such other authority as may be specified by the appropriate Government in this behalf.

EXEMPTIONS

A person who is eligible for payment of gratuity or any person authorised, in writing, shall send a written application to the employer.

Application shall be made ordinarily within 30 days.

RIGHTS AND OBLIGATIONS OF THE EMPLOYER

Employers Duty to Determine and Pay Gratuity

As soon as gratuity becomes payable the employer shall, whether the application 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 Controlling Authority, specifying the amount of gratuity so determined.

If the amount of gratuity payable is not paid by the employer within the period specified the employer shall pay, simple interest at the rate of 10 per cent per annum.

Recovery of Gratuity

If the gratuity payable under the Act is not paid by the employer within the prescribed time,

the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may specify, from the date of expiry of the Prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Protection of Gratuity

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or criminal Court.

Unit V Apprentices Act, 1961

OBJECTIVE

To regulate and control the programme of training of apprentices and for matters connected therewith.

APPRENTICE

It 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.

Qualifications for being engaged as an apprentice.

A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he—

- Is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- Satisfies such standards of education and physical fitness as may be prescribed.

CONTRACT OF APPRENTICESHIP

Section 4 states that—

- ❖ 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.
- ❖ The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into.
- ❖ 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.
- ❖ 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.
- ❖ 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.

6.

❖ The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

REGULATION OF OPTIONAL TRADE

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

The employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

NUMBER OF APPRENTICES FOR A DESIGNATED TRADE AND OPTIONAL TRADE

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.

OBLIGATIONS OF EMPLOYERS

To provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules.

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

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.

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.

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

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.

SETTLEMENT OF DISPUTES

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.

OFFER AND ACCEPTANCE OF EMPLOYMENT

Every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Were 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.

AUTHORITIES UNDER THE ACT

To provide the apprentice with the training in

The Central Apprenticeship Council,

The State Council,

The State Apprenticeship Council,

The All India Council,

The Regional Boards,

The Boards or State Councils of Technical Education

The Central Apprenticeship Adviser,

The State Apprenticeship Adviser.

OFFENCE AND PENALTIES

If any employer or any other person—

- (a) Required to furnish any information or return-
 - ❖ refuses or neglects to furnish such information or Return, or
 - ❖ 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
 - ❖ refuses to answer,
- (b) Requires an apprentice to work overtime without the approval of the Apprenticeship Adviser.
- (c) Employs an apprentice on any work which is not connected with his training.
- (d) Makes payment to an apprentice on the basis of piece-work, or
- (e) Requires an apprentice to take part in any output bonus or incentive scheme.
- (f) Engages as an apprentice a person who is not qualified for being so engaged.
- (g) 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.

Unit VI

Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

OBJECTIVE

To 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.

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.

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.

EXEMPTION FROM FURNISHING OR MAINTAINING OF RETURNS AND REGISTERS REQUIRED UNDER CERTAIN LABOUR LAWS

It shall not be necessary for an employer in relation to any small establishments or very small establishment to furnish the returns or to maintain the registers required to be furnished or maintained.

It may be noted that such employer—

- (a) Furnishes, in lieu of such returns, annual return.

- (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,
- (ii) A register in Form III, in the case of very small establishments.

FURNISHING OR MAINTAINING OF RETURNS AND REGISTERS IN ELECTRONIC FORM

The annual return, wage books and other records, may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

INTRODUCTION

Sexual harassment of women at workplace is a serious concern to humanity.

Sexual harassment results in violation of women rights under Articles 14 and 15 of the Constitution of India.

Sexual harassment of women at workplace very first time recognized in judgement of Vishaka V. State of Rajasthan [Vishaka judgement]

DEFINITION

It includes unwelcomed sexually determined behaviour,

Physical contact & advances,

Demand or request for sexual favours,

Sexually coloured remarks,

Showing pornography,

any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

OBJECTIVE

To prevent and protect women against workplace sexual harassment.

MOST COMMON FORMS OF INAPPROPRIATE BEHAVIOUR

Quid pro Quo– When supervisor or employer demands for sexual favour from a women works in return for some type of job benefit.

Hostile work environment– Creating offensive working environment and humiliating treatment which would affect her health or safety.

APPLICABILITY

It is applicable to both organized and unorganized sectors (self-employed or having less than 10 workers).

It applies to government bodies, private & public sector organizations, non-governmental organizations, hospitals and nursing homes, educational institutes, sport institution and also applies to dwelling place or house.

AGGRIEVED WOMEN

a women relating to any workplace, of any age whether employed or not, who alleges to have been any act of sexual harassment by respondent.

women relating to any dwelling place of any age who is employed in such dwelling place or house.

COMPLAINT COMMITTEE**1. Internal Complaint Committee. (ICC)**

It is required to set up Internal complaint Committee where 10 or more workers are employed. It is set up by or made by the employer of an organization.

ICC shall consist of following members:-

- ❖ A presiding officer who must be a women employed senior level. If senior level women employee is not available then presiding officer should be nominated from other offices of workplace.
- ❖ It should contain at least two members who is committed to cause of women or who have experience in Social work and have legal knowledge.
- ❖ ICC should contain one external member who is familiar with issues of sexual harassment.
- ❖ At least one-half of members of committee shall be women.

Tenure:- Every member of committee and Presiding offer officer shall be appointed for 3 years from the date of their nomination by employer.

Fees:- The employer should pay fees to member appointed from non-governmental organizations for holding the proceedings of internal committee as may be prescribed by him.

If presiding officer or any member of committee, contravenes provisions of act or convicted for an offence or injury and found guilty in disciplinary proceedings or abused his position shall be removed from the committee.

2. Local Complaint Committee (LCC)

Government is required to set up Local complaint committee to investigate sexual harassment cases in unorganized sector.

It is constituted where establishment having less than 10 employees or complaint is against employer.

Sexual harassment of domestic workers or complaint is against the employer or the third party who is not employee LCC has special relevance.

(i) Notification of district officer- (Section 5)

- ❖ Appropriate government should appoint District Magistrate or the collector or Deputy collector as a District officer for every district to exercise powers of this act.

(ii) Constitution and jurisdiction of Local Committee

- ❖ Section 6:-
- ❖ Every district officer shall constitute the “Local committee” to receive the complaints of sexual harassment.
- ❖ The District officer shall appoint one nodal officer in every block, taluka and tehsil in rural or urban areas to receive and forward complaints to Local committee within 7 days.

(iii) Composition, tenure and other terms and conditions of Local committee.

- ❖ Section 7:- The Local committee should consists of following members:
- ❖ Chairperson shall be nominated by women in field of social work or committed to cause.
- ❖ One member nominated by womens in block, taluka or tehsil or ward in district.
- ❖ Two members, at least one of them should be women or who is familiar to issues or who is from NGO as may be prescribed.

Local committee’s members should have knowledge of law and at least one of the nominees is from SC / ST / OBC or minority category.

COMPLAINT (SECTION 9)

An aggrieved woman can file written complaint to Internal Complaint Committee (ICC) or Local Complaint Committee (LCC) within 3 months from date of last incident.

If an aggrieved woman is unable to file complaint because of her physical or mental incapability or death, then her legal heirs or other persons to LCC or ICC on behalf of her.

CONCILIATION (SECTION 10)

It is provided that no monetary settlement can be made as basis of conciliation.

Before or after inquiry aggrieved women can take steps to settle matter between her and respondent.

If settlement has arrived then Internal committee or Local committee shall record the settlement and forward to the employer or District officer.

DOMESTIC WORKER

Domestic worker means women who is employed in household but does not include family member of employer.

INQUIRY INTO COMPLAINT

Section 11– Internal Complaint Committee or Local Complaint Committee shall make inquiry into the complaint and in case of domestic worker ICC or LCC shall forward complaint to the police within 7 days.

ICC and LCC shall have powers while inquiring into complaint of sexual harassment-

- ❖ Summoning and enforcing the attendance of a person and examining him on oath,
- ❖ can require the discovery and documents of production, and
- ❖ any other matter which may be prescribed.

Such inquiry should be completed within 90 days.

If aggrieved women is not happy with the recommendation of ICC or LCC then she may prefer an appeal to the court within 90 days.

DUTIES OF COMPANY

(i) It is duty of employer to provide safe working environment for every working women in organization.

(ii) Display at any conspicuous place and consequences of Sexual harassment in the workplace.

(iii) To organise workshops and awareness programme at regular intervals to inform the employees with the provisions of this act.

(iv) It is duty of employer to provide necessary facilities to Internal committee or Local Committee.

(v) Assist in attendance of respondent before ICC or LCC.

(vi) Employer should made available all required information to LCC or ICC.

(vii) Providing assistance to women if she chooses to file complaint of offense under Indian Penal Code, 1860.

(viii) To take initiate actions under Indian Penal code 1860 or any other law against perpetrator.

(ix) It is duty of employer to treat sexual harassment as misconduct and take appropriate actions against it.

DUTIES OF DISTRICT OFFICER (SECTION 20)

District officer shall make necessary measures to promote awareness about women rights and sexual harassment.

District officer shall monitor the timely submission of reports furnished by LCC.

COMMITTEE TO SUBMIT ANNUAL REPORT

Internal committee or Local committee should report all cases in year and forward reports to District officer and employer.

District officer should transfer all reports in brief to state government.

Employer to include information annual & report.

Appropriate government to take measures to publicise the act.