



SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS



Part I: Setting Up of Business

Gratitude Note ♥

To my family & close friends, Thank you for your unwavering belief in me and for always being my pillars of support ✨

To I Can Academy, I am super grateful for the doors you have opened to pursue my dreams. So So thankful!

To my Mentor, I extend my heartfelt gratitude for your constant guidance ✨

To all the wonderful individuals who have believed in me, Whether it was a word of encouragement, a lending hand or a shoulder to lean on, your presence in my life has been priceless ☺

A letter to the Students ♥

As we embark on this educational journey together, I encourage you to be actively engaged in your learning process. Ask questions, participate in discussions and make the most of the resources provided!

Remember, your dedication & curiosity will be the thriving forces behind your success ✨

As your teacher, I am here to guide & support you throughout this course. If you have any questions or need any assistance, feel free to drop a message on my WhatsApp no. 86025 59000.

I BELIEVE in YOU & I'm so thrilled to witness your growth & accomplishments! ✨

Love & Respect,
Super Excited Vinita ☺

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Lesson 1 - Selection of Business Organization



The choice of a business organization is driven by a combination of several factors such as nature of activity, capital requirement, tax implications, etc. Company Secretaries while playing advisory role would help the clients in deciding the type of organization, when considering to start a business.

Lesson Outline	Page No.
➤ Types of Business Organizations	
➤ Key Features of various Business Organizations: ✓ Sole Proprietorship ✓ Partnership Firm ✓ HUF ✓ Limited Liability Partnership ✓ Co-Operative Society ✓ Section 8 Company ✓ One Person Company ✓ Private Company ✓ Public Company	
➤ Factors governing the decisions for suitable form of organization	
➤ Company as a choice of business Organization for Start-Ups	

TYPES OF BUSINESS ORGANIZATIONS:

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

Choosing a form of business entity is crucial to a successful organization. The choice of a business entity will depend on an object, nature and size of the business of such entity. The main types of business entities in India are:

- | | | |
|---------------------------------|------------------------|---------------------|
| ✓ Sole Proprietorship | ✓ Partnership Firm | ✓ HUF |
| ✓ Limited Liability Partnership | ✓ Co-Operative Society | ✓ Section 8 Company |
| ✓ One Person Company | ✓ Private Company | ✓ Public Company |

Other types of business entities are Guarantee Company, Subsidiary company, statutory company, insurance company or unlimited company. There can also be Association of Persons (AOP) and Body of Individuals (BOI), Corporation, Co-operative Society, Trust etc.

SOLE PROPRIETORSHIP



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

Features of Sole Proprietorship

Unlimited Liability: A sole proprietorship has no separate existence. Therefore, all debts can only be recovered from the sole proprietor. Therefore, the owner has unlimited liability with regard to all the debts.

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

PARTNERSHIP FIRM

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

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

Features of Partnership

Unlimited Liability: On account of unlimited liability, the partners in the business are liable for all of its debts. Hence, if a partner is unable to repay a bank loan or is liable to pay a fine, this can be recovered from his or her personal possessions.

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

Relatively Inexpensive: A General Partnership is cheaper to start than an LLP. Even over the long-term, it is inexpensive due to the minimal compliance requirements.

HINDU UNDIVIDED FAMILY (HUF)

A Hindu family can come together and form a HUF. HUF is taxed separately from its members. HUF has its own PAN and files tax returns independent of its members.

One can save taxes by creating a family unit and pooling in assets to form a HUF.

Features of Hindu Undivided Family (HUF)

There should be **atleast two male members** in the family to form a HUF. They should inherit the ancestral property.

All of the members enjoy this property and have an **equal share** in that property.

Thus, any child taking birth in that family becomes a member of the HUF. There is **no requirement for an agreement to become a member**.

LIMITED LIABILITY PARTNERSHIP (LLP)

Limited Liability Partnership is an alternate corporate business entity that combines the benefits of company's limited liability with the flexibility of a partnership firm's management structure. It was introduced in India by way of Limited Liability Partnership Act, 2008. LLP is relatively a cheaper approach to incorporate as compared to a Private Limited Company and requires fewer compliances. Its main improvement over General Partnership is that it

limits the liabilities of its partners to their contributions to the business and offers each partner protection from negligence or incompetence of the other partners.

Features of Limited Liability Partnership

Suitable for Non-Scalable Businesses: It has limited liability, like a private limited company, and has a simpler structure, like a general partnership. A business that is unlikely to require equity funding, may register an LLP.

Fewer Compliances: The Ministry of Corporate Affairs ('MCA') has given some concessions to the LLP. For example, an audit is mandatory only if the turnover is greater than Rs. 40 lakhs or whose contribution is more than Rs. 25 lakhs. Furthermore, LLPs have fewer requirements for reporting structural changes to the Registrar of Companies (RoC) compared to private limited companies.

Number of Partners: There is no limit to the number of partners there may be in an LLP.

CO-OPERATIVE SOCIETY

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



Features of Co-operative Society

A society is an **association of persons** united together by **mutual consent** to deliberate, determine and act jointly for some **common purpose**.

Societies are usually registered for **promotion of charitable activities** like education, art, religion, culture, music, sports, etc.

SECTION 8 COMPANY

Section 8 Companies are registered under the Companies Act, 2013. Section 8 company is a company established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.

Provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members.

Features of Section 8 Company

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

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

ONE PERSON COMPANY (OPC)

An OPC means a company with only 1 (one) person as a member. This person will be the only director and shareholder. Share holder can make only 1 nominee, who shall become a shareholder in case of death / incapacity of original stakeholder. Hence, the nominee has no power until the original member is incapable of entering into contract.

The constitution of a One Person Company (OPC) is a strong improvement over sole proprietorship. It gives a single promoter full control over the company while limiting his/her liability to contributions to the business. Hence, there is no scope of raising equity funding or offering employee stock options.

Features of One Person Company

For Solo Entrepreneurs: A big improvement over the sole proprietorship firm, as the liability is limited. Furthermore, having a nominee enables perpetual existence of the OPC.

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

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

PRIVATE COMPANY

Private company is a company which has the following characteristics:

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

PUBLIC COMPANY

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

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

Form of Organisation	Features
Sole Proprietorship	 
Partnership Firm	  
HUF	  
LLP	  
Co-operative Society	
Section 8 Company	     
OPC	  

Private Company	☞ ☞ ☞
Public Company	☞ ☞ ☞

FACTORS GOVERNING THE DECISIONS FOR SUITABLE FORM OF ORGANIZATION

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

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	

1. Nature of Business Activity

This is an important factor affecting the choice of a form of ownership.

In **small trading businesses, professions**, and rendering of **personal services, sole-proprietorship is predominant**. Examples are small retail stores, medicine stores, decorators, bakers, etc.

The **partnership and LLP** form of organization is suitable where the business is to be carried on a **slightly bigger scale** with help of one or more partner (owner). **Hotels, small scale manufacturing enterprises**, small drug manufacturers, stockbrokerage firms, consulting agencies etc. seem to be suited to partnership form of organization.

Similarly, businesses that require **large capital** and working capital requirements, such as **large chain stores, multiple shops**, and software industrial activities, are generally in the form of **companies**.

2. Scale of Operations

The second factor that affects the form of business organization is the scale of operations. If the scale of operations of business activities is small, sole proprietorship or a One Person Company (OPC) is suitable; if the scale of operations is modest – partnership or LLP is preferable; whereas, in case of large scale of operations, the company form is advantageous.

3. Capital Requirements:

Capital is one of the most crucial factors affecting the choice of form of organization. Requirement of capital is closely related to the type of business and scale of operations. Enterprises requiring heavy investment (like iron and steel plants, large scale infrastructure projects etc.) should be organized as companies. Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organized as sole proprietorships or Partnerships.

4. Degree of Control and Management

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

In **sole proprietorship and OPC**: an **entrepreneur has complete control** over his business.

In **partnership**: management and control of business is **jointly** shared by the **partners** according to a partnership deed.

In a **company**: **ownership and management are separate**. The management and control of the business is entrusted to the Board, who are generally the elected representatives of shareholders. Corporate structure and management is required if the activities are large and professional managers are required.

5. Degree of Risk and Liability

The size of risk and the willingness to bear it, is an important consideration while selecting a form of business organization. The amount of risk involved in a business depends on the nature and size of business and various other factors.

Thus, **Sole proprietorships carry less risk** than partnerships or companies, but the owner is **personally responsible** for all the business debts. Likewise, in partnership, **partners are individually and jointly responsible** for the liabilities of the partnership firm.

Companies and LLPs have a real advantage, as far as the risk is concerned, because creditors can force payment of their claims only to the **limit of the company's and LLPs assets**.

6. Flexibility of Administration

As far as possible, the form of organization chosen should allow flexibility of administration, which is determined by how the organization's activities are structured and the clear definition of authority and responsibility within departments, sections, and units.

Sole proprietary and partnership businesses have a simple internal structure, making it easy to change administration without inconvenience or loss.

While, in case of company, administration is not that flexible. Thus, in such structures any substantial change in the existing line of business activity – say from cotton textiles to sugar manufacturing may not be permitted by law if such a provision is not made in the 'objects clause' of the Memorandum of Association of the company.

7. Division of Profit

Profit is the guiding force of private business and it has a tremendous influence on the selection of a particular form of business organization. Entrepreneurs who want to keep all the profits will likely choose sole proprietorship.

But, if he is willing to share the profits, partnership form of organization would be preferred. In company form of organization, however, the profits (whenever the Board of Directors decides) are distributed among shareholders in proportion to their shareholding, but the liability of the shareholders is limited.

8. Tax Implication

In the choice of the form of business organization, tax implication plays an important factor. In smaller entities, such as sole proprietorship or partnership, tax liability is dependent on the extent of profits. In case of companies or LLPs, tax liability could be higher and charged at a flat rate.

However, the liability of the owner(s) in smaller entities is unlimited. In case of companies or LLPs, the liability of shareholders is limited to the value of shares they have purchased.

9. Independence

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

COMPANY AS A CHOICE OF BUSINESS ORGANIZATION FOR START-UPS

Start-ups prefer company as a business structure because:

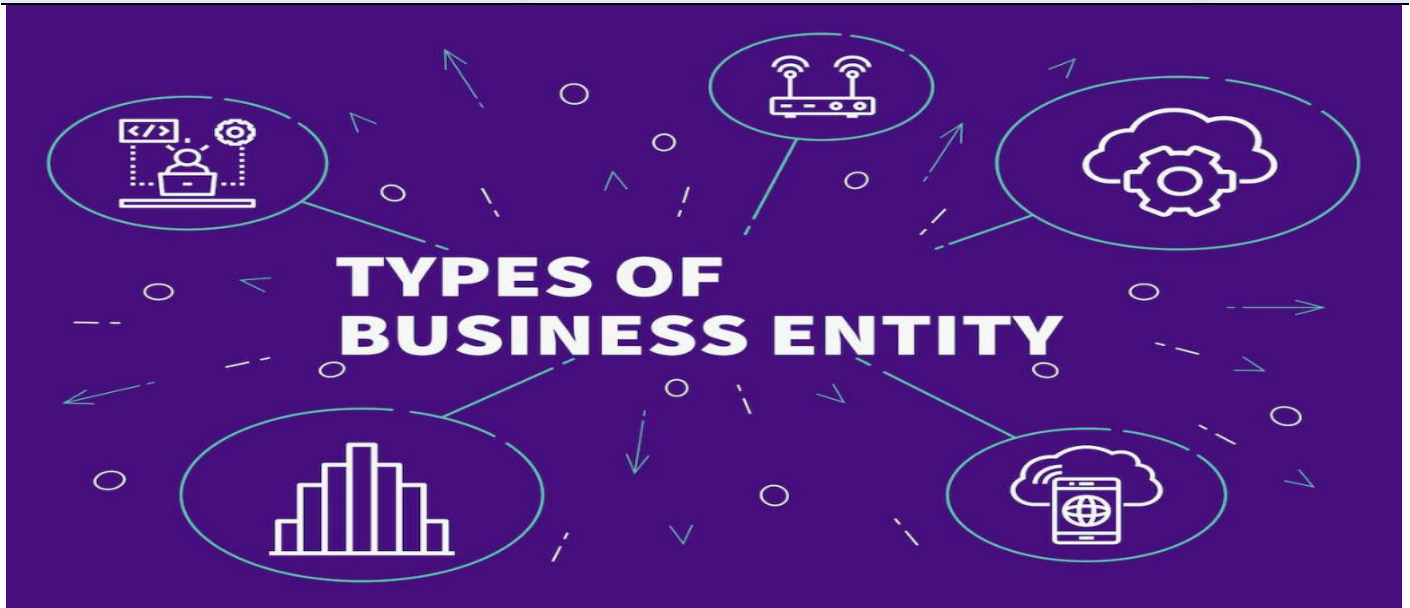
- ~ it allows **outside funding** to be raised easily,
- ~ **limits the liabilities** of its shareholders and
- ~ enables them to **offer employee stock options** to attract top talent.

As these entities must **hold board meetings** and **file annual returns** with the Ministry of Corporate Affairs (MCA), they tend to be viewed with **more credibility** than an LLP or General Partnership.

QUESTIONS:

1. What are the main types of business entities in India?
2. What are the major factors governing the selection of a suitable form of a business organization?
3. As a Company Secretary, you are requested to advise, which form of organisation would be suitable for Start-ups.
4. List down the features of Section 8 Companies.
5. Differentiate Private Company & Public Company.

Lesson 2 - Corporate Entities-Companies



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

Lesson Outline	Page No.
➤ Introduction	
➤ Basic Types of Corporate Entities: • Classification of Companies • Private Company • Public Company • One Person Company • Nidhi • Section 8 Company • Producer Company • Foreign Company	
➤ Drafting Of Incorporation Documents: • Memorandum of Association • Articles of Association	
➤ Formation and Registration of Corporate Entities:	
➤ Procedural aspects with regard to Incorporation of Corporate Entities	

INTRODUCTION

A company is a group of persons who have come together for some common purpose and who have incorporated themselves as a **separate legal entity** in the form of a company for that purpose. The following are the defining **characteristics** of a company:

- ✓ Corporate Personality
- ✓ Perpetual Succession
- ✓ Separate Property
- ✓ Transferability of Shares
- ✓ Capacity to sue or be sued

BASIC TYPES OF COMPANIES

The Companies Act, 2013 provides for the following basic types of companies that may be registered under the Act:

Private Companies

Public Companies

One Person Company (OPC)

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

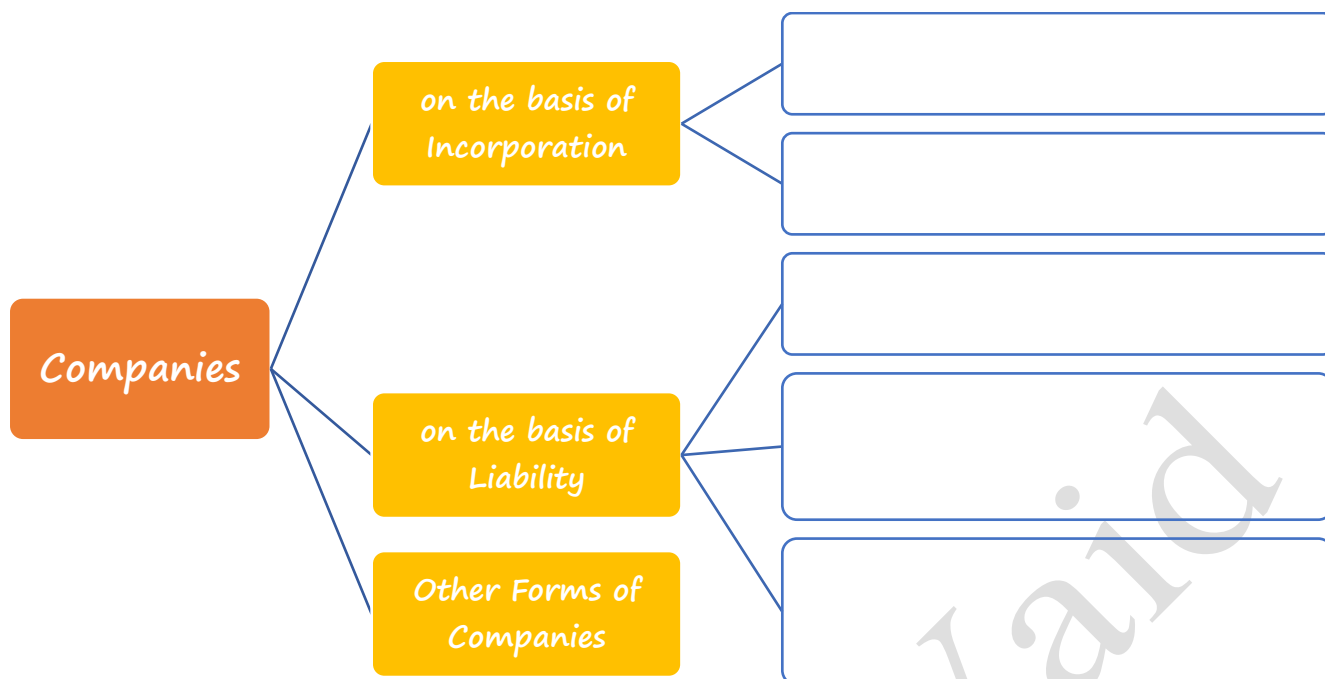
(1) A company may be formed for any lawful purpose by–

- (a) **seven** or more persons, where the company to be formed is a public company;
 - (b) **two** or more persons, where the company to be formed is a private company; or
 - (c) **one** person, where the company to be formed is a One Person Company that is to say, a private company,
- by subscribing their names or his name to a memorandum and complying with the requirements of the Act in respect of registration

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

- (a) a company **limited by shares**; or
- (b) a company **limited by guarantee**; or
- (c) an **unlimited** company.

CLASSIFICATION OF COMPANIES:



(i) Classification on the basis of Incorporation:

Companies may be incorporated under the following categories:

- (a) **Statutory Companies:** Statutory Companies are constituted by a special Act of Parliament or State Legislature. The provisions of the **Companies Act, 2013 ("Act")** do not apply to them. Examples are Reserve Bank of India, Life Insurance Corporation of India, etc.
- (b) **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law and registered with the Registrar of Companies fall under the category of Registered Companies.

(ii) Classification on the basis of Liability:

Companies can be classified into following three categories on the basis of Liability:

- (a) **Unlimited Companies:** The liability of members of this type of company is unlimited. **Section 2(92)** of the Act provides that unlimited company means a company not having any limit on the liability of its members. Such companies may or may not have share capital. They may be either a **public company or a private company**.
- (b) **Companies limited by guarantee:** **Section 2(21)** of the Act provides that a company that has the liability of its members limited to such amount as the members may undertake respectively, by the Memorandum of Association, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are placed in the position of **guarantors of the company's debts up to the agreed amount**. The members are liable to the company and to any other person upto the extent of guarantee given by them.

(c) **Companies limited by shares:** **Section 2(22)** of the Act provides that “company limited by shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. These companies can be either public or private.

For example, a shareholder who has paid Rs. 85 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 15 only.

(iii) Other Forms of Companies:

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

- i. has in its objects the promotion of **commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment** or any such other object;
- ii. intends to **apply its profits**, if any, or other income in **promoting its objects**; and
- iii. intends to **prohibit** the payment of any **dividend** to its members,

such company may be allowed to be registered **without** addition to its name of the word “**limited**” or “**private limited**”. The association proposed to be registered under section 8 may be company limited by guarantee or a Company limited by shares.

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

- i. has a **place of business** in India whether by itself or through an agent, physically or through electronic mode; and
- ii. conducts any **business activity** in India in any other manner.

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

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

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

(f) “Small company” means a company, other than a public company –

1. **paid-up share capital** of which does not exceed **4 crore rupees**, or such higher amount as may be prescribed which shall not be more than ten crore rupees; **AND**
2. **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed **40 crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Provided that **nothing** in this clause shall apply to –

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

PRIVATE COMPANY

As per **Section 2(68)** of the Companies Act, 2013, “Private Company” means a company, which by its articles –

- i. **restricts** the right to **transfer** its shares;
- ii. except in case of OPC, limits the number of its members to **200**:

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

Provided further that –

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

It must be noted that it is only the number of members that is limited to **200**. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.

The words ‘**Private Limited**’ must be added at the **end** of its name by a private limited company. As per section 3(1), a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration. **Section 149(1)** further lays down that a private company shall have a **minimum** number of **2 directors**. The only two members may also be the two directors of the private company.

Examples of Private Companies:

1. Flipkart India Private Limited	2. Makemytrip (India) Private Limited
3.	4.

PUBLIC COMPANY

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

Provided that a company which is a **subsidiary of a public company** shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

As per **section 3(1)(a)**, a public company may be formed for any lawful purpose by **7 or more persons**, by subscribing their names to a memorandum of association and complying with the other requirements. As per **section 58(2)**, the securities or other interest of any member in a public company shall be **freely transferable**.

Examples of Public Companies:

1. Tata Motors Limited	2. Tata Motors Limited
3.	4.

ONE PERSON COMPANY (OPC)

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

Characteristics of One Person Company

1. The financial statement of OPC may **not include the cash flow statement**.
2. The Memorandum of OPC shall indicate the **name of the other person**, with his prior written consent in the prescribed form, who shall become the member of the company, in the event of the subscriber's death or his incapacity to contract.
3. The words **"One Person Company"** shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
4. The **annual return** of OPC shall be signed by the **company secretary**, or where there is no company secretary, by the **director** of the company.
5. For the purposes of **section 114**, in respect of any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an **ordinary or special resolution**, it shall be sufficient if, the resolution is entered in the **minutes-book with sign and date by the member** and such date shall be deemed to be the date of the meeting.
6. Where there is **only one director** in an OPC, in respect of any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, the resolution is entered in the **minutes-book with sign and date by the director** and such date shall be deemed to be the date of the Board meeting.

7. An OPC shall file a copy of the **financial statements** duly adopted by its member, along with requisite attachments **within 180 days** from the end of the financial year.
8. An **OPC, small company and dormant company** shall be deemed to have complied with the provisions of section 173, if **at least 1 meeting** of the Board of Directors has been conducted in **each half of a calendar year** and the gap between the two meetings is **not less than 90 days**.

Examples of OPC:

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

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

Nidhis are **not permitted** to engage themselves in the business of chit fund, hire-purchase, insurance or in any other business including investments in shares or debentures. These Nidhis do their business **only with members**. Such members are only individuals.



CHARACTERISTICS OF NIDHI

- ~ Every Nidhi shall be incorporated as a **public company** and shall have the last words **“Nidhi Limited”** as part of its name.
- ~ It shall have a minimum **paid up share capital** of **Rs. 10 lakh**.
- ~ Every Nidhi shall, within a period of **120 days** from the date of its incorporation, file an application in **form NDH-4** to ensure that it has—
 - i. Minimum **200** members;
 - ii. Minimum **Net Owned Funds** of **Rs. 20 lakh**.

Share capital and allotment:

- (a) Every Nidhi shall issue **fully paid up** equity shares of the nominal value of not less than **Rs. 10 each**.
- (b) Every Nidhi shall allot to each deposit holder at least **10 equity shares** or shares equivalent to **Rs. 100**.

It may be noted that a savings account holder and a recurring deposit account holder shall hold at least **one equity share** of **Rs. 10**.

Membership of Nidhi:

- (a) A Nidhi shall not admit a **body corporate or trust** as a member.
- (b) Its membership shall be at least **200 members** at any time.
- (c) A **minor** shall **not** be admitted as a **member** of Nidhi.
- (d) Deposits may be accepted in the name of a minor, if they are made by the **natural or legal guardian** who is a member of Nidhi.
- (e) A member shall not transfer more than **50% of his shareholding during the subsistence of such loan or deposit**, as the case may be. Provided that the member shall retain the minimum number of shares required at all times.

Branches of Nidhi:

(a)	A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding 3 financial years . A Nidhi may open up to 3 branches within the district.	
(b)	If a Nidhi proposes to open more than 3 branches within the district or any branch outside the district, it shall obtain prior permission of the Regional Director and intimate the Registrar about opening of every branch within 30 days of such opening.	
(c)	Nidhi shall not open branches outside the State where its registered office is situated.	
(d)	Nidhi shall not open branches unless financial statement and annual return (up to date) are filed with the Registrar.	
(e)	A Nidhi shall not close any branch unless – (i) the proposal to close the branch along with the plan regarding payment of deposits and recovery of loan is duly approved by the board at its meeting; (ii) it has obtained approval of the Regional Director for such closure with fee at least 60 days prior to such closure.	
(f)	After obtaining the approval, publishes an advertisement in a newspaper in vernacular language in its place of business at least 30 days prior to such closure.	
(g)	Fixes a copy of such advertisement or a notice informing branch closure on the notice board of Nidhi for a period of at least 30 days from the date on which advertisement was published.	
(h)	Gives an intimation to Registrar within 30 days of closure.	

Acceptance of deposits:

Rule 13 of the Nidhi Rules, 2014 provides that

- (a) **Fixed deposits** accepted by a Nidhi shall be for a minimum period of **6 months** and a maximum period of **60 months**.
- (b) **Recurring deposits** shall be accepted for a minimum period of **12 months** and a maximum period of **60 months**. In case of recurring deposits relating to mortgage loans, the maximum period shall correspond to the repayment period of such loans granted by Nidhi.
- (c) The maximum balance in a savings deposit account qualifying for interest shall not exceed **Rs. 1 lakh** at any point of time and the rate of interest shall not **exceed 2% above interest rate** payable on savings bank account by nationalised banks.
- (d) A Nidhi may offer interest on **fixed and recurring deposits** at a rate not exceeding the maximum rate of interest prescribed by the **RBI** which the Non-Banking Financial Companies can pay on their public deposits.

Loans by Nidhi:

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

S.N.	where total amount of deposits of such Nidhi from its members is	Loan up to
(a)	less than Rs. 2 crore	Rs. 2 lakh
(b)	more than Rs. 2 crore but less than Rs. 20 crore	Rs. 7.5 lakh
(c)	more than Rs. 20 crore but less than Rs. 50 crore	Rs. 12 lakh
(d)	more than Rs. 50 crore	Rs. 15 lakh

Where a Nidhi has **not made profits** continuously in the 3 preceding financial years, it shall not make any fresh loans exceeding **50%** of the maximum amounts of loans specified in above clauses.

A member shall not be eligible for any further loan if he has **defaulted in repayment** of any previous loan taken from the Nidhi.

Rate of interest on any loan given by a Nidhi: shall not exceed **7.5%** above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

Directors in a Nidhi:

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

- The Director shall be eligible for **re-appointment** only after the expiration of two years of ceasing to be a Director.
- Where the tenure of any Director in any case had already been **extended** by the **Central Government**, it shall terminate on expiry of such extended tenure.
- The person to be appointed as a Director shall comply with the requirements of **Director Identification Number** and shall fulfill the **fit and proper person criteria**.

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

PROCESS OF INCORPORATION OF NIDHI

1.	A Nidhi shall be a public company and shall have a minimum paid up equity share capital of Rs. 10 lakh .	
2.	Nidhi shall not issue preference shares, debentures or any other debt instruments.	
3.	No Nidhi shall have any object in its Memorandum other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.	
4.	Every “Nidhi” shall have the last words ‘ Nidhi Limited ’ as part of its name.	

Under Nidhi (Amendment) Rules, 2022, the Central Government, on receipt of application (in **Form NDH-4** along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the official Gazette.

REQUIREMENTS FOR MINIMUM NUMBER OF MEMBERS AND NET OWNED FUNDS

Nidhi (Amendment) Rules, 2022 provides that every Nidhi shall, within a period of **120 days** from the date of its incorporation, ensure that it has –

- filed E-form **NDH-4**;
- Net Owned Funds of Rs. **20 lakh or more**;
- minimum of **200** persons as members;
- unencumbered term deposits of not less than **10% of the outstanding deposits**; and
- ratio** of Net Owned Funds to deposits of not more than **1:20**.

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

GENERAL RESTRICTIONS OR PROHIBITIONS

In terms of **Rule 6**, Nidhi **shall not** –

- (a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any Body corporate;
- (b) **issue** preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
- (c) open any **current account** with its members;
- (d) acquire or purchase **securities** of any other company or control the composition of the Board of Directors of any other company;
- (e) carry on any business other than the business of borrowing or lending in its own name. Nidhis may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding **20% of the gross income** of the Nidhi at any point of time during a financial year;
- (f) **accept deposits** from or lend to any person, other than its members;
- (g) **pledge** any of the assets lodged by its members as security;
- (h) take deposits from or lend money to any Body corporate;
- (i) enter into any **partnership** arrangement in its borrowing or lending activities;
- (j) issue or cause to be issued any **advertisement** in any form for soliciting deposit;
It may be noted that private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.
- (k) pay any **brokerage or incentive** for mobilizing deposits from members or for deployment of funds or for granting loans;
- (l) raise loans from **banks or financial institutions** or any other source for the purpose of advancing loans to members of Nidhi.

SECTION 8 COMPANY

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

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

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

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

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

intends to prohibit the payment of any dividend to its members

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

- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of **limited companies**.
- (3) A **firm** may be a member of the company registered under this section.
- (4) (i) A Section 8 Company shall not **alter** the provisions of its **memorandum or articles** except with the previous approval of the Central Government.
(ii) A Section 8 Company may **convert** itself into company of any other kind only after complying with prescribed conditions.
- (5) The Central Government may **revoke** the licence granted to the company, if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.
Provided that no such order shall be made unless the company is given **a reasonable opportunity of being heard**. Provided further that a copy of every such order shall be given to the Registrar.
- (6) Where a licence is revoked, the Central Government may direct that the company be **wound up or amalgamated** with another Section 8 company, in the public interest.
Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.
- (7) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be **transferred** to another company registered under this section and having similar objects, subject to such conditions as the **Tribunal** may impose, or may be sold and proceeds thereof credited to “**Insolvency and Bankruptcy Fund** formed under section 224 of the Insolvency and Bankruptcy Code, 2016”.
- (8) A company registered under this section shall **amalgamate** only with another company registered under this section and having **similar objects**.

CHARACTERISTICS OF SECTION 8 COMPANY

1. It is formed for promoting **commerce, art, science, sports, education, research, social welfare, religion, Charity, protection of environment** or any such other object.
2. The profits, if any, are applied in promoting its objects.
3. It **prohibits** the payment of **dividends** to its members.
4. The Company can be incorporated **without** using the word “Limited” or “Private Limited” as the case may be.
5. There is **no requirement** of any minimum paid up capital.
6. It is **exempted** from **stamp duty** registration.
7. Many privileges and exemptions are available to Section 8 companies.
8. An **OPC** cannot be incorporated or converted into a Section 8 Company.

PRODUCER COMPANY

Chapter XXIA (Section 378A to 378ZU) of Companies Act, 2013 deals with the producer companies. A producer company is a **body corporate** having objects or activities specified in **Section 378B** of the Act.

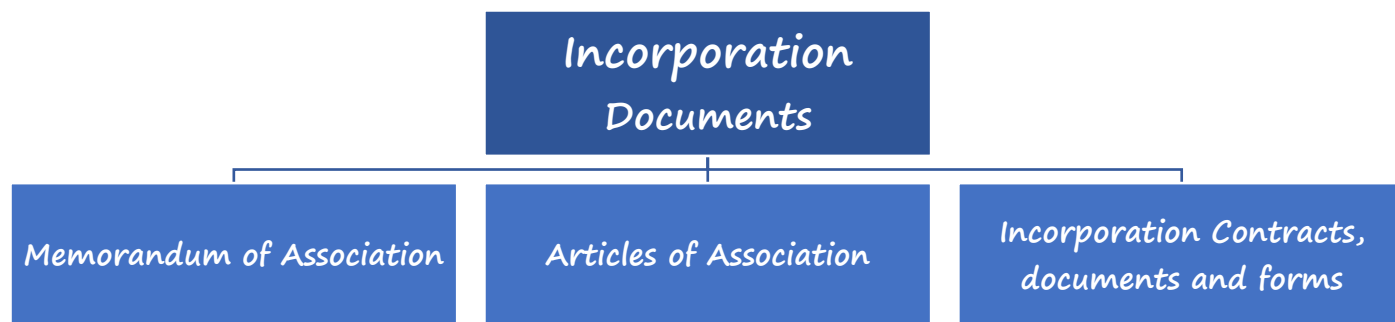
The membership of producer companies is open to such people who themselves are the **primary producers**, which is an activity by which some **agricultural produce** is produced by such primary producers.

OBJECTS OF PRODUCER COMPANIES

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

- (a) production, harvesting, procurement, grading, pooling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit;
- (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;
- (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
- (d) providing education on the mutual assistance principles to its Members and others;
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;
- (g) insurance of producers or their primary produce;
- (h) any other activity, ancillary or incidental to any of the activities referred above;
- (i) Financing of procurement, processing, marketing or other activities specified above including extending of credit facilities or any other financial services to its Members.

DRAFTING OF INCORPORATION DOCUMENTS



MEMORANDUM OF ASSOCIATION

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

Memorandum is one of the **most essential pre-requisites** for incorporating any form of company under the Companies Act, 2013 (hereinafter referred to as 'Act'). **Section 3** of the Act states that a company may be formed for any lawful purpose by **seven or more persons**, in case of a **public company**; **two or more persons**, in case of a **private company**; or **one person**, in case of a **One Person Company** by subscribing their **names** or his name to a memorandum and complying with the requirements of this Act in respect of its registration.

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

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

FORMS OF MEMORANDUM OF ASSOCIATION

Memorandum of association should be in any one of the Forms specified in **Tables A, B, C, D or E of Schedule I** to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

FORM IN	APPLICABLE IN THE CASE OF
Table A	companies limited by shares
Table B	companies limited by guarantee not having a share capital
Table C	companies limited by guarantee having a share capital
Table D	unlimited companies not having a share capital
Table E	unlimited companies having a share capital

CONTENTS OF MEMORANDUM OF ASSOCIATION

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

(a)	
(b)	
(c)	
(d)	
(e)	
(f)	

- (a) **Name Clause**: The name of the company shall end with “Limited” in the case of a public company; and “Private Limited” in the case of a private company. This shall **not apply** in case of **Section 8 companies and government companies**.

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

- be **identical** with or **resemble** too nearly to the name of an **existing company** registered under this Act or any previous company law; or
- be such that its use by the company –
 - will constitute **an offence** under any law for the time being in force; or
 - is **undesirable** in the opinion of the Central Government.

IDENTICAL NAMES

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

- the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;
- the plural or singular form of words in one or both names;
- type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;
- use of different tenses in one or both names;
- use of different spellings including use of misspelled words of an expression;
- use of host name such as ‘www’ or a domain extension such as ‘net’, ‘org’, ‘dot’ or ‘com’;
- the order of words in the names;
- use of the definite or indefinite article in one or both names;
- complete translation or transliteration of an existing name, in Hindi or in English;
- addition of the name of a place to an existing name, which does not contain the name of any place;

UNDESIRABLE NAMES

Undesirable names are those names which in the opinion of **Central Government** are:

1.	Prohibited under the Provisions of Emblems and Names (Prevention and Improper Use) Act, 1950.	
2.	The name includes a trade mark registered under the Trade Marks Act, 1999.	
3.	Name is identical with or too nearly resembles the name of an LLP	
4.	The name includes any word or words which are offensive to a section of people.	
5.	The proposed name contains the words 'British India'.	
6.	The proposed name includes the word "State" (exception: Government company)	
7.	The proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited	

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

Board, Commission, Authority, Undertaking, National, Union, Central, Federal, Republic, President, Rashtrapati, Small Scale Industries, Khadi and Village Industries Corporation, Financial Corporation and the like, Municipal, Panchayat, Development Authority, Prime Minister or Chief Minister, Minister, Nation, Forest corporation, Development Scheme, Statute or Statutory, Court or Judiciary, Governor, Bureau, the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities.

Precautions to be taken care before applying for the proposed name

The name approval application may be rejected in the following cases:

- Proposed Name exactly identical/resembled/phonetically to the name of an existing company/ LLP.
- Proposed Name includes words which are registered under Trademark Act with a specific class(es).
- Wrong Class/Category/Sub-Category of the Proposed Company is mentioned in web form.

- d) Industrial Activity Code of NIC is not found in consonance with the attached objects of the Company in SPICe+ PART A.
- e) Proposed Name is found Descriptive i.e. it contains commonly used words.
- f) No significance about Abbreviations used in proposed name.
- g) Proposed Name indicates words Finance/Investment/Capital/ Holding/ Insurance etc whereas the proposed objects of the Company do not indicate such activities.
- h) Objects mentioned in the form are vague and the TM cannot be ascertained. (E.g. manufacturing / development / producing of all type of goods etc.)
- i) Name contain words viz Board, National, Commission etc. for which previous approval of the Central Government is required.
- j) If the proposed name contains the name a foreign country/city/town etc. then applicant has to attach any proof of significance of business relations with such foreign country like MOU with a company of such country. In case proposed name includes name of India and a foreign country (e.g. India Japan or Japan India) in such cases name shall be allowed if, there is Government to government participation or patronage and no company shall be incorporated using the name of enemy country.

RESERVATION OF NAME

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

- (a) The name of the proposed company; or
- (b) The name to which the company proposes to change its name.

Reservation of Name for 20 days

Upon receipt of the application, the Registrar may, on the basis of information furnished along with the application, reserve the name for a period of **20 days** from the date of approval.

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

It shall be noted that if it is found that name reservation was applied by furnishing wrong or incorrect information, then the reserved name shall be cancelled and the person making name reservation application shall be liable to a penalty which may extend to **Rs. 1 lakh**.

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

- either direct the company to change its name within a period of **3 months**, after passing an ordinary resolution;
- take action for **striking off** the name of the company from the register of companies; or
- make a petition for winding up of the company.

(b) **Situation Clause:** The name of the **State** in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is **not required** to be stated therein.

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

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

(a)	paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language(s) in general use in that locality, also in the characters of that language(s);	
(b)	have its name engraved in legible characters on its seal;	
(c)	get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications;	
(d)	have its name printed on negotiable instruments such as hundies, promissory notes, bills of exchange and such other document as may be prescribed;	
(e)	If it has a website, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.	

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

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

The **Companies (Incorporation) Third Amendment Rules, 2022** provides for physical verification of registered office of the company by the Registrar in presence of two witnesses of the locality.

The Registrar shall carry the documents as filed on **MCA 21** in support of the address for the purposes of physical verification and take a photograph of the registered office.

Further a report of physical verification is also required to be in the prescribed format.

- (c) **Object Clause**: The third compulsory clause in the memorandum sets out the **objects** for which the company has been formed. Under **section 4(1) (c)** of the Act, all companies must state in their memorandum the objects for which the company is proposed to be incorporated. It states affirmatively the **ambit and extent** of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified.

The purpose of the objects clause is to enable the persons dealing with the company to know its **permitted range of activities**. The acts beyond this ambit are **ultra vires** and hence **void**. Even the entire body of shareholders **cannot ratify** such acts.

The subscribers to the memorandum of association enjoy almost unrestricted freedom to choose the objects. The only restriction is that objects should **not be illegal and against** the provisions of the Companies Act, 2013.

The objects are divided into **two sub-categories**:

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

The main objects of the MOA give a **brief** about the activities that are decided to be carried by the company. The main objects of the company generally include the activities like **manufacturing, trading or providing any kind of services** by the company. Further, another sub clause (any matter considered necessary in furtherance thereof) describes the activities incidental to the main objects.

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

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

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

- A. to the **assets** of the company in the event of its being wound-up while he is a member or within **one year** after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities contracted before he ceases to be a member, as the case may be; and
- B. to the costs, charges and expenses of winding-up and for adjustment of the rights of the **contributories** among themselves.

Some essential categories of the Liability clause:

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

(e) **Capital Clause:** in the case of a company having a share capital, the **amount of share capital** with which the company is to be registered and the division thereof into shares of a fixed amount. The shares into which the capital is divided must be of **fixed value**, which is commonly known as the nominal value of the share. The capital is variously described as **"nominal", "authorized" or "registered"**.

The usual way to state the capital in the memorandum is: "The share capital of the company is 10,00,000 rupees divided into 1, 00,000 equity shares of 10 rupees each".

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

(f) **Subscription Clause:** It states the number of shares **each subscriber** to the memorandum agree to subscribe, indicated opposite his name, which shall not be less than **1 share**.

In the case of a OPC, the name of the person who, in the **event of the death** of the subscriber, shall become the member of the company.

The **subscriber sheet** to the Memorandum of Association is a vital document that is required to be submitted along with the Memorandum of Association during the company registration process. It provides the details of the **first members** of the company.

The required details include:

- The name of the subscribers.
- The details of the father or spouse of the subscribers.
- The complete address of the subscribers with a valid pin code.
- The pan card number and occupation of the subscribers.
- Signatures of the subscribers.
- Total number of shares that have been subscribed to by each subscriber.
- If a subscriber is a Company or corporate body, its director or partner's signature on behalf of the company.

Provision in the memorandum or articles is void

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

ARTICLES OF ASSOCIATION

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

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

Articles that **go beyond** the company's sphere of action are **inoperative**, and anything done under the authority of such article is **void and incapable of ratification**.

ENTRENCHMENT PROVISIONS OF ARTICLES

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

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

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

CONTENTS OF ARTICLES

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

1. Exclusion wholly or in part of Table F, G, H, I or J.
2. Adoption of preliminary contracts.
3. Share Capital and variation of rights, if any.
4. Allotment of shares.
5. Transfer and transmission of shares.
6. Forfeiture of shares.
7. Alteration of capital.
8. Share certificates.
9. Voting rights and proxies.
10. Meetings and rules regarding committees of the Board.
11. Directors, their appointment, remuneration and delegations of powers.
12. Issue of Debentures and stocks.
13. Managing director, Whole-time director, Manager, Secretary, Chief Executive Officer and Chief Financial Officer.
14. Seal.
15. General meetings, proceedings at general meetings, adjournment of meeting.
16. Board of Directors, Proceedings of the Board meetings.
17. Borrowing powers.
18. Dividends and reserves.
19. Winding up, etc.

DRAFTING OF ARTICLES OF ASSOCIATION

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

FORM IN	APPLICABLE IN THE CASE OF
Table F	company limited by shares
Table G	company limited by guarantee having a share capital
Table H	company limited by guarantee not having a share capital
Table I	unlimited company having a share capital
Table J	unlimited company not having a share capital

PRECAUTIONS TO BE TAKEN WHILE FRAMING THE ARTICLES OF ASSOCIATION:

- Articles of association must be divided into paragraphs and numbered consecutively.
- It shall not contain something that is contrary to the **memorandum**.
- Anything stated or amended in the articles shall be in accordance with **the Companies Act**.
- The Articles shall be signed by **each subscriber** of the memorandum of association who shall add his **address, description and occupation**.
- Subscribers shall sign the Articles in the presence of at least **one witness** who shall attest the signature and shall likewise add his address, description and occupation.

FORMATION AND REGISTRATION OF CORPORATE ENTITIES

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has notified an integrated web form '**SPICE+**' replacing the SPICe form.

Features of SPICE+:

SPICE+ is divided in to **two parts** viz.:

Part A – for **Name reservation** for new company and

Part B – offering a bouquet of **services** viz.

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

For the incorporation of company, the user may **either choose** to submit Part-A for reserving a name first and thereafter submit Part B for incorporation & other services or file Part A and B together.

All Check form and Pre-scrutiny validations (except DSC validation) happen on webform itself. Once the SPICe+ is filled completely with all relevant details, the same would then have to be converted into pdf format, for affixing **DSCs**. Changes/modifications to SPICe+ (even after affixing DSCs), can also be done by editing the same web form application which has been saved, generating the updated pdf affixing DSCs and uploading the same.

Step – 1	
Step – 2	
Step – 3	
Step – 4	
Step – 5	
Step – 6	
Step – 7	

STEP – I: Apply For Name Approval

- A. Login on MCA Website:** Applicant has to login into their account on MCA Website. After Login, user has to click on the icon SPICe+ in MCA Service. An online form shall be opened. Applicants have to fill the information online. (This form cannot be downloaded).
- B. Details required to be mentioned in online form (Part A of SPICe+) are:** Type, Class, Category and Sub-category of company, Main division of industrial activity of the company with description.
- C. Choose File:** This option is available to upload the **PDF** documents.
- D. Submission of Form on MCA Website:** Submit the form after completion of above steps.
- E. Validity of Reserved Name:** Reserved name shall be valid for **20 days** from the date of approval of name, whereas for change of name of existing company, the validity period of new name would be 60 days from the date of approval.

STEP – II: Preparation of Documents for Incorporation of Company

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

- INC-9 – Declaration by Subscriber(s) and director(s).
- DIR-2- Declaration from the proposed Directors along with Copy of Proof of Identity and residential address.
- Form MBP-1-Disclosure of interest in other entities.

- Proof of Office address and NOC from the owner of the property.
- Copy of the utility bills which should not be older than 2 months.
- All the Subscribers should have Digital Signature.
- Copy of PAN from the subscribers along with Proof of Identity and address.

STEP – III: Fill the Information in Form

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

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

This form can be used for the following purposes:

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

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

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

STEP – V: Fill details of PAN & TAN

It is mandatory to mention the details of **PAN & TAN** in the SPICE+ Form.

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

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

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

Upload all four documents as Linked form on MCA website and make the payment for the same. Where the Registrar on examining SPICe+ finds such application or document to be defective or incomplete in any respect, he shall give mark the application for resubmission.

Only 2 (Two) resubmissions are allowed for SPICe+ forms. Each resubmission has to be replied within **15 (fifteen) days** from the date of intimation given by the Registrar failing which the form will be liable for rejection.

STEP – VIII: Certificate of Incorporation

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

PRECAUTION TO BE TAKEN BY PROFESSIONALS

As per certification in **e-form DIR-12 & INC-22**, a professional declares that he has been engaged for the purpose of certification. Therefore, the **professional should:**

1. Obtain engagement letter from the promoters
2. Verify original records pertaining to registered office
3. Ensure all attachments are clear enough to read
4. Ensure registered office of the company is functioning for the business purposes of the company
5. Take a declaration to the effect that all the original documents have been handed over after incorporation. (Since all documents/information as originally filed should be preserved at the registered office)
6. In case of omission of material fact or submission of false/incomplete/ misleading information, ROC/RD can after giving opportunity of being heard, refer the matter to the e-governance division of MCA, which in turn may initiate proceedings under section 447 and/or ask the respective professional institute to take requisite disciplinary action.

STATUTORY COMPLIANCES OF A PUBLIC LIMITED COMPANY

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

- A public company should have at least **3 directors**.
- There must be at least **7 members** to start a **public** company.
- There is **no ceiling** on the maximum number of members in a public company.

- In a Public Limited Company, there must be at least **5 members**, personally present at the General Meeting for constituting the requisite quorum.
- The shareholders of a public company can **freely transfer** their shares.
- The shares of a public company can be **listed** on a recognized stock exchange and traded publicly.

STEPS FOR INCORPORATION OF PUBLIC COMPANY

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

PROCESS OF INCORPORATION OF A ONE PERSON COMPANY (OPC)

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

The Companies (Incorporation) Rules 2014 states, only a **natural person** who is an **Indian citizen** and **resident in India**:-

- (a) shall be eligible to incorporate a OPC;
- (b) Shall be a **nominee** for the **sole member** of a OPC.

"Resident in India" means a person who has stayed in India for a period of not less than **120 days** during the immediately preceding financial year.

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

(3) Where a natural person, being member in OPC in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that OPC, such person shall meet the **eligibility criteria** specified in sub-rule (2) within a period of **180 days**.

(4) **No minor** shall become member or nominee of the OPC or can hold share with beneficial interest.

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

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

The subscriber to the memorandum of an OPC shall **nominate** a person, after obtaining **prior written consent** of such person, who shall, in the event of the subscriber's **death or his incapacity** to contract, become the member of that One Person Company.

The name of the person nominated shall be mentioned in the memorandum of OPC and such nomination shall also be mentioned in **Form SPICe+**. Form SpicE+ along with the proposed nominee's consent and prescribed fee shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

PROCESS OF INCORPORATION OF SECTION-8 COMPANY

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

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

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

- (a) the proposed name to be applied;
- (b) objects to be carried by the Company;
- (c) proposed registered office address;
- (d) authorized capital;
- (e) Number of promoters, directors, and number of shares to be subscribed by each promoter.

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

- (i) The name of the company should be in consonance with the **principal objects** of the company as set out in the memorandum of association. It need not be necessarily indicative of the objects, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum.
- (ii) The proposed name should not fall in the ambit of undesirable names specified in **Rule 8** of Companies (Incorporation) Rules, 2014.
- (iii) **Name** of Section 8 Company **shall include** the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral trust and the like words.
- (iv) There is no requirement to add the word "Limited" or "Private Limited" to its name.

The following provisions have to be **noted before incorporation**:

- (a) There must be at least **2 or 3 subscribers** to the memorandum in case company is proposed to be incorporated as private company or public company respectively.
- (b) Minimum number of Directors required is **2 Directors or 3 Directors**, in case company is proposed to be incorporated as private company or public company respectively with a maximum limit of up to **15 Directors**. A Company may appoint more than 15 directors after passing a **special Resolution** in a general Meeting.
- (c) Section 8 company shall have at least one director who has stayed in **India** for a total period of not less than **182 days** during the financial year.

APPLICATION FOR INCORPORATION

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

Once the e-Form is **processed and found complete**, company would be registered and **CIN** would be allocated.

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

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

1. Memorandum of Association;
2. Article of Association;
3. Declaration by professional in Form INC 14 that the Memorandum and Articles have been drawn up in conformity with the provisions of Section 8 and rules made thereunder and all other requirements of the act relating to incorporation of a Section 8 Company have been complied with ;
4. Declaration by each of the persons making the application in the Form no. INC-15;
5. Declaration by First Directors and Subscribers;
6. Address Proof of the subscribers;
7. Identity proof of subscribers;
8. An estimate of the future annual income and expenditure of the company for next 3 years, specifying sources of income and the objects of the expenditure;
9. The verification of the registered office shall be filed in Form No. INC. 22 (when address for correspondence is the address of registered office of the company) and the following documents shall be attached thereto:
 - (a) the registered document of the title of the premises of the registered office in the name of the company; or
 - (b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - (c) the authorization from the owner of the premises along with proof of ownership, to use the premises by the company as its registered office; and
 - (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner, which is not older than two months.

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

10. Appointment of directors of the company in **Form DIR - 12** along with the following attachments:

- Consent to act as Directors in **Form DIR- 2**.
- **Affidavit** by the Directors for Not accepting Deposits (On Non-judicial stamp paper of Rs. 100/- and duly notarised).
- **Declaration by each Subscriber** to Memorandum of Association (On Non-judicial stamp paper of Rs. 100/- and duly notarised).

CERTIFICATE OF INCORPORATION

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

QUESTIONS:

1. State in brief the various kinds of companies which can be registered under the Companies Act, 2013.
2. Define a private company and state the exemptions which it enjoys under the Companies Act, 2013.
3. Define a public company and distinguish it from a private company.
4. Write short notes on:
 - (a) Small Companies
 - (b) One Person Companies
 - (c) Nidhi
5. What is the importance of the objects clause of the memorandum of association? If a company undertakes to do anything which is not either expressly or impliedly provided for by the objects clause, what would be the consequences?
6. "Memorandum of association is a charter of the company". Comment upon the statement and explain the clauses of a memorandum of association of a company.
7. State the procedure for incorporation of Public Company having share capital.

Lesson 3 - Limited Liability Partnership



Limited Liability Partnership (LLP) is a partnership formed and registered under **Limited Liability Partnership Act, 2008**.

LLP is an alternate corporate business entity that combines the benefits of company's limited **liability with the flexibility** of a partnership firm's management structure.

In India LLP became effective from 31st March, 2009 after passing the Limited Liability Partnership, Act, 2008 and amended in 2021 (effective from 1st April, 2022).

Lesson Outline	Page No.
➤ Features of LLP	
➤ Advantages and Disadvantages of LLP	
➤ Limited Liability Partnership Act, 2008 - Definitions	
➤ Partners in an LLP	
➤ Formation and Registration of LLP	
➤ Procedure for Change of Name LLP	
➤ Procedure for Shifting the Registered Office of LLP	
➤ LLP Agreement - Objective & Preparation	
➤ Essential Clauses of LLP Agreement	
➤ Alteration to the LLP Agreement	
➤ Procedure for Change in Partner/Designated Partner	
➤ Annual and Event Based Compliances	
➤ Compounding of Offences	
➤ Winding Up of LLP	
➤ Case Laws	

FEATURES OF LLP

1.	LLP is a body corporate incorporated and formed under the Limited Liability Partnership Act, 2008.	
2.	LLP is a legal entity on its own and separate from its partners.	
3.	Every LLP has its own name , can sue and be sued in its own name and has perpetual succession.	
4.	The existence, rights and liabilities of LLP is not affected by the change in the constitution of its partners.	
5.	Every LLP shall have at least 2 partners at all points of time. Where the number of partners falls below 2 and remains as such for more than 6 months, then the only remaining partner who is running the LLP shall be personally liable for all the obligations of the LLP incurred beyond the aforesaid period of 6 months.	
6.	Every LLP shall have atleast 2 “designated partners” . This means where the LLP has only 2 partners both of them shall be “designated partners”. Any individual or body corporate can be a partner in LLP. [Body corporates are represented by individual nominees on their behalf]	
7.	The name of every LLP shall end with the words “LLP” or “Limited Liability Partnership”.	
8.	Every LLP shall have a registered office to which all communications shall be addressed and received.	
9.	Every document, invoice and official correspondence of an LLP shall contain its name, address and registration number.	
10.	The LLP Agreement also called as the LLP deed shall be registered under the provisions of the LLP Act, 2008.	
11.	Any partnership firm or unlisted company can convert itself into an LLP after following the relevant provisions of the Act.	

ADVANTAGES OF LLP

- 1) **Easy formation:** Unlike a company, formation of LLP involves lesser formalities and shorter time.
- 2) **Flexibility in management:** Since the rights, duties and terms of management are as per the LLP agreement, lot of flexibility is given to the partners to manage the affairs of the LLP.
- 3) **Lower cost of compliance:** There are fewer compliance requirements when compared to a company and the compliances are not complex.
- 4) **Entry and exit of partners:** Partners can be admitted and can move out easily without any rigidity, in accordance with the LLP agreement.
- 5) **Easy to close down:** The procedure to wind up an LLP is easier and quicker compared to a company.
- 6) **Liability of partners:** Unlike partnership firm, liability of the partners is not unlimited. Their personal assets are not used to discharge unpaid debts of the LLP.
- 7) **Audit requirements:** Unlike companies, audit is not mandatory for LLPs except as provided under the Act or under any other law.
- 8) **Separate legal entity:** LLPs have a separate legal entity, perpetual succession and are not affected by change in the constitution of partners.
- 9) **Members:** There is no restriction to the number of partners in an LLP.

DISADVANTAGES OF LLP

- 1) **Registration:** Unlike partnership, LLP registration is mandatory. LLPs are governed by the provisions of the LLP Act, 2008.
- 2) **Penalties:** Unlike partnership, LLPs have to comply with many legal provisions and non-compliance involves facing penalties.
- 3) **Right of Partners:** LLP agreement can be drafted to give more rights and powers to some partners than others. So, it isn't a one vote per share system like Company.
- 4) **Public Disclosure:** LLPs have to mandatorily file Annual Returns, Statement of Accounts and Solvency every year. These become public documents, which can be accessed by others including competitors.
- 5) **Limitations in Formation of LLP:** LLP cannot be formed by a single person. A non – resident Indian and a Foreign National willing to form a LLP in India must have one person resident in India to act as Designated Partner.
- 6) **Exit Options are Not Easy for LLPs in default of Filings:** A LLP who has defaulted in filings its statement of accounts and annual return with the Registrar of LLPs, will have to make its default good by filing necessary e-forms with late filing fee, to shut down its operations and wind up.

7) **Limitation in External Commercial Borrowings (ECB):** ECB means raising loan from outside India to do business in India. Limited Liability Partnerships are not allowed to raise ECB from its foreign partners, FIIs, Foreign Banks, and any financial institution located outside India.

LIMITED LIABILITY PARTNERSHIP ACT, 2008

DEFINITIONS	
Limited Liability Partnership [Sec. 2(n)]	“Limited Liability Partnership” means a partnership formed and registered under the Limited Liability Partnership Act, 2008 .
Limited Liability Partnership Agreement [Sec. 2(o)]	“Limited Liability Partnership Agreement” means any written agreement between the partners of the Limited Liability Partnership or between the Limited Liability Partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that Limited Liability Partnership.
Partner [Sec. 2(q)]	“Partner” in relation to any LLP means any person who becomes a partner in the Limited Liability Partnership in accordance with the Limited Liability Partnership Agreement.
Small LLP [Sec. 2(ta)]	Small LLP means a limited liability partnership having: (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

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

With the passage of the LLP Amendment Act, 2021, many privileges are now extended to the Start-up LLPs under the LLP Act too.

Both Start-up LLPs and Small LLPs enjoy concessions in respect of lower fees and milder penalties under the LLP Act, 2008. This would encourage many small unorganized businesses to choose LLP as a suitable form of business organization.

PARTNERS IN AN LLP

- Every LLP shall have not less than 2 designated partners out of which atleast one shall be a resident in India. “Resident in India” means stay in India for a period not less than 120 days during the financial year.
- Where all the partners in the LLP are body corporates at least 2 of the nominees of such body corporates shall act as “designated partners”.
- Every partner shall give his prior consent to act as designated partner.
- Designated partners are responsible for compliance and disclosure requirements of the LLP.
- Every Designated Partner shall obtain a DPIN [Designated Partner’s Identification Number] and shall quote it while signing on documents/forms, in the capacity of a designated partner.
- Vacancy of a designated partner shall be filled within 30 days and the Registrar shall be notified.
- Any partner may resign from LLP as per the LLP agreement and by giving a notice in writing of not less than 30 days to the LLP.
- Upon the admission or cessation of a person as partner of the LLP, a notice shall be filed with the Registrar within 30 days in the prescribed form.
- Similarly, whenever there is a change in the name or address of any partner, a notice shall be filed with the Registrar within 30 days in the prescribed form.
- No person can continue as a partner of LLP in the following circumstances:
 - Upon his death
 - Upon the dissolution of the LLP
 - If he is declared as an insolvent or if has applied to be adjudged as an insolvent
 - If he is declared to be of unsound mind by a competent court.
- The cessation of a partner from the LLP does not by itself discharge him from any obligation, owed to the LLP or other partners or to any other person, incurred while he was a partner of such LLP.
- The liabilities of the LLP are met out of the property of the LLP. No partner is personally liable for the debts or other obligations of the LLP in the normal course of business.
- However, where any partner(s) acts with a fraudulent intent then he shall be made personally liable for such fraudulent acts and his liability shall become unlimited.



FORMATION AND REGISTRATION OF LLP

DSC

DPIN

Name

FiLLiP

Agreement

Obtain DSC:

For obtaining DIN for the Partners/ Designated Partners of the LLP, a Digital Signature Certificate (DSC) is required. Therefore, the proposed Partner must obtain a Digital Signature Certificate, which can be used for filing of documents with Registrar of Companies (ROCs) online.

Apply for DPIN for designated partners:

After obtaining Digital Signatures for the Partners, application for Director Identification Number (DIN) can be made. DIN registration usually happens immediately. DIN and DPIN are synonymous and can be used interchangeably.

Obtaining Name Approval:

Once DIN is available, application for reservation of name can be made to the MCA. It is important to keep in mind the LLP Naming Guidelines and suggest appropriate names for the LLP in the application. There are two ways of reserving name of the proposed LLP:

- i. File an application under RUN-LLP for ascertaining availability and reservation of the name of an LLP; OR
- ii. Name can be proposed in e-form FiLLiP, an application for incorporation of LLP;
- iii. An application for Name change shall be accompanied by the resolution of LLP, attested copy of consent from the partners and NOC where applicable.

If the name is approved, the ROC will issue a fresh certificate and the new name will be effective from the date mentioned in the certificate.

After the name approval is obtained, form LLP-5 shall be filed for giving notice of change of name along with the form 3 (altered copy of the LLP agreement containing the new name).

As per section 15 of LLP Act, no LLP shall be registered by a name which in the opinion of the Central Government is undesirable or identical or closely resembles to that of any other partnership firm or LLP or body corporate or registered trademark or a trademark which is the subject matter of an application for registration under the Trademarks Act 1999.

Filing for Incorporation:	E-Form FiLLiP (web-based) shall be filed with the Registrar having jurisdiction over the State in which the registered office is situated. Where a designated partner has already DIN, DPIN need not be obtained and the DIN can be used in the place of DPIN. Following are the documents to be attached with eform FiLLiP: i) Consent of partners. If body corporates are partners, certified true copy of board resolution of such body corporate ii) Subscribers' sheet iii) Details of LLPs/companies in which partner is a partner/director respectively [including Designated partner] iv) Identity and address proof of individuals acting as partner (including Designated Partner] v) Proof of address of registered office [Rental/lease agreement or ownership document vi) List of main objects of LLP vii) NOC from trade mark owner/ foreign body corporate [where the proposed name is similar or the same as such entity]. Upon examination of e-form FiLLiP, if the Registrar finds it necessary to call for some information or finds it incomplete or defective, he shall give an intimation to the applicant to furnish such information or complete the details or remove such defects as the case maybe and re-submit within 15 days of such intimation. After re-submission, if the Registrar is still not satisfied he shall give one more opportunity of 15 days for resubmission. Provided that the total period for re-submission of documents shall not exceed 30 days. PAN & TAN shall be allotted along with certificate of incorporation or registration.
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Section 16 of LLP Act states that on an application for the reservation of a name for the proposed LLP, the Registrar upon satisfaction of all other conditions, reserve such name for a period of 3 months from the date of intimation by the Registrar.

Where an LLP is registered with a name that is identical or closely resembles the name of any other LLP or company or a registered trademark of any proprietor under the **Trademarks Act, 1999** then upon an application by such LLP or company or proprietor of trade mark, the Central Government may give directions to such LLP to change its name within a period of 3 months from the date of such direction. [Section 17(1)]

Where an LLP complies with the direction and changes its name, it shall within a period of **15 days** of such change of name, give a notice of intimation to the Registrar who shall make the necessary changes in the certificate of incorporation. The change of name shall be made in the LLP agreement within **30 days of obtaining** the new certificate of incorporation. [Section 17(2)]

Where the LLP fails to comply with the direction, then the Central Government shall allot a new name to the LLP and the Registrar shall issue a fresh certificate of incorporation to the LLP containing the new name. [Section 17(3)]

PROCEDURE FOR CHANGE OF NAME LLP

The procedure for the name change is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008. The reasons for name change can be business-related or on account of certain directives from the Central Government (if the name of the LLP is considered undesirable or similar to an already existing LLP) and failure to comply with such direction given shall be punishable with fine which shall not be less than **10,000 rupees** but which may extend to **5 lakh rupees** and the designated partner of such LLP shall be punishable with fine which shall **not be less than 10,000 rupees** but which may extend to **1 lakh rupees**.

An application for changing the name of the LLP should be, first, submitted to the Ministry of Corporate Affairs. The application must have maximum six name preferences, which must be in tandem with the LLP naming guidelines.

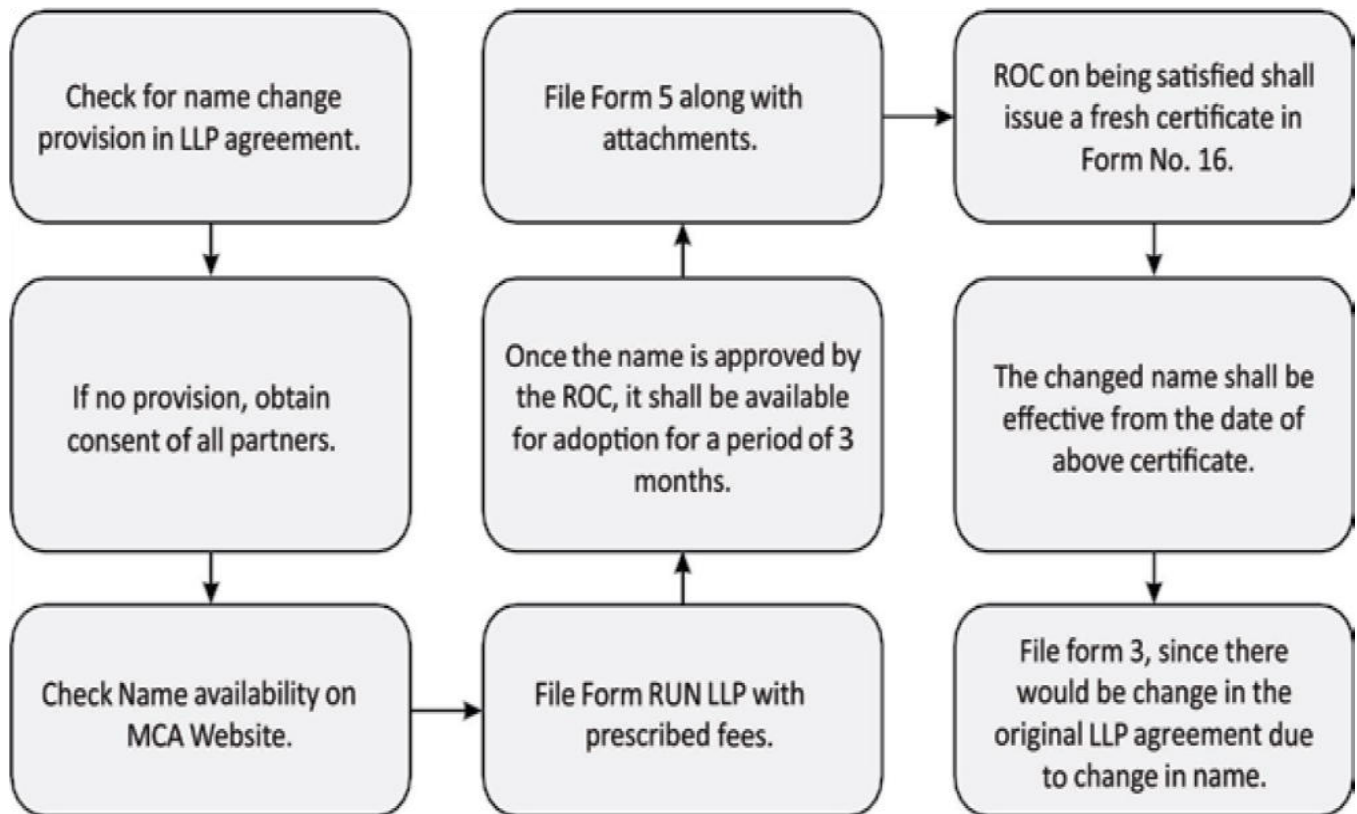
Along with the LLP name change application, the partners need to submit:

1. Certified copy of consent of all partners involved for the name change;
2. Copy of the existing LLP agreement;
3. Trademark copy or a copy of the registration certificate.

After the suggested name gets approved, one has to file **Form LLP-5**, giving notice of the change in the name. The form has to be submitted to **the Registrar within 30 days**.

The ROC, after taking into consideration the application, will approve/deny the name change. If **the name is approved, the ROC will issue a certificate** and the new name will be effective from the date mentioned in the certificate.

Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.



PROCEDURE FOR SHIFTING THE REGISTERED OFFICE OF LLP

The procedure for the change in registered office of LLP is given under **Rule 17 of LLP Rules, 2009**. **Form 15 is to be filed within 30 days** of change of registered office. Mandatory Documents to be attached with Form 15 are:

- Proof of changed address of registered office.
- Either 'Copy of the minutes of decision/ resolution/ consent of partners' or 'The extracts of the relevant provisions of the LLP Agreement'.
- Copies of public notice and consent of secured creditors - in case of 'change of place of the registered office from one State to another State'.



Any other information can be provided as an optional attachment.

NOTICE OF CHANGE OF REGISTERED OFFICE

Checklist for Shifting of Registered Office:

Action to be taken	Change of R.O. within the same State and within jurisdiction of same Registrar (1)	Change of R.O. within the same State from the jurisdiction of one Registrar to another (2)	Change of R.O. from one state to another (3)
Resolution for Change of Address	Consent of all partners shall be required for changing the place of Registered Office of the LLP.	Same as (1)	Same as (1)
Secured Creditors	No Consent Required	No Consent Required	Consent Required
Form to be filed	Form- 15 prescribed under Rule 17 of the LLP Rules 2009 along with the prescribed fees.	Same as (1)	Same as (1)
Public Notice	No public notice required.	No public notice required.	Give public notice of change of registered office in an English daily newspaper and vernacular daily where the registered office is situated.
Time limit for filing	Within 30 days of passing of resolution.	Within 30 days of passing of resolution.	Within 30 days of passing of resolution.

LLP AGREEMENT

- The LLP agreement is the **most important document of an LLP**. It is akin to the partnership deed of a partnership firm. The LLP agreement must be registered with the Registrar and every subsequent alteration shall be made as per the provisions of **the LLP Act, 2008 and registered with the Registrar**.
- The LLP agreement is a written agreement divided into paragraphs drafted on a stamp paper of requisite value and is signed by all the partners. Two witnesses must sign on the last page.

OBJECTIVE OF LLP AGREEMENT

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

HOW TO PREPARE LLP AGREEMENT

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



Two witness should sign the agreement on the last page



All partners should sign the agreement



Each partner should be provided with the copy of agreement

ESSENTIAL CLAUSES OF LLP AGREEMENT

Following are some of the essential clauses mentioned in the LLP Agreement:

1.	
2.	
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- 1) **Interpretation / Definitions:** This clause is the essence of any LLP agreement. An LLP Agreement must provide for various definitions such as the definition of designated partners, the accounting period, business of LLP.
- 2) **Designated Partners:** LLP agreement shall clearly mention the name, age and address of each of the Designated Partners correctly.
- 3) **Name of the LLP and Changes to it:** This clause shall state that business of the LLP shall be carried on in the name and style of [Name of LLP]. Any change in the name of the LLP shall be notified to the Registrar by the Designated Partner(s).
- 4) **Registered office of the LLP:** LLP agreement shall state that partnership business shall be carried on at the under mentioned address, which shall also be its registered office. The business shall also be carried from such other places as may be mutually decided by the partners from time to time.
- 5) **Business of the LLP:** The nature of business is stated clearly. The LLP may engage in any and all activities necessary or incidental to the business of the LLP including but not limited to such ancillary business. It may also include any other business conducted in such manner as may be decided by the majority of Partners.
- 6) **Capital Contribution:** Total contribution of the LLP and the contribution by each partner (including non-monetary contribution like rendering any services) to be mentioned in this clause. Manner of Additional capital contribution and withdrawal of contribution by the partners shall also be stated in this clause.
- 7) **Profit Sharing Ratio:** An ideal LLP Agreement must also mention the ratio in which the profits and the losses of the business will be shared among the partners.
- 8) **Rights and Duties of Designated Partners:** The LLP Agreement must specify the rights and duties of the Designated Partners. If not specified, the provisions of Schedule I of the Limited Liability Act, 2008 will apply.
- 9) **Admission of Partner, Retirement, Resignation and Expulsion of Partners:** LLP agreement must include the provisions regarding admission of new partners, retirement as well as the death of a partner, and guidelines for the expulsion of partners.
- 10) **Remuneration & Interest to be paid to Partners:** The LLP agreement shall contain a clause regarding the amount of remuneration to the Designated Partner(s), for rendering their services as such. The rate of interest to be paid to the partners on their capital contribution is also specified.
- 11) **Duration & Winding Up:** The partners must specify the term of validity of such LLP agreement -whether it is a perpetual agreement or is valid for a fixed period. The agreement must also provide for the situations when the partners have agreed to wind up the affairs of the LLP.
- 12) **General Provisions:** The LLP agreement shall also include general provisions binding on legal heirs, successors, counterparts, serving of notices, waiver, dispute resolution, indemnities, Governing law etc.

ALTERATION TO THE LLP AGREEMENT

Alteration of the LLP agreement means making changes to the original agreement filed with the ROC.

Passing a resolution approving the changes to the LLP Agreement

File E-form 3 with the Registrar within 30 days of amendment

Documents to be attached with E-Form-3:

- copy of original agreement,
- altered agreement and
- optional attachments, if any

PROCEDURE FOR CHANGE IN PARTNER /DESIGNATED PARTNER

In order to change the partners or designated partners in LLP, E-form 4 shall be filed along with **E-form-3 for changes made to the LLP agreement subsequent to change in partnership/designated partnership**. The following documents shall be attached:

Consent of such partners/designated partners including certified copy of Board resolution where the partner is a body corporate.

- Copy of resolution/authorization letter mentioning name and address of individuals **nominated as Partner/Designated partner**.
- Affidavit proof of change of name where there is a change to the name of existing partners.
- Evidence of cessation, if change is subsequent to cessation

ANNUAL COMPLIANCES OF LLP

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

Sr. No.	Compliance	Form No.	When to file	Objective
1.	Annual Return	11	Within 60 days of closure of its Financial year	Summary of management affairs of the LLP in the previous year
2.	Statement of Accounts & Solvency (SAS)	8	Within 30 days from the end of the 6 months of the Financial year to which such SAS relates to	The statement that the LLP is in a position to discharge its debts
3.	Income Tax Return	IT return form	July 31st of the Assessment year**	Statutory requirement.

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

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

FILING OF ANNUAL RETURN

- **Annual returns are filed in Form 11.** This form is a summary of the management affairs of the LLP, such as number of partners and their names. **Form 11 needs** to be filed within 60 days of the closure of the Financial year. Hence this Annual Return should be filed on or before **30th May every year by the LLP.**
- In case the annual turnover **of the LLP crosses Rs 5 crores** or the Capital contribution from Partners exceeds more **than Rs 50 Lakhs the Annual return** should be accompanied by a Certificate from Practising Company Secretary.

FILING OF STATEMENT OF THE ACCOUNTS OR FINANCIAL STATEMENTS

- All LLPs are required to maintain their Books of Accounts in Double Entry System. They also need to prepare a Statement of Solvency (Accounts) every year ending on 31st March. For this purpose, **LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year.**
- It should be noted that LLPs **whose annual turnover exceeds Rs. 40 lakh or** whose contribution **exceeds Rs. 25 lakh** are required to get their accounts audited by a qualified Chartered Accountant mandatorily.
- The penalty for non-filing of these forms with **the ROC is Rs. 100 per day per form.**

FILING OF INCOME TAX RETURNS

Every LLP is required **to close its financial year on 31st March** every year as per the Income Tax Act and is also required to file their returns with the Income Tax Department.

The LLP whose annual **turnover exceeds Rs. 40 lakhs** or capital contribution exceeds Rs. 25 Lakhs are required to get their accounts audited. Maintenance of book of accounts is mandatory for LLP, irrespective of annual turnover.

However, it is mandatory for LLP to file return of income electronically under digital signature, if its accounts are required to be audited under **section 44AB of the Income Tax Act.** Due dates for an LLP to file their Income Tax Returns are as follows:

Particulars	Due Dates
LLP who is required to get its accounts audited under the Incometax Act or under any other law	September 30 of the assessment year
LLP who is required to furnish a report in Form No. 3CEB under Section 92E of Income Tax Act	November 30 of the assessment year
In any other case	July 31 of the assessment year

EVENT BASED COMPLIANCES FOR LLP

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

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

COMPOUNDING OF OFFENCES

As per section 39(1) of LLP Act, the Regional Director or any other officer not below the rank of Regional Director authorized by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

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

WINDING UP OF LLP

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

- a) The **LLP** decides that it shall be wound up by the tribunal;
- b) There are less than two **Partners** in the LLP for a period of more than 6 months;
- c) The LLP has acted against the interest of the **nation** or State security or public order;
- d) Default is made in the **filing** of Annual return or Statement of accounts & Solvency for any five consecutive financial years;
- e) The **Tribunal** is of the opinion that it is just and equitable to wind up the LLP under Section 64 of the Act.

CASE LAWS

Swarnapadme Consulting LLP (Petitioner) vs. Union of India (Respondent) [Karnataka High Court]

Conclusion:

The petitioner failed to file Annual Returns and Statement of Account & Solvency for the years 2016 and 2017 as it did not have sufficient profits. Since the said filings were not made, ROC was under the impression that the LLP has discontinued its operations and sent a notice dated 16.03.2018 asking the LLP for response failing which its name will be removed from the Register of LLPs.

Upon receipt of the notice, the LLP came to understand that filing of forms with the ROC is mandatory irrespective of profits or losses. So within 30 days of receiving the notice the LLP made the filings for 2016 and 2017. However while trying to file the statutory returns in 2018, the LLP came to know that the ROC has changed its status from 'active' to 'defunct'. The LLP then made a representation to the ROC to change the status to active but there was no response.

Later the matter came up before the court; it was held that it is the duty and obligation of the respondent [ROC] to consider the representation made by the petitioner [LLP] and pass appropriate order to change the status of the LLP back to active.

Conclusion:

In 2005, the petitioner was registered as a partnership firm. In 2016 the firm was converted into LLP and registered with the name M/S Sozin Flora Pharma LLP. However, the Department of State Revenue asked the LLP to pay stamp duty and registration charges for transferring the assets of the erstwhile partnership firm to the LLP. The petitioner [LLP] explained that upon conversion into LLP the vesting of property of the firm in the LLP is automatic and therefore it is not liable to pay stamp duty and registration charges. On behalf of the State, it was contended that the LLP is a separate distinct entity from that of its partners and hence the conversion amounts to change of legal rights.

The Hon'ble Court made reference to Sec.58 of the LLP Act and held that the transfer and vestment of property of a partnership firm in favour of a converted LLP is statutory and is by operation of law; the legal entity is not changed after conversion, only the identity of the petitioner firm as a legal entity undergoes a change and the order of the Revenue Department was quashed and set aside. Held stamp duty and registration charges cannot be levied upon conversion of partnership firm into LLP.

QUESTIONS:

1. What are the advantages and disadvantages of LLP?
2. What are the steps involved in the formation and registration of LLP?
3. What is an LLP Agreement? State the procedure for altering the LLP Agreement.
4. A Limited Liability Partnership wants to change its name. Explain under what factors have to be borne in mind and the procedure for the same.
5. LLP Agreement is the essence of LLP formation. Examine the statement in light of all the essential clauses of the LLP Agreement.
6. ABC LLP wants to shift its registered office from Delhi to Maharashtra. Suggest the partners the procedure for the change in the registered office of the company.
7. The Financial Statements of Limited Liability partnership are nor mandatorily required to be audited by a Chartered Accountant. Comment.

Lesson 4 - Startups and its Registration



Startups have emerged as a fast-growing business model. This chapter deals with the evolution of Startups in India, the Startup India Policy, financing options, the exemptions available to start-ups and their registration process.

This chapter also explains the concept of unicorns with case studies.

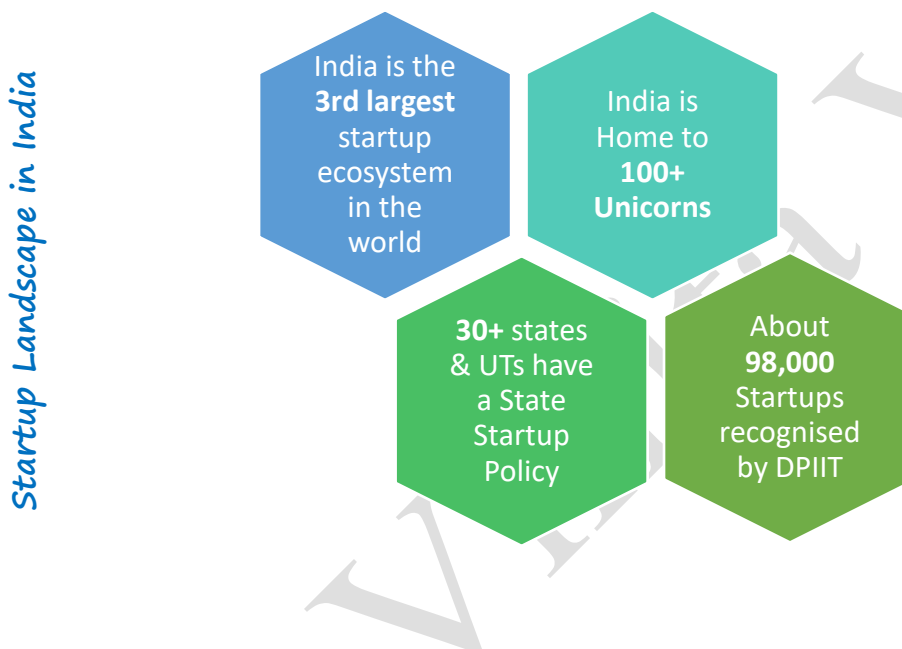
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INTRODUCTION

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

Business models for startups are generally found via a “bottom-up” or “top-down” approach. Startups face high risks and can fail, but successful startups can become large and influential. Startups operate in high-risk sectors and may struggle to attract investment or buyers.

Founders' agreement are often agreed early on to confirm the commitment, ownership and contributions of the founders and to deal with the intellectual properties and assets that may be generated by the startup. Startup founders often agree on ownership and contributions early on, and may enter into a Shareholders' Agreement with investors.



STARTUP INDIA POLICY

The “Startup India” initiative announced by the Hon’ble Prime Minister on 15th August, 2015 aims to promote entrepreneurship and innovation by creating an ecosystem that supports startup growth.

The government's efforts are focused on empowering startups to achieve greater heights through innovation and design, generating employment opportunities, and driving sustainable economic growth.

In order to meet the objectives of the initiative, the Startup India Action Plan was launched on **16th January 2016**. Since, the launch of Startup India initiative, over **98,000 Startups** have been recognized by Department for Promotion of Industry and Internal Trade (DPIIT) by mid-2023.

DEFINITION OF START-UP

An entity shall be considered as a Startup:

1.

Upto a period of 10 years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.

2.

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

3.

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

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

The Startup India Action Plan consists of various action items spanning across areas such as:

- **Simplification and handholding** – Startup India Hub, Compliance regime based on self-certification, Rolling out of mobile app and portal, Faster exit for Startups, etc.
- **Funding support and incentives** – Provision of funding support through Fund of Funds, Credit Guarantee Fund for Startups, Tax exemptions, etc. and
- **Industry-academia partnership and incubation** – Organising Startup fests, Annual incubator grand challenge, Building innovation centres at national institutes, etc.

FUNDING SUPPORT & INCENTIVES

1.	Fund of Funds	For providing fund support for Startups, Government has created a Funds for Startups (FFS) at Small Industries Development Bank of India (SIDBI) with a corpus of INR 10,000 crore . The FFS shall contribute to the corpus of Alternative Investment Funds (AIFs) for investing in equity and equity linked instruments of various Startups.
2.	Startup India Seed Fund	Government has launched a Startup India Seed Fund worth INR 1,000 crore to help startups and support ideas from aspiring entrepreneurs.
3.	Credit Guarantee Fund for Startups	Since debt funding for Startups is perceived as high-risk activity, a Credit Guarantee Fund for Startups is being setup to provide credit guarantee cover to banks and lending institutions providing loans to Startups.

4.	Relaxed Norms in Public Procurement for Startups	Provision has been introduced in the procurement policy of Ministry of Micro, Small and Medium Enterprises to relax norms pertaining to prior experience/ turnover for Micro and Small Enterprises. Department of Expenditure has notified relaxation in public procurement norms in respect of all Startups.
5.	Tax Incentives	I. Income Tax Exemption on profits under Section 80-IAC of Income Tax Act: If a Startup is recognized by DPIIT, it can apply for a deduction equal to 100% of its profits and gains derived from an eligible business for 3 consecutive assessment years out of 10 years, starting from the year the startup is incorporated. Also, the annual turnover must not exceed Rs. 100 crores in the previous year relevant to the assessment year for which deduction is claimed. II. Tax Exemption on Investments above Fair Market Value: • DPIIT Recognized Startups are exempt from tax under Section 56(2) (vii b) of the Income Tax Act when the Startup receives any consideration for issue of shares which exceeds the Fair Market Value of such shares. • The startup has to file a duly signed declaration in Form 2 to DPIIT to claim the exemption. III. Introduction of Section 54EE in the Income Tax Act, 1961: Exemption from tax on long-term capital gain if such long-term capital gain is invested in a fund notified by Central Government. The maximum amount that can be invested is Rs. 50 lakh. IV. Amendment in Section 79 of Income Tax Act: Startups can carry forward their losses on satisfaction of any one of the following two conditions: a. Continuity of 51% shareholding/voting power; or b. Continuity of 100% of original shareholder.
6.	Legal Support and Fast-tracking Patent Examination at Lower Costs	A scheme for Startups IPR Protection (SIPP) has been introduced for facilitating fast track filing of Patents, Trademarks and Designs by Startups. The scheme provides for reduced filing fees and expedited examination of patents filed by Startups.
7.	Self-Certification based Compliance Regime	Compliance norms relating to Environmental and Labour laws have been eased in order to reduce the regulatory burden on Startups. Ministry of Environment and Forests (MOEF) has published a list of 36 white category industries. Startups falling under the

		“White category” would be able to self-certify compliance in respect of specified Environment Acts.
8.	Setting up Incubators	Incubators are organisations set-up for assisting entrepreneurs with building and launching their startups. The Incubators provide value added services such as office space, utilities, admin & legal assistance, etc. Additionally, they offer financial support through grants, debt and equity investments.

RECOGNITION AS STARTUPS

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

1.	A Startup shall make an online application over the mobile app or portal set up by the DPIIT.	
2.	The application shall be accompanied by – a. a copy of Certificate of Incorporation or Registration, as the case may be, and b. a write-up about the nature of business highlighting how it's work towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.	
3.	The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit – a. recognise the eligible entity as Startup; or b. reject the application by providing reasons.	

INDIAN STATES WITH STARTUP POLICIES

States have a vital role to play in promoting the Startup ecosystem. Presently 31 States have their own Startup policies. Many other States and Union Territories (UTs) are in the process of drafting their policies and operating guidelines.

Another important role of State is to reduce the regulatory burden on budding Startup founders by simplifying labour, taxation, land, and other laws and regulations under the State purview.

STATE STARTUP RANKING – EVOLUTION

The States' Startup Ranking Framework was created by the Indian government in 2018 to improve the startup ecosystem across the country. It emphasizes cooperation between States and UTs and includes ongoing improvements. Below three new Reform Areas were introduced to the framework:

1. **Capacity Building of Enablers** – This Reform Area focuses on holistic development through trainings conducted for key stakeholders of the State startup ecosystem.
2. **Mentorship Support** – This Reform Area focuses on creating a large and accessible mentorship network within the State for the startups.
3. **Fostering Innovation and Entrepreneurship** – This Reform Area captures grassroots innovation, disruptive policies for startups, and entrepreneurial spirit of the students.

EXEMPTIONS/BENEFITS FOR STARTUPS

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



1.	Simple process	Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested can complete a straightforward form and upload necessary documents entirely online.
2.	Reduction in cost	The government also provides lists of facilitators of patents and trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees (reduced upto 80%).
3.	Tax holiday for 3 Years	Startups will be exempted from income tax for 3 years provided they get a certification from Inter-Ministerial Board (IMB).
4.	Apply for tenders	Startups can apply for government tenders. They are exempted from the “prior experience/turnover” criteria applicable for normal companies answering to government tenders.
5.	R&D facilities	Seven new Research Parks will be set up to provide facilities to startups in the R&D sector.
6.	No time-consuming compliances	Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.

7.	Tax saving for investors	People investing their capital gains in the venture funds setup by government will get exemption from capital gains. This will help startups to attract more investors.
8.	Easy exit	In case of exit, a startup can close its business within 90 days from the date of application of winding up.
9.	Meet other entrepreneurs	Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

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:

A Startup shall be eligible, if it fulfils the following conditions:

- (i) it has been **recognised by DPIIT**.
- (ii) aggregate amount of **paid-up share capital and share premium** of the startup after issue or proposed issue of share, if any, does not exceed, 25 crore rupees:

Provided that in computing the amount of 25 crore rupees, shares issued to the following persons shall not be included –

1. a non-resident; or
2. a venture capital company or a venture capital fund;
3. a specified company

- (iii) It has not **invested** in any of the following assets–

- (a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for renting or held as stock-in-trade;
- (b) loans and advances extended, except in the ordinary course of business;
- (c) capital contribution made to any other entity;
- (d) shares and securities;
- (e) jewellery other than that held as stock-in-trade in the ordinary course of business;
- (f) other specified assets

Explanation: “**specified company**” means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of preceding financial year exceeds 100 crore rupees or turnover for the preceding financial year exceeds 250 crore rupees.

Benefits / Exemptions to Start-ups under the Companies Act, 2013

S.N.	Section	Description
1.	Section 2(40)- Definition of financial statement	The financial statement of a private company (if it is a start-up) may not include the cash flow statement
2.	Section 54- Issue of sweat equity shares	A start-up company may issue sweat equity shares up to 50% of its paid-up capital up to 10 years from the date of its incorporation or registration. (previous limit was 5 years).
3.	Section 62 – Further issue of share capital	For the purposes of section 62(1)(b), an “Employee” does not include– (i) an employee who is a promoter or a person belonging to the promoter group; or (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company. The aforementioned conditions shall not apply to a start-up upto 10 years from the date of its incorporation or registration
4.	Section 73- Prohibition on acceptance of deposit from public	“Deposit” does not include an amount of 25 lakh rupees or more received by a start-up company, by way of a convertible note (convertible or repayable within 10 years from the date of issue) in a single tranche, from a person
5.		The maximum limit of accepting deposits from members shall not apply to a private company which is a start-up, for 10 years from the date of its incorporation
6.	Section 92- Annual Return	Annual return of a private company (if it is a start-up) shall be signed by the Company Secretary, or where there is no Company Secretary, by the Director of the Company
7.	Sections 173 – Meetings of Board	A private company, which is a start-up, shall be deemed to have complied with the provisions of section 173, if at least 1 meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meeting is not less than 90 days

LIFE CYCLE OF START-UP

The startup lifecycle has distinct stages due to the rapid growth of the startup ecosystem. Each stage presents a new set of challenges for entrepreneurs, emphasizing the importance of understanding them. The startup lifecycle can be broadly divided into 4 stages.



Stage 1: Ideation and Development

The first stage of the startup lifecycle is ideation, which focuses on **testing the feasibility of a product/service**. At this stage, getting opinions and feedback from others and assessing the business model is crucial. Testing the potential viability of an entrepreneurs' business can help answer questions about government aid, regulations, and other factors that may affect the business. Key factors to consider during this stage are:

TARGET MARKET

BUSINESS MODELS

TEAM SKILL SETS

Stage 2: Validation

After an entrepreneur evaluates their business idea and outlines their strategy, it is important to validate the product or service. This involves **setting goals, creating a value proposition, and obtaining customer feedback**. Validation is important as it provides a clearer understanding of potential outcomes and confirms the viability of the idea through testing. The main considerations of the validation stage are:

VALIDATING AND TESTING
OF PROTOTYPES

MODIFICATIONS

Stage 3: Early Traction

The Early Traction stage allows for **product testing by a set of target customers**, which helps validate its efficacy. This stage presents challenges but also showcases revenue and cash flow.

A high customer retention rate confirms the success of the product and company at this stage. Startups acquire more customers by seeking funding from various sources such as crowdfunding agencies, angel investors, incubators, and Government seed grants.

Pivoting

Pivoting in a startup happens when the company **adjusts its strategy due to changes** in the industry, customer needs, or other factors affecting its profits. The process involves using feedback to modify the business model. Most successful companies go through several pivots to find product-market fit. What makes the experiment work is usually not one major pivot, but a series of experiments across customers, problem, product, and technology and growth channels.

Major areas of focus during Pivoting include the following:

1. **Simplifying** a product by turning one feature of a product into the product itself.
2. Incorporating a **product as a feature** of a larger product suite.
3. Focusing on a **different set of customers** by targeting a new market or vertical
4. **Switching platforms**, such as changing from an app to software or vice versa
5. Using **innovative technology** to reduce manufacturing costs and create a more reliable product.

Stage 4: Growth/Exit

The fourth stage of a startup's life is when it is economically healthy and profitable, and can continue to be so if it manages its niche and competitiveness well. At this stage, the company may **choose to grow further through mergers, acquisitions, or going public**. Some companies are successful in sustaining their growth, achieving valuation of more than \$1 billion and become unicorns.

REGISTRATION STEPS

A.	
B.	
C.	
D.	
E.	
F.	

A. Incorporation of Business Entity:

To register as a start-up, one must create a legal entity such as a **Private Limited Company, Partnership firm, or Limited Liability Partnership (LLP)**. This is done by filing the incorporation application with the Registrar of Companies (ROC)/ Registrar of Firms, as the case may be, where the registered office of the new entity is proposed to be established.

B. Register with Start-up India:

Once the entity is incorporated, the business can be registered as a startup. The registration process is completely **online** and simple for the users. To register a business as a startup, one must visit the Startup India website and click "Register". Enter details such as name, email, mobile number, and password, and verify the email with the OTP sent. Once the **Startup India profile is created**, startups can apply for acceleration, incubator/mentorship programs, and other challenges, and access resources like Learning and Development Program, Government Schemes, State Policies for Startups.

C. Get recognition from DPIIT

After creating a profile on Startup India website, the next step is to **get recognition from DPIIT**. This recognition offers various benefits to startups, such as access to high-quality intellectual property services, relaxation in procurement norms, self-certification under labour and environment laws and tax exemptions.

To get DPIIT recognition, log in to the Startup India website with registered profile (account) credentials, go to the **'DPIIT Recognition for Startups' button under 'Schemes and Policies' tab**, and click on the 'Get Recognized' button on the next page. Then click on 'Click here for submitting your application for recognition as a Startup' button on the following page.

D. Application for Recognition:

On the **'Startup Recognition Form'**, the details has to be filled such as the entity details, full address (office), authorized representative details, directors/partner details, startup activities and self-certification. After entering all the sections, accept the terms and conditions and click on the 'Submit' button.

E. Documentation required for Registration:

Following documents should be kept ready for **getting the registration completed on the Startup India Portal**:

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

F. Getting the Recognition Number:

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

IMPORTANT POINTS FOR A START-UP

1. Choose the right legal structure for your startup:

Choosing the right legal structure is one of the most crucial decisions for any startup. The decision depends on various factors such as nature/ sector of business operation, regulatory and tax considerations, costs, external capital requirement, profit sharing etc. Preferred entity structures for startups are LLP and private limited company.

2. Registrations and business licenses:

After incorporating a business entity in India, there are necessary registrations and business licenses required by law. The license requirements are determined by the nature of the business activity, number of employees, location, etc. Examples are Food safety license, Health/Trade license, Shops & Establishment License etc.

3. Intellectual Property Protection:

Intellectual Property Rights are a very important asset class for a startup. It is essential to obtain trademark registration for the business name/trade name under the Trademarks Act. All Intellectual Property (trademark, copyright, design, trade secrets, inventions, patents, etc.) should be registered under the entity's name, not the founders' names.

4. Founder Equity – Split and Vesting:

Founder equity should be split amongst founders based on the nature of role played by each founder along with their time, effort and capital contribution to the startup.

Founder shares should be always subject to vesting schedule – typically over a period of three to four years. This is very important to ensure future viability of the business.

5. Founder agreements:

The founder's agreement is the most valuable tool for startup founders to establish their relationship and clarify key issues. It should clearly mention the roles and responsibilities of the founders decision-making structure, equity split, intellectual property ownership, termination, exit process, etc.

6. Employee Stock Option Pool (ESOP):

ESOP's are incentives given to employees/directors of a company to attract talent and retain employees by rewarding them. ESOPs create a sense of ownership amongst employees.

7. Third Party Agreements:

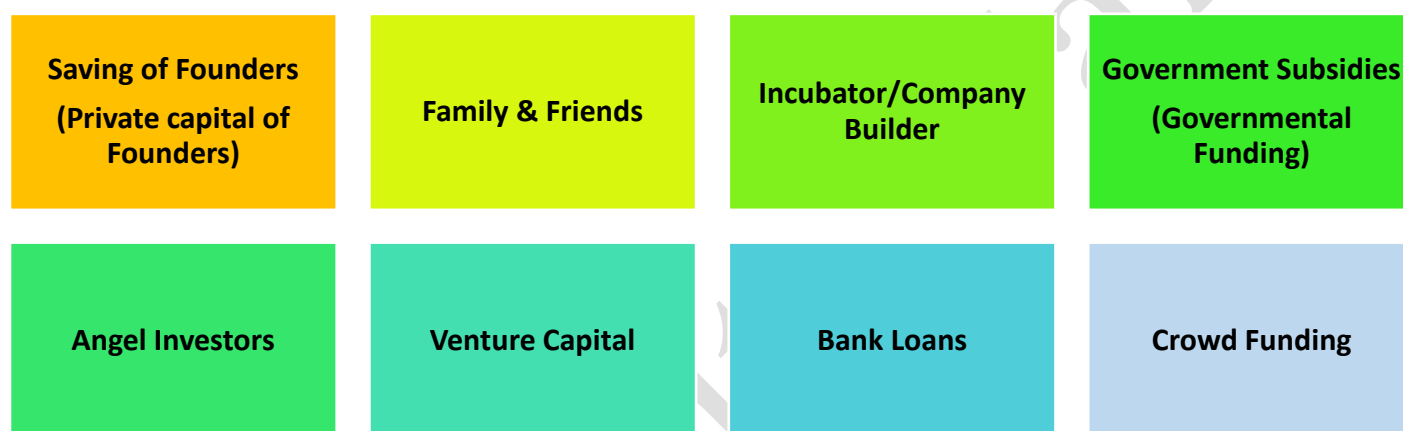
Prior to entering into a third-party agreement and while negotiating the terms, it is advisable to execute a non-disclosure agreement. Clauses related to breach, termination and dispute resolution should be captured in all third-party agreements.

8. Compliance management:

Compliance and its importance is often overlooked by many startups. It is extremely critical for the sustainable growth of the startup that it is in compliance with applicable legal, secretarial, taxation, employee related and other associated compliances.

FINANCING OPTIONS AVAILABLE FOR STARTUP COMPANIES

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



Analysis of the different financing options are as under:

Characteristics of Investment	Equity Financing	Debt Financing	Grants
Nature	There is no component of repayment of the invested funds	Invested Funds to be repaid within a stipulated time frame with interest	There is no component of repayment of the invested funds
Risk	Higher risk for the investor as he has no guarantee against his investment	Lower risk for the investor as the investment is generally against collateral	No risk for the startup as no collateral is involved
Pressure for Repayment	Less pressure for adhering to a repayment timeline but added pressure from	More pressure for adhering to repayment timeline and generating cash	No pressure for repayment as grants are a form of monetary

	investors to achieve growth targets	flows to meet interest repayments	support provided for a specific purpose
Return to Investor	Capital growth for investors	Interest payments	No Return
Involvement in Decisions	Usually involved in decision making process	Less involvement in decision making	No direct involvement in decision making
Sources	Angel Investors, Self-financing, Family and Friends, Venture Capitalists, Crowd Funding, Incubators	Banks, Non-Banking Financial Institutions, Government Loan Schemes	Central Government, State Governments, Grant Programs of Private Entities

SEED CAPITAL

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

Seed capital can come from the founders, families or friends and is for the market research, product development, and other initial stage operations. Seed funding allows founders to explore their business idea and turn it into a viable product or service, which can then attract venture capitalists.

However, seed funding is a risky investment and should be utilized carefully to avoid diluting ownership. The paperwork and legal fees involved in seed funding are relatively low compared to later rounds of funding, and there are usually no restrictions in the manner of business working as it is still in the nascent stage.

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

I. Venture Capitalist/Private Equity

Venture capital ("VC") / Private Equity ("PE") are the first major investments that a startup typically receives. The preferred securities for these investments are **convertible instruments, such as compulsory convertible preference shares and debentures.** The investor and startup normally enter into a non-binding offer based on the startup's preliminary valuation, followed by due diligence to finalize transaction documents such as:

- A Term Sheet / Letter of Intent / Memorandum of understanding is executed
- Share Subscription Agreement/ Debenture Subscription Agreement is executed. It usually captures subscription amount, conditions, etc.
- Contracting parties may enter into Shareholders' Agreement

- (d) Issuance of Securities through Private Placement process;
- (e) Filing of necessary eForms with ROC related to issuance and allotment of securities;
- (f) Completion of Conditions Subsequent.

II. Angel Investors

Angel investors are usually individuals or a group of industry professionals who invest in startups in exchange for **equity**. Under the SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

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

III. Bridge Round

Bridge round is a financing option that **helps startups “bridge” the gap between larger funding rounds**. It is a short-term financing option often structured as convertible debt. Bridge rounds also provide an interim cash infusion to capitalize the rapid growth or prepare for an IPO of start-ups.

Startups will first target existing investors during the bridge round and raise from new investors, if additional funding is needed.

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

IV. Series Funding

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

Series rounds are crucial for funding of new companies. A **typical series A round is in the range of \$2 million to \$10 million, purchasing 10% to 30%** of the company. The capital raised during a series round is usually intended to capitalize the company **for 6 months to 2 years** as it develops its products, performs initial marketing and branding, hires its initial employees, and undertakes early-stage business operations.

SOURCES OF FUNDS

A. Seed Capital

Small investments may not be worth the legal and financial costs, but companies needing money for operations may seek angel capital. In fields such as software and telecommunications, larger investments are usually unnecessary. However, some fields like pharmaceuticals, semiconductors, and real estate development may have series A rounds in excess of \$10 million.

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

1.	Be Series A Ready	Assessing your company's performance in areas of revenue, business model proof, market fit and customer acquisition can help determine if it's Series A ready.
2.	Start Early	Fundraising takes time, so plan ahead and start at least 7-8 months before you want to raise a Series A round.
3.	Practice your "Pitch"	The key is to take as many meetings as possible. Speak to other founders who have successfully raised Series-A and take their inputs for your pitch.
4.	Create a Fundraise Momentum	Approaching multiple venture funds at the same time is a good idea to get a competitive dynamic into the process.
5.	Know the "standard market practice"	Keep yourself up to date with the commonly offered deal terms for a Series A.
6.	Get the deal terms right	Ensure that the deal terms for your Series A are right and consistent with the trajectory of your business. The Series A terms will play as a foundation for all future rounds, hence important to get them the right the first time itself.
7.	Engage a Professional	If you're raising funds – hire a professional who specializes in the fundraising process.
8.	Paperwork in place	Shorten your transaction closing time by having all paper work in place for due diligence. The paperwork should be organized and ready for review by the Investor appointed legal counsel/diligence team.

B. Debt Financing

i. Loan from Banks & NBFCs

Loans from banks and NBFCs provide funding for purchasing inventory and equipment, as well as for operational and expansion purposes. More importantly, unlike VCs or angels, banks do not seek ownership in your venture. However, there are several drawbacks, such as having to pay interest on the loan regardless of business performance, needing significant collateral and a good track record and a lot of documentation such as:

- Application for loan sanction by borrowers;
- Issue of sanction letter by the Bank;
- Agreement of Loan;
- Security/collateral documentation, such as (i) Deed of Mortgage; (ii) Deed of Hypothecation; etc.

ii. External Commercial Borrowings

External Commercial Borrowings (ECB) in form of **bank loans, buyers' credit, suppliers' credit** can also be availed from non-resident lenders to fund the business requirements. ECB can be accessed under two routes, viz., Automatic Route and Approval Route, depending on various factors.

ECB has certain end use restrictions such as that it **cannot be used for** (a) on lending or investment in capital market; (b) acquiring a company in India; (c) real estate sector etc. Under ECB, the borrower must create certain security in favour of the overseas lender to secure the loan, subject to compliance with ECB guidelines. The documentation required for ECB is similar to that for a bank loan.

iii. CGTMSE Loans

The Government of India launched a scheme called Credit Guarantee Trust for Micro and Small Enterprises to support entrepreneurs. Under this scheme, new and existing micro and small enterprises can borrow **up to 1 crore** from certain banks and institutions without the need for collateral or surety.

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

During the IPO, the Company raises funds by offering and issuing equity shares to the public. An IPO allows a company to obtain large volumes of capital for future growth from a wide pool of stock market investors.

Companies can also issue of American Depositary Receipts ("ADRs") or Global Depositary Receipts ("GDRs") to raise funds from international stock investors.

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

1. Crowd Funding

Crowdfunding is a recent practice where entrepreneurs can get seed funding through small amounts collected from a large number of people, usually through the internet.

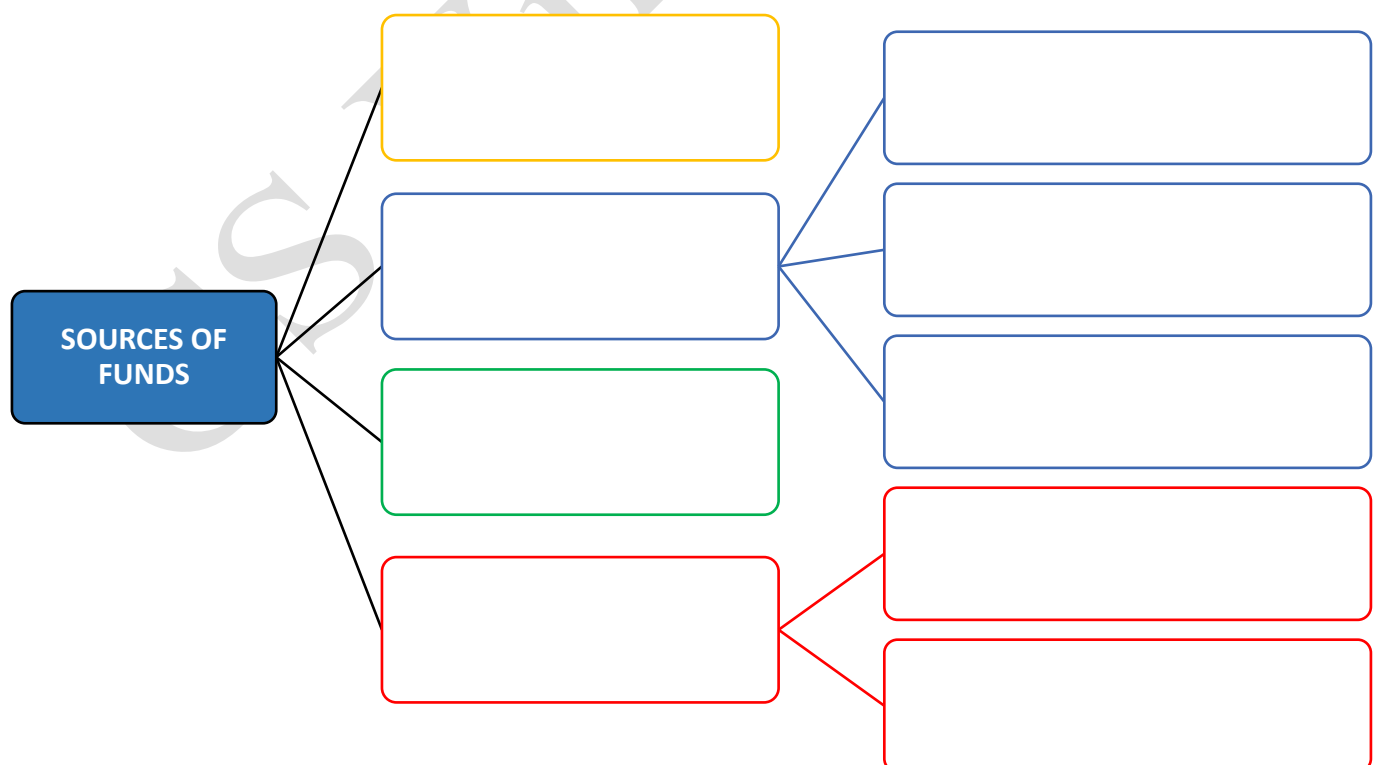
To get the funding, the entrepreneur can showcase their idea to a group of people and convince them of its utility and success. They can do this by creating a profile and presentation that includes the business idea, its impact, and the rewards and returns for investors, supported by suitable images and videos.

2. Incubators

These set-ups precede the seed funding stage and help the entrepreneur develop a business idea by providing resources and services in exchange for small equity stake, ranging from 2-10%.

Incubators offer office space, administrative support, legal compliances, management training, mentoring, access to industry experts and funding through angel investors or VCs.

Incubators are usually government-supported institutes or private business run by industry veterans or companies. The incubation period can be 2-3 years and admission is rigorous. Some of the top options in India include IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT-Kanpur, SIIC and the Shri Ram College of Commerce (SRCC).



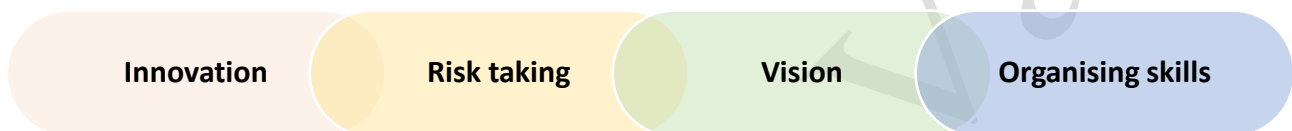
ENTREPRENEURSHIP

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

The concept of Entrepreneurship has various meanings, depending on the situation. On one extreme an entrepreneur is a person of very high aptitude who pioneers change. On the other extreme, anyone who wants to work for himself is considered to be an entrepreneur.

To some economists, the entrepreneur is one who is willing to bear the risk of a new venture if there is a significant chance for profit. Others emphasize the entrepreneur plays a role of an innovator who markets his innovation.

Four Key Elements of Entrepreneurship



Traits of an Entrepreneur

- ✓ He is a person who develops and owns his own enterprise.
- ✓ He is a moderate risk taker.
- ✓ He is innovative.
- ✓ Reflects strong urge to be independent.
- ✓ Persistently tries to do something better.
- ✓ Prepared to withstand the hard life.
- ✓ Exhibits sense of leadership.
- ✓ Also exhibits sense of competitiveness.
- ✓ Tends to persist in the face to adversity.
- ✓ Convert a situation into opportunity.

Characteristics of an Entrepreneur

- (i) **Mental Ability:** Entrepreneur must have creative thinking and must be able to analyse problems and situations.
- (ii) **Business Secrecy:** He should guard his business secrets from his competitors.
- (iii) **Clear Objectives:** He must have clear objectives as to the exact nature of business.
- (iv) **Human Relation:** He must maintain good relations with his customers, employees etc.
- (v) **Communication Ability:** He should have good communication skills means both the sender and the receiver should understand each other's message.

HOW ENTREPRENEURSHIP IS DIFFERENT FROM A STARTUP?

The primary distinction between the startup and entrepreneurship is that an entrepreneur refers to all business ventures, new or old. It includes small businesses, partnerships, firms, sole-proprietorship and corporations which can be based on a new idea or on an existing idea.

On the other hand, a startup is a newly emerged business venture started by individual founders to meet a market gap. Startups mostly mean new businesses that are solving market's problems with unique ideas.

UNICORNS STARTUPS

Unicorn is a term used for privately held startup companies with a **valuation over \$1 billion**. The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.



The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators. However, in the past decade, there has been a significant increase in both investment activity and infrastructure facilities for the expansion of the unicorn tribe.

India has seen a significant increase in the number of unicorns in the past decade, with 107 unicorns as of September 2022, generating large-scale employment. The majority of the unicorns are headquartered in Bengaluru, followed by Delhi and Mumbai. Traditional sectors such as E-commerce, Fin-tech, Supply Chain & Logistics dominate the arena, but unconventional sectors like Content, Gaming, Hospitality and Data management & analytics are also emerging. The minimum and maximum time taken by a startup to become a unicorn are **6 months and 26 years**, respectively. Mensa Brands became a unicorn in just 6 months in 2021, making it one of the fastest unicorns in Asia.

Indian Startups turned Unicorns

In 2021 itself, India witnessed the birth of **44 unicorns** with a total valuation of \$ 93 Bn. Unconventional sectors and sub-sectors marked an entry into the unicorn space including, NBFCs, Cryptocurrency Exchanges, D2C, Cloud Kitchens and many others. Indian unicorns are also exploring the public listing avenues as a next step to realise the growth potential.

Some one of big unicorn names that offered an IPO include Zomato, Nykaa, PolicyBazaar, Paytm and Freshworks. Some of the Startups turned Unicorns are Cred, Meesho, Mobikwik, Mamaearth, Groww, Byju's, Delhivery, Bigbasket, Lenskart, Dream 11, Unacademy, etc.

CASE STUDY ON ZOMATO – INDIA'S FIRST LISTED UNICORN

About the Company:

Zomato was originally incorporated as “DC Foodiebay Online Services Private Limited” as a Private Limited Company under the Companies Act, 1956 at New Delhi, on January 18, 2010. The Company's name was changed to “Zomato Media Private Limited” on May 25, 2012 and then to “Zomato Private Limited” on April 22, 2020.

In 2021, the company converted into a public limited company and was named "Zomato Limited"

Growth of Business from year to year:

Zomato has grown significantly since its inception in 2010, expanding from a single-service provider to a multi-category service provider offering various services. The company has experienced rapid growth in all aspects of its business, particularly food delivery. With the easing of COVID-19 lockdowns in India in May 2020, Zomato's food delivery business began to recover, and in Q4 FY2021, it recorded its highest quarterly gross order value (GOV).

Main Products of Zomato:

Zomato is a technology platform that connects customers, restaurants, and delivery partners. Customers can use the platform to search for and order food delivery, book tables, and make payments.

Restaurant partners can use Zomato's marketing tools to engage and acquire customers. Zomato also offers a procurement solution called Hyperpure, which supplies high-quality ingredients and kitchen products to restaurants. It also provide its delivery partners with transparent and flexible earning opportunities.

Zomato became the nation's first unicorn to make its stock-market debut and its IPO was oversubscribed by a large number of investors.

Zomato's Role during COVID-19:

Zomato introduced contactless payments and deliveries during COVID-19 to minimize face-to-face interactions. This was beneficial for both customers and delivery executives. Zomato trained their delivery partners in hygiene practices, offered free medical consultations, and ensured their financial safety.

Conclusion:

Zomato becomes one of the successful food delivery apps in India. Strong advertising channel, efficient personnel, the good rating system and social media and experienced sources of funds are some of the main successive factor of Zomato.

STUDY ON DELHIVERY – E-COMMERCE-FOCUSED LOGISTICS PLATFORM

About the Company:

Delhivery is a logistics and delivery solutions company that was incorporated as "SSN Logistics Private Limited" in 2011 and later changed its name to "Delhivery Private Limited" in 2015. In October 2021, it became a public limited company and changed its name to "Delhivery Limited".

Its main objects are to provide logistics and delivery solutions to consumers and businesses, as well as web hosting & maintenance services.

Delhivery became a unicorn in 2019 with a valuation of \$1.5 billion and was last valued at \$4.77 billion in May 2022. While the company has incurred restated losses in recent years, its revenue from contracts with customers has been improving.

Main Offerings of Delhivery:

Delhivery is a leading supply chain services company in India that provides logistics courier services to businesses and individuals at affordable rates, without any setup fees or subscription charges. The services offered by Delhivery can be divided into 3 primary departments:

1. **Warehousing** – Flexible warehousing across 40+ cities in India
2. **Transportation** – Largest pan-India reach across 19000+ pin codes and 2500+ cities
3. **E-Commerce** – Ready integration with Shopify, WooCommerce, Magento & Opencart.

Its mission is to help customers build flexible, reliable, and efficient supply chains with low costs. Delhivery serves over 29,200 active customers in various industries, such as e-commerce,

retail, and manufacturing, through its extensive logistics network, infrastructure, and automation investments.

Delhivery's Role during COVID-19:

During the period of April to June 2021, Delhivery partnered with Hunger Heroes to import 8419 oxygen concentrators. It also partnered with "ACT Grants" and others to import 35875 oxygen concentrators, oxygen plants, oxygen cylinders and medical supplies from around the world to distribute them in India.

Conclusion:

Delhivery became a unicorn in 2019 when it raised \$413 million in a Series F round led by SoftBank Vision Fund, Carlyle Group, and Fosun International. The company is known for its innovative strategies and has experienced significant growth since its early days as a small local business.

QUESTIONS:

1. Define a Startup and trace the evolution of start-ups in India.
2. What are the highlights of the Startup Policy of the Government of India?
3. What are the tax exemptions available to Startups in India.
4. Describe the different forms of Debt and Equity Financing which can be raised by Startups.
5. "Start-ups India" initiative is used to promote growth and to help Indian economy by the Government of India. Explain the benefits which are being given to entrepreneurs establishing start-ups.

Lesson 5 - Micro, Small and Medium Enterprises



Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. MSMEs are an important part of the Indian economy, providing employment opportunities and promoting industrialization in rural and backward areas.

The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 (came into force on **02nd October, 2006**) defining the micro, small and medium enterprises and promoting their development and competitiveness. It provides the first-ever legal framework for recognition of the concept of “enterprise” which comprises both manufacturing and service entities.

Lesson Outline	Page No.
➤ The Micro, Small and Medium Enterprises Development Act, 2006 – Important Definitions	
➤ Memorandum of MSME	
➤ National Board for MSMEs – Establishment & Functions	
➤ Classification of Enterprises	
➤ Udyam Registration Process & Benefits	
➤ NSIC Registration	
➤ MSME Schemes	
➤ Micro and Small Enterprises Facilitation Council – Reference of disputes & Composition	

IMPORTANT DEFINITIONS

Advisory Committee:	Section 2 (a) states that Advisory Committee means the committee constituted by the Central Government under sub-section (2) of section 7.
Appointed Day:	Section 2(b) of the Act defines the term appointed day as to mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.
Board:	“Board” means the National Board for Micro, Small and Medium Enterprises established under section 3.
Enterprise:	Section 2(e) of the Act defines the term Enterprise as an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (IDRA) or engaged in providing or rendering of any service or services.
Medium Enterprise:	The term Medium Enterprise has been defined under Section 2(g) of the Act as to mean an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of Sub-section (1) of Section 7. Section 7 deals with the classification of enterprises.
Micro Enterprise:	Micro Enterprise under Section 2(h) has been defined to mean an enterprise classified as such under subclause (i) of clause (a) or sub-clause (i) of clause (b) of Sub-section (1) of Section 7.
Small Enterprise:	Small Enterprise under Section 2(m) of the Act means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of Sub-section (1) of Section 7.
Supplier:	The term supplier defined under Section 2(n) of the Act means a micro or small enterprise, which has filed a memorandum with the authority referred to in Sub-section (1) of Section 8, and includes— (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

MEMORANDUM OF MSME

Any person who intends to establish a micro or small enterprise, may, at his discretion, or a medium enterprise engaged in providing or rendering of services may, at his discretion; or a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA, is required to file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government or the Central Government (Section 8).

ESTABLISHMENT OF NATIONAL BOARD FOR MSMEs

Section 3 of MSMED Act, 2006 provides for establishment of a board by the Central Government, known as National Board for Micro, Small and Medium Enterprises. Its head office shall be in **New Delhi**.

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

- (a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the **ex officio Chairperson** of the Board;
- (b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be **ex officio Vice Chairperson** of the Board, and where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;
- (c) 6 Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio;
- (d) 3 Members of Parliament of whom 2 shall be elected by the House of the People and one by the Council of States;
- (e) the Administrator of a Union territory to be appointed by the Central Government, ex officio;
- (f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, ex officio;
- (g) 4 Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio;
- (h) the Chairman of the Board of Directors of the National Bank, ex officio;
- (i) the Chairman and Managing Director of the Board of Directors of the Small Industries Bank, ex officio;

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

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

FUNCTIONS OF THE BOARD:

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

1) To examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government for promotion and development and for 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 MSMEs.	
3) To advise the Central Government on the use of the Fund or Funds constituted under section 12 of MSMED Act, 2006.	

CLASSIFICATION OF ENTERPRISES

The Government vide its notification dated 26th June 2020 has notified the **composite criteria of classification of MSMEs**. The Udyam Registration process for MSMEs has been simplified by making it fully online, digital, and paperless and based on self-declaration. No documents or proof are required to be uploaded for registering as MSME. Aadhaar and PAN are required for registration.

The criteria for classification of Micro, Small and Medium Enterprises is:

(i)
A **Micro enterprise**, where the investment in plant and machinery or equipment does not exceed **1 crore rupees** and turnover does not exceed **5 crore rupees**;

(ii)
A **Small enterprise**, where the investment in plant and machinery or equipment does not exceed **10 crore rupees** and turnover does not exceed **50 crore rupees**; and

(iii)
A **Medium enterprise**, where the investment in plant and machinery or equipment does not exceed **50 crore rupees** and turnover does not exceed **250 crore rupees**.

MSME includes all establishment engaged either in manufacturing or rendering services but it does **not include those enterprise which are engaged only in trading activities**.

REGISTRATION PROCESS

- (1) The form for registration shall be as provided in the **Udyam Registration portal**.
- (2) There will be **no fee** for filing Udyam Registration.
- (3) **Aadhaar number** shall be required for Udyam Registration.
- (4) The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a karta in the case of a Hindu Undivided Family (HUF).
- (5) In case of a Company or a Limited Liability Partnership or a Co-operative Society or a Society or a Trust, the organisation or its authorised signatory shall provide its GSTIN and PAN along with its Aadhaar number.
- (6) No enterprise shall file more than **one Udyam Registration**: However, any number of activities including manufacturing or service or both may be specified or added in one Udyam Registration.
- (7) Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

It may be Noted that:

- An enterprise for the purpose of this process will be known as Udyam and its Registration Process will be known as 'Udyam Registration'.
- A permanent registration number will be given after registration.
- After completion of the process of registration, a certificate will be issued online.
- This certificate will have a dynamic **QR Code** from which the web page on Udyam Portal and details about the enterprise can be accessed.
- There will be **no need for renewal** of Registration.

BENEFITS OF TAKING UDYAM REGISTRATION

- It will be a **permanent registration** and basic identification number for an enterprise.
- MSME Registration is paperless and based **on self-declaration**.
- There will be **no need for renewal** of Registration.
- Any number of activities including manufacturing or service or both may be specified or added in **one Registration**.
- The Udyam Registration may also help MSMEs in **availing the benefits of Schemes of Ministry of MSMEs** such as Credit Guarantee Scheme, Public Procurement Policy, additional edge in Government Tenders & Protection against delayed payments etc.
- Becomes eligible for **priority sector lending** from Banks.

NSIC REGISTRATION

National Small Industries Corporation (NSIC) enlists Micro & Small Enterprises (MSEs) under **Single Point Registration scheme (SPRS)** for participation in Government Purchases. The units enlisted under SPRS of NSIC are eligible to get the benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Ministry of Micro Small & Medium Enterprises,

Both manufacturing and service provider enterprises having MSME or Udyog Aadhaar registration are eligible for obtaining NSIC registration. To obtain registration, enterprises having MSME or Udyog Aadhaar registration can apply online or by submitting an application at one of the NSIC offices.

MSME SCHEMES

MSMEs are amongst the strongest drivers of economic development, innovation and employment. Some of the major MSME schemes implemented by the Government of India are:

MSME Schemes



A. Prime Minister's Employment Generation Programme (PMEGP)

- The scheme aims to provide financial assistance to set up self-employment ventures and generate sustainable employment opportunities in rural as well as urban areas.
- The scheme is applicable to all individuals above the age of **18 years**.
- In this scheme, own contribution of the beneficiary is 10% of the project cost in case of general category and 5% of the project cost in case of special category (SC/ST/OBC/PH/Women/Ex Servicemen/ NER) Beneficiaries.
- If the application for loan is approved, then the **banks sanction** and release the balance amount of **90% to 95% of the project cost** for setting up of the business.

B. Credit Guarantee Scheme For Micro & Small Enterprises (CGTMSE)

This scheme aims to encourage the first generation entrepreneurs to venture into self-employment opportunities by facilitating credit guarantee support for **collateral free / third-party guarantee-free loans** to the Micro and Small enterprises (MSEs), especially without collateral.

The scheme is applicable to all the **existing entrepreneurs and aspiring entrepreneurs**.

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

This scheme is formulated to:

- support the sustainability and growth of MSEs by addressing common issues such as **improvement of technology, skills, quality, market access, etc.** and
- create/upgrade infrastructural facilities in the **new/ existing Industrial Areas/Clusters of MSEs.**

Its main objective is:

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

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

The main objective of SFURTI is:

- to organize **traditional industries and artisans** into collectives by increasing production and value addition to make products competitive and
- to **promote traditional sectors** and increase income of artisans providing sustainable employment.

The scheme is applicable to existing artisans from **traditional industries, such as Handicraft, Textile, Khadi, Bamboo, Honey etc.**

E. Entrepreneurship And Skill Development Programme (ESDP) Scheme

- ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.
- It is applicable to all the **aspiring and existing entrepreneurs.**
- It facilitates **entrepreneurship/ self-employment awareness and motivation** to different sections of the society including SC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Basic/Advance Welding/ Sheet metal work, Carpentry, Glass & Ceramics etc. is the main target of the scheme.
- The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

F. National SC-ST Hub Scheme

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

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

This scheme aims to establish **Livelihood Business Incubation (LBI) centers** predominantly in **rural and underserved areas** to promote entrepreneurship and skill development. These centers will help beneficiaries create formal micro-enterprises and provide training for wage/self-employment opportunities in the agro rural sector.

The scheme is applicable to **any agency/ institution of Government of India/ State government or existing training centers** under Ministries/Departments of Government of India/State Government, Industry Associations, Academic Institutions and any not-for-profit private institutions with experience in successfully executing incubation and/or skill development programs.

REFERENCE TO MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

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

The said Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an **Arbitrator or Conciliator** in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

Every reference made under this section shall be decided within a period of **90 days from the date of making such a reference**.

Section 19 of the MSMED Act, 2006 states that no application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services, shall be entertained by any court unless the **appellant (not being a supplier) has deposited with it 75%** of the amount in terms of the decree, award or, as the case may be.

While the application to set aside the decree, award, or order is pending, the court may order that a reasonable percentage of the deposited amount be paid to the supplier, subject to such conditions as it deems necessary to impose, until a final decision on the application is made.

COMPOSITION OF MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL

The Council shall consist of **at least 3 but up to 5 members**, to be appointed from amongst the following categories, namely:

(i)	Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and	
(ii)	one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and	
(iii)	one or more representatives of banks and financial institutions lending to micro or small enterprises; or	
(iv)	one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.	

QUESTIONS:

1. ABC Pvt. Ltd., is engaged in manufacture of textiles. The Company has investment of Rs. 5 Crore and Turnover of Rs. 25 Crore. The Company wants to know their category as per definition of MSME. Will your answer differ, if ABC Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover?
2. Discuss in brief the various Government schemes for MSME?
3. State the process of UDYAM Registration.
4. Write a short note on:
 - MSME Memorandum
 - Micro and Small Enterprises Facilitation Council.

Lesson 6 - Conversion of Business Entities

CONVERSION OF

DIFFERENT BUSINESS ENTITIES



Conversion of existing business entity to other form is a strategic decision which needs to be taken to get the benefits of one form of business entity over other form for a particular business at a particular point of time.

This chapter covers the legal and procedural aspects relating to various conversions provided in the Companies Act, 2013 and rules thereunder.

Lesson Outline	Page No.
➤ Introduction	
➤ Conversion of Private Company into Public Company and Vice Versa	
➤ Conversion of Section 8 company into other kind of Company	
➤ Conversion of Company into LLP and Vice Versa	
➤ Conversion of OPC to other type of Company and Vice Versa	
➤ Companies authorized to registered under chapter XXI of the Companies Act, 2013	

INTRODUCTION

The provisions of the Companies Act, 2013 read with rules made thereunder provides for the conversions of various entities from one type of company to other another type of Company. However, in some case the company is mandatorily required for the conversion in to another type of Company.

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered and provided that a company already registered in a class may convert itself as a company of another class by alteration of memorandum (section 13) and articles (section 14) of the company in accordance with the provisions of the Chapter II of the Companies Act, 2013.

An application in this regard is required to be made to Registrar. The Registrar after being satisfied that all provisions have been complied with, shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a fresh certificate of incorporation for the converted entity. The conversion of a company shall not affect any debt, liabilities and obligations. Such debt, liabilities, obligation and contracts may be enforced as if there is no such conversion.

The company can convert into following type of companies:

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

CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

The provisions related to conversion of private company into public company are provided under section 18 (conversion of companies already registered) and 14 (alteration of articles) of the Companies Act, 2013 read with Rule 33 of Companies (Incorporation) Rules, 2014.

Section 14 of the Companies Act, 2013 plays an important role during conversion of a private company into a public company. Conversion of a private company into a public company involves alteration of article of association of private company, which cannot be done without passing special resolution by the company in general meeting. The company shall have minimum of 7 members in the company.

The alteration of the articles of the private company shall be made in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company i.e. minimum and maximum number of members, transfer of shares, number of directors, quorum of the general meeting etc., the company shall, as from the date of such alteration, cease to be a private company.

Benefits of Conversion of Private Company into a Public Company:

Now a days the private companies which are planning for future expansion prefer to get it converted into public limited companies due to various benefits and growth opportunities available to the public companies. The main advantage of being a public company is access to capital fund. Public company can easily raise share capital from existing and new investors. Even the shareholders of public company have the benefit of liquidity of their investments as the shares of public limited company are freely transferable, if listed on stock exchange. Various other benefits being a public company are illustrated below:

BENEFITS OF CONVERSION OF PRIVATE TO PUBLIC COMPANY

Freely
Transferability
of Shares

Greater
Reliability

Raising of
capital from
large group

Listing of shares at
stock exchange

Future
expansion

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

1. **Holding a Board Meeting:** Issue a notice (**not less than 7 days**) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Private Limited Company into Public Limited Company. The main agenda for this board meeting would be:
 - a. To pass a board resolution to get in-principal approval of Directors for conversion of private company into a public company.
 - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Private company into a Public company.
 - c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of private limited company into public limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
 - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
 - e. Pass Board resolution for increase in number of Directors, if Directors are less than 3 in the company.
 - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the RoC and to do all such acts and deeds necessary to give effect to the proposed conversion.
 - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast **21 clear days** before the actual date of General Meeting. **Shorter notice** can be issued if the consent of majority of shareholders holding **95% of paid-up capital** has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in MOA and AOA for such conversion including the removal of restrictive provisions as applicable to the private limited company and for change of name of the company to delete the word "private".

4. **Filing of e-form MGT-14:** As per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
- Notice of general meeting along with copy of explanatory statement under section 102;
 - Certified true copy of special resolution;
 - Altered memorandum of association;
 - Altered articles of association
 - Certified true copy of board resolution may be attached as an optional attachment.
5. **Filing of e-form INC-27:** For giving effect to the conversion, an application in E-Form INC-27 needs to be filed with the RoC along with prescribed fees within fifteen days of passing of Special Resolution as per Rule 33 of Companies (Incorporation) Rules, 2014. Following documents are required to be attached with e-form INC-27:
- It is mandatory to attach minutes of the member's meeting where approval was given for conversion and altered articles of association;
 - Certified True Copy of Special Resolution;
 - Altered articles of association;
 - Certified True Copy of Special Resolution;
 - Certified true copy of board resolution may be attached as an optional attachment;
 - Other information if any can be provided as an optional attachment(s).
6. **Scrutiny of documents by ROC and issuance of fresh Certificate of Incorporation:** As per Section 18, for conversion of a private company into a public company, the Registrar shall on an application made by the company and on the approval of E-Form MGT-14 and E-Form INC-27, after satisfying himself that the provisions of Chapter II of the Companies Act, 2013 applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

Points to ponder:

- Appropriate steps should be taken to increase the number of members to at least seven, if the company has less than **seven members**.
- Name clause** of Memorandum needs to be amended to exclude the word 'Private'.
- The **Articles of Association** should be amended to remove the restrictive provisions applicable to the Private Company.
- If the number of **directors** of the Company is two, the number of directors should be increased to at least three.

- Company has **not defaulted in filing** of Annual Returns or financial Statement due for filing with the Registrar.
- Company has **not failed to pay or repay matured deposits or debentures** or interest thereon.

Post Conversion requirements to be arranged by the company

Once the company gets converted into public limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

- A fresh PAN card has to be applied to reflect the conversion done.
- The bank account details of the company needs to be updated.
- Proper intimation needs to be given to tax authorities and other regulatory authorities about the conversion.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.
- A fresh rubber stamp is required to be arranged with the new name of the Company.
- Paint or affix or print, new name along with the former name so changed on the outside of every office.
- Inform about the conversion from private limited to public limited to various Government authorities like GST department, Regional Provident Fund department, Income tax department, etc.
- Intimate all the banks where the current accounts of the company are opened about the conversion with regard to change in the name and status of the Account holder.

CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE LIMITED

Section 13, 14, 15 & 18 of the Companies Act, 2013, Rule 33(2) the Companies (Incorporation) Rules, 2014 regulate the conversion of public company into private company. Conversion of status of company from public to private would become effective from the date of receipt of the approval of the Registrar by means of issuing a new certificate of Incorporation.

As per **Section 13 and Section 14** of the Companies Act 2013 read with Rule 33 of the Companies (Incorporation) Rules, 2014. A public company can be converted into the private company only after obtaining its shareholders' approval by way of passing of **special resolution in general meeting**.

At the time of Conversion Company have to make several alterations. Some of them are mentioned below:

- Change of Name;
- Alteration of Memorandum of Association;
- Alteration of Article of Association;
- New Certificate of Incorporation;
- Alteration of Letter head, book & papers.

Benefits of conversion of Public Limited Company into Private Limited Company:



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

- Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Public Limited Company into Private Limited Company. The main agenda for this board meeting would be:
 - To pass a board resolution for approving proposal of conversion of Public Company into a Private Company, and to recommend the proposal for conversion for approval of shareholders in the General Meeting of the Company.
 - To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Public company into a Private company.

- c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of public limited company into private limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
 - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
 - e. Pass Board resolution for considering and approving the reduction in the total number of members of the company to a maximum of 200 members.
 - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
 - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Private Limited Company.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards-2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Shorter notice can be issued if the consent of majority of shareholders holding 95% of paid-up capital has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
 3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Public Limited Company into a Private Limited company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including insertion of restrictive provisions as applicable to the private limited company and for change of name of the company to insert the word "private".
 4. **Filing of e-form MGT-14:** In case of conversion of Public Company into a Private Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
 - (a) A certified true copy of Altered MoA;
 - (b) A certified true copy of Altered AoA;

- (c) Notice of General Meeting along with an explanatory statement;
 - (d) Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.
5. **Publication of an Advertisement:** The Company shall, at least twenty-one days before the date of filing of the application with Regional Director must advertise an application for conversion of public limited company into private limited company in a vernacular newspaper in the district, and in English newspaper, which is circulated widely in the State in which the Registered Office of the Company is situated as per Rule 41(5) of the Companies (Incorporation) Rules, 2014. The application should be advertised in **Form INC-25A**. The Company shall also serve the individual notice by registered post with acknowledgement due to each of the Creditors and debenture holders of the company and to the RD, Registrar of Companies and the regulatory body for the same.
6. **File an Application with the Regional Director for Conversion of Public Company into Private Company:** The Company must draft an application for the conversion of Public Company into Private Company and file the same with the Regional Director within sixty days from the date of passing of Special Resolution in **e-Form RD-1** along with the prescribed fee as per Rule 41(1) and 41(3) of the Companies (Incorporation) Rules, 2014. The form needs to be filed along with the following annexures:
- (a) Draft copy of altered Memorandum of Association and Articles of Association, with proposed alterations including the alterations pursuant to Section 2(68).
 - (b) Copy of minutes of General Meeting.
 - (c) Copy of Board resolution dated not earlier than thirty days authorizing to file application for such conversion.
 - (d) Declaration by a Key Managerial Personnel that pursuant to the provisions of Section 2(68) of the Companies Act, 2013 that the company limits the number of its members to 200 and also stating that no deposit has been accepted by the Company in violation of the Act and rules made thereunder.
 - (e) Declaration by a Key Managerial Personnel that there has been no non-compliance of sections 73 to 76A, 177 , 178, 185, 186 and 188 of the Act and rules made thereunder.
 - (f) Declaration by a Key Managerial Personnel and in case if there is no KMP, by any director of the company, that no resolution is pending to be filed in terms of sub-section (3) of section 179 and also stating that the Company was never listed in any of the Stock Exchanges and if was so listed, all necessary procedures were complied with for complete delisting of the shares in accordance with the applicable rules and regulations laid down by Securities Exchange Board of India.

(g) List of Creditors and Debenture Holders of a date not more than 30 days before the date of filing of Application with Regional Director along with the name and address of creditors and debenture holders, the nature of claims, debts and liability with amount due and in respect of any contingent or unascertained debt, the estimated value of such debt.

(h) An affidavit signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be managing director, where there is one, to the effect that full enquiry have been made into affairs of the company and have formed an opinion that the list of creditors and debenture holders is correct, and that the estimated value of the debts or claims payable on contingency or not ascertained are proper estimates of the values of such debts and claims that there are no other debts, or claims against, the company to their knowledge.

7. **Approval of Application for conversion by Regional Director or seeking of further information, if required, by Regional Director:** Where no objection has been received from any person in response to the advertisement or notice published in the newspaper and the application is complete in all respects, the concerned Regional Director shall pass an order approving the application within 30 days from the date of receipt of the application as per Rule 41(6)(a) of the Companies (Incorporation) Rules, 2014.

But where an objection has been received by the Regional Director or Regional Director on examining the application has specific objection under the provisions of the Act, the same shall be recorded in writing and shall hold a hearing/hearings within a period of 30 days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing.

In case where no consensus is received, the Regional Director may approve the conversion, if he is satisfied having regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene the provisions of the Act, with reasons to be recorded in writing.

Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within 30 days from the date of receipt of the application, call for such information or defects or incompleteness, directing the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of 15 days in e-Form RD-GNL-5. In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within 15 Days, the Regional Director shall reject the application with

reasons within 30 days from the date of filing application or within 30 days from the date of last re-submission made, as the case may be.

8. **Filing of e-form INC-28 with the Registrar of Companies:** Company shall file the order conveyed by the Regional Director with the Registrar in Form INC-28 within 15 days from the date of receipt of approval as per Rule 41(9) of the Companies (Incorporation) Rules, 2014 along with the prescribed fee.
9. **Filing of e-form INC-27 with the Registrar of Companies:** Company shall file the copy of order approving the alteration of article along with the certified true copy of altered articles with the Registrar of Companies in Form INC -27 along with the prescribed fee together within 15 days from the date of receipt of the order.
10. **Issuance of fresh Certificate of Incorporation:** The Registrar on the approval of E-Form MGT-14 and E-Form INC-27, after satisfying himself that the provisions applicable for conversion of companies have been complied with, close the former registration of the company and after registering the documents, issue a fresh certificate of incorporation in the same manner as its first registration.

Points to ponder:

- Name clause of Memorandum needs to be amended to include the word 'Private'.
- The Articles of Association should be amended to include the restrictive provisions applicable to the Private Company.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- Company has not failed to pay or repay matured deposits or debentures or interest thereon.
- Reduce in the total number of members of the company to a maximum of 200 members.

Post Conversion requirements to be arranged by the company

Once the company gets converted into private limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

- Arrange new rubber stamps with the new name, and all the stationary in the new name of the Company.
- Arrange printing of fresh copies of Altered Memorandum of Association and Articles of Association with new Certificate of Incorporation.
- Paint the new name of the Company outside every office, building etc. along with former name so changed.

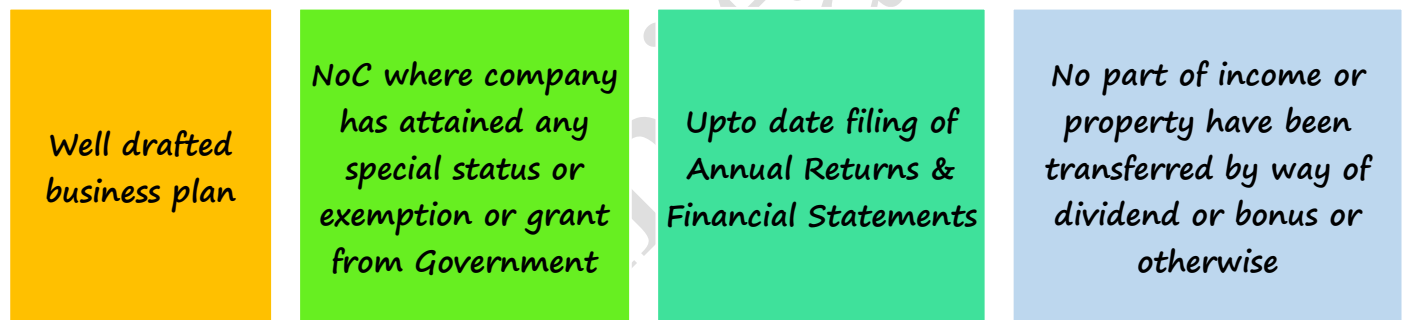
- Get the new name printed on its business letters, letter heads, Bill heads, Invoice Forms, Receipt Forms and all other official publications along with former name so changed.
- Inform about the conversion of the Company to all concerned persons/ govt. authorities.
- Intimate all the Banks where Company is operating Bank Accounts about its conversion and file necessary applications and documents with regard to change in the name of Account holder.
- Make application to Income Tax Department for new Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN).

CONVERSION OF SECTION 8 COMPANY INTO OTHER KIND OF COMPANY

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

Section 8 Company cannot be converted to One Person Company.

Pre-requisites for conversion of Section 8 Company



Detailed Procedure for Conversion of a Section 8 Company into any other Company:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Section 8 Company into any other Company. The main agenda for this board meeting would be:

- a. To pass a board resolution to get in-principal approval of Directors for conversion of section 8 company into any other company.
 - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a section 8 company into any other company.
 - c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of section 8 Company into any other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
 - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
 - e. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
 - f. To approve the draft new set of Memorandum of Association and the Articles of Association.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 14 clear days' before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Section 8 Company into any other Company along with alteration in MOA and AOA under section 14.
4. **Filing of e-form MGT-14:** In case of conversion of Section 8 Company into any other company special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
- A certified true copy of Altered MoA.
 - A certified true copy of Altered AoA.
 - Notice of General Meeting along with an explanatory statement.

- Certified true copy of Special Resolutions passed in General Meeting along with explanatory statement.
5. **Filing of e-form INC-18 with the Regional Director and Registrar:** The Company shall file an application in Form No. INC-18 with the Regional Director along with the prescribed fees for conversion of section 8 company into private limited company along with the following attachments:—
- A certified true copy of the special resolution.
 - A copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind.
 - The proof of serving of the notice served to all the authorities (Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating).

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

6. **Publication of an Advertisement:** After submitting an application to the Regional Director, the Company should publish a notice in **FORM INC-19** in the newspaper at least one in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, for the Conversion of Section 8 Company into any other Company and on the website of the company, if any. The publication in the newspaper should be done within a week from the date of submitting an application to the Regional Director.
7. **Order of Conversion by Regional Director:** On receipt of application and on being satisfied, the Regional Director shall pass the order of conversion with certain conditions, as may be required depending upon the facts and circumstances of each case. However, before imposing any conditions or rejecting the application, the Regional Director shall give a reasonable opportunity of being heard to the Company.
8. **Issuance of fresh Certificate of Incorporation:** On receipt of all the required documents, the Registrar of Companies will Issue Fresh Certificate of Incorporation to the applicant. When the license of Company as Section 8 Company is revoked, the Company can apply for the Conversion of its status and name with the Registrar of Companies in **Form INC-20**.

Points to ponder:

- The Company has not transferred any part of the Income or property of the Company by way dividend or bonus or otherwise.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- No objection certificate is required in case where the Company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority or from Government.

Effect of conversion of Section 8 Company into Private Company

- The Company cannot claim the privileges and exemptions as enjoyed by Section 8 Company after the conversion.
- The newly converted Company has to pay the difference between the balance of market price and purchase price, if before the Conversion the Company has bought any **immovable property from the Government** at lower rates than the market price.
- Where the Company is left with some **unutilized income and accumulated profits** which are brought forward from the previous year the same should be utilized for the purpose of settlement of outstanding dues or any amount due to suppliers or creditors.
- After settlement of all the dues, if any amount is left, it will be transferred to the **Investor Education & Protection Fund**. The amount should be transferred within 30 days of the Conversion of Section 8 Company into other form of Company.

CONVERSION OF COMPANY INTO LLP

Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.

Before proceeding for conversion of company into Limited Liability Partnership one needs to confirm regarding certain pre-conditions and once all these conditions are fulfilled, the process for conversion of company into Limited Liability Partnership can be initiated.

Conditions to fulfill for conversion:

- All members/directors will become the partners of the newly converted LLP
- All statutory compliances have been fulfilled including Income tax returns, RoC returns, etc. up-to-date
- Creditors must agree for the conversion
- No prosecution or pending cases against the company proposing to convert

- There should be no pending E-Forms of a company
- There should be no open charges for or against the Company.

Detailed Procedure for Conversion of Company into Limited Liability Partnership:

- Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Company into Limited Liability Partnership. The main agenda for this board meeting would be:
 - To pass a board resolution to get in-principal approval of Directors for conversion of Company into Limited Liability Partnership.
 - To fix date, time and place for holding general meeting to get written approval of shareholders, by way of Special Resolution, for conversion of Company into Limited Liability Partnership.
 - To authorize the Director to issue notice of the general meeting as approved by the board.

Before conducting board meeting obtain DIN for all those designated partners who don't have DIN already.
- Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' written approval for Conversion of Company into Limited Liability Partnership.
- Application for Name Availability on LLP Portal:** The Company must apply for a name reservation, by filing web based form 'RUN-LLP' with ROC along with the board resolution passed by the Company approving the conversion into LLP and obtain Name Approval Letter from ROC.
- Filing of incorporation documents in LLP Portal:** Once the Company reserves its name, LLP must file its incorporation in web based form FiLLip (Filing of Form of Incorporation) with ROC along with the below-mentioned documents:
 - Proof of Address of Registered office of LLP

- Subscription sheet signed by the promoters
- Latest Utility bill of registered office
- NOC of owner of registered office, if taken on rent / lease
- Notice of Consent & Appointment of Designated Partners with their personal details
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner

5. **Application for Conversion of company into LLP:** For converting the existing Company into LLP, FiLLip Form 18 must be duly filled. The following information is required to be furnished along with the form 18:

- Statement of shareholders
- Incorporation Documents & Subscribers Statements
- Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor
- List of all the Secured creditors along with their consent to the conversion
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return
- Approval from any other body/authority as may be required
- Particulars of pending proceedings from any court/Tribunal etc.

6. **Drafting of limited liability partnership agreement:** After the incorporation, the designated partners must enter into an LLP agreement in prescribed format. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to filed in e-form 3 within 30 days of incorporation along with the Certificate of incorporation as LLP form ROC but in order to avoid any dispute between the partners as to the terms & conditions of the agreement the same can be filed afterwards. The contents of limited liability partnership agreement are as follows:

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

7. **Issuance of fresh Certificate of Incorporation:** After all formalities and filings been complied with by the applicants and approved by the Ministry, Registrar of LLP will issue a Certificate of Registration in Form no. 19 as to conversion of the LLP. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

Effect of Conversion from Company to LLP:

- The Company gets dissolved after conversion.
- Registrar of Company will remove the name of Company from the register of Companies maintained with it.
- Conversion does not affect present liability, obligation, agreements and contracts.
- On conversion of Company into LLP, assets of the Company will be transferred to LLP. There is no requirement of instrument of transfer. Hence, no stamp duty implication is required for such transfer.
- After conversion into LLP there is no requirement for holding minimum number of meetings as prescribed by the Companies Act, 2013.

CONVERSION OF LLP INTO COMPANY

Several businesses started in India as Limited Liability Partnership (LLP), may now wish to convert into a private limited company for more growth in business or for infusing equity capital. The entire world is gradually drifting towards one global market without any trade barriers between the countries. With the emergence of corporate work culture and promotional startup benefits, a great chunk of entrepreneurs are looking forward to corporatization. This step can be initiated in 2 ways as enumerated below:

(i) **Incorporation of a new corporate entity.**

(ii) **Conversion of existing entity (e.g. LLP/ Partnership Firm) into a Company.**

The second option of conversion of Limited Liability Partnership into a corporate entity might be practical for the existing entities to switch over from one mode of business to another. The process of conversion is a step by step procedure, which is a technical process but if handled with expert knowledge may be time and cost saving, as well.

The provisions regarding Conversion of Limited Liability Partnership into Company are under “the Companies (Authorized to Register) Amendment Rules, 2016.

However, there are various requirements which need to be satisfied for converting an LLP into a Private Limited Company, for instance, an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company), approval from all the partners is required, advertisement in newspaper is to be done in a local and a national newspaper, NOC is required from the ROC where such LLP is registered and then all the incorporation process has to be undertaken which includes:

- 1) **Approval of Name:** Hold a meeting of the partners to take assent of majority of its members summoned for the purpose of registering the LLP under Section 366 of the Companies Act, 2013. To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the LLP as a Company. One of the major advantages is that the business can be run under the same name as that of the LLP except that in addition to the name of the LLP the words 'limited' or 'private limited' has to be added. Apply for name reservation in form RUN in V3 portal. It is a web based form.
- 2) **Securing DSC and DIN:** In case all members, who are future directors of the company after conversion, do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors of the company must be obtained. For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs. The form must be accompanied by self-attested address proof and identity proof with 1 recent passport size color photo of the applicant. All the required documents should be attested by a practicing cost accountant or a practicing chartered accountant or a practicing company secretary.
- 3) **Filing form no. URC – 1:** After getting the approval of name from Registrar of Companies, the applicant must prepare & file the form no. URC-1 in addition to the following documents:
 - List of the members with various details viz. names, address, shares held by them appropriately, etc.
 - List of the first directors of the private company with various details viz. names, address, the DIN, passport number with an expiry date, etc.
 - An affidavit from every person proposed as first directors, that he is not banned to be a director under section-164 and all the necessary documents filed with the registrar for the registration of firm must contain information which is complete and correct & true to be best of his belief and knowledge.

- A list including the names & addresses of partners of LLP and a copy of LLP agreement & certificate of registration duly verified by two designated partners of LLP must be enclosed.
- A statement indicating the following specifications.
- The nominal share capital of firm & the number of shares into which it is separated.
- The number of shares taken & the amount paid for every share.
- The name of the firm, with the addition of word Limited or private limited is required.
- A written consent or No objection certificate from all creditors.
- Copy of newspaper advertisement, statement of accounts of the company which must not be 6 days preceding the date of the application and it must be duly certified by the auditor.
 - Written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
 - an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable;
 - A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

In case of an application by a Limited Liability Partnership or firm for registration as a company limited by guarantee or as an unlimited company –

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm, as the case may be with proof of membership;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
- (iii) in case of a firm, deed of partnership, bye laws or other instrument constituting or regulating the company and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
- (iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of guarantee;
- (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration;

- (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899), as applicable;
 - (viii) A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.
- 4) **Filing of SPICe, SPICe MOA and SPICe AOA:** Similar to incorporation of new company, the process has to be followed by filing SPICe + form along with required attachments for the converted entity.

Conditions to fulfill for conversion:

- ~ All the partners should have approved the conversion of LLP.
- ~ The LLP should have complied with all the required returns and compliances.
- ~ Publication related to such conversion of LLP into a Private Company, in at least two newspapers, one in English Language and another in any vernacular language newspaper of the place of registered office.
- ~ The Limited Liability Partnership must have at least two partners who are required for incorporation of a Private Limited company.
- ~ There should be no open charges for or against the Company.

Points to ponder:

- There is **no capital gain tax** in a private limited company.
- Existing LLP has just been replaced by the Private Limited Company by adding the "Pvt. Ltd." at the end of its name.

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

One Person Company (OPC) refers to a form of company that has only one person as a member, unlike a private company where the minimum number of members are two or a public company where the minimum number of members are seven. Section 18 of the Companies Act, 2013 read with Rule 6 of the Companies (Incorporation) Rules, 2014, explicitly provide provisions for the voluntary conversion of One Person Company (OPC) to other forms of the Company, as the case may be.

When conversion is necessary into a Private Company or Public Company

1. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with section 122(3) of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2. A One Person Company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.
3. The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:
 - (a) Altered MOA and AOA;
 - (b) copy of resolution;
 - (c) the list of proposed members and its directors along with consent;
 - (d) list of creditors; and
 - (e) the latest audited balance sheet and profit and loss account.
4. On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

Detailed Procedure for Conversion of OPC into company:

1. **Holding of Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a One Person Company into Other Company. The main agenda for this board meeting would be:
 - a. To pass a board resolution to get in-principal approval of Directors for conversion of One Person company into other company.

- b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of One Person Company into other company.
 - c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of One Person Company into other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
 - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
 - e. Pass Board resolution for increase in number of Directors as per the type of company chosen for conversion.
 - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
 - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
 3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for OPC into Other Company along with alteration in MOA and AOA under section 14 for such conversion.
 4. **Filing of e-form MGT-14:** In case of conversion of One Person Company into Other Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
 - a. Notice of general meeting along with copy of explanatory statement under section 102;
 - b. Certified true copy of special resolution;
 - c. Altered memorandum of association;
 - d. Altered articles of association;

- e. Certified true copy of board resolution may be attached as an optional attachment.
5. **Filing of e-form INC-6:** The One Person Company (OPC) shall file an application in Form No. INC 6 within 30 days of passing resolution of conversion, along with the fees prescribed in the Companies (Registration offices and fees) Rules, 2014 and the following documents:
- Altered Memorandum of Association and Articles of Association
 - Copy of Special Resolution along with explanatory statement
 - List of the proposed members and its directors together with their consent
 - List of creditors
 - Copy of latest duly attested financial statements that is audited balance sheet and profit and loss account
 - Declaration by way of affidavit of Directors duly sworn in confirming that all members and creditors of the company have given their consent for conversion.
6. **Issuance of New Certificate of Incorporation:** On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company in Form INC-25.

Conditions to fulfill for conversion:

- Alteration of Memorandum of Association and Articles of Association in accordance with Section 122(3) of the Companies Act, 2013 to give effect to the conversion.
- Increase the minimum number of directors to two or three as the case may be.
- Increase the minimum number of members to two or seven as the case may be.
- Due compliance with the provisions of section 18 of the Companies Act, 2013.

Points to ponder:

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

CONVERSION OF COMPANY INTO ONE PERSON COMPANY

Legal Provisions related to Conversion of Private Company into OPC are given in Section 18 the Companies Act, 2013 read with Rule 7 of Companies (Incorporation) Rules, 2014. One Person Company (OPC) can be easily managed with very fewer compliances to be followed as compared to other form of Company. The Conversion of Private Company into OPC will benefit most people associated with the Company.

1. **Holding of Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-1 for convening a Board Meeting to consider the proposal for converting a Company into One Person Company. The main agenda for this board meeting would be:
 - a. To pass a board resolution to get in-principal approval of Directors for conversion of a Company into One Person Company.
 - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Company into One Person Company.
 - c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of a Company into One Person Company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
 - d. To authorize the Director to issue notice of the general meeting as approved by the board.
 - e. To authorize the director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
 - f. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of One Person Company.
2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Company into One Person

Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion. Before passing the Special Resolution in the General Meeting, the Company should get a No Objection Certificate (NOC) in writing from the existing shareholders and creditors.

4. **Filing of e-form MGT-14:** In case of conversion of Company into One Person Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3) (a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
 - a. Notice of general meeting along with copy of explanatory statement under section 102;
 - b. Certified true copy of special resolution;
 - c. Altered memorandum of association;
 - d. Altered articles of association;
 - e. Certified true copy of board resolution may be attached as an optional attachment.
5. **Filing of e-form INC-6:** The application for the Conversion of Private Company into OPC should be filed to the RoC in Form INC-6 with the following attachments:
 - The total list of members and creditors.
 - The latest Audited Balance Sheet and the Profit and Loss Account.
 - The copy of No Objection Letter from shareholders and creditors.
 - An affidavit of the declaration of the Directors of Company that all the creditors and shareholders have given consent for the Conversion of Private Company into OPC.
6. **Issuance of New Certificate of Incorporation:** On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

Points to ponder:

- A minor shall not become a member or nominee of the One Person Company.
- The Shareholder should not be holding any other OPC, or he/she should not be a member of any other OPC.
- The Shareholder of the new OPC should be a resident person of India.
- The Shareholder of the new OPC should have Indian nationality.

COMPANIES AUTHORISED TO REGISTER UNDER THE COMPANIES ACT, 2013

- (1) For the purposes of Part XXI Companies, the word “**company**” includes any partnership firm, LLP, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.
- (2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force, and consisting of two or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:
Provided that—
- (i) a company registered under the Indian Companies Act, 1882/1913/1956, shall not register in pursuance of this section;
 - (ii) a company having the liability of its members limited by any Act of parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
 - (iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;
 - (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
 - (v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;
 - (vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses

of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;

(vii) a company with less than seven members shall register as a private company.

(3) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Once the compliance with respect to requirements of chapter XXI of the Act is done with respect to registration and on payment of prescribed fees under section 403 of the Act, the Registrar shall certify that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited.

As per section 368 of the Act, all the properties whether movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act. However the registration under this part shall not affect its rights or liabilities in respect of any debts or obligations incurred or any contract entered by or behalf of the company before registration.

With respect to the suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Effect of Registration under Part XXI of the Act

1) All provisions contained in any Act of Parliament or any other law for the time being in force constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and articles of Association.

- 2) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner as if it had been formed under this Act, subject to following:—
- (a) Table F in Schedule I shall not apply unless it is adopted by special resolution;
 - (b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;
 - (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration;
 - (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories shall apply.
- 3) The provisions of this Act with respect to the registration of an unlimited company as a limited company; the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up and the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up shall apply to these companies notwithstanding anything in any Act of Parliament or any other law for the time being in force.

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

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

QUESTIONS:

1. ABC Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on the following matters :
 - (a) Provisions regarding notice of general meeting
 - (b) Whether company required to obtain 'No Objection Certificate'.
 - (c) Types of e-forms required to be filed with ROC for such conversion
 - (d) Penalty for contravention of provisions with respect to conversion.
2. Discuss the procedure for conversion of section 8 Company into other form of company?
3. State the essential pre-conditions of companies for Registration under Part XXI of the Act.
4. What are the benefits of conversion of Public Limited Company into Private Limited Company?
5. What are the important points to be kept in mind for conversion of a Private Limited Company into a Public Company?

Lesson 7 - Non-Corporate Entities

Non-Corporate Entities



This Chapter deals with the concept of Non-Corporate Entities like Partnership, Hindu Undivided Families, Sole Proprietorship, Multi-State Cooperative Society, Trust and societies, formation and registration of NGOs, namely, Section 8 Company its features, exemptions available to them and registration process.

Lesson Outline	Page No.
➤ Introduction	
➤ Partnership	
➤ Hindu Undivided Family (HUF)	
➤ Sole Proprietorship	
➤ Multi State Cooperative Society	
➤ Trust	
➤ Partnership Deed & Trust Deed	
➤ Society	
➤ Mega Firm/Multidisciplinary Firm (MDF)	

PARTNERSHIP

Partnership is an association of persons who agree to combine their financial resources and managerial abilities to run a business and share profits in an agreed ratio. This type of business usually arises from the need for more capital, better supervision, and risk-sharing.

Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm. In India, Partnership firms are governed by the Indian Partnership Act, 1932.

CERTAIN KEY DEFINITIONS CONTAINED IN THE INDIAN PARTNERSHIP ACT, 1932:

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

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

HOLDING OUT [SECTION 28]

1. Anyone who by words spoken or written or by conduct **represents** himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person does or does not know that his representation has reached the person so giving credit.
2. Where after a **partner's death**, the business is continued in the old firm name, the continued use of that name shall not of itself make his legal representative liable for any act of the firm done after his death.

DISSOLUTION OF A FIRM [SECTION 39]

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

INSOLVENCY AND BANKRUPTCY OF PARTNERSHIP FIRM

The Insolvency and Bankruptcy of partnership firms where the amount of default is not less than Rs. 1000 shall be governed by Insolvency and Bankruptcy Code, 2016.

IS PARTNERSHIP FIRM A BODY CORPORATE UNDER COMPANIES ACT, 2013?

The definition of Body Corporate under **Section 2 (11) of the Companies Act, 2013** specifically says that it does not include a co-operative society and any other body corporate (not being a company defined in the Act), which the Central Government may notify.

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

- it is merely an association of individuals and the law does not recognize it to have an existence distinct from its partners.
- it does not have a perpetual succession.
- since it is not regarded as a legal entity, therefore the firm cannot enter into any contract on its own.
- it can sue or be sued only if the Firm is a registered Partnership.

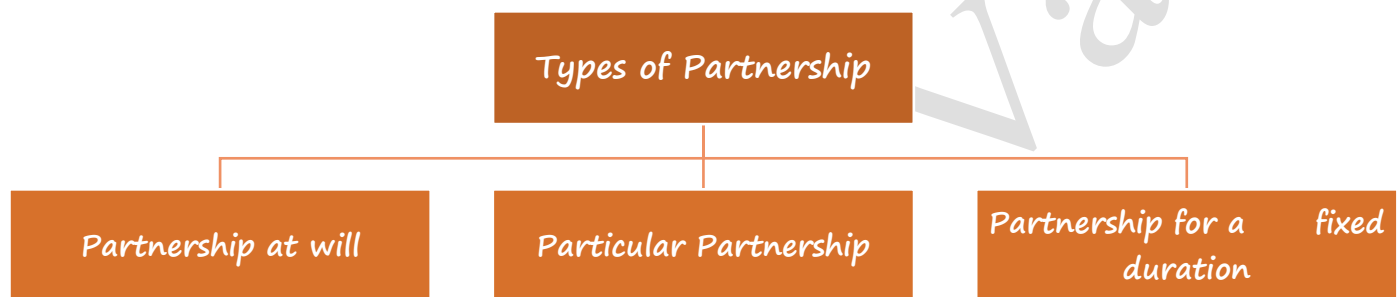
FEATURES OF PARTNERSHIP

1.	Existence of an agreement	Partnership is formed on the basis of an agreement (Partnership Deed) between two or more persons to carry on business.
2.	Engagement in business	A partnership can be formed only on the basis of a business activity. Its business may include any trade, industry or profession.
3.	Sharing of profits and losses	In a partnership firm, partners are entitled to share in the profits and are also to bear the losses, if any.
4.	Agency relationship	The partnership business may be carried on by all or any of the partners acting for all. Thus, each partner is a principal and so can act in his own right. At the same time, he can act on behalf of other partners as their agent.
5.	Unlimited Liability	The liability of partners is unlimited. In case some obligation arises then not only the partnership assets but also the private property of the partners can be taken for the payment of liabilities of the firm.
6.	Common Management	It is not necessary for all partners to participate in the day-to-day activities of the business but they are entitled to participate. Even if partnership business is run by some partners, the consent of all other partners is necessary for taking important decisions.
7.	Restriction on transferability of share	No partner can transfer his share in partnership to any other person, without the consent of all other partners.

8.	Registration	To form a partnership firm, it is not compulsory to register it. However, if the partners so decide, it may be registered with the Registrar of Firms.
9.	Duration	The partnership firm continues at the pleasure of the partners. Legally a partnership comes to an end if any partner dies, retires or becomes insolvent. However, if the remaining partners agree to work together under the original firm's name, the firm continue its business after settling the claim of the outgoing partner.

TYPES OF PARTNERSHIP

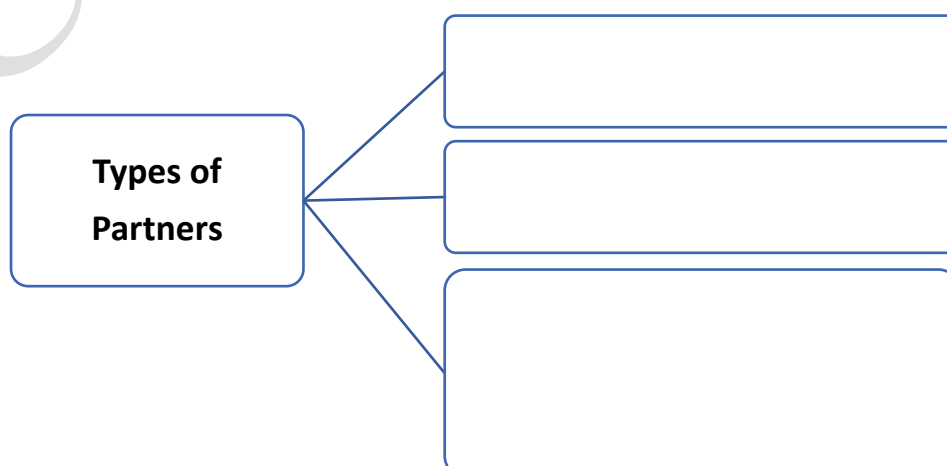
According to the nature of agreement among partners, there can be three types of partnership as follows:



- (i) **Partnership at-will:** Such a partnership exists on the will of the partners i.e., it can be brought to an end whenever any partner gives notice of his intention to do so.
- (ii) **Particular partnership:** A particular partnership is formed for undertaking a particular venture. It comes to an end automatically with completion of the venture.
- (iii) **Partnership for a fixed duration:** Such partnership is for a fixed period of time say 2 years, 5 years or any other duration.

TYPES OF PARTNERS

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



- (i) **Active Partners:** Partners who take active part in the conduct of day-to-day business of the firm on behalf of the other partners are called active partners.
- (ii) **Sleeping or dormant partners:** Sleeping or dormant partners are those who do not take active part in the management of the business but are bound by the activities of other partners. Such partners only contribute capital in the firm and share in the profits and losses of the business.
- (iii) **Others:** Active and sleeping partners are, as a matter of fact, the full-fledged partners. However, there are other types of partners also who may be associated with partnership directly or indirectly, such as:
 - (a) **Nominal Partners:** Nominal partners are those who lend their name to a business without contributing capital or taking part in management. Such partners are liable to third parties like other partners, but do not have a pecuniary interest unless they have a share in the profits. For example, a reputed industrialist may lend their name to a family-run business without any profit motive.
 - (b) **Partners by holding out:** If a person by his words or conduct holds out to another that he is a partner, he cannot later deny that he is not a partner. This person is known as a "partner by holding out" and can be held liable for paying the debts of the firm to third parties.
 - (c) **Minor Partners:** A minor cannot be a partner according to Indian Contract Act. But he can be admitted to get the benefits if all the partners give their consent. He will share the profit equally but his liability will be limited in case of loss.

MINOR ADMITTED INTO THE BENEFITS OF PARTNERSHIP

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

MERITS OF PARTNERSHIP

A partnership form of organization offers the following advantages:

- (i) **Ease in formation:** It is very easy and economical to form. All that is required is an agreement among the partners.
- (ii) **Pooling of financial resources:** It commands more financial resources compared to sole proprietorship. This helps in expanding business and earning more profits.
- (iii) **Pooling of managerial skills:** It facilitates pooling of managerial skills of all its partners. This leads to greater efficiency in business operations. For instance, in a big partnership firm,

each partner can handle a different aspect of the business such as production, marketing, legal, and personnel.

- (iv) **Balanced business decisions:** In a partnership firm, decisions are taken unanimously after considering all the major aspects of a problem. This ensures balanced business decisions alongwith smooth implementation.
- (v) **Sharing of risks:** Unlike sole proprietary organization, the risks of partnership business are shared by partners on a predetermined basis.
- (vi) **Privacy:** It is not required to publish its accounts, which helps to keep the business affairs private. Since the partners make the important decisions, there is little chance of trade secrets being leaked. This helps to maintain the privacy of the firm.
- (vii) **Division of work:** In a partnership, all the firm's work is divided among the partners based on their knowledge and skills. This division of work leads to efficient management, which results in higher profits.

LIMITATIONS OF PARTNERSHIP

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

- (i) **Uncertainty of existence:** The existence of a partnership firm is very uncertain. The retirement, death, bankruptcy or lunacy of any partner can put an end to the partnership.
- (ii) **Unlimited Liability:** It is true that like the sole proprietor each partner has unlimited liability. But his liability may arise not only from his own acts but also from the acts and mistakes of co-partners over whom he has no control.
- (iii) **Difficulty in withdrawal or Blocking of Capital:** Investment in a partnership can be easily made but cannot be easily withdrawn. This is so because the withdrawal of a partner's share requires the consent of all other partners.
- (iv) **Lack of institutional confidence:** A partnership business does not enjoy much confidence of banks and financial institutions because the nature of its activities is not disclosed at public and the agreement among partners is not regulated by any law.
- (v) **Lack of Public Trust:** The public has less confidence in partnership firms since their annual reports and accounts are not published.
- (vi) **Lack of a Control:** Combined ownership leads to a lack of leadership and directionless operations.
- (vii) **Difficulties of expansion:** It is difficult for a partnership firm to expand its operations due to the limited number of partners (restricted to 50) and their limited personal resources.

PARTNERSHIP DEED

Partnership deed, also known as a partnership agreement, is a document that outlines in detail the rights and responsibilities of all parties to a business operation. It has the force of law and is designed to guide the partners in the conduct of the business.

The key ingredients of a Partnership Deed are given below:

1.	Definitions and vital information	The partnership deed normally carries the name of the business, the address of its principal place of business, name and address of all partners and a short summary of the nature of business.
2.	Partnership duration	The Deed must mention the firm's establishment date and the deal period.
3.	Investment	The deed gives important financial details of the partnership, such as: - the amount of capital to be invested by each partner, - the Profit /Loss sharing of each partner, - the salaries to be paid to each partner and - the accepted method of raising additional capital/ loan.
4.	Accounting	The partnership deed provides for the accepted method of accounting for the cash flow, profit and loss, and assets and liabilities of the business.
5.	Duties, powers and obligations	The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed.
6.	Profit & loss ratio	Profit/Loss ratio to be accrued to and be borne by the Partners.
7.	Admission/ Retirement/ Expulsion of a partner	Details/ Rules regarding the future admission, retirement and exit of a partner. If one partner is causing problems or loses legal rights due to bankruptcy or other court action, the other partners must have a method to remove that partner or change their partnership rights.
8.	Dissolution	The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts would be settled.
9.	Arbitration	As in all business contracts, a partnership deed must provide for the means of arbitration of disputes.

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

BENEFITS OF PARTNERSHIP DEED

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

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

REGISTRATION PROCEDURE

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

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

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

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

CONSEQUENCES OF NON-REGISTRATION

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

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

REGISTRATION UNDER INCOME TAX

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

HINDU UNDIVIDED FAMILY (HUF)

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

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



Characteristics of a Joint Hindu Family Business

1. Governed by Hindu Law:	The business of the Joint Hindu Family is controlled and managed under the Hindu law. There are two schools of Hindu law: (i) Dayabhaga: It prevails in West Bengal & Assam and allows both the male & female members to be co-parceners. (ii) Mitakshara: There are four schools of Mitakshara. The application of schools of Mitakshara is regionwise. It allows only male members to be co-parceners. Note: The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be co-parceners or become legal heirs in the same way as men. In the case of Vineeta Sharma v. Rakesh Sharma & Ors. (2020), the Supreme Court established that the right in coparcenary is accorded by birth, regardless of their birthdate or whether their father was alive at the time of the amendment. Hence, daughters will be given a share in the coparcenary property even if the father died before 2005. (The Act was applied retroactively to remove gender discrimination regarding rules of the coparcenary.)
2. Management:	All the affairs of a Joint Hindu Family are controlled and managed by one person who is known as 'Karta' or 'Manager'. The Karta is the senior

		most male member of the family. He works in consultation with other members of the family but ultimately he has a final say. The members of the family have full faith and confidence in Karta. Only Karta is entitled to deal with outsiders. But other members can deal with outsiders only with the permission of Karta.
3.	Membership by Birth:	The membership of the family can be acquired only by birth. As soon as a male child is born in family, he becomes a member.
4.	Liability:	The liability of Karta is unlimited while the liability of 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.	Dissolution:	The Joint Hindu Family Business can be dissolved only at the will of all the members of the family.

BENEFITS OF HUF

1. **Easy to Start:** It is very easy to start the Joint Hindu Family Business. No legal formalities are required to be faced, such as registration. It requires no agreement, though in actual practice, it is documented to avoid litigation and for regulatory purposes.
2. **Efficient Management & Control:** The management of Joint Hindu Family Business is centralised in the hands of Karta of family, who works in consultation with other members of the family.
3. **Secrecy:** In Joint Hindu Family Business, all the decisions are taken by the 'Karta' himself. He is in a position to maintain perfect secrecy in all matters.
4. **Prompt Decision:** The Karta is the only person who exercises control and direction over the business. This ensures prompt or quick decisions.
5. **Credit Facilities:** In Joint Hindu Family Business, the credit facilities are more. One reason for this is that liability of the 'Karta' is unlimited.
6. **Expanded loyalty & cooperation:** In Joint Hindu Family Business, it is the natural love and affection which the members are having for each other. It helps to run the business more efficiently and smoothly.
7. **Freedom regarding Selection of Business:** The Karta is at freedom to select any business of his choice. He has not to depend on others.

LIMITATIONS OF HUF

1. **Limited Resources:** The Joint Hindu Family Business experiences a financial shortage, since it is mostly dependent on ancestral property. This limits the possibility of business expansion.
2. **Unlimited Liability of Karta:** The Karta carries not just the burden of decision-making and management, but also unlimited liability. His personal belongings might be utilized to pay off business debts.
3. **Dominance of Karta:** The control and management of the business are vested solely in the hands of the Karta, which may not always be acceptable to the other members, leading to conflicts and breakdown of the family unit.
4. **Limited Managerial Skills:** Karta cannot be an expert in all areas of management, his poor judgments may affect the business. His failure to make good decisions may even lead to financial difficulties and losses.
5. **Misuse of Power:** Management of a Joint Hindu Family Business is centered in the hands of the family's Karta. This may lead to power misuse by Karta for personal benefits.
6. **Limited Membership:** The membership of the business is restricted to family members exclusively. No one from outside the Joint Hindu Family Business can join the business.

HUF FORMATION:

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

- a. A HUF deed is a **written formal document on a stamp paper** (as applicable in the respective State) specifying the name of Karta and Coparceners of HUF.
- b. The **eldest male** member of HUF **becomes Karta** of HUF.
- c. The **name** of the HUF and its members are also required **to be stated in the HUF Deed** at the time of creating of HUF.
- d. The **name of HUF** is usually the **name of the Karta** followed by the word HUF e.g. Ram Kumar HUF.
- e. HUF Deed also **states the capital** with which the HUF has been initiated.
- f. A **declaration** is also provided by each member of family where they declare the name of Karta and also state that –
 - i. Karta has the authority of the accounts vested in his hand.
 - ii. Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.

- g. Further, a **rubber stamp of HUF** will also be prepared and will be affixed on all the documents pertaining of HUF to authorize the transaction. Rubber stamp should be Rectangular.
- h. It is recommended that the Deed should be **notarised**.
- i. **PAN** should be obtained for the HUF. This is mandatory because all financial transactions must carry PAN.

KEY POINTS IN CREATION OF HUF AND FORMAT OF DEED FOR CREATION OF HUF

- ❖ Under the Income Tax Act, an HUF is a separate entity for the purpose of income tax return.
- ❖ The same tax slabs are applicable to HUF as to individual assessee.
- ❖ One cannot transfer own assets/money into HUF.
- ❖ If one has ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to the exemption limit.
- ❖ The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc. and will be assessed under HUF.
- ❖ Existence of property or multiple members is not a pre-requisite to create HUF. A family which does not own any property may still have the character of Hindu joint family.
- ❖ Any gifts received by the members of HUF (birthday, marriage, etc.) can be treated as assets of HUF.
- ❖ The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh (now 3 lakh). HUF will also gain from the tax slab structure of computing income tax.
- ❖ Apart from basic exemption of Rs. 2.5 lakh (now 3 lakh), section 80C deduction up to Rs. 1.5 lakh is also available.

SOLE PROPRIETORSHIP

The sole proprietorship is a form of business that is owned, managed and controlled by an individual. He has to arrange capital for the business and he alone is responsible for its management. He is therefore, entitled to the profits and has to bear the loss of business. In the eyes of the law and the public, the sole proprietor and the business are one and the same.

It is the simplest and most easily formed business organization. This is because not much legal formality is required to establish it. For instance, to start a restaurant or to run a grocery store, the proprietor has only to follow the rules laid down by local administration.

MERITS OF SOLE PROPRIETORSHIP

A sole proprietary organization has the following advantages:

- (i) **Easy formation:** A sole proprietorship business is easy to form where no legal formality involved in setting up the business. It is not governed by any specific law. It is simply required to comply with the rules and regulations laid down by local authorities.
- (ii) **Swift Decisions:** In sole proprietary organization, all the decisions relating to business operations are taken by one person, which makes functioning of business simple and easy.
- (iii) **Sole beneficiary of profits:** The sole proprietor is the only person to whom the profits belong. There is a direct relation between effort and reward.
- (iv) **Benefits of small-scale operations:** The sole proprietorship is generally organized for small-scale business. Such a business is also entitled to certain concessions from the government. For example, small industrial organisations can get electricity and water supply at concessional rates on a priority basis.
- (v) **Inexpensive Management:** The sole proprietor does not appoint any specialists for various functions. He personally supervises all the business activities.
- (vi) **Confidentiality:** A sole proprietor can keep all business-related information to themselves as the business's only decision-maker. The law does not bind them to make the accounts of a sole proprietorship public.
- (vii) **Lesser paperwork:** Business setup involves several tasks. Among these, one of the most dreaded ones is paperwork or documentation. The paperwork in a sole proprietorship is much less. Hence, business owners can spend their time planning the business strategies to prevent risks in the long-term journey.
- (viii) **Simple tax calculations:** One of the benefits of being a sole proprietor is that the taxes are simpler. The sole proprietors need not file taxes separately for personal and business transactions. Besides these, sole proprietors also get certain tax advantages accompanying small business deductions.

LIMITATIONS OF SOLE PROPRIETORSHIP

A sole proprietor generally suffers from the following limitations:

- (i) **Limitation of management skills:** A sole proprietor may not be able to manage the business efficiently as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.
- (ii) **Limitation of Resources:** A significant disadvantage of owning a sole proprietorship is the challenge of raising capital. The business is wholly reliant on a single owner's finances, investments, and credit history. So, banks and other lenders are often doubtful about the repayment aspect.

- (iii) **Unlimited liability:** The sole proprietor is personally liable for all business obligations. For payment of business debts, his personal property can also be used if the business assets are insufficient.
- (iv) **Lack of continuity:** In case of death, insolvency, imprisonment, etc. of the owner, the business can shut down if there is no successor or heir to continue the business.
- (v) **Selling the business is a challenge:** Selling a sole proprietorship business is challenging. If the business is significantly profitable, selling it would trigger high capital gains tax. Also, selling off a sole proprietorship business means selling the debts as well.
- (vi) **Risk in decision-making:** In a sole proprietorship business, there is nobody to assist in decision-making. So, the risk of errors in decisions is high.
- (vii) **No economies of scale:** Large-scale business organizations enjoy large-scale economies as well. That means they can produce more in lesser overhead costs per product. But for sole proprietorships, this is hard to achieve.

PROCEDURE FOR FORMATION OF SOLE PROPRIETORSHIP FIRM

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

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

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

MULTI STATE CO-OPERATIVE SOCIETY

The Multi-State Cooperative Societies (MSCS) Act, enacted in 1984, was modified in 2002. The MSCS Act, 2002 allows for cooperative societies to operate across multiple states. The Act provides for formation of both primary (with both individual and institutional members) and federal cooperatives (with only institutional membership).

Examples are Farming Co-Operative Society, Credit Co-Operative Society, Agriculture Co-Operative Society, Real Estate Co-Operative Society, Transport Co-Operative Society and many more.

Their main objects shall be serving their **members' interests across multiple states and promote social and economic betterment through co-operative principles**. Otherwise, they are ineligible for registration. Under Section 9 of the said Act, a MSCS is a body corporate with limited liability.

In order to ensure financial discipline, extensive provisions have been enacted.

- No part of the fund other than net profit shall be distributed among members.
- Investment of society's fund only in recognized securities is permissible.
- Contribution to political parties or loans to non-members or borrowing from external sources are prohibited.
- Annual auditing by recognized auditors is mandatory, and the Central Government may order a special audit if necessary.

BENEFITS OF MSCS

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

FORMATION OF MSCS

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

1. A **certificate from the bank** stating credit balance of the proposed MSCS.
2. A **scheme** explaining how the proposed MSCS has reasonable prospects of becoming a viable unit.
3. Four copies of **bye-laws** in original.
4. **Proposed area** of operation for registration shall initially be permitted for two contiguous states only.
5. **List of at least 50 members** from each state. The list has to be submitted in the specified format along with the copies of ID proofs of the members duly attested by Chief promoter.
6. Certified copies of the **resolutions** passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence.
7. **Contact number and e-mail address** of the Chief Promoter or Society on cover page.

B. For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted:

1. No Objection Certificate from the Registrar of Cooperative Societies of the States/U.T. where the area of operation is proposed.
2. A certificate to the effect that the credentials of the Chief Promoter/Promoters have been verified by the Registrar of Co-operative Societies of the state where the head office is proposed to be located.

All documents to be submitted in original with the **signatures of the Chief Promoter/Promoters** on each page.

REGISTRATION PROCEDURE

1. For the purposes of registration of a MSCS under this Act, an application shall be made to the Central Registrar in the prescribed form.
2. The application shall be signed:
 - a. in the case where **all the members are individuals** – by at least 50 persons from each of the state concerned;
 - b. when the **members are cooperative societies** – by duly authorised representatives on behalf of at least 5 such societies as are not registered in the same state; and
 - c. when **another multi-state cooperative society and other cooperative societies are members** – by duly authorised representatives of each of such societies.
 - d. when the **members are cooperative societies or MSCSs and individuals** – by at least
 - i. 50 persons, being individuals, from each of the two states or more; and
 - ii. 1 cooperative society each from two states or more or one MSCS.
3. The application shall be accompanied by four copies of the proposed **bye-laws** of the MSCS and other information as the Central Registrar may require.
4. If the Central Registrar is satisfied:
 - a. that the application complies with the provisions of this Act and the rules;
 - b. that the proposed MSCS satisfies the basic criterion that its objects are to serve the interests of members in more than one state;
 - c. that its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles;
 - d. that the proposed bye-laws are not contrary to the provision of this Act and the rules, he may register the multi-state cooperative society and its bye-laws.
5. The application for registration shall be disposed of by the Central Registrar within a period of 4 months from the date of receipt thereof by him.
6. Where the Central Registrar refuses to register a MSCS, he shall communicate the order of refusal together with the reasons thereof to the applicants. Provided that no order or refusal shall be made unless the applicants have been given a reasonable opportunity of being heard.

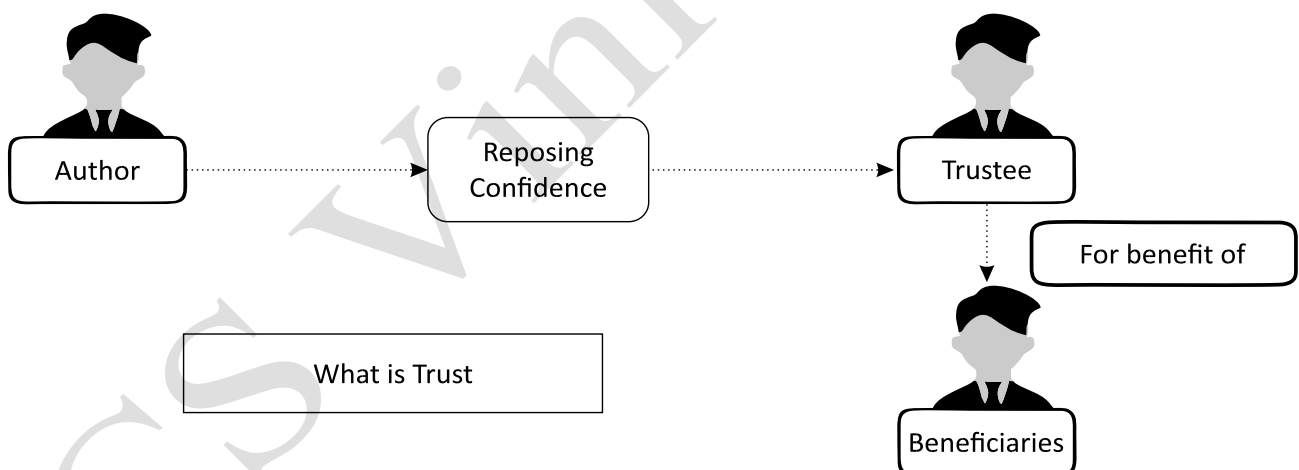
If the application for registration is neither disposed of **within 4 months** specified above nor the order of refusal is communicated, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of the MSCS Act, 2002.

REGISTRATION CERTIFICATE

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

TRUST

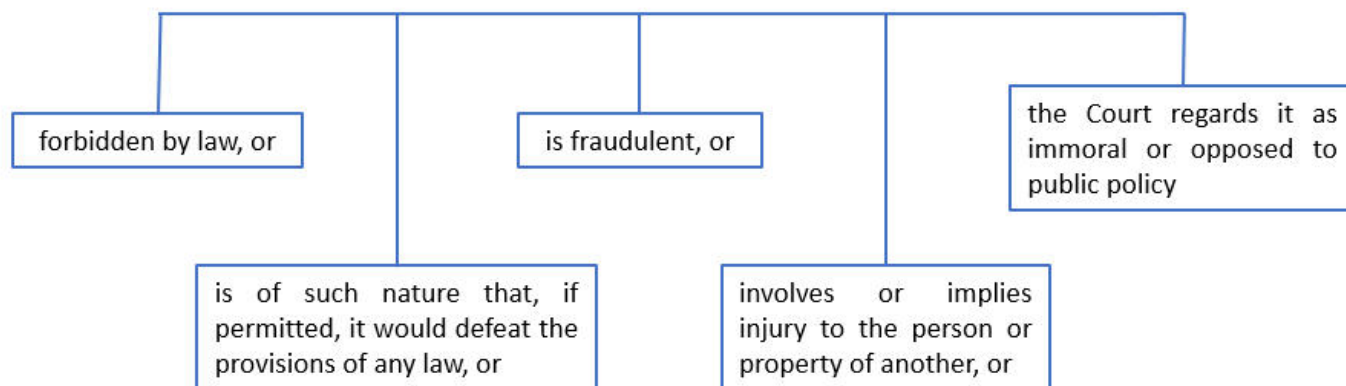
A Trust is a legal relationship where a person or entity (trustee) holds property for the benefit of one or more individuals or organizations (beneficiaries). The trustee is responsible for managing the property and is bound by a fiduciary duty to act in the best interests of the beneficiaries. The terms of the trust are governed by a written Trust agreement, and the ownership of the property is transferred from the person who creates the trust (settlor) to the trustee.



In India, **the Indian Trusts Act, 1882** regulates trusts, which are categorized as private and public. Public trusts are further classified as charitable and religious trusts and are governed by various legislations. Public charitable trusts are eligible for tax benefits, while private trusts (or family trusts) do not have charitable purposes and do not enjoy such benefits. Additionally, trusts are increasingly being used for investment purposes, and such trusts are governed by the Securities and Exchange Board of India (SEBI).

OBJECTIVES OF A TRUST

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



PERSONS WHO CAN CREATE A TRUST

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

- Every person competent to contracts (as per Indian Contract Act, 1872)
- By or on behalf of minor with the permission of a principal Civil Court of original jurisdiction
- Hindu Undivided Family
- Association of Persons (AOP)
- Trust by a woman
- Company

PERSONS WHO CAN BE A TRUSTEE

As per **Section 10** of the Indian Trust Act, 1882, every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

DIFFERENCE BETWEEN PUBLIC TRUST AND PRIVATE TRUST

- The main difference between a public trust and a private trust lies in the identification of the **beneficiaries**. In a public trust, the beneficiaries are a large or substantial body of the public, while in a private trust, the beneficiaries are a narrow and specific group of individuals, such as the employees of a company.
- In a Public Trust, the **interest** is vested in an uncertain and fluctuating body. They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals.

(c) Public trusts have a wider domain and are **managed** by a board of trustees, while private trusts have a limited domain and are managed for the benefit of definite and ascertained individuals.

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

EXEMPTIONS AVAILABLE TO TRUSTS

Exemptions available to Trusts are primarily governed by the provisions of the Income Tax Act, 1961. Certain key exemptions are:

Section 10	Total tax exemption is available for certain types of trusts which include trusts formed for any activities related to sports, education, scientific research, professions, or promotion of khadi and village based industries, hospitals etc. and are notified as charitable or religious institutions.
Section 11	As per Section 11, income earned by a trust established for religious or charitable purposes is exempt from taxation. However, there are some exceptions outlined in section 13, such as income from a trust established for private religious purposes or a charitable trust whose funds are not invested in specified ways.
Tax exemption for a Private Trust	The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

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:

1. **Creation of a Trust Deed:** A trust deed must be created. It may be in any language sufficient to show the intention and no technical words are necessary.

A **trust-deed**, generally, incorporates the following:

- (i) the name of the **trust**;
- (ii) the name(s) of the **author(s)/settlor(s)** of the trust;
- (iii) the name(s) of the **trustee(s)**;
- (iv) the name(s) of the **beneficiary/ies** or whether it shall be the public at large;
- (v) the place of principal and other offices;

- (vi) the property that shall devolve upon the trustee(s) under the trust for the benefit of the beneficiary/ies;
 - (vii) the object and purpose of the trust;
 - (viii) the procedure for appointment, removal or replacement of a trustee, their rights, duties and powers, etc;
 - (ix) the rights and duties of the beneficiary/ies;
 - (x) the mode and method of determination of the trust.
2. **Obtain the signatures of Settlor, Trustees and Witnesses at the appropriate places.** Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.
 3. **Print the Trust Deed** on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.
 4. **Register the Original deed** in a Sub-Registrar office paying registration charges: A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of settlor on all the pages.
 5. At the time of registration, the settlor and witnesses must be **personally present** with their identity proof in original.
 6. The **Sub- Registrar retains the photocopy** and returns the original copy of the Trust Deed.
 7. Thereafter, the Trust can apply for a **permanent account number** for the trust and open a bank account for it as it is a separate entity.

Registration of Trust

The requirements to register a trust deed are as follows:

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

PARTNERSHIP AGREEMENT & TRUST DEED

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

SOCIETY

A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose. Societies are usually registered for promotion of charitable activities like education, art, religion, culture, music, sports, etc., In India, The Societies Registration Act, 1860 lays down the procedure for society registration and operation in India.

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

- i. charitable societies;
- ii. the military orphan funds or societies established at the several presidencies of India;
- iii. societies established for the promotion of science, literature, or fine arts;
- iv. the diffusion of political education;
- v. the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public;
- vi. public museums and galleries of paintings and other works of art.
- vii. any other objects as may be prescribed by the respective State Governments.

ADVANTAGES OF SOCIETY

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

DISADVANTAGES OF SOCIETY

- (a) Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable;
- (b) Since such institutions are of charitable nature, it is an inappropriate form of a commercial venture;
- (c) The concept of equity investment or ownership is virtually absent; hence, it is not attractive for commercial investors;
- (d) Such entities are considered risky mainly on account of their lack of professionalism and managerial practices;

FORMATION OF SOCIETY

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

As per Section 4 of the Act, once in every year, an **annual general meeting** of the society should be conducted. If the rules do not provide for an annual general meeting, a list of the names, addresses and occupations of the members of the governing body should be presented to the Registrar, every year.

Registration can be done either at the **state level** (i.e., in the office of the Registrar of Societies) or at the **district level** (in the office of the District Magistrate or the local office of the Registrar of Societies).

BENEFITS OF FORMING A SOCIETY

1. Under Income Tax Act, a society can avail exemption from income tax, subject to registration under Section 12A/12AA of the Act and other conditions. Registration under section 12A is one-time registration. There is no provision which requires any renewal of registration.
2. Donors to societies may claim a rebate under Income Tax Act for donations made to the Society, provided the society has applied and obtained approval under Section 80G.

3. Societies, being NGO's receive various grants from government and other agencies.
4. Societies are run on democratic principles and ensures wider participation by members in the activities.
5. In view of the election process, there is scope for removing inefficient management and effect changes in the management to ensure better governance.

REGISTRATION OF A SOCIETY IN INDIA

A Society can be created by a **minimum of 7 or more persons**. Apart from **persons from India, companies, foreigners as well as other registered societies** can also register for the Memorandum of the society.

Society registration is maintained by state governments. Thus, the application for society registration must be created to the specific authority of the state, where the registered office of society is situated.

1. **Selection of a Name:** According to Society Registration Act, 1860, an identical or similar name of a currently registered society will not be allowed. Moreover, the proposed name should be unique and not suggest a relationship with the government or violate the provisions of the Emblem and Names Act, 1950.
2. **Memorandum of Association:** The Memorandum of society along with Rules & Regulations of society must be signed by every establishing member. The memorandum must also contain details of members of the society registration along with their names, addresses, designations, and occupations.
3. **Documents to be submitted and signed for registration:**
 - A covering letter mentioning the purpose for formation of the society and requesting its registration. It should be signed by all establishing members
 - Duplicate copy of memorandum and articles of association of the society along with certified copy
 - Duplicate copy of Rules & Regulations of society along with duplicate copy duly signed by all establishing members
 - Address proof of registered office of society as well as no-objection certificate (NOC) issued by landlord
 - A list of all the members of the governing body along with their PAN Card, Residence Proof and signatures.
 - Affidavit by secretary or president of society declaring relationship among subscribers
 - Few minutes of meeting regarding the society registration along with other essential documents.

The documents are to be filed with the Registrar along with the fees, and a suitable name. If the Registrar is satisfied with the application, then they will certify that the society is registered.

CONSEQUENCES OF REGISTRATION / NON-REGISTRATION OF A SOCIETY

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

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

In the absence of registration, the society has no legal status, and, therefore, it cannot sue and be sued. Further, an unregistered society cannot claim benefits under the Income-tax act.

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

ACCOUNTS AND AUDITS

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

MEGA FIRM

A Mega Firm or Multidisciplinary Firm (MDF) is a Partnership firm with **more than 25 partners** that provides various professional services under one roof with equal expertise. MDF allows professionals, such as Company Secretaries, to acquire expertise in multiple areas, such as taxation, finance, accounting, IPR and international business, and offer comprehensive solutions to clients.



This is a paradigm shift from the traditional approach of small offices to a global office. MDF is necessary to cater to the demands of larger assignments and provides clients with timely and quality services.

Keeping in view of the present needs of the corporate and multi-dimensional growth of CS profession, there is a demand for multidisciplinary (MDF) or mega firms. These firms offer a range of services under one roof, including Corporate and Labour laws, RBI/FEMA compliance, Secretarial Audits, Insolvency and Bankruptcy Code, GST, etc.

Such firms provide clients with a higher level of comfort and assurance, as they can rely on multiple partners for timely and quality services. Without MDF/Mega firms, it may not be possible to undertake larger assignments.

According to **Regulation 165A of The Company Secretaries Regulations, 1982 (Regulations)** –

A member in practice may form multidisciplinary firm

with the member of other professional bodies as prescribed under regulations 168A and 168B of the Regulations, 1982,

in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

Regulation 168 A – Other Professional bodies:

1. The person has to be member of any of the following, namely:
 - a. The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
 - b. The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
 - c. Bar Council of India established under the Advocates Act, 1961;
 - d. The Indian Institute of Architects established under the Architects Act, 1972;
 - e. The Institute of Actuaries of India established under the Actuaries Act, 2006;
 - f. The membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council.
2. The following shall be the persons qualified in India, namely:
 - a. Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;
 - b. Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
 - c. Actuary within the meaning of the Actuaries Act, 2006;
 - d. Bachelor in Engineering from a University established by law or an institution recognized by law;
 - e. Bachelor in Technology from a University established by law or an institution recognized by law;
 - f. Bachelor in Architecture from a University established by law or an institution recognized by law;
 - g. Bachelor of Law from a University established by law or an institution recognized by law;
 - h. Master in Business Administration from Universities established by Law or Technical Institutions recognized by All India Council for Technical Education.

Regulation 168B determines the membership of professional body for partnership. Accordingly for the purposes of entering into partnership, a person shall be a member of any of the following professional bodies, namely:

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

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

PRE-REQUISITES

MDF is a partnership amongst independent individuals. Therefore, every one should understand that:

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

BENEFITS

In an MDF, professionals work closely together in a shared office space, which promotes collaboration, providing access to a wide range of resources and meeting the diverse needs of clients.

- a) **Working in a team environment:** The concept of MDF will have an opportunity to work with team members who share interests, expertise, ideas, and work ethically.
- b) **Good Exposure:** In MDF, having more partners with diverse experiences allows apprentices and employees to work on a variety of projects. The specialized knowledge of each partner also enables the firm to explore new areas of practice.
- c) **Cost effective:** With large investment budgets, the MDF have more developed infrastructure, processes and tools. The overheads and the risks get distributed amongst the partners.
- d) **Better Growth opportunities:** With the right work ethic and dedication, MDF can experience professional growth early compared to the other small firms.
- e) **Global scope and reach:** The MDF have an international or global scope and reach, offer diversified services and may attract big multinationals.

- f) **Structure & Processes:** The structure for execution of works or assignments will be more systematic and the process will be cost effective due to the standard processes and procedure.
- g) **Reputation & risk-adjusted value:** Many of the bigger client's organizations may prefer that MDF, since it is perceived as proxy for high levels of professionalism, quality and reputation. Credibility of the firm gets established in long term.

PROCESS OF CONSTITUTION

The process of formation of MDF shall be an outcome of conscious and sincere decision. Meetings should be held before an **MOU** is reached and a one-year trial period under the MOU can help establish compatibility. Mutual faith and understanding are important.

Once the initial bridge is crossed, a formal partnership can be constituted on agreed terms. All founder partners should be on equal footing with the same intellectual level.

AGREEMENT BETWEEN PARTNERS

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

RISKS INVOLVED

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

QUESTIONS:

1. What are the various forms of business organisations?
2. What are the advantages of partnership compared to sole proprietorship?
3. What are the different types of partners and the role they play in partnerships?
4. Are the partners personally liable for the debts of the partnership firm?
5. What are the benefits of a Multi-State Cooperative Society? Compare the same with a State Cooperative Society.
6. Rohan has completed MBA in dairy farming and is keen in uniting farmers in Rajasthan by forming a Multi-State Co-operative Society. Brief Rohan on the documentary requirements

for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed.

7. Ramesh wants to form a society to promote the 'Beti Bachao, Beti Pado Movement' of Government of India. He seeks your advice on the following :
- (i) The purposes for which a society can be formed under the Societies Registration Act, 1860;
 - (ii) Whether the foreigners and other registered societies can be members of a society?
8. AB Ltd. wants to create a trust for the benefit of employees of the Company and their spouses and children. Decide with reasons whether this trust will be Public Trust or Private Trust. Also state the differences between Public Trust and Private Trust.

Lesson 8 – Financial Services Organisation

FINANCIAL SERVICE COMPANIES IN INDIA



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

Lesson Outline	Page No.
➤ Introduction	
➤ Non Banking Financial Company	
➤ Housing Finance Companies	
➤ Asset Reconstruction Company (ARC)	
➤ Micro Finance Institutions (MFI)	
➤ Nidhi Company	
➤ Payment Banks	
➤ Mudra Banks	
➤ Chit Funds	

INTRODUCTION

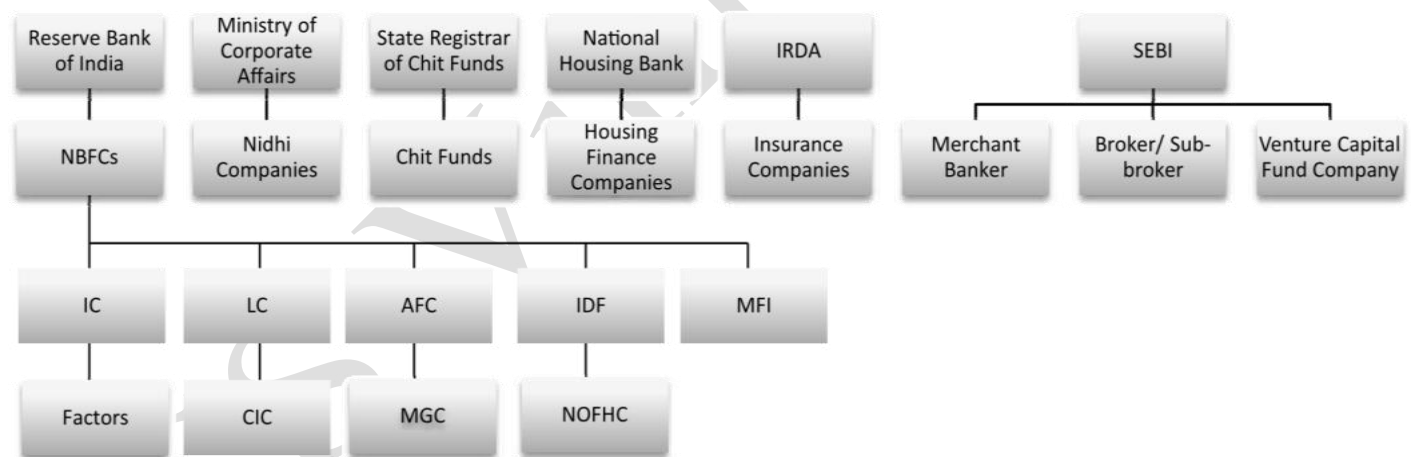
India's financial sector is experiencing rapid expansion, with both existing firms and new entities entering the market. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities. The recent introduction of payments banks has further diversified the sector. However, commercial banks still dominate the financial system, accounting for over 64% of total assets.

The Government of India has introduced several reforms to liberalise, regulate and enhance this industry. The Government and Reserve Bank of India (RBI) have taken various measures to facilitate easy access to finance. Various types of Non Banking Financial Companies (NBFCs), asset reconstruction companies (ARCs), and microfinance institutions (MFIs) have been launched to support this growth.

Over the years, NBFCs, Housing Finance Companies (HFC's), ARCs, MFIs and Nidhi Companies have played a dominant role in mobilisation and disbursement of funds.

Leveraging mobile technology and advancements in information technology, Payment Banks has emerged as a new model of banks conceptualised by the RBI.

FINANCIAL SERVICES ORGANISATIONS STRUCTURE IN INDIA:



IC – Investment Company

AFC- Asset Finance Company

LC – Loan Company

IFC – Infrastructure Finance Company

CIC – Core Investment Company

MGC – Mortgage Guarantee Company

IDF- Infrastructure Debt Fund

MFI – Micro Finance Institution

NOFHC – Non-Operative Financial Holding Company

NON BANKING FINANCIAL COMPANY

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 (or any earlier enactments) engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/ securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire – purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property.

A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in instalments by way of contributions or in any other manner, is also a non-banking financial company (Residuary non-banking company).

50-50 Test

- ✓ When a company's financial assets (cash and cash equivalents, debtors, securities, cash in bank etc.) constitute more than **50% of the total assets**
(AND) +
- ✓ income from financial assets constitute more than **50% of the gross income.**

A company which fulfills both these criteria must obtain NBFC registration.

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

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

SYSTEMICALLY IMPORTANT NBFCs

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

REGULATORY AND SUPERVISORY FRAMEWORK

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

depositor protection

consumer protection

financial stability

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

Nedumpilli Finance Company v. State of Kerala

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

The legislatures of Kerala and Gujarat had sought to bring NBFCs under the ambit of their respective legislations to regulate the interest rate charged by moneylenders and protect borrowers.

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

SCALE BASED REGULATORY FRAMEWORK FOR NBFCs

NBFCs play a pivotal role in the economic growth of the country. The NBFC sector has undergone a significant transformation over the years. In October 2021, RBI notified scale-based regulations for NBFCs, which is effective from 1st October, 2022. With these regulations, RBI aims to increase transparency in NBFC operations through greater disclosures and improved governance standards.

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

Top Layer: The Top Layer is empty. This layer can get populated if the RBI believes that certain NBFCs in the Upper Layer pose a significant increase in potential systemic risk. Such NBFCs shall move to the Top Layer from the Upper Layer.

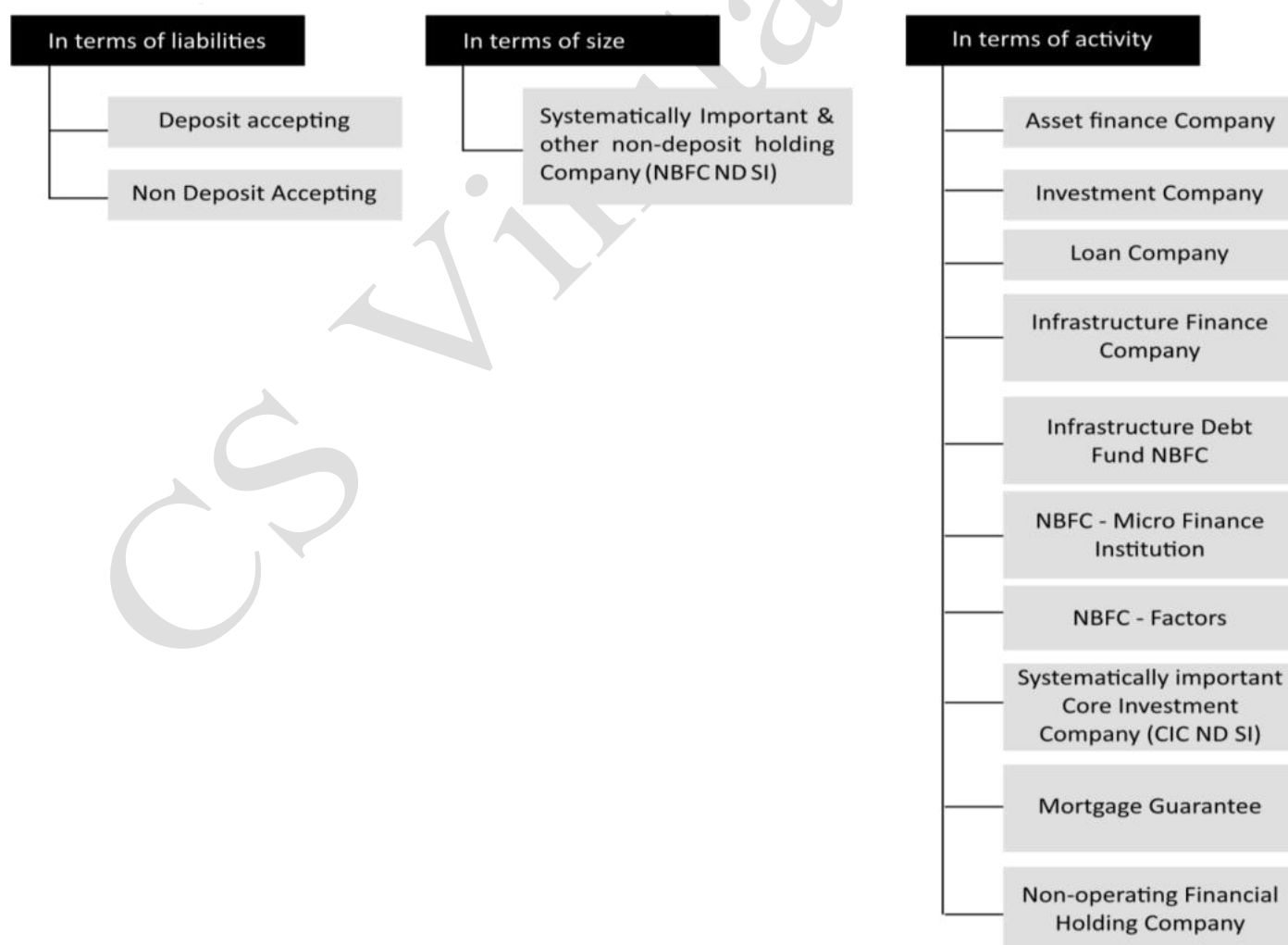
Upper Layer: It comprises of those NBFCs which require enhanced regulatory supervision. The top 10 eligible NBFCs in terms of their asset size shall always reside in the upper layer, irrespective of any other factor.

Middle Layer: It consists of all deposit taking NBFCs, non-deposit taking NBFCs with asset size of Rs.1000 crore and above and NBFCs undertaking the activities of Standalone Primary Dealers, Infrastructure Debt Fund, Core Investment Companies, HFC and IFC.

Base Layer: It comprises of non-deposit taking NBFCs below the asset size of Rs. 1000 crore, Peer to Peer Lending Platform, Account Aggregator, and NBFCs with no public funds and no customer interface.

TYPES/CATEGORIES OF NBFCs

NBFCs are categorized as:



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

I. Asset Finance Company (AFC)

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

II. Investment Company (IC)

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

III. Loan Company (LC)

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

IV. Infrastructure Finance Company (IFC)

IFC is a non-banking finance company –

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

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

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

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

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

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

IDFs would essentially act as vehicles for refinancing existing debt of infrastructure companies, thereby creating fresh headroom for banks to lend to fresh infrastructure projects. IDF-NBFCs would take over loans extended to infrastructure projects which are created through the Public Private Partnership (PPP) route and have successfully completed one year of commercial production. Such take-over of loans from banks would be covered by a Tripartite Agreement between the IDF, Concessionaire and the Project Authority for ensuring a compulsory buyout with termination payment in the event of default in repayment by the Concessionaire.

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

NBFC-MFI means a non-deposit taking NBFC (other than a Section 8 company) that fulfils the following conditions:

- (a) RBI specifies Rs. 10 crore as net owned fund (NOF) requirement for NBFCMFI with effect from October 01, 2022. However, existing non-banking financial companies and having net owned fund of less than Rs. 10 crore, shall achieve the NOF of Rs. 10 crore as per the following glide path:
- Rs. 7 crore by March 31, 2025
 - Rs. 10 crore by March 31, 2027
- (b) Not less than **85% of its net assets** are in the nature of “**qualifying assets**” which satisfy the following criteria:

i.	Annual income of Borrower	Loan which is disbursed to a borrower with household annual income upto Rs. 1,25,000 and Rs. 2,00,000 for rural and urban/semi-urban households, respectively;
ii.	Loan cycles	Loan amount upto Rs 75,000 in the first cycle and Rs 1,25,000 in subsequent cycles;
iii.	Total loan	Total indebtedness of the borrower upto Rs 1,25,000 (excluding loan for education and medical expenses);
iv.	Tenure	Minimum tenure of 24 months for loan amount exceeding Rs 30,000;
v.	Collateral	Collateral free loans without any prepayment penalty;
vi.	Purpose	Minimum 50% of aggregate amount of loans for income generation activities;

vii.	Repayment	Flexibility of repayment periodicity (weekly, fortnightly or monthly) at borrower's choice.
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VIII. Non-Banking Financial Company – Factors (NBFC-Factors)

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

IX. Mortgage Guarantee Companies (MGC)

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

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

NOFHC is financial institution through which promoter/ promoter groups will be permitted to set up a new bank. It's a wholly-owned NOFHC which will hold the bank as well as all other financial services companies regulated by RBI or other applicable financial sector regulators.

XI. Systemically important non-deposit taking non-banking financial company (CIC-ND-SI)

CIC-ND-SI means an NBFC not accepting / holding public deposits and having total assets of Rs. 500 crore and above as shown in the last audited balance sheet;

BENEFITS OF INCORPORATING AN NBFC

The benefits of incorporating an NBFC and carrying on its activities are listed below:

1.	Competitive Interest Rates	Rate of interest is one of the main aspects of all types of loans. NBFCs have focused on reducing interest rates in recent decades, often matching or even surpassing bank rates. Lower interest rates have made borrowing easier and more affordable for borrowers, resulting in reduced Equated Monthly Installments (EMIs).
2.	Quick Processing	At banks, it is very important that the applicant should fulfil the eligibility criteria but NBFC are lenient in this aspect. This makes loan approval easier, smoother process and quicker.
3.	Less Rules and Regulations	As NBFC are incorporated under the Companies Act, (though regulated by the RBI), the rules and regulations for lending are not as stringent as banks.

4.	Last Resort of Borrowing	NBFCs are the last resorts of borrowing. Further, Agility is a key feature for NBFCs as it sets the banks apart. Banks functions slower as compared to the NBFCs.
5.	Caters Customer needs	Another major advantage of NBFCs is the ground level understanding of their customer's profile and the need for their credit, which gives them an edge, as their ability to customize their products according to client needs.
6.	Loan available for Individuals with Poor Credit Rating	Individuals with poor credit rating generally will not get loans from banks. On the other hand, loans will be offered to individuals with low credit score by NBFCs but most of the time the interest rates for such borrowers will be higher than market rates.

DIFFERENCE BETWEEN BANKS & NBFCs

S.N.	Particulars	Banks	NBFCs
1.	Definition	Banking is acceptance of deposits withdrawable by cheque or demand	NBFC is a financial Institution that is into Lending or Investment or collecting monies under any scheme/arrangement
2.	Regulations	Governed by BR Act, 1949 and RBI Act, 1934	Governed by Companies Act, 2013 and RBI Act, 1934
3.	Registration and Licensing	Licensing requirements are quite stringent. Transfer of shareholding is controlled by RBI	Formation of NBFC is easy. Acquisition of NBFCs is procedurally regulated and are subject to approval
4.	Loan Sanction Process	Comparatively Stringent	Easier and faster
5.	Restrictions on business	No non-banking activities can be carried	Cannot provide checking facilities
6.	Overdraft Facility	Available in some banks	Not available
7.	Priority sector lending requirements	Certain minimum exposure to priority sector required	Priority sector norms are not applicable to NBFCs

INCORPORATION OF NBFCs

Non-Banking Financial Companies (NBFCs) are companies incorporated under Companies Act, 2013 or Companies Act, 1956.

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

REGISTRATION PROCESS WITH RESERVE BANK OF INDIA

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

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

Every non-banking financial company shall make an application for registration to the RBI in the specified form.

For considering the application for registration, the RBI may require to be satisfied by that the **following conditions are fulfilled**, namely:

- (a) that the NBFC is or shall be in a position to pay its present or future **depositors** in full as their claims accrue;
- (b) that the **affairs** of the NBFC are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
- (c) that the general **character** of the management or the proposed management of the NBFC shall not be prejudicial to the public interest or the interests of its depositors;
- (d) that the NBFC has adequate **capital structure** and earning prospects;
- (e) that the **public interest** shall be served by the grant of certificate of registration to the NBFC to commence or to carry on the business of India;
- (f) any other condition, as the RBI may impose.

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

The Bank cancel a certificate of registration granted to an NBFC under this section if such company—

- (i) **ceases** to carry on the business of a non-banking financial institution in India; or
- (ii) has failed to comply with any above conditions or the **condition** subject to which the certificate of registration had been issued to it; or
- (iii) **fails**—
 - (a) to comply with any direction issued by the RBI; or
 - (b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the RBI; 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 RBI; or
- (iv) has been **prohibited** from accepting deposit by an order made by the RBI and such order has been in force for a period of at least 3 months:

Provided that before cancelling a certificate of registration, RBI shall give an **opportunity to such NBFC for taking necessary steps** to comply with the provision or fulfilment of the condition.

Provided further that before making any order of cancellation of certificate of registration, such NBFC shall be given a **reasonable opportunity of being heard**.

A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an Appeal to the Central Government, within a period of **30 days of communication** of the order. The decision of the Central Government shall be final.

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

PROCEDURE FOR FILING APPLICATION WITH RBI

1. The applicant company is required to apply online and submit a physical copy of the application to the Regional Office of the RBI.
2. The application can be submitted online by accessing RBI's secured website <https://cosmos.rbi.org.in>. At this stage, the applicant company will not need to log on to the COSMOS application and hence user ids are not required.
3. The company can access RBI's secured website "**Cosmos**" for Company Registration. Fill the suitable application form (i.e. NBFC or SC/RC) and upload.
4. The company may note to indicate the correct name of the Regional Office in the field. 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 hard copy of the application form (indicating CARN) along with supporting documents, to the concerned Regional Office.
6. The company can then check the status of the application with the acknowledgement number.

HOUSING FINANCE COMPANIES

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

Collateral securities are accepted against loans advanced by HFCs which include the property for which loan has been granted with other collaterals. The value of the collateral ensures that the lender is secured and has covered itself from the risk of default.

Loans given by HFCs are usually for a long period of time. Hence, HFCs do regular property valuation to understand how the property value is changing.

A Housing Finance Company (HFC) is a company registered under the Companies Act, 2013 or any earlier enactment. In addition to it, an HFC also requires registration with National Housing Bank (NHB) for commencing or carrying on the business of housing finance.

ELIGIBILITY CRITERIA FOR OBTAINING HOUSING FINANCE COMPANY REGISTRATION

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

Must be an NBFC:	The business entity that wants to operate as HFC must be registered as NBFC with the Apex Bank, i.e. RBI.
Net Owned Funds:	It shall be noted that the Net owned fund of an HFC must be at least Rs. 20 Crores . Therefore, an applicant needs to satisfy the requirements of net worth for obtaining HFC Registration.
Must be registered under the Companies Act 2013:	The said Company requires to satisfy the requirements of a private limited company under the provisions of the Act.
Housing Finance Activities as Object Clause:	The objects of this type of company must mention for financing housing loans and other commercial complexes. Besides providing finance, the said company must also have the predictions of earning.

The regulatory power of the HFCs was transferred from National housing Bank to Reserve Bank of India by the **Central Government with effect from 09 August 2019**.

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

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).

Out of the total assets (netted off by intangible assets), at least 50% should be by way of housing financing for individuals.

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

- a. Loans to individuals or group of individuals
 - including co-operative societies for construction/ purchase of new dwelling units.
 - for purchase of old dwelling units.
 - for purchasing old/new dwelling units by mortgaging existing dwelling units.
 - for renovation/ reconstruction of existing dwelling units.
- b. Loans to individuals for purchase of plots for construction of residential dwelling units provided the borrower declares to construct the house within three years from date of availing the loan.
- c. Lending to public agencies including state housing boards for construction of residential dwelling units.
- d. Loans to corporates/ Government agencies for employee housing.
- e. Loans for construction of educational, health, social, cultural or other institutions/ centres, which are part of housing projects.
- f. Loans for construction meant for improving the conditions in slum areas.
- g. Lending to builders for construction of residential dwelling units.

All other loans including those given for furnishing dwelling units, or renovation of the existing dwelling unit/s, will be treated as *non-housing loans*.

TRANSITION TIME FOR EXISTING HFCs TO FULFIL THE ASSET BASED CRITERIA

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

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

Such HFCs shall be required to submit to the RBI, a Board approved plan within 3 months including a roadmap to fulfil the above criteria and timeline for transition. HFCs unable to fulfil the above criteria as per the timeline shall be treated as NBFC – Investment and Credit Companies (NBFC-ICC) and they will be required to approach the RBI for conversion of their Certificate of Registration from HFC to NBFC-ICC.

NET OWNED FUND (NOF) REQUIREMENT

The minimum net owned funds required for a company to commence housing finance as its principal business or carry on the business of housing finance as its principal business is Rs. 20 crore.

Provided that a HFC holding a Certificate of Registration (CoR) and having net owned fund of less than Rs. 20 crore, may continue the business of housing finance, if it achieves NOF of Rs. 15 crore by March 31, 2022 and Rs. 20 crore by March 31 2023.

Further, the HFC shall submit a statutory auditor's certificate to RBI within a period of 1 month evidencing compliance with the prescribed levels as at the end of the period indicated above. If the HFCs fails to achieve the prescribed level within the stipulated period, it's registration shall be liable to be cancelled. Such companies, who wish to be treated as NBFC – **Investment and Credit Companies** (NBFC-ICCs), will be required to approach RBI for conversion of their CoR from HFC to NBFC- ICC.

“**Net Owned Fund**” means net owned fund as defined under Section 29A of the National Housing Bank Act, 1987 including paid up preference shares which are compulsorily convertible into equity.

BENEFITS OF INCORPORATING A HOUSING FINANCE COMPANY

1. Among the financial services, housing finance creates employment, both directly and indirectly.
2. Industries such as cement, brick manufacturing, sanitary products, electrical fittings and glass industries experience more demand due to house construction.
3. Rural housing develops not only rural areas but prevents migration of labor to urban areas.
4. Factories or industrial establishments create townships by providing more housing facilities to their employees. Housing finance thereby reduces congestion in urban areas.
5. Due to housing finance, there is a vertical expansion and re-modelling of the existing houses.
6. Housing facilities not only improve, they also reflect the culture of the country.
7. Non-conventional energy gets popularized due to modern housing facilities which is one of the major benefits of housing finance.

HOUSING FINANCE COMPANY: REGISTRATION PROCESS

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

First the applicant has to download the **application form** for Housing Finance company registration from the website. All the documents must be **attached** along with the application. The **demand draft** in favour of the NHB also must be attached and submitted in the NHB Head Office.

The NBH would check the authenticity of the application. If the documents provided are sufficient then the NBH would go ahead and register the HFC. The procedure for incorporating a Housing Finance Company (HFC) is the same as any other company. NHB after satisfying itself on the fulfilment of **following conditions**, may grant a Certificate of Registration:

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

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

The applicant company is required to submit a physical copy of the application (in duplicate) along with the essentials documents to the Head Office of the NHB. Further, attach a **Demand Draft for Rs. 10,000 favouring NHB payable at New Delhi.**

NET OWNED FUND

Net Owned Funds means:

- (a) The aggregate of the **paid-up equity capital and free reserves** as disclosed in the latest balance sheet of the housing finance institution after deducting therefrom –
 - (i) accumulated balance of **loss**;
 - (ii) deferred revenue **expenditure**, and
 - (iii) other intangible **assets**; and

- (b) further reduced by the amounts representing –
- (i) investments of such institution in **shares** of–
 - its subsidiaries;
 - companies in the same group;
 - all other housing finance institutions which are companies; and
 - (ii) the book value of **debentures, bonds, outstanding loans and advances** (including hire-purchase and lease finance) made to, and deposits with–
 - subsidiaries of such company; and
 - Companies in the same group, to the extent such amount exceeds 10% of (a) above;

CONDITIONS PERTAINING TO THE CANCELLATION OF THE HOUSING FINANCE COMPANY LICENSE

The Certificate of registration granted to a HFC 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 NHB; or
 - to maintain accounts in accordance with the requirement of any law or any direction or order issued by the NHB; or
- Mandatory to submit its books of accounts and other relevant documents, when it is demanded by an inspecting authority of the NHB; or
- Has been prohibited from accepting deposit by an order made by the NHB and such order has been in force for a period of at least 3 months.

ASSET RECONSTRUCTION COMPANY (ARC)

India's banking industry plays a crucial role in lending and borrowing money, but sometimes customers default on their payments, causing significant losses for the banks.

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

Asset Reconstruction Company (Securitization Company / Reconstruction Company) is a company registered under **Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002**. It is regulated by RBI as an NBFC. RBI has exempted ARCs from various compliances under the Reserve Bank Act, 1934.

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

- (a) **Isolating** Non Performing Loans (NPLs) from the Financial System (FS),
- (b) **Freeing** the financial system to focus on their core activities, and
- (c) **Facilitating** development of market for distressed assets.

ARC performs the following functions:-

- (i) Acquisition of financial assets
- (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

Banks and financial institutions with a large proportion of their bad loans or Non-Performing Assets can sell to a separate entity i.e. Asset Reconstruction Company. Then ARCs recover a sum through attachment, liquidation etc. The objective is to help banks in making clean books by reducing Non-Performing Assets. Asset Reconstruction Companies are also making profit by buying Non-Performing Assets at a lower price.

ASSET RECONSTRUCTION

Let us understand the meaning of asset reconstruction:

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

SECURITISATION:

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

BENEFITS OF INCORPORATING AN ASSET RECONSTRUCTION COMPANY (ARC)

- Relieving banks of the burden of NPAs will allow them to focus better on managing the core business including providing new business opportunities for the ARC.
- The transfer should help restore depositor and investor confidence by ensuring the lender's financial health.
- ARCs can maximize recovery value while minimizing costs.
- ARCs also helps building industry expertise in loan resolution and restructuring management.
- Developing capital markets through secondary asset instruments.

ASSET RECONSTRUCTION COMPANY – THE REGISTRATION PROCESS

CONDITIONS FOR REGISTERING AN ASSET RECONSTRUCTION COMPANY

There are specific **conditions or eligibility criteria** for registering an ARC. The following criteria have to be sufficed for this:

1. The company must be registered as a company under the Companies Act, 2013.
2. After the company is formed, it must be eligible for registration under the RBI under the respective statutory legislation.
3. There should not be any losses incurred by the company in the previous or preceding 3 financial years.
4. If there is a process for the realisation of assets, then sufficient arrangement must be carried out for the purpose of securitisation and asset reconstruction.
5. The ARC must be able to pay all the periodical returns.
6. Directors must have sufficient experience and exposure in financial matters including reconstruction, insolvency, financial assets, etc.
7. There must be no criminal convictions against the directors.
8. All the key management executives and sponsors should pass the requirements related to the fit and proper person test.
9. Other RBI guidelines.

DOCUMENTS REQUIRED FOR REGISTRATION OF AN ARC

1. Certificate of Incorporation of the Company
2. Memorandum of Association and Articles of Association of the Company
3. Board Resolutions stating that the company has not taken or accepted any form of deposits.
4. Information that the directors are not disqualified (as per the Companies Act)
5. Information and profiles related to the sponsors of the company

6. Information related to the management of the company (shareholders and directors)
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).

Asset Reconstruction companies (ARCs) are governed by the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003.

- (i) Every ARC shall apply for registration in the form of specified application with supporting documents to the Chief General Manager-in-Charge, Department of Non-Banking Regulation, Central Office, RBI, Centre 1, World Trade Centre, Cuffe Parade, Colaba, Mumbai 400 005.
- (ii) 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.
- (iii) An ARC shall commence business within 6 months from the date of grant of Certificate of Registration by the Bank; RBI may grant extension for further period not exceeding 12 months.

Provisions of section 45 -IA, 45-IB and 45-IC of RBI Act, 1934 shall not apply to NBFC, which is an ARC. The prescribed minimum **Net Owned Fund for ARCs is Rs. 300 crore.**

MICRO FINANCE INSTITUTIONS (MFI)

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

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

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

Characteristics of a Micro Finance Institution

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

- (a) their needs are small and arise suddenly.
- (b) the institutional providers of finance, namely, the banks, demand collateral security which they cannot provide.
- (c) most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education, illness, funerals, weddings for which it is difficult to obtain institution finance.
- (d) for purpose of investment in income generating activities.

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

(3) Microfinance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self-mobilization, by way of saving and sale of assets.

(4) The biggest flexibility in the case of microfinance is the lack of any physical collateral, even in case of loan from the bank.

The characteristics of MFIs may be summarised as under:

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

Incorporation of MFI

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

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

The **list of documents** to be filed with RBI for registration are given below:

1	Certified copies of Certificate of Incorporation.
2	Certified copies of extract of only the main object clause in the MOA relating to the financial business.
3	Board resolution stating that: - the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/ commence the same before getting registration from RBI - the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India - the UIBs in the group where the director holds substantial interest or otherwise has not accepted any public deposit in the past /does not hold any public deposit as on the date and will not accept the same in future - the company has formulated "Fair Practices Code" as per RBI Guidelines.
4	Copy of Fixed Deposit receipt & bankers certificate of no lien indicating balances in support of NOF.
5	For companies already in existence, the Audited balance sheet and Profit & Loss account along with directors & auditors report or for the entire period the company is in existence, or for last three years, whichever is less, should be submitted.
6	Copy of the certificate of highest educational and professional qualification in respect of all the directors.
7	Copy of experience certificate, if any, in the Financial Services Sector (including Banking Sector) in respect of all the directors.
8	Banker's report in respect of applicant company, its group/subsidiary/associate/holding company/ related parties, directors of the applicant company having substantial interest in other companies The Banker's report should be about the dealings of these entities with these bankers as a depositing entity or a borrowing entity. <i>Note: Please provide bankers report from all the bankers of each of these entities and provide the report for all the entities. The details of deposits and loans balances as on the date of application and the conduct of the account should be specified.</i>

In addition to the documents required for registration as **Type II-NBFC-ND**, following list of documents /information to be submitted by the NBFC-MFI applicant:

(i) Board resolution stating that:

- (a) the company will be a member of all the Credit Information Companies and will be a member of at least one Self-Regulatory Organisation
- (b) the company will adhere to the regulations regarding pricing of credit, Fair Practices in lending and non-coercive method of recovery as per RBI Guidelines
- (c) the company has fixed internal exposure limits to avoid any undesirable concentration in specific geographical locations
- (d) the company is not licensed under Section 25 of the Companies Act, 1956 / Section 8 of the Companies Act, 2013.

(ii) Roadmap for achieving 85% qualifying assets.

In the developmental paradigm, microfinance has evolved as a need-based policy program to cater to the so far neglected target groups (women, poor, rural, deprived, etc.). Its evolution is based on the concern of all developing countries for empowerment of the poor and the alleviation of poverty. Microfinance programmes in the recent past have become one of the more promising ways to use scarce development funds to achieve the objectives of poverty alleviation.

NIDHI

A Nidhi Company, is one that belongs to the non-banking finance sector and is recognized under **section 406** of the Companies Act, 2013. Their core business is borrowing and lending money between their members. They are also known as Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company. They are regulated by the Ministry of Corporate Affairs, Government of India and are registered under the Companies Act, 2013(or any earlier enactments).

Nidhi companies are incorporated in the nature of **Public Limited Company** and hence, they have to comply with two set of norms, one of Companies Act, 2013 and another is the Nidhi Rules, 2014. No RBI approval is necessary to register the company, as RBI has specifically exempted this category of NBFC in India to comply its core provisions such as registration with RBI etc.

CHARACTERISTICS AND GENERAL RESTRICTIONS/PROHIBITIONS AND PROCESS OF INCORPORATION OF A NIDHI COMPANY (Covered in Chapter– 2)

BENEFITS OF INCORPORATING A NIDHI COMPANY

1. A Nidhi mobilises small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy.
2. The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.
3. Nidhis offer a higher rate of interest on deposits, making it an attractive investment opportunity for people, especially senior citizens.
4. The Board of Directors of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles. This lends credibility to the institution and instills confidence in the minds of borrowers and depositors.

Criteria for fit and proper person

For the purpose of determining as to whether any promoter or director of the Nidhi Company is a '**fit and proper person**', the following shall be taken into account, namely:-

- a. integrity, honesty, ethical behaviour, reputation, fairness and character of the person; and
- b. the person not incurring any of the following disqualifications, namely:-

(i)	criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 has been filed and which is pending;	
(ii)	charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences which is pending;	
(iii)	an order of restraint, prohibition or debarment has been passed against such person by any regulatory authority or enforcement agency in any matter concerning company law, securities laws or financial markets which is in force;	
(iv)	an order of conviction has been passed against such person by a court for any offence involving moral turpitude;	
(v)	has been declared insolvent and not been discharged;	
(vi)	has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;	
(vii)	has been categorised as a willful defaulter;	
(viii)	has been declared a fugitive economic offender;	
(ix)	is a director in 5 or more Nidhi companies, or is a promoter of 3 or more Nidhi companies	

PAYMENT BANKS

Payment banks is a new model of banks conceptualised by the Reserve Bank of India (RBI). These banks can accept a restricted deposit, which is currently limited to Rs. 1 lakh per customer and may be increased further. They can pay interest on these deposits just like savings bank account.

Both current account and savings accounts can be operated by such banks. Payments banks can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services. These banks cannot grant loans or issue credit cards.

The current limit on maximum end of day balance of **Rs. 2 lakh per individual customer**.

There are two kinds of banking licences that are granted by the RBI – universal bank licence and differentiated bank licence.

Payments bank comes under a differentiated bank licence since it cannot offer all the services that a commercial bank offers. In particular, a payments bank cannot lend. The main objective of payments bank is to widen the spread of payment and financial services to small business, low-income households in secured technology-driven environment.

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

REGULATIONS

Payment Banks are regulated by the RBI. An application has to be filed with RBI for a licence to commence banking business by a company incorporated in India.

Requirements regarding **capital funds is Rs. 100 crores**. The RBI will grant full licenses under Section 22 of the Banking Regulation Act, 1949 after it is satisfied that requirements/conditions have been fulfilled.

The **other terms and conditions** are as follows:

- To be registered as a public limited company under the Companies Act, 2013.
- Payment Banks cannot form subsidiaries.
- Foreign shareholding will be allowed in these banks as per extant FDI norms.
- If there is any acquisition of more than 5% shares this will require prior RBI approval.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- No lending activity is permitted. Bank can accept utility bills.
- A quarter of its branches should be in unbanked rural areas.

Some of the Payment Banks operating in India are –

1. Airtel Payments Bank Ltd.	2. India Post Payments Bank Ltd.
3. FINO Payments Bank Ltd.	4. Paytm Payments Bank Ltd.
5.	6.

Payment Banks can be promoted by:

- i. Existing non-bank Pre-paid Payment Instrument (PPI) issuers;
- ii. Individuals/professionals;
- iii. NBFCs, Corporate Business Correspondents (BCs);
- iv. Mobile telephone companies;
- v. Super-market chain;
- vi. Companies;
- vii. Real sector cooperatives; that are owned and controlled by residents; and
- viii. Public sector entities.

A promoter/promoter group can have a joint venture with an existing scheduled commercial bank to set up a payments bank.

Promoter/promoter groups should be 'fit and proper' with a sound track record of professional experience or running their businesses for at least a period of 5 years in order to be eligible to promote payments banks.

PBs can accept demand deposits and they will initially be restricted to hold a maximum balance of Rs. 100,000 per individual customer (now it is 2 lakh).

PBs are also permitted to issue ATM/debit cards (but cannot issue credit cards); offer Payments and remittance services through various channels; function as Business Correspondent of another bank; distribute non-risk sharing products like mutual fund units and insurance products, etc.

PBs cannot undertake lending activities. Apart from maintaining CRR with the RBI, a PB is required to invest **minimum 75%** of its "demand deposit balances" in SLR securities with maturity up to 1 year and hold **maximum 25%** in current and time/fixed deposits with other Scheduled Commercial banks for operational and liquidity management.

Key issues which require compliance by an applicant company are summarised below:

1. It will be registered as **public limited company** under the Companies Act, 2013.
2. The banks will be **licensed** as payments banks under Section 22 of the Banking Regulation Act, 1949.
3. The **minimum capital requirement** is **Rs. 100 crore**. For the first five years, the stake of the **promoter** should remain **at least 40%**.

4. **Foreign shareholding** will be allowed in these banks as per the rules for FDI in private banks in India.
5. The **voting rights** will be regulated by the Banking Regulation Act, 1949. The voting right of any shareholder is **capped at 10%**, which can be raised to 26% by RBI. Any acquisition of more than 5% will require approval of the RBI.
6. The majority of the bank's **board of directors** should consist of independent directors, appointed according to RBI guidelines.
7. Initially, the **deposits** will be capped at Rs. 100,000 per customer (now it is 2 lakh), but it may be raised by the RBI based on the performance of the bank.
8. The bank **cannot** undertake **lending activities**.
9. **25% of its branches** must be in the unbanked rural area.
10. The bank must use the term "**payments bank**" in its name.

MUDRA BANKS

Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs. It was launched by Prime Minister Narendra Modi on 8th April 2015.

MUDRA provides refinance support to Banks / Micro Finance Institutions (MFIs) for lending to micro units having loan requirement up to **Rs. 10 lakh**. MUDRA provides refinance to micro business under the **Scheme of Pradhan Mantri MUDRA Yojana**. The other products are for development support to the sector. It targets mainstream young, educated or skilled workers and entrepreneurs who cannot have access to credit from regular banking system.

It will provide its services to small entrepreneurs outside the service area of regular banks, by using last mile agents. The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

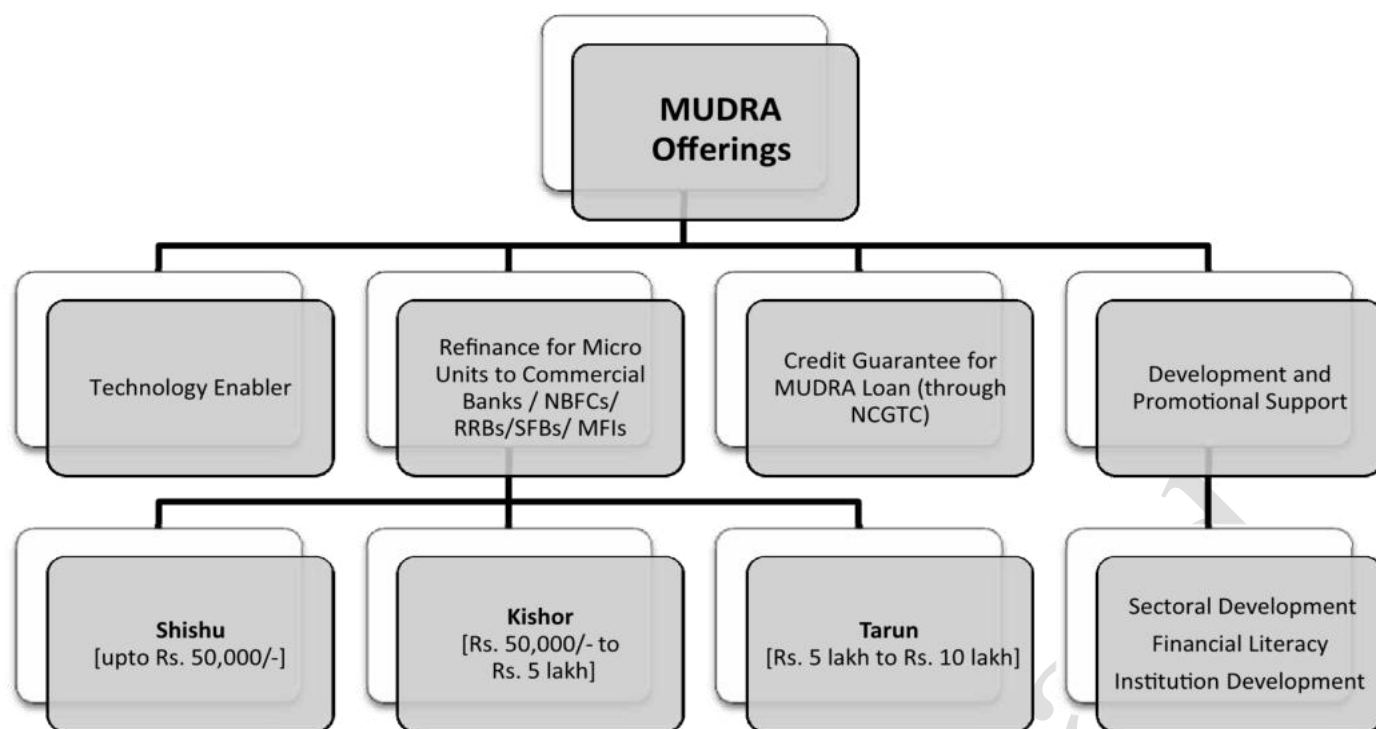
Shishu: Allowed loans up to **Rs.50,000** (US\$780)

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

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

Those eligible to borrow from MUDRA bank are:

• Small manufacturing unit	• Shopkeepers
• Fruit and vegetable vendors	• Artisans



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

Lastly, this loan is for new business and is only applicable for **small business owners**.

PROCEDURE FOR LOAN

Once the beneficiary identifies an idea and comes up with a business plan, he is supposed to select the business category for availing the loan (Shishu, Kishor or Tarun).

The beneficiary can contact the nearest Public/ Private sector bank (specified) to apply for business under PMMY.

An **application** form has to be submitted along with the following documents for the approval of the loan:

- Proof of Identity (Self attested Voter ID/Driving License/PAN Card/ Aadhaar Card/Passport/any other Photo ID issued by Government)
- Proof of Residence (Recent Telephone Bill/Electricity Bill/ Voter ID Card/Aadhaar Card/Passport/Domicile Certificate/Certificate Issued by a local authority)
- Applicant's recent photograph (not older than 6 months)
- Quotation of Machinery/other items to be purchased
- Name of the Supplier/Details of Machinery/Price of Machinery
- Proof of Identity/Address of the Business Enterprise (relevant licenses & certificates)
- Proof of Category (SC/ST/OBC/Minority etc.)

Apart from the above-mentioned documents, individual banks could ask for other documents as needed. The Banks are not supposed to take any processing fee and are not supposed to ask for any collateral. The **repayment** period is also **extended to 5 years**. But the applicant should not be a defaulter to any Bank or financial institution.

MUDRA Bank is **not a separate bank** (like SBI etc). It is a government financing scheme to provide business loan to new small businesses in India. To get business loan under PPMY the candidate has to contact the nearest Public/ Private sector bank. MUDRA will be operating as a refinancing institution through State / Regional level intermediaries.

Mudra loan is extended for a variety of purposes which result in **income generation and employment creation**. The loans are extended mainly for:

- Business loan for Vendors, Traders, Shopkeepers and other Service Sector activities
- Working capital loan through MUDRA Cards
- Equipment Finance for Micro Units
- Transport Vehicle loans – for commercial use only
- Loans for agri-allied non-farm income generating activities, e.g. pisciculture, bee keeping, poultry farming, etc.
- Tractors, tillers as well as two wheelers used for commercial purposes only.

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

1.	Transport Vehicle	Purchase of transport vehicles for transportation of goods and passengers such as auto rickshaws, small goods transport vehicles, taxis, etc. Tractors/Tractor Trolleys/ Two Wheelers used only for commercial purposes are also eligible for assistance.
2.	Community, Social & Personal Service Activities	Salons, beauty parlours, gymnasium, boutiques, tailoring shops, dry cleaning, motorcycle repair shops, Photocopying Facilities, Medicine Shops, Courier Agents, etc.
3.	Food Products Sector	Activities such as papad making, achar making, jam/jelly making, agricultural produce preservation at rural level, sweet shops, small service food stalls and day to day canteen services, cold storages, ice making units, ice cream making units, etc.
4.	Textile Products Sector / Activity	Handloom, khadi activity, chikan work, zari and zardozi work, traditional or computerized embroidery and hand work, traditional dyeing and printing, knitting, cotton ginning, stitching and other textile non garment products such as bags, furnishing accessories, etc.
5.	Business loans for Traders and Shopkeepers	Financial support for on lending to individuals for running their shops / trading & business activities /service enterprises and non-farm income generating activities with beneficiary loan size of up to 10 lakh per enterprise / borrower.

6.	Equipment Finance Scheme for Micro Units	Setting up micro enterprises by purchasing necessary machinery/equipments with per beneficiary loan size of upto Rs. 10 lakh.
7.	Activities allied to agriculture	'Activities allied to agriculture', e.g. pisciculture, bee keeping, poultry, livestock-rearing, grading, sorting, aggregation agro industries, diary, fishery, agri-clinics and agribusiness centres, food & agro-processing, etc.

MUDRA Card

MUDRA Card is a **debit card** issued against the MUDRA loan account, for working capital portion of the loan. The borrower can make use of MUDRA Card in multiple drawals and credits, so as to manage the working capital limit in cost-efficient manner and keep the interest burden minimum. MUDRA Card also helps in digitalization of MUDRA transactions and creating credit history for the borrower. MUDRA Card can be operated across the country for withdrawal of cash from any ATM / micro ATM and also make payment through any 'Point of Sale' machines.

Types of funding support from MUDRA

1. Micro Credit Scheme (MCS) for loans up to Rs. 1 lakh finance through MFIs.
2. Refinance Scheme for Commercial Banks / Regional Rural Banks (RRBs) / Scheduled Co-operative Banks.
3. Women Enterprise programme.
4. Securitization of loan portfolio.

- 1. Micro Credit Scheme:** It is offered mainly through Micro Finance Institutions (MFIs), which deliver the **credit up to Rs.1 lakh**, for various micro enterprise activities. The loans are given to the individuals for specific income generating micro enterprise activity. The MFIs for availing financial support need to enroll with MUDRA by complying to some of the requirements as notified by MUDRA, from time to time.
- 2. Refinance scheme for Banks:** Different banks like Commercial Banks, Regional Rural Banks and Scheduled Cooperative Banks are eligible to avail of refinance support from MUDRA for financing micro enterprise activities. The refinance is available for term loan and working capital loans, **up to an amount of 10 lakh per unit**. The eligible banks, who have enrolled with MUDRA, can avail of refinance from MUDRA for the loan issued under Shishu, Kishor and Tarun categories.

3. **Women Enterprise programme:** To encourage women entrepreneurs, the financing banks / MFIs may consider extending additional facilities, including interest reduction on their loan. At present, MUDRA extends a **reduction of 25bps in its interest rates** to MFIs / NBFCs, who are providing loans to women entrepreneurs.
4. **Securitization of loan portfolio:** MUDRA also supports Banks / NBFCs / MFIs for raising funds for financing micro enterprises by participating in securitization of their loan assets against micro enterprise portfolio, by providing second loss default guarantee, for credit enhancement and participating in investment of Pass Through Certificate (PTCs) either as Senior or Junior investor. PTC is a certificate that is given to an investor against certain mortgaged backed securities that lie with the issuer.

CHIT FUNDS

Section 2(B) of Chit Fund Act 1982 defines it as a rotating savings and credit association system, a popular practice in India. Chit fund schemes may be organized by financial institutions and unorganized money market industries or informally among friends, relatives, or neighbours. In some variations of chit funds, the savings are for a specific purpose. It's mostly popular in the areas where people have limited access to banking facilities therefore they prefer to invest their money in a Chit fund.

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

A chit fund works in such a manner which comprises a group of members, called **subscribers**. The organizer brings the group together and administers the activities of the group. For their efforts, the organizer is either compensated each month or at withdrawal time. The fee may be omitted in informal situations.

Features of Chit Funds

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

Relevant Statute Governing Chit Funds

Chit funds companies in India are governed by various State or Central laws. Organized chit fund schemes are required to be registered with the Registrar of Firms, Societies, and Chits. The chit funds are governed according to the following laws:

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

The **Reserve Bank of India (RBI)** is the regulator of banks and other non-banking financial companies, but it **does not control** the chit fund business. Despite the fact that chit funds are accepting deposits, the term 'deposit' as defined by the Reserve Bank of India Act, 1934 does not comprise the subscription to chits. However, the RBI can always guide State Governments on the regulatory aspects of the creation of rules or exemption of certain chit funds.

Although, **SEBI** as the regulator and controller of the securities market regulates and manages collective investment schemes. But the SEBI Act, 1992 specifically **precludes chit funds** from their definition of collective investment schemes

Prevention of Money Laundering (Amendment) Act, 2012 has recognized Chit Funds in Section 2(l).

Under **Prize Chits and Money Circulation Scheme (Banning) Act, 1978** (PCMCS) '**Conventional Chit**' i.e. the chit mentioned above has been defined. In this act, another type of chit has also been defined named as 'Prize Chit' and it is banned in the territory of India. Prize chit is different from conventional chit as prize chit involves the sale of certificates, units, and other instruments and there is an admission fee also, whereas, conventional chit does not contain any of those features.

Chit Funds Act, 1982 – Important definitions in the Act

Chit Agreement	It is defined as a document which contains the articles of agreement between the foreman and the subscribers of the chit.
Chit Amount	It is the sum-total of all the subscriptions payable by all the subscribers for any instalment of a chit without any deduction of discount.
Discount	It is the sum of money which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers or for both.

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

1. The Act states that all registered chit funds should contain either of the words “chit fund”, “chitty”, or “Kuri” as part of their name. These names can only be used by chit funds, no other person or entity has the right to use these names.
2. Registered chit funds are not allowed to conduct any business other than chit businesses.
3. The foreman is allowed to start or run several chits simultaneously. However, prior approval of the state government is required before starting each chitty.
4. It prohibits every kind of fund that does not have prior permission of the respective state government.
5. The foreman needs to **deposit 100%** of the chit value with the Registrar of Chits prior to the commencement of the chit scheme. This deposit will be refunded to the foreman on the successful completion of the chit cycle.
6. All registered Chit funds shall have its accounts audited by a qualified CA.
7. The Act requires that all registered chit funds impose a **40% cap** on the discount on bidding amount. This 40% is calculated on the chit value of the scheme. This bid-cap is administered to ensure that the bid does not rise uncontrollably leading to subsequent default by the bidder.

Types of Chit Funds

Chit funds are of different kinds. These are:

1. **Organized Chit Funds:** In northern India, a common type of chit fund is where small paper chits with each member's names are gathered in a box. When all the members come together for a monthly gathering, the person who is in charge in front of all the present members picks a chit from the box. The member so selected gets to take home the day's collection. Afterwards, that person's chit is removed from the box. The person who was previously selected comes to the meetings and pays his/her share, but his/her name will not be selected again.
2. **Special Purpose Funds:** Some chit funds are organized for a specific purpose. For example, Christmas gifts fund which has a very specific end date which is about a week before Christmas. Such a fund can reduce the cost and relieves the members from extra work in the busy festival season. Nowadays, such special purpose chit funds are conducted by, ladies wear shops, jewellers etc. to promote their goods.

3. **Online Chit Funds:** With the popularity of e-commerce, Chit funds are being organized online as well. Online chit funds are conducted online, and contributors can make their monthly contributions and receive the prize through online transactions including electronic funds transfer system.
4. **Registered Chit Funds:** Registered chit funds are those funds which are registered with the state government under the Chit Funds Act, 1982. There are over 10,000 registered chit funds in India.
5. **Unregistered Chit Funds:** Unregistered funds are those which are not registered with any state government. They are not regulated under any law.

Registration of Chit Funds

The Chit Fund Act, 1982 regulates the Chit Fund business in India. According to the Act, a “chit” means a transaction whether it is called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of individual that every one of them will subscribe to a certain sum of money by way of periodical installments over a definite time period and that each such subscriber will, in her/his turn, as determined by lot/auction/tender or in such other manner as may be specified in chit agreement, be entitled to prize amount.

A transaction cannot be called as a chit unless the members will not subscribe and pay for it to be entitled for the prize money.

The chit funds are a category of NBFC which are regulated by the other regulators and hence exempt from the requirement of registration under RBI Act.

To start this business in India, it is recommended that the promoters of the chit fund company should first incorporate a Private Limited Company with the objective of operating a chit fund business. Once a private limited company is constituted, the company then applies with the appropriate Chit Fund Registrar of the State to obtain the registration for operating a Chit fund company. A chit fund business can only be started after obtaining the chit fund business registration.

The registration will not be given to:

1. Any individual or entity convicted of any **offence under the Chit Fund Act** or under any other Act regulating the business and sentenced to imprisonment for any such offence; or
2. Any individual or entity who had **defaulted in payment of the fees or the filing** of any statement or the record required to be paid or filed under this Act or had previously violated any of the provisions of this Act or the rules made thereunder; or
3. Any individual or entity had been convicted of any **offence that involves moral turpitude and had been sentenced to imprisonment** for any such offence unless a period of five years has elapsed since his/her release.

Restrictions imposed by RBI on chit fund business

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

QUESTIONS:

1. Explain the various types of Financial Services Organisations operating in India.
2. List and briefly explain the various categories of Non-Banking Financial Companies.
3. Explain the role of Asset Reconstruction Companies and how far they have been successful in resolving the issue of stressed assets of banks.
4. ARCs can maximize recovery value with minimum cost. Explain the benefits of incorporating an Asset Reconstruction Company (ARC).
5. What is a Payment Bank? What are the key issues to be kept in mind in the compliance requirement of a Payment Bank.
6. Shivani and her six more relatives & friends want to incorporate a Nidhi Company. They seek your advice on the following issues with respect to the formation of company:
 - (i) Whether Nidhi Company can be formed as a private company? Is there any specific law for the Nidhi Companies?
 - (ii) Whether the approval of Reserve Bank of India (RBI) is required?
 - (iii) Whether Nidhi is allowed to raise funds through issue of equity shares and preference shares?
 - (iv) Whether Nidhi is allowed to carry on business other than the business of borrowing or lending in its own name?

As a practising Company Secretary, advise with reference to the provisions of the Companies Act, 2013.

Lesson 9 - Business Collaborations



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

A Special Purpose Vehicle (SPV) is formed for a specific purpose. In this chapter, Joint Venture and Special Purpose Vehicle, their advantages and disadvantages, their characteristics and the process for registering these entities are covered.

Lesson Outline	Page No.
➤ Business Collaboration	
➤ Foreign Collaboration	
➤ Joint Venture	
➤ Restrictions under FDI Policy	
➤ Essential Features of a Shareholders' Agreement (SHA)/ Joint Venture Agreement/ LLP Partnership Agreement (PA)	
➤ Special Purpose Vehicle (SPV)	
➤ LLP as a Special Purpose Vehicle	

BUSINESS COLLABORATION

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

TYPES OF BUSINESS COLLABORATION

Horizontal Collaboration	When the businesses in the same set of functional area collaborate to improve their competencies is known as Horizontal Collaboration. For example: conducting research toward new or improved products and services requires monetary investment, time and worker capacity.
Vertical Collaboration	Vertical Collaboration is a collaboration wherein a business collaborates with companies in its supply chain, either upward (suppliers) or downward (distributors), to minimize risk and obtain lower prices in exchange for a long-term commitment. For example: Computers shipping with pre-installed third-party software, fast food chain collaborating with a food packaging supplier, etc.
Intersectional Collaboration	Businesses from different functional areas share their knowledge for advancement of all partners in the collaboration. This can include Manufacturing and Marketing collaborations, referral rewards, and tie-ups.
Joint Venture	Joint Venture (JV) is when two or more businesses form a new company with profits split according to a formal contract. For example: One party in the JV provides technical support and another party provides manufacturing and marketing arrangements.
Equity	A company acquires a minor equity stake in another business in exchange for a monetary investment. Such exchanges can accompany other types of collaboration and may involve access to decision making. For example: Funding to start-ups on equity basis.

FOREIGN COLLABORATION

- Foreign collaboration is an alliance of resident and non-resident entities to carry on the agreed task collectively. (Entities can be individuals, firms, companies, organizations, governments, etc.)
- It is an alliance formed for mutual benefit of collaborating parties.
- Before starting a foreign collaboration, both entities must seek approval (permission) from the Governmental Authority of the domestic country.

- The collaborating entities prepare a preliminary agreement detailing the contribution of each entity, such as finance, technology, machinery, management consultancy, labour, raw material and so on.
- After obtaining the necessary permission, individual representative of a resident and non-resident entity signs this preliminary agreement. Thereafter, a contract is executed, and foreign collaboration gets established. Contract is a legally enforceable agreement.
- After establishing foreign collaboration, resident and non-resident entity start business together in the domestic country.
- Profit-sharing ratio and tenure of the collaboration are specified in the written contract.

Examples of Foreign Collaboration

Some prominent examples of FC between an Indian and Foreign entity are:

- ICICI Lombard GIC (General Insurance Company) Limited is a financial FC between ICICI Bank Ltd., India and Fairfax Financial Holdings Ltd., Canada.
- Tata DOCOMO is a technical foreign collaboration between Tata Teleservices from India and NTT Docomo, Inc. from Japan.



FEATURES OF FOREIGN COLLABORATION

1.	Type of partnership	FC is a type of partnership between a domestic entity and foreign based entity, where the foreign entity generally provides support for finance, technology, engineering, management, etc. and the domestic entity provides cheap labour, high-quality raw materials, land and so on.
2.	Requires an Approval of the government	Before initiating FC, the collaborating entities must seek permission from the government of the domestic country. The government gives approval only when the contract complies with the industrial and foreign policies.
3.	Entities are from developed and developing country	FC involves entities from developed and developing countries, with the former providing assistance to the latter.
4.	Benefits to developed country	The benefits of FC to a developed country include good returns on investment and a good reputation for providing financial and technical assistance.
5.	Benefits to developing country	The benefits of FC to a developing country include access to financial technology, and expertise, and faster economic growth.

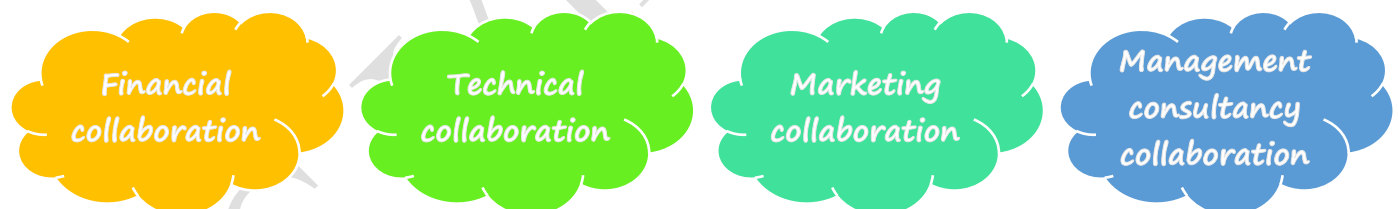
6.	Initiation of foreign collaboration	FC is initiated at the government and/or corporate level. At governmental level FC, governments of foreign country and domestic country collaborates. Similarly, at corporate level FC, private or public companies from foreign country and domestic country collaborates.
7.	Better utilization of resources	FC helps better utilize resources, as developed countries can access low-cost labor and raw materials in developing countries.
8.	Miscellaneous features	Miscellaneous features of FC include reducing unemployment, improving infrastructure, increasing government revenue, and aiding economic growth.

OBJECTIVES OF FOREIGN COLLABORATION

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

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

TYPES OF FOREIGN COLLABORATION



1. **Financial collaboration:** In case of financial collaboration, the inflow of foreign investment takes place in the domestic (host) country. In this method, the foreign company lends finance by:
 - **Purchasing ownership shares** of the domestic company and gets the dividend in return.
 - **Giving long-term loans** to the domestic company and gets interest in return.
 - **Giving credit facility** to the domestic (native) company, which is used for purchasing raw-materials, plant and machinery.

Thus, in financial collaboration, there is an inflow of finance from developed countries to developing countries.

2. **Technical collaboration:** In case of technical collaboration, the inflow of foreign technology takes place in the domestic (host) country. In technical collaboration, the foreign company provides technological know-how, professional services, expertise, machineries, etc., to the domestic country. This collaboration helps to remove the technology gap and encourages the inflow of modern technology from developed countries. Therefore, the governments of developing countries encourage such collaborations. In developing countries, most of the foreign collaborations are technical in nature.
3. **Marketing collaboration:** Marketing collaboration involves the sale of goods produced by a domestic company in the foreign market and/or international market by a foreign company using its distribution network. Marketing Collaboration can increase exports of goods and services for developing countries.
4. **Management consultancy collaboration:** Management consultancy collaboration is a type of partnership where a foreign management consultancy provides management skills and advice to a domestic company in the host country. In other words, it gives advice and solves management problems of the domestic company. It teaches management skills for the following:
 - Production management.
 - Marketing management.
 - Personnel management.
 - Financial management.

The collaboration helps the domestic company to modernize and diversify its business process. This type of collaboration is found in both private and public sector.

FOREIGN COLLABORATION IN INDIA

In India there are basically **two forms of foreign collaboration (FC): financial and technical**. In case of FC, the approving authority is the **Reserve Bank of India** and for technical collaboration, the approving authority is Department for Promotion of Industry and Internal Trade (**DPIIT**) in the Ministry of Commerce and Industry.

The government allows foreign direct investment in sectors that will benefit the country, and foreign investors are treated equally with Indian partners.

The Foreign Exchange Management Act 1999 regulates foreign exchange and provides civil remedies for contravention. For setting up FC, approval from the government under the relevant foreign exchange laws is required.

A foreign company can now form a collaboration without forming a company with an Indian counterpart. However, FCs exceeding the minimum limit (set out in the automatic route) requires approval from the government.

The Government has set up a **Foreign Investment Promotion board** to encourage foreign investment in India. Some of the **functions of the Board** include:

- ✓ speed up clearance of proposals
- ✓ to review the collaborations cleared
- ✓ ear-marking and ascertaining of contacts to invest in India

JOINT VENTURE

A Joint-ventures can be defined as “an enterprise in which two or more investors share ownership and control over property rights and operation”.

The venture can be for one specific project only, or a continuing business relationship. Entering into a joint venture is a major decision. Businesses of any size can use joint ventures to strengthen long-term relationships or to collaborate on short-term projects.

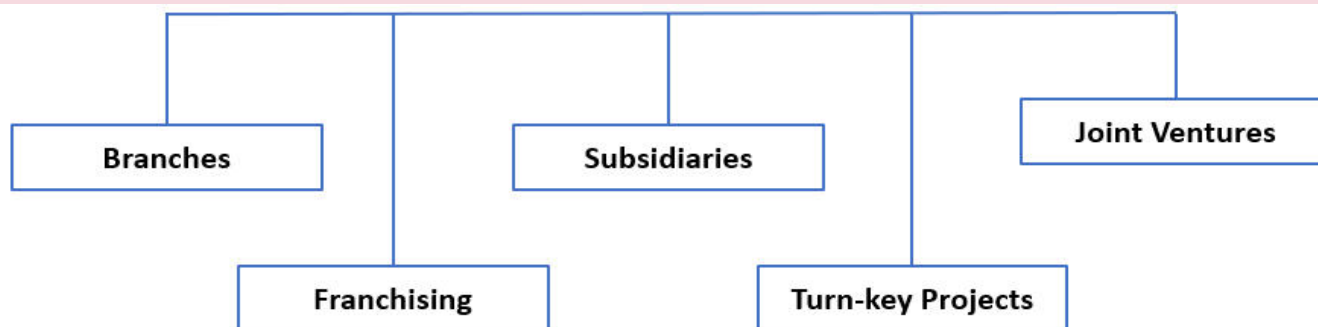


Joint Venture commonly referred to as a “JV”, are typically formed either by individuals, business entities, corporations or partnerships. The contributions to the joint ventures are either in the form of money [capital], services, physical assets [equipment] or intellectual property [software, patents], etc., or a combination of all. Business entities, who do not individually have the capacity, in terms of resources finances and technical know-how etc. can benefit by forming Joint Venture for pooling of resources, sharing technical know-how and exploring larger markets for their goods and services.

Examples of Joint Venture Companies in India are:

1. Hindustan Unilever Limited – JV between Unilever and India's Hindustan Lever Limited.
2. Vodafone Idea Limited – JV between Britain's Vodafone Group and India's Idea Cellular.
3. _____
4. _____

MNC's IN DIFFERENT FORMS INCLUDING JOINT VENTURES



ADVANTAGES OF FORMING JOINT VENTURE

(i)	Risk Sharing	Risk sharing is one of the biggest advantages of forming a Joint Venture, particularly, in those industries where the cost of product development and likelihood of failure of any particular product is very high.
(ii)	Economies of Scale	Joint Ventures can provide economies of scale necessary to compete globally, particularly in industries with high fixed costs. Combining resources can help achieve critical mass and compete effectively.
(iii)	Market Access	For companies that lack a basic understanding of customers or infrastructure to distribute their, forming a JV with the right partner can provide instant access to established, efficient and effective distribution channels and receptive customer bases.
(iv)	Exploring the Global Market	Formation of JV can be advantageous to those companies, seeking to enter foreign markets. Partnering with foreign company would provide an ease to that Company for penetrating a foreign market, which can otherwise be difficult due to lack of experience in such market and local barriers to foreign-owned or foreign-controlled companies.
(v)	Easy acquisition of other entity or business	Joint Ventures can be a less costly and less risky option than complete acquisitions, particularly when a company wants to acquire another, but cannot due to cost, size, or geographical restrictions or legal barriers. Further, it is sometimes used as a first step to a complete acquisition with the JV Partner.
(vi)	Cost Efficiency	Joint Ventures can help small-scale companies overcome financial and resource shortages. It helps to produce goods by sharing resources and costs with a partner.
(vii)	Flexible nature	Joint Ventures are flexible enterprises that provide each participant the freedom to continue with their individual businesses. Thus, during the term of the contract participants can freely resume their business as long as they fulfil the needs mentioned in the agreement.

DISADVANTAGES OF JOINT VENTURE

(i)	Restricted flexibility where full concentration is required for JV Project	Flexibility is important however, some projects require full concentration resulting in individual businesses suffering in the process.
(ii)	Lack of equal involvement	Equal involvement from all JV partners may not be possible, as it is unlikely for all companies to share the same involvement and responsibilities.
(iii)	Cultural Differences	Different cultures and management styles may result in poor co-operation and integration, creating hurdles for the JV.
(iv)	Extensive Research and planning required	JV can result in a frustrating experience and ultimately a failure if it lacks adequate planning and research.
(v)	Lack of clear communication	A JV involves different companies from different horizons with different goals, there is often a severe lack of communication between partners.
(vi)	Unreliable partners	Because of the separate nature of a JV, it is possible that the partner do not devote 100% of their attention to the project and become unreliable.
(vii)	Creation of competitor	Another potential disadvantage of a JV is the possibility of the creation of a competitor or a potential competitor in the form of one's own JV partner.

STRATEGIES OF ENTERING INTO A JOINT VENTURE



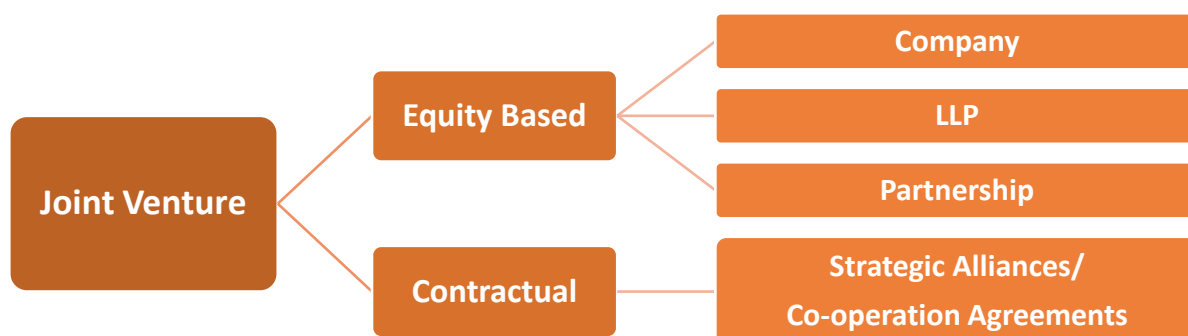
If formed strategically JVs can be very effective for growth and success of a business.

Following are the strategies for forming a successful Jointing Venture:

1. **Identification of prospective Joint Venture Partner(s):** The prospective partner should be strong in terms of business, technology and resources. One partner must be able to compliment the other partner especially in those areas where it lacks.
2. **Trustworthy:** A JV with strong and trustworthy partner would generate enormous benefits for both the partners and the entity.
3. **Development of Strong JV Relationship:** Partners must strive to develop joint venture relationships that are easy to maintain, financially profitable, intellectually rewarding, and long-lasting.
4. **Equal Contribution:** JV Partners must make sure that all the partners have equal contribution in the Joint Venture entity in terms of skills, intellectual resources, marketing resources, capital, and so on.
5. **Written Agreement:** The agreement should always be written and must clearly define all the terms, rights and responsibilities of each partner, with no ambiguity or clashing of interests.
6. **Limiting the scope of Joint Venture:** It is essential that limits and scope of the venture should be defined in the beginning itself. At a later stage, the scope can be increased with mutual consent of all the partners.
7. **Well defined Business Model:** The firms in a JV must clearly define the nature of the new venture including customer propositions, channels, investments, income, costs, success factors, and delivery timetable.
8. **Flexibility:** The partners in JV should try to be flexible and favour partners who demonstrate the same level of flexibility.
9. **Establishment of Exit Routes:** JV Partners much establish clear protocols in the beginning itself for amending or unwinding the relation if it fails to meet the expectations or in case of disputes.

FORMATION OF JOINT VENTURES

A Joint Venture can be of the following types:



(1) Equity based Joint Venture

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

The parties undertake to provide money or other resources as their contribution to the assets or other capital of that legal entity. The entity is generally established as a limited liability company and is distinct from either of the parties which participate in its creation. The newly created company, thus, becomes the owner of the resources and each party becomes an owner of the company with equity in it.

The parties agree on the purpose, management, operation, and duration of the company, as well as the distribution of profits and losses based on their capital contributions.

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

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

Circumstances indicating SPV:

All the above five characteristics need not be fulfilled in every equity based JV. For example, one of the parties may provide investment without having any say in the management of the JV and vice-versa.

Typically, if a foreign company is providing technology and other knowledge-based inputs, it may want to ensure that the JV company is managed as per its directions and may retain an option to invest in it on a later date. This may be done by a foreign company to establish presence in a sector where Foreign Direct Investment (FDI) is not allowed.

(2) Contractual Joint Venture

The contractual JV might be used where the establishment of a separate legal entity is not needed or not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but they exercise some elements of control in the JV.

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

For the purposes of contractual joint venture, terms of the joint venture are outlined in a contract. The parties negotiate and agree on how the joint venture will operate, and additional agreements, such as licensing agreement, know-how agreement and agreement covering all other commercial matters, can be added as annexes once the joint venture is established.

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

- (i) Two or more parties have a **common intention** – of running a business venture.
- (ii) Each party will **bring some inputs** in the form of money, technology or materials.
- (iii) Each party exercises certain degree of **control** on the venture.
- (iv) The relationship is not a transaction-to-transaction relationship but has a character of **long-term relationship**.

TYPES OF ENTITIES UNDER EQUITY BASED JV

Every equity based joint venture gives birth to a new entity. Government of India permits certain type of entities. Different types of entities are summed up below:

- (1) **Company** – A limited liability company is the most preferred structure for joint venture entities in India.

Government also encourages investment being in the form of equity capital of a company incorporated in India. Companies in India are mainly of two types – private limited and public limited. There is no minimum share capital prescribed either for private limited company or public limited company. At least one director of every company must be a resident of India.

- (2) **Limited Liability Partnership (LLP) Firm** – LLP Firm structure is regulated in India by The Limited Liability Partnership Act, 2008. Foreign investment in LLP is allowed subject to certain restrictions.

An LLP Firm combines the convenience of a partnership firm with the limited liability feature of a company. An LLP Firm needs minimum two partners. It also requires minimum two Designated Partners out of which at least one should be resident of India. There is no requirement of minimum capital contribution to incorporate an LLP Firm.

- (3) **Venture Capital Fund** – A duly registered Foreign Venture Capital Investor is allowed to contribute up to 100% in Indian Venture Capital Undertakings / Venture Capital Funds / other companies.

(4) **Trusts** – A foreign company is not allowed to use Trust as a form of a joint venture entity in India. However, some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds are now permitted to receive foreign investment.

(5) **Other Entities** – Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based joint venture entities.

RESTRICTIONS UNDER FDI POLICY OF THE GOVERNMENT OF INDIA

Typically, any non-resident entity can set up an equity based joint venture in India. However, some entities face restrictions under FDI Policy of Government of India. The restrictions are as follows:

1. As per FDI Policy 2020, a Citizen or entity **land border from India** can invest only after the approval of the Government of India, in certain sectors other than defense, space, atomic energy and sectors prohibited for foreign investment.
2. NRI residents in **Nepal and Bhutan** as well as citizens of Nepal and Bhutan can invest on repatriation basis subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.
3. A **Foreign Institutional Investor** (FII) can invest only under the Portfolio Investment Scheme with certain limits.
4. A **Foreign Venture Capital Investor** (FVCI) duly registered in India may contribute up to 100% of the capital of an Indian Company under the automatic route and may also set up a domestic asset management company to manage the fund, subject to relevant RBI Rules and Regulations and FDI policy.

DOCUMENTS FOR JOINT VENTURES

Finalization of a joint venture goes through many stages. The first may be called the familiarisation stage when the two partners generally attempt to know each other. The second may be called the engagement phase when there is a level of commitment but still it is not very firm or long-term. The final stage is when broad understanding has been reached on the terms of the Joint Venture. At each stage, the documentation is different.

At the **familiarisation stage**, Indian companies often prefer a simple Memorandum of Understanding (MOU) to define their relationship and a road map for the future.

During the **engagement phase**, a more formal contractual Joint Venture may be envisaged, as the parties are putting in relatively higher amount of resources. The contracts are generally of a fixed duration or are related to specific events.

Finally, at the **concluding stage**, an equity-based joint venture may be considered, requiring careful preparation of documents like the Joint Venture Agreement or Shareholders' Agreement or LLP Partnership Deed. When forming a joint venture company, it is important to pay close attention to the Articles of Association and tailor them to meet specific needs, especially when one partner is a foreign national or company.

ESSENTIAL FEATURES OF A SHAREHOLDERS' AGREEMENT (SHA) /JOINT VENTURE AGREEMENT / PARTNERSHIP AGREEMENT (PA)

The SHA/PA is not a document for the government or the courts. SHA/PA is a working document and should be drafted with business essentials in focus.

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

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

ESSENTIAL COMPONENTS OF A JOINT VENTURE AGREEMENT

In India, there is no legally prescribed format of a Joint Venture Agreement. However, in actual practice, the Agreement contains the following components (illustrative list):

- (a) **Description** (Nature of the Agreement)
- (b) **Parties** (full description of the parties to the Agreement)
- (c) **Recitals** (situation existing prior to the execution of this Agreement; It is also used to convey the intention of the parties)
- (d) **Operative Part** (defines the rules for the future; typically consists of name and constitution of the new entity being set up, equity investments, activities to be undertaken, role of each party, constitution of the Board, names of the Chairman and Managing Director and their powers, duties, etc.)
- (e) **Legal aspects:**
 - (i) Amendments of the JV Agreement
 - (ii) Duration of the JV
 - (iii) Termination
 - (iv) Dispute resolution
 - (v) Confidentiality and Non-Disclosure Agreement
 - (vi) Non-compete clause
 - (vii) Indemnification
 - (viii) Procedure for execution.

SPECIAL PURPOSE VEHICLE (SPV)

A Special Purpose Vehicle (SPV) or Special Purpose Entity (SPE) are generally formed for a special purpose. These companies/entities close their operations once the purpose is attained. The operations of these entities are limited to the acquisition and financing of specific assets.

An SPV can be formed for any lawful purpose. An SPVs/SPEs may be formed through limited partnerships, trusts, corporations, limited liability corporations or other entities. An SPV/SPE may be designed for independent ownership, management and funding of a company or as protection of a project from operational or insolvency issues. Thus, based on above meaning, we can conclude that a SPV is an entity which has distinct identity from its promoters or sponsors or constituents or shareholders.

An example is the creation of an SPV for the implementation of the Smart Cities Mission Project of the Ministry of Housing & Urban Affairs, Government of India. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

BENEFITS OF SPECIAL PURPOSE VEHICLE (SPV)

The biggest advantage of SPV is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation. The SPV also allows securitisation of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secure assets can be securitised.

Model SPV:

- (a) **Ownership of Assets** – An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
- (b) **Minimum Statutory Requirement** – Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
- (c) **Tax benefits** – SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. Some countries have different tax rates for capital gains and gains from property sales.
- (d) **Legal protection** – By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
- (e) **Accounting Reasons** – Debts raised through SPV and losses incurred by SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture in the eyes of its stakeholders.
- (f) **Separating the risk** – It helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.
- (g) **Securitization of assets** – The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

PURPOSE OF SPECIAL PURPOSE VEHICLE

An SPV is a separate legal entity created by a parent company or financial institution to limit risk and raise funds for a specific purpose. It allows for highly leveraged or speculative investments without endangering the parent company. SPVs are mostly formed to implement large-scale projects or when Government Regulations specify creation of a separate vehicle for carrying out any specified activity.

Banks and financial institutions create SPVs to securitize their loans and receivables. The SPV raises debt backed by these receivables and their future cash flows. The difference between the incomes received and the cost of servicing the debt is the profit of the SPV. This way, the risk is separated from the bank's general business.

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

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

DIFFERENCE BETWEEN A SPECIAL PURPOSE VEHICLE (SPV) AND A COMPANY

SPV is a type of company formed to raise funds from the market. It has to follow the rules of formation of a company laid down in the Companies Act. Like a company, the SPV is an artificial person. It has all the attributes of a legal person. The SPV has an existence of its own in the eyes of law. It can sue and be sued in its name. The SPV has to adhere to all the regulations laid down in the Companies Act. Members of an SPV are mostly the companies and individuals sponsoring the entity. An SPV can also be a partnership firm.

The company, as distinguished from an SPV, may be called a general purpose vehicle. A company may do many things which are mentioned in the memorandum of association (MoA) or permitted by the Companies Act. An SPV may also do the same, but its scope of operation is limited and focused. The MoA is quite narrow in the case of an SPV. This is primarily to provide comfort to lenders who are concerned about their investment.

HOW IS AN SPV ESTABLISHED?

Like a company, an SPV must have promoter(s) or sponsor(s), usually a corporation that moves assets or activities into the SPV to isolate them from the parent company's risks. This isolation of assets is important for providing comfort to investors. Further, the performance of the new entity will not be affected by the ups and downs of the originating entity, making it less risky and providing comfort to the lenders. It's important that the SPV can function independently from the parent company.

SPV AS PREFERRED VEHICLE FOR FUNDS RAISING BY INFRASTRUCTURE SECTOR

SPVs are a preferred vehicle for funds raising by the infrastructure sector, which requires large amounts of capital. Organizations like IDFC, PFC, and IRFC raise funds for infrastructure development. The proposed SPV, which is likely to be a government company, will add to the availability of long-term funds for infrastructure sector projects.

An example is the creation of an SPV for the implementation of the Smart Cities Mission Project of the Ministry of Housing & Urban Affairs, Government of India. The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.

LLP FIRM AS A SPECIAL PURPOSE VEHICLE

A Limited Liability Partnership (LLP) Firm combines the benefits of company's limited liability with the flexibility of a partnership firm's management structure. Before the passing of The Limited Liability Partnership Act in 2008, a foreign company had to set up a company as an SPV to participate in tender or consortium with an Indian company. The disadvantage was that winding up such a company is difficult.

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

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

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

(i)	Low cost of incorporation of an LLP;	
(ii)	Flexibility of rules of management and governance based on the Agreement;	
(iii)	Low annual maintenance cost ;	
(iv)	There may not be any necessity of getting the accounts audited before the project takes off;	
(v)	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;	

(vi)	Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;	
(vii)	Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.	

QUESTIONS:

1. Explain the meaning and features of foreign collaboration.
2. Define a Joint Venture Company. What are its characteristics?
3. Distinguish between a Joint Venture Company and a Special Purpose Vehicle (SPV)
4. Explain, with reasons, why the concept of Special Purpose Vehicle (SPV) has gained prominence in India in recent times. Quote Examples.

Lesson 10 - Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company



This Chapter helps in understanding how to establish branch and liaison office of Foreign Companies in India.

Lesson Outline	Page No.
➤ Introduction	
➤ Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India	
➤ Eligibility, Registration, Permitted activities and Procedure of establishment of BO/ LO/ PO	
➤ Closure of Branch Office/Liaison Office/Project Office	

INTRODUCTION

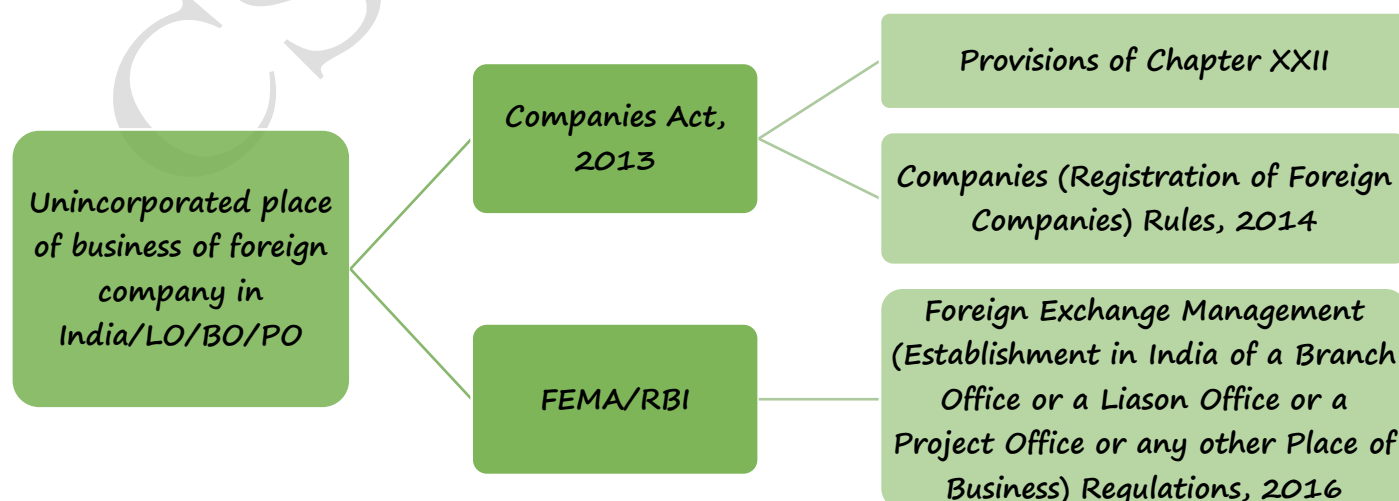
With India possessing vast natural and human resources and being among the fastest-growing economies in the world with a large market, it provides immense opportunities for foreign companies to grow and diversify their business. Therefore, there is a lot of interest among foreign companies and foreign nationals to open a wholly owned subsidiary, branch, liaison or project office in India or start a business in India.

Foreign company can also open an office in India without starting necessarily as a subsidiary company or associate company. Branch Office / Liaison Office allow for long-term functioning of a foreign company's office in India with approval from the Reserve Bank of India (RBI), while project offices can be started under General RBI approval if certain criteria are fulfilled.

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

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

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



Important Terms

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

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

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 total voting power either at its own or together with one or more of its subsidiary companies:

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

Explanation. –For the purposes of this clause –

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

Key Provisions

Further, as per the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 [hereinafter “FEM (BO/LO/PO) Regulations”], Branch Office, Liaison Office or Project Office are defined as follows:

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

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

Sections **376, 379 to 393A** under Chapter XXII of the Companies Act, 2013 ('Act') deal with Companies Incorporated Outside India.

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

Section 379 of the Act provides that where not less than **50% of the paid-up share capital**, whether equity or preference or partly equity and partly preference of a foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act, as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India.

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

- (a) a certified copy of the **charter**, statutes or memorandum and articles, of the company or other instrument defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof;
- (b) the full **address** of the registered or principal office of the company;
- (c) a list of the **directors and secretary** of the company with prescribed particulars;
- (d) the name(s) and address(es) of one or more persons resident in India **authorised** to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full **address** of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on **earlier occasion** or occasions;
- (g) **declaration** that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as prescribed.

Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified places or documents as required under Section 382.

Section 381 of the Act requires a Foreign Company to maintain books of Account and file a copy of **balance sheet and profit and loss** account in prescribed form with ROC **every calendar**

year. These accounts should be accompanied by **list of place of business** established by the foreign company in India.

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

- (i) The provisions of Charges; Inspection, Inquiry and Investigation; Section 71 (relating to Debentures); Section 92 (filing of annual returns); Section 135 (Corporate Social Responsibility) shall apply mutatis mutandis to a foreign company, subject to prescribed exceptions and modifications.
- (ii) The provisions of Section 128 shall apply to a foreign company to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India.

As per **Section 386(c)**, having a **share transfer office or registration office** will constitute a **place of business**. In *Tovarishstvo Manufacture Liudvig Rabenek, Re [1944]*, it was held that where representatives of a company incorporated outside the country **frequently stayed in a hotel in England for looking after matter of business**, it was held that the company had a place of business in England.

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

PROVISIONS PERTAINING TO NAME

As per Rule 8 of the Companies (Incorporation) Rules, 2014 ("hereinafter referred to as the Rules") states that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available.

Provided further that provisions of Rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India.

The **name shall be considered undesirable**, if-

- The proposed name implies association or connection with an embassy or consulate of a foreign government.
- The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country.

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

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

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with FEM (BO/LO/PO) Regulations.

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 BOs are easily remittable from India, subject to the taxes applicable.

Eligibility for setting up a Branch Office (BO)

The applicant company must be a body corporate incorporated outside India;	
The name of the Indian BO must be the same as the foreign company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);	
Net worth of the BO must not be less than US \$100,000 ; and	
The foreign company should have a profit making record in the immediately preceding 5 financial years in the home country.	

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

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

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

- (i) Export/import of goods.
- (ii) Rendering professional or consultancy services.
- (iii) Carrying out research work in which the parent company is engaged.
- (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (v) Representing the parent company and acting as buying/ selling agent in India.
- (vi) Rendering services in Information Technology and development of software in India.
- (vii) Rendering technical support to the products supplied by parent/group companies.
- (viii) Representing a foreign airline/shipping company.

A branch office is **not allowed** to undertake any Retail Trading Activities. Manufacturing or Processing activities, undertaken directly or indirectly, are also barred.

The RBI has given general permission to foreign companies to set up branch offices in Special Economic Zones (SEZs) subject to the **following conditions**:

1. such BOs are functioning in those sectors where 100% FDI is permitted;
2. such BOs comply with Chapter XXII of the Companies Act, 2013;
3. such BOs function on a stand-alone basis.

Every Branch Office has to deliver documents as specified in Section 380 of the Companies Act, 2013 within 30 days of its establishment to the Registrar.

Registration of a Branch Office in India

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

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

For other sectors, the form must be submitted to the Ministry of Finance. In this case, the application for establishing branch office must be forwarded by the foreign entity through a designated AD Category – I bank to the RBI.

If the foreign entity wishes to establish a branch office in more than one location in India, it must register the branch, or seek approval from the RBI for each of the location separately. The RBI approval is also necessary for each activity the branch office intends to undertake in India.

The foreign company is required to **deposit the following set of forms**:

- FNC form duly signed by AR;
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration;
- The incorporation documents of the branch office to be established in India;
- Proof of registered office;
- Note on location or proposed activity;
- The latest audited balance sheet of the applicant entity;
- Board resolution to open a branch office;
- KYC of the authorized signatory; and
- Information about the local representatives of the parent company in the branch office.

Funding of the BO by the Foreign Company

Equity Share Capital	Preferred Share Capital	Debentures and Borrowings
in the usual way Indian companies are financed.	such convertible preference shares, compulsorily convertible into equity shares are regarded as FDI.	these 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 (LO)

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 foreign company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);	
Net worth of the LO must not be less than US \$ 50,000 ; and	
The foreign company should have a profit making record in the immediately preceding 3 financial years in the home country.	

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

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

In the case of the Bar Council of India vs. A. K. Balaji & Ors., the Hon'ble Supreme Court held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that **foreign law firms/companies or foreign lawyers cannot practice profession of law in India**. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession.

	Branch Office	Liaison Office
Track Record	A profit making track record during the immediately 5 Financial years in the home country	A profit making track record during the immediately 3 Financial years in the home country
Net Worth	Not less than USD 100,000 or its equivalent.	Not less than USD 50,000 or its equivalent.
Permissible Activities	• Export & Import of goods – only on wholesale basis. • Rendering professional or consultancy services. • Carrying on research work, in areas in which the parent company is engaged. • Promoting technical or financial collaborations between Indian companies and parent or overseas group company. • Representing the parent company in India and acting as buying/ selling agent in India. • Rendering services in information technology and development of software in India. • Rendering technical support to the products supplied by parent/ group companies. • Foreign airline/shipping company.	• Representing in India the parent company / group companies. • Promoting export / import from / to India. • Promoting technical/ financial collaborations between parent/ group companies and companies in India. • Acting as a communication channel between the parent company and Indian companies.

PROJECT OFFICE

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

Parameters of project office

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

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

“a bilateral or multilateral International Financing Agency” means the World Bank or the International Monetary Fund or similar other body.

A person from any country other than Pakistan who has been awarded a contract for a project by a Government authority/ Public Sector Undertaking may open a bank account with an AD Bank without any prior approval from the RBI.

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

A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. RBI provides guidelines to be followed for establishing a BO and reserves the right to reject an application on the non-fulfilment of the same. The Applications are made in form FNC and are considered by the RBI under two routes determined by the degree of FDI:

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

Additionally, the RBI will also consider the **following criteria** while sanctioning the Liaison office/ Branch office of a parent company.

Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-I bank as per the guidelines given by RBI. If the principal business of the entity resident outside India falls under sectors where 100% FDI is allowed in terms of Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, and the entity seeks to open a BO/LO/PO, the AD Category-I bank may consider such applications under the delegated powers.

Cases in which RBI Approval is required for Setting up BO, PO and LO in India

An application from a foreign company for opening of a BO/LO/PO in India shall require prior approval of RBI and shall be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110 001 who shall process the applications in consultation with the Government of India, in the following cases:

- The applicant is a citizen of or is registered/incorporated in **Pakistan**;
- The applicant is a citizen of or is registered/incorporated in **Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau** and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- The principal business of the applicant falls in the four sectors namely **Defence, Telecom, Private Security and Information and Broadcasting**. However, prior approval of RBI shall not be required in cases where Government approval or license/permission by the concerned Ministry/ Regulator has already been granted. Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Defence Public Sector Undertakings;
- The applicant is a **Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government**. However, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act.

The application by the foreign company has to be made through a designated AD Category-I bank to the General Manager of the Foreign Exchange Department of RBI.

The BO hence, once approved by the RBI, will be allotted a **Unique Identification Number (UIN)**. Once the offices have been set up, the BO must also obtain a PAN. This should be reported in the Annual Activity Certificate (AAC) to be presented by BO at the end of each year to show that the activities are undertaken in the permitted categories only.

Section 382 of the Companies Act, 2013, states that the company has to 'conspicuously' exhibit outside the office, the company's name and the specify country it was incorporated in. The name must be in English Language and in the local language of the area where the office is set-up.

Procedure for Establishment of BO/LO/PO

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

1.	
2.	
3.	
4.	
5.	
6.	

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

(a) Copy of the **Certificate of Incorporation/Registration; Memorandum and Articles of Association** attested by the Notary Public in the country of registration.

[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above].

(b) **Audited Balance sheet** of the applicant company for the last 5/3 years in case of branch office/ liaison office respectively.

[If the applicants' home country laws do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner, showing the net worth may be submitted].

(c) **Bankers' Report** from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

(d) **Power of Attorney** in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

The AD Category-I bank shall, after exercising due diligence, grant approval to the foreign entity for establishing BO/LO/PO in India.

2. **Allotment of Unique Identification Number (UIN):** However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of UIN to each BO/LO.

3. **Issue of Approval letter:** After receipt of the UIN from the RBI, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

4. **Intimation to Designated AD Category I bank:** An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The bank in turn shall inform RBI accordingly.
5. **Extension for setting up office:** The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse. In cases if inability to open the office within the stipulated time frame due to reasons beyond its control, the bank may consider granting extension of time for a further period of 6 months for setting up the office. Any further extension of time shall require the prior approval of RBI in this regard.
6. **BO/LO by foreign banks and insurance companies:** All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the IRDA, respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

Opening of bank account by BO/LO/PO

LIAISON OFFICE		BRANCH OFFICE	
To open that bank account: Applicant to approach AD Bank			
Can maintain only one bank account – No prior RBI Approval (To open more than one account, prior permission from RBI needs to be procured)			
Permitted debits (Dr.) and credits (Cr.)			
Permitted Dr.	Permitted Cr.	Permitted Dr.	Permitted Cr.
Only for meeting the local office expenses of the office	Funds from head office to meet office expenses	Expenses incurred by branch office	Funds from head office to meet office expenses
	Refund of security deposit paid from liaison office account or directly by head office	Remittance of profits and winding up proceeds	Legitimate receivables arising from business operations
	Refund of taxes, duties etc. paid from liaison office bank account		
	Sale proceeds of assets of liaison office		

An entity from Pakistan shall need prior approval of RBI to open a bank account for its project office in India. Any other foreign entity may open a bank account without such prior approval.

PROJECT OFFICE	
To open the bank account approval of AD Bank is required	
- If the project office is of an entity not from Pakistan: No prior approval of RBI is required. - If the project office is of an entity from Pakistan: Prior RBI approval is required.	
Project office can have two foreign currency accounts- one denominated in USD and other in the home currency of the awardees of the project- but with the same bank.	
Permitted debits (Dr.) and credits (Cr.)	
Permitted Dr.	Permitted Cr.
Payment for project related expenditure	Foreign exchange receipts from project sanctioning authority
	Foreign exchange receipts from parent/ group company abroad or bilateral/ multilateral international financing agency
The foreign currency accounts must be closed upon completion of the Project	

ANNUAL ACTIVITY CERTIFICATE BY BO/LO/PO

- (i) The **Annual Activity Certificate (AAC)** as at the end of March 31 each year along with the required documents needs to be submitted by the following:
- In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
 - In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

- (ii) The designated AD bank shall scrutinize the AACs and ensure that the activities undertaken are in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD bank, the same should immediately be reported to the General Manager, RBI, CO Cell, New Delhi, along with the copy of the AAC and their comments thereon.

Extension of validity period of the approval of LO and PO

(i) Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the concerned AD Category-I bank. The designated AD Category - I bank may extend the validity period of LO/s for a period of **3 years** from the date of expiry of the original approval/ extension granted if the applicant has complied with the following conditions and the application is otherwise in order:

- (a) The LO should have submitted the Annual Activity Certificates for the previous years; and
- (b) The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

Such extension has to be granted, as expeditiously as possible as and in any case not later than 1 month from the receipt of the request under intimation to the General Manager, RBI, quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on its website immediately.

(ii) Further, entities engaged in **construction and development sectors and NBFCs are permitted to open a liaison office for 2 years only**. No further extension would be considered for liaison offices of entities which are NBFCs 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.

(iii) 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**), RBI and the Insurance Regulatory and Development Authority (**IRDA**) respectively.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

Application for additional offices and activities

i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

- (a) If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.

- (b) The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
- (c) Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank. Changes in the postal address may be intimated to the CO Cell, New Delhi by the AD Category-I bank at the earliest.
- ii. Requests for undertaking activities in addition to what has been permitted initially may be submitted by the applicant to the RBI through the designated AD Category -I bank justifying the need.

Remittances of Profits/ Surplus

An overview of remittances of profits or surplus for branch and project offices is given below. As liaison office cannot undertake any business activities, the question of remittance of profits etc. by them does not arise.

Branch Office	Project Office
Permitted, net of taxes	Intermittent remittances permitted pending winding up or completion of the project
Following documents to be submitted with AD Bank:	Following documents to be submitted with AD Bank:
i. Certified copy of audited balance sheet and profit and loss account for the relevant year. ii. Chartered Accountant certificate certifying: - the manner of arriving remittable profits - that the remittable profit has been earned by undertaking permitted activities - that the profits do not include any profit on revaluation of assets of the branch	i. Auditors/ Chartered Accountant Certificate confirming that a sufficient provision has been made to meet the liabilities in India including income tax ii. Undertaking from the project office that remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittances from abroad.

CLOSURE OF BO/PO/LO

1. **Submission of request for closure:** Requests for closure of the BO/LO/PO and allowing the remittance of its winding up proceeds 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 may be submitted along with the following documents:

(a)	Copy of the RBI's/AD Category-I bank's approval for establishing the BO/LO/PO.	
(b)	Auditor's certificate: (i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets; (ii) confirming that all liabilities (in India) of the office have been either fully met or adequately provided for; and (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.	
(c)	Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO/LO/PO and there is no legal impediment to the remittance.	
(d)	A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO/LO in India, wherever applicable.	
(e)	The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.	
(f)	Any other document/s, specified by RBI/AD bank while granting approval.	

2. **Remittance of winding up proceeds:** Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

CHECKLIST FOR BO/LO/PO

S.N.	Particulars	Details
1.	Register with the Registrar of Companies (ROC)	A BO/LO/PO or any other place of business to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
2.	Application to an Authorised Dealer Category I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A BO/LO/PO need to meet the profit making track record.
4.	Permissible Activities	A BO/LO/PO shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain PAN from the Income Tax Authorities on setting up their office in India and report the same in the AACs.
6.	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only.
8.	Annual Activity Certificate (AAC)	The BO/LO shall submit the AAC as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
9.	BO/LO/PO change their existing AD Category-I bank	BO/LO/PO can change their existing AD Category - I bank subject to both the AD banks giving consent in writing for the transfer and the transferring AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.
11.	Carry out permitted/ incidental activities from leased property	As per the FEMA, 1999, BOs/ LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.
12.	Term Deposit Account	AD Category - I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO/PO of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO/LO/PO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/ airline companies.

14.	Change in the name of the existing LO/BO	Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and the application is received with the Board resolution for change of name and documents/certificate from ROC India showing change of name. Where change in name is requested on account of acquisitions or mergers of foreign entities involving change in ownership, the acquired entity or new entity shall apply afresh by closing the existing entity. It shall be noted that the approvals given to one foreign entity is not transferrable to another foreign entity.
15.	Change in the Top Management	Change in the Top Management or CEO/MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.
16.	Closure of the Branch office/ Liaison office	Requests for closure of the BO/LO may be submitted to the Authorised Dealer Category - I bank along with: ~ copy of the RBI's/ Authorised Dealer Category - I bank's approval for establishing the office; ~ Auditor's certificate; ~ Confirmation from the applicant/parent company regarding no legal proceedings and no legal impediment to the remittance; ~ A report from the RoC regarding compliance with the Companies Act, 2013, and ~ any other document/s specified by the RBI/ Authorised Dealer Category-I bank while granting approval.
17.	Remittance of winding up proceeds	Remittance of winding up proceeds of BO/LO established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

QUESTIONS:

1. What are the permitted activities for a liaison office in India of a person resident outside India?
2. Discuss the procedure for establishment of branch office of foreign company in India?
3. What is Annual Activity Certificate and when the same is required to be submitted and to whom?
4. What procedure must be followed for making application for establishment of additional Branch Offices and Liaison Offices?
5. State the check list for Project office in India.

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



This Chapter covers the Regulatory framework under Foreign Exchange Management Act, 1999 and FEM (Overseas Investment) Rules, Regulations & Direction, 2022. Further, it outlines the Issues in choosing location, structure and the processes of Incorporation of business entities in UK, Singapore, Canada, Australia, etc. Company Secretaries, while playing advisory role, can guide and help in setting up of business outside India.

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➤ Issues in choosing location Outside India	
➤ Procedure for Setting up business in other Countries ✓ New Zealand ✓ Singapore ✓ China ✓ New York ✓ United Kingdom ✓ Canada ✓ Australia	

INTRODUCTION

The year 1991 was the golden year for Indian economy. In 1991, India changed its foreign investment policies, which allowed foreign investments into India and enabled Indians to set up businesses abroad. This move aimed to increase the competitiveness of Indian companies globally and to help the country's export efforts.

The introduction of the Foreign Exchange Management Act in 1999 facilitated external trade and payments and aimed to promote an orderly development and maintenance of the foreign exchange market in India.

India has also signed Free Trade Agreements with its trading partners to increase its economy's competitiveness and allow Indian companies to increase their overseas direct investments.

According to the Reserve Bank of India, **Overseas Direct Investment ("ODI")** means investment by acquiring unlisted equity capital of a foreign entity, or subscribing to the memorandum of association of a foreign entity, or investing in 10% or more of the paid-up equity capital of a listed foreign entity or investing in less than 10% of the paid-up equity capital of a listed foreign entity 'with control'. Where an investment by a Person Resident in India ('PRII') is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls below 10% or such person loses control in the foreign entity.

EVOLUTION

India's Overseas Investment flows increased significantly in the 1990s and subsequent decades due to reforms in India's domestic and foreign policies. However, the removal of import licensing systems, non-tariff barriers, and tariff rates led to increased inflow of cheaper imports, which made Indian firms more competitive in the global market.

Post 1991, Overseas Investment emerged as an important way for Indian companies to gain market access, global presence, and increased economic integration. Overseas investments have grown in volume and expanded geographically and sectorally. These investments help improve India's service and manufacturing sectors and aid in the battle against rising unemployment rates.

INVESTMENTS & DEVELOPMENTS

India's economy is mainly driven by domestic demand, with consumption and investments contributing the most to economic activity. Despite short-term risks, the Indian economy has remained strong due to solid policy measures in place. This puts Indian businesses in a good position to invest abroad and expand their operations.

The Government has reduced restrictions on Indian companies investing overseas, and is taking steps to support such investments, recognizing the importance of robust foreign investment for economic progress.

Laws / Authority governing Setting up of Business outside India

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

The Reserve Bank of India has combined the FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 and the FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 and FEMA (Overseas Investment) Regulations, 2022. The new rules and regulations simplify the existing framework for overseas investment and significantly reduce the need for seeking specific approvals, thereby reducing the compliance burden and associated costs.

The RBI has also issued **FEMA (Overseas Investment) Directions, 2022**, which provide compliance requirements from the erstwhile ODI Master Directions not covered in the new rules and regulations.

The new Overseas Investment Rules & Regulations have introduced the concept of “Strategic Sector”. Strategic sector shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government.

Foreign entities having core activity in any strategic sector are not required to have a limited liability structure. Accordingly, Overseas Direct Investment can be made in these sectors by unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority.

OI Rules v/s OI Regulations

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

OI Rules provides the regulatory framework for making of overseas investment covering: – the permissions, conditions and restrictions in making Overseas Direct Investment (‘ODI’), – pricing guidelines,	OI Regulations provides only the operational part covering: – conditions for undertaking Financial Commitment (‘FC’), other than by investment in equity capital,
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- transfer, liquidation and restructuring of ODI.

While the OI Rules have been framed by CG, however, the same will be administered by the RBI.

- consideration in case of acquisition or transfer of equity capital of a Foreign Entity ('FE'),
- mode of payment,
- obligations of PRII,
- reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.

OVERSEAS INVESTMENT

Under the erstwhile ODI regulations, effective till August 21, 2022, there was a concept of direct investment outside India in JV and WOS that excluded portfolio investment and FC. OI Rules combines the two to define Financial Commitment and separately define the term Overseas Portfolio Investment ('OPI').

Further, the concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

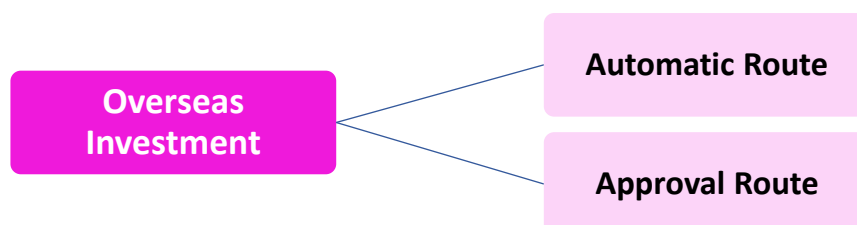
“Financial commitment” by a PRII means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund based facility extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend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

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

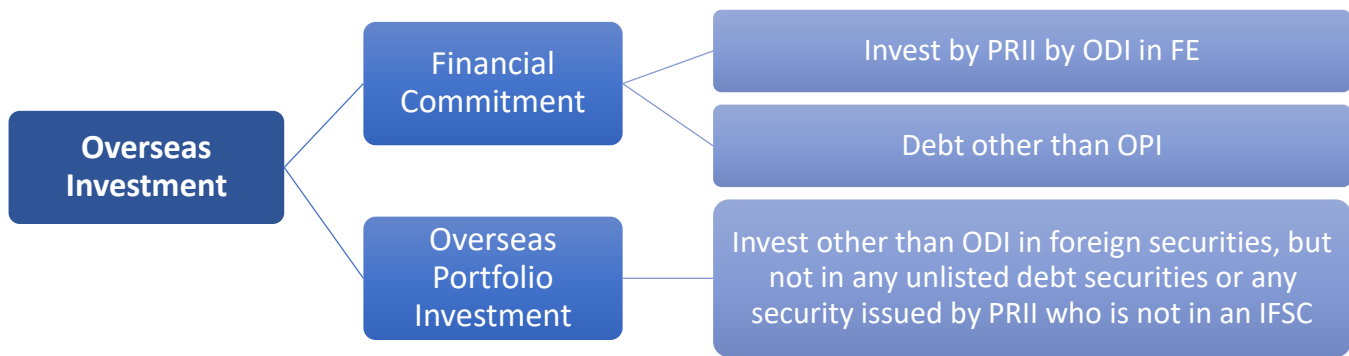
“Overseas Investment” or “OI” means financial commitment and Overseas Portfolio Investment by a PRII;

$$OI = FC + OPI$$

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



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



As per the new regime, Indian entity shall mean:

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

NON-APPLICABILITY

Acquisition or transfer of any investment outside India made:

- out of **Resident Foreign Currency Account**; or
- out of **foreign currency resources held outside India** by a person who is employed in India for a specific job or assignment, duration of which does not exceed 3 years; or
- in accordance with Section 6(4) of FEMA Act i.e. where the investment in the foreign security or any immovable property situated outside India **was acquired when the person was resident outside India (PROI) or inherited from a PROI**.

PROHIBITIONS

1. No PRII shall make ODI in a foreign entity **engaged in** –
 - real estate activity;
 - gambling in any form; and
 - dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.
2. Any **ODI in start-ups, recognised under the laws of the host country**, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

3. No PRII shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than **two layers of subsidiaries**:

Provided that such restriction shall not apply to the following classes of companies—

- a. a banking company;
- b. a systematically important non-banking financial company;
- c. an insurance company; and
- d. a Government company.

AUTOMATIC ROUTE

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

Step-down subsidiary, in respect of a foreign entity, has been defined as an entity in which the foreign entity has control. The investments made through a step-down subsidiary shall qualify as overseas investment, if the step-down subsidiary complies with the structural requirements of a foreign entity, i.e. it shall have limited liability.

‘Bona-fide business activity’ has been defined as any business activity permissible under any law in force in India and the host country/host jurisdiction.

Further, control is defined as the right to appoint majority of the directors or control the management or policy decisions, and ODI means the acquisition of unlisted equity capital, subscription to MoA of a foreign entity, investment in 10% or more of listed securities, or investment in less than 10% of listed securities with control. It is possible to argue that control is possible without infusion of capital.

Accordingly, where a foreign entity is set up without any outward remittance of cash (for example in Delaware where a company can be incorporated without capital contribution), and the Indian resident has control of such entity, the transaction should qualify as an ODI. Similarly, a gift of controlling shares of a foreign entity from a non-resident to resident may also result in the resident having made ODI into the foreign entity.

APPROVAL ROUTE

The OI Rules, 2022 states that overseas investment under the automatic route, shall not be made into a company incorporated in Pakistan or such other country as may be decided by the Central Government. The OI Rules provide for investments that will require prior approval of CG, RBI and NOC from lender banks/regulatory bodies etc. The OI Rules provide that:

Approval from Central Government: The applications for overseas investments in Pakistan / other countries as may be restricted by the Central Government beyond the prescribed limits, shall be made to the Central Government through the RBI. As such, the applications shall be forwarded by the AD banks to the RBI for onward submission to the Central Government.

Approval from Reserve Bank: Financial commitment by an Indian entity, exceeding USD 1 billion (or its equivalent) in a financial year shall require prior approval from the RBI even when the total financial commitment of the Indian entity is within the eligible limit under automatic route (i.e. within 400% of the net worth as per the last audited balance sheet).

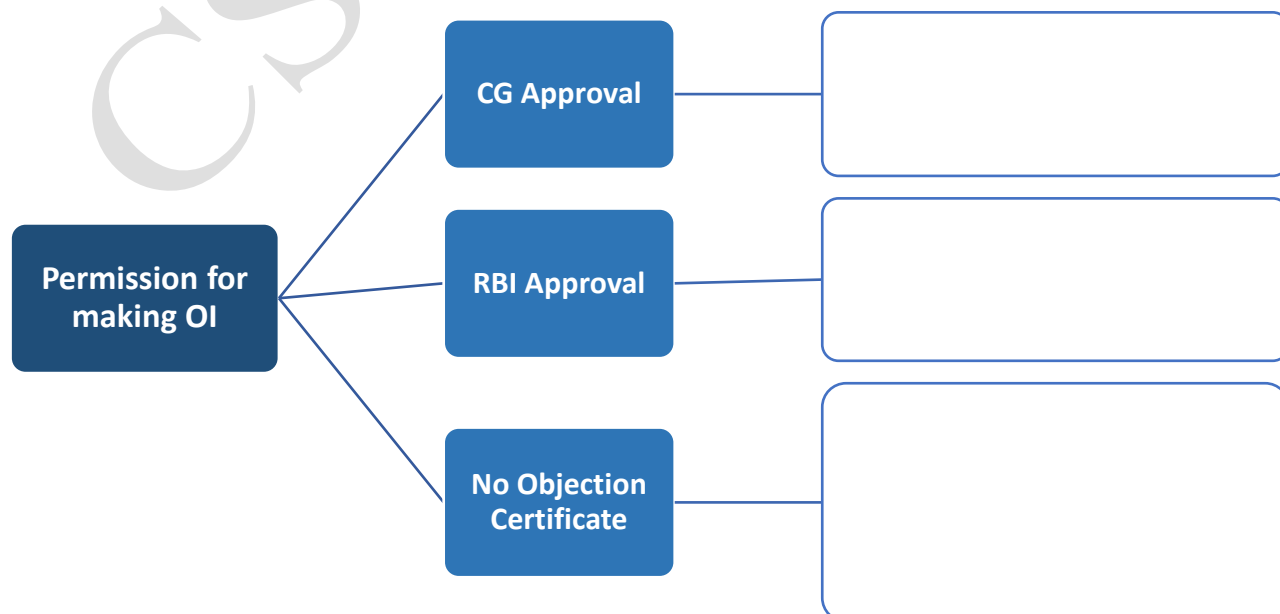
In essence, the Rule provides that approval with respect to investment in restricted geography / sector has to be obtained from the Central Government, whereas approval for investments beyond the monetary limit has to be obtained from the RBI.

No Objection Certificate: Rule 10 provides that if any PRII who –

- i. has an account appearing as a non-performing asset (NPA); or
- ii. is classified as a willful defaulter by any bank; or
- iii. is under investigation by a financial services regulator or by investigative agencies in India such as the Central Bureau of Investigation (CBI), Directorate of Enforcement (“ED”) or Serious Frauds Investigation Office (“SFIO”)

– shall obtain a No Objection Certificate (NOC) from the concerned bank, regulator or investigative agency, as the case may be, for making any financial commitment or undertaking any divestment under the OI Rules. It is provided that if the bank, regulator or investigative authority, as the case may be, fails to furnish the NOC within **60 days from the receipt of application**, an NOC may be presumed to have been obtained (‘deemed consent’).

Further, it is clarified that where an Indian entity has already issued a guarantee before an investigation has begun or account is classified as an NPA/ willful defaulter and is subsequently required to honour such guarantee, such remittance will not constitute fresh financial commitment and hence NOC shall not be required.



METHOD OF FUNDING

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

(i) by remittance made through banking channels;	
(ii) from funds held in an account maintained as per the provisions of the Act;	
(iii) by swap of securities;	
(iv) by using the proceeds of American Depositary Receipts or Global Depositary Receipts or external commercial borrowings raised for making ODI or financial commitment by way of debt by an Indian entity.	

It is further provided in the OI Directions that:

- An Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office and not for making any overseas investment.
- Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as specified under the FEMA Regulations, 2016.

FOREIGN DIRECT INVESTMENT POLICY

The Department for Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulating the policy on Foreign Direct Investment (FDI). It is also responsible for maintenance of data on inward FDI into India.

The Government has made liberal policy on FDI, allowing up to 100% FDI in most sectors/activities under the automatic route. The FDI policy is regularly reviewed, with a view to making it more investor-friendly. The DPIIT constructively engages in stakeholder consultations to make sure the FDI policy is transparent and easily understood.

The policy pronouncements on FDI are made by the DPIIT through various notifications and amendments to the Foreign Exchange Management Rules.

Reporting requirements

The OI Regulations provide for various reporting requirements for financial commitments, disinvestment and restructuring. Reporting is very crucial because failure to do so may result in a prohibition on further financial commitments or transfers until Late Submission Fees ('LSF') are paid. LSF amount is levied per return and cannot exceed 100% of the amount involved in the delayed reporting.

All reportings shall be made through the designated AD bank in the manner and format specified by the Reserve Bank. A PRII shall report–

a.	Financial Commitment	at the time of sending outward remittance or making a financial commitment , whichever is earlier
b.	Disinvestment	within 30 days of receipt of disinvestment proceeds
c.	Restructuring	within 30 days from the date of such restructuring

A PRII other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment **within 60 days from the end of the half-year** (September or March-end) in which such investment or transfer is made.

Annual Performance Report (APR): A PRII acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an APR with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be **submitted by 31st December of the next year**. **No APR** shall be required where–

- i. a PRII is holding less than 10% of the equity capital without control in the foreign entity and there is no other financial commitment; or
- ii. a foreign entity is under liquidation.

FLA Return: An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within prescribed time, to the Department of Statistics and Information Management, Reserve Bank of India. (31st July is the due date)

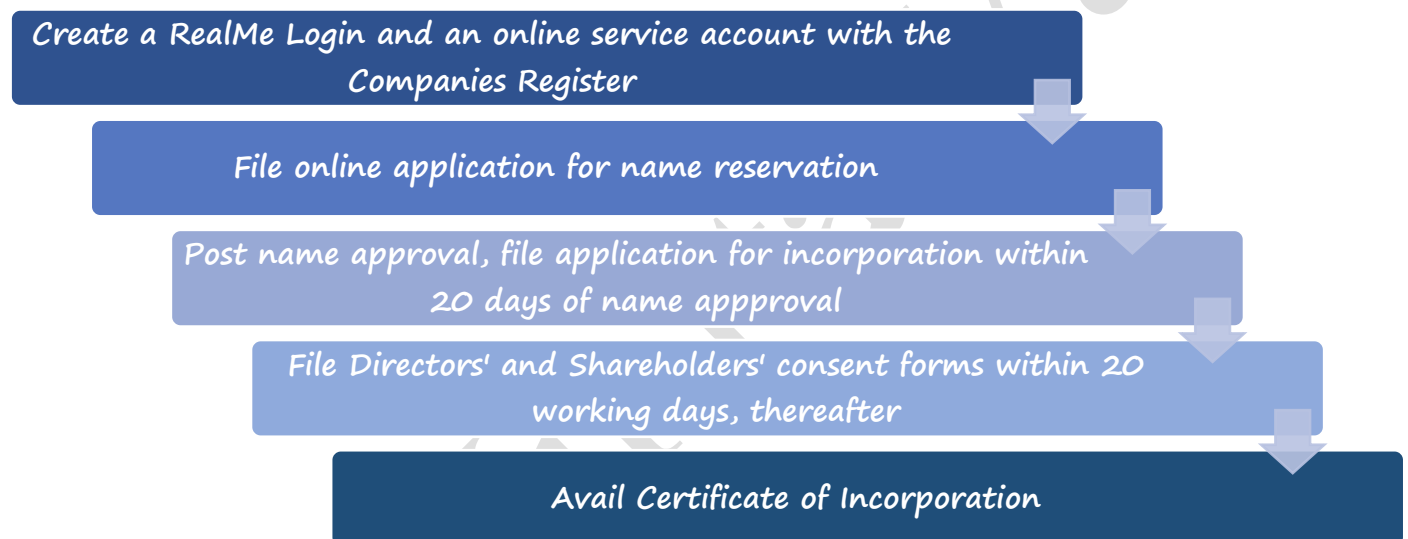
ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

Geographical Location of the business	• Infrastructure (ports, airports, storage); • Access (transportation of goods, materials and personnel); • Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce; • Availability of talent pool for productions (labour), services and management; • Risks: The outbreak of COVID-19 highlights the pitfalls of global interdependency and the challenge for global governance. Epidemics and pandemics impact the economy and society.
Economic Aspects	• Ease of doing business: entering, establishing and closing the business; • Cost of doing business; • Laws relating to labour, quality and availability of labour force; • Laws relating to taxation; • Incentives: Local, regional, and/or state economic development incentives available to help the company lower project costs.

Political Aspects	- Friendly country, MFN (Most-Favored Nations) status; - Their relations with neighbouring countries and your country; - Regulatory environment: Impact of governmental regulations related to environmental permits, utility connection approvals, and waste disposal permits.
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; - Power, communication, telecom – availability, quality and cost.

SETTING UP OF A BUSINESS IN NEW ZEALAND

Regulator: New Zealand Companies Office



- **RealMe Login and online service account:** 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.
- **Name reservation:** To reserve a company name online, entrepreneurs can visit the New Zealand Companies Office Web site (www.companies.govt.nz). A new company's name must be unique and can be reserved for up to 20 working days with the Companies Office. For incorporating a company, it must have at least one share, at least one shareholder, at least one director, a registered office, and an address for service.
- **Filing of application and consent forms:** The applicant(s) can apply for company registration online by completing forms on company details and paying the registration fee. Thereafter, Directors' and Shareholders' consent forms shall be filed within 20 working days.
- **Avail Certificate of Incorporation:** Once your company is successfully incorporated, the Companies Office will issue a Certificate of Incorporation.

SETTING UP OF BUSINESS IN SINGAPORE

Regulator: Accounting and Corporate Regulatory Authority (ACRA)



Registration online with ACRA including company name search and filing the company incorporation and tax number (GST)

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore.

Incorporation is done through Bizfile+, an electronic filing system. It provides over 300 electronic services including submission of statutory documents, reserving domain names, registering for GST and application for a corporate bank account.

The process starts with applying for a company name, which can be approved within a few minutes or take up to 2 months if it needs to be referred to another agency for approval. Once the name is approved, the lodger can proceed to register the business immediately. Once a name has been approved, it will be reserved for 120 days. The registration fee is SGD 300, and a notice of incorporation will be issued upon successful registration.

GST registration can also be done online when the annual taxable turnover exceeds SGD 1 million.

Key Notes:

There are **7 types of companies** which can be incorporated in Singapore. The options available in the company name application are:

1. Public company limited by shares
2. Public company limited by guarantee
3. Unlimited public company
4. Private company limited by shares
5. Unlimited private company
6. Exempt private company
7. Unlimited exempt private company

The private limited company is governed by the **Singapore Companies Act**. It must have:

- Company name – approved by ACRA
- Shareholders – Minimum 1
- Directors – At least 1 resident director
- Company Secretary – must be a Singapore resident
- Paid-up capital – At least S\$1
- Registered address – Must be physical office address

Sign up for Employee Compensation Insurance at an insurance agency:

In Singapore, employers are required by law to insure their employees under the Work Injury Compensation Act (WICA), unless they are exempted by the Minister.

SETTING UP OF A BUSINESS IN HONG KONG SAR, CHINA



Agency: Companies Registry

Choose a company name and obtain a certificate of incorporation and a business registration certificate

A company name can be searched online free of charge at the Companies Registry (www.icris.cr.gov.hk).

If the name is available, a certificate of incorporation and a business registration certificate will be issued upon the filing of an incorporation form signed by the founder member(s), a copy of the articles of association and a Notice to Business Registration Office (IRBR1) alongwith payment of applicable fees. The incorporation form contains comprehensive information on the registered office address, first secretary and first directors of a company. It takes approximately 4 working days for paper applications to be processed.

However, submitting application through the e-Registry or mobile application can speed up the business registration process, and in simple cases, the certificates can be downloaded in less than a day.

At the moment of incorporation, the company will also be automatically registered with the Inland Revenue Department for tax purposes.

Sign up Employee's Compensation Insurance and Mandatory Provident Fund (MPF) Schemes with a private company or a bank

Agency: Compensation Insurance and Mandatory Provident Fund (MPF) providers (banks/insurance firms)

Pursuant to the Employees' Compensation Ordinance, Employers in Hong Kong are required by law to provide insurance coverage for their employees in case of work-related accidents resulting in injuries or fatalities.

Additionally, under the Mandatory Provident Fund Schemes Ordinance, employers must enroll their regular and casual employees in an MPF scheme and make MPF contributions. The company can apply for these schemes anytime after incorporation.

SETTING UP OF BUSINESS IN NEW YORK CITY

A limited liability company (LLC) is a hybrid, combining the characteristics of a corporation (credibility and limited liability) with those of a partnership (flexibility and pass-through taxation).

Reserve Company's name (optional), file articles of organization and adopt company's operating agreement



Apply for (EIN) for tax and employer purposes



Register to collect state sales tax



Register as an employer with the Unemployment Insurance Division at the State Labor Department



Arrange for workers' compensation and disability insurance



Arrange for publication and submit certificate and affidavits of publication

1. **Reserve the company's business name (optional), file the company's articles of organization and adopt the company's operating agreement:** The company founders may reserve the name of the company online with the New York State Department of State Division of Corporations prior to filing the company's articles of organization. The application holds the name for 60 days and may be extended twice for additional periods of 60 days. The company name must contain the words "Limited Liability Company," "L.L.C.," or "LLC."

The founders must file the company's articles of organization. Forms can be purchased at a legal supply store or downloaded from the department's website. The application processing time is about 7 business days. However, optional expedited processing is available on payment of additional fee.

2. **Apply for federal identification number (EIN) for tax and employer purposes:** The company needs to apply for a federal Employer Identification Number ("EIN"), which is used for tax and employer purposes.
3. **Register to collect state sales tax:** Businesses that sell taxable goods or services, as well as those that buy and sell for resale (for example, a wholesale distributor), must register as a sales tax vendor and get a Certificate of Authority. This includes businesses that sell tangible personal property, offer taxable services, charge for amusement, or operate a hotel, restaurant, or other food and beverage establishment.
4. **Register as an employer with the Unemployment Insurance Division at the State Labor Department:** Founders must register as an employer by completing Form NYS-100 to determine whether or not the company is liable under the New York State Unemployment Insurance Law. If the company is determined liable, the company shall report wages paid to the company's employees and other specified returns.
5. **Arrange for workers' compensation and disability insurance:** As New York employers, the specified LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.
6. **Arrange for publication and submit certificate and affidavits of publication:** The New York State Limited Liability Company Law requires that within 120 days (after the effectiveness of the initial articles of organization), an LLC must publish in two newspapers a copy of the Articles of Organization or a notice related to the formation of the LLC once a week for six successive weeks.

After publication, each newspaper publisher will provide the entrepreneur with a Certificate of Publication, with the affidavits of publication of the newspapers attached. It must be submitted to the New York Department of State, Division of Corporations.

SETTING UP OF A BUSINESS IN UNITED KINGDOM

Register with
Companies
House

Register for
PAYE

Register for
VAT

Sign up for
Employer's
Liability Insurance

Agency: Companies House

Registration with Companies House

The registration can be done through paper application or electronically either by the founders of the Company or with the help of incorporation professionals.

In case the company chooses to file for incorporation itself online, model articles of incorporation and company memorandum are generated automatically by the registration website www.gov.uk/register-a-company-online. Following information must be provided to the relevant Registrar of Companies (i.e., for England and Wales, Scotland, or Northern Ireland):

- Statement of compliance with all requirements of the 2006 Companies Act;
- Application form INO1, which includes:
 - proposed company **name**;
 - **country** of registration office (e.g. England and Wales (or Wales), Scotland or Northern Ireland);
 - Whether the **liability** of the members is to be limited and if so whether by shares or guarantee; and;
 - Whether the company is **public or private**;
- A statement of the capital and initial shareholdings, in the case of a company with a share capital.
- A statement of the proposed officers, being the first director and company secretary (for a private company, appointment of a company secretary is optional);
- A statement of the intended registered office address.
- Information of People with Significant Control.

In case the company wants to amend model articles of association or company memorandum it cannot file for registration online. Instead, the company must use professionals to compose incorporation documents and submit them via specialized software to Companies House.

Register for PAYE

Agency: HM Revenue and Customs (HMRC) – Tax authority

The company must contact the HMRC to set up a contribution scheme for national insurance and pay-as-you-earn (PAYE) tax, which deducts tax from employee wages or salary. The company will be issued with an activation PIN within 5 business days – typically less – and will have to activate this PIN within 28 days (or else request a new PIN). The company must submit reports every time they pay their employees.

Register for VAT

Agency: HMRC

A business will need to register for VAT if its taxable goods and services supplied is more than the specified threshold.

Most applications for VAT registration can be completed online but there are some circumstances where a business has to apply by post. To register online for VAT or use other VAT online services, a business will first need to sign up for HMRC Online Services or the Government Gateway.

Sign up for employer's liability insurance

Agency: Insurance company

The Employers' Liability (Compulsory Insurance) Act of 1969 requires all employers in the United Kingdom to maintain employers' liability insurance from an approved insurance company.

SETTING UP OF A BUSINESS IN CANADA

Following are the steps involved in setting up of business in Canada:

Planning a business

- Assessing readiness, choosing a business structure, market research and writing a business plan

Choosing a business name

- Selecting a good name, checking its availability, registering and protecting business name

Registering business with the Government

- Registering or incorporating business, plus how to apply for a business number or tax account

Applying for business permits and licences

- Permits and licences that may needed for the business

SETTING UP OF A BUSINESS IN AUSTRALIA

To run the business in Australia, one need to register the business. Following are the steps in brief for setting up of business in Australia:

- **Australian business number (ABN):** An (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:** Depending on the type of business to be started.
- **Licences and permits:** Depending on the location of the business and the industry.
- **Trade mark:** Register the business as a trade mark to protect the business name and brand from being used by others.

QUESTIONS:

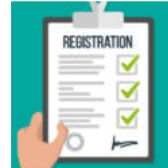
1. What are the different routes of overseas investment?
2. What are the major issues in choosing location outside India?
3. Explain how the political issue plays a vital role in taking the foreign investment decisions?
4. What is the process to set up a business in Australia?

Lesson 12 - Identifying Laws applicable to various Industries & their Initial Compliances



Business Structure

Licenses & Registrations



Specific Laws

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

Lesson Outline	Page No.
➤ Formalizing and Deciding the Business Structure	
➤ Section 8 Company	
➤ Parameters for Deciding Business Structure	
➤ Formation of a Company including documentation	
➤ Guidelines to reserve a company name	
➤ Applying for Business Licenses	
➤ Adhering to Labour Laws	
➤ Adherence to Laws relating to Intellectual Property	
➤ Ensuring Effective Contract Management	
➤ Laws relating to Industries in specific	

FORMALIZING AND DECIDING THE BUSINESS STRUCTURE

The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be. For example, if it's a company, it would be governed under Companies Act, 2013; Limited Liability Partnership is governed by the LLP Act 2008; in case of Partnership, the Partnership Act, 1932 would be applicable; if it is an MSME, the MSME Act, 2006 would come into picture. It shows that there is a plethora of laws which need to be complied with the respective form of businesses.

Therefore, the first thing for starting any business is to determine the nature and type of the business. Founders need to incorporate the business as a specific business type - sole proprietorship, private limited, public limited, partnership, limited liability partnership etc. It is very essential to have this clarity at the very beginning as this will be integral to the business' overall vision and goals, both short term and long term.

Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before they are incorporated or registered.

Here is a quick look into the legal implications for the major business types in India:

LEGAL DETAILS	BUSINESS TYPES				
	Proprietorship	Partnership	Limited Liability Partnership (LLP)	Public/Private Limited Company	One Person Company (OPC)
Registration	No formal registration required	Registration is optional	Has to be registered with the Ministry of Corporate Affairs (MCA) under the LLP Act 2008	Has to be registered with the MCA under the Companies Act 2013	Has to be registered with the MCA under the Companies Act, 2013
Legal Status	Not recognised as a separate entity	Not recognised as a separate entity	Is a separate legal entity.	Is a separate legal entity.	Is a separate legal entity.
Member Liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an

				unlimited company.	unlimited company
Number of Members Required	Can only have 1 person	Minimum 2 persons required (Max: 50)	Minimum of 2 persons required (Max: No limit)	Minimum of 2 persons required for Private Company (Max: 200) and 7 persons for a public company (Max: No limit)	1 person is required. Appointment of nominee is mandatory
Transferability	Not transferable	Not transferable	Ownership can be transferred	Ownership can be transferred	Ownership can be transferred
Taxation	Based on total income of proprietor	Partnership profits are taxed as per the slabs provided under Income Tax Act, 1961	LLP profits are taxed as per the slabs provided under Income Tax Act, 1961	Profits of the Company are taxed as per the slabs provided under Income Tax Act, 1961	Profits of OPC are taxed as per the provisions of the Income Tax Act, 1961
Annual / Statutory Meetings	Not required	Not required	Not required	Board and General Meetings should be conducted periodically	Board Meetings should be conducted twice a year
Annual Filings	Filing of annual report (AR) is not required. Income tax return (ITR) shall be filed on the income of the proprietorship	Filing of AR is not required. ITR shall be filed for the partnership	To file Annual Accounts & Returns & Solvency and Annual Return with the Registrar every year. ITR must also be filed annually	To file Annual Accounts & Returns and Annual Return with the Registrar every year. ITR must also be filed annually	To file Annual Accounts & Returns and Annual Return with the Registrar every year. ITR must also be filed annually
Legal Details	Proprietorship	Partnership	Limited Liability Partnership (LLP)	Public/Private Limited Company	One Person Company
Existence or Survivability	Dependent on proprietor	Dependent on partners. Can be dissolved at	Not dependent on partners. Can be dissolved	Not dependent on directors or shareholders.	Not dependent on directors or shareholder. Can

		will or upon on the death of partner(s)	voluntarily or by order of the Company Law Board	Can be dissolved voluntarily or by Regulatory Authorities	be dissolved voluntarily or by Regulatory Authorities
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India is an emerging market with wide scope and opportunities for both Indian and foreign investors. The Government of India offers entrepreneurial friendly policies which makes invasion and growth of businesses in India easier. Before starting a business, it is very important to prepare a blueprint of the business. Other business structures are as follows:

SECTION 8 COMPANY

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

The Companies registered under the Section 8 of Companies Act, 2013 enjoy the following advantages:

- **Access to Tax benefits:** Since Section 8 companies are charitable institutions, they have access to the various exemptions available under the Income Tax Act.
- **Zero Stamp Duty:** The Section 8 Companies are not liable to pay stamp duty on the Memorandum of Association (MOA) and Articles of Association (AOA), unlike other entities incorporated under the Companies Act, 2013.
- **Minimal share capital:** Unlike private limited, public limited, or OPC, a Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company.
- **Exempted from suffix/prefix of name:** Section 8 companies do not have the compulsion to affix the term like "Limited" or "Private Limited" in their name.
- **Separate legal entity:** Section 8 company possesses a distinct legal status and has perpetual existence.
- **Improved Credibility:** The flexible and transparent constitutional framework of Section 8 companies allows them to garner better credibility than other types of NGOs such as Society and trust.

Reliance Foundation, Infosys Foundation, TATA Foundation, are some commendable examples of successful Section 8 companies registered in India.

EXEMPTIONS GRANTED TO SECTION 8 COMPANIES

General Meetings at shorter notice:	The Annual General Meetings (AGM) for the Companies can be convened after the short notice period of 14 days under section 108 of Companies Act, 2013.
Minutes of the Meeting:	Recording of minutes of General Meetings, Board Meeting and other resolutions is not applicable . However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes
Audited Financial Statements:	Copies of the audited financial statements and documents can be sent 14 days to the members instead of 21 days.
Directorship:	The maximum limit of 15 directors and appointment of more than 15 directors by passing special resolution are not applicable to Section 8 Company.
Appointment of Independent Director:	There is no requirement to appoint an independent director for Section 8 Company.
Holding of Board Meetings:	The companies are required to hold one Board Meeting within 6 months (instead of 4 board meetings annually).
Constitution of NRC and related compliances:	Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee or a Stakeholders Relationship Committee.
No appointment of Company Secretary:	As per the new notification, they do not have to appoint a Company Secretary.

PARAMETERS FOR DECIDING BUSINESS STRUCTURE

The business structure could be a decisive element in ensuring the success of the organization. The parameters for deciding the business structure are listed below:

1.	
2.	
3.	
4.	
5.	
6.	

1. **Control & Management:** Single Business Owners who has the ownership of all the investments should rather go for a One Person Company. However, entrepreneurs looking for more investments should rather go for an LLP or a Company.
2. **Capital Investments:** To obtain funds from an outside entity, such as an investor, bank, or venture capitalist, an authentic business model such as private limited company must be opted. Unlike sole proprietorships, Corporations can easily raise funds from an outside source. An LLP can encounter identical issues, although, but as a separate entity, owners don't always need to use personal assets or credit.
3. **Liability Threshold & Personal Risk:** Owners would want to safeguard their risk under financial pressure. The right business structure could limit exposure to such risks. In the case of partnerships, the partner shares the responsibility to confront risk individually. HUF, Sole Proprietors and Partnerships have unlimited liability. Meanwhile, the business models like LLP & Company provide comprehensive protection to the owner's liability with a few exceptions.
4. **Tax Obligation:** A tax obligation for an LLP owner is similar to the sole proprietor. The income generated from the business is considered personal income and taxed accordingly. Corporations pay taxes on profits after deducting expenses and payroll.
5. **Licenses, Permits, & Regulations:** Apart from getting legal registration for the business, specific permits and licenses may be required to obtain to operate. Depending on the type of activities and business nature, it may require to be licensed at the local, state, and central levels.
6. **Attracting Investors:** Having an unregistered business structure can make it difficult to attract investors and raise capital for the business. Legally established business structures like OPC, Public Company, LLP etc are much more likely to gain confidence of investors.

(Topics of Process of formation of a Company, Reservation of name or change of name and Spice+ Form were already covered in Chapter-2. Hence, excluded in this chapter to avoid duplication)

DOCUMENTS REQUIRED FOR COMPANY REGISTRATION

The general documents that are to be submitted for registration of LLP, One Person Company, Private Limited and Public Limited Company are as follows:

Documents of the **Directors and Shareholders** of the company/ **Partners** of the LLP

- **Proof of identification** of all the company's directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as proof of identification:
 - Pan card
 - Aadhar card
 - Driving license
 - Passport

- **Proof of address** of all the directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as address proof:
 - Latest telephone bill (not older than 2 months)
 - Latest electricity bill (not older than 2 months)
 - Bank account statement having address
- **DIN** (DPIN in case of LLP) and DSC of all the directors (partners in case of LLP)

Documents of the Company/LLP

- **Proof of registered office** of the company. The below documents must be submitted as address proof of the company:
 - Tenancy/rental agreement between the landlord and company/LLP.
 - Letter or NOC from the landlord of his/her permission to use the office/premises as the LLP's/company's registered office.
 - Sale deed of the company/LLP office premises in the name of the company/LLP.
- The Memorandum of Association (**MoA**) which contains the objects of the company for which the company is going to be incorporated and the liability of the members of the company.
- The Articles of the Association (**AoA**) which lays down the by-laws on which the company will operate.

GUIDELINES TO RESERVE A COMPANY NAME

The name of a company **should be**:

- Unique
- Contain a noun and an activity word that reflects its objectives
- Be in line with Company Name Guidelines issued by Ministry of Corporate Affairs.

The Company Name **should not be**:

- Be same, similar, identical or resembling to the name of an existing Company or LLP registered. Phonetically similar names are also to be avoided.
- Be similar to a registered trade mark or a trade mark for which an application has already been filed.
- The name chosen should not constitute an offense under any law and should not be undesirable in the opinion of the Central Government.
- The company name should not have any word or expression which is likely to give the impression that the company is in any way connected to the government central or state or any other local authority when it is actually not unless the approval from the respective government authority has been attained.

- If a company's name indicates any activities relating to financing, leasing, chit-fund, investment, securities etc., though the company's business activity is not related to any of such activities than such names shall not be allowed.
- Any descriptive name, wherein the name contains any commonly used words that describe any business activity.

APPLYING FOR BUSINESS LICENSES

Licenses are integral to run any business. Depending on the nature, size and location of business, several licenses are applicable in India. Business licenses are the legal documents that allow a business to operate while business registration is the official process of listing a business (along with relevant information) with the official registering authority.

For instance, an e-commerce company may require additional licenses like GST Registration, Professional Tax etc. while a restaurant may require licenses like Food Safety License, Certificate of Environmental Clearance, FSSAI Act, Health Trade License etc. along with the above-mentioned licenses.

The common license that is applicable to all businesses is the **Shop and Establishment Act** which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry.

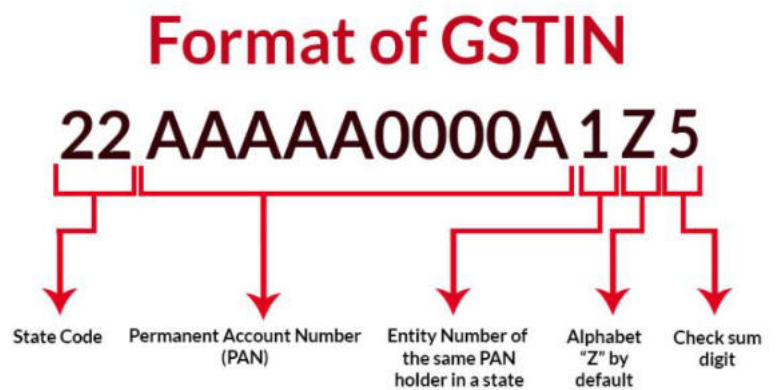
Employee's State Insurance Registration: Employee's State Insurance (ESI) is a self-financing social security and health insurance scheme for Indian workers. It offers medical benefits to workers and its dependents as well as insurance to worker from temporary or permanent disablement and sickness.

ESI Registration is mandatory for employers having 10 or more employees. For all employees earning Rs. 25,000 or less per month as wages.

EPF Registration: Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is social security legislation for the future benefit of employees & their dependents, in case of unfortunate incidents occurring in the future. It applies to every establishment which is a factory engaged in any industry in which 20 or more person is employed.

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. Establishments with fewer than 20 employees can register voluntarily.

GST Registration: GST Registration is mandatory for every business or corporation involved in buying and selling of goods or services. Every GST taxpayer is allotted a unique identification number called GSTIN. The threshold limit for registration is annual turnover of more than 20 lakh rupees for supply of services and 40 lakh rupees for supply of goods (exemptions provided to special category states). If a business is carried on without registering under GST, then it will be an offence under GST law.



CATEGORY	REGION	AGGREGATE ANNUAL T/O (INR)
Services	Special Category States- Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand & Himachal Pradesh	10 Lakhs
Services	Rest of India	20 Lakhs
Goods	Special Category States- Assam, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Tripura, Sikkim, Uttarakhand & Himachal Pradesh	20 Lakhs
Goods	Rest of India	40 Lakhs

FSSAI Registration or License (In case of business of edibles): This is the national authority for ensuring the safety and standardization of food items in India. FSSAI stands for Food Safety and Standard Authority of India. All retail establishments, trade outlets, kiosks, eateries, caterers, and cloud kitchens must follow to FSSAI regulations, get licenses, and periodically renew their registrations. Under FSSAI, the license or registration is divided into 3 categories namely:

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



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

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

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

Additional Licensing and Registration: Wherever essential, the government requires various licenses and permits to guarantee the welfare of the public and the environment. For example, the Insurance Regulatory and Development Authority supervises insurance firms, while the Reserve Bank of India oversees the banking and microfinance industries.

ADHERING TO LABOUR LAWS

Labour Laws protect workers from being exploited and ensure their safety and security in the workplace. These laws hold employers accountable and help create a productive work environment.

Adhering to labour laws is essential for all organizations, regardless of their size, and includes compliance with minimum wages, gratuity, bonus, PF payment, weekly holidays, maternity benefits, prevention from sexual harassment, etc.

OBJECTIVE OF THE LABOUR LAWS

The most important factors that the Labour Laws **aim to work on** are:

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

Some **major labour laws** applicable under this scheme are:

- The Industrial Disputes Act, 1947
- The Trade Union Act, 1926
- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- The Industrial Employment (Standing Orders) Act, 1946
- The Payment of Gratuity Act, 1972
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948
- The Factories Act, 1948.

ADHERENCE TO LAWS RELATING TO INTELLECTUAL PROPERTY

In the 21st century, Intellectual Capital has become a crucial element of international trade due to globalization and liberalization. India's consent of the WTO (World Trade Organization) agreement has paved the way for its compliance with **TRIPS (Trade Related Aspects of Intellectual Property Rights)**.

Intellectual property is vital for most businesses in the contemporary regime of knowledge and innovation, especially for tech centric businesses. Codes, algorithms and research findings, etc. are some of the most common intellectual property owned by organizations. Therefore, one has to ensure strict adherence to the Laws relating to Intellectual Property.

The TRIPS agreement has made way for the harmonization of Indian laws connected with Intellectual Property Rights.

The **Office of the Controller General of Patents, Designs and Trademarks** controls all patents in India. For the effective implementation of the IP Laws, facilitators have been empanelled by the Controller General of Patents, Trademarks and Design. Such facilitators help the new enterprises in setting up their business under the vigil of IPRs by providing advisory services, assisting in patent filing and disposal of patent application, etc. at a minimum charge.

ENSURING EFFECTIVE CONTRACT MANAGEMENT

Contracts are crucial for running a business smoothly and ensuring recourse in case of non-fulfilment. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. These should be formalized with details about salary, scope of work, and stock options to reduce risks.

Contract management involves **overseeing agreements with suppliers, customers, partners, and employees to avoid sales losses and regulatory penalties**. Adherence to contract law is critical for a company's success.

Details about Winding Down the Business:

Closing a company is a difficult call to make for any entrepreneur. When a company decides to shut down, all the stakeholders from vendors to employees to customers and investors need to be informed in advance and the whole process must be properly planned and executed in order to make the exit easy on everyone.

It is the last stage of existence of a company and all its assets are used to pay off the creditors, shareholders and other liabilities.

LAWS RELATING TO INDUSTRIES – SPECIFIC LAWS

Specific Laws and General Laws

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

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

LIST OF APPLICABLE LAWS

Trading & Retail Industry

1. The Trade Marks Act, 1999;
2. The Patents Act, 1970;
3. The Indian Copyright Act, 1957;
4. Legal Metrology Act, 2009;
5. Shops and Establishment Act & Rule (State wise);
6. The Food Safety & Standard Act, 2006;
7. Acts prescribed related to Retail activities;
8. The Consumer Protection Act, 2019 and Rules & Regulations made thereunder;
9. Local laws as applicable to various stores as per the respective Municipal Authority;
10. Whistle Blowers Protection Act, 2014;
11. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

IFSC & Bullion Exchange Industry

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

Start-ups

1. Shop and Establishment Act, (State-wise);
2. Environment and Protection Act, 1986;
3. Competition Act, 2002;
4. The Trade Unit Act, 1926;
5. Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
6. The Government has provided an exemption from labour inspection for a start-up if they apply all the major 9 labour laws of the country regularly for worker's benefit;

7. Whistle Blower Protection Act, 2014;
8. The Consumer Protection Act, 2019 and rules made thereunder;
9. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Non-Banking Financial Company (NBFC)

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

Pharma Industry

1. The Food Safety and Standards Act, 2006;
2. The Narcotic Drugs and Psychotropic Substances Act, 1985;
3. The Drugs and Cosmetics Act, 1940 and Drugs Rules, 1945;
4. The Essential Commodities Act, 1955 - Drug Price Control Order, 2013;
5. Pharmacy Act, 1948;
6. Drugs (Price Control) Order, 1995;
7. Bio Medical Waste (Management and Handling) Rules, 1998;
8. The Air (Prevention and Control of Pollution) Act, 1981;
9. The Water (Prevention and Control of Pollution) Act, 1974;
10. The Environment (Protection) Act, 1986 and allied rules;
11. The Electricity Act, 2003;
12. The Petroleum Act, 1934;
13. The Boilers Act, 1923;
14. Trademarks Act, 1999;
15. The Patents Act, 1970;

Banking Industry

1. The Reserve Bank of India Act, 1934 and Guidelines issued by RBI;
2. Banking Regulation Act, 1949, Master Circulars, Notifications and Guidelines issued by the RBI from time to time;
3. The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970;
4. Negotiable Instruments Act, 1881;
5. Foreign Contribution Regulation Act, 2010;
6. Prevention of Money Laundering Act, 2002;
7. The Shops and Establishments Act, 1953;
8. Indian Contract Act, 1872;
9. Information Technology Act, 2000;
10. Right to Information Act, 2005;
11. Trade Marks Act, 1999;
12. Copyright Act, 1957;
13. Patents Act, 1970;
14. Weekly Holiday Act, 1942;
15. General Clauses Act, 1897.

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. Copyright Act, 1957;
6. Prevention of Money Laundering Act, 2002;
7. Trademarks Act, 1999;
8. Indian Contract Act, 1872;
9. Negotiable Instruments Act, 1881;
10. Information Technology Act, 2000;
11. Employees' Provident Fund and Miscellaneous Provisions Act, 1952 & the scheme provided thereunder.

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. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;

5. Housing Finance Companies – Corporate Governance (National Housing Bank) Directions, 2016;
6. Housing Finance Companies – Auditor's Report (National Housing Bank) Directions, 2016;
7. Information Technology Framework for HFCs – Guidelines;
8. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
9. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015;
10. Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021.

Real Estate Companies

(A) Pre-constructions

1. Real Estates (Regulations & Development) Act, 1916
2. Environment (Protection) Act, 1986;
3. The Air (Prevention and Control of Pollution) Act, 1981;
4. The Water (Prevention and Control of Pollution) Act, 1974;
5. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
6. The Electricity Act, 2003;
7. The Forest (Conservation) Act, 1980;
8. The Mines and Minerals (Development and Regulation) Act, 1957;
9. The Petroleum Act, 1934;
10. The Railways Act, 1989;
11. The Transfer of Property Act, 1882 and Registration Act, 1908;
12. The Wildlife Protection Act 1972;

(B) During the constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
3. The Electricity Act, 2003;
4. The Environment (Protection) Act, 1986;
5. The Explosives Act, 1884;
6. The Water (Prevention and Control of Pollution) Act, 1974;
7. The Food Safety and Standards Act, 2006;
8. The Forest (Conservation) Act, 1980;
9. The Motor Vehicles Act, 1988;

10. The Real Estate (Regulation and Development) Act, 2016 including rules & regulations made thereunder;
11. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
12. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(C) Post constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Electricity Act, 2003;
3. The Emblems and Names (Prevention of Improper Use) Act, 1950;
4. The Environment (Protection) Act, 1986;
5. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
6. The Motor Vehicles Act, 1988;
7. The Petroleum Act, 1934;
8. The Public Liability Insurance Act, 1991;
9. The Representation of the People Act, 1951;
10. The Rights of Persons with Disabilities Act, 2016;
11. The Water (Prevention and Control of Pollution) Act, 1974;
12. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Telecom Industry

1. The Indian Telegraph Act, 1885;
2. The Telecom Regulatory Authority of India Act, 1997 and Rules and Regulations made thereunder;
3. The Indian Wireless Telegraphy Act, 1933;
4. The Information Technology Act, 2000;
5. Guidelines on Corporate Governance by Department of Public Enterprises (DPE);
6. Department of Telecommunication guidelines and License Agreements.

Information & Technology Industry

1. The Information Technology Act, 2000;
2. The Special Economic Zones Act, 2005;
3. Software Technology Parks of India rules and regulations
4. The Copy Rights Act, 1957;
5. The Patents Act, 1970;

6. The Trade Marks Act, 1999;
7. The Registration Act, 1908;
8. Limitation Act, 1963;
9. Indian Contract Act, 1872;
10. Negotiable Instrument Act, 1881 and amendments thereto;
11. Weekly Holidays Act, 1942;
12. The Telecom Regulatory Authority of India Act, 1997;
13. The Insurance Act, 1938;
14. The Information Technology (Certifying Authorities) Rules, 2000.

Media and Communication Industry

1. The Right to Information Act, 2005;
2. The Information Technology Act, 2000;
3. The Telecom Regulatory Authority of India Act, 1997;
4. The Cable Television Networks (Regulation) Act, 1995;
5. The Delivery of Books and Newspapers (Public Libraries) Act, 1954;
6. The Newspaper (Prices and Pages) Act, 1956;
7. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957;
8. The Working Journalists (Fixation of Rates of Wages) Act, 1958;
9. Registration of Newspapers (Central) Rules, 1956;
10. The Young Persons (Harmful Publications) Act, 1956;
11. The Dramatic Performances Act, 1876 (Relevant Provisions);
12. The Cinematograph Act, 1952;
13. The Cine-Workers Welfare Cess Act, 1981;
14. The Cine-Workers Welfare Fund Act, 1981;
15. The Press and Registration of Books Act, 1867;
16. The Press Council Act, 1978.

Infra Industry

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

Environment Laws

India's fast industrial growth and urbanization for economic development have resulted in significant local, regional, and global environmental problems. To address this, the Indian government has created an environmental legal and institutional framework to regulate the factors that affect the environment, in line with the country's development agenda and international norms.

The key national laws related to environmental protection include the following:

- a. Water (Prevention and Control of Pollution) Act, 1974;
- b. Water (Prevention and Control of Pollution) Cess Act, 1977;
- c. Air (Prevention and Control of Pollution) Act, 1981;
- d. Environment (Protection) Act, 1986;
- e. The Public Liability Insurance Act, 1991;
- f. The Biodiversity Act, 2002;
- g. The National Green Tribunal Act, 2010;
- h. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules;
- i. Plastic Waste Management Rules;
- j. E-waste Management Rules, 2016.

QUESTIONS:

1. Explain the various essential licenses applicable for starting a business.
2. What is the eligibility criteria to apply for Section 8 Company License?
3. Discuss the laws applicable for the registration of Company in India along with process of their registrations.
4. Shyam, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Prasad on the requirements of Industrial licensing based on category of Industries.
5. Manish wants to start a manufacturing business but he is not able to decide on the form of business (Type of Business Entity). He seeks your advice about the legal implications and requirements for the various business forms in India on the basis of the following parameters:
 - (i) Registration
 - (ii) Member's liability
 - (iii) Number of members required
 - (iv) Taxation
 - (v) Legal Status.

Lesson 13 - Various Initial Registrations and Licenses



A business entity is required to secure various registration and licenses in order to set up its businesses in India. This chapter deals with the list of mandatory as well as additional initial registration requirements and the licenses along with their detailed procedures.

Lesson Outline	Page No.
➤ Introduction	
➤ Mandatory Registration – PAN/TAN	
➤ GST Registration	
➤ Registration under Shops & Establishments Act	
➤ ESI & EPF Registration	
➤ Pollution Control	
➤ Sector based registrations	
➤ IE Code	
➤ Drug License	
➤ FSSAI	
➤ NBFC Registration	
➤ Banking	
➤ IRDA (Insurance Regulatory and Development Authority)	
➤ Industry Licensing Policy	
➤ Telecom License	

INTRODUCTION

'Ease of doing business' refers to the regulatory environment in a country to set up and operate a business. Every year, the World Bank compares the business environment in 190 countries in its Ease of Doing Business Report.

India has emerged as one of the most attractive destinations not only for investments but also for doing business. India jumps 79 positions from 142nd (2014) to 63rd (2019) in 'World Bank's Ease of Doing Business Ranking 2020'.

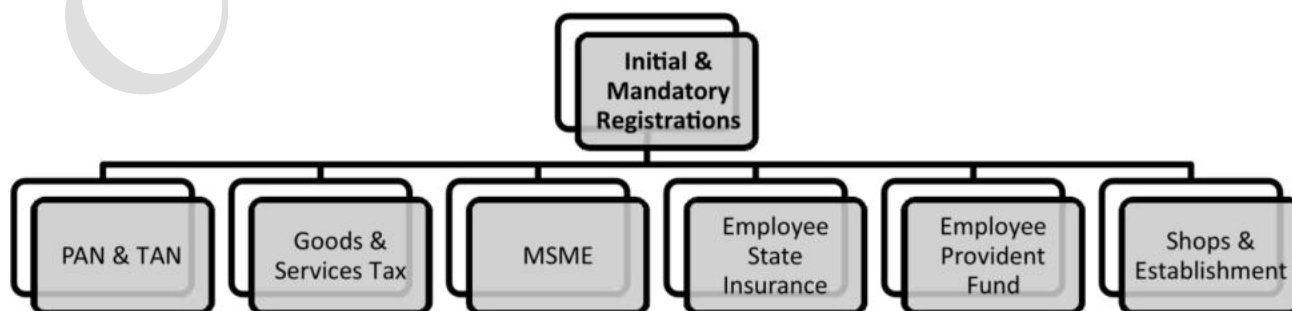
BUSINESS ENTITY REGISTRATION

To start a business, it is necessary for an entrepreneur to decide the form of business entity. The business entity that he could seek for are following:

S.N.	Form of Business Entity	Law under which Registration is required
1.	Proprietorship	Not required
2.	Partnership	Not compulsory but can be registered under the Partnership Act, 1932
3.	Private Company	The Companies Act, 2013
4.	Public Company	The Companies Act, 2013
5.	Limited Liability Partnership	The Limited Liability Partnership Act, 2008
6.	One person company	The Companies Act, 2013

After registration, the entity needs to open Current Account in Bank before starting business transactions. However, proprietor and partnership firm can open Current Account in Bank and need not wait for registration certificate.

MANDATORY REGISTRATION



What is PAN?

PAN is a Permanent Account Number (in short called as PAN) and is a vital document for any taxpayer. It is a **10-character alphanumeric number** consisting of letter and digits e.g. (AAAAA1234A).

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.

For whom it is mandatory to obtain PAN:

- Every person if his total income or the total income of any other person in respect of which he is assessable during the year exceeds the maximum amount which is not chargeable to tax
- A charitable trust who is required to furnish return **under Section 139(4A)**
- Every person who is carrying on any business or profession whose total sale, turnover, or gross receipts are or is likely to **exceed five lakh rupees in any year**
- Every person who intends to enter into **specified financial transactions** in which quoting of PAN is mandatory
- All non-individual resident persons and persons associated with them shall apply for PAN if the financial transaction entered into by them during the financial year **exceeds Rs. 2,50,000.**

Significance of PAN for Setting up of Business

- 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 and 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

- The PAN card is an important document for conducting even the simplest of financial transactions like opening a savings bank account or applying for a debit/credit card.
- Application for PAN can be made both online and offline as per the forms specified by the income tax department (i.e., form **49A for resident individual** and Form **49AA for foreign citizens**) together with the supporting documents as proof of identity, address and date of birth.
- Individual applicants will have to affix two recent, coloured photograph (Stamp size 3.5 cms x 2.5. cms) on PAN application form in case application are made physically.
- Online application for PAN can be made either through the portal of **NSDL** or **UTITSL**.
- For New PAN applications, in case of Individual and HUF applicants, if address for Communication is selected as Office, then Proof of Office Address along with Proof of residential address is to be submitted with NSDL.

Linking of PAN with Aadhar

- As per Section 139AA, every person who is eligible to obtain Aadhar is required to quote his Aadhar number in the PAN application form with effect from **1st day of July, 2017**.
- In case of an applicant, being a company, which has not **the PAN application form with effect from 1st day of July, 2017**, been registered under the Companies Act, 2013, the application for allotment of a PAN may be made in Spice+ specified under the said Act for incorporation of the company.

TAN

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

Persons liable to apply for TAN

1. Every person liable to deduct tax at source (**TDS**) or collect tax at source (**TCS**) is required to obtain TAN. However, a person who is required to deduct tax under section 194-can use PAN in the place of TAN as such person is not required to obtain TAN.
2. **As per section 194-IB** any individual or HUF [whose books of account are not required to be audited] is liable to **deduct tax at the rate of 5%** while making payment of rent of any land or building or both to a resident person if amount of rent exceeds **Rs. 50,000 for a month or part of a month**.

3. **Section 194M** provides for deduction of tax, at the rate of **5%**, from the sum **paid to a resident**, in a year on account of **contractual work, commission (not being insurance commission), brokerage or professional fees**, by an individual or a HUF [whose books of account are not required to be audited], if aggregate of such sum **exceeds Rs. 50 lakhs** in a year.

Relevance of TAN

As per section 203A of the Income-tax Act, 1961, every person who deducts or collects tax at source has to apply for the allotment of TAN. It is mandatory to quote TAN in the following documents:

- TDS/ TCS statements i.e., return;
- Statement of financial transactions or reportable accounts;
- Challans for payment of TDS/TCS;
- TDS/TCS certificates;
- Other documents as may be prescribed.

Procedure to Apply for TAN

There are two modes for applying for TAN:

- **OFFLINE** – An application for allotment of TAN is to be filed in Form 49B in duplicate and submitted to any TIN-Facilitation Centre (TIN-FC) of NSDL.
- **ONLINE** — Online application for TAN can be made from the website of NSDL TIN website.

In case of an applicant being a company, which has not been registered under the Companies Act, 2013, the application for allotment of Tax Deduction Account Number may be made in Form SPICe+ specified under the Companies Act, 2013.

Where to get the Physical Application Forms

Places from where to obtain **Form 49B** are:

- (1) Form 49B is freely downloadable from the website of Income-tax Department (<http://www.incometaxindia.gov.in>)
- (2) It is also available at TIN-FCs.

No separate TAN is required to be obtained for the purpose of TCS, if the person already holds TAN for the purpose of TDS.

No documents are required to be submitted along with application for allotment of TAN. However, for online application, the signed acknowledgment which is generated after filling up the form is to be forwarded to NSDL. These applications are digitized by NSDL and forwarded to ITD. ITD will issue the TAN which will be intimated to NSDL online. On the basis of this, NSDL will issue the TAN letter to the applicant.

GST REGISTRATION

What are Goods and Services Tax (GST)?

Goods and Services Tax is an Indirect Tax levied on goods and services. It's a revolutionary change under the **tax regime to create "One Nation One Tax"**. GST was rolled out on July 1st, 2017 replacing the Indirect taxes like excise duty, service tax, value added tax, central sales tax, purchase tax, entertainment tax, luxury tax and octroi that was levied by the central and states separately at different tax rates.

GST in India is classified into four types:

Type of GST	Who levies it?	Transactions on which GST is levied
SGST (State Goods and Service Tax)	State Government	Intra-State goods and service transactions
UGST (Union Territory Goods and Service Tax)	Union Government	Intra-union territory goods and service transactions
CGST (Central Goods and Service Tax)	Central Government	Intra-State goods and service transactions
IGST (Integrated Goods and Service Tax)	Levied by Central Government and revenue is shared between Central Government and State Government	Inter-State goods and service transaction Import and Export

GST Registration

Registration of any business entity under the GST Law implies obtaining a unique number from the tax authorities for the purpose of collecting tax on behalf of the government and to avail Input tax credit for the taxes on his inward supplies.

Section 22 of Central Goods and Services Tax Act, 2017 mandates the Registration of every supplier of goods whose turnover exceeds INR **40 Lakhs** in a financial year

Persons not liable to register

The following persons are not liable to registration as per section 23 of Central Goods and Services Tax Act, 2017:

- Persons engaged exclusively in the business of supplying goods or services or both that are not liable to tax;
- Persons engaged exclusively in the business of supplying goods or services or both wholly exempt from tax;
- Agriculturist, to the extent of supply of produce from land cultivation;
- Specified categories as may be notified by the Government.

Compulsory registration

Section 24 of the CGST Act, 2017 provides for compulsory registration for certain category of persons irrespective of their turnover:

- 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;
- 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.

Aggregate Turnover under the Act includes the aggregate value of all of the following supplies of a person having the same PAN.

- ✓ taxable supplies,
- ✓ exempt supplies,
- ✓ zero-rated supplies,
- ✓ interstate supplies,
- ✗ but doesn't include the inward taxable supplies under the Reverse Charge Mechanism.

The supplies by the agents on behalf of the principal would be included in the aggregate turnover of both, the principal and the agent. Registration is mandatory at every place of business from wherein a taxable supply has been made.

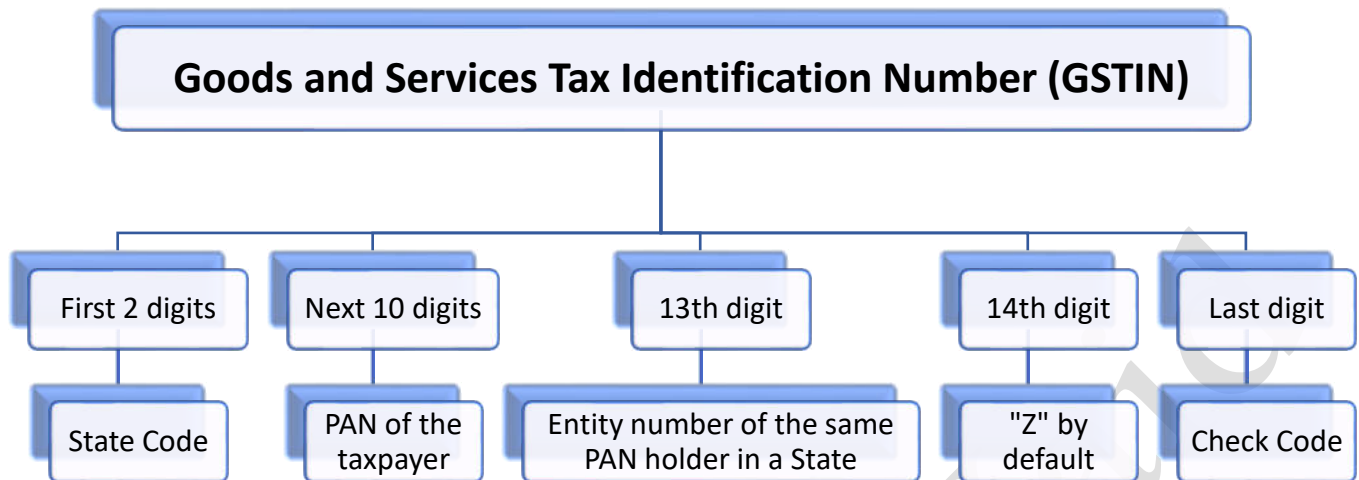
GSTIN

The registration in GST is based on Permanent Account Number and State specific. Supplier has to register in each of such State or Union territory from where he effects supply. In GST registration, the supplier is **allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration.**

Registration under GST is not tax specific, which means that there is a single registration **for all the taxes viz., CGST, SGST/UTGST, IGST and cesses.**

A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State wise registration for the

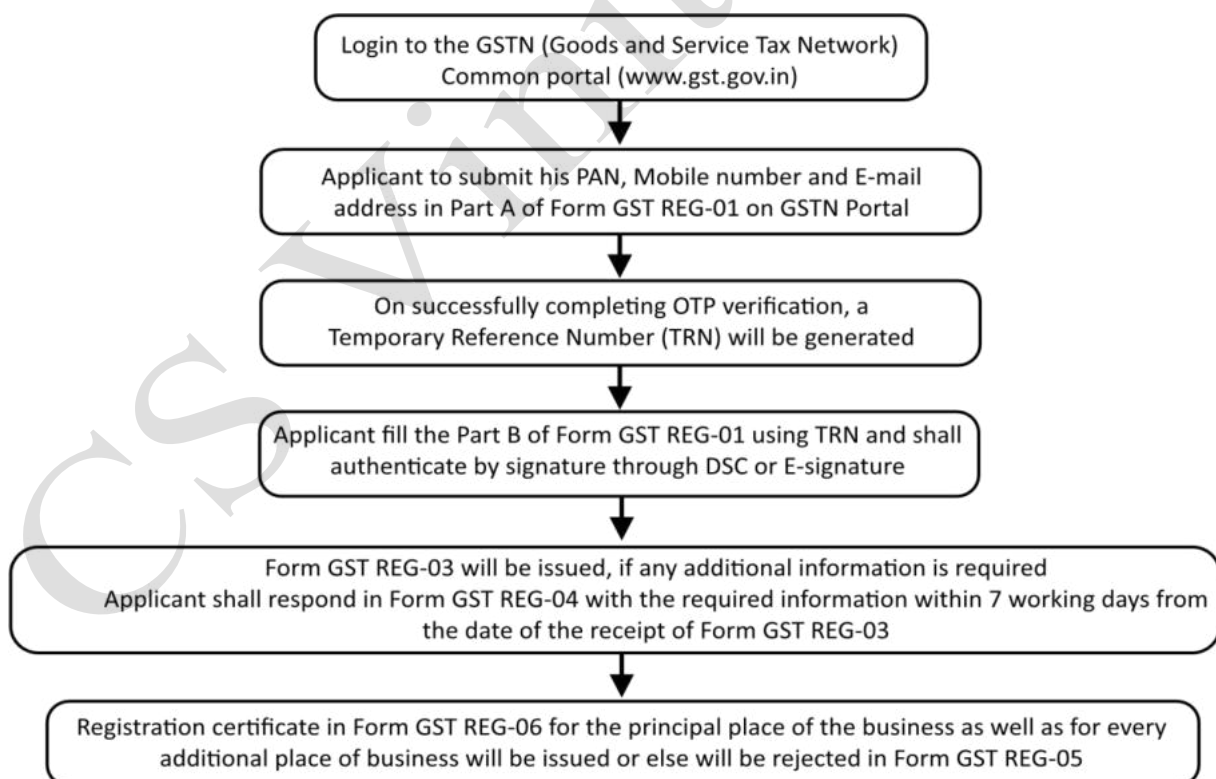
branches in different States. But within a State, an entity with different branches would have **single registration** wherein it can declare one place as principal place of business and other branches as additional place of business. However, a business entity having separate business verticals in a state may obtain separate registration for each of its business verticals.



Procedure for Registration

GST registration process will be online through a **portal** maintained by GSTN (Goods and Services Tax Network).

Steps for GST registration are:



Important points:

1. The registration shall be granted to the applicant within a period of **3 working days** from the date of submission of the application, if application along with the accompanying documents is found to be in order.

2. In case of deficiency in application documents or clarification submitted, the concerned officer may issue a notice electronically in **FORM GST REG-03** within a period of three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in **FORM GST REG-04**, within a period of **7 working days** from the date of the receipt of such notice.
3. Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of **7 working days** from the date of the receipt of such clarification or information or documents.
4. Where no reply is furnished by the applicant in response to the notice so issued or where the proper officer is not satisfied with the reply, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05**.
5. If the proper officer fails to take any action, –
 - (a) within a period of **3 working days** from the date of submission of the application; or
 - (b) within a period of **7 working days** from the date of the receipt of the clarification, information or documents,the application for grant of registration shall be deemed to have been approved.
6. **Effective date of registration:**
 - Where an application for registration has been submitted by the applicant within a period of 30 days from the date of his becoming liable to registration, the effective date of registration shall be the date on which the person becomes liable to registration.
 - If the application has been submitted after the expiry of above-mentioned thirty days, the effective date of registration shall be the date of the grant of registration.
7. Where the registration has been granted, the applicant shall be communicated the registration number, and the certificate of registration (duly signed or verified through electronic verification code) shall be made available to him on the common portal, within a period of **3 days after the expiry** of the period of deemed registration as stated above.

REGISTRATION AS COMPOSITE TAXPAYER

Composition Scheme under GST

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to **Rs. 1.5 Crores (Rs. 75 lakhs in case of few States)**. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Composition Scheme is available to service providers whose aggregate annual turnover does **not exceed Rs. 50 lakhs**. Both exclusive service providers and mixed service providers of goods and services can opt for this scheme.

Persons not eligible for Composition Scheme

- any supply of goods which are not liable to be taxed under this Act;
- inter-State outward supplies of goods;
- supplies through E-commerce operators who are required to collect tax under section 52;
- a manufacturer of notified goods;
- a casual dealer;
- a Non-Resident Foreign Taxpayer;
- a person registered as Input Service Distributor (ISD);
- a person registered as TDS Deductor/Tax Collector.

Under this scheme, a taxpayer will pay tax as a percentage of his/her turnover during the financial year without the benefit of Input Tax Credit. A taxpayer opting for composition scheme will not collect any tax from his/her customers and show only Bill of supply instead of invoice. The floor rate of tax for CGST and SGST are as follows:

Manufactures and Traders	1%
Restaurants not serving alcohol	5%
Other Service Providers	6%

PROCESS FOR REGISTRATION AS COMPOSITE TAXPAYER:

A person who is applying for the fresh Registration under GST has to file **FORM REG-01** and under **Part B** of the form, he has to select the option of Section 10 (Registration as composite taxpayer).

Important points:

- For composition levy, **all businesses under a single PAN mandatorily either can be registered under composition levy** or all of them under normal levy and there is no facility of choosing the Composition Scheme for only a few businesses under the Goods & Services Tax Act, 2017.
- **Display of registration certificate and GSTIN on the name board:**
 1. Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.
 2. Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

REGISTRATION UNDER SHOPS & ESTABLISHMENTS ACT

One of the important regulations required to be complied with by most businesses in India is the Shop and Establishment Act, enacted by every state in India. **The Shop and Establishment (S&E) Act** is applicable on all the commercial establishments; viz, business centres, offices, warehouses, stores, hotels, amusement parks, theatres, etc., nationwide. The Act regulates payment of wages, hours of work, leave, holidays, terms of service and other work conditions of people employed in shop and commercial establishments.

Purpose of Shop and Establishment Act

The Shop and Establishment Act in India is promulgated by the State and may slightly differ from state to state. However, all shops and commercial establishments operating within each state are covered by the respective Shop & Establishments Act.

Key Definitions:

“Shop”: Shop means any premises where –

- (i) goods are sold, either by retail, wholesale, or
- (ii) services are rendered to customers.

It includes an office, a store-room, godown, warehouse, or workplace, whether on the same premises or otherwise, used in connection with such trade/ business. A shop however does not include a factory or a commercial establishment.

“Commercial Establishment”: Commercial establishment means

- (i) a premise where any trade, business, profession or any work is undertaken,
- (ii) which may include society, charitable or another trust, journalistic and printing establishments, contractors and auditors establishments, educational institutes, premises where the business of banking, insurance stocks, and shares, the brokerage is undertaken, restaurants and eating houses, residential hotels, clubs, theatres and other places of public amusement or entertainment. Establishments are defined as shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment. Further, establishments as defined by the Act may also include such other establishments as defined by the Government by notification in the Official Gazette. However, factories are not covered by the shops & establishments Act and are regulated by the Factories Act, 1948.

License under Shop and Establishment Act

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a S&E Act License in the prescribed form comprising:

- the name of the employer,
- address of the establishment,
- name of the establishment,
- category of the establishment,
- number of employees, and
- other relevant details as requested.

On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier. The registration certificate must be prominently displayed at the shop or commercial establishment and renewed periodically, as per the Act.

Registration of Shops & Establishments

As a business owner of a shop or establishment, you are compulsorily required to get the same registered under the Shops and Establishment Act. Here are the specific rules:

1. Submit an application in the prescribed form to the **Inspector** of the area within **30 days of starting any work in the shop/establishment**. The application is to be submitted along with the prescribed fees and following information:
 - (a) Name of the employer and the name of a manager, if any;
 - (b) The postal address of your establishment;
 - (c) The name of establishment;
 - (d) Such other particulars as may be prescribed.
2. Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application. If satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate for the establishment. This certificate will be **valid for 5 years and has to be renewed thereafter**.

It is important that the registration certificate has to be prominently displayed at the establishment.

The Labour Department of each state has the authority for the registration process. Many States have a 100% online process, while some states are still following the manual procedure for filing.

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. The ESI Scheme applies to factories and other establishment's viz. Road Transport, Hotels, Restaurants, Cinemas, Newspaper, Shops, and Educational/Medical Institutions wherein 10 or more persons are employed.

Employees' State Insurance Corporation (ESIC) is a social government organization established under the Act to manage the funds according to the rules and regulations of ESI Act.

Applicability

The ESI Act is applicable to all non-seasonal factories and has been extended to the factories and other establishments here as under:

Section	Coverage
2(12)	all non-seasonal factories employing 10 or more persons.
1(5)	Shops, Hotel, Restaurants, Cinema including preview theatres, Road-motor transport undertakings, Newspaper establishments, Private Medical Institutions, Educational Institutions and to contract and casual employees of Municipal Corporation employing 10 or more persons in the certain States/UTs where the State Government is appropriate government.
1(5)	Shops, Hotels, Restaurants, Road Motor Transport establishments, Cinema including preview theatres, Newspaper establishments, establishment engaged in Insurance Business, NBFCs, Port Trust, Airport Authorities, Warehousing establishments employing 20 or more Persons where the Central Government is appropriate government.

Wage Limit for Registration

- Employees of the aforesaid categories of factories and establishments, drawing wages upto Rs. **21,000/- per month**, are entitled to social security cover under the Act.
- For Disabled persons, the wage Limit is Rs. 25,000/- per month.
- Employee contribution: **0.75%** of total wages.
- Employer Contribution: **3.25%** of total wages.

Online Registration of Employers

The Ministry of Labour and employment, Central Government has launched Unified Shram Suvidha Portal to facilitate reporting of Inspections, and submission of Returns. **Unique Labour Identification Number (LIN)** is allotted to units to facilitate online registration, which replaces all previous codes issued by labour enforcement agencies. LIN is a unique **10-digit number**. The ID cards like Aadhaar Number, Driving License, PAN, Passport No., UAN, and Voter Id No. act as identifier.

A common form for both ESIC and EPFO registration has been introduced under said portal. Registration of employers under ESI and EPF Act is fully online and no physical application documents are required.

Registration of Employee

On joining the organization, an employee has to register in ESIC Portal.

- Once **signing up** with required details, the employee will receive a mail on his registered mail ID confirming user ID and password provided.
- The employee shall **login** with the credentials and fill up the new **registration form**.
- The employee shall state details of Organisation and employer. Once all the information, the form be **submitted** to complete the registration.
- An employee is registered only after he makes advance **payment** for the next six months.
- Once registered, the employee will receive the **C-11 letter**, which is the registered letter containing his unique **registration number (of 17 digits)**.
- Once registered, the registration can be transferred if the employee switches the organization and takes up employment elsewhere.

EMPLOYEE PROVIDENT FUND (EPF) – MEANING AND REGISTRATION PROCEDURE

The Employee's Provident Fund Scheme (EPFS) was enacted to provide **financial stability and security to employees** in the organized sector **when they are temporarily or no longer fit to work**. It is managed by a board consisting of government, employer, and employee representatives, and employees must contribute a portion of their salary to the fund each month during their employment.

A tri-partite Board known as the Central Board of Trustee, EPF consisting of **representatives of government (both Central and State), Employers and Employees** manages these funds, and employees are required to contribute a part of their salary to it every month during their employment tenure.

Compulsory Registration	Voluntary Registration
Registration is mandatory for an establishment: (i) which is a factory engaged in any industry having 20 or more persons, and (ii) to any other establishment employing 20 or more persons or class of such establishments as notified by the Central Government.	However, an establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits.

The employer must obtain the registration **within 1 month** of touching mandatory registration threshold.

As an ease of doing business initiative, the Government of India launched a unified portal labour and employment "**Shram Suvidha Portal**" to facilitate Establishments, Contractors, Employers or Principal Employers to submit application for Registration/License under Labour Laws Online i.e.,

- (1) The Employees Provident Funds and Miscellaneous Provision's Act (EPF) Act, 1952.
- (2) Employees' State Insurance Act (ESI) Act, 1948.
- (3) Contract Labour (Regulation and Abolition) Act, 1970.
- (4) Building and Other Construction Workers (BOCW) Act, 1996.
- (5) Inter-State Migrant Workmen (ISMW) Act, 1979.

License: (1) CLRA Act (2) ISMW Act

Unified Shram Suvidha Portal is the official portal of Ministry of Labour and Employment, that provides single window access for Registration or Licensing related services of Employers/Establishments and other stakeholders. The registration process for employer for EPF is same as provided under ESI registration.

Every employee is issued Universal Account number by EPFO towards the contribution to EPF. **UAN is a 12-digit unique identification number**, which allows Employee to connect all his PF accounts across organisations on a single platform.

However, w.e.f. 15.02.2020, new Public & Private Limited Companies and OPC shall get registration number for EPFO & ESIC on MCA portal, when they cross the threshold limit under the respective Acts.

POLLUTION CONTROL

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, **for 39 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Forest and Climate Change, (MoEFCC) Government of India.** This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.

State Pollution Control Board is the concerned authority to obtain a pollution license/Certificate or a consent to establish such business. The permission is obtained in two stages:

(i) Consent to establish (CTE)

1. To be obtained prior to commencement of construction or any similar activities to start the business.
2. License valid for a period **1 to 7 years** according to the request made.

(ii) Consent to operate (CTO)

3. To be applied and obtained before starting production activity on the Unit.
4. CTO License valid for a **period of 5 years**, which may vary State to State.

The Central Pollution Control Board has specified list of industries as requiring a pollution license.

The MoEFCC recategorized the industries based on Range of Pollution Index and grouping of Industrial Sectors based on use of Raw Materials, manufacturing Process adopted and pollutants likely to be generated as follows:

CATEGORY	POLLUTION INDEX SCORE (PSI)
Red Category	Industrial Sectors having PSI of 60 and above
Orange Category	Industrial Sectors having PSI of 41 to 59
Green Category	Industrial Sectors having PSI of 21 to 40
White Category	Industrial Sectors having PSI including and upto 20

Industries which fall under white category are exempted from environment clearance and consent under Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981. Industries and business under white category need to self-govern themselves and need to intimate various State Pollution Control Board (SPCB) **within 30 days** of commencement of their business.

The White Category of industries has to however satisfy these conditions to be eligible for this pollution license exemption:

1. The industry is being established in the **locality** demarcated for them.
2. Their investment is not more than **Rs. 1 Crore** on plant and machinery.
3. There will not be any discharge of **trade effluent** from the industry and/or that industry will not discharge any **air pollution** including noise into the atmosphere.
4. The industry will not discharge any **toxic/hazardous** wastes and will not handle any toxic/hazardous chemicals.

Procedure for obtaining NOC from Pollution Control Board:

1. The application for CTE and CTO can now be made online by logging onto concerned State's pollution control board's (SPCB) website.
2. SPCB need to reply **within 4 months**. Due diligence is carried out by pollution authority of the business premises and pollution.
3. NOC application is either accepted or rejected. If application is accepted, then a certificate is issued to business. However, if application is rejected, then it is intimated to applicant with reason.

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

- EC (Environment Clearances)
- FC (Forest Clearance)
- WC (Wild Life Clearance)
- CTE (Consent to Establish)
- CTO (Consent to Operate)
- Authorization (Waste Management & Hazardous and Other Wastes (Management And Transboundary Movement) Rules)
- HSM (Hazardous Substance Management)

OTHER REGISTRATION AS PER REQUIREMENT OF SECTOR/ ACTIVITIES

Sector	Registration/License	Authority
Import and export for Goods and Services	IE Code	Director General for Foreign Trade
Setting up of Pharmacy Business	Drug License	Central Drugs Standard Control Organization and State Drugs Standard Control Organization
Regulating food Business	FSSAI	Food Safety and Standards Authority of India
Non Bank Finance Activity	NBFC Registration	Reserve Bank of India
Banking Activities	Banking Licence	Reserve Bank of India
Insurance Activities	IRDAI Registration	Insurance Regulatory and Development Authority of India
Industrial Activities	Industrial Activities	Department for Promotion of Industry and Internal Trade
Telecom Services	Telecom license	Ministry of Communications and Information Technology

IMPORT EXPORT CODE

Import Export Code (IE Code) is a key business identification number which is mandatory for exporting or importing goods. **It is a 10-digit code** which is issued by the **Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry**. However, for services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

IE code has lifetime validity. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, without this code.

The IE Code must be quoted by importers while clearing customs. Also, banks require the importers IE Code while sending money abroad. For exporters, IE Code must be quoted while sending shipments. And banks require the exporters IE Code while receiving money from abroad.

Consequent upon introduction of GST, IEC number is the same as the PAN of the firm. The IEC would be separately issued by DGFT.

Application for IE Registration

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

1.	Valid Login Credentials to DGFT Portal (After Registering on DGFT Portal).	
2.	User should have an active Firm's PAN and its details like Name as per Pan, Date of Birth or Incorporation. Note: These are validated with the Income Tax Department site.	
3.	Scanned Documents for Upload in the System (PDF Only and Max file size of 5 MB). a. Proof of establishment/ incorporation/ registration. b. Proof of Address can be any one of the following documents: (i) Sale Deed, rent agreement, lease deed, electricity bill, telephone bill, Partnership deed; (ii) Other acceptable documents (for proprietorship only): Aadhar card, passport, voter id; (iii) In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the premises owner in favor of the firm along with address proof. c. Proof of Firm's Bank Account: Cancelled Cheque or Bank Certificate	

4.	User should have an active DSC or Aadhaar of the firm's member for submission.	
5.	Active Firm's Bank account for making online payment of the application fee.	

DRUG LICENSE

A Drug License is permission to start a pharmacy business. Drug comprises of medications and instruments used for diagnosis, treatment and prevention of any disorder or disease in animals and human beings. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license **under Drugs and Cosmetics Act, 1940.**

Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization. The applicant shall visit respective state website for obtaining such license.

Classification of Drug License

Normally, the Drug Control Organization issues two types of licenses for operating a pharmacy business.

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

Prerequisites for obtaining Drug License

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

Area:	Minimum 10 square meter – for a medical shop or pharmacy or wholesale outlet. Minimum 15 square meter – if the pharmacy business combines retail and wholesale
Storage Facility:	The store must have refrigerator & air conditioner in the premises, as certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.
Technical Staff:	(a) Wholesale – The sale of drug shall be made either in the presence of registered pharmacist or a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C

	with 4 years' experience in dealing in drugs, specially approved by the department of drug control. (b) Retail – The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours.
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Documents required for obtaining Drug License

The documents required for starting a pharmacy business varies from state to state. However, below is an indicative list:

- Application form with Covering Letter in the prescribed format
- Challan of fee deposited for obtaining drug license
- Declaration form in the format prescribed
- Key plan (Blue print) for the premises
- Site plan (Blue print) for the premises
- Basis of possession of the premises
- Proof of ownership of the premises, if rented
- Proof of constitution of the business (Incorporation Certificate / MOA / AOA / Partnership Deed)
- Affidavit of non-conviction of proprietor/partners/directors under Drugs and Cosmetics Act, 1940
- Affidavit of registered pharmacist or competent person working full time
- Appointment letter of registered pharmacist/competent person, if employed person.

FSSAI

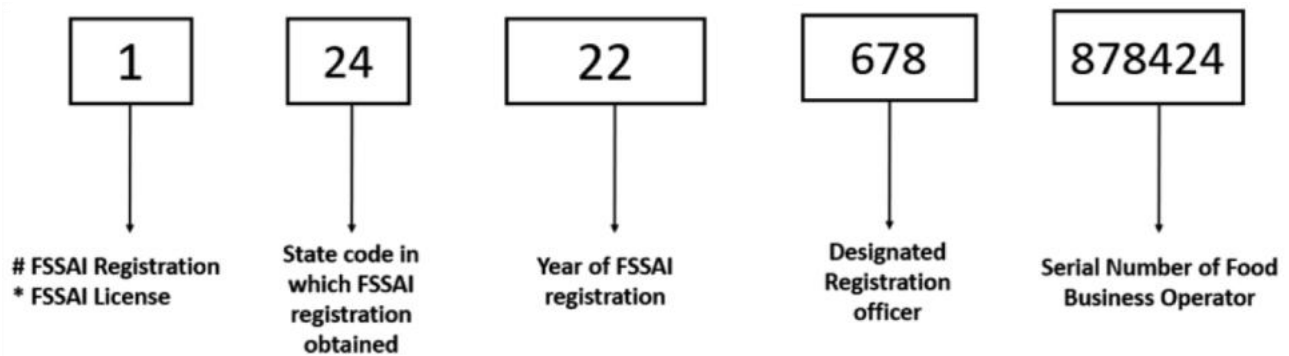
FSSAI stands for **Food Safety and Standards Authority of India**, which is an autonomous body created at the central level to regulate food-related issues in India. FSSAI was established, in August 2011, to ensure the safety and wholesomeness of articles of food. The purpose is to lay down standards that are backed by science, to regulate the manufacture, storage, distribution, sale, and import. The aim is to protect and promote public health through various regulations and supervision of food processes.

FSSAI registration and licensing are governed by regulations that require all food business operators involved in the manufacturing, storage, transportation, or distribution of food products to obtain an FSSAI registration or license.

As per section 3(1) of the Food Safety and Standards Act, 2006, **every food business operator in India** is required to be licensed under FSSAI, if they are involved in the manufacturing, storage, transportation or distribution of food products. They must obtain a **14-digit registration** or a license number which must be printed on food packages. Based on the size a nature of business, FSSAI registration or FSSAI license may be required.

This step is taken by government's food licensing & registration system to ensure that food products undergo certain quality checks, thereby reducing the instances of adulteration, substandard products and improve accountability of manufacturers by issuing food service license.

FSSAI License Number



FSSAI Registration

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

- (a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- (b) Distributes foods including in any religious or social gathering except a caterer; or
- (c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and whose:
 - Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - Procurement or handling and collection of milk is up to 500 litres of milk per day or
 - Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

A producer of milk who is a registered member of a dairy Cooperative Society registered under Cooperative Societies Act and supplies the entire milk to the Society shall be exempted from registration.

Petty food business operators are required to obtain a FSSAI registration by submitting an physical or online application. On submission of application, the registration should be provided or application rejected in **writing within 7 days of** receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.

FSSAI License

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

FSSAI State License

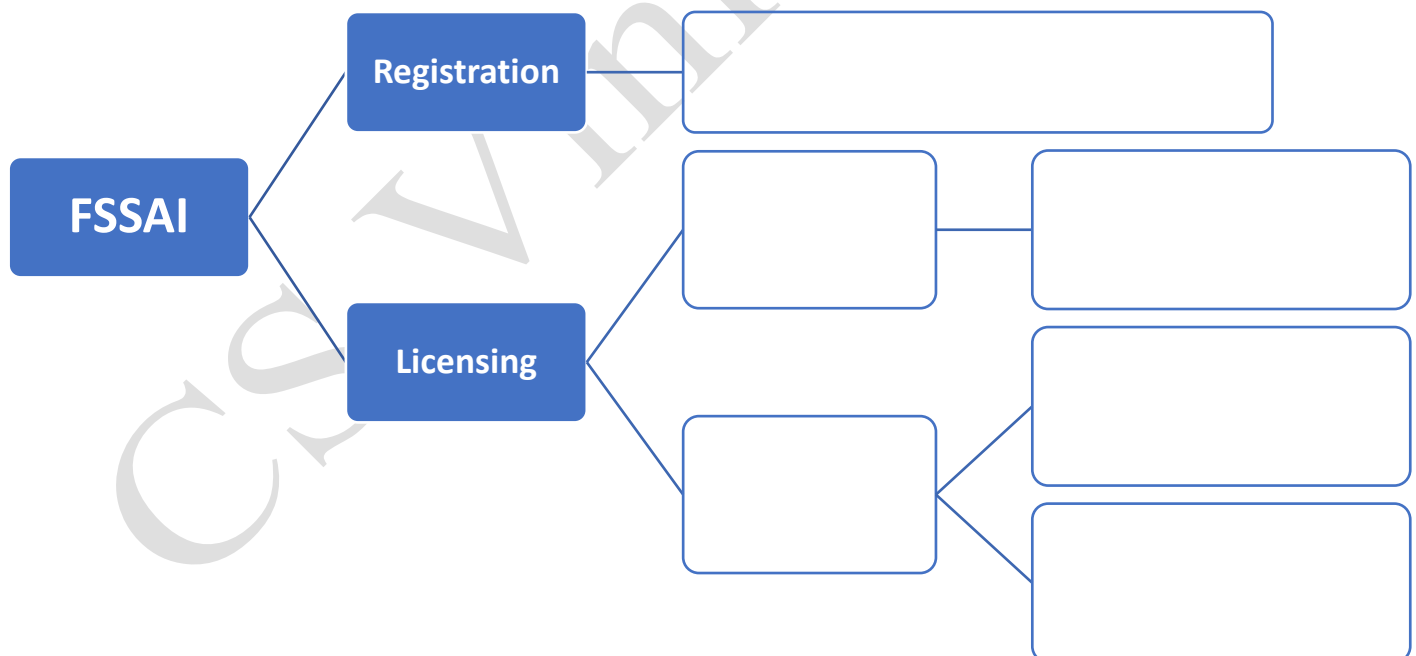
It is needed for small to medium sized Food business operators (manufacturers, processor and transporters) having an annual turnover of Rs. 12 Lakhs – Rs. 20 Crores.

FSSAI Central License

It is mandated for all Food giants with an annual turnover of more than Rs 20 Crores. Large food manufacturer/ processors/ transporters and importers/ exporters of food products require central FSSAI license.

The fee and procedure for obtaining a FSSAI license is more extensive when compared to a FSSAI registration.

FSSAI license in '**Form C**' is granted for **a period of 1 to 5 years** as requested by the food business operator. Higher fee would be applicable for obtaining FSSAI license for more years. If registration is obtained for one or two years, then the license can be renewed by making an application, no later than **30 days prior to the expiry date** of the FSSAI license.



NON-BANK FINANCE COMPANY REGISTRATION

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 or previous company law, that is engaged in the business of loans and advances, receiving deposits (some NBFC's only), acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business. Therefore, NBFCs are doing functions similar to Banks but they differ from Banks.

DIFFERENCES BETWEEN BANKS AND NBFCs:

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

REQUIREMENT OF NBFC LICENSE WITH RBI

As per the RBI Act, 1934, NBFCs which are conducting financial activity as principal business which include lending or acquisition of shares, stocks, bonds, etc., or financial leasing or hire purchase or accepting deposits shall not commence or carry-on business of a non-banking financial institution without obtaining a certificate of registration from the Bank.

FINANCIAL ACTIVITY AS PRINCIPAL BUSINESS

- ✓ When a company's financial assets (cash and cash equivalents, debtors, securities, cash in bank etc.) constitute **more than 50% of the total assets**
(AND) +
- ✓ income from financial assets constitute **more than 50% of the gross income.**

A company which fulfills both these criteria must obtain NBFC registration.

Therefore, companies engaged in agricultural operations, industrial activity, providing services, purchase and sale of goods or 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

The following types of entities that are involved in the principal business of financial activity do not require NBFC License from RBI, as they are regulated by other financial sector regulators:

- Housing Finance Companies – Regulated by the National Housing Bank;
- Insurance Companies – Regulated by Insurance Regulatory and Development Authority of India (IRDA);

- Stock Broking, Merchant Banking Companies, Venture Capital Companies, Mutual Funds and Companies that run Collective Investment Schemes – Regulated by Securities and Exchange Board of India;
- Nidhi Companies – Regulated by the Ministry of Corporate Affairs (MCA);
- Chit Fund Companies – Regulated by the respective State Governments.

Mortgage Guarantee Companies have been notified as NBFC under the RBI Act, 1934. Core Investment Companies with asset size of less than Rs. 100 crore, and those with asset size of Rs. 100 crore or more but not accessing public funds are exempted from registration with the RBI.

REQUIREMENT FOR OBTAINING NBFC LICENSE

To apply and obtain NBFC License, the following are the basic requirements:

- It shall be a **company** registered in India (Private Limited Company or Limited Company);
- The company must have minimum Net Owned **Fund of Rs. 200 lakhs**.

Calculating Net Owned Funds as per RBI Definition

The Net Owned Funds would be calculated based on the last audited balance sheet of the Company.

Net owned funds

= Paid up equity capital + free reserves+ balance in share premium account +capital reserves representing surplus arising out of sale proceeds of assets(not created by revaluation of assets)

(-) accumulated losses

(-) book value of intangible assets

(-) investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of 10% of the owned fund mentioned above

TYPES OF NBFC LICENSE

- in terms of the type of **liabilities** into
 - Deposit accepting NBFCs and
 - Non-Deposit accepting NBFCs
- non deposit taking NBFCs by their **size** into
 - systemically important (NBFC-NDSI) and
 - other non-deposit holding companies (NBFC-ND) and
- by the kind of **activity**, they conduct.

APPLYING FOR NBFC LICENSE

The application for NBFC License must be submitted online and offline with the following documents to the Regional Office of RBI:

- Information about the management.
- Certified copies of Certificate of Incorporation and Certificate of Commencement of Business in case of public limited companies.
- Certified copies of up-to-date Memorandum and Articles of Association of the company. Details of clauses in the memorandum relating to financial business.
- Copy of PAN/CIN allotted to the company.
- Directors' profile, separately filled up and signed by each director.
- CIBIL Data pertaining to Directors of the company.
- Board Resolution
 - specifically approving the submission of the application and its contents and authorizing signatory.
 - stating that the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of RBI in writing.
 - stating that the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/commence the same before getting registration from RBI.
- Statutory Auditors Certificate certifying:
 - that the company is/does not accept/is not holding public deposit.
 - that the company is not carrying on any NBFC activity.
 - net owned fund as on date of the application.
- Details of Authorized Share Capital and latest shareholding pattern of the company including the percentages.
- Last three years Audited balance sheet and Profit & Loss account along with directors & auditors report or for such shorter period as are available (for companies already in existence).
- Business plan of the company for the next three years giving details of its (a) thrust of business, (b) market segment and (c) projected balance sheets, cash flow statement, asset/income pattern statement without any element of public deposits.
- Other documents as may be required.

BANKING

Licensing of Banking Companies is governed by Banking Regulation Act, 1949. To be registered as a banking company, the entity must be a company registered under the Companies Act, 2013 or previous company laws or a foreign company having the prescribed minimum paid up capital.

The minimum paid-up voting equity capital for a bank shall be **500 Crore Rupees for universal banks and 200 Crore Rupees for small finance banks**. And any addition to this capital will be based upon the plan presented by the promoters of the bank to the RBI.

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

1.	Its subscribed capital is not less than one-half of its authorized capital;	
2.	Its paid-up capital is not less than one-half of the subscribed capital;	
3.	The capital of the company consists of ordinary shares, equity shares and preference shares. Provided that the issue of preference share shall be in accordance with the RBI guidelines.	
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 the extent and amount of his shareholding to the RBI.	

Section 22 of the Act details on licensing of Banking Companies which states as below:

1. Every company before commencing banking business shall apply in writing to the RBI for a license under this section.
2. No company shall carry on banking business in India unless it holds a license issued in that behalf by the RBI and any such license may be issued subject to such conditions imposed by the RBI.
3. Before granting any license under this section, the RBI may require to be satisfied by that the following conditions are fulfilled, namely:
 - (a) That the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
 - (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;
 - (c) That the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors;
 - (d) That the company has adequate capital structure and earning prospects;
 - (e) That the public interest will be served by the grant of a license to the company to carry on banking business in India;
 - (f) any other condition as the RBI may impose

(3A) Before granting the license to a company incorporated outside India, the RBI must be satisfied that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

IRDA (INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY)

Introduction

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

IRDA (Registration of Indian Insurance Companies) Regulations, 2000

Classes of insurance business for which requisition for registration application may be made:

(1) The classes of business of insurance for which requisition for registration application may be made are:

(i) Life insurance business;	(ii) General insurance business;
(iii) Health insurance business exclusively;	(iv) Reinsurance business.

(2) An applicant means a public company registered under the Companies Act, 2013 or a statutory body established by an Act of Parliament to carry on insurance business and applies to IRDAI for registration as an Indian insurance company.

(3) An applicant shall make a requisition for registration application under regulation 3 either for Life Insurance or General Insurance Business or Health Insurance Business exclusively or Reinsurance Business.

(4) Minimum Equity Capital Requirement:

- to set up a Life, General or Health Insurance Company	- INR 100 crore
- to set up a Reinsurance Company	- INR 200 crore

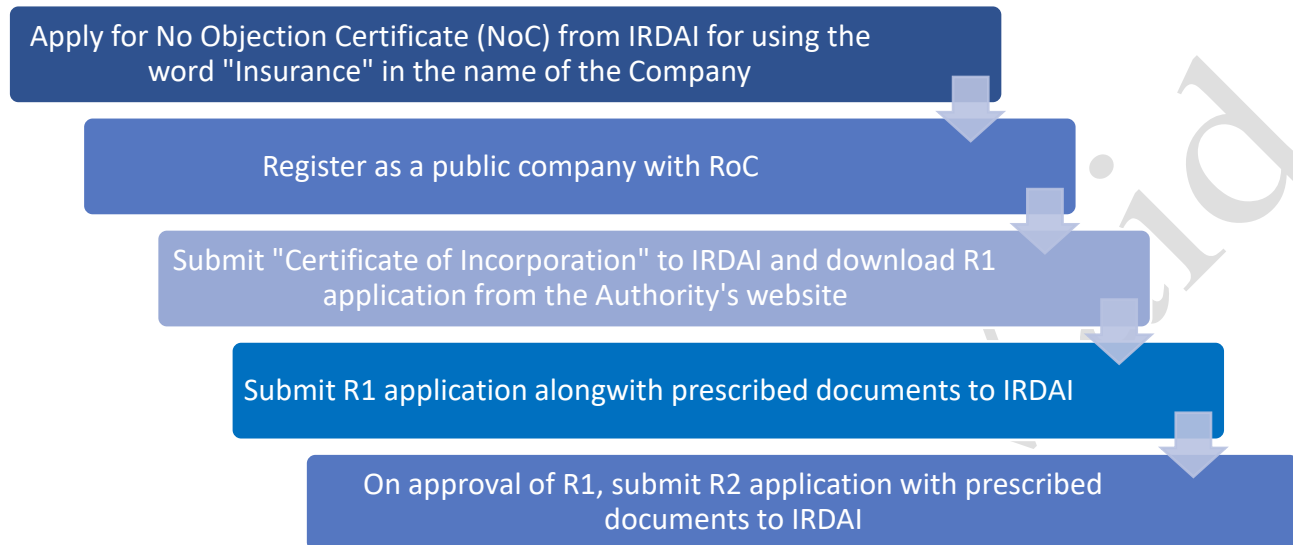
Who cannot apply for Registration under IRDA:

An applicant shall **not be eligible to apply** for the requisition in the following circumstances:

- Where the **requisition** for registration application has been **rejected** by the Authority or withdrawn; or
- where the foreign investors or Indian Promoter of the existing venture have **exit** for any reason at any time during **the preceding 2 financial years** from the date of requisition for registration application; or

- c. Where application for **registration** has been **rejected** by the Authority or withdrawn by the applicant for any reason at any time during the preceding two financial years from the date of requisition for registration application; or
- d. Where **Certificate of Registration** has been cancelled by the Authority; or
- e. Where the name of the applicant does not contain the **words 'insurance' or 'assurance'**.

Procedure for Registration of Insurance Company



Application in FORM IRDAI/R1 (Regulation 3)

- An applicant desiring to carry on insurance business shall make an application to the Authority for issuance of requisition for registration application **form IRDAI/R1**.
- The Authority may require the applicant to furnish further information or clarifications.
- The Authority, by recording the reasons in writing, may reject the application.
- The aggrieved applicant may **appeal** to the Securities Appellate Tribunal, within **30 days** from the date of such communication.

Documents to be attached with FORM IRDAI/R1

Every requisition for registration application shall be accompanied by—

- (i) a certified copy of the Memorandum of Association and Articles of Association;
- (ii) the name, address and the occupation of the directors;
- (iii) a certified copy of the annual report of Indian Promoters and the Foreign Investors for the **last 5 years preceding the year** of filing of the requisition;
- (iv) a certified copy of the shareholders' agreement between Indian Promoters and Foreign Investors of the applicant;
- (v) Projection of Business for **5 years duly** approved by the Board of Directors of the applicant.

Furnishing of further information and clarification, etc.

The Authority may require the applicant to furnish further information or clarification regarding the matters relevant to consider the requisition for registration application.

Application in Form IRDAI/R2 for grant of certificate of registration

The Authority on being satisfied with the information submitted and on verification that –

- (a) the requisition is complete in all respects and is accompanied by all documents required therein; and
- (b) the applicant shall carry on all functions in respect of the insurance business including management of investments within India as may be specified;

may accept the requisition and issue the application for registration in Form IRDAI/R2 for grant of certificate of registration to the applicant.

An applicant, whose requisition for registration application has been accepted by the Authority, shall make an application in Form IRDAI/R2.

Every such application shall be accompanied by –

- (a) evidence of having specified minimum paid-up equity share capital (i.e. Rs. 100 crore for life insurance/general insurance/health Insurance business or Rs. 200 crore crore for re-insurance business);
- (b) an affidavit by the promoters and foreign investors of the applicant certifying that the requirement of adequate paid-up share capital after excluding any preliminary expenses of the company, have been satisfied;
- (c) a statement indicating the distinctive numbers of shares issued to each Indian promoter and Investors in respect of share capital of the applicant;
- (d) an affidavit by the MD, CEO or WTD of the Indian promoters and the foreign investors of the applicant certifying that the foreign shareholding does not exceed 74% of the total paid-up capital of the applicant company;

In case of Indian promoter being LLP, it shall be signed by the Designated Partner.

- (e) Where the foreign direct investment is more than 26%, a certified copy of the approval given by Foreign Investment Promotion Board (FIPB);
- (f) a certified copy of the published prospectus, if any;
- (g) a certified copy of the standard forms of the insurer including rates, advantages, terms and conditions for insurance policies together with a certificate by an actuary in case of life insurance business that such rates, advantages, terms and conditions are workable and sound;
- (h) a certified copy of the Memorandum of Understanding or Management Agreement or Shareholders Agreement or any other agreements entered into between the Indian promoters and the foreign investors, if any, or amongst the promoters;

- (i) proof in support of payment of the non-refundable **fee of Rs. 5 lakh**;
- (j) a certificate from a **PCA or PCS** certifying that all the requirements of the Act have been complied with by the applicant;
- (k) any other information required by the Authority

Manner of payment of fee for registration:

The non-refundable fee of **Rs. 5 lakh** shall be remitted by a bank draft issued by any scheduled bank payable at Hyderabad or by any recognised electronic funds transfer to IRDAI.

Grant of certificate of registration

The Authority, after making such inquiry as it deems fit and on being satisfied, may register the applicant as an insurer and grant the applicant the certificate in Form IRDAI/R3.

Provided that the Authority may impose such conditions as may be deemed fit at the time of grant of the Certificate of Registration.

Commencement of Insurance Business:

An applicant shall commence insurance business for which it has been authorised within 12 months of the grant of the Certificate.

Provided that if the company believes that it will not be in position to commence the insurance business **within 12 months**, it can request an extension from the Authority before the time limit expires.

The Authority on receipt of the request will examine it and communicate its decision in writing, either rejecting the request or granting it. No extension of time shall be granted by the Authority beyond **24 months from the date of grant of Certificate of Registration**.

INDUSTRY LICENSING POLICY

Section 11 of the Industries (Development and Regulation) Act, 1951 lays down condition of Licensing of new industrial undertakings as follows—

- (1) No person or authority other than the Central Government, shall establish any new industrial undertaking, except in accordance with a license issued in that behalf by the Central Government:

Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

- (2) Such license or permission may contain such conditions as the Central Government may deem fit to impose.

Section 11A of the Act makes it mandatory to obtain license for producing or manufacturing new articles unless the owner of an industrial undertaking had the existing license or permission amended in the prescribed manner.

Since the liberalization and deregulation of the Indian economy in 1991, most industries have been exempted from obtaining an industrial license to start manufacturing in India. Government attention is reserved only for those industries that may impact public health, safety, and national security.

At present, industrial license is made compulsory only for the following:

1. **Industries** retained under compulsory licensing are:
 - Alcoholics drinks
 - Cigarettes and tobacco products
 - Electronic aerospace and defense equipment
 - Explosives
 - Hazardous chemicals
2. The Government has reserved certain items for exclusive manufacture in the small-scale sector. **Non-small-scale (large or medium) units** can undertake the manufacture of such items, only after obtaining an industrial license and undertaking to export 50% of the production of SSI reserved items.
3. When the proposed location attracts **locational restriction**.

To create a business and Investor friendly environment, DPIIT has developed **G2B Portal** as a Single Window System to file an **Industrial Entrepreneurs Memorandum (IEM)** as well as **Industrial License** under Industries (Development and Regulation) Act, 1951. The online portal has the required authentication mechanisms for submitting IEM and IL applications.

Once the license is obtained, an industrial undertaking is eligible for the allotment of controlled commodities.

The validity of all Industrial Licenses are up to **3 years**. The licensee has to apply for extension of validity after 3 years, as applicable.

Procedure to apply for Industrial License

1. All applications for Industrial License under IDR Act, 1951 can now be applied online on G2B Portal in Form FC-IL/FORM FC-IL – Composite form for Foreign Collaboration and Industrial License.
2. Information in respect of incomplete applications is sought from the applicants.
3. If the applications for grant of license are complete in all respect with necessary documents, DPIIT circulates them to concerned administrative ministries, Concerned State Government and other concerned agencies for their comments.

4. After receipts of Comments, files are processed and submitted to the Licensing committee for consideration.
5. Licensing committee can recommend for grant of license/rejection of proposal/deferment of the proposal, based on the comments received and deliberations in the Committee. After recommendation, the approval of the Minister in charge of DPIIT is obtained for grant of licenses or otherwise.

IEM (Industrial Entrepreneur Memorandum)

All industrial undertakings exempted from the requirements of industrial licensing under the Industries (Development and Regulation) Act (D&R), 1951 and having an investment in plant and **machinery of Rs 50 Crore** and above; and **turnover of Rs. 250 crore** and above, may file an IEM. This is filed online by filing details as per 'Part A' of **IEM through portal G2B**.

Confirmation for receipt of such information by this Department is known as 'IEM Acknowledgement':

All on-line applications filed through the portal are scrutinized in 'IEM Section'. Once the information is verified and found correct; the Department electronically issues IEM Acknowledgement to the applicant.

However, the Acknowledgement (Ack.) does not imply clearance or approval to carry out the industrial activity unless all relevant statutory regulations, notifications, and directions issued by the Central or State Governments are fully complied with.

All Industrial undertakings that have filed an IEM are required to report the commencement of commercial production. This information is filed online through the same portal using the prescribed 'Part B' form of the IEM. A copy of the related IEM Acknowledgement is required to be attached with the filing. Like 'Part A' Ack. of IEM, the Department also issues Ack. for 'Part B' through its portal.

TELECOM LICENSE

Business entities which provide internet services or engaged in commercial communications i.e., call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services who are categorised as 'Other Service Providers' (OSP) under **New Telecom Policy, 1999**, must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications and Information Technology.

OSP license shall be categorized into two types:

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

Process

A **company** registered under the Companies Act, 2013 or under any other previous law or **LLP** registered under Limited Liability Act, 2008 or **Partnership Firm or organisations** registered under Shops and establishment Act are eligible to obtain OSP license.

- To Obtain a OSP license, the Company or LLP shall file an Application **in Form - 1** to the DoT 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

Mandatory documents required for OSP License

- Certificate of Incorporation issued by ROC;
- Memorandum and Articles of Association;
- Copy of LLP Agreement;
- Board resolution Power of Attorney authorizing the Authorized signatory with attested signature;
- Resolution passed by all designated partners or Partners as per provisions of LLP Act;
- A Note on nature of business or activities of the proposed OSP;
- List of present directors of the Company;
- List of present designated partners of LLP;
- Present Shareholding pattern of the Company;
- Present Shareholding pattern of LLP.

All the documents must be certified with seal by company secretary or one of Directors or Statutory Auditors or public notary in case of Company.

All documents must be certified with seal by either designated partner or all partners or statutory Auditors or public notary in case of LLP.

The OSP license is valid for a period of **20 years** and can be **extended** for further period of **10 years**.

QUESTIONS:

1. Discuss the process of acquiring license under PAN, TAN Shops and Establishment in India.
2. Discuss the registration process of ESI and EPF .
3. What is OSP license? Discuss its types and registration process in detail.
4. Puran wants to open garment shop in a shopping mall. Is he required to get his shop registered under Shops and Establishment Act, 1948? If so, advise him the procedure.
5. PQ Pvt. Ltd., is engaged in the business of textile related products and employs 20 employees. Out of which, 11 employees draw a monthly salary of more than Rs. 25,000

each and 9 employees draw a monthly salary of less than Rs. 20,000 each. Because of this the Management of the Company is of the view that the Company is not covered under Employee's State Insurance (ESI) Act, 1948. Referring to relevant provisions clarify whether the contentions of the Management of PQ Pvt. Ltd. is correct.

6. Nivasan, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Nivasan on the requirements of Industrial licensing based on category of Industries
7. Write short notes on Industrial Entrepreneurs Memorandum (IEM).

CS Vinita Vaid