For June & December, 2025

Bharat's

Setting Up of Business, Industrial & Labour Laws

With Quick Recap & Flow Charts

CS Executive (Module 1, Paper 3)

CS Amit Vohra
CS Rachit Dhingra

Salient Features

- Complete Coverage of Syllabus of ICSI
- Easy understanding through Flow Charts, Diagrams & Tables
- Incorporated 200 + Practical Problems (Case Studies)
- Important provisions printed in bold for better understanding
- Amended incorporation & conversion procedures
- All Schemes of the Central Government (as per ICSI Syllabus) included with real life examples
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CS Executive
Module 1,
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9th Edition

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SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

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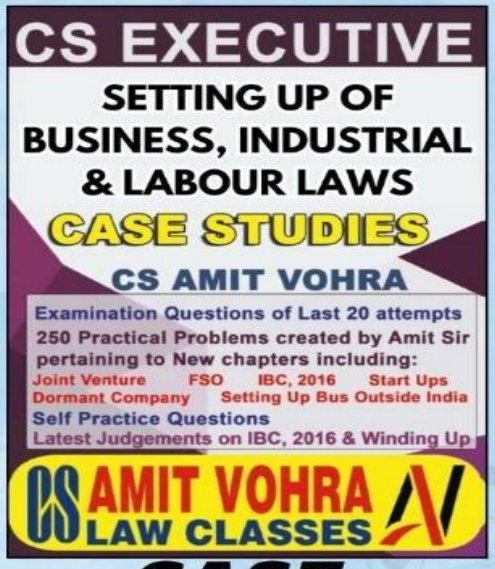

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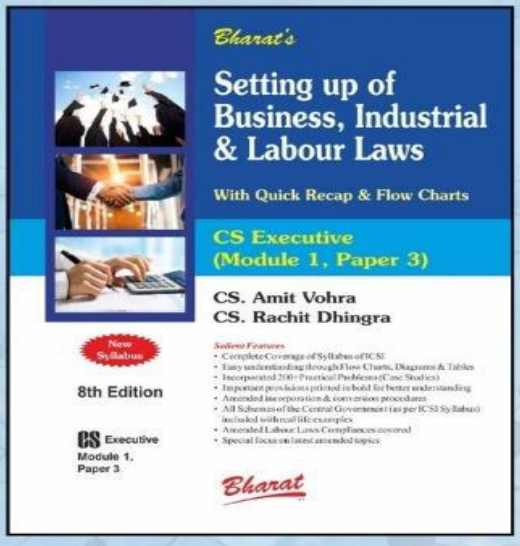

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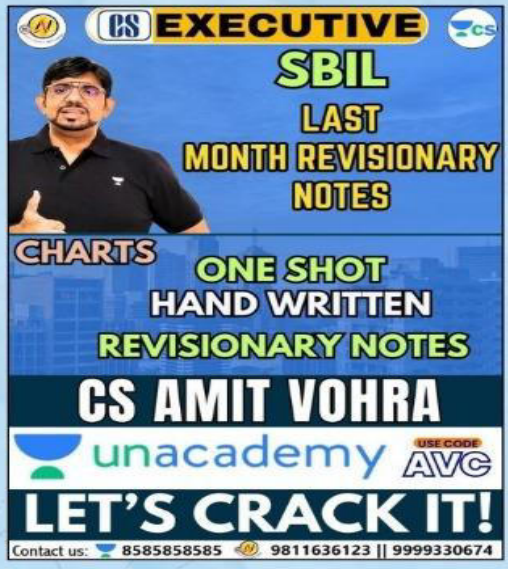

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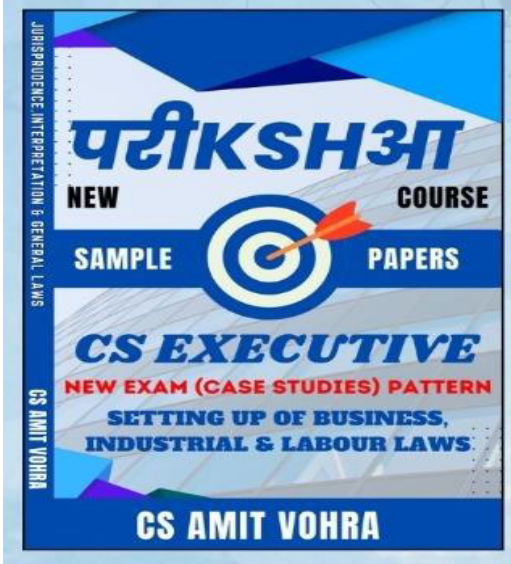

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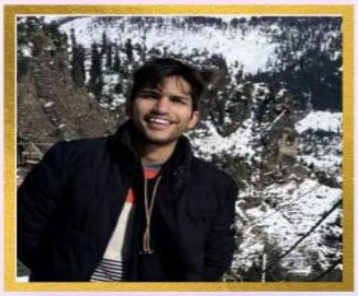

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Bakki sir the journey continuess looking to learn a lot from you🙏🙏

12:46

Hello Sir
Good Afternoon... Sir SBEC ka paper sach me boht easy gya aaj ka maine saare questions attempt kiye hain ☺️ Kal wali pre marathon class hi revise krke gya tha bas sab kuch usi se aaya ☺️

13:08

Thank you Sir 13:08

Hello Sirji
You indeed are a jyotishi
Paper went well
All credit goes to you
Thankyou so much for always being there for us ❤️❤️❤️
Pranam 🙏

13:04

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Sir 12:23

The paper went well 12:23

More than half of the paper was from your yesterday class 12:23

So thank you 12:23

Good afternoon sir
Sir ,paper bohot acha gaya aapke charts aur pre marathon se hi sab aaya tha
Thank you 😊 so much sir for your guidance 12:27

Sir paper jesa aapne bataya vhi aaya mai YouTube se aapke revision lec dekh rai hoon and honestly speaking very very helpful 🥹❤️ 12:52

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STUDENTS' REVIEWS

REVIEWS

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1 review
★★★★★

This is a little note to let you know just how helpful you have been. You're such an amazing teacher and I hope you know that! Thank you!

Your classes are just so inspirational! I've never had a teacher like you, and for that, I'm so, so thankful every day!

Teachers are our second parents, friends and Trust. Thank you for all that you've done for me this year. I hope we stay in touch for a long time to come.

You are a true godsend! You've got all of the best qualities of a teacher. Without you, I wouldn't have made it through.

Your patience is endless and your passion is so evident. Thanks a million!

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★★★★★

There is no other teachers who teaches law like CS Amit Vohara Sir.. This is my genuine suggestion to students.. Just take one demo class of AV sir... You will love the class and as well as AV sir also ❤📸

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The best ,law teacher not in India but I think in world is only one CS Amit vora sir ...I am very lucky that he is my guru 🙌not only in study but in providing guidance..I am totally addicted to his lectures 😊

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Simrat Singh
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The sheer amount of hard work Amit Sir puts in each one of his lectures is something which I can't help but admire. Be it his Last Month revisionary notes and lectures or be it his ocean in hands questions or main lectures, the quality and depth of academic and non academic education which we receive through Amit sir is brilliant.
p.s I really love the real-life experiences he shares with us which narrate some of his interactions with the corporate world.

Highly satisfied as a consumer and as a student.

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I have been learning so much in my classes with CS Amit Vohra sir. He paces the class just right so you feel challenged but not overwhelmed. asking questions and gets the students to respond which is both fun and promotes faster learning. He is patient and eager to help. He is the best teacher and so my inspiration. I'm thrilled to have found this class! Thank you sir!!

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Chapter – 1
SELECTION OF BUSINESS ORGANIZATION

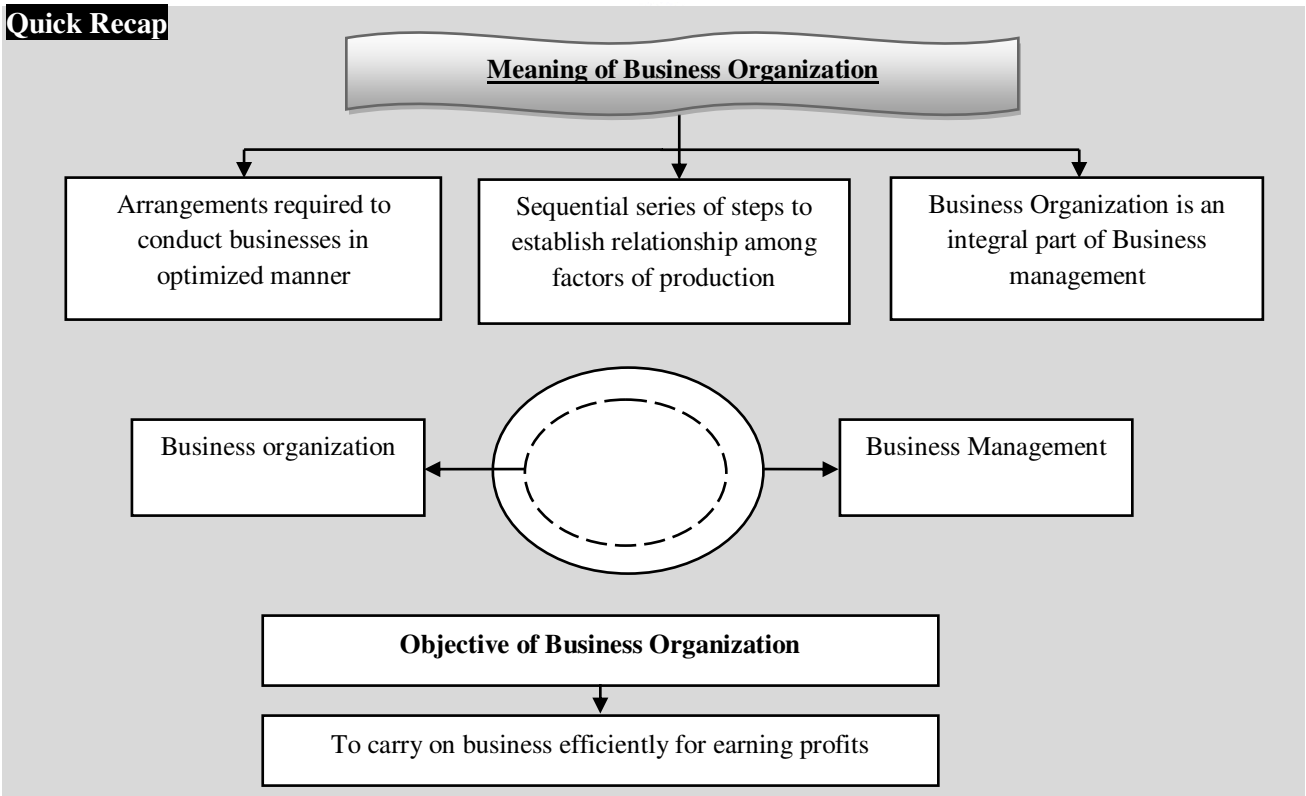
Synopsis

1. Choice of a Business Organization
2 Factors governing the decisions for suitable form of organization
3. Conclusion

1. Choice of a Business Organization

- Business organization refers to all **necessary arrangements required to conduct a business in an optimized manner.**
- It refers to all those steps that need to be undertaken for establishing and maintaining relationship between men, material, and machinery to **carry on the business efficiently for earning profits.**
- This may be called the **process of planning and organising** which are the **integral part of the business management.**

Quick Recap



Types of Business Entities

- Sole Proprietorship
- Partnership
- Hindu Undivided Family (HUF) Business
- Co-operative Society
- Company
- Limited Liability Partnership

- Trust

Choosing a form of business entity is crucial to a successful organization because it determines the power, control, risk and responsibility of the entrepreneur as well as the division of profits and losses.

The choice of a business entity will depend on an object, nature and size of the business of such entity which will be varied from case-to-case.

A **business enterprise can be owned and organized in several forms.** Each form of organization has its own merits and demerits. The ultimate choice of the form of business depends upon the balancing of the advantages and disadvantages of the various forms of business.

Once a form of business organization is chosen, it is very difficult to switch over to another form because it needs the winding up, dissolution of the existing organization.

Therefore, a thoughtful consideration should be given to this aspect of planning and only that form of organization most suited to the style of business should be chosen.

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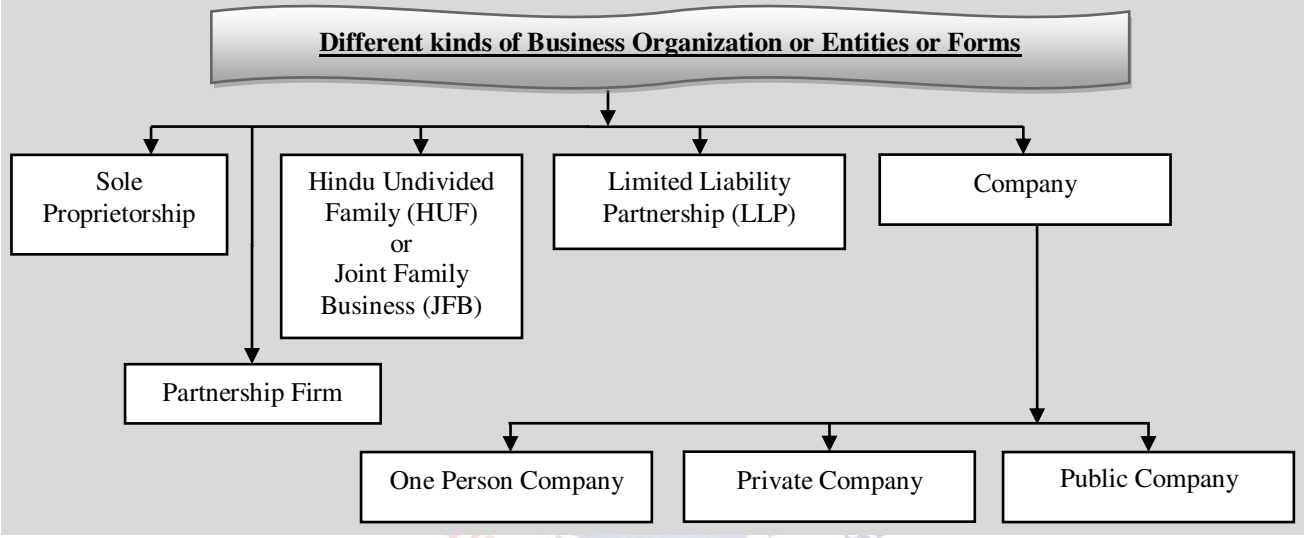

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2. Factors governing the decisions for suitable form of organization

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

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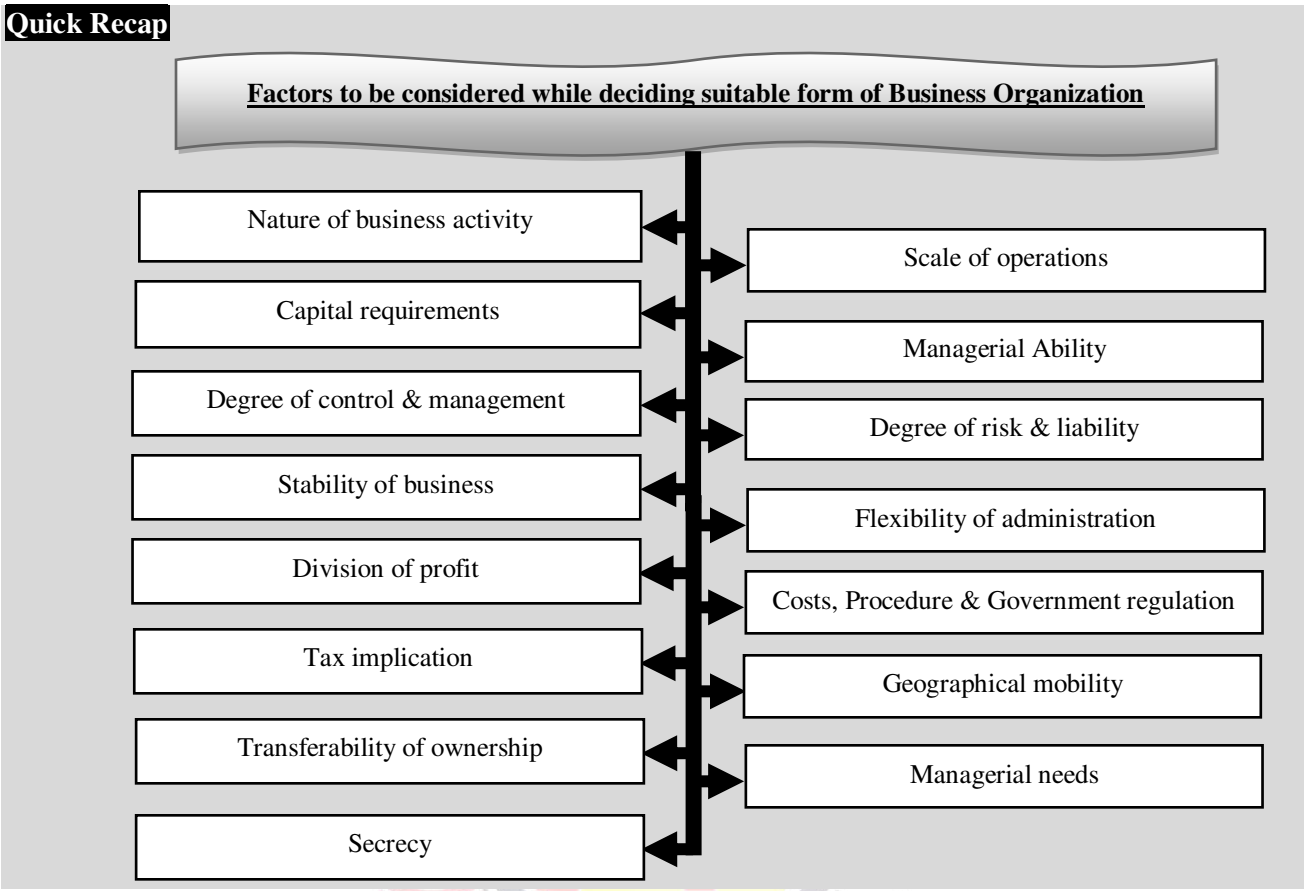

1. **Nature of a Business Activity**

This is an important factor having a direct bearing on the choice of a form of ownership. In small trading businesses, professions, and rendering of personal services, sole-proprietorship is predominant.

Sole Proprietorship is suitable to the following businesses:

- Beauty Parlours
- Repair shops
- Consulting agencies
- Small retail stores
- Medicine stores
- Dentist
- Accounting concerns
- Restaurants
- Specialty shops
- Decorators
- Bakers and Confectioners
- Tailoring shops
- Small scale shoe repairers and manufacturers

The partnership is suitable in all those cases where sole proprietorship is suitable, provided the business is to be carried on a slightly bigger scale with help of one or more partner (owner).

Partnership is suitable to the following businesses:

- Finance
- Trading
- Real estate industries
- Stockbrokerage firms
- Consulting agencies

Company is suitable to the following businesses:

- Large chain stores
- Multiple shops
- Super- bazaars
- Engineering industrial activities with high capital and working capital requirements
- Software industrial activities

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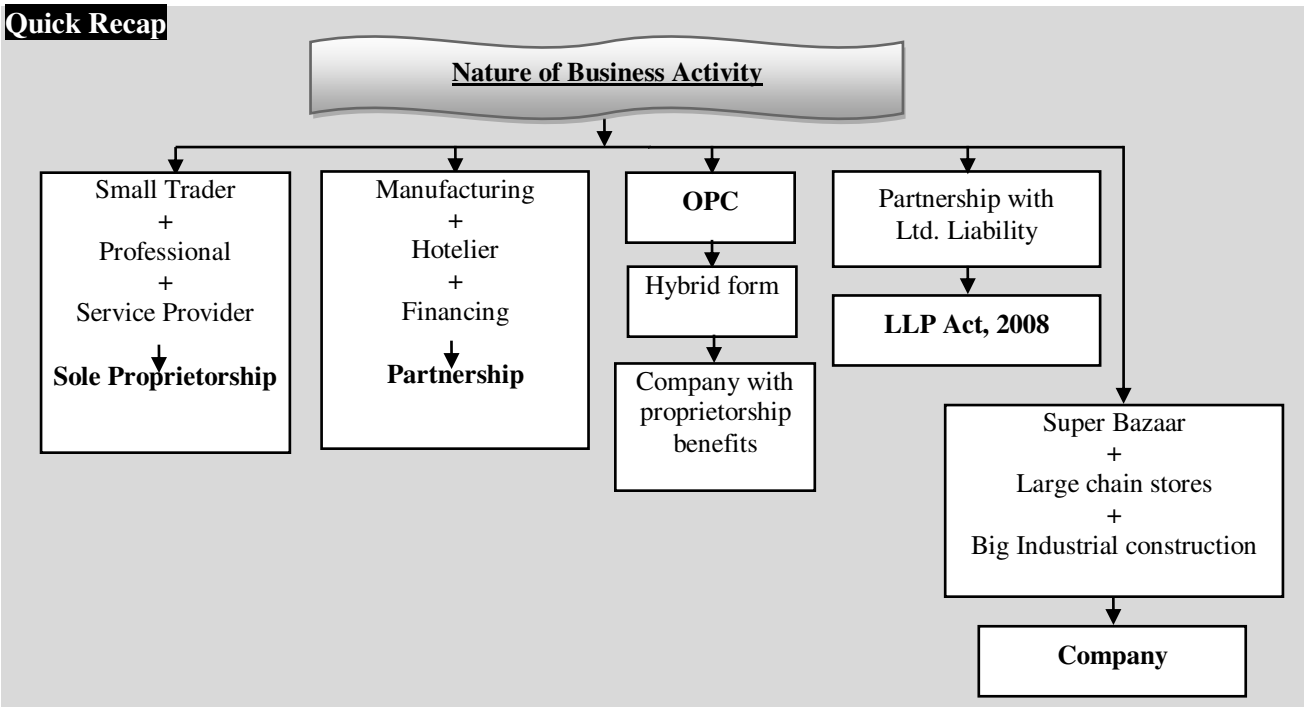

2. Scale of operations

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**, then **partnership or limited liability partnership (LLP)** is preferable.
- In case of **large scale of operations, the company** form is advantageous.

Note:—The **scale of business operations depends upon the size of the market area** served, which, in turn, depends upon the **size of demand for goods and services.**

Enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely:—

(i) Micro enterprise:—where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees.

(ii) Small enterprise:—where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and

(iii) Medium enterprise:—where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty Crore rupees.

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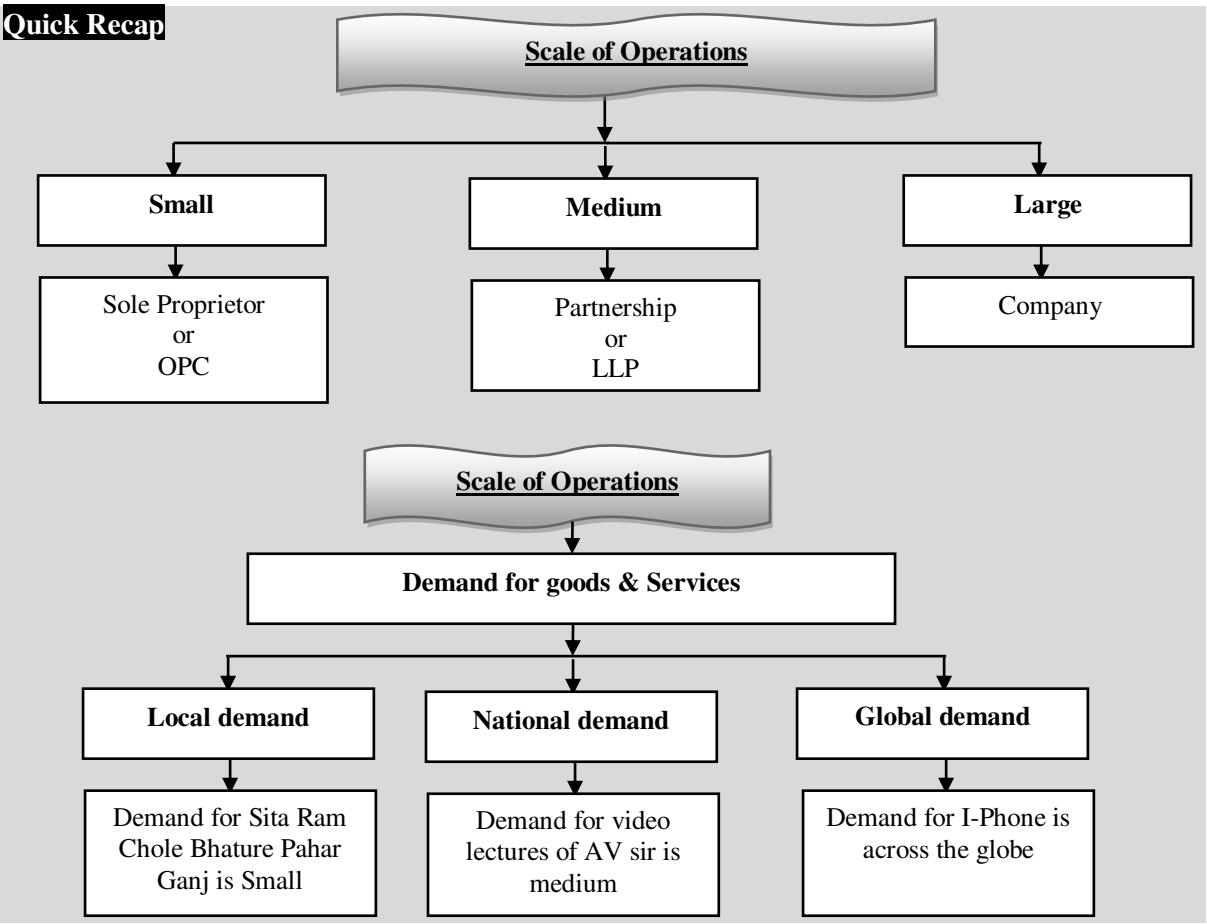

3. Capital Requirement

Capital is one of the **most crucial factors** affecting the choice of a particular form of ownership organization. Requirement of capital is closely related to the type of business and scale of operations.

Enterprises requiring **heavy investment** (like iron and steel plants, large scale infrastructure projects, etc.) should be organised as **companies**. Depending on the capital required, they can be set up as public companies and in some cases, may be in the form of listed companies by raising money from the public and being listed on the stock exchanges.

Enterprises requiring **small investment** (like retail business stores, personal service enterprises, etc.) can be best organised as **sole proprietorships or even as Partnerships.**

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

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

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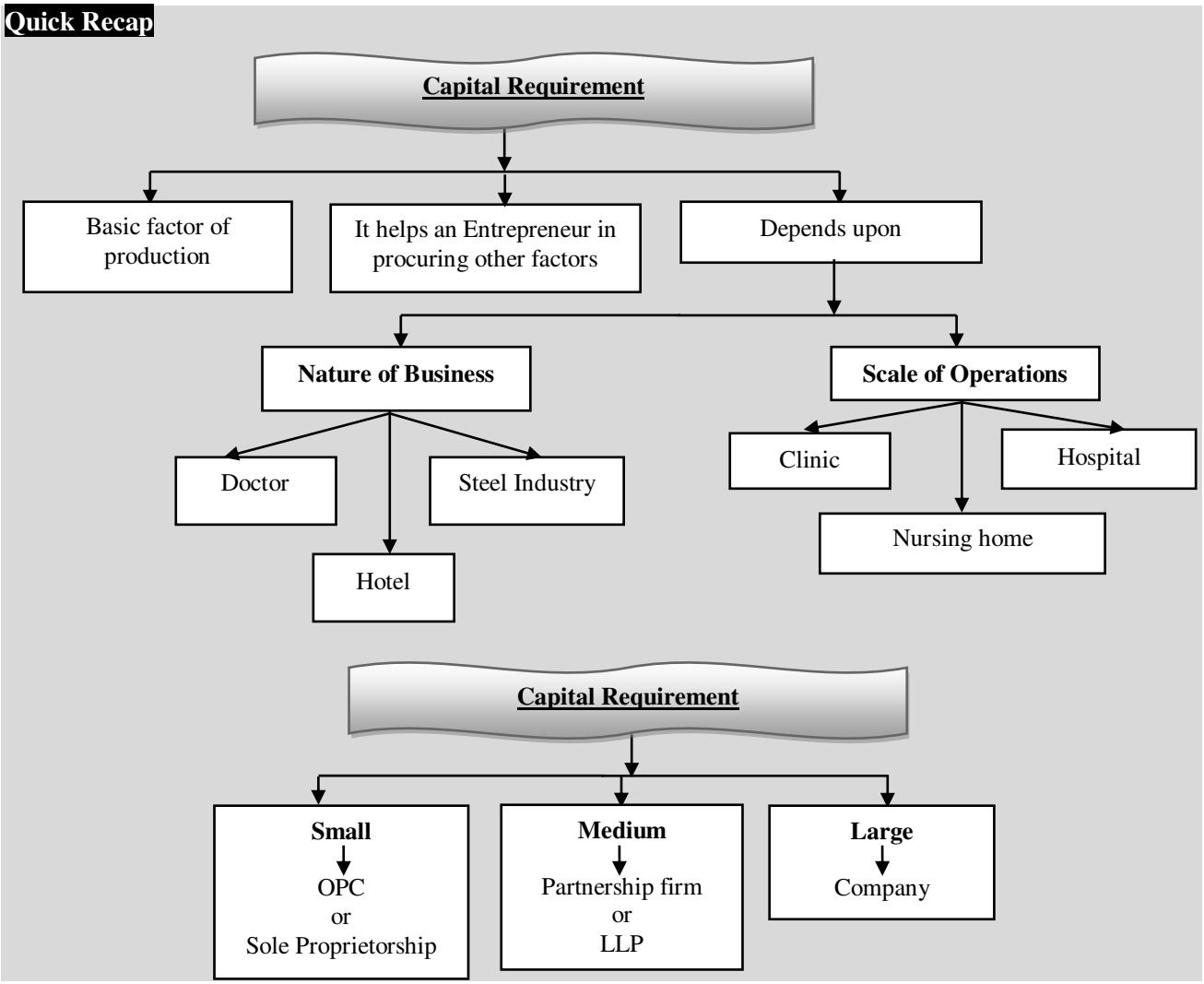

4. Managerial Ability

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

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

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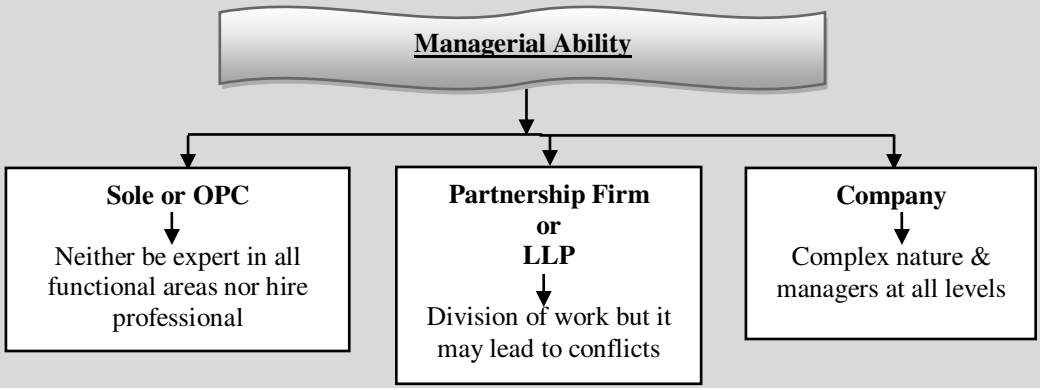

5. Degree of Control and Management

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

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

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

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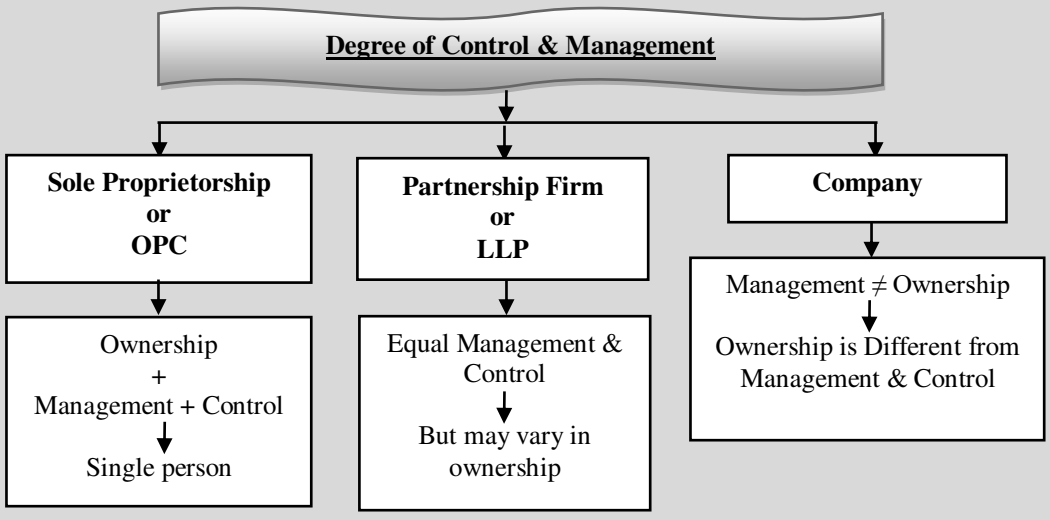

6. Degree of Risk and Liability

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

- A **sole proprietary business** carries **small amount of risk** with it as compared to partnership or company. However, the **sole proprietor is personally liable** for all the debts of the business to the extent of his entire property.
- In partnership, **partners are individually and jointly responsible** for the liabilities of the partnership firm.
- Companies and LLPs have a real advantage, as far as the risk is concerned, over the other forms of business organization. Creditors can force payment of their claims only to the **limit of the company's and LLP's assets.**

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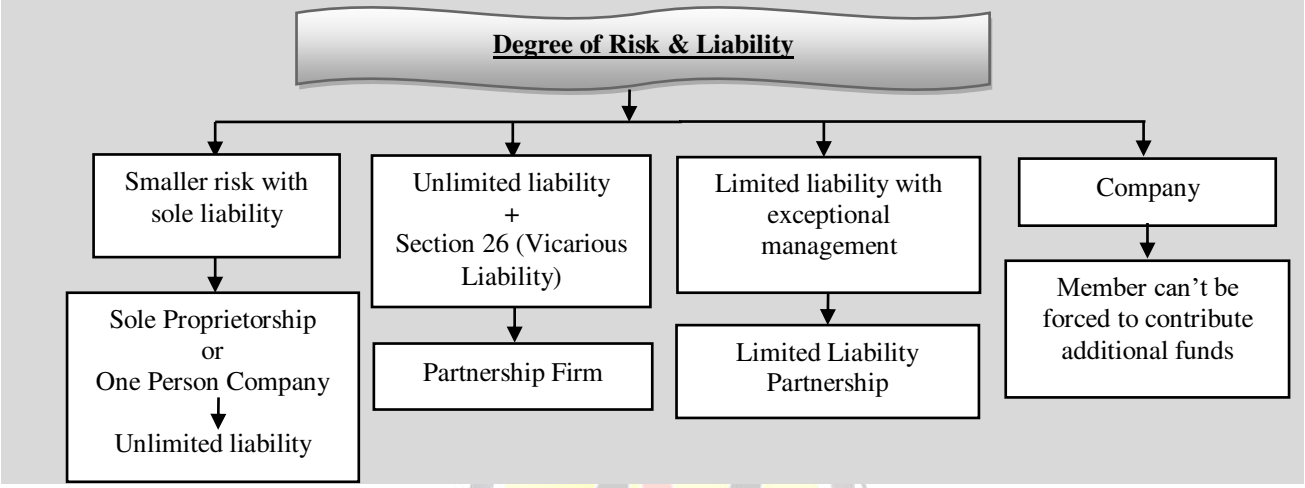

7. Stability of Business

Stability of business is another factor that governs the choice of an ownership organization. A stable business is preferred by the owners in so far as it helps him in attracting suppliers of capital who look for safety of investment and regular return, and also helps in getting competent workers and managers who look for security of service and opportunities of advancement.

- **Sole proprietorships are not stable,** although no time limit is placed on them by law. The illness of owner may derange (disturb) the business and his death cause the demise of the business.
- **Partnerships are also unstable,** since they are terminated by the death, insolvency, insanity, retirement, admission, expulsion or withdrawal of or by one of the partners.
- **Companies and LLPs have the most business stability** due to its feature or perpetuity being an artificial or legal person. The life of the company and LLP is not dependent upon the life of its members or partners. **Members or partners may come, members or partners may go, but the company or LLP goes on forever.**

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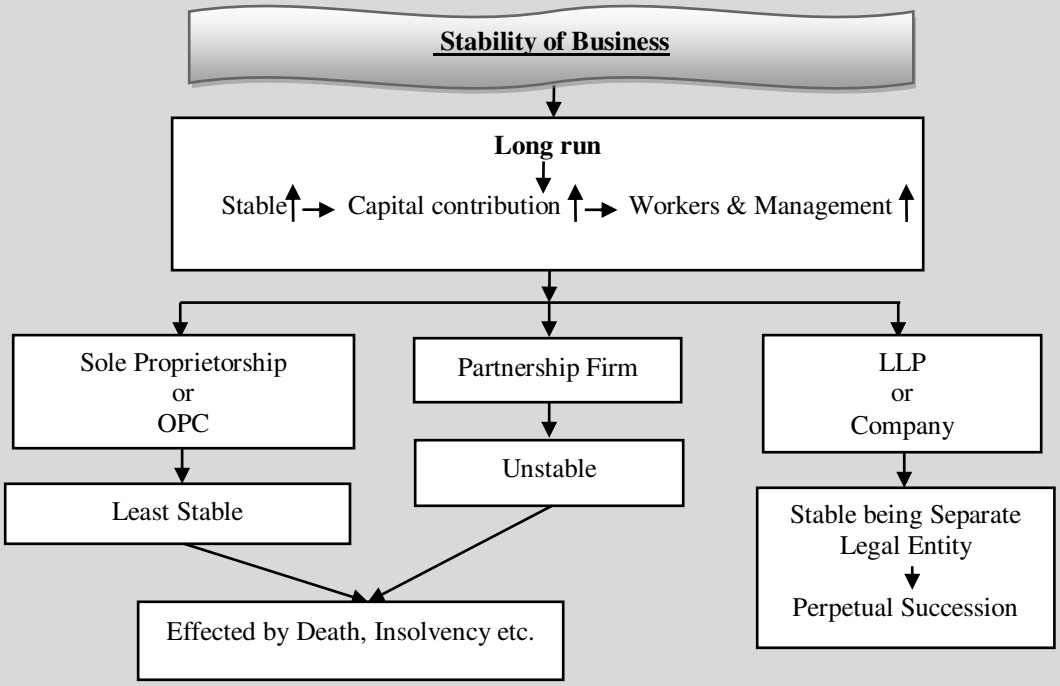

8. Flexibility of Administration

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

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

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

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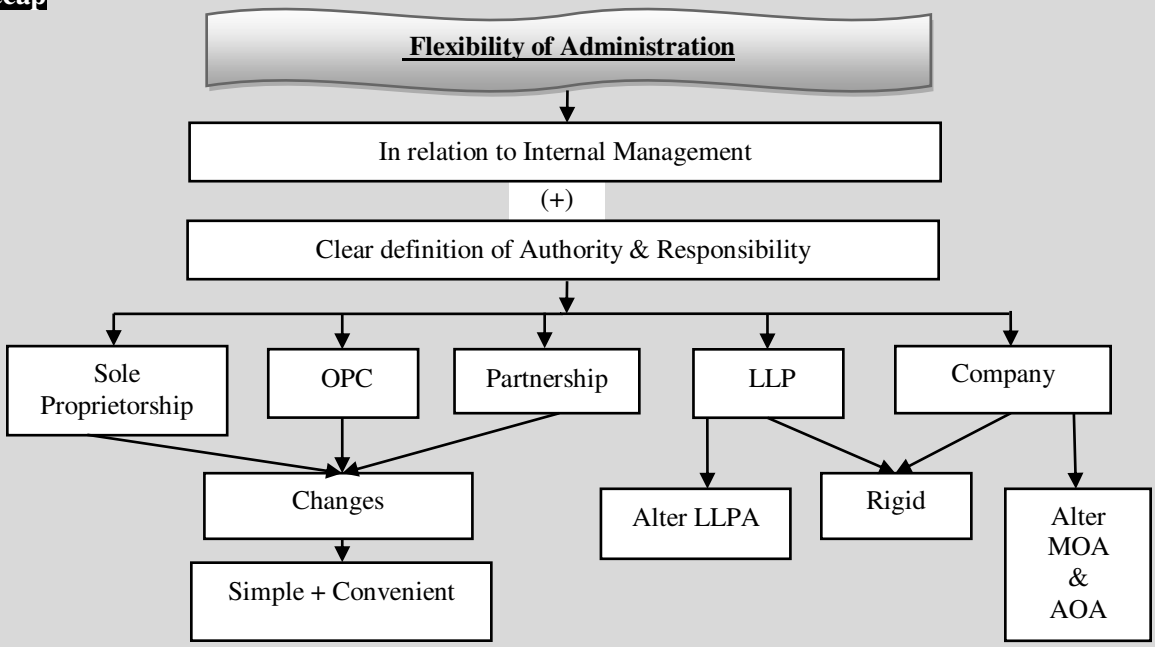

9. Division of Profit

Profit is the guiding force of private business and it has a tremendous influence on the selection of a particular form of business organization.

- An entrepreneur desiring to **pocket all the profits** of business will naturally prefer **sole proprietorship**.
- If one is **willing to share the profits**, **partnership form** of organization would be preferred.
- In **company 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 also limited. Companies may also reward shareholders by issue of bonus shares.

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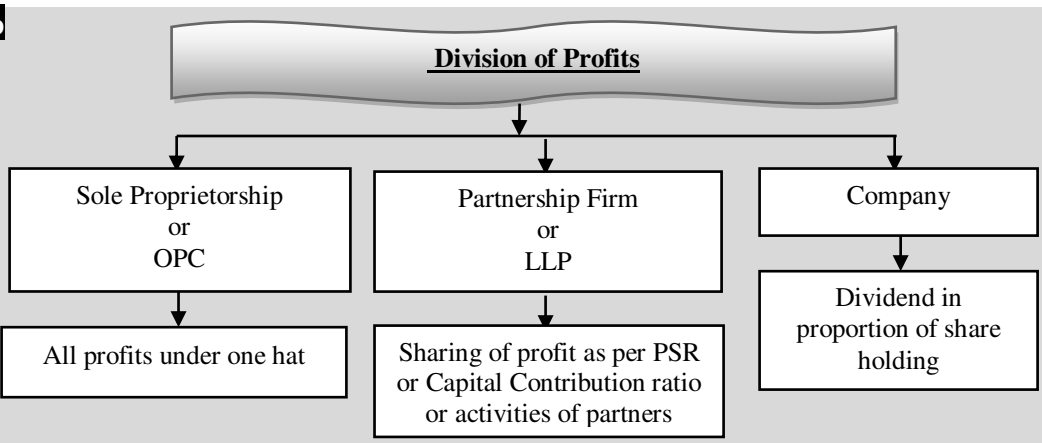

10. Cost, Procedure and Government Regulations

Different forms of organization involve different procedure for establishment and are governed by different laws which affect the immediate and long-term functioning of a business enterprise.

- Sole proprietorships are the **easiest and cheapest** to get started as there is no government regulation.
- **Partnerships** are also **quite simple to be initiated**. Only a partnership deed is required to create partnership amongst two or more persons, although it may also be created orally.
- **Company** form of business organization is **more complicated to form.** It can be created by law, dissolved by law, and operate under the express provisions of the law. In the formation of a company, a number of legal formalities have to be gone through which entails, at times, quite a substantial amount of expenditure. Further, various formalities have to be complied with for closure of companies.

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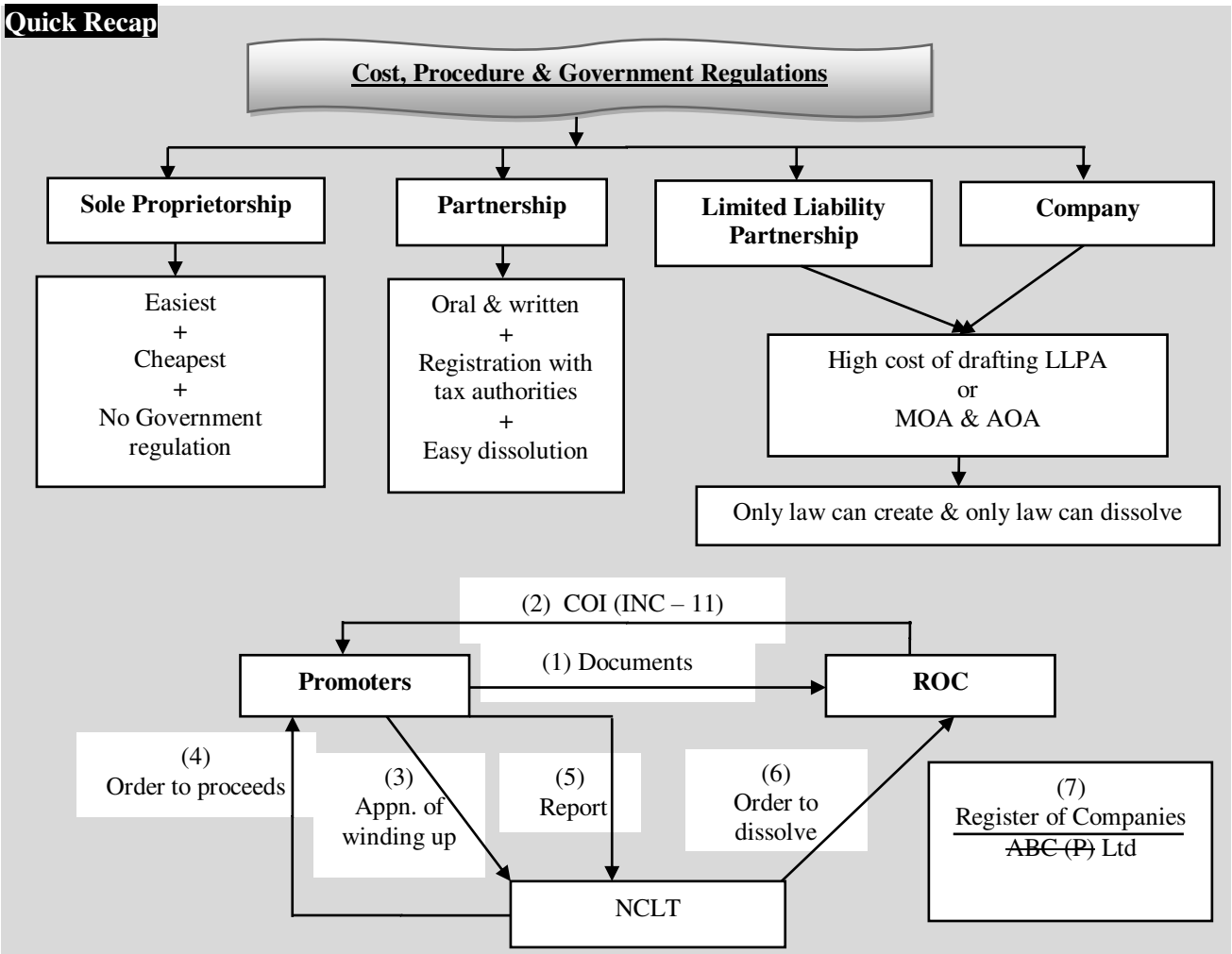

11. Tax Implication

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

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12. Geographical Mobility

The extent to which the product or service is proposed to be manufactured or made available also plays vital role in choosing the type of business organization.

- If a concern deals with local market, a **seasonal product or perishable goods,** or is meant to cater to a specificity or locality, then **sole proprietorship or partnership form** of business may be suitable.
- If it is proposed to market the **product or service all over India** (which may also entail providing customer support services), accompany form of organization may be preferred.

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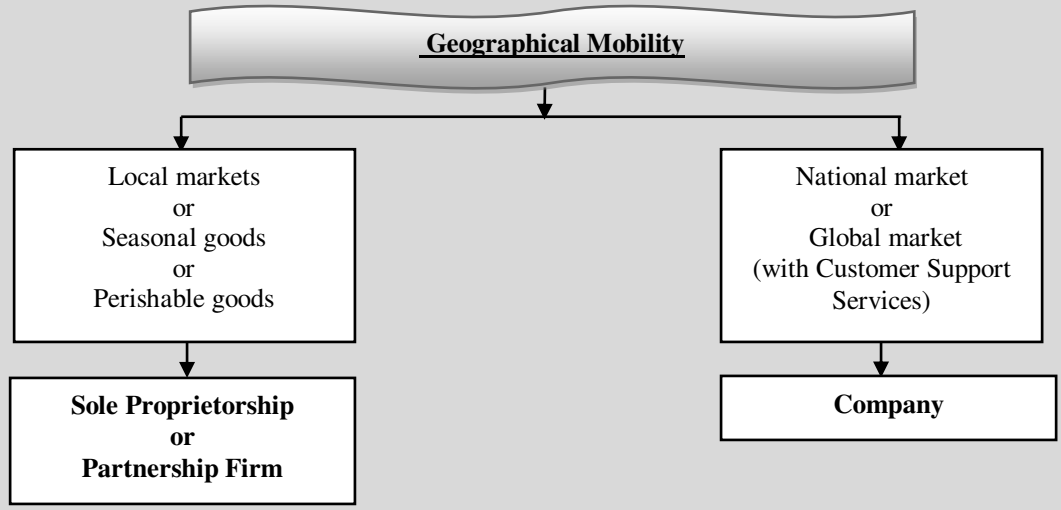
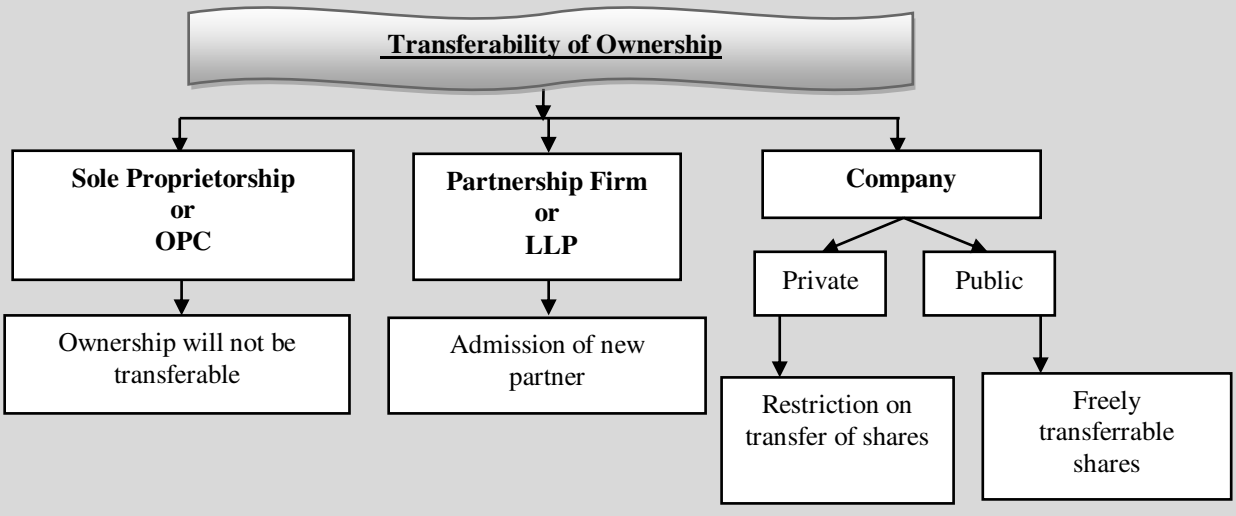


13. Transferability of Ownership

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

Quick Recap

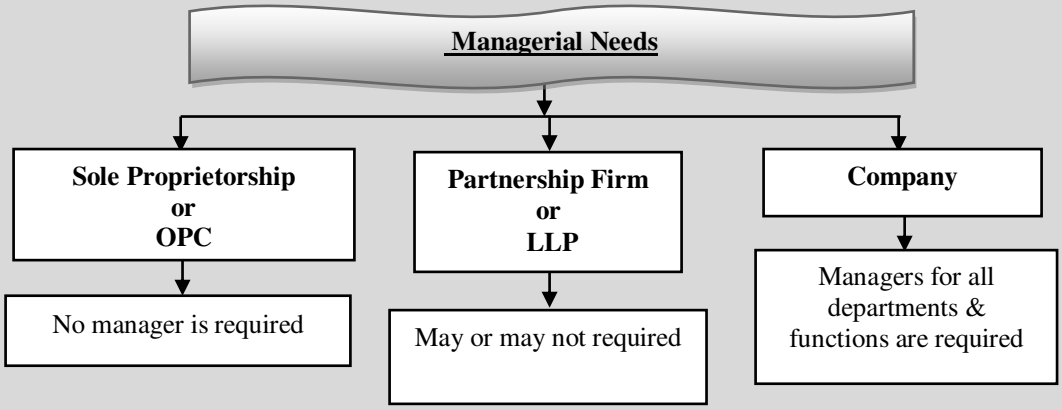


14. Managerial Needs

Managerial and administrative requirements also affect the decision about the form of organization.

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

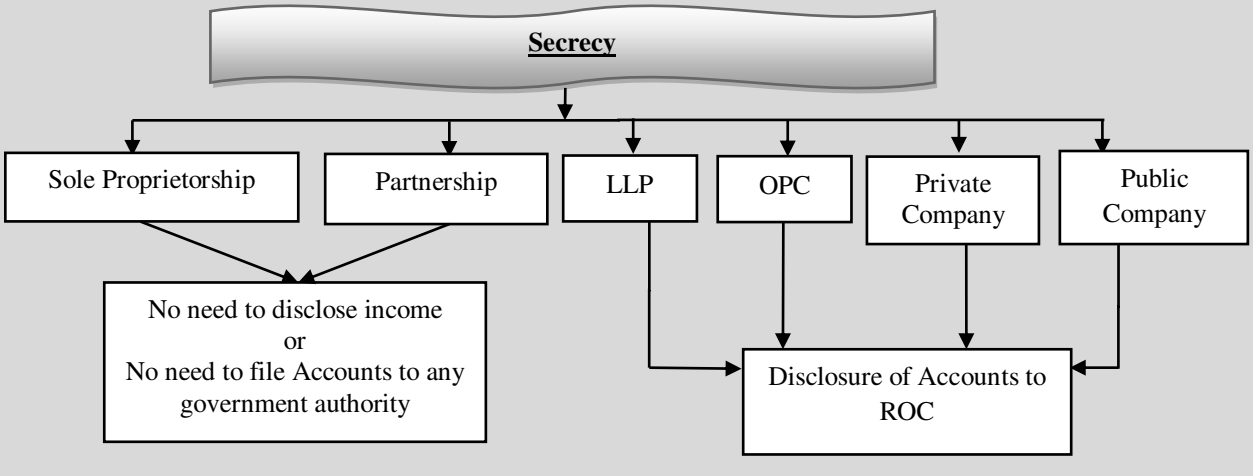
Quick Recap



15. Secrecy

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

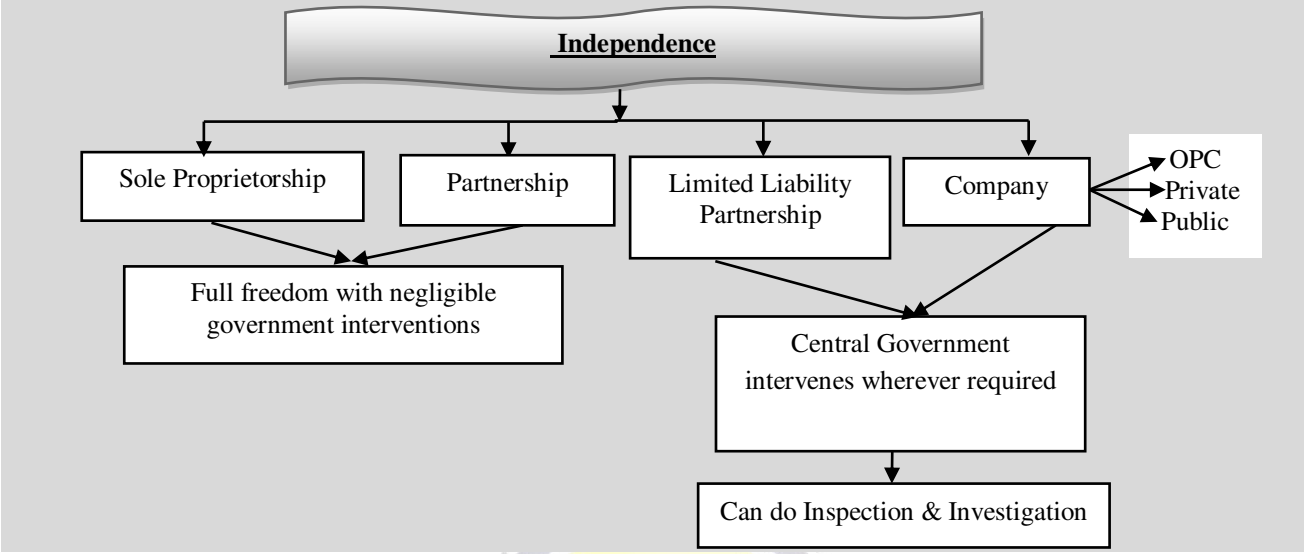
Quick Recap



16. Independence

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

Quick Recap



3. Conclusion

It may be noted that the above mentioned factors do not exist in isolation, but are inter-dependent, and all these factors are important in their own right. Nevertheless, the factors of Nature of Business and Scale of Operations are the most basic ones in the selection of a form of ownership for setting up of a business organization. All other factors are dependent on these basic considerations. It may further be noted that the various factors listed above are only major factors, and in no case they constitute an exhaustive list. Depending upon the requirements of the business, the demands of the situation and sometimes even the personal preference of the owner, the choice, of a form of business, is made.

Thus, the best form of business organization for any business is the one which leads to the best realization of its objectives. Since business and entrepreneurial objectives vary, no single form of organization can be considered as best for all kinds of businesses.

Chapter – 2 Unit - 1
CLASSIFICATION OF COMPANIES

SYNOPSIS

1. Private Company [Section 2(68)]
   (1) Definition and Meaning of Private Company
   (2) Consequences of Alteration of the Articles of Private Companies
2. One Person Company [Section 2(62)]
   (1) Definition and Meaning of 'One Person Company' (OPC)
   (2) Benefits of OPC
   (3) Difference between a Sole Proprietorship and an OPC
3. Small Company [Section 2(85)]
   (1) Definition and Meaning of Small Company
4. Public Company [Section 2(71)]
5. [Section 3A] Members severally liable in certain cases
6. Classification of Companies on the basis of Liability of Members
7. Company not for Profit [Section 8]
8. Government Company [Section 2(45)]
   (1) Definition and Meaning of Government Company [(Section 2(45)]
   (2) Annual Report of Government Companies
9. Holding and Subsidiary Company
10. Investment Company [Explanation to Section 186]
11. Associate Company [Section 2(6)]
12. Start Up [Explanation to Section 2(40)]
13. Dormant Company [Section 455(1)]
14. IFSC Company [Explanation to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014]
15. Public Financial Institution [Section 2(72)]
16. Conversions of One Type of Company into another type of Company

1. Private Company [Section 2(68)]

(*1*) *Definition and Meaning of Private Company*

The term '**private company'** has been defined under **Section 2(68) of Companies Act, 2013**. A private company means a company, having such **minimum paid-up share capital** as may be prescribed and which by its articles provides the following:—

(i) **Restricts the right to transfer its shares**;

(ii) Except in the case of one person company (OPC), limits the number of its members to two hundred (200) excluding present and past employees who continue to be the members of the company (here joint members shall be counted as one); and

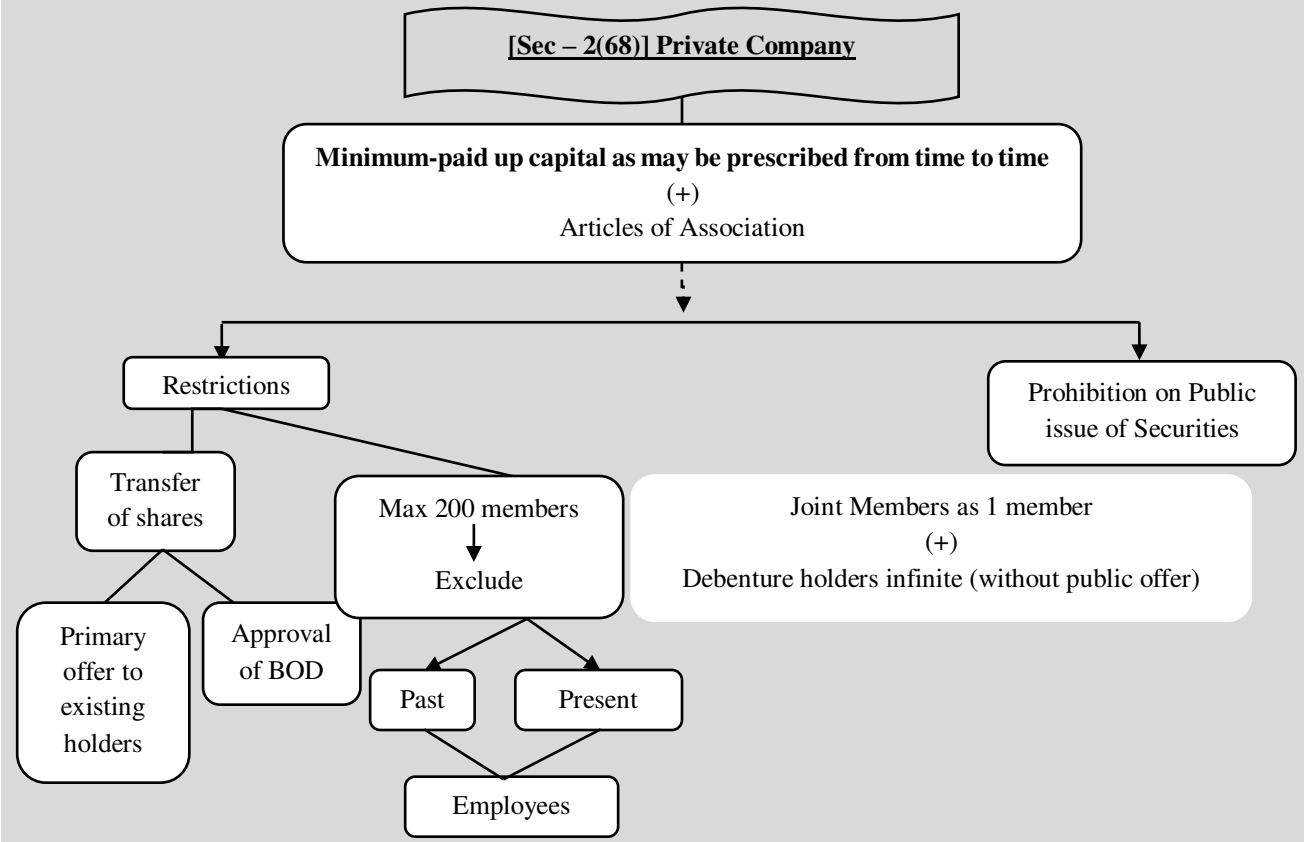
(iii) Prohibits any invitation to the **public to subscribe for any securities** of the company

There should be at least two persons to form a private company i.e. the **minimum no. of members in a private company is two.** A private company should have at least **two directors**. The **name** of a private limited company must **end** with the words "**Private Limited**".

(*2*) *Consequences of Alteration of the Articles of Private Companies*

As per proviso to **section 14(1),** where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under section 2(68), the company shall, as from the date of such alteration, cease to be a private company. In such a case, it shall be **treated as a public company from the date of alteration of its articles.**

Quick Recap



2. One Person Company [Section 2(62)]

(*1*) *Definition and Meaning of 'One Person Company' (OPC)*

The term 'one person company' has been defined under **Section 2(62) of Companies Act, 2013.** As per this, One Person Company' means a company which has **only one person as a member.**

It is **basically a private company with some unique features**.

As regards the name of a one person company, the act provides that the words "one person company" or OPC" shall be **mentioned in brackets below the name of such company**, wherever its name is printed, affixed or engraved.

The concept of OPC provides a more flexible structure and less compliance requirements of a company.

(*2*) *Benefits of OPC*

To encourage unorganized proprietorship business to enter into organized corporate world, the concept of "one person company" ('OPC') was **recommended by JJ Irani Committee**. As the name suggests, it means a company which has only one person as member.

The concept is widely accepted in countries like China, Pakistan, Singapore, US. In the case of India, if you wish to set up a private company, minimum two shareholders are required. In many cases, because of this legal requirement a second shareholder is forcefully roped in. This second shareholder at times takes advantage of his position. Having recognized this problem the concept of OPC has been introduced.

Because much public interest is not involved, many relaxations have been granted to OPC in compliances and procedural aspect. Some of **salient features** of an OPC and the privileges it enjoys are as follows:

(a) An OPC is primarily a **private company**.

(b) OPC is **not required to hold annual general meeting**.

(c) **Information** to be provided in the **directors' report** has been **significantly reduced** (as compared to a private company).

(d) Annual return in other companies shall be signed by director and company secretary and in case of no company secretary by a practicing company secretary whereas in the case of OPC **annual return shall be signed by company secretary** and **in case of his absence it will be signed by director of the company.**

(e) The requirement of a **minimum number of Board meetings** to be convened shall **not apply to an OPC having one director**. However, in case of OPC having **more than one director**, the OPC shall hold **at least one meeting** of the board of directors in each half of calendar year and the **gap between two meetings is not less than ninety day.**

(*3*) *Difference between a Sole Proprietorship and an OPC*

The fundamental difference between a sole proprietorship and an OPC is the way **liability is treated in the latter.**

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

The **promoter's liability** is **limited in an OPC** in the event of a default or legal issues. On the other hand, in **sole proprietorships, the liability is not** restricted and extends to the individual and his or her entire assets.

Quick Recap

Difference between Sole Proprietorship and OPC

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

1. Nomination by the Subscriber or Member of One Person Company

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

The name of the **person nominated** shall be **mentioned in the memorandum** of one person company and such nomination **in Form No.INC-32 (SPICe)** along with consent of such nominee obtained in **Form No. INC.3** and fee as provided in the **Companies (Registration offices and fees) Rules, 2014** shall be **filed with the Registrar** at the time of incorporation of the company along with its memorandum and articles.

It may be noted that only a **natural person** who is an **Indian citizen** and resident in India-

- Shall be **eligible to incorporate** a one-person company;
- **Shall be a nominee** for the sole member of a one-person company.

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

2. Withdrawal of consent by nominee

The person nominated by the subscriber or member of a one person company may, withdraw his consent **by giving a notice in writing** to such sole member and to the one person company.

The sole member shall nominate **another person as nominee within fifteen days** of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in **Form No. INC. 3.**

The company shall, within **thirty days** of receipt of the notice of withdrawal of consent, file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in **Form No. INC.4** along with fee as provided in the **Companies (Registration offices and fees) Rules, 2014** and the written consent of such another person so nominated in **Form No. INC.3.**

3. Change of nominee by sole member

The subscriber or member of a one person company may, by intimation in writing to the company, **change the name** of the person **nominated** by him at any time for any reason including in case of **death or incapacity** to contract of nominee and nominate another person after obtaining the prior consent of such another person in **form no. INC.3**

The company shall, on the receipt of such intimation, file with the registrar, a notice of such change in **Form No. INC.4** along with fee as provided in the **Companies (Registration offices and fees) Rules, 2014** and with the written consent of the new nominee in **Form No. INC.3** within thirty days of receipt of intimation of the change.

4. Death of sole member

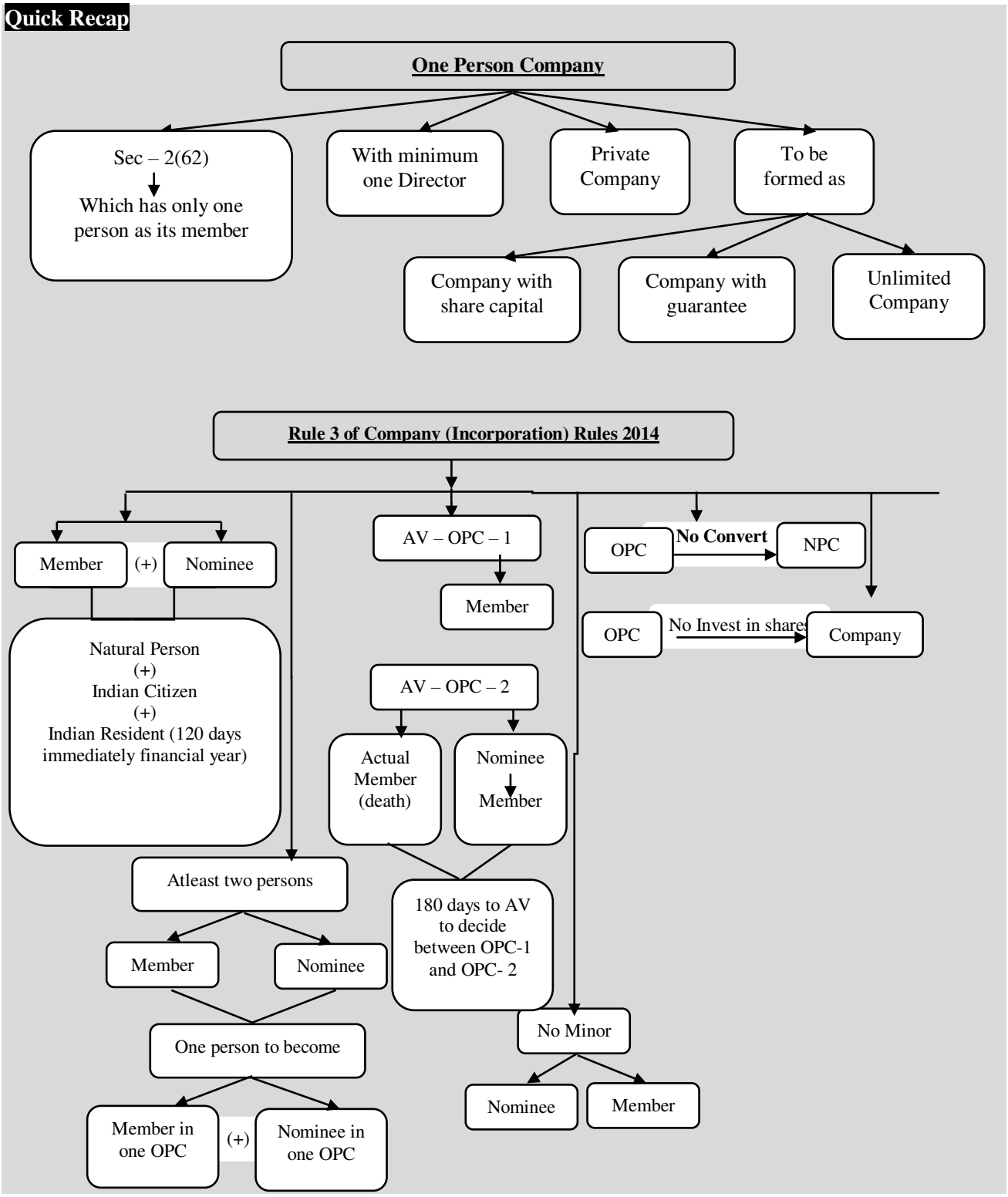
Where the sole member of one person company **ceases to be the member** in the event of death or incapacity to contract and his nominee becomes the member of such one person company, such **new member** shall **nominate within fifteen days** of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the registrar an intimation of such cessation and nomination in **Form No. INC.4** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** with thirty days of the change in membership and with the prior written consent of the person so nominated in **Form No. INC.3.**

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

- **Only a Natural person** who is an **Indian Citizen whether resident in India or otherwise** shall be eligible to incorporate a One Person Company or shall be a nominee of One person Company.

  Note: - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than **one hundred and twenty days** during the immediately preceding financial year.
- A **natural person** shall **not be member of more than a One Person Company** at any point of time and the said person shall **not be a nominee of more than a One Person Company**.
- Where a **natural person**, being member in One Person Company in accordance with this rule becomes a **member in another such Company** by virtue of his **being a nominee** in that One Person Company, **such person shall meet the eligibility** criteria specified in sub rule (2) **within a period of one hundred and eighty days**.
- **No minor** shall become member or nominee of the one person company.
- Such company **cannot be incorporated or converted** into a company under section 8 (Non-Profit Companies) of the Act.
- OPC **cannot carry out non-banking financial investment activities**.
- OPC **cannot invest in securities** of a body corporate.

Quick Recap


One Person Company
Sec – 2(62)
Which has only one person as its member
With minimum one Director
Private Company
To be formed as
Company with share capital
Company with guarantee
Unlimited Company
Rule 3 of Company (Incorporation) Rules 2014
Member
(+)
Nominee
Natural Person
(+)
Indian Citizen
(+)
Indian Resident (120 days immediately financial year)
AV – OPC – 1
Member
AV – OPC – 2
Actual Member (death)
Nominee
Member
OPC
No Convert
NPC
OPC
No Invest in shares
Company
Atleast two persons
Member
Nominee
One person to become
Member in one OPC
(+)
Nominee in one OPC
180 days to AV to decide between OPC-1 and OPC- 2
No Minor
Nominee
Member

Case Study

Mr. X is a member of X Pvt. Ltd (OPC). Can he become nominee of Y Pvt. Ltd (OPC)? If yes then, how will you deal with the situation if member of Y Ltd. Ltd. (OPC) has been deceased?

According to Sec

Rule 3(2) of Companies (Incorporation) Rules, 2014 states that a natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

Rule 3(3) states that, if a person is member in one OPC and nominee in other OPC and has subsequently acquired membership in other OPC as well, then he shall discontinue from any of the OPC within 180 days of becoming member in subsequent OPC.

Conclusion

As per Rule 3(2) the nomination of Mr. X as nominee in subsequent OPC is valid even being member of other OPC. Within 180 days of acquiring membership in Y Pvt. Ltd, Mr. X need to vacate from either X Pvt. Ltd or Y Pvt. Ltd.

Note

- Every OPC is a Pvt. Company, but every Pvt. Company is not OPC
- Every small Co. is a Pvt. Company, but every Pvt. Company is not a Small Company

3. Small Company [Section 2(85)]

(*1*) *Definition and Meaning of Small Company*

The term 'small company' has been defined under **Section 2(85) of Companies Act, 2013.** As per this, small company means a company, **other than a public company,**—

(i) **Paid-up share capital** of which does **not exceed fifty lakh rupees**, or such **higher amount** as may be prescribed (Rupees Four Crores) which shall not be more than ten crore rupees;

and

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

Provided that **nothing in this section 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.

It is basically a private company meeting prescribed threshold.

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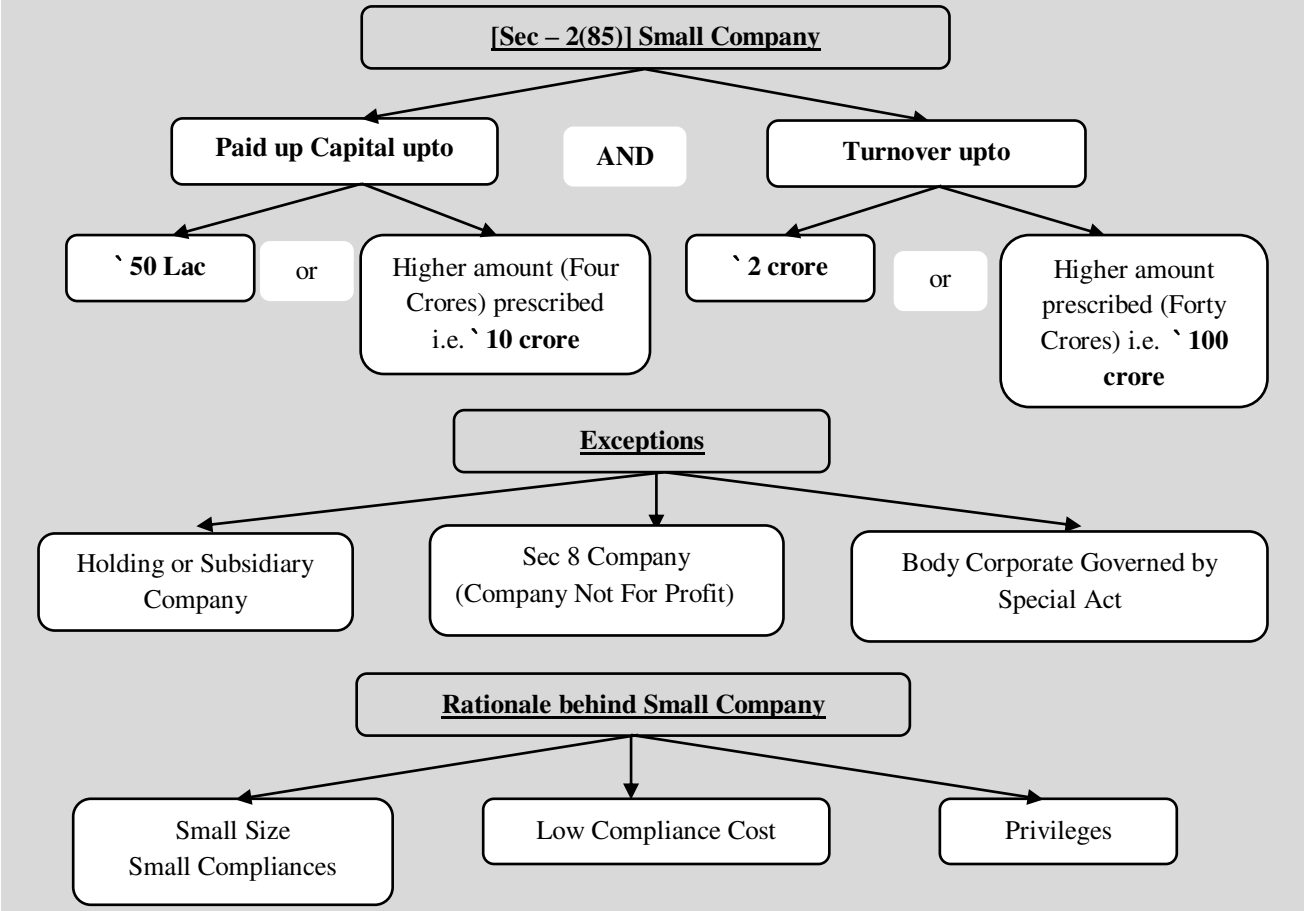
Quick Recap



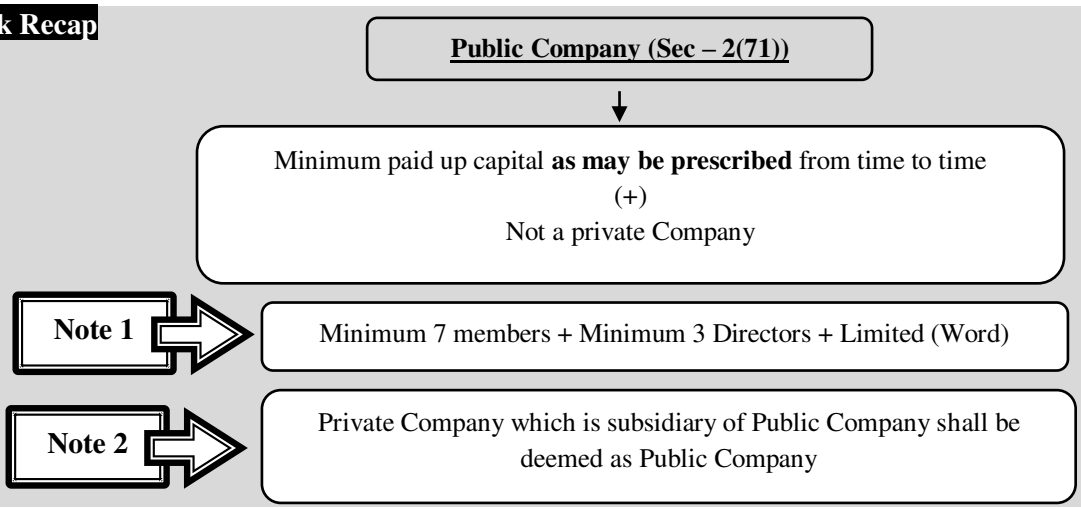
4. Public Company [Section 2(71)]

The term 'public company' has been defined under **Section 2(71) of Companies Act, 2013.** A 'public company' means a company which has such minimum paid up share capital may be prescribed and which is **not a private company.**

Further, a **private company** which is a **subsidiary of a public company** shall also be **deemed to be a public company** for the purposes of the act, even where such subsidiary company continues to be a private company in its articles (three restrictions).

There should be at least seven persons to form a public company i.e., **the minimum no. of members** in a public company is **seven**. A public company should have **at least three directors**. The name of a public limited company must end with the word **"Limited".**

Quick Recap



5. [Section 3A] Members severally liable in certain cases

If at any time the **number of members of a company is reduced**:

- in the case of a public company, below seven, and
- in the case of a private company, below two,

and the company **carries on business for more than six months** while the number of members is so reduced, **every person** who is a member of the company during the time that it so **carries on business after those six months** and is **cognisant of the fact** that it is carrying on business with less than seven members or two members, as the case may be, shall be **severally liable for the payment of the whole debts** of the company **contracted during that time**, and may be severally sued therefor.

6. Classification of Companies on the basis of Liability of Members

Companies (both private and public companies) can be classified into following three categories, on the basis of liability of members towards the company.

1. **[Section 2(21)] Companies Limited by Guarantee**

   A company limited by guarantee or a "guarantee company"- is a company having the **liability** of its members **limited to such an amount as the members** may respectively thereby **undertake, by the memorandum of association of the company**, to contribute to the assets of the company in the event of its being wound up.

   A special feature of this type of company is that the **liability** of members **to pay** their guaranteed amounts **arises** only when the **company has gone into liquidation** and not when it is a going concern. Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.

   A **guarantee company without share capital** does not obtain its initial and working funds, from its members, but from some other source or sources e.g. Grants, endowments, fees, subscriptions and the like. But a **guarantee company having a share capital raises its initial capital from its members,** while the normal working funds would be provided from other sources, such as fees, charges, subscriptions.

   If a **guarantee company has share capital**, the shareholders have **two fold liability**: to **pay the amount which remains unpaid** on their share whenever called upon to pay, and secondly, to **pay the amount payable under the guarantee when the company goes into liquidation**. The voting power of a guarantee company having a share capital is determined by the shareholding and not by the guarantee.

2. **[Section 2(22)] Company limited by shares**

   A company limited by shares is a registered company having the l**iability** of its members **limited to the amount**, if any, **unpaid on the shares** respectively held by them.

   If his shares are fully paid –up, he has nothing more to pay.

3. **[Section 2(52)] Listed Companies**

   A company which has any of its securities listed on any recognised stock exchange;

   Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

4. **[Section 2(92)] Unlimited Companies**

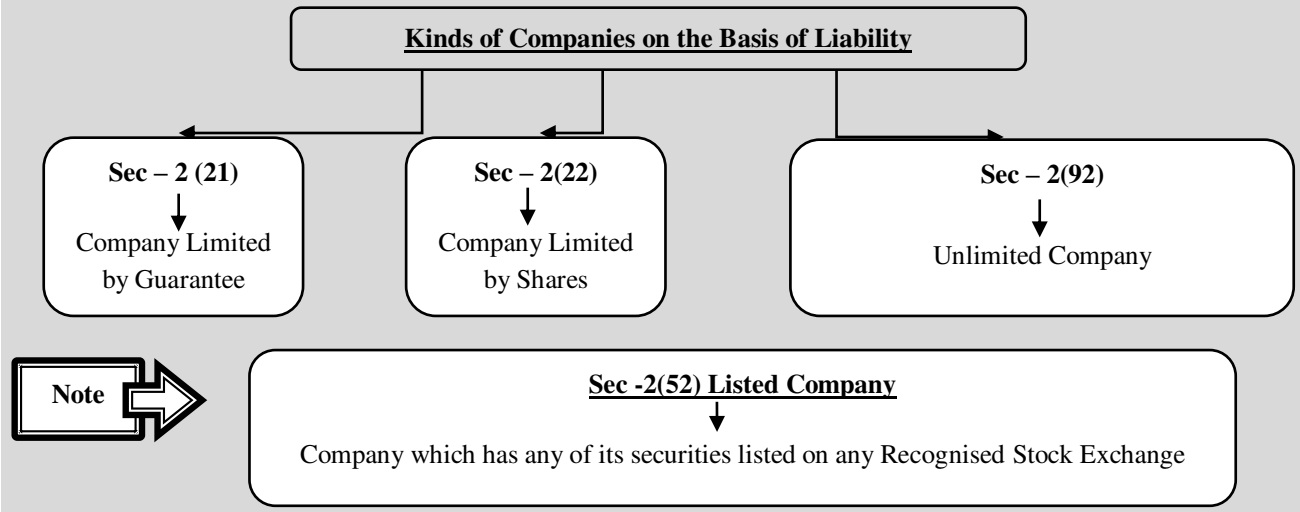
   In the case of an unlimited company, there is **no limit on the liability** of its members.

   Thus, the **maximum liability** of the members of such a company **could extend** to their entire **personal property** to meet the debts and obligations of the company.

   The **members** of an unlimited company are **not liable** directly to the **creditors** of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

It may be noted that the name of an unlimited company does not end with the word (s) 'Limited' or 'private Limited', as the case may be. However, it is **separately mentioned** along **with the name that it is a public or private company**, as the case may be, with unlimited liability of members.

Quick Recap



7. Company not for Profit [Section 8]

The name of a company must end with word 'limited', in the case of a public limited company, and with the word 'private limited', in the case of a private limited company. But Section 8 permits the registration; under a **license granted by the central government** (power delegated to ROC), of associations not for profit with limited liability **without adding the word 'Limited' or words 'private limited' to their names.**

An association not for profit must satisfy the following two conditions:-

- It is **formed for promoting commerce, science, art**, religion, charity, sports, education, research, social welfare, protection of environment or **other useful objects**; and
- It **does not intend to pay any dividend** to its members but apply its profit or other income in the promotion of its object.

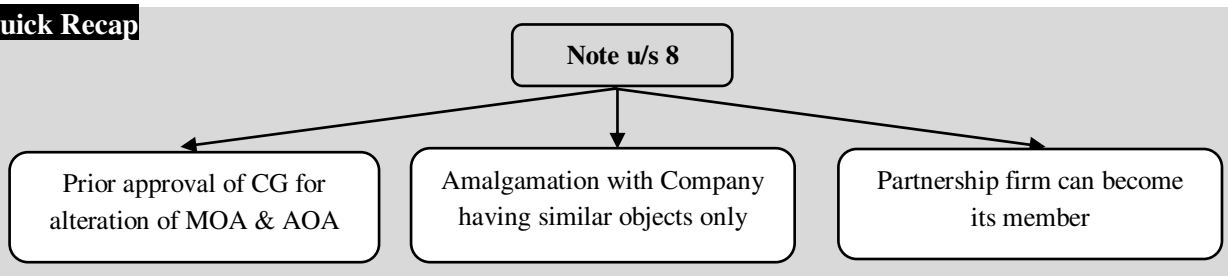
Section 8 companies, since working without motive of earning any profit, shall be **exempted from certain provisions of the Companies act, 2013**, which shall be **prescribed by the Central Government** from time to time.

A company which has been granted licenses under section 8 **cannot alter any of the provisions** of its memorandum as well as the articles of association except with the **previous approval of the central government.**

It may be noted that a section 8 company shall **amalgamate**, only **with another company** registered under this section and **having similar objects**.

It may further be noted that in general a **partnership firm**, not being a person in the eyes of law, **cannot become a member** of a company. However, it can become a member of a section 8 company.

Quick Recap



8. Government Company [Section 2(45)]

(*1*) *Definition and Meaning of Government Company* [(*Section 2*(*45*)]

Section 2(45) of the Companies Act, 2013 defines the Government Company. A Government Company means a company in which **51% or more paid-up share capital is held by the central government; or by one or more state government(s); or partly by the central government and partly by one or more state government**. It may be noted that a subsidiary company of a government company is also a government company.

Explanation.- For the purposes of this clause, the "**paid up share capital**" shall be construed as "**total voting power**", where **shares with differential voting rights** have been issued.

(*2*) *Annual Report of Government Companies*

Where the central government is a member of the Government company, Central Government must place **before both the houses of parliament** an **annual report** on the working and affairs of each Government Company **within three (3) months** of its annual general meeting together with a company of the audit report and any comments upon or supplement to such report made by the **Comptroller and Auditor General of India**.

Where a **state government** is a member of Government Company, the annual report is likewise to be placed **before the State Legislature**.

Government Company is a 'State' under Article 12 of the Constitution of India

Case Law ***R.D. Shetty* v *International Airports Authority of India*; and *Ajay Hasia* v *Khalid Mujib***

The Supreme Court observed that following are some of the instances where a **Government Company** can be **regarded as a 'State'** within the meaning of Article 12 of the Constitution of India:-

1. If the **entire share capital** of the corporation is held by government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the government.
2. Existence of deep and pervasive State Control may afford an indication that the corporation is a 'State agency or instrumentality.
3. It may also be relevant factor – whether the corporation enjoys **monopoly status**, which is State conferred or State protected.
4. If the functions of the corporation are of **public importance** and closely related to government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of government.
5. Specifically, if a department of government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of government.

Case Law ***A.K. Bindal* v *Union of India* (2003)**

Since **employees of Government companies are not Government servants**, they have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government. It is the responsibility of the company to pay them the salaries.

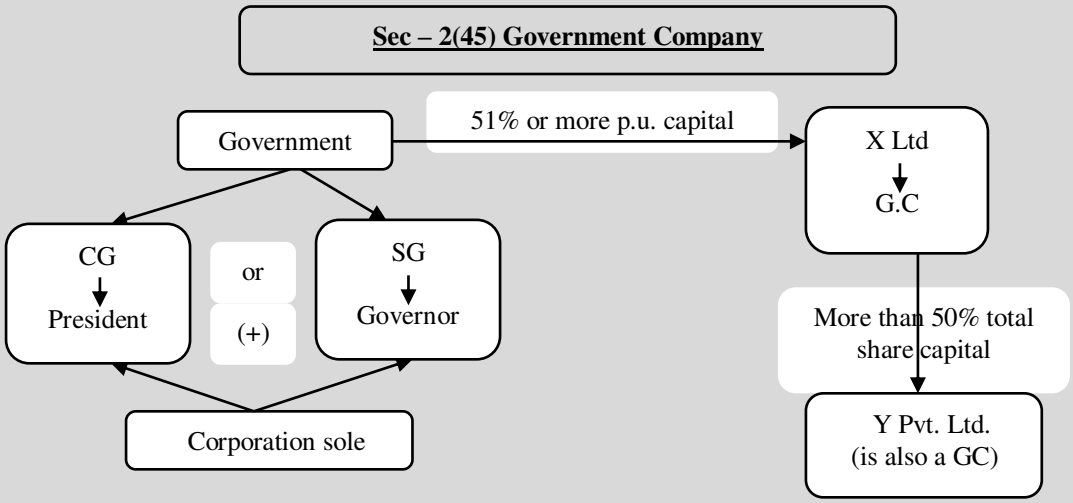
Case Law ***P.B. Ghayalod* v *Maruti Udyog Ltd*.**

But, if in a government company, there is **substantial foreign holding**, the foreign collaborator has power to nominate directors on the board and all major decisions require approval of foreign collaborator, such a company cannot be regarded as an instrumentality of State as the Government **did not enjoy an all-pervasive control** and Government was not its only source of finance.

Case Law ***Hindustan Steel Works Construction Ltd.* v *State of Kerala***

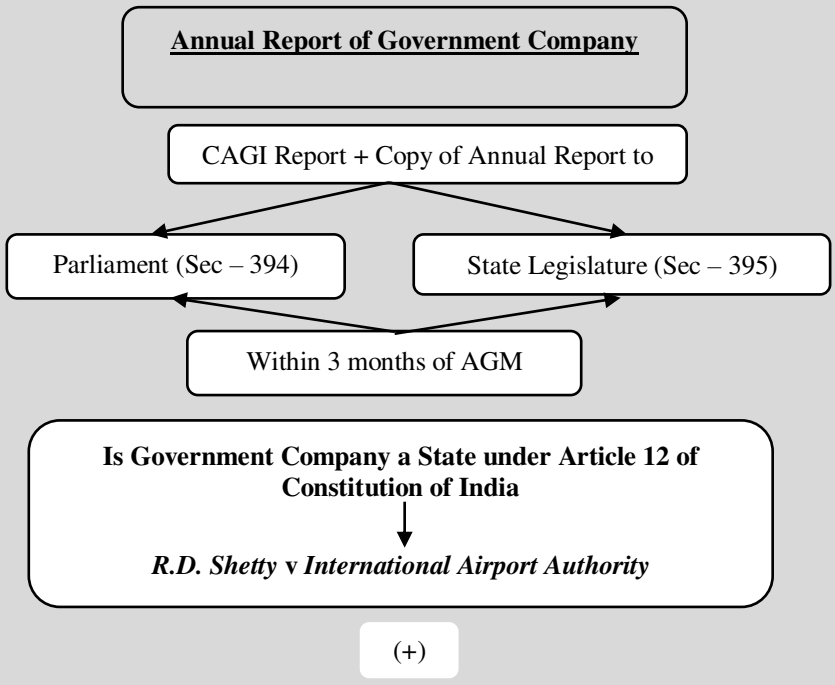
It was held that in spite of all the control of the Government, a **government company is neither a government department nor Government establishment,** it is just an agency of the Government. Similarly, the employees of a Government Company are not the employees of the Central or State Government.

Quick Recap

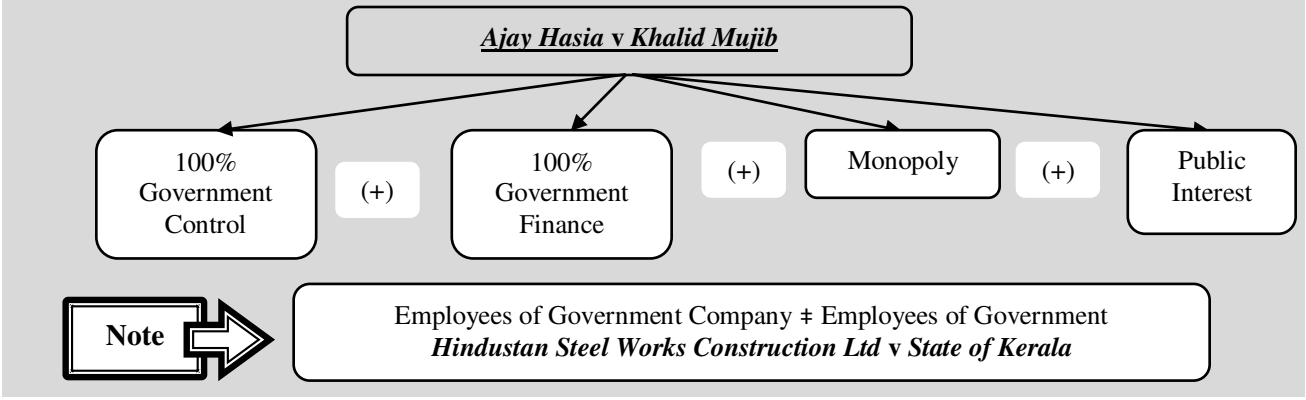


Where shares with Differential Rights – Paid up Share Capital = Total Voting Power

Quick Recap



Quick Recap



9. Holding and Subsidiary Company

Section 2(87) of the Companies Act, 2013 states the circumstances, any of which must exist to constitute the relationship of holding and subsidiary companies. Section 2(87) provides that a company shall be **deemed to be a subsidiary** of another, if any of the following conditions are satisfied:—

(a) That **other controls the composition of its board of directors**;

(b) That other 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; or

(c) The **first-mentioned company is a subsidiary of any company** which is that other's subsidiary.

Explanation: For the purpose of this clause

(a) above, the composition of the board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.

Case Law	***Hunger for Investment Ltd.* v *Turner Morison & Co. Ltd.***
Holding and subsidiary companies are incorporated companies and each is a **separate legal entity.**	

It may be noted 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. For the purpose of this clause, **the term 'company' includes any body corporate.** Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.

Also, "layer" in relation to a holding company means its subsidiary or subsidiaries

Further, **'Holding Company'** in relation to one or more other companies, **means a company of which such companies are subsidiary companie**s. **[Section 2(46)]**

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

[Rule 2 of the Companies (Restriction on Number of Layers) Rules, 2014] Restriction on number of layers for certain classes of Holding Companies

(1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub rule (2), shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) The provisions of this rule shall not apply to the following classes of companies, namely:—

(a) A banking company as defined in clause (c) of section 5 of the Banking Regulation Act 1949 (10 of 1949);

(b) A non-banking financial company as defined in clause (f) of Section 45_1 of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

(c) An insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act,1938 (4 of 1938) and the lnsurance Regulatory Development Authority Act, 1999 (41 of 1999);

(d) A Government company referred to in clause (45) of section 2 of the Act.

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) Every company other than a company referred to in sub-rule (2) existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1)—

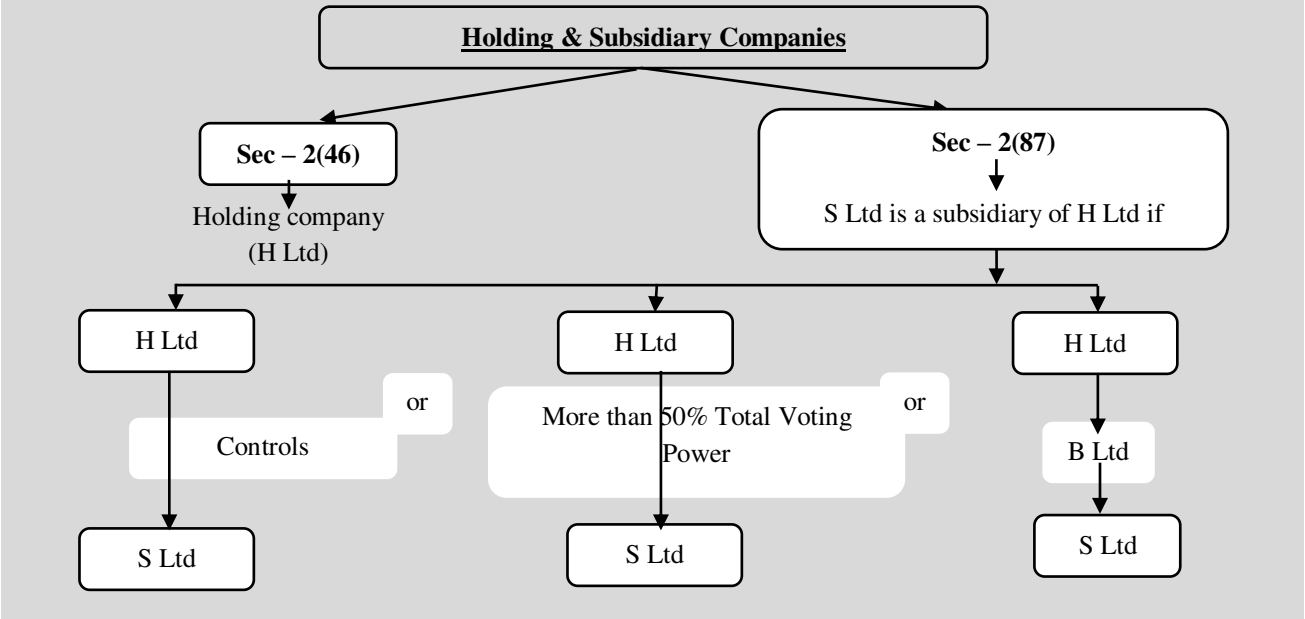
(i) Shall file, with the Registrar a return in Form CRL- 1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the official Gazette;

(ii) Shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and

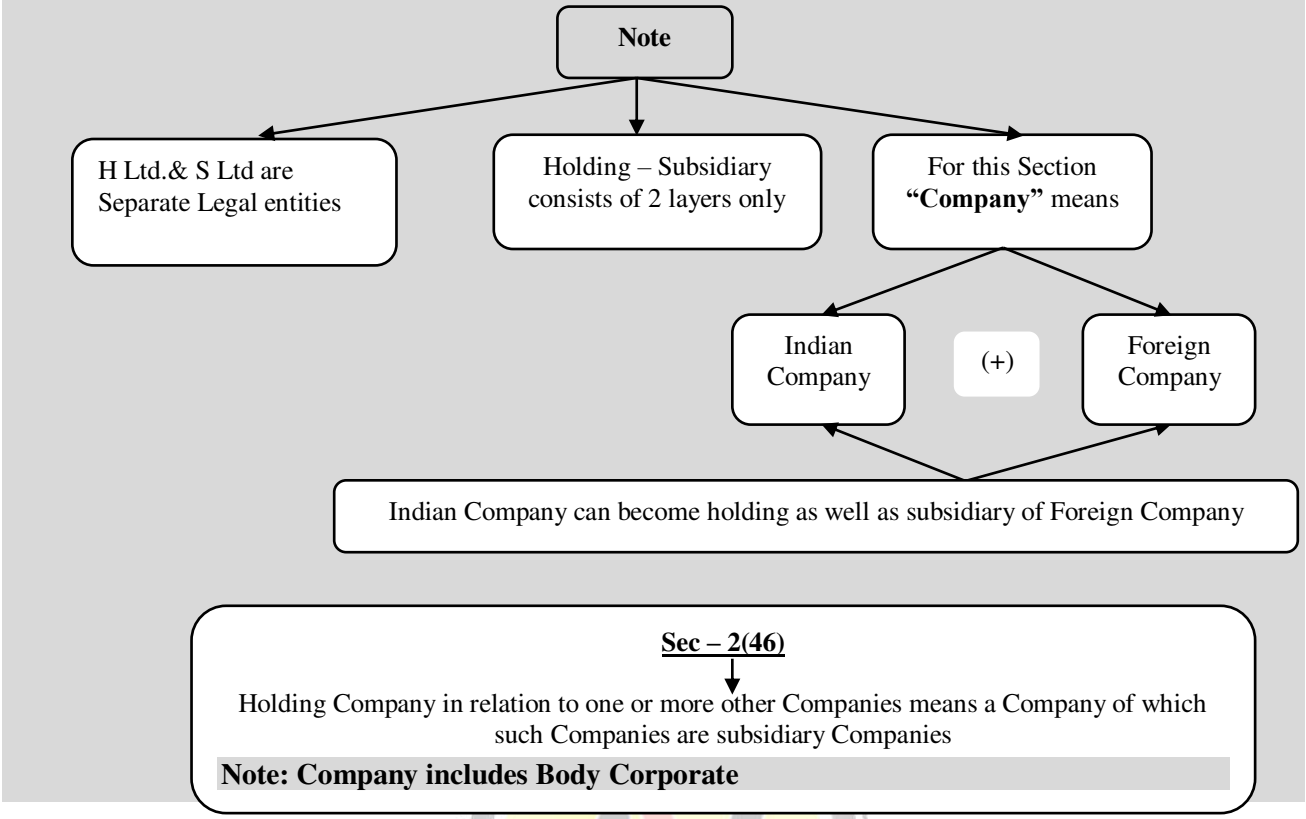
(iii) Shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub-rule (1), whichever is more.

(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Quick Recap



Quick Recap



10. Investment Company [Explanation to Section 186]

"**Investment company**" means a **company** whose **principal business is the acquisition of shares, debentures or other securities** and a **company will be deemed** to be **principally engaged** in the **business of acquisition of shares, debentures or other securities**, if its **assets in the form of investment** in **shares, debentures or other securities** constitute **not less than fifty per cent**. of its total assets, or if its **income** derived **from investment business** constitutes **not less than fifty per cent**. as a proportion of its gross income.

11. Associate Company [Section 2(6)]

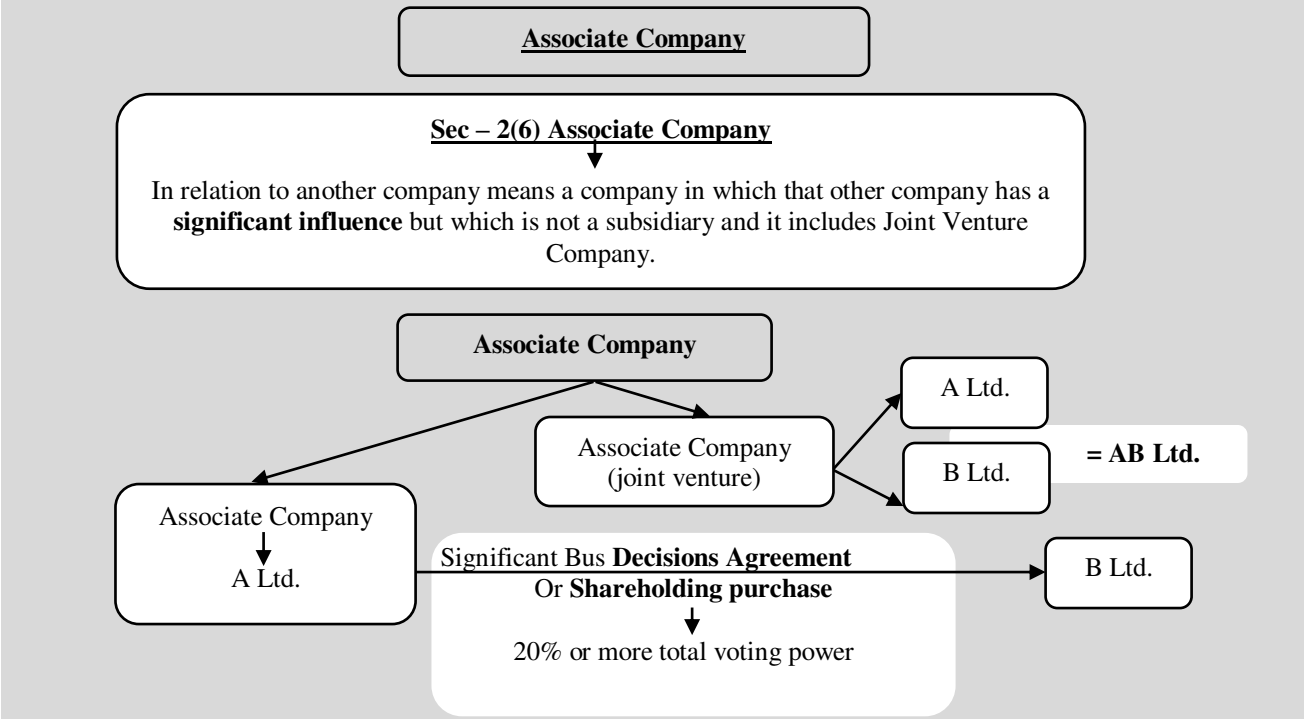
Here, **Associate Company,** as defined under **Section 2(6)**, in relation to another company, means a company in which that **other company has a significant influence**, but which is **not a subsidiary** company of the company having such influence and **includes a joint venture company**.

Explanation.—For the purposes of this clause:

"significant influence" means control of **at least twenty per cent of total voting power** (aggregate of the paid- up equity share capital and convertible preference share capital), or control of or participation in of business decisions under an agreement;

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

Quick Recap



12. Start Up [Explanation to Section 2(40)]

For the purposes of this Act, the term 'start-up' or "start-up company" means a **private company incorporated under the Companies Act, 2013** (18 of 2013) **or the Companies Act, 1956** (1 of 1956) and **recognised as start-up** in accordance with the **notification issued by the Department of lndustrial Policy and Promotion**, Ministry of Commerce and Industry

13. Dormant Company [Section 455(1)]

The Companies Act, 2013 has recognized a new set of companies called as **Dormant Companies**.

As per section 455(1) where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation appended to section 455(1) says that for the purposes of this section,—

1. **"Inactive company"** means a company
   - Which has **not been carrying on** any business or operation

     or
   - Has **not made any significant accounting transaction** during the last two financial years

     or
   - Has **not filed financial** statements **and annual returns** during the last two financial years.
2. **"Significant accounting transaction"** means any transaction **other than**-
   - **Payment of fees** by a company to the Registrar.
   - **Payments made by it to fulfill the requirements** of this Act or any other law.
   - **Allotment of shares** to fulfill the requirements of this Act.
   - **Payments for maintenance** of its office and records.

14. IFSC Company [Explanation to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014]

International Financial Services Center (IFSC) is not defined in companies act but as per notification of government of India it is an "unlisted public company" or "private company" which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority (IRDA) of India as the International Financial Services Center located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006

15. Public Financial Institution [Section 2(72)]

According to **Section 2 (72)**, "Public financial institution" means—

(i) the **Life Insurance Corporation of India**, established under section 3 of the Life Insurance Corporation Act, 1956;

(ii) the **Infrastructure Development Finance Company Limited**, referred to in clause (vi) of sub-section(1) of section 4A of the Companies Act, 1956 so repealed under **section 465** of this Act;

(iii) specified company referred to in the **Unit Trust of India** (Transfer of Undertaking and Repeal) Act,2002;

(iv) **institutions notified by the Central Government** under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under **section 465** of this Act;

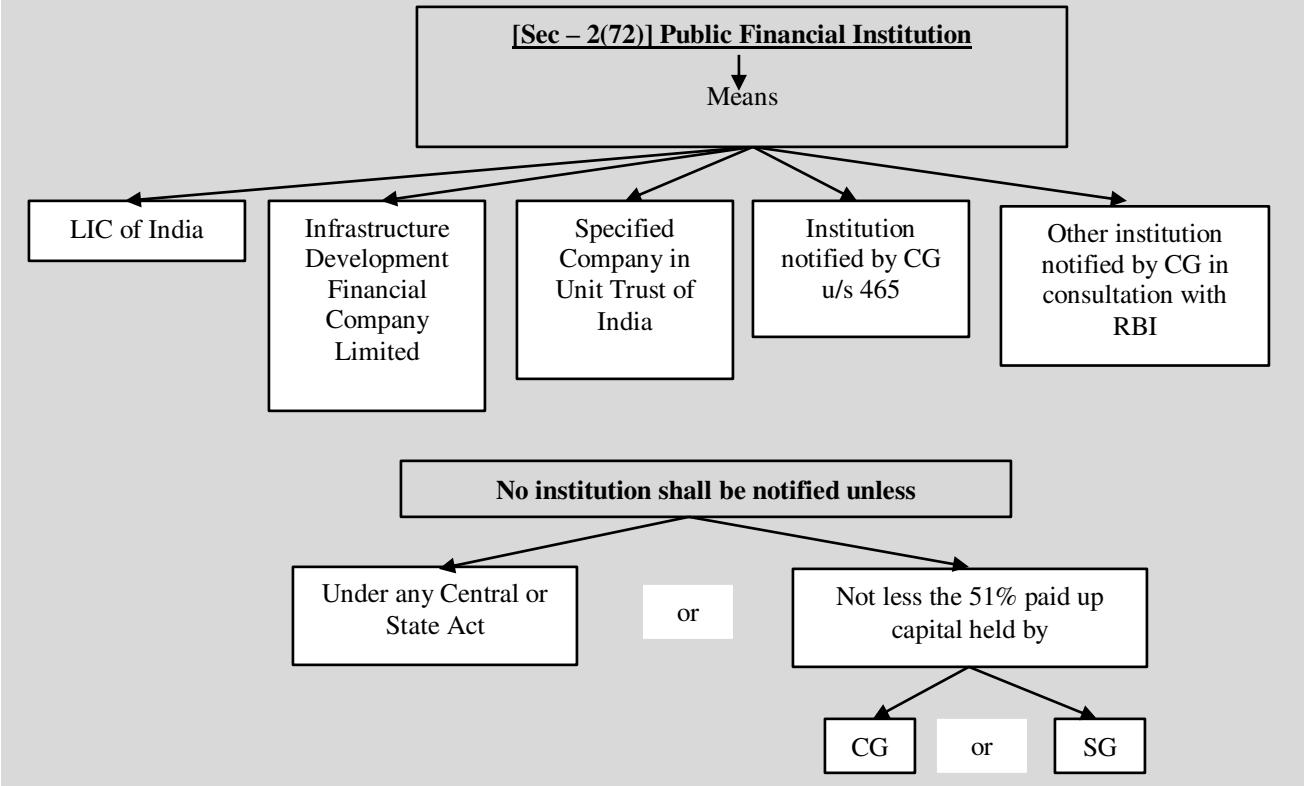
(v) such other institution as may be notified by the Central Government in **consultation with the Reserve Bank of India:**

However, no institution shall be so notified unless—

(A) it has been established or constituted by or under any **Central or State Act** other than this Act or the previous company law**;** or

(B) **Not less than fifty-one percent of the paid-up share capital is held or controlled by the Central Government or by any State Government** or Governments or partly by the Central Government and partly by one or more State Governments.

Quick Recap



16. Conversions of One Type of Company into another type of Company

1. Conversion of a Private Company into a Public Company

A private company can be converted into a public company by complying with following requirements

- Alteration of its articles thereby **deleting the three restrictions** of a private company, bypassing a **Special Resolution** as per **Section 14**; and
- Changing its name thereby **deleting the word 'private' from its name**, by passing a **Special Resolution** as per **Section 13.**

Further, if the number of **members** is **below 7**, steps should be taken to **increase the number** of members **to at least 7** and that the number of **director**s should be increased to **at least 3,** if they are only 2 directors.

The company becomes public from the date the special resolution is passed u/s 14. But the change in its name, by deleting the word 'private' becomes effective only on the issue of **fresh certificate of incorporation** by the Registrar of Companies.

[Rule 33] Alteration of Articles

(1) For effecting the **conversion of a private company into a public company** or vice versa, the application shall be filed in **Form No. INC 27** with fee.

2. Conversion of a Public Company into a Private Company

A public company having a share capital and membership within the limits imposed upon private companies can be converted into a private company by complying with following requirements :

- Alteration of its articles thereby **adding the three restrictions** of a private company, by passing a **Special Resolution** and shall not be valid unless it is approved by an **order** of the **Central Government** (power delegated to Regional Director) on an application made in **Form RD -1** along with requisite documents; and
- Changing its name thereby **adding the word 'private** 'to its name, by passing a **special resolution** as per Section 13.

It should be noted that although the company becomes a private company as soon as the approval of the Central Government (power delegated to Regional Director) for the conversion under section 14 is received but the change in its name becomes effective only on the issue of **fresh certificate of incorporation** by the Registrar in the changed name (Form INC 25).

[Rule 33] Alteration of Articles

(1) For effecting the **conversion of a private company into a public company** or vice versa, the application shall be filed in **Form No. INC 27** with fee.

(2) Subject to the provision of sub-rule (1), for **effecting the conversion of a public company into a private company**, a copy of **order of the Tribunal** approving the alteration , shall be **filled with the Registrar in Form No. INC 27** with fee **together with the printed copy of altered articles** within **fifteen days** from the date of receipt of the order from the Tribunal.

3. [Rule 6] Conversion of OPC into a Public Company or a Private Company

(1) The **One Person company** shall **alter its memorandum and articles** by **passing a resolution** in accordance with sub-section (3) of section 122 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

4. [Rule 6(2)] Voluntary conversion of OPC into a Public Company or a Private Company

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

5. [Rule 7] Conversion of Private Company into One Person Company (OPC)

(1) A private company other than a company registered under section 8 (non-profit company) of the Act may convert itself into one person company by passing a special resolution in the general meeting.

(2) Before passing such resolution, the company, shall obtain no objection in writing from members and creditors.

(3) The one person company shall **file copy of the special resolution** with the Registrar of Companies **with in thirty days** from the date of passing such resolution in **Form No. MGT.14**.

(4) The company shall file an application in **Form No.INC.6** for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:—

- The directors of the company shall give a declaration by way of **affidavit** duly sworn in confirming that all members and creditors of the company have given their **consent for conversion**;
- The **list of members and list of creditors;**
- The latest **Audited Balance Sheet and the Profit and Loss Account**; and
- The copy of **No Objection letter** of secured creditors.

(5) On **being satisfied** and complied with requirements stated herein the **Registrar shall issue** the **Revised Certificate of Incorporation**, mentioning that now it has become a private company.

6. Conversion of Section 8 Company into a Company of any other kind

Section 8(4)(ii) provides that a company registered under section 8 i.e. companies with charitable objects may convert itself into company of any other kind only after complying with such conditions as may be prescribed under **Rule 21 and 22 of Companies (Incorporation) Rules, 2014**.

{Rule 21} Conditions for Conversion of a Company Registered Under Section 8 into a Company of Any Other Kind

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

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

(a) the date of incorporation of the company;

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

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

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

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

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

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

Application to Regional Director

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

In this regard Rule 22(2) states that the company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the **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** and if any of **these authorities** wish to make any **representation to Regional Director**, it shall do so **within sixty days** of the receipt of the notice, after giving an opportunity to the Company.

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

Publication of notice – Rule 22(1)

The company shall, **within a week** from the date of submitting the application to the Regional Director, **publish a notice** at its own expense, and a **copy of the notice**, as **published**, shall be sent forthwith to the **Regional Director** and the said notice shall be **in Form No. INC.19** and shall be published-

(a) at least **once** 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; and

(b) on the **website of the company**, if any, and as may be notified or directed by the Central Government.

Rule 22(3)

The copy of proof of serving such notice shall be attached to the application.

[Rule 22(4)] Declaration to the effect that no dividend /bonus shares

The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise.

[Rule 22(5)] No objection certificate from relevant authorities, in case of special status

Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained,

No failure in filing financial statements/Annual Return

The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director.

[Rule 22(7)] Attach certificate of compliance for conversion

The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

[Rule 22(9)] Company to give up concessions enjoyed or being enjoyed

On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case.

[Rule 22(11)] On receipt of Approval of Regional Director

On receipt of the approval of the Regional Director,

(i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;

(ii) the Company shall thereafter file with the Registrar.-

  (a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in **Form No.INC.20** along with the fee;

  (b) amended memorandum of association and articles of association of the company.

  (c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

[Rule 22(12)] On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

CHAPTER – 2 UNIT – 2
PROMOTION & FORMATION OF COMPANIES

Synopsis

1. List of Sections under Chapter Formation of Company
2. Introduction
3. Promoter
4. Legal position of Promoter
5. Is a Director or Officer or Employee of the Issuer a Promoter?
6. Duties of Promoter
7. Remedies available to the Company against Promoter
8. Liabilities of Promoters
9. Remuneration of Promoters
10. Formation of Company [Section 3 & 3A read with Companies (Incorporation) Rules 2014]
11. Step by Step formalities (in brief) for formation of a New Company
12. Incorporation of Companies [Section 7]
13. Punishment for furnishing false or incorrect information at the time of incorporation
14. Incorporation through SPICe +
15. Provisions specifically relating to incorporation of Companies with Charitable objects under Section 8
16. Filing of the Notice for situation of the Registered office with the ROC
17. Pre-incorporation or Preliminary or Promoters Contract
18. Conclusiveness of Certificate of Incorporation
19. Service of Documents [Section 20]
    (1) Service of documents to Company
    (2) Service of documents to registrar or member
20. Authentication of Documents, Proceedings & Contracts [Section 21]
21. Execution of Bills of exchange etc [Section 22]
    (1) Acceptance, endorsement etc. of Bill of exchange, hundi etc.
    (2) Authorization by Company
    (3) Binding nature of authorization given by Company

1. List of Sections under Chapter Formation of Company

Section	Particular of Section
Section 2(69)	Definition of Promoter
Section 3	Formation of Company
Section 3A	Members severally liable in certain cases
Section 7	Incorporation of Company
Section 8	Formation of Company with Charitable Objects
Section 9	Effect of Registration
Section 10A	Commencement of Business etc.
Section 20	Service of Documents
Section 21	Authentication of document, proceedings and contracts
Section 22	Execution of Bills of Exchange, etc.

2. Introduction

A company comes into existence is generally by a process referred to as incorporation. Once a **company** has been **legally incorporated**, it becomes a **distinct entity** from those who invest their capital and labour to run the company.

Usually the **first step to form a company** is the process known as **'promotion'** where a person **persuades others to contribute capital** to a proposed company before it is incorporated. Such a person is called the **promoter** of the company.

Promoters also can enter into a contract on behalf of a company before or after it has been granted a certificate of incorporation, and arrange share issues in the name of the company.

***Section 3 to 22 of the Companies Act, 2013* (*hereinafter called the Act*) *read with Companies* (*Incorporation*) *Rules, 2014 made under Chapter II of the Act* (*hereinafter called 'the Rules'*)** cover the provisions with regard to incorporation of companies and matters incidental.

3. Promoter

1. Definition of the word promoter

Section 2 (69) of the Companies Act, 2013 defines the term 'promoter' as under:

"Promoter" means a person—

(a) who has been **named** as such **in a prospectus** or is identified by the company in the annual return referred to in **section 92**; or

(b) who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of **Directors of the company is accustomed to act.**

Provided that **sub-clause (c) shall not apply** to a person who is **acting merely in a professional capacity.**

Further, according to **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**, "promoter" includes:

(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters.

2. Meaning of Promoter

A promoter is a one (*i.e.* individual firm, company etc.) who **performs the preliminary duties** necessary to bring the company into being and float it, *i.e.* who **brings** the **company into existence**. He **conceives the ideas**, develops it and induces others to join the enterprise. Thus, promoter is **neither a term of law nor of act; but of business**. The promoter originates the scheme for the formation of a company gets together the subscribers to the memorandum; **gets the memorandum and articles prepared**, executed and registered**; finds** the **bankers, brokers and legal advisers**, finds the **first directors**, **settles** the terms of **preliminary contracts** with vendors and **makes arrangement** for preparation, **advertisement** and **circulation of the prospectus** and **placement** of the **capital**.

The question whether a person is or is not a promoter is a question of fact depending upon the role performed by him in the formation of the company.

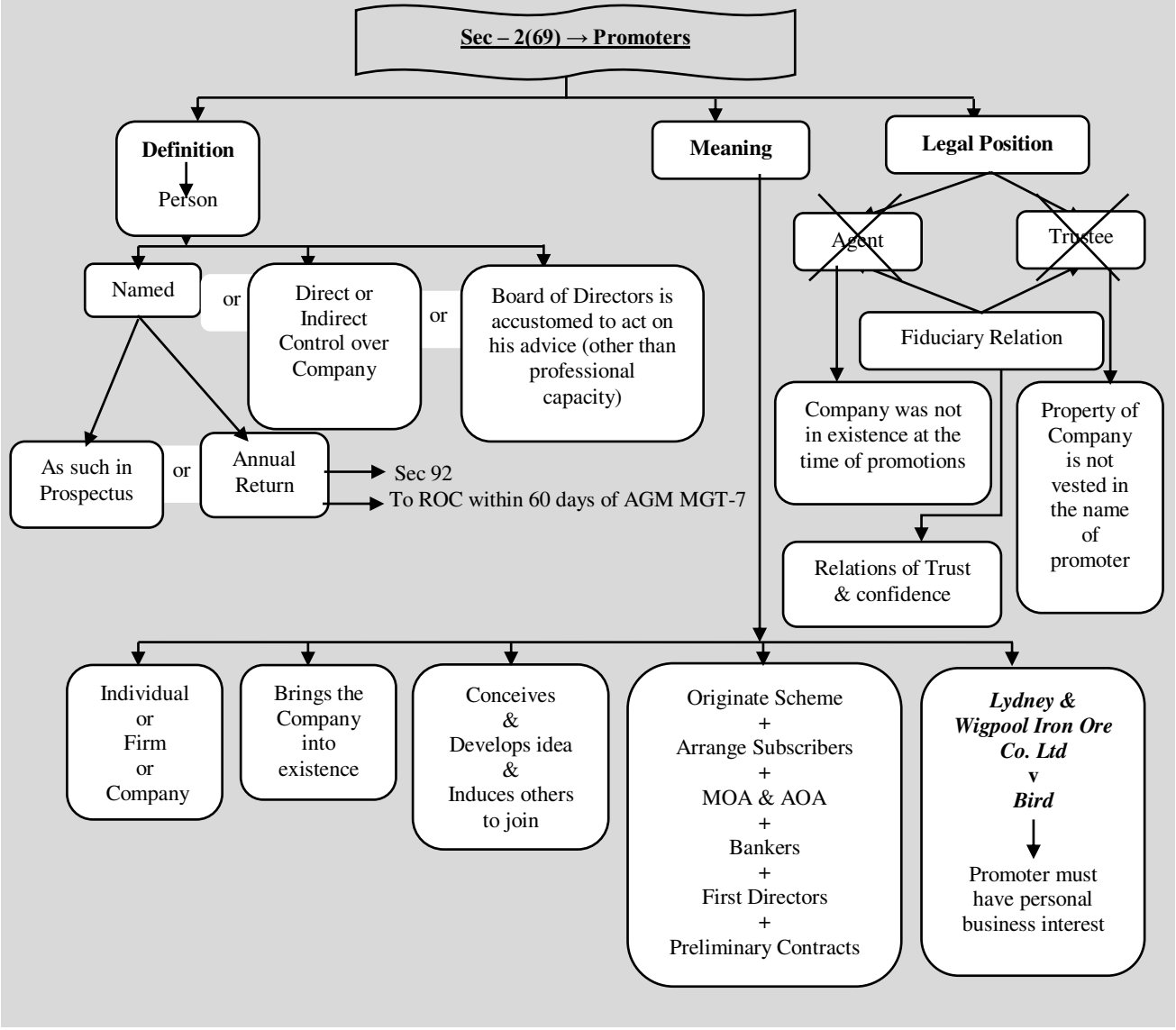
Case Law ***Lydney and Wigpool Iron Ore Co. Ltd.* v *Bird***

But a person who merely **acts in a professional capacity on behalf of the promoter** such as a solicitor or an accountant and who is paid by him **is not a promoter**.

4. Legal position of Promoter

The company not being in existence a **promoter** is **neither an agent** of, **nor a trustee** for, the company. But he **occupies a fiduciary position** (*i.e.,* position of trust & confidence) in relation to the company he promotes. The fiduciary relation means **full disclosure of the relevant facts**, including any profits made.

Quick Recap



Case Study 1 **Sec 2(69)**

Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain.

Answer

Promoter- According to section 2 (69) of the Companies Act, 2013, Promoter means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub clause (c) shall apply to a person who is acting merely in a professional capacity.

5. Is a Director or Officer or Employee of the Issuer a Promoter?

A **director or officer or employee** who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise is **considered as a promoter**.

As per **section 2(27)**, **control**" shall include the **right to appoint majority of the directors** or to **control the management** or **policy decisions** exercisable by a person or **persons acting individually** or in concert, directly or indirectly, including by **virtue of their shareholding or management rights or shareholders agreements or voting agreements** or in any other manner.

However, a **director or officer or employee** of the issuer or a person, if acting as such merely in his **professional capacity**, shall **not be deemed as a promoter**.

6. Duties of Promoter

Following are the two important duties of a promoter of a company:-

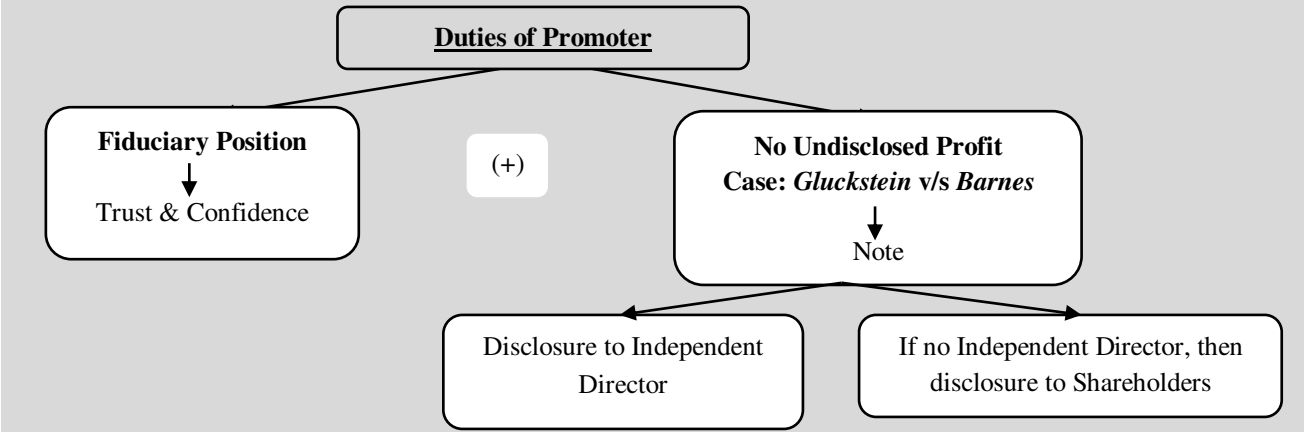
1. The promoters, being in a fiduciary position, **cannot make**, either directly or indirectly, **any profit** at the **expense of the company** he promotes, without the knowledge and consent of the company and that if he does **make a profit** in disregard of this rule, the **company can compel him to account for it.**
2. **Not to derive undisclosed profits**.

Case Law ***Gluckstein* v/s *Barnes* (1900)**

A promoter is **not allowed** to **derive a profit** from the **sale of his own property** to the company, unless all material facts are disclosed.

Thus, it is not the profit made by the promoter, which the law forbids but the non- disclosure of it. The disclosure must be made to an independent Board of directors and where there is no independent Board of directors, **disclosure must be made to the intended shareholders** as a whole.

Quick Recap



7. Remedies available to the Company against Promoter

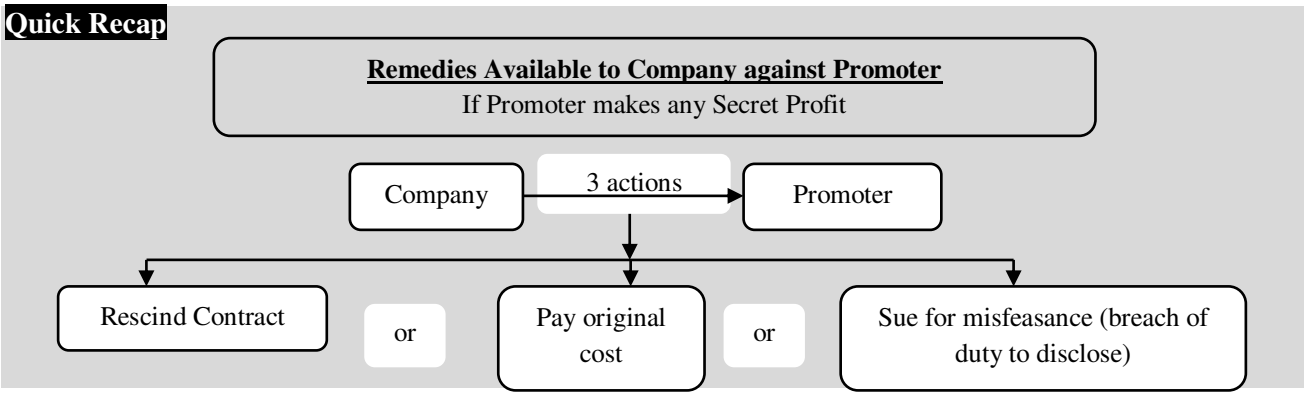
If a **promoter makes a secret profit** or does **not disclose** any profit, the company has a remedy against him. Secret profit may be made by **purchasing property** or a business himself and **selling it to the company at higher price**. The difference between the two prices amounts to secret profit, if he promotes the company at the time he buys the property or business.

Following are some of the remedies available to the Company against a promoter:

- **Rescind the contract** and if he has made a profit on some ancillary transaction that may also be recovered.

- **Retain the property**, paying no more for it than what the promoter has paid depriving him of his profit.
- Where the above remedies would be inappropriate such as when the property has been altered so as to render recession impossible and the promoter has already received his inflated price, the company may **sue him for misfeasance** (breach of duty to disclose). The measure of damages will be the difference between the market value of the property and the contract price.

Quick Recap



8. Liabilities of Promoters

A promoter is subject to the following **liabilities** under the various provisions of the Companies Act, 2013:

1. ***Incorporation of company by furnishing false information***:- As per **section 7(*6*),** where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the **promoters**, the persons named as the **first directors** of the company and the persons making declaration shall be **liable for fraud** under **section 447 by NCLT under section 7(7).**
2. **Section 26** of the Act lays down matters to be stated and reports to be set out in the prospectus. The **promoter(s**) may be held **liable** for the **non-compliance of the provisions** of this Section.
3. ***Civil Liability for misstatements in prospectus as per Section 35***
4. ***Punishment for fraudulently inducing persons to invest money under Section 36***
5. ***Contravention of provisions relating to private placement:*** *As per* **Section 42(*10*),**if a company makes an offer or accepts monies in **contravention** of the **provisions** of **private placement** as stated in section 42, the **company, its promoters and directors** shall be liable for a **penalty** which may **extend** to the **amount raised through the private placement or two crore rupees, whichever is lower,** and the company shall also **refund all monies** with interest, to subscribers within a period of **thirty days** of the order imposing the penalty.
6. **Failure** ***to cooperate with Company Liquidator during winding up****:*

   Section 284 (2), if any person required to assist or **cooperate with the Company Liquidator** under sub-section (1) **does not assist or cooperate**, the Company Liquidator may make an application to the Tribunal for necessary directions.
7. ***Criminal Liability for misstatement in prospectus:*** Besides **civil liability**, the promoters are **criminally liable** under **Section 34** for the issue of **prospectus containing untrue or misleading statements** in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead. **Section 447** imposes severe punishment for fraud on promoters who make untrue or misleading statements in prospectus with a view to obtaining capital.

   Any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with **imprisonment** for a term which shall **not be less than six months** but which may **extend to ten years** and also a

fine which shall **not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.** Further, where the fraud in question **involves public interest**, the term of imprisonment shall **not be less than three years**.

Provided further that where the **fraud involves an amount less than ten lakh rupees or one per cent. of the turnover** of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which **may extend to five years** or **with fine which may extend to fifty lakh rupees** or with both

A promoter can, however, **escape the punishment if he proves**:

(i) that the **statement or omission was immaterial;** or

(ii) that he had reasonable grounds to believe, and did, up to the time of the issue of prospectus, **believe that statement was true** or the inclusion or omission was necessary.

9. Remuneration of Promoters

When a promoter makes proper disclosure, he may expect to be **rewarded for his efforts.** Therefore, when the company is registered, it may agree to pay some remuneration for services rendered. In practice, a promoter is **remunerated in any of the following ways:—**

(a) He may **sell his own property** to the company for cash **at an over valuation** after making full disclosure to an independent Board of directors or to the intended shareholders.

(b) He may **sell his property for fully-paid shares** in the company, after making full disclosure.

(c) He may be given a**n option to buy further shares in the company at par.**

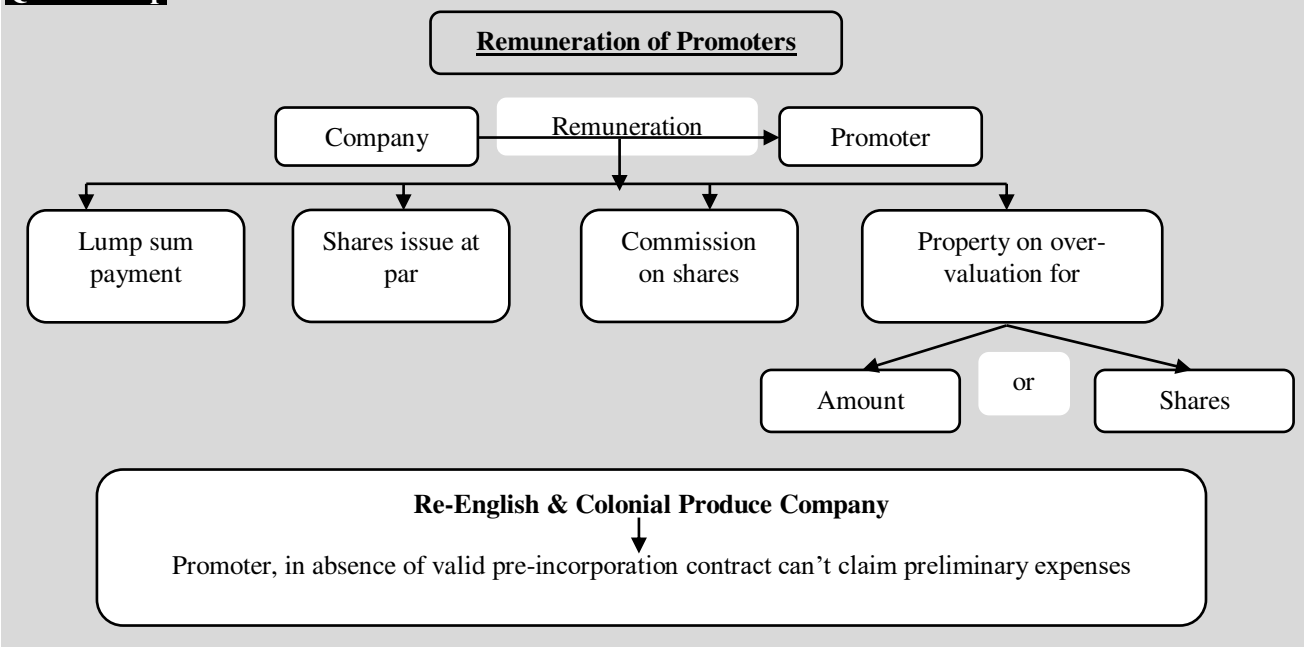
(d) He may take **commission** on the shares sold.

(e) He may be paid a **lump sum** by the company.

Case Law ***Re English and Colonial Produce Company* (1906)**

A Promoter has **no legal right to claim promotional expenses** for his services unless there is a valid pre-incorporation contract. Without such a contract, he is not even entitled to recover his preliminary expenses.

Quick Recap



10. Formation of Company [Section 3 & 3A read with Companies (Incorporation) Rules 2014]

(1) **Section 3** of Companies Act, 2013 states that a company may be formed for any lawful purpose by—

- **seven or more persons**, where the company to be formed is to be a **public company**;
- **two or more persons**, where the company to be formed is to be a **private company**; or
- **one person**, where the company to be formed is to be **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 this Act in respect of registration.

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

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

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company

Note: A Specified IFSC Public Company and Specified IFSC Private Company shall be formed only as a company limited by shares

(3) The Companies Act, 2013 prescribes specific procedures for incorporation and registration of companies. A company **can be formed** either by:—

- **incorporation of a new company;** or
- **conversion of existing business** (partnership firm or co-operative societies, society, limited liability partnership, or any other business entity) formed under any other law for the time being in force which applies for registration under this Part into company under the provisions of **Chapter XXI, Part I** and of the Companies Act, 2013; or
- companies **incorporated under section 8** of the Companies Act, 2013.

(4) **Section 3A** of Companies Act, 2013 states that if at any time the **number of members** of a company is **reduced**:

- in the case of a **public company**, **below seven**,
- in the case of a private company, below two,

and the company **carries on business** for **more than six months** while the number of members is so reduced, **every person who is a member** of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be **severally liable** for the **payment of the whole debts of the company** contracted during that time, and may be severally sued therefor

11. Step by Step formalities (in brief) for formation of a New Company

Persons desirous of forming a company must adhere to the step-by-step procedure as discussed below:—

1. Selection of **type** of the company;
2. Selection of **name** for the proposed company;
3. **Apply for Directors Identification Number and Digital Signatures,** if directors do not have the same;
4. Apply for **Name Reservation** through **SPICe+ PartA;**
5. **Drafting of Memorandum and Articles of Association;**
6. Fill **Form SPICe+ Part B, AGILE-PRO-S, e-MOA & e-AOA;**
7. **Payment of stamp duty** electronically, digitally signing and e-filing of various documents with the Registrar;
8. Payment of **registration and filing fees**;
9. Receipt of **Certificate of Incorporation from ROC**;
10. Declaration to be filed for **Commencement of Business in Form INC-20A.**

12. Incorporation of Companies [Section 7]

Following is the procedure, in brief, for the incorporation of a company:

1. **Selection of the type of company**
   - The promoters of a company may be individual entrepreneurs or bodies corporate, LLP engaged in efforts to incorporate a company.
   - They have powers of defining the objects for the proposed company.
   - Depending upon, the purposes for which the company is to be incorporated, proposed scale of operations, capital etc. the promoters can select type of the company as they wish to form i.e. one person company, private company, public company, non-profit making company, etc.
2. **Preliminary Requirements**
   - **Requirement for having DIN**

     (a) Section 152(3) provides that every individual, intending to be appointed as director of a company shall **make an application for allotment of DIN** to the **Central Government** in the prescribed **Form DIR-3**.
   - However, in order to reserve the name of a company through SPICe+ (Part A) or incorporation of Company SPICe+, the pre-requisite of having a DIN has been done away with.
   - **Requirement for providing a declaration by the director for dis-qualification**

     Section 152(4) of the Companies Act, 2013 provides that every person proposed to be appointed as a director by the company in general meeting or otherwise, needs to give director identification number and a **declaration in the Form DIR-8** informing about his **disqualification under section 164(2).**
   - **Requirement for providing consent to act as director and its filing with the ROC**

     Section 152(5) of the Companies Act, 2013 provides that a person appointed as a director shall not act as a director unless he gives his consent to hold the office as director to the Board of directors of the Company.
   - **Requirement for having digital signatures**
3. **Reservation of Name**
   - ***Applying for reservation of the selected name***
   - The promoters of company shall make an application through the web service available at www.mca.gov.in by using **SPICe+ (Part A)** under the head MCA Services alongwith fee as prescribed in the **Companies (Registration Offices and Fees) Rules, 2014** i.e. **` 1,000/-;**
   - Few features of **SPICe+ (Part A)** Service are as follows:
     - **SPICe+ (Part A)** is a web service for Reserving a proposed name for a new Company;
     - **SPICe+ (Part A)** can be accessed on www.mca.gov.in under the head MCA services;
     - Promoters are permitted to apply two proposed names only;
     - **SPICe+ (Part A)** form does not require Director Identification Number (DIN) or Digital Signature Certificate (DSC);
     - The name approved shall be valid for a period of 20 days from the date of approval.

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SPICe+ Part A

Name Reservation

Type of Company *

Class of Company *

Category of Company *

Sub-Category of Company *

Main division of industrial activity of the Company *

Description of the main division

Summary of the objects to be pursued by the company on its incorporation *

Please make sure to mention the objects of the proposed company and relevant comments

You may include a document that supports your name reservation below.

Particulars of the proposed or approved name *

i.

ii.

Choose File

Description of the main division

Manufacture of food products and beverages

Summary

To Carry

You may i

Particular

i.

ii.

Choose File

Confirmation Alert

Choose whether you want to proceed for incorporation or only submit application for name reservation?

Submit for Name Reservation | Proceed for Incorporation | Cancel

Auto-Check | Save | Submit

4. Extension of reservation of name in certain cases

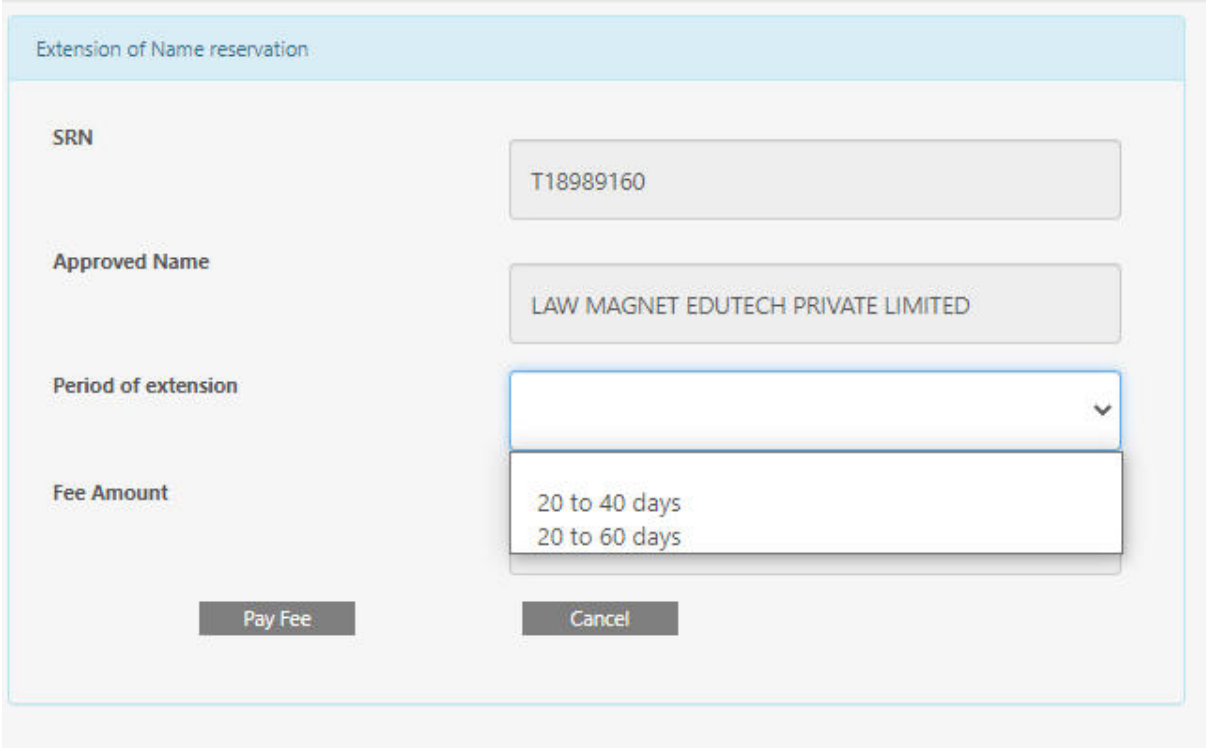
Upon **payment of fees** provided below through the web service available at **www.mca.gov.in**, **the Registrar shall extend the period of a name reserved** under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), **upto**:

(a) **forty days from the date of approval** under rule 9, on payment of **fees of rupees of one thousand rupees** made before the expiry of twenty days from the date of approval under rule 9;

(b) **sixty days from the date of approval** under rule 9 on payment of **fees of rupees two thousand made before the expiry of forty days** referred to in clause (a) above;

(c) **sixty days from the date of approval** under rule 9 on payment of **fees of rupees three thousand made before the expiry of twenty days** from the date of approval under rule 9:

Provided that the **Registrar shall have the power to cancel the reserved name** in accordance with sub-section (5) of section 4 of the Act.



5. Preparation of Memorandum of Association

The Memorandum of Association is the **charter of a company**. It is a document, which amongst other things, **defines the area** within which the company can operate. The first step in the formation of a company is to prepare a document called the memorandum of association. In fact memorandum is one of the most essential pre-requisites for incorporating any form of company under the Act.

Section 4 of the Act prescribes the **particulars to be mentioned in a memorandum of association** and other requirements. It is the constitution document of the company. The company cannot act beyond the provisions of the memorandum and in case company does so, it will be considered as Ultra vires the company and hence void.

Section 4(6) of the Companies Act, 2013 provides that the memorandum of association should be in any one of the Forms specified in **Tables A, B, C, D or E of Schedule I** to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

- The Form in **Table A** is applicable in the case of **companies limited by shares**;
- The Form in **Table B** is applicable to **companies limited by guarantee not having a share capital**;

- The Form **i**n **Table C** is applicable to the **companies limited by guarantee having a share capital;**
- The Form in **Table D** is applicable to **unlimited companies not having a share capital;'8**
- The Form in **Table E** is applicable to **unlimited companies having a share capital**.

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

Notes:

1. Stamp duty is to be paid electronically through **MCA 21 portal**.
2. While filing the documents for incorporation of Company, the document related to Memorandum of Association shall be filed by way of e-form i.e. e-MOA which shall be filed in Form INC -33 available on MCA portal.

6. Preparation of Articles of Association

According to **Section 2(5)** of the Companies Act, 2013, '**articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.** The articles of a company shall be in respective forms specified in **Tables, F, G, H, I and J** in Schedule I as may be applicable to such company.

- The Form in **Table F** is applicable in the case of **companies limited by shares;**
- The Form **in Table H** is applicable to the **companies limited by guarantee not having a share capital**;
- The Form in **Table G** is applicable to **companies limited by guarantee having a share capital;**
- The Form **in Table J** is applicable to **unlimited companies not having share capital**..
- The Form **in Table I** is applicable to **unlimited companies having a share capital**;

In terms of **section 5(1),** the articles of a company shall **contain the regulations** for management of the company. The articles of association of a company are **its bye-laws** or rules and regulations that **govern the management of its internal affairs** and the conduct of its business.

Note: While filing the documents for incorporation of Company, the document related to Memorandum of Association shall be filed by way of e form i.e. e AOA which shall be filed in Form INC 34 available on MCA portal.

7. Filing of the documents with the Registrar of Companies

Section 7(1) read with Rule 12 of the Companies (Incorporation) Rules, 2014 states that there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the below mentioned documents and information for registration, namely:

Rule 12 of the Companies (Incorporation) Rules 2014 states that an application for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32)] along with the fee as provided under the Companies (Registration offices and fees) Rules, 2014;

Provided that in case pursuing of any of the **objects of a company requires registration or approval from sectoral regulators** such as the Reserve Bank of India, the Securities and Exchange Board, registration or **approval**, as the case may be, **from such regulator shall be obtained** by the proposed company **before pursuing such objects** and a declaration in this behalf shall be submitted at the stage of incorporation of the company.

Provided further that in case of a **Company being incorporated as a Nidhi**, the **declaration** by the Central Government under **section 406 of the Act shall be obtained by the Nidhi before commencing the business** and a declaration in this behalf shall be submitted at the stage of incorporation by the company.

The below mentioned documents and information shall be filed with the Registrar for registration, namely:

- ***Memorandum and Articles of Association of the company duly signed***

  Section 7(1)(a) states that the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed (Rule 13)**;**

  Rule 13 of Companies (Incorporation) Rules 2014 states that the Memorandum and Articles of Association of the company shall be signed in the manner, specified in rules of MOA.

- ***Declaration from the professional***

  [Rule 14 of the Companies (Incorporation) Rules 2014]

  Section 7(1)((b) states that a declaration in the prescribed form **(Rule 14)** by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that **all the requirements of this Act and the rules made there under in respect of registration** and matters precedent or incidental thereto **have been complied with**, to be filed in **Form No. INC. 8.**

- **Declaration from Subscribers and First Directors**

  [**Rule 15 of The Companies (Incorporation) Rules 2014]**

  Section 7(1)(c) states that **a declaration** from **each of the subscribers** to the memorandum and from persons named as the **first directors**, if any, in the articles **in Form No. INC.9** that he is **not convicted of any offence** in connection with the promotion, formation or management of any company, or that he **has not been found guilty of any fraud** or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding **five years** and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

  The address for correspondence till its registered office is established;

- **Particulars of subscribers**

  Section 7(1)(e) states that the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed **(Rule 16)**;

  Rule 16 of Companies (Incorporation) Rules states that Particulars of **every subscriber to be filed with the Registrar** at the time of incorporation.

- **Rule-17 Particulars of First Directors of the company and the consent to act as Director, the consent for acting as director shall be given in Form DIR-2 and the particulars of first directors are filed with ROC in Form DIR-12**

- **Power of Attorney**

  With a view to fulfilling the various formalities that are required for incorporation of a company, the **promoters may appoint an attorney** (on stamp Paper) empowering him to carry out the instructions/requirements stipulated by the Registrar.

8. Rule-18 Certificate of Incorporation

- On the satisfaction of the Registrar that **all the requirements have been complied with** by the company, he shall retain the documents and register the MOA, AOA and other documents and **Certificate of Incorporation** shall be issued by the Registrar in **Form No.INC-11** and the **Certificate of Incorporation** shall **mention permanent account number** (PAN) of the company where it is issued by the Income-tax Department.
- **Section 7(2)** cast an obligation on the Registrar to issue a Certificate of Incorporation (inclusive of CIN) in the **Form INC-11** on being satisfied that the documents received are correct.

9. Section 10A read with Rule 23A Commencement of Business

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

(a) a declaration is filed by a **director within a period of one hundred and eighty days** of the date of incorporation of the company in such form and verified in such manner as may be prescribed (Form INC-20A), with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

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

(2) If any **default** is made in complying with the requirements of this section, the **company** shall be liable to a **penalty of fifty thousand rupees** and **every officer** who is in **default** shall be liable to a **penalty of one thousand rupees for each day** during which such default continues but **not exceeding an amount of one lakh rupees**.

(3) Where **no declaration has been filed** with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the **Registrar** has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the **removal of the name** of the company from the register of companies under Chapter XVIII

Rule 23A Declaration at the time of Commencement of Business

The **declaration** under **section 10A** by a director shall be in **Form No, lNC-20A** and shall be **filed** as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the **contents of the said form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant. in practice**:

Provided that in the case of a **company pursuing objects requiring registration or approval** from any **sectoral regulators** such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the **registration or approval**, as the case may be from such regulator shall also be obtained and **attached with the declaration**

Preservation of Documents of incorporation

Section 7(4) states that the company shall **maintain and preserve** at its registered office **copies of all documents and information** as originally filed under **sub-section (1)** till its dissolution under this Act.

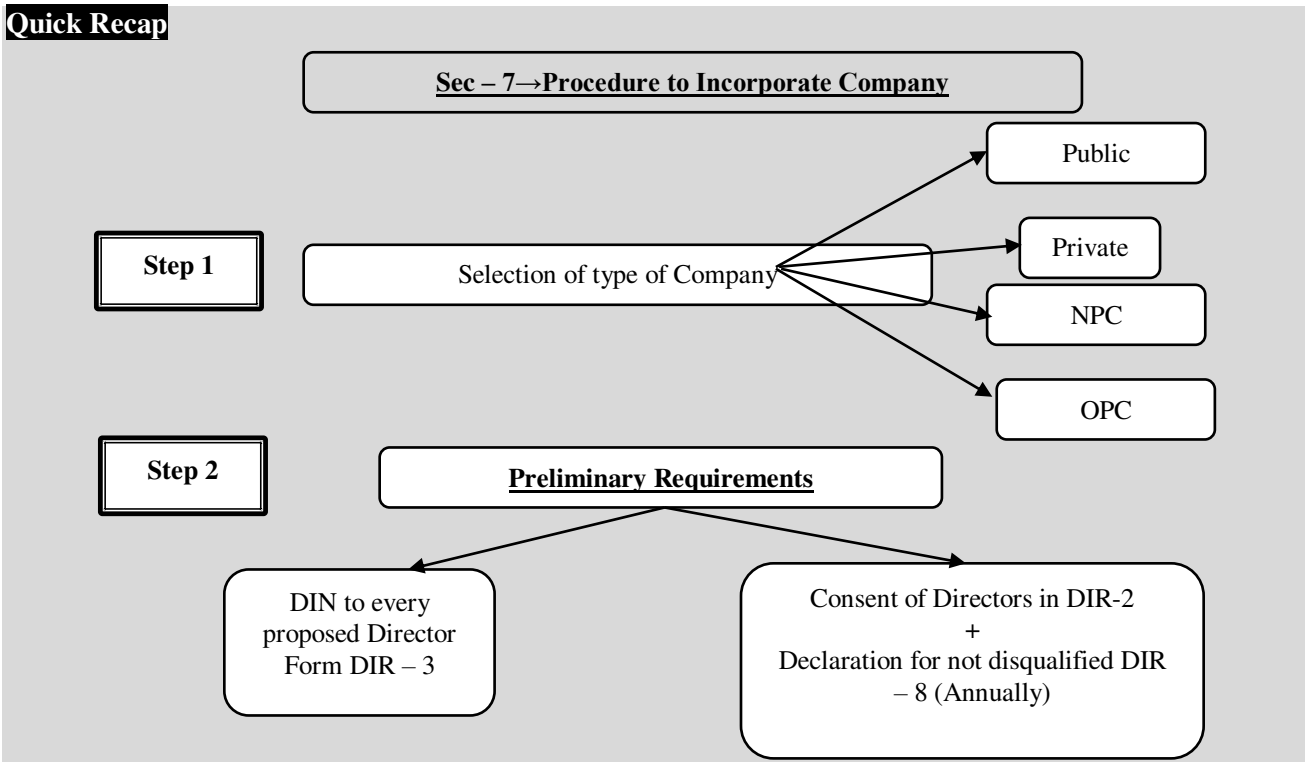
13. Punishment for furnishing false or incorrect information at the time of incorporation

The Companies Act, 2013 imposes severe punishment for incorporation of a company by furnishing false or incorrect information. The persons furnishing false or incorrect information shall be liable for following punishment:-

(i) [Section 7(5)] If any **person furnishes any false or incorrect particulars** of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be **punishable for fraud** under **section 447.**

(ii) [Section 7(6)] Without prejudice to the above liability, where, at any time after the incorporation of a company, it is proved that the company has been **got incorporated by furnishing any false or incorrect information** or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the **promoters**, the persons named as the **first directors** of the company and the persons making declaration under **section 7(1)(b)** shall each be **punishable for fraud** under **section 447.**

Quick Recap



Stepwise procedure for incorporating a Company:

STEP – I: Apply for Name Approval

A. Login on MCA Website

Applicant have to login into their account on MCA Website.

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

Details required to be mentioned in online form (Part A of SPICe+) are as follows:

(i) Type of company
(ii) Class of company
(iii) Category of company
(iv) Sub-Category of company
(v) Main division of industrial activity of the company
(vi) Description of the main division.
(vii) Summary of the objects to be pursued by the company on its incorporation
(viii) Particulars of the proposed or approved name

C. Choose File:

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

D. Submission of Form on MCA Website:

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

E. Validity of Reserved Name:

The name may be either approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any. Reserved name shall be valid for 20 days from the date of approval.

Rule 9A of the Companies (Incorporation) Rules, 2014-Extension of Reservation of name in certain cases

Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;

(b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;

(c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9.

However, the Registrar shall have the power to cancel the reserved name in accordance with sub-section (5) of section 4 of the Companies Act, 2013.

STEP – II: Preparation of Documents for Incorporation of Company

The following documents are required to be enclosed: For SPICe+:

(a) Memorandum of Association;

(b) Articles of Association;

(c) Declaration by the first director(s) and subscriber(s);

(d) Proof of office address (Conveyance/Lease deed/Rent Agreement along with rent receipts);

(e) Copy of utility bills not older than two months;

(f) NOC for use premises for registered office of proposed Company from owner and person whose name mentioned in utility bill;

(g) Copy of certificate of incorporation of foreign body corporate (if any);

(h) A resolution passed by promoter company (Applicable if name a body corporate is promoter);

(i) The interest of first director(s)in other entities;

(j) Consent of Nominee (INC–3) (Applicable for one person Company);

(k) Proof of identity as well as the residential address of subscribers;

(l) Proof of identity as well as residential address of the nominee;

(m) Resolution of unregistered companies in case of Chapter XXI (Part I) Companies;

(n) Optional attachments(if any).

STEP – III: Fill the Information in Form

Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form "Spice+ Part -B.

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

Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, and separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.

This form can be used for the following purposes:

- Application of DIN (upto 3 Directors)
- Application for Availability of Name
- 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 GST, IEC.

STEP – IV: Fill details of PAN & TAN

It is mandatory to mention the details of PAN & TAN in the Incorporation Form INC-32.

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

If Company wants to apply for GST or IEC it has to select YES in the form and fill the information in the form. If Company doesn't want to apply for GST and IEC then it have to select no.

If Companies wish to perform Aadhar authentication for GSTIN registration, they can select Yes or No itself in the Agile Pro- S Form.

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

After proper filing of SPICe+ form, applicant has to file form INC-33 (e-MOA) and INC-34 (e-AOA) from the MCA site.

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

Once all the 4 forms ready with the applicant, upload all four document as Linked form on MCA website and make the payment of the same.

Following is the sequence of uploading linked forms to SPICE +:

(a) e-MOA [if applicable]

(b) e-AOA [if applicable]

(c) URC-1[if applicable]

(d) AGILE-PRO-S [mandatory in all the cases]

(e) INC-9

Companies getting incorporated through SPICe+ with an Authorized Capital up to INR 15,00,000 would continue to enjoy 'Zero Filing Fee' concession. Such companies will be levied with only stamp duty fees as may be applicable on state to state basis.

STEP – VIII: Certificate of Incorporation

The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11 along with CIN, PAN & TAN.

STEP – IX: Commencement of Business

As per Section 10A read with Rule 23A of the Companies (Incorporation) Rules, 2014, every company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

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

(b) The company has filed with the Registrar a verification of its registered office in form INC-22 as provided in sub-section (2) of section 12 of the Companies Act, 2013;

⇒⇒⇒

Note 1 → Stamp duty is to be paid electronically through MCA – 21 systems at the time of filing with ROC

Note 2 → Sec – 7(4) Original Documents of incorporation to be preserved by Company at its registered office

Note 3 → False information – Penalty u/s 447

Note 5 → **Preparation of MOA & AOA** ↓ Table of Schedule I

	Sh	✓ **G**	✓ **G**	✓ **Unltd**	✓ **Unltd**
		× **Sh**	✓ **Sh**	× **Sh**	✓ **Sh**
Table (MOA)	A	B	C	D	E
Table (AOA)	F	H	G	J	I

Note 6 → **Effect of Registration Sec – 9** ↓ Separate Legal entity

14. Incorporation through SPICe +

Stakeholders can avail of 10 different services i.e.

(i) Name Reservation;
(ii) Allotment of Director Identification number (DIN);
(iii) Incorporation of New Company;
(iv) Allotment of PAN;
(v) Allotment of TAN;
(vi) Application for EPFO registration;
(vii) Application for ESIC registration;
(viii) Bank Account;
(ix) Professional Tax Registration (only for companies to be registered in Maharashtra, Karnataka & West Bengal);
(x) Application for GSTIN (optional, if applied for).

In one form by applying for Incorporation of a new company through **SPICe+ form (INC-32)** - Simplified Proforma for Incorporating Company electronically **with eMoA (INC-33), eAOA (INC-34) and AGILE – PRO-S (INC-35).**

There is no need for reserving a name separately before filing SPICe+. One name for the proposed company can be applied for in SPICe+ (INC-32).

Also, a Section 8 company (Companies with Charitable Objects) can also be incorporated using SPICe+ form but after reserving a name using **SPICe+ (Part A)** utility and will have to use attach MOA & AOA instead of using eMOA & eAOA.

Note: In case of companies incorporated with a nominal capital of **less than or equal to rupees fifteen lakhs** or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, **fee on INC-32 (SPICe+) shall not be applicable**.

Case Study 2	**Section 9**

Mr. X seeks your advice with relation to registration of a Company. Considering the provisions of Companies Act, 2013, advice what are the effects of registration of a company?

Answer

Section 9 of the Companies Act, 2013 provides that, from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued by the said name.

Accordingly, when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow:

(i) The company becomes a distinct legal entity. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name.

(ii) It acquires a life of perpetual existence by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up.

(iii) Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company as and when declared either as divided or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders.

15. Provisions specifically relating to incorporation of Companies with Charitable objects under Section 8

Rule 19-20 of Companies (Incorporation) Rules, 2014

Rule 19- License under sec-8 for new companies which charitable object etc-

(1) A person or an association of persons (hereinafter referred. this rule as "the proposed company"), desirous of incorporating a company with limited liability under **sub-section (1)** of **section 8** without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in **SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32)** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** to the Registrar for a license under sub-section (1) of section 8.

(2) The memorandum of association of the proposed company shall be in **Form No.INC.13**.

(3) The application under **sub-rule (1)** shall be accompanied by the following documents, namely:

- The memorandum and articles of association of the proposed company;
- The declaration in **Form No.INC.14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under Section 8 and matters incidental or supplemental thereto have been complied with;
- An estimate of the future **annual income and expenditure** of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- The declaration by each of the persons making the application in **Form No. INC.15.**

Rule 20- License for Existing Companies

(1) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in **Form No.INC.12** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (5) of section 8.

(2) The application under sub-rule (1), shall be accompanied by the following documents, namely:

(a) the memorandum and articles of association of the company;

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

(c) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies

(d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;

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

(f) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and

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

(3) The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in **Form No. INC.26** and shall be published-

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and

(b) on the websites as may be notified by the Central Government.

(4) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).

(5) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

(6) The licence shall be in **Form No.INC.16. or Form No.INC.17**, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

(7) The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

16. Filing of the Notice for situation of the Registered office with the ROC

A company shall, within thirty (30) days of its incorporation and at all times thereafter, have a registered Woffice. The company needs to file with the Registrar a verification of its registered office in the **Form INC-22 within 30 days** (**60 days** in case of **Specified IFSC Public Companies & Specified IFSC Private Companies**) of its incorporation [S**ection 12(2)]** along with following documents:

- **Registered document** of the title of the premises of the registered office in the name of the company; or

- **Notarized copy of lease/rent agreement** in the name of the company
- **No objection certificate** from the owner to use the premises
- **Utility Bill** like telephone, gas, electricity, etc. e which is not older than **2 months**.
- There shall be attached to Form INC-22 the **list of all other companies** with their **CIN**, having the same premises as their registered office address.

17. Pre-incorporation or Preliminary or Promoters Contract

Pre-incorporation contracts are those **contracts which are entered** into by **agents or promoters or trustee/**and on behalf of a prospective company **before it has come into existence**. **Before existence** a Company is non-existent and has **no capacity to contract**.

Since a company comes into existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned. It take effect as a personal contract with the persons who purport to contract on the Company's behalf and in that case they are liable for failure to the perform the promises made in the name of the Company.

Case Law ***Kelner* v *Baxter* (1866)**

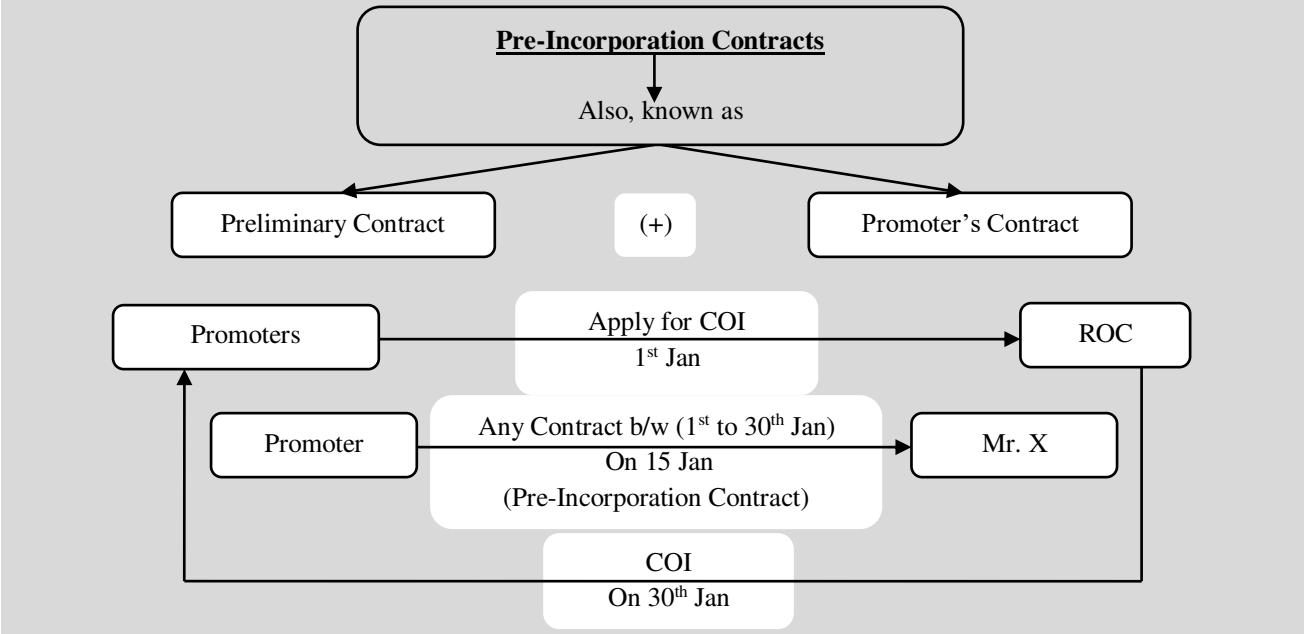
The Company, before it is incorporated, is **not bound by a contract** entered into by an agent purporting to act on its behalf. It **cannot ratify the contract** after incorporation. However, the **persons purport to act, as agents on behalf of the company would be personally liable.**

Even if a Company takes some benefits from a contract purported to have been before its formation, the contract is not binding on the Company.

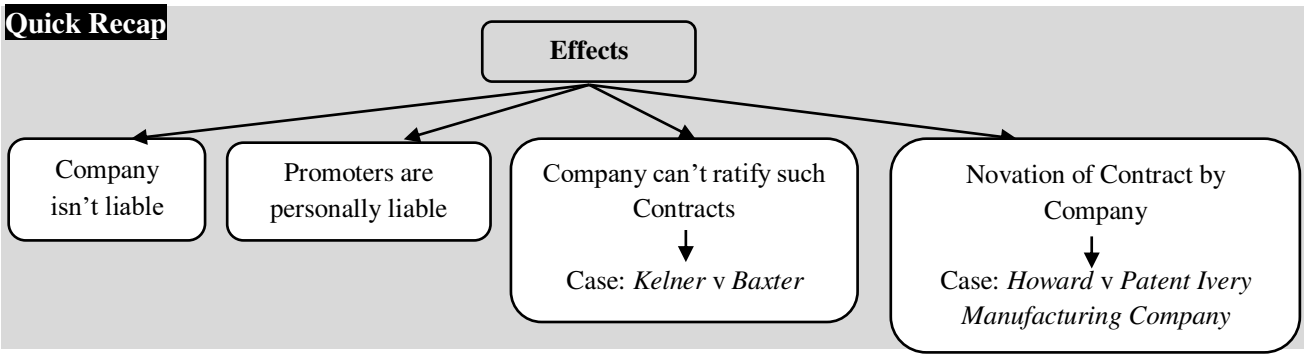
Case Law ***Howard* v *Patent Ivery Manufacturing Co.* (1888)**

Although, a **company cannot ratify a pre-incorporation contract**, it may make a new contract after it is incorporated to carry into effect a contract made before it is formed. Since the **pre-incorporation contract is a nullity,** even the company, **cannot sue the vendor** of property if he fails to carry out such a contract.

Quick Recap



Quick Recap



Case Study 3 **Pre-incorporation Contracts**

XYZ Co. Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can he held liable for payment under the following situations:

(i) When the company has already adopted the contract after incorporation?

(ii) When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?

Answer

The present contract has been entered into by the promoters for purchase of furniture. The terms of the contract provide for the payment by the XYZ Co Ltd after it is incorporated. A pre incorporation contract is not binding on the company as it was not in existence on the date of the contract. Such a contract can also not be entered into by promoters acting as agents of the company as the company not being in existence cannot appoint agents.

Therefore, the contract for the purchase of furniture cannot be binding on the company.

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name (*Scot* v. *Lord Ebury*), even though the contract expressly provided that only the company shall be answerable for performance.

In ***Kelner* v *Baxter*** also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers can be as under:

(i) The promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held personally liable in this case for the reasons given above.

(ii) In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

Examination Question

Whether a Company is liable for a contract entered into before incorporation?

Sunrise Limited submitted the documents for incorporation on 5th October, 2019. If was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2019. The company on 14th October, 2019 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013 whether the company con be exempted from the said contractual liability.

Answer

The Company is not bound by the contract entered into on 14.10.2019

- Since a Pre—incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into
- Thus the company is exempted from the said liability

Sometimes contracts are made on behalf of a company even before it is incorporated. But no contract can bind a company before it becomes capable of contracting by incorporation.

Pre-incorporation contracts in general are void ab initio and hence not binding on the company. 'Thus, unless the company adopts the contract, the other party cannot enforce the same against the company. However, promoters can be- held personally liable. The problem is based on above case i.e**.** ***Kelner*** **v/s** ***Baxter***. After application of above provisions it is clear that the company can be exempted from the said contractual liability.

Examination Question

Liability of the promoters and of the company in respect of a pre-incorporation Contract

K Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to, be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of the above furniture. As a result supplier sued the promoters of the company for the recovery of money

Examine whether promotes can be held liable for the payment under the following situation:

(i) When the company has already adopted the contract after incorporation?

(ii) When the company marks a fresh contract with the suppliers in substitution of pre – incorporation contract?

Answer

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name, (*Scot* v. *Lord Ebury*) even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner* v *Baxter* also it was held that the persons signing the contracts viz. promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been on, its, behalf before it came into existence as ratification by the company when formed is legally impossible.

The company can if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre- incorporation contract made by the promoter. The adoption of the pre – incorporation contract by the company will not create a contract between the company and the other parties even thought the adoption of the contract is made as one of the objects of the company in its memorandum of Association. It is therefore safer for the promoters acting on behalf of the company about to be formed to provided in the contract that: (a) if the company make a fresh contract in terms of the pre –incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

(i) The promoters in the first case will be Liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. 'Therefore promoters continue to be held liable in this case for the reasons given above.

(ii) In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre – incorporation contract. This is called Novation of Contract.

Examination Question

Whether a person who contracts with the promoters to sell an immovable property to the proposed company can enforce the contract against the company after incorporation?

OR

Before the incorporation of the company, the promoters of the company entered into an agreement with Mr. Jainson to buy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr. Jainson whether he has any remedy under the provisions of the Companies Act?

Answer

Mr. Jainson has no remedy against the company

- Since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into;
- Unless the company, after incorporation, has adopted the pre-incorporation contract i.e. the contract has not been novated by the Company.

Mr. Jainson may hold the promoters liable for any loss incurred by him.

The present case is related to the pre-incorporation contract. The promoters of the company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated, As such contracts are nullity and the company cannot sue or be sued on such contract when company comes into existence. So in such case 'A' has remedy against the promoters only. They are liable personally for those contracts that are made on behalf of the company not come into existence. Even the company cannot ratify such contracts after its registration. Such contacts are deemed to have been entered into personally by the promoters.

18. Conclusiveness of Certificate of Incorporation

A Certificate of Incorporation given by the Registrar in respect of any association shall be **conclusive evidence** that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act.

Section 9 states that certificate, once issued, is conclusive evidence of fact that company has been duly registered. In other words, once a certificate of incorporation has been granted **none can question regularity of incorporation**.

Lord cairns observed- "**When once COI is given nothing is to be required into as to regularity of prior proceedings.**

Case Law ***Jubilee Cotton Mills Ltd.* v/s *Lewis* (1924)**

1. 6th Jan: Documents submission for Registration to ROC
2. Company registered on 8th but COI dated 6th Jan.
3. On 6th allotment was made to Lewis.
4. Whether allotment is valid or not.?
5. It was held that COI is conclusive evidence of all that it contains.
6. In Law, Company was formed on 6th Jan & allotment of shares was valid.

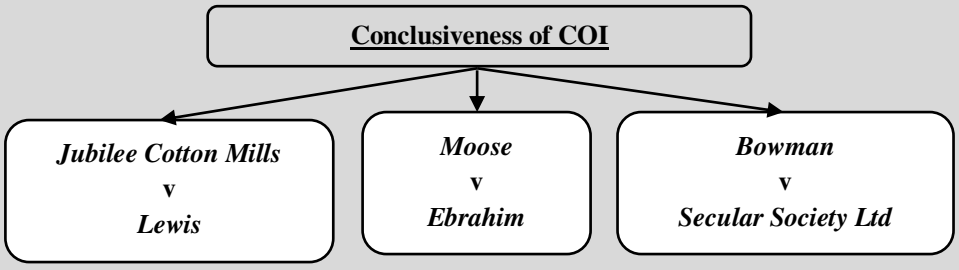
Case Law ***Moosa* v *Ebrahim* (1912)**

Accordingly, even though conditions of registration prescribed by act might not have been duly implied with prior to registration, e.g., the signature of memorandum by all inputs, forged or there were not even subscribers to memorandum **once COI is issue, the court can't go behind it & existence of company can't be questioned.**

Case Law ***Bowman* v *Secular Society Ltd* (1917)**

It may however be noted that if company having objects has been registered, **the illegal objects doesn't become, legal by issue of certificate.** But the certificate would be all same conclusive and legal personality of company can't be extinguished by cancellation of COI.

Quick Recap



CS AMIT VOHRA Law Classes
"Certificate Of Incorporation
is the
Conclusive Evidence for Existence
Of Company"

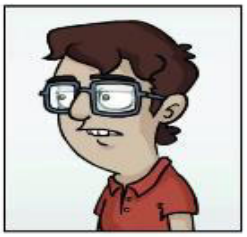
CS AMIT VOHRA Law Classes
Jubliee Cotton Mills Ltd.
Vs
Lewis
[1924]

CS AMIT VOHRA Law Classes

CHARACTER PLAYING IN CASE

Ammy

Harry



Lewis

CS AMIT VOHRA Law Classes

Conversation Between

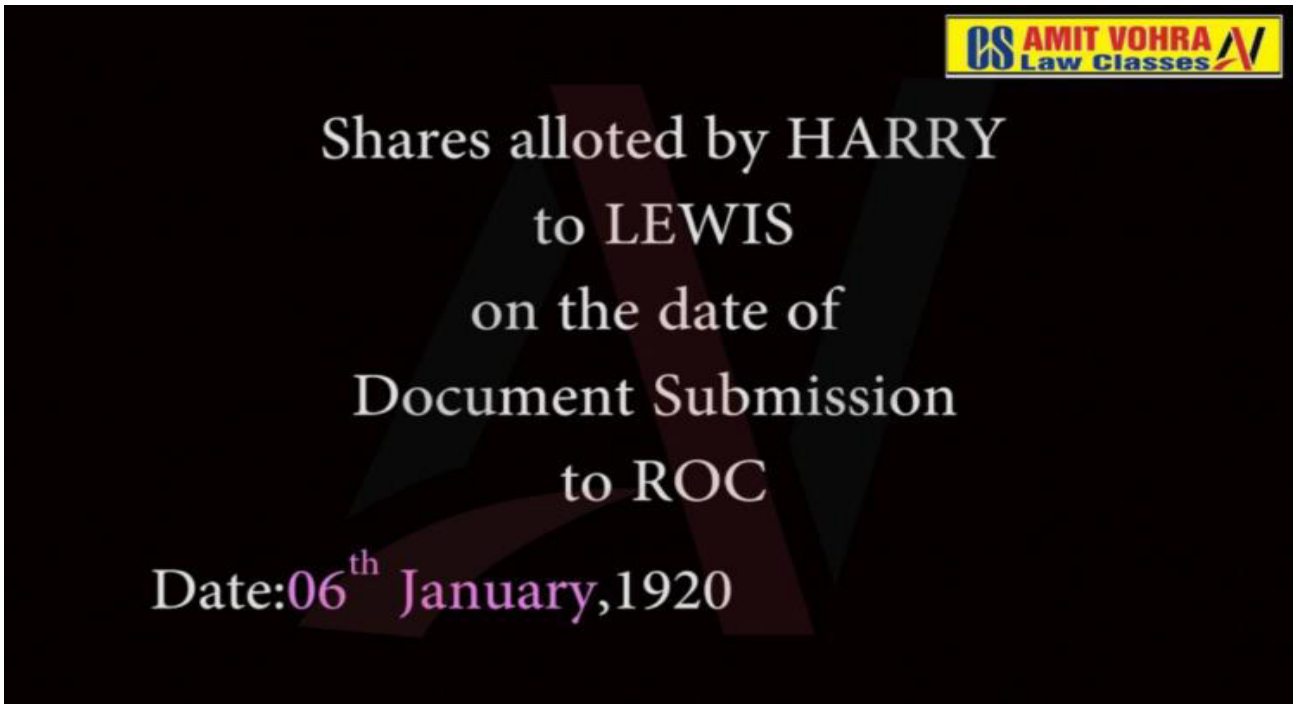
-Promoter:1 (Ammy)

-Promoter:2 (Harry)

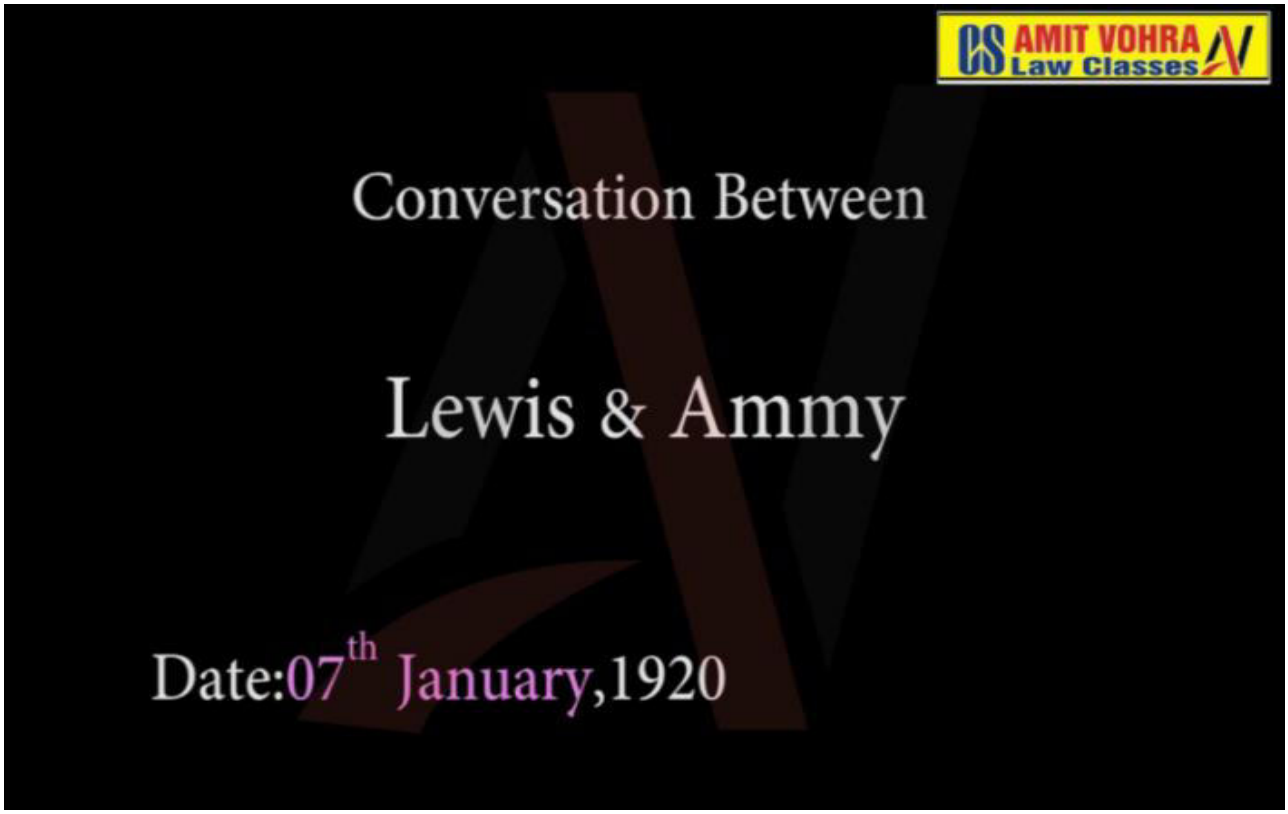
Date:06th January,1920

CS AMIT VOHRA
Law Classes
Hello Harry,
documents dedo, main ROC mein jaake
company registered kara deta hu

CS AMIT VOHRA
Law Classes
R
O
C

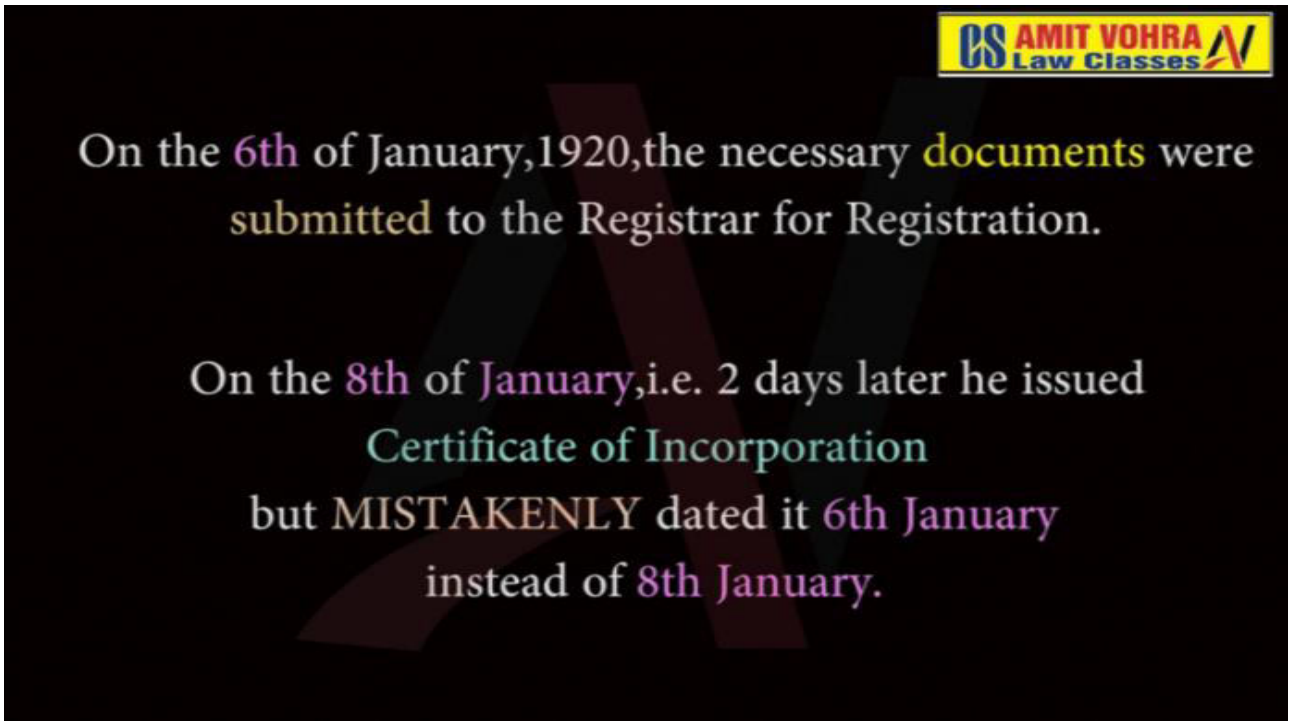

CS AMIT VOHRA Law Classes
Shares alloted by HARRY
to LEWIS
on the date of
Document Submission
to ROC
Date:06th January,1920

CS AMIT VOHRA Law Classes
Lewis aaya tha.
Humne usko shares allot
kare hai ,ye rahi uski payment


CS AMIT VOHRA Law Classes
Conversation Between
Lewis & Ammy
Date:07th January,1920

CS AMIT VOHRA Law Classes
Ammy, you cheated on me!
Tumne mere saath galat kiya hai.
Maine tumhe saare shares ki payment kar di hai
Tab bhi mujhe sunne mein aa raha hai
ki tumhari company abhi tak registered nahi hai,
aur mere saare shares void hai

CS AMIT VOHRA Law Classes
Lewis Ji, aisa nahi hai.
Humne company ke documents ROC main
submit kara diye hai
ek do din mein humari company
registered ho jaegi.


CS AMIT VOHRA Law Classes
On the 6th of January,1920,the necessary documents were submitted to the Registrar for Registration.
On the 8th of January,i.e. 2 days later he issued Certificate of Incorporation
but MISTAKENLY dated it 6th January
instead of 8th January.

Certificate of Incorporation

Jubliee Cotton Mills ltd .

Name of Company

This is to certify that the above-mentioned Company has been registered by the Registrar of Companies as a Limited Liability Company on the

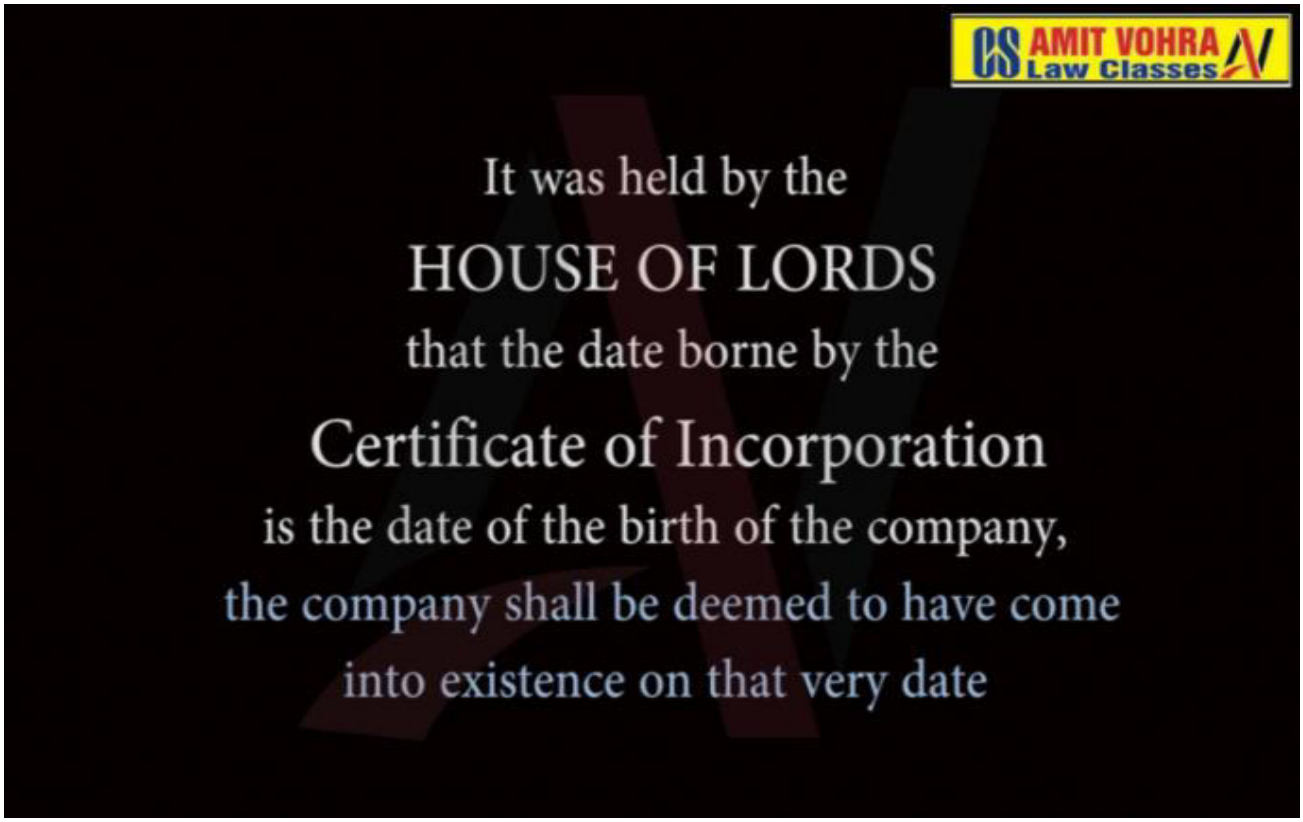
06.01.1920

Date of Registration

REGISTERED ROC REGISTERED

Registrar of Companies

Dated this 06th day of January 1920



It was held by the

HOUSE OF LORDS

that the date borne by the

Certificate of Incorporation

is the date of the birth of the company,

the company shall be deemed to have come

into existence on that very date

Case Study: 4 **Section 10**

Though six out of seven signatures to the Memorandum of Association of a company were forged, the company was registered and the Certificate of Incorporation was issued. Can the registration of the company be challenged subsequently on the ground of forged signatures?

Or

The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a Certificate of Incorporation. The plaintiff contended that (a) conditions of registration were not duly complied with, and (b) that there were no seven subscribers to the Memorandum. Will the Court uphold his contention?

Answer

Yes, (being a fundamental right under the Constitution of India to go for legal proceedings) the registration of the company can be challenged but it will not in any way affect or cancel the registration of the company and the Memorandum and Articles.

[***Moosa* v/s *Ebrahim***]

Accordingly, even though conditions of registration prescribed by act might not have been duly implied with prior to registration, e.g., the signature of memorandum by all inputs, forged or there were not even subscribers to memorandum **once COI is issue, the court can't go behind it & existence of company can't be questioned.**

Section 10 (1) of the Companies Act, 2013 states that subject to the provisions of the Act, the Memorandum and Articles shall, when registered, bind the company and the members thereof, to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.

Case Study: 5 **Section 3 & 9**

The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

Answer

Section 3 of the Companies Act states that a company may be formed for any lawful purpose by 7 or more persons in case of public company, 2 or more persons in case of private company and 1 person in case of a one person company. Hence, a company cannot be formed for an unlawful purpose or for carrying on illegal business.

Section 9 of the Act further provides that from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, a may from time to time, become members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company under this Act. Under this Act a company can be formed for a lawful purpose. Hence, a company cannot be formed in the first place for an illegal business activity.

In the present case the Registrar was at fault in issuing the certificate of incorporation but the issue of the certificate of incorporation does not give the company the right to do illegal business.

On applying the above provisions in the present problem, the company's contention is wrong.

Though a certificate of incorporation is a conclusive evidence of its formation and existence,, it does not render its illegal objectives as legal. In ***Bowman* v *Secular Society Ltd.***, the court held that the statute does not provide that all or any of the objects specified in the memorandum, if otherwise illegal, would be rendered legal by the certificate. Therefore, the contention of the company that the nature of business cannot be gone into after the certificate of incorporation has been obtained is not tenable. Moreover, the illegality of its objects is adequate grounds for the Registrar to rectify his gross mistake and suo motu take necessary steps to cancel the certificate of incorporation.

19. Service of Documents [Section 20]

Section 20 of the Act, provides the **mode in which documents may be served on the Company**, on the members and also on the Registrar.

(*1*) *Service of documents to Company*

A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by

(a) registered post; or

(b) speed post or

(c) courier service or

(d) leaving it at its registered office or

(e) means of such electronic or other mode as may be prescribed **(Rule 35)**

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

(*2*) *Service of documents to registrar or member*

Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by

(a) post or

(b) registered post or

(c) speed post or

(d) courier or

(e) delivering at his office or address, or

(f) such electronic or other mode as may be prescribed **(Rule 35).**

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Notes:

1. For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery
2. For Section 20(2), in case of Nidhi Company, the document may be served only on members who hold shares of more than one thousand rupees (` 1000) in face value or more than one per cent, of the total paid-up share capital of the Nidhis whichever is less.

   For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi

20. Authentication of Documents, Proceedings & Contracts [Section 21]

As per Section 21 of the Act:

(a) a **document or proceeding requiring authentication** by a company; or

(b) **contracts made** by or on behalf of a company,

may be **signed by**

(i) any **key managerial personnel** or

(ii) an **officer** or employee (or any other person – in case of Specified IFSC Private & Specified IFSC Public Companies) of the company duly **authorised by the Board** in this behalf.

21. Execution of Bills of exchange etc [Section 22]

(*1*) *Acceptance, endorsement etc. of Bill of exchange, hundi etc.*

A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(*2*) *Authorization by Company*

A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

(*3*) *Binding nature of authorization given by Company*

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.

Chapter – 2 Unit - 3
MEMORANDUM AND ARTICLES OF ASSOCIATION OF COMPANY

SYNOPSIS

1. List of Sections under Chapter Memorandum and Articles of Association of Company
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3. Purpose of Memorandum
4. Form of Memorandum [Section 4(6)]
5. Printing and Signing of MOA [Section 3 & 4]
6. Contents of Memorandum [Section 4(1)]
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   (2) Situation or Registered office Clause [Section 4(1)(b)]
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7. Alteration of Memorandum of Association
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   (1) Change of Name
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13. Articles of Association
    (1) Contents of Articles of Association
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15. Legal Effect of registration of MOA & AOA [Section 10]
    (1) Members bound to the company
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16. Doctrine of Ultra Vires
17. Consequences or Effects of Ultra Vires Act
18. Constructive Notice of Memorandum of Association
19. Doctrine of Indoor Management
    (1) Exceptions to the Doctrine of Indoor Management

AMIT VOHRA LAW CLASSES

1. List of Sections under Chapter Memorandum and Articles of Association of Company

Section	Particular of Section
Section 2(5)	Definition of Articles
Section 2(56)	Definition of Memorandum
Section 4	Memorandum
Section 5	Articles
Section 6	Act to override Memorandum and Articles
Section 10	Effect of MOA & AOA
Section 12	Registered office of Company
Section 13	Alteration of Memorandum
Section 14	Alteration of Articles
Section 16	Rectification of Name
Section 17	Copies of Memorandum & Articles to be given to members

2. Definition and Meaning of Memorandum [Section 2(56)]

- The term 'Memorandum of Association' has defined under [**section 2(56)]** of the Companies Act, 2013.

  According to this section, "memorandum" means memorandum of association of a company as **originally framed or altered from time** to time in pursuance of any previous company law or of this Act.
- The memorandum of association is a document, which contains the **fundamental provisions** of the company's contribution.
- It contains the essential conditions upon which alone the company can be incorporated. In this respect, it is company's charter of its existence and operations and is of supreme importance in determining its powers.
- It defines as well as confines the powers of the company. It not only shows the objects of formation but also **determines the utmost possible scope of its operations beyond which its action cannot go.**

  Section 4 of the Act prescribes the particulars to be mentioned in a memorandum of association and other requirements. It is the **constitution document of the company.** The company cannot depart from the provisions of the memorandum. If it enters into a contract or engages in any trade or business which is **beyond the powers** conferred on it by the memorandum, such a contract or the act will be **ultra vires** (Beyond Powers) the company and hence **void.**

Case Law	***Pacific Coast Coal Mines Ltd.* v *Arbuthnot* (1917)**
The company has no power to do any act not authorized expressly or impliedly by its memorandum and any act so done is ultra vires and incapable of ratification, even if every member of the company assents to it.	

3. Purpose of Memorandum

The purpose of memorandum is towards:—

- The **intending shareholder** who contemplates the investment of his savings, should have knowledge of the field the corporate is operating in, or the purpose for which it is going to be used and what risk he is taking in making the investment.
- Anyone dealing with the company will without reasonable doubt whether the contractual relation into which such person is entering with the company is one relating to a matter within its corporate objects.

Case Law	***Egyptian Salt and Soda Co.* v *Port Said Salt Association Ltd***
In short, the memorandum enables shareholders, creditors and all those who deal with the company to know what its powers are and what the range of its activities is.	

4. Form of Memorandum [Section 4(6)]

Section 4(6) of the Companies Act 2013 provides that the memorandum of association should be in any one of the Forms specified in **Tables A, B, C, D or E** of Schedule I to the Act.

- The Form in **Table A** is applicable in the case of companies limited by shares.
- The form in **Table B** is applicable to companies limited by guarantee not having a share capital.
- The form in **Table C** is applicable to the companies limited by guarantee having a share capital.
- The form **in Table D** is applicable to unlimited companies not having a share capital;
- The form in **Table E** is applicable to unlimited companies having a share capital.

5. Printing and Signing of MOA [Section 3 & 4]

The memorandum of association must be printed, divided into paragraphs, numbered consecutively and signed by each subscriber:—

- **7** in the case of a **public company**
- **2** in the case of a **private company**
- **1** in case of **OPC**

in the presence of **at least one witness** who shall attest the signatures of the subscribers.

Each subscriber must state his address, occupation and the number of shares he takes opposite his name.

Only a person **sui juris *i.e.,* capable of entering into contract** on his own can subscribe to the memorandum.

Notes:

1. Both artificial and natural persons can subscribe to memorandum.
2. In case of OPC, along with the name of subscriber, name of nominee shall also be given with his prior consent, who shall, in the event of subscriber's death or incapacity become the member of company.
3. Minor and incompetent person cannot be subscriber

Case Law	***Palaniappa Mudaliar* v *Official Liquidator Pashupati Bank Ltd***
It has been decided in case of ***Palaniappa Mudaliar* v *Official Liquidator, Pashupati Bank Ltd***, that minor and incompetent person cannot be a subscriber to the memorandum.	

6. Contents of Memorandum [Section 4(1)]

Section 4(1) of the Companies Act, 2013 provides that the memorandum of association of every company must contain the following clauses:

(*1*) *Name Clause* [*Section 4*(*1*)(*a*)]

A company being a legal entity must have a **name of its own** to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is **not undesirable.**

The name of the company with "**Limited**" as its last word in the case of a public company; and "**Private Limited**" as its last words in the case of a private company.

Further in case of One Person Company, the words ''**One Person Company''** shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved. Ministry of Corporate Affairs (MCA) has clarified that **display of its name in English in addition** to the display in the **local language** will be a sufficient compliance with the requirements of the section.

A Specified IFSC Private Company and Specified IFSC Public Company, shall have the suffix "International Financial Service Company" or "IFSC" as part of its name.

Note: Company registered under section 8 for charitable objects has been exempted from this requirement.

***Publication of Name* [*Section 12*]**

As per Section 12, the **name of the company and the address of the registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses,** if any must be **mentioned in legible characters in all business letters, in all its bill heads, letter papers** and in all its notices and other official publications, as well as in all negotiable instruments and other prescribed documents.

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

***Restriction on the name* [*Section 4*(*2*)]**

Section 4(2) of the Companies Act, 2013 provides that name stated in the memorandum shall not—

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

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

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

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

Case Law ***Atlas Cycles* (*Haryana*) *Ltd.* v *Atlas Products Pvt. Ltd* (2008)**

In the case of ***Atlas Cycles* (*Haryana*) *Ltd.* v *Atlas Products Pvt. Ltd* (2008),** use of the brand name as corporate name was settled. Both the plaintiff and the defendant companies belong to the same family. The Appellant-plaintiff was the proprietor of the trade mark in the name "Atlas". The Respondent-defendant company containing the name "Atlas" in its corporate name started dealing in bicycles. The plaintiff objected to the use of the name "Atlas" by the defendant company. The Defendants were restrained from using the word 'Atlas' in their corporate/trade name in respect of bicycles and bicycle parts.

***The name should not give impression that the company is connected with the government* [*Section 4*(*3*)]**

Section 4(3) provides that a company shall not be registered with a name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

(b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

Note: Restriction for use of world 'national' name in the names of Companies or LLP

***Application for reservation of name to the Registrar* [*Section 4*(*4*)]**

Section 4(4) provides that a person may make an application, in such form and manner and accompanied by such fee, as may be prescribed [as per Companies (Registration Office and Fees) Rules, 2014 (` 1000/-)] 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.

[Rule 9 Reservation of name or change of name]

An application for **reservation of name** shall be made through the web service available at www.mca.gov.in by using web service **SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32)**, and for **change of name** by using **web service RUN (Reserve Unique Name)**

along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, **Central Registration Centre** after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.

[Rule 9A Extension of reservation of name in certain cases]

Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar **shall extend the period of a name reserved** under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) **forty days** from the date of approval under rule 9, on payment of fees of **rupees of one thousand rupees made before the expiry of twenty days** from the date of approval under rule 9;

(b) **sixty days** from the date of approval under rule 9 on payment of fees of **rupees two thousand made before the expiry of forty days** referred to in clause (a) above;

(c) **sixty days** from the date of approval under rule 9 on payment of fees of rupees **three thousand made before the expiry of twenty days** from the date of approval under rule 9:

Provided that the **Registrar shall have the power to cancel the reserved name** in accordance with sub-section (5) of section 4 of the Act

***Approval for reservation of name by the Registrar* [*Section 4*(*5*)]**

Section 4(5) provides that upon receipt of an **application under sub-section (4),** the Registrar may, on the basis of information and documents furnished along with the application, **reserve the name for a period of twenty days** from the date of approval or such other period as may be prescribed.

Provided that 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.

Powers of the Registrar for cancellation of the name reserved upon wrong or incorrect information if the Company has not been incorporated

Where after reservation of name it is found that name was applied by furnishing wrong or incorrect information if the company has not been incorporated, the reserved **name shall be cancelled** and the person making application shall be liable to a **penalty** which may **extend** to **one lakh rupees.**

***Rectification of name of the Company* [*Section 16*]**

(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of **three months** from the issue of such direction, after adopting an **ordinary resolution** for the purpose.

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

(3) If a company is in **default** in complying with any direction given under sub-section (1), the **Central Government shall allot a new name to the company** in such manner as may be prescribed and the Registrar

shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

(*2*) *Situation or Registered office Clause* [*Section 4*(*1*)(*b*)]

The name of the State in which the registered office of the company is to be situated must be given in the memorandum.

Section 12(1) provides that a company shall, within **thirty (30) days** of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

A Specified IFSC Private Company and Specified IFSC Public Company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set up under the Special Economic Zone Act, 2005 read with Special Economic Rules, 2006, where it is licensed to operate, at all times.

The company shall furnish to the Registrar verification of its registered office within a period of **thirty days** (**60 days** in case of Specified IFSC Private Companies & Specified IFSC Public Companies) of its incorporation in the **Form INC-22.**

(*3*) *Objects Clause* [*Section 4*(*1*)(*c*)]

All companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. It sets out the objects and is the most important of all clauses. It indicates the extent of company's power and the sphere of its activities. It defines the limit of operations to be carried on by the company.

A Specified IFSC Private Company and Specified IFSC Public Company shall state its object to do financial services activities, as permitted under Special Economic Zone Act, 2005 read with Special Economic Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate.

Any business carried on by the company should be stated in the memorandum of association hence the business activities not mentioned in the objects clause of the memorandum shall be *ultra vires* and therefore, void. **(Doctrine of *Ultra Vires*).**

The objects should be stated in the following manner in clause 3rd of the MOA:

(*a*) The objects to be pursued by the company on its incorporation are:—

(*b*) Matters which are **necessary for furtherance** of the objects specified in clause 3(*a*) are:"

Note:

1. Here the word necessary for furtherance means ancillary
2. If object of a company is illegal, such company cannot be registered.

(*4*) *Liability Clause* [*Section 4*(*1*)(*d*)]

The 4th clause of memorandum of every company must state whether the liability of its members is limited by shares or limited by guarantee.

(i) In a company **limited by shares** that liability of its members is limited to the amount unpaid, the liability of a member whose shares are fully paid up is nil.

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

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

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

(*5*) *Capital Clause* [*Section 4*(*1*)(*e*)]

To be stated 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 and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share per subscriber; and
- The number of shares each subscriber to the memorandum intends to take indicated opposite his name.
- The authorised share capital can also be termed as **Registered or Nominal Share Capital.**

Declaration for Subscription:

The subscribers to the memorandum declare: **"We, the several persons whose names and addresses are subscribed below, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names"**. Then follow the names, addresses, description, occupations of the subscribers and the number of shares each subscriber has agreed to take and their signatures attested by a witness**.**

The statutory requirements regarding subscription of memorandum are that:

(i) Each subscriber must take at least one share; and

(ii) Each subscriber must state opposite his name the number of shares which he agrees to take**. [Section 4(1)(e))]**

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

7. Alteration of Memorandum of Association

Section 13(1) of the Companies Act, 2013 provides that save as provided in **section 61 (Dealing with power of limited company to alter its share capital),** a company may, by a **special resolution** and after complying with the procedure specified in this section, alter the provisions of its memorandum. The memorandum of association of a company may be altered in the following respects:

(1) By changing its name **[Sections 13(2)].**

(2) By altering it in regard to the State in which the registered office is to be situated **[Section 13(4) & (7)].**

(3) By altering its objects **[Section 13 (1) & (9).**

(4) By altering the liability clause **[Section 13 (1)]**

(4) By altering its share capital **(Section 61).**

The provisions or conditions of the memorandum of association relating to the name clause, registered office clause, the objects clause, limited liability clause, subscriber's share clause as provided in **Section 4** of the Companies Act, 2013 or any other specific provisions contained therein, can be altered by following the prescribed procedure laid down in the Act. Strict compliance of the prescribed procedure is demanded by law.

Further **section 13(6)** provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the **special resolution** passed by the company under **section 13(1).**

Section 13(10) provides that no alteration made under this section shall have any effect until it has been registered in accordance with the provisions of the said section. Further, any alteration of the memorandum, 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. **[Section 13 (11)]**

Below mentioned are the procedure for alteration of various clauses of MOA:

8. Alteration of Name Clause

(*1*) *Change of Name*

The name of the company can be changed by a special resolution and with the written approval of the Central Government. The powers of the Central Government for approving change in the name have been delegated to the Registrar of Companies.

Approval of the Central Government is not necessary if the change relates to the addition / deletion of the word 'private' to the name of the company consequent to the conversion of a private company into a public company and vice versa. **[Section 13(1) & (2)].**

(*2*) *Rectification of Name* [*Section 16 read with Rule 33A of Companies (Incorporation) Rules, 2014*]

Section 16 provides that if by inadvertence or otherwise, a company is registered by a name which is identical to or too nearly resembles the name of a company already in existence. The rectification of name must also be carried out if central government so directs at any point of time after registration of the company. The direction of the central government is required to be complied with by the company within a period of 3 months from the date of issue thereof.

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

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

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

Rule 33A. Allotment of a new name to the existing company under Section 16(3) of the Act.

(1) In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of **section 16** of the Act within a period of three months from the date of issue of such direction, the letters "**ORDNC" (which is an abbreviation of the words "Order of Regional Director Not Complied**"), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in **Form No.INC-11C:**

Provided that nothing contained in sub-rule (1) shall apply in case **e-form INC-24** filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

(2) A company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of **section 12** of the Act and the statement, "**Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)"** shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved:

Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of **section 13** of the Act.

(*3*) *Rule 29 of Companies* (*Incorporation*) *Rules 2014 states that*

(1) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon.

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be

(2) An application shall be filed in **Form No.INC.24** along with the fee for change in the name of the company and a new certificate of incorporation in Form **No.INC.25** shall be issued to the company consequent upon change of name.

(4) Effect of change of name

The change of name **will not affect** any **rights and obligations** of the company, or legal proceedings commenced **under the old name**. However, where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not competent. Inspite of a change in name the entity of the company continues. The company is not dissolved nor does any company come into existence.

9. Alteration of Situation Clause

(1) Change of Registered Office.

Change within the local limits of same town [Section 12 (4) read with Rule 27]

- A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a **Board Resolution**.
- A notice of the change is to be given to the Registrar of Companies in Form No. INC22 **within fifteen (15) days** (**60 days** in case of Specified IFSC Private Companies & Specified IFSC Public Companies) of such change.
- This change of registered office **does not involve alteration of memorandum**.

Change from one city to another within the same State [Section 12(5)]

If the registered office is to be shifted from one city, town or village to another city, town or village within the same State, a **special resolution** by postal ballot (except OPC and other company upto 200 members) has to be passed in the general meeting of the company**.**

A notice of the change is required to be given to the Registrar in Form no INC 22, within fifteen (15) days (**60 days** in case of Specified IFSC Private Companies & Specified IFSC Public Companies) **of such change along with Form no MGT 14 (within 30 days of passing of SR), towards special resolution passed**.

Note:

1. In case of Specified IFSC Private Companies & Specified IFSC Public Companies, the registered office can be changed from one place to another within the international Financial Services Centre by passing a Board resolution.
2. The Specified IFSC Private Companies & Specified IFSC Public Companies, shall not change the registered office to any other place outside the international Financial Services Centre.

(2) Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies

- Proviso to **Section 12(5)** provides that along with **Special Resolution**, confirmation by the **Regional Director** (filed in **Form INC-23**) will be necessary for changing registered office of a company from one place to another if the change of registered office is from the jurisdiction of one Registrar to the jurisdiction of another within the same State.
- **Rule 28 of Companies (Incorporation) Rules, 2014** states that the Regional Director, after hearing the parties shall pass necessary orders within a period **of fifteen days** from the date of the receipt of the application complete in all respects.
- Thereafter, the company concerned shall **file** a copy of the said **order with the Registrar of Companies** (ROC) within a period of **thirty days** from the date of the confirmation order by Regional Director.
- The said **ROC** shall **record** the ordered **changes in** its **records**.
- The **ROC** of the state where the **registered office** of the company was **previously situated**, shall **transfer all the documents** and papers **to** the **new ROC**.

A notice of the change is required to be given to the Registrar in Form no INC 22, within fifteen (15) days (**60 days** in case of Specified IFSC Private Companies & Specified IFSC Public Companies) **of such change along with Form no MGT 14, towards special resolution passed**.

Note: This provision is applicable only in those states where there are more than one offices of Registrar of Companies. At present there are two states where there are more than one offices of ROCs. They are Maharashtra and Tamil Nadu. In Maharashtra the two offices of ROCs are located at Mumbai and Pune; whereas in Tamil Nadu the offices of ROCs are located at Chennai and Coimbatore.

Rule 28 of Companies (Incorporation) Rules 2014 states that

(1) An **application** seeking **confirmation** from the **Regional Director** for **shifting the registered office** within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in **Form no.INC.23** along with the fee and following documents:

(a) **Board Resolution** for shifting of registered office;

(b) **Special Resolution** of the members of the company approving the shifting of registered office;

(c) A **declaration** given by the **Key Managerial Personnel or any two directors** authorised by the Board, that the **company has not defaulted** in **payment of dues to its workmen** and **has either the consent of its creditors** for the proposed shifting **or has made necessary provision for the payment** thereof ;

(d) A **declaration not to seek change in the jurisdiction of the Court** where cases for prosecution are pending;

(e) Acknowledged copy of **intimation to the Chief Secretary** of the State as to the proposed shifting and that the employees' interest is not adversely affected consequent to proposed shifting

Also, **Form no MGT.14** is to be filed with the Registrar towards special resolution.

(2) The **Regional Director** shall **examine the application** referred to in sub-rule (l) and the application may be **put up for orders without hearing** and the **order** either approving or rejecting the application shall be passed **within fifteen days of the receipt of application** complete in all respects.

(3) The **certified copy of order** of the Regional Director, **approving the alternation of memorandum for transfer of registered office** company within the same State, shall be **filed in Form No.INC-28** along with fee with the Registrar of State **within thirty days** from the date of receipt of certified copy of the order.

***Change from one State to another State* [*Section 13*(*4*)]**

The change of registered office from one State to another State involves alteration of memorandum, and the change can be effected by **a special resolution** of the company which must be confirmed by the Central Government **(delegated to RD)** on an application made to it **[Section 13(4)].**

The **Central Government** shall **dispose of the application** within a period of **sixty days** and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that a sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge **[Section 13(5)]**.

A company shall, in relation to any alteration of its memorandum involving change of registered office from one State to another**, file** with the **Registrar** the special resolution passed by it in **MGT 14 [Section 13(6)]**

Where an alteration of the memorandum results in the shifting of the registered office of a company from one State to another, a **certified copy** of the **order** of the **Central Government** approving the alteration shall be filed by the company with the **Registrar of each of the States** within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration **[Section 13(7)]**.

Rule 30 states that

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one state Government or Union territory to another, shall be filed with the central Government in Form No. lNC.23 along with the fee and shall be accompanied by the following documents, namely:—

(a) a copy of Memorandum of Association, with proposed alterations;

(b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;

(c) a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:—

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that

(i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23—

(a) advertise in the Form No.INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with wide circulation in the state in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received:

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed".

Rule 31 The certified copy of the **order of** the **Central Government**, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be **filed** in **FormNo.INC.28** along with the fee as with the **Registrar** of the State within **thirty days** from the date of receipt of certified copy of the order.

Case Law ***Minerva Mills Limited* v *Government of Maharashtra***

A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.

10. Alteration of Object Clause

Pursuant to Section 13(1) a company can change its objects clause by passing a special resolution. Further in case of a listed company, the special resolution for alteration in the objects clause of the Memorandum of Association needs to be passed through Postal Ballot in terms of section 110.

The Company needs to file special resolution in the Form MGT-14 along with the altered copy of the memorandum of association and other relevant documents with the Registrar with the filing fee as prescribed under the Companies (Registration Offices and Fees) Rules, 2014. Thereafter the Registrar shall register alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

Rule 32 of Companies (Incorporation) Rules states that:

(1) when the company has **raised money from public** through **prospectus** and has **any un-utilized amount** out of the money so raised, it shall **not change the objects for which the money so raised** is to be applied unless a **special resolution** is passed through **postal ballot** and the **notice** in respect of the resolution for altering the objects **shall contain** the following particulars, namely:—

- the total **money received**;
- the total **money utilized** for the objects stated in the prospectus;
- the **unutilized amount** out of the money so raised through prospectus,
- the particulars of the **proposed alteration** or change in the objects;
- the **justification** for the **alteration** or change in the objects;
- the **amount proposed to be utilised** for the **new objects**;

- the **estimated financial** impact of the proposed alteration on the earnings and cash flow of the company;
- the **other relevant information** which is necessary for the members to take an informed decision on the proposed resolution;
- the **place** from where any interested person may **obtain a copy** of the notice of resolution to be passed.

(2) The **advertisement** giving details of each resolution to be passed for change in objects which shall be **published** simultaneously with the dispatch of postal ballot notices to shareholders, except OPC and other companies with members not exceeding 200.

(3) The **notice** shall also be placed on the **website** of the company, if any.

11. Alteration of Liability Clause

As per section 13(1), a company may, by a special resolution alter the provisions of its memorandum. It means that a company can change the liability clause of its memorandum of association by passing a **special resolution**. Further section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).**Form MGT-14** needs to be filed with the ROC within 30 days.

12. Alteration of Capital Clause

Section 61 of the Companies Act, 2013 provides that a company limited by shares may, by passing an ordinary resolution in a general meeting, alter the capital clause of its memorandum; provided authority to alter is given to it by its articles of association. A notice of alteration in **Form No. SH-7** and copy of resolution is required to be filed with the ROC within **30 days.**

As per Section 61(1) Capital Clause can be altered in any of the following ways:—

- By increasing its authorized share capital by an issue of new shares. Although, section 61(1) (a) of the Companies Act, 2013 refers to the issue of new shares, it really deals with a case of increase in the authorised share capital, and not increase of the issued share capital. The case of increase of the issued or subscribed capital is dealt with separately by section 62 of the Act.
- By Consolidating and dividing existing shares into shares of larger denomination.
- By sub-dividing shares into shares of smaller denomination than is fixed by the memorandum, so, however, that the proportion between the amount paid and unpaid shall remain the same.
- By converting fully – paid shares into stock or vice – versa.
- Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

All the above alterations do not require the confirmation by the Tribunal except that alteration relating to consolidation and division which results in changes in the voting percentage of shareholders shall not take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

These alterations are, however, required to be notified and a copy of the resolution should be filed with the Registrar within 30 days of the passing of the resolution along with an altered memorandum. **[Section 64(1)].**

13. Articles of Association

According to **Section 2(5)** of the Companies Act, 2013, provides that "articles" means Articles of Association of the company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

***Form and Contents of Articles* [*Section 5*]**

The articles of a company shall be in respective forms specified in Tables, **F, G, H, I and J** in **Schedule I** as maybe applicable to such company.

- The Form in **Table F** is applicable in the case of companies limited by **shares**;

- the Form in **Table H** is applicable to the companies limited by **guarantee not** having a **share capital**;
- the Form in **Table G** is applicable to companies limited by **guarantee having** a **share capital;**
- the Form in **Table J** is applicable to **unlimited companies not having share capital**.
- the Form in **Table I** is applicable to **unlimited companies having share capital;**

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

Section 5(2) provides that the articles shall also contain such matters, as may be prescribed.

(*1*) *Contents of Articles of Association*

Articles usually contain provisions relating to the following matter.

1. Exclusion wholly or in part of Table F.
2. Adoption of preliminary contracts.
3. Number and value of shares.
4. Issue of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. Share certificates.
14. Dematerialisation.
15. Conversion of shares into stock.
16. Voting rights and proxies.
17. Meetings and rules regarding committees.
18. Directors, their appointment and delegations of powers.
19. Nominee directors.
20. Issue of Debentures and stocks.
21. Audit committee.
22. Managing director, Whole-time director, Manager, Secretary.
23. Additional directors.
24. Seal.
25. Remuneration of directors.
26. General meetings.
27. Directors meetings.
28. Borrowing powers.
29. Dividends and reserves.
30. Accounts and audit.
31. Winding up.

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32. Indemnity.
33. Capitalisation of reserves.

(*2*) *Entrenchment Provisions* [*Section 5*]

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 Companies Act, 2013 recognizes an interesting concept of entrenchment. Essentially, the **entrenchment provisions allow** for certain **clauses in the articles** to be **amended upon satisfaction of certain conditions or restrictions** (such as obtaining a 100% consent) **greater than those prescribed** under the Act. This provision acts as a **protection to the minority shareholders** and is of **specific interest** to the **investment community**. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

The provisions for **entrenchment** referred to in section 5(3) shall be made **either on formation** of a company, or **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 of such provisions in such form and manner as may be prescribed. [Section 5(5)]

(*3*) *Alteration of Articles of Association* [*Section 14*]

- A company has a statutory right to alter its articles of association;
- The power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum;
- **Section 14(1)** provides that a company may, by a **special resolution**, alter its articles including alterations having the effect of conversion of a private company into a public company; or vice versa;

  It also stipulates that any alteration having the effect of conversion of a public company into a private company shall **not be valid unless** it is **approved** by an order of the **Central Government** on an application made to it;
- **Section 14(2)** - Every alteration of the articles under this section and a copy of the order of the **Central Government** approving the alteration as per section 14(1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of **fifteen day**s.

(*4*) *Restriction on Alteration of Articles of Association*

- Alteration must **not exceed** the powers given in **MOA**.
- Alteration must **not** be **inconsistent** with **Companies Act**.
- Alteration **must be** in the ***bona fide*** interest of company.
- Alteration must **not** be **illegal**.
- Alteration must **not be against** to **public policy**.
- No alteration regarding **expulsion of member**.

(*5*) *Act to Override MOA & AOA* [*Section 6*]

Section 6 of the Companies Act, 2013 provides that:-

- If the MOA & AOA or resolution passed by board or members contain provisions which are contrary to the act, then the provisions as contained under the **act shall prevail.**
- If the provisions contained in the MOA & AOA or the resolution passed by Board or members is more restrictive than that of the Act, then such **restrictive provisions shall prevail over the act**.

14. Copies of Memorandum, articles etc. to be given to members [Section 17]

(1) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—

- the memorandum;
- the articles; and
- every agreement and every resolution referred to in subsection (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.

(2) If a company makes any **default** in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a **penalty of one thousand rupees for each day** during which such default continues **or one lakh rupees**, whichever is less.

15. Legal Effect of registration of MOA & AOA [Section 10]

Section 10 of the Companies Act, 2013 provides that, subject to the provisions of the Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member; and contained a covenant on its and his part to observe all the provisions of the memorandum and of the articles.

The effect of documents, when registered, may be disused under the following heads:-

1. Members bound to the Company;
2. Company bound to the members;
3. Member bound to Member; and
4. Company not bound to outsider.

(*1*) *Members bound to the company*

The memorandum and articles constitute a contract bind the members to the company. The company can, therefore, enforce articles against any member.

Case Law	***Boreland's Trustee* v *Steel Brother and Co. Ltd.***

In ***Boreland's Trustee* v *Steel Brother and Co. Ltd.*,** articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons at a price fixed by the directors. Boreland a shareholder was adjudicated bankrupt.

His trustee in bankruptcy claimed that she was not bound by these provisions and should be at liberty to sell the shares at their true value. It was held that the trustee was bound by the articles as the shares were purchased by Boreland in terms of the articles of the company.

(*2*) *Company bound to Members*

Just as the members are bound to the company, so also the company is bound to the members to observe and follow the articles.

Case Law	***Wood* v *Odessa Waterworks Co.***

In ***Wood* v *Odessa Waterworks Co.*,** The articles provided that the directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in cash. Instead of paying the dividend in cash to the shareholders resolution was passed to give them debentures/bonds. The directors were restrained from acting on the resolution.

(*3*) *Member bound to Member*

As between the members inter-se each member is bound by the articles to the other members.

Case Law	***Rayfield* v *Hands***

In ***Rayfield* v *Hands*,** the plaintiff was shareholder of company. The articles required him to inform the director of his intention to transfer his shares and the director (who were also member) were to take those shares at a fair price. The plaintiff notified the directors, who contended that they were not bound to take the shares and pay for them. It was held that the articles were banking upon the plaintiff as member and the directors as members, so that the member- directors upon the plaintiff as a member and the directors as members, so that the member-directors were bound to purchase plaintiff's shares and pay for them.

(4) Company not bound to Outsider

The team "outsider" signifies a person who is not member of the company, even if she is a director of an or solicitor to the company. The articles do not constitute a contract between a company and an outsider. No outsider can acquired any enforceable rights by virtue of articles. The articles do not confer any contractual rights even upon a member, in a capacity other than that of a member. To succeed, the party suing must prove a contract outside and independent of the articles of association of the company.

Case Law	***Eley* v *Positive Life Insurance Co.***

In ***Eley* v *Positive Life Insurance Co.***, the articles provided that Eley should act as a solicitor for life to the company and should not be removed from office except for misconduct.

Eley acted as a solicitor to the company and also became a member of the company.

The company however discontinued his he had no cause of action because the articles did not constitute any contract between the company and himself as solicitor,. His action was dismissed.

Difference between Memorandum and Article of Association

- The **memorandum**, being the charter of the company, is the **supreme document**. **Articles** are **subordinate** to the memorandum. If there is **conflict** between the articles and the **memorandum**, the latter **prevails.**
- **Memorandum** is the charter of the company, which defines the **fundamental conditions and objects** for which it is incorporated. **Articles** of association contain the **internal rules and regulations** framed by the company to govern its internal management.
- The **memorandum** defines the **area beyond** which the activities of the company **cannot go** while **articles** lay down the regulations for the **internal management** of the company within the area determined by the memorandum (Ashbury versus Riche).
- Registration of **Memorandum is mandatory** for all classes of companies, however a public company with share capital may adopt the model specified in **Table F** of Schedule I as its **Articles,** so as to avoid the formalities of registration of articles with the Registrar.
- **Memorandum** can be **altered** by following **various prescribed provisions** which may include approval of NCLT. In case of **articles**, the **alteration** can be done by a **special resolution**, to any extent, provided they do not conflict with the Memorandum and the Companies Act.
- Any act of the company which is **ultra vires**, the **memorandum** is wholly **void** and **cannot be ratified** even by the whole body of shareholders. Any act of the company, which is **ultra vires** the **articles**, **but** is **intra vires** the **memorandum**, can be **confirmed** by the **shareholders**.

16. Doctrine of *Ultra Vires*

The meaning of the term '**ultra vires'** is **beyond the powers of**. **Anything** which is **outside the specified objects and powers** or not reasonably incidental to or necessary for the attainment of objects of the company **is ultra vires the company** and therefore is **void**.

No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it. Consequently, an act, which is ultra vires the company, does not bind the company and neither the company not the other contracting party can sue on it.

The study of the objects clause in the Memorandum cannot be complete without understanding the evolutionary process that this aspect has undergone in the UK during the last 142 years. The *ultra vires* doctrine of the object was finally settled and truly laid in the celebrated case **of *Ashbury Railway Carriage and Iron Co*. v *Riche* (1875)**.

Case Law	***Ashbury Railway Carriage and Iron Co.* v *Riche* (1875)**

In that case, as illustrated that the object of the company was "to make and sell, or lend on hire, railway carriages and wagons and all kinds of railway plant, and to carry on the business general contractors; to purchase, lease, work and sell mines, minerals, lands and to do all such other things as are necessary, contingent or conducive to all or any of such objects."

"The company entered into a contract with the plaintiff for the financing of the construction of a railway line in Belgium and the question that came up before the court was whether the contract was valid. **The House of Lords** held that the contract was *ultra vires* the company and observed that the Memorandum of Association "states affirmatively the ambit and extent of vitality and power which by law are given to the corporation and it states negatively that nothing shall be done beyond that ambit and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified."

- **Ultra vires act**

  An ultra vires act cannot be ratified even by whole body of shareholders.

  The execution of a document by the managing directors, without the common seal, is an ultra vires act and a subsequent resolution cannot ratify it.

- **Ultra vires contract**

  A contract, which is ultra vires the company, is no contract at all.

- **Ultra vires borrowings**

  In a case where the borrowing is ultra vires directors and intra vires the company the money could be recovered in an action for money and received.

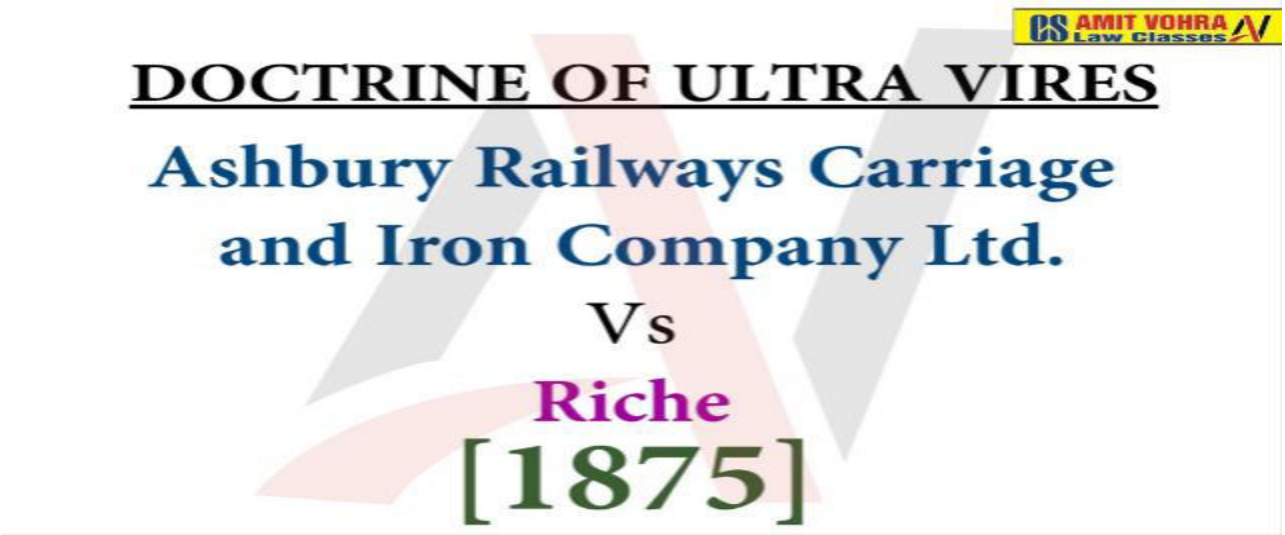
- **Ultra vires grants and guarantees**

  A guarantee for the payment of dividends, which enables the guarantor to bring an action against the company for reimbursement even when there are no profits, is ultra vires and void .

17. Consequences or Effects of *Ultra Vires Act*

Injunction: Any member of the company can bring injunction against the company restraining it from proceeding with the ultra vires acts.

Personal liability of Directors: The funds of the company under the act can only be applied in carrying out its authorized objectives. If director has made ultra vires payment, he may be compelled to refund the money to the company.



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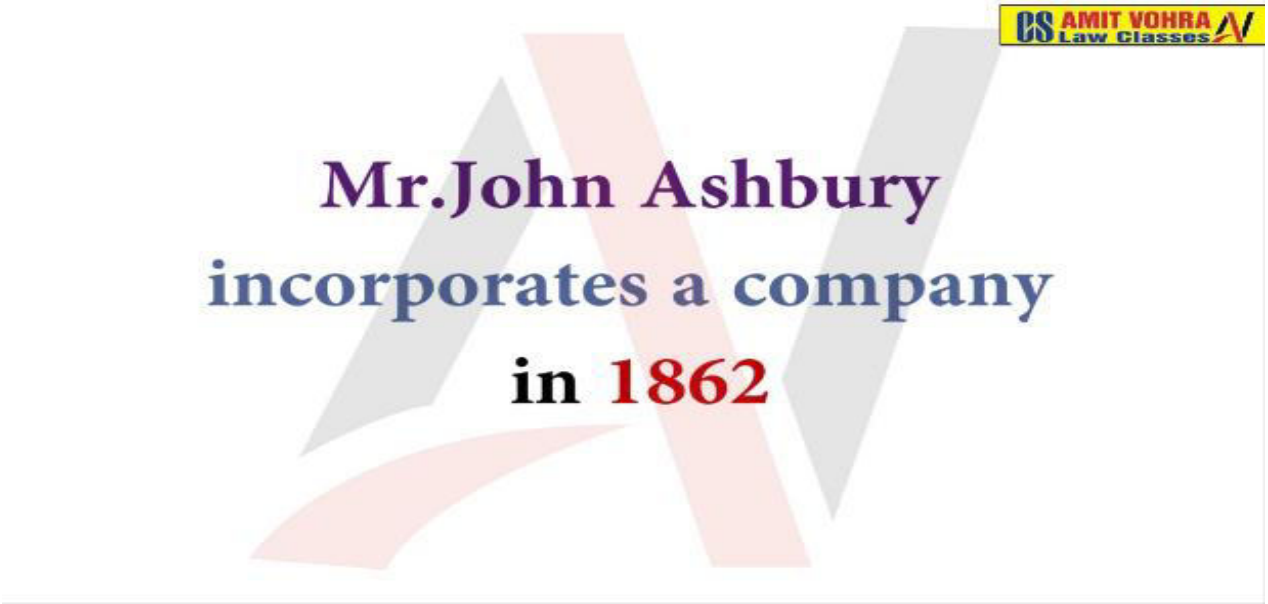
Characters Playing In This Case
John Ashbury (MD)
Riche
Officer (Belgium Govt.)
Director
(Ashbury Railways)
Judge


CS AMIT VOHRA Law Classes
Mr.John Ashbury
incorporates a company
in 1862

CS AMIT VOHRA Law Classes

The **object clause** of MEMORANDUM OF ASSOCIATION
stated the objects of Company
"to make and sell, or lend on hire railway carriages and wagons ,
and all kinds of railway palint, fittings,
machinery and rolling stock to carry on
the business of mechanical engineers and general contractors
to purchase and sell as merchant timber ,
coal, metal or other materials;
and to buy and sell any materials on
commissions or as agents"

CS AMIT VOHRA Law Classes

Mr.John Ashbury
in the Office of
Belgium Government
on 14th March 1864.

1
CS AMIT VOHRA Law Classes
Congrats! Mr.Ashbury
Apki company ko Belgium City mein
Railway track banane ka
70,000 pounds ka contract milta hai.

2
CS AMIT VOHRA Law Classes
Thank You Sir !
We will make our best efforts
to make you feel proud.

CS AMIT VOHRA Law Classes

Mr.John Ashbury
in his office with
other **Board Members.**

4
CS AMIT VOHRA Law Classes
but humari company to pehle se hi
kuch bade projects mein shaamil hai
to is contract ke liye hum resources
arrange kaise kar sakenge!

5
CS AMIT VOHRA Law Classes
I think we must assign the contract
to some other contractor
Yes we can
apki knowledge mei koi
contractor hai ?

CS AMIT VOHRA Law Classes

Director Of
Ashbury Railways Carriage
and Iron Company Ltd.
Calling Riche

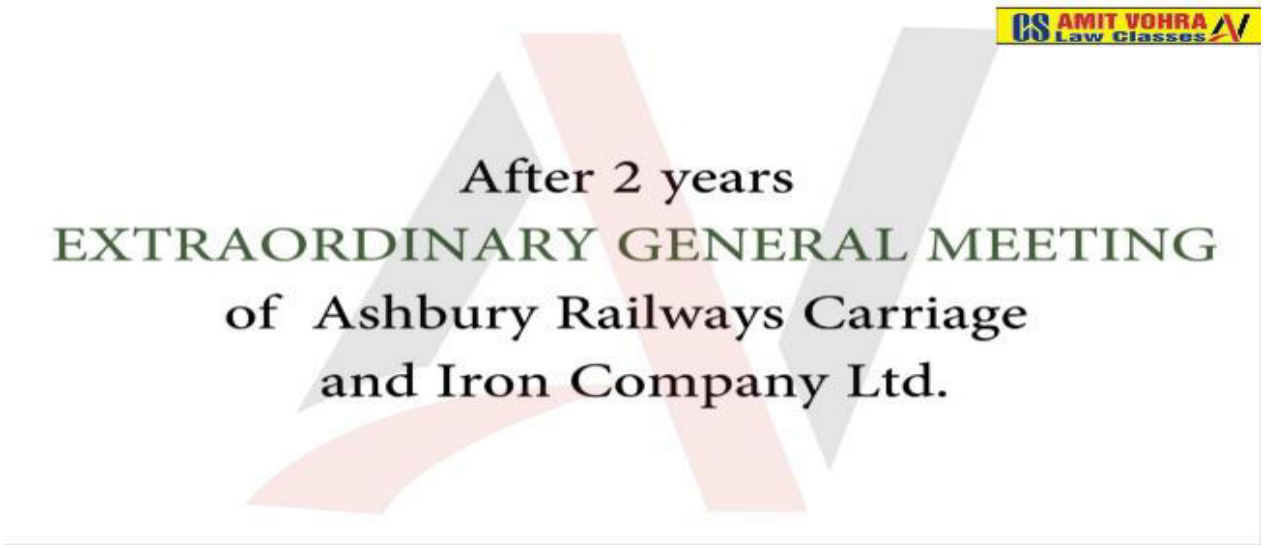
CS AMIT VOHRA Law Classes

Mr.Riche
in the office of
Ashbury Railways Carriage
and Iron Company Ltd.

8
CS AMIT VOHRA Law Classes
2
It's my pleasure to work for you Sir
but mere pass itni funding nahi hai
1
Humari company ko Railway line
banane ka contract mila hai
jo hum aapko assign karna chahte hai

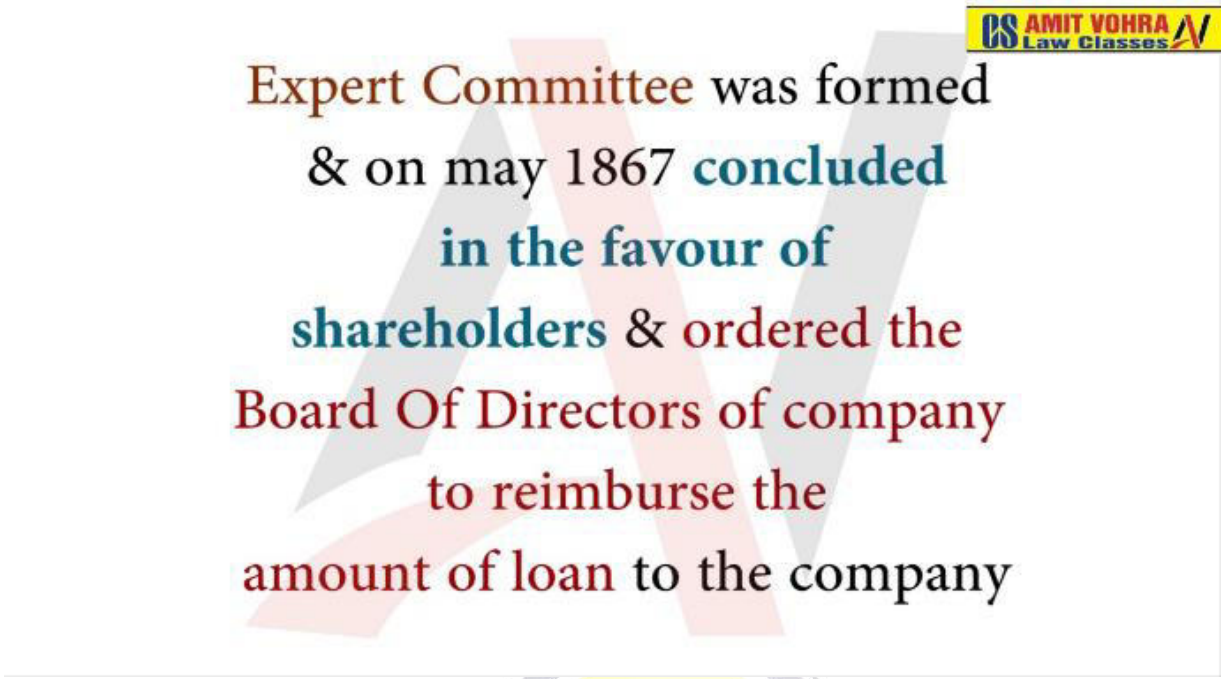
9
CS AMIT VOHRA Law Classes
2
Done Sir
1
No issues
We will finance you the amount and
subsequently set it off

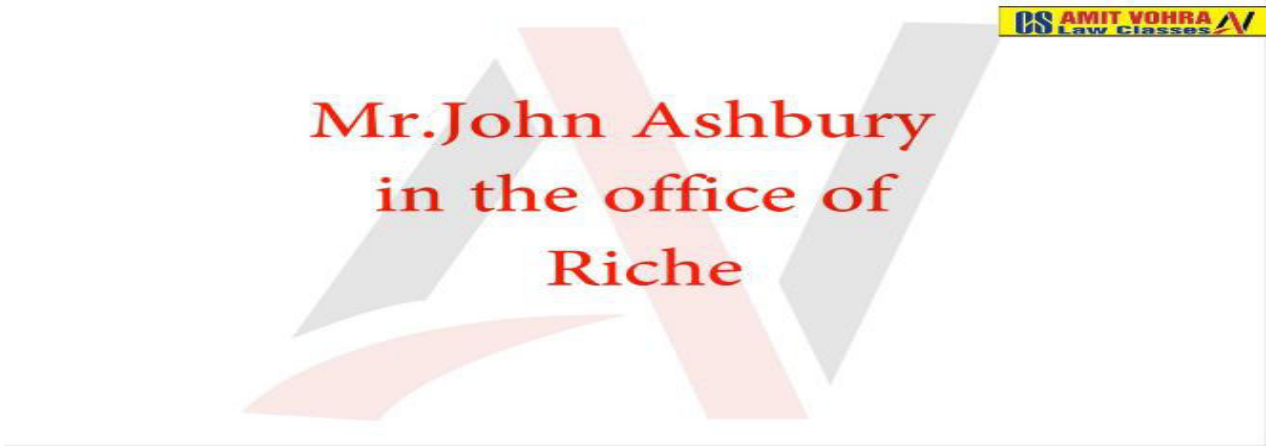
CS AMIT VOHRA Law Classes
In the year 1865
Ashbury Railways Carriage and
Iron Company limited
explictly entered into a
FORMAL CONTRACT with Riche


CS AMIT VOHRA Law Classes
After 2 years
EXTRAORDINARY GENERAL MEETING
of Ashbury Railways Carriage
and Iron Company Ltd.

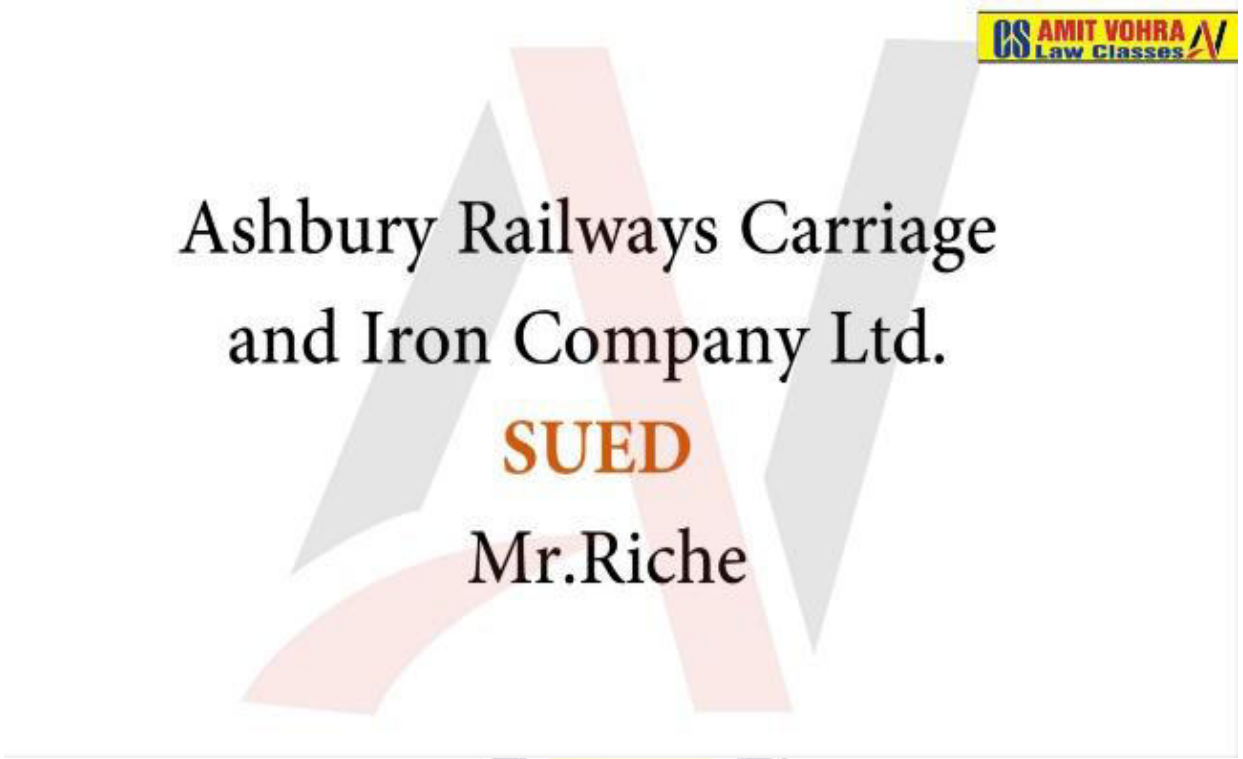
10
CS AMIT VOHRA Law Classes
3 Ultra Vires contract
aap kehna kya chahte hai ?
1
Mr.Ashbury hum shareholders
aapke kaam se nakhush hai
Member
2
Kyu ki aap Board Of Directors
ne Ultra Vires contract kiya hai

11
CS AMIT VOHRA Law Classes
1 Ji haan
Humari company M/s.Riche ko railway line
contract ke lie finance kar rahi hai
Member
2 jabki ye memorandum ke bhara hai
hum sahreholders is contract ko
disapprove karte hai


CS AMIT VOHRA Law Classes
Expert Committee was formed
& on may 1867 concluded
in the favour of
shareholders & ordered the
Board Of Directors of company
to reimburse the
amount of loan to the company


CS AMIT VOHRA Law Classes
Mr.John Ashbury
in the office of
Riche

12
CS AMIT VOHRA Law Classes
1. Humare shareholders ne aapke contract par objection raise kiya hai and I am sorry to inform you that hum us contract ko continue nahi kar sakte aur aapko humara loan wapis karna hoga
2 I will not repay any loan instead aapko apne sahreholders se approval lena chahiye


CS AMIT VOHRA Law Classes
Ashbury Railways Carriage
and Iron Company Ltd.
SUED
Mr.Riche

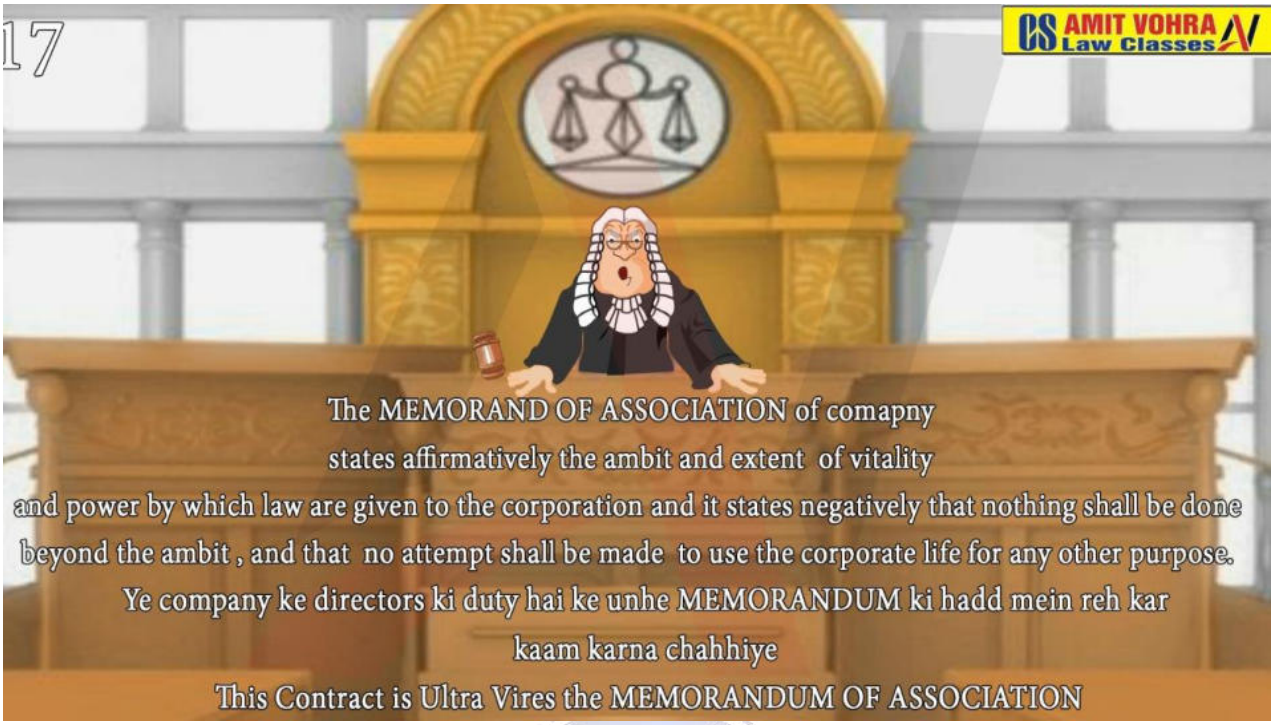
CS AMIT VOHRA Law Classes
'COURT ROOM'

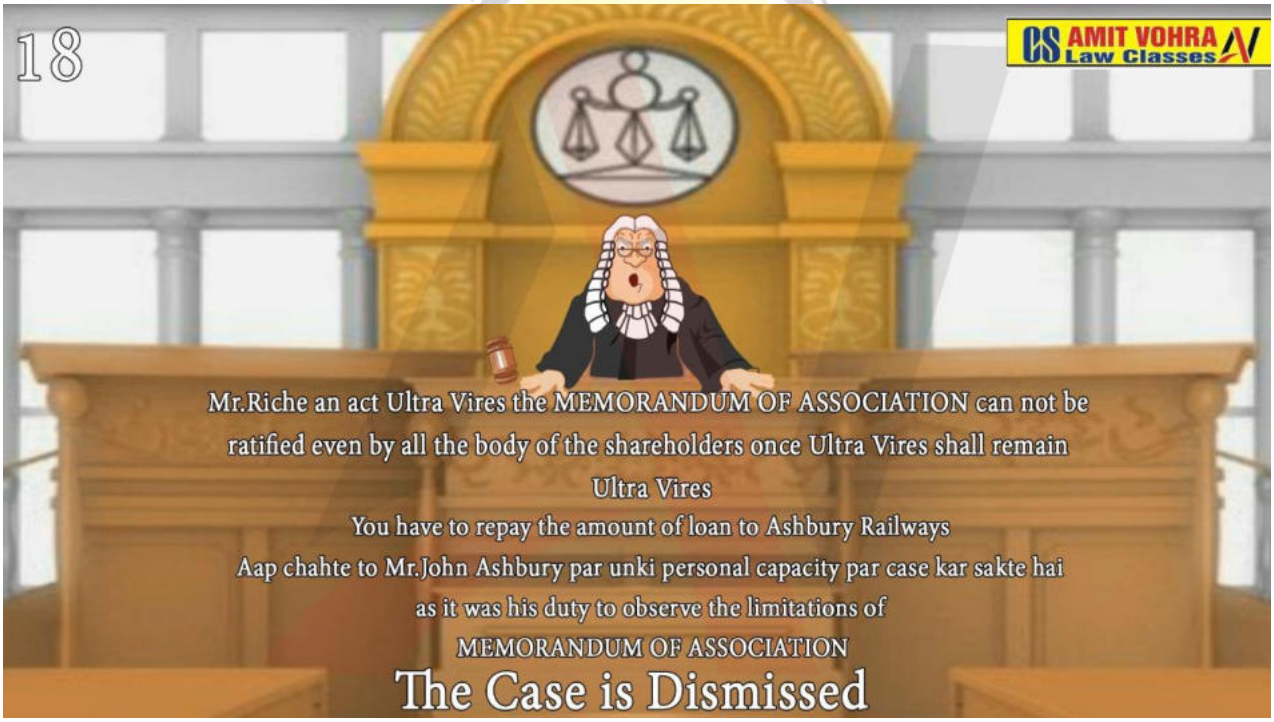
13
CS AMIT VOHRA Law Classes
1
My Lord ! Humari company ko
Belgium Government se 70,000 pounds ka ek contract mila tha
to construct railway line in belgium city
We assigned to contract to M/s.Riche & also agreed to
finance the construction lekin humare shareholders ne objection
raise kardia

14
CS AMIT VOHRA Law Classes
1
Humari company ke objects ke mutabik hum lending nahi
kar sakte, as it is not provided in
MEMORANDUM OF ASSOCIATION

15
CS AMIT VOHRA Law Classes
1
Hence,the contract is Ultra Vires the company
and we pray before you to get he amount back from
M/s.Riche

16
CS AMIT VOHRA Law Classes
2
Your Honour! I agree that the lending and financing is not
mentioned in the object clause of Memorandum
Lekin, Company shareholders ka approval leke
is contract ko kar sakti hai





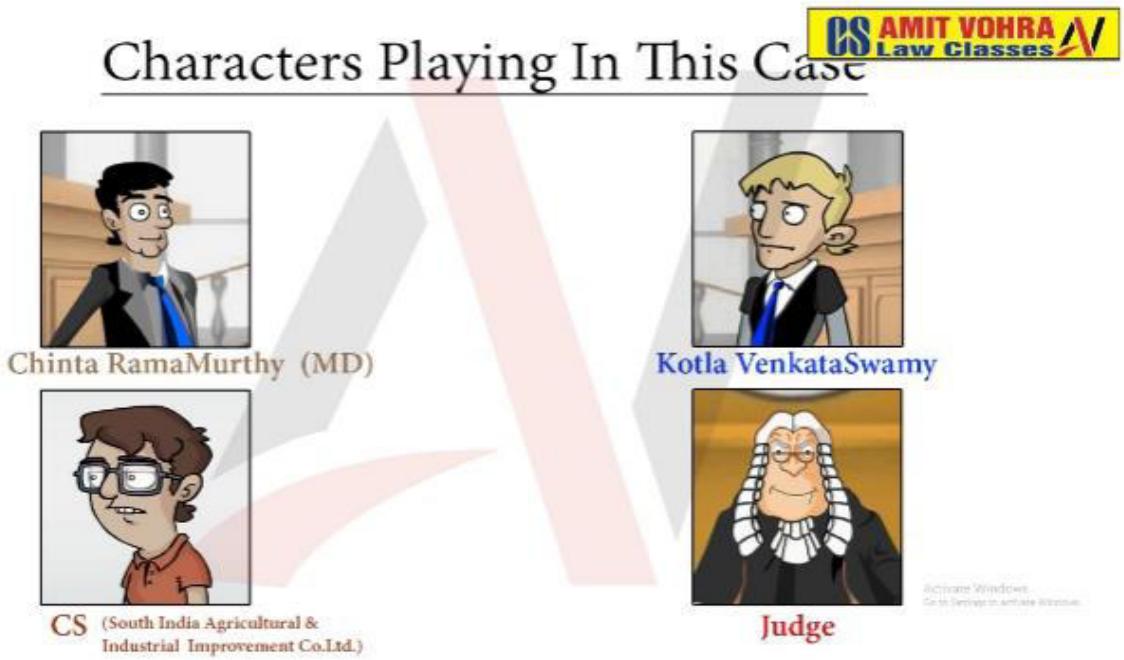
18. Constructive Notice of Memorandum of Association

The office of the Registrar of Companies is a public office and documents filed or registered therewith are public documents. These documents are open and accessible to all for inspection. The Memorandum and Articles of Association of a company assume the character of public document on their registration with the concerned Registrar, therefore the Articles are open to any person to read these documents and ensure that his contract is in keeping with the provisions contained in the Articles.

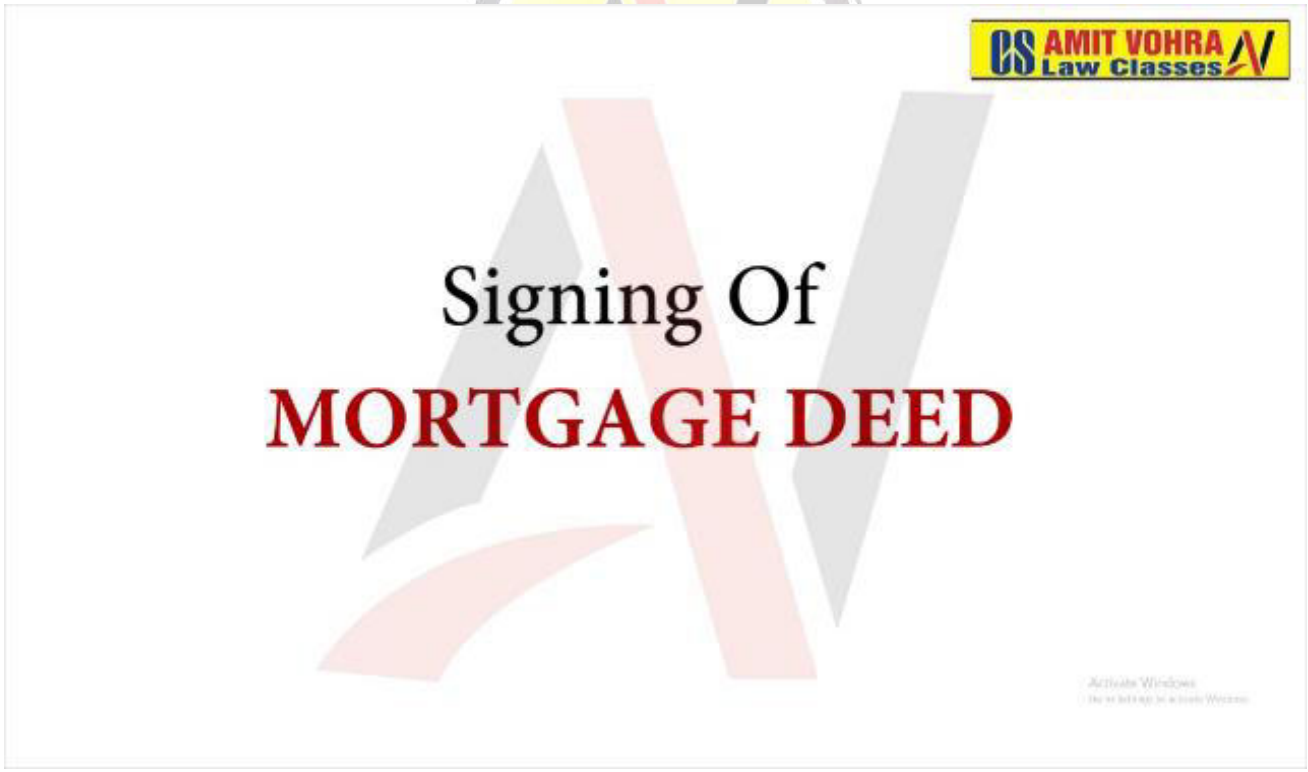
Outsiders dealing with the company are presumed to have constructive notice of contents of the memorandum and the articles

Case Law	***Kotla Venkata Swamy* v *Ramamurthy***
In ***Kotla Venkata Swamy* v *Ramamurthy***, the articles required that all deeds etc. should be signed by the managing director and the secretary but the plaintiff accepted the deed not signed by the managing director. It was held that the plaintiff could not claim under this deed and thus every person dealing with the company is deemed to have notice of the contents of its memorandum and articles and also the have understood them according to their proper meaning. Outsiders may assume that the company's internal management has been regular.	

The 'Doctrine of Constructive Notice' is a negative Doctrine. Because it is against the outsiders dealing with the company and cannot resort to the plea that they did not read or understand the Memorandum of Association and Articles of Association fully. However, there is one exception to the wholesome rule of Constructive notice, which is called **"Doctrine of Indoor Management".**



CS AMIT VOHRA Law Classes
Chinta RamaMurthy
on behalf of
South India Agricultural and Industrial
Improvement Company Limited
Mortgaged its property to
Kotla VenkataSwamy
and borrowed Rupees 1000 to be
repaid after 2 years with interest of 10% p.a


CS AMIT VOHRA Law Classes
Signing Of
MORTGAGE DEED

CS AMIT VOHRA Law Classes
Mortgage Deed
Working Director
CS

CS AMIT VOHRA Law Classes
After 2 Years....

CS AMIT VOHRA Law Classes
Kotla VenkataSwamy
Calls
Chinta RamaMurthy

1
CS AMIT VOHRA Law Classes
Hello Sir,
Kotla Venkataswamy this side,
I just called you to confirm
that when am I getting my money back?
I will let you know.

CS AMIT VOHRA Law Classes
No response has been
received by Kotla VenkataSwamy
from Chinta RamaMurthy

CS AMIT VOHRA Law Classes
Chinta RamaMurthy
Did Not
Pick the Call

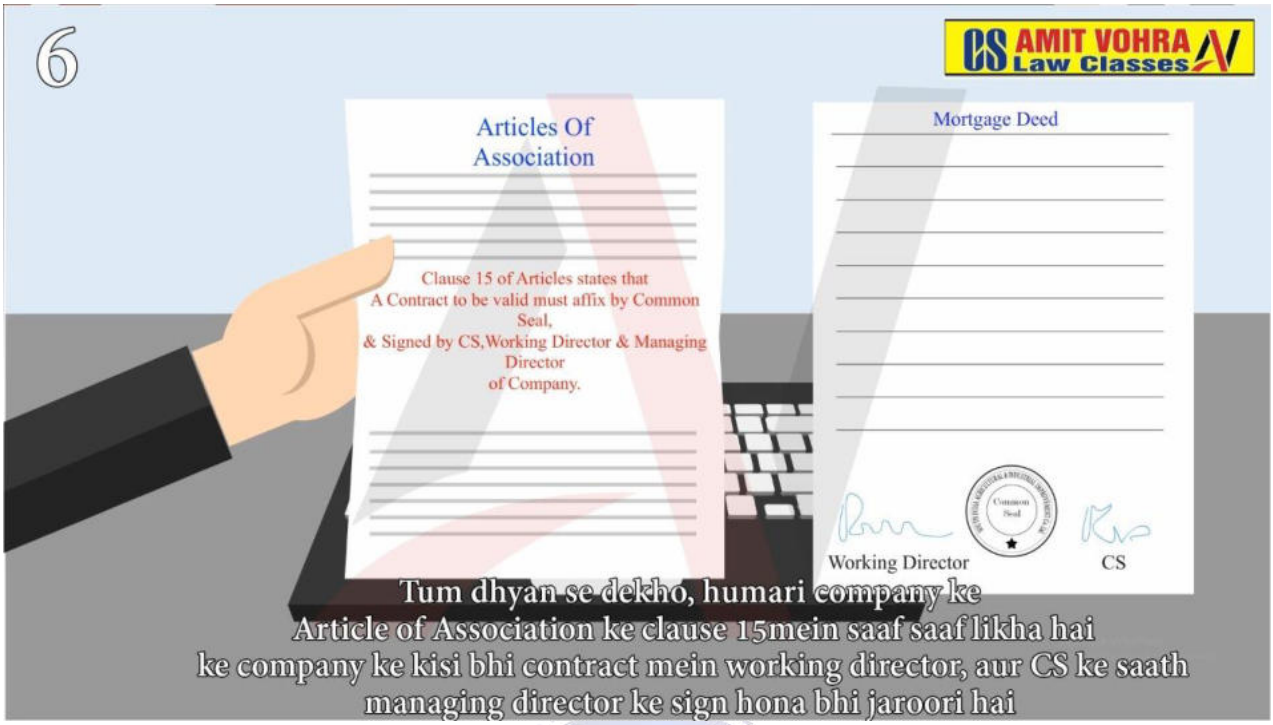
2
CS AMIT VOHRA Law Classes
Lagta hai i need to visit
office personally

CS AMIT VOHRA Law Classes
Kotla VenkataSwamy
with Chinta RamaMurthy
in his office

3
CS AMIT VOHRA Law Classes
1
I am here to
demand my money back
Which money ? 2

4
CS AMIT VOHRA Law Classes
1
My 1000 rupees, jo meine aapki company ko udhaar diye the , is mortgage bond ke against, yaad aaya?
2
Ha yaad aaya par sorry me isme tumhari koi madad nhi kar sakta kyuki ye mortgage bond valid nahi hai

5
CS AMIT VOHRA Law Classes
Articles of Association
Hence,there is no liability of our company

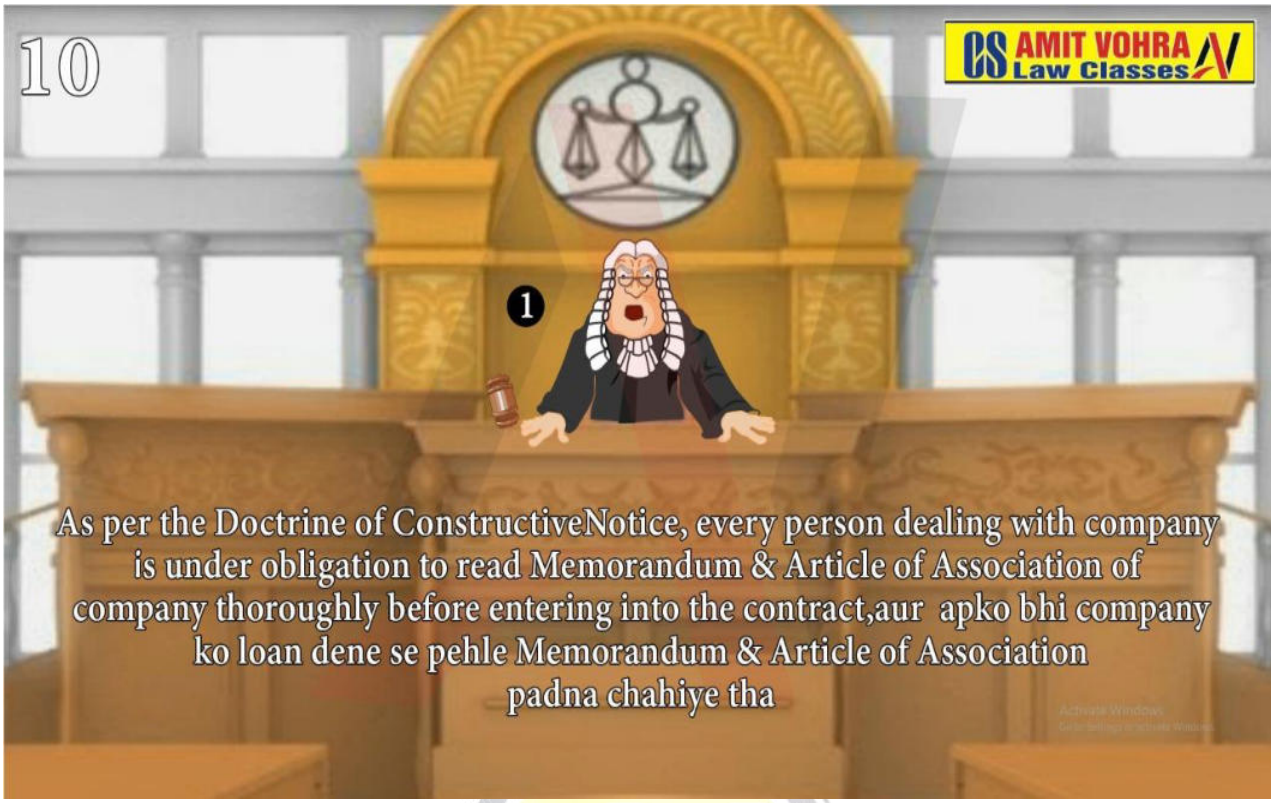

6
CS AMIT VOHRA Law Classes
Articles Of Association
Clause 15 of Articles states that
A Contract to be valid must affix by Common Seal,
& Signed by CS,Working Director & Managing Director
of Company.
Mortgage Deed
Working Director
CS
Tum dhyan se dekho, humari company ke
Article of Association ke clause 15mein saaf saaf likha hai
ke company ke kisi bhi contract mein working director, aur CS ke saath
managing director ke sign hona bhi jaroori hai

CS AMIT VOHRA Law Classes
Kotla VenkataSwamy
Sued
Chinta RamaMurthy

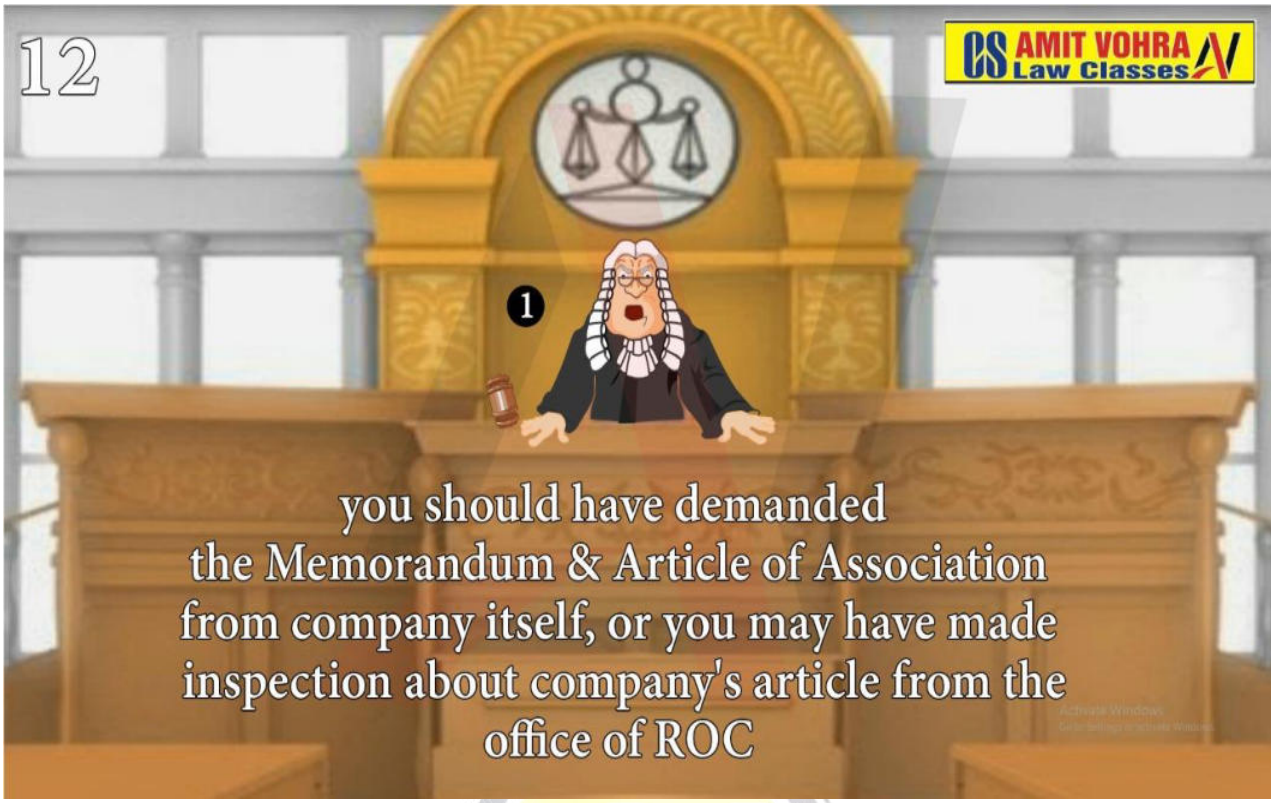
7
CS AMIT VOHRA Law Classes
Chinta RamaMurthy
1
Kotla VenkataSwamy
My lord! Ye mortgage bond valid nahi
hai kyu ki as per articles of company
company is liable for all such contracts
jisme along with common seal,CS,
working Director
managing director ke sign honge
and I am sorry to say , but isme mortgage bond par
managing director ke sign nahi hai

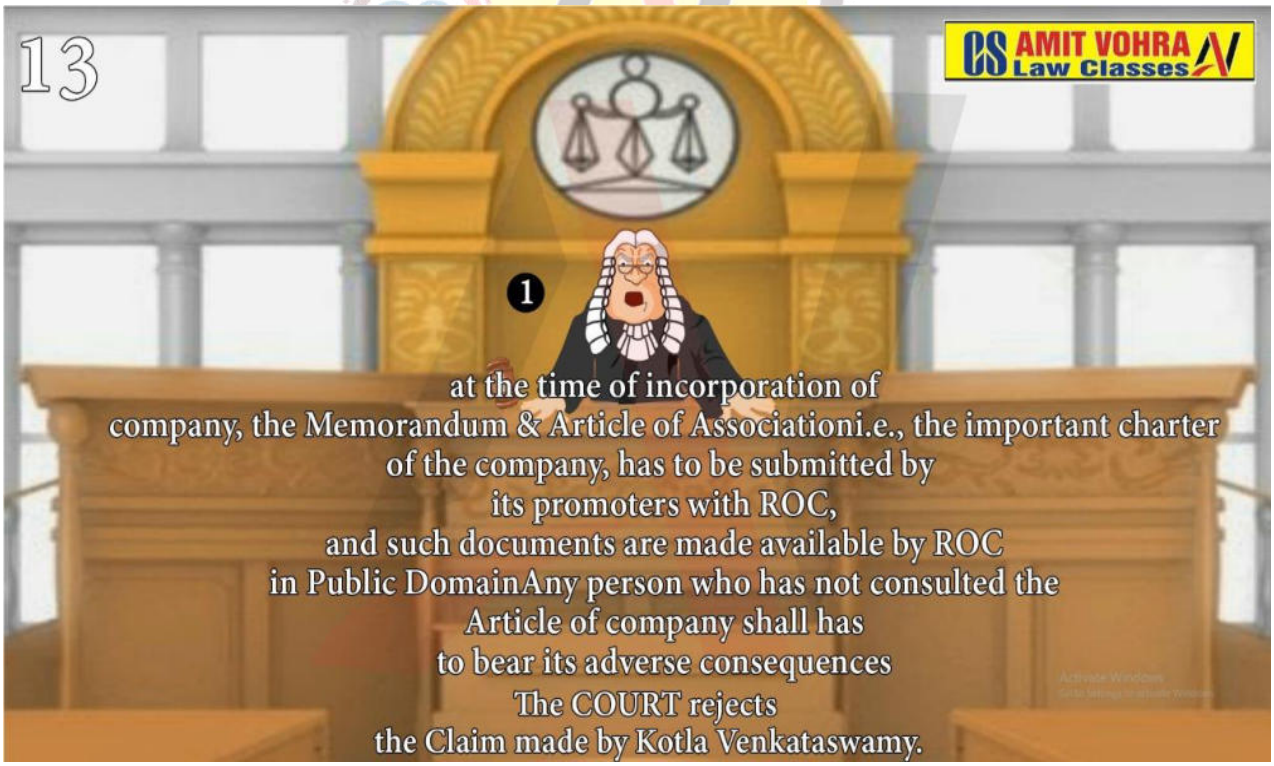
8
CS AMIT VOHRA Law Classes
Chinta RamaMurthy
Kotla VenkataSwamy
1
Your Honour!
At the time of taking loan inke company ke working director and CS ne signatures kiye how do I came to know ? Ke managing director ke sign bhi required hai .
2
Kyu! tumne Article of Association nhi pada tha?

9
CS AMIT VOHRA Law Classes
Chinta RamaMurthy
Kotla VenkataSwamy
2
farak padta hai Kotla VenkataSwamy
1
nahi pada tha usse kya farak padta hai


10
CS AMIT VOHRA Law Classes
1
As per the Doctrine of ConstructiveNotice, every person dealing with company is under obligation to read Memorandum & Article of Association of company thoroughly before entering into the contract,aur apko bhi company ko loan dene se pehle Memorandum & Article of Association padna chahiye tha

11
CS AMIT VOHRA Law Classes
Chinta RamaMurthy
1
Agar aapne Article of Association ko pada hota to aapko yeh pata chal jata ki ye mortgaged bond valid nahi hai, and you should not give loan
Kotla VenkataSwamy
2
But,My Lord! from where should I get Memorandum & Article of Association


12
CS AMIT VOHRA Law Classes
1
you should have demanded
the Memorandum & Article of Association
from company itself, or you may have made
inspection about company's article from the
office of ROC


13
CS AMIT VOHRA Law Classes
1
at the time of incorporation of
company, the Memorandum & Article of Associationi.e., the important charter
of the company, has to be submitted by
its promoters with ROC,
and such documents are made available by ROC
in Public DomainAny person who has not consulted the
Article of company shall has
to bear its adverse consequences
The COURT rejects
the Claim made by Kotla Venkataswamy.

19. Doctrine of Indoor Management

The Doctrine of Indoor Management restricts the scope of the "Doctrine of Constructive Notices".

Case Law	***Royal British Bank* v *Turquand* in 1856**

This Doctrine is also termed as **'Turqu and Rule'** and was enunciated in the famous and leading case of ***Royal British Bank* v *Turquand* in 1856**.

The doctrine of indoor management is based on the maxim **Omnia Praesumuntur Rit Esse Acts** (all things are presumed to have been done rightly). The doctrine seeks to protect outsiders against the company.

It provides a shelter to the outsiders dealing with the company that are, in no way, bound to judge the regularity of the internal procedures of a company. In case of companies where closed door policy is adopted, it will not be within the reach of the outsider dealing to know the regularity of the internal management of the company. It is none of the business of outsiders to conduct an inquiry and make sure that internal procedures have been duly and timely adhered to by the company and they can rely on them.

Therefore, the 'Doctrine of Indoor Management' is just reverse of the 'Doctrine of Constructive Notice'. In case of Doctrine of Indoor Management the outsider is protected against the company whereas in case of Doctrine of Constructive Notice, the company is protected from the outsiders.

The doctrine of indoor management may be summarised as:

"While a person dealing with a company is presumed to have read the public documents and understood their contents and made sure that the transactions are not inconsistent therewith, he is also entitled to assume that the provisions of the Articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that company has carried out its indoor internal proceedings (or indoor management)."

(1) Exceptions to the Doctrine of Indoor Management

The doctrine of indoor management has its own exceptions as stated hereunder.—

(*i*) The rule does not protect a person actually having **knowledge of the irregularity**.

(*ii*) The rule will not apply in favour of a person **who does not make inquiry** regarding the transaction being made under suspicious circumstances. Non-making of inquiry by him where the circumstances so warrant may be considered as negligence on his part and may not be able to resort to this doctrine as his shelter.

(*iii*) The rule does not protect **void or illegal *abinitio*** transactions.

(i*v*) If the acts **are outside the scope of the apparent authority**, rule will not render protection.

(*v*) The rule cannot be invoked in favour of a **person who did not consult** the Memorandum and Articles of Association.

⇒⇒⇒

DOCTRINE OF INDOOR MANAGEMENT

Royal British Bank

Vs

Turquand

[1856]

Characters Playing In This Case

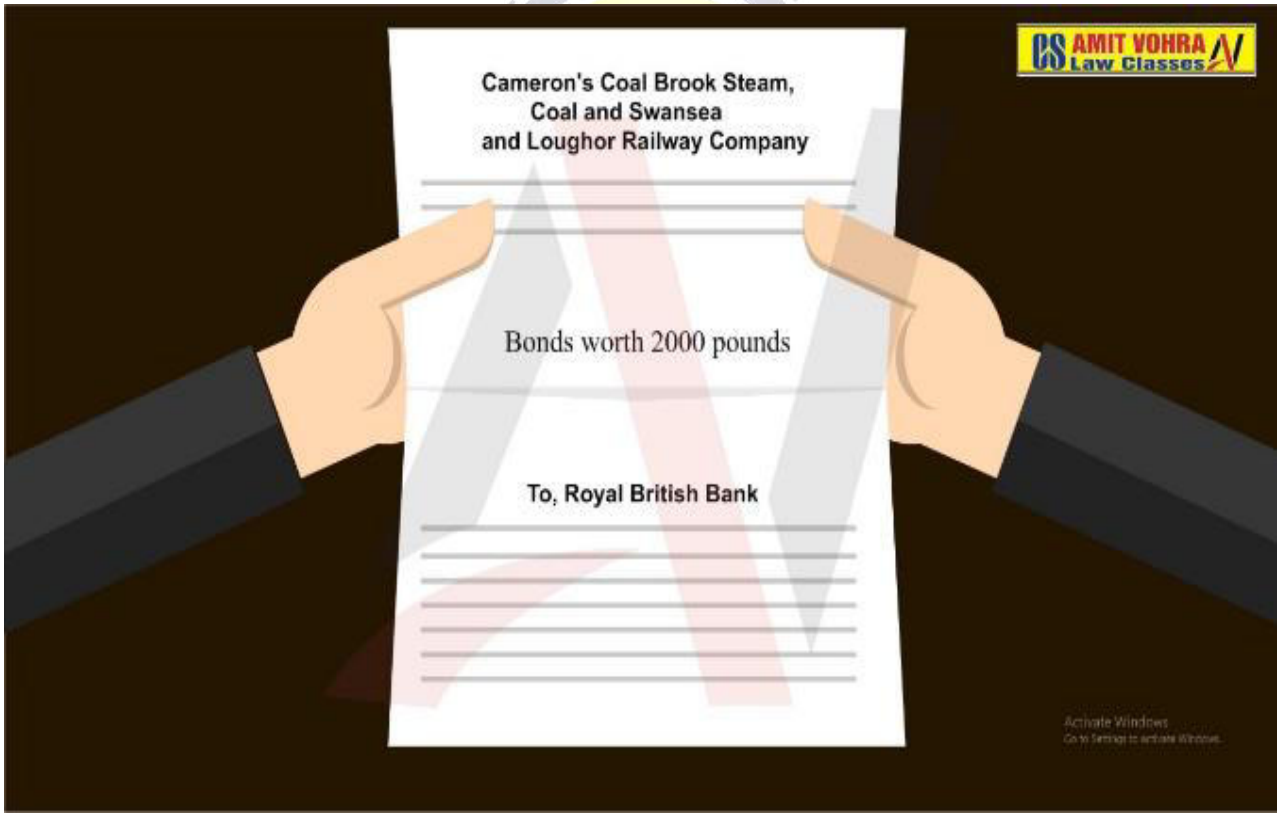
M.D (Cameron's Coal Brook Steam,Coal and Swansea and Loughor Railway Company)

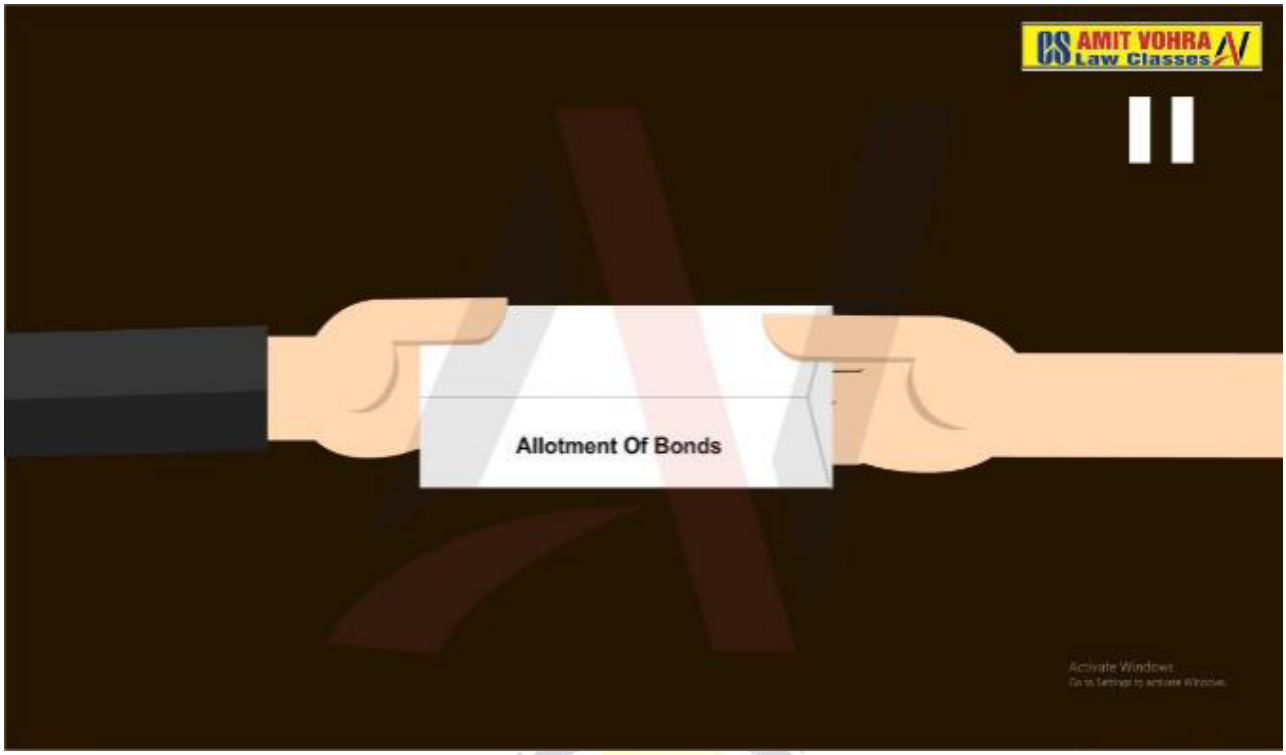
M.D (Royal British Bank)

Turquand (Liquidator)

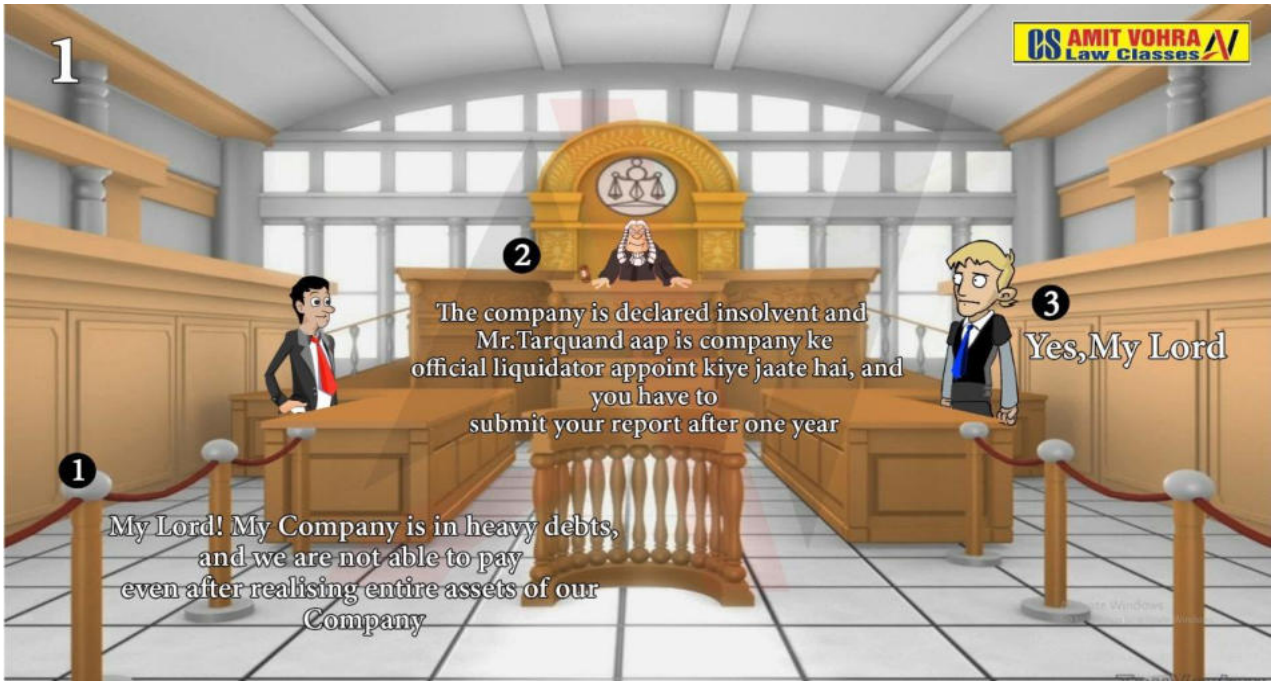
JUDGE

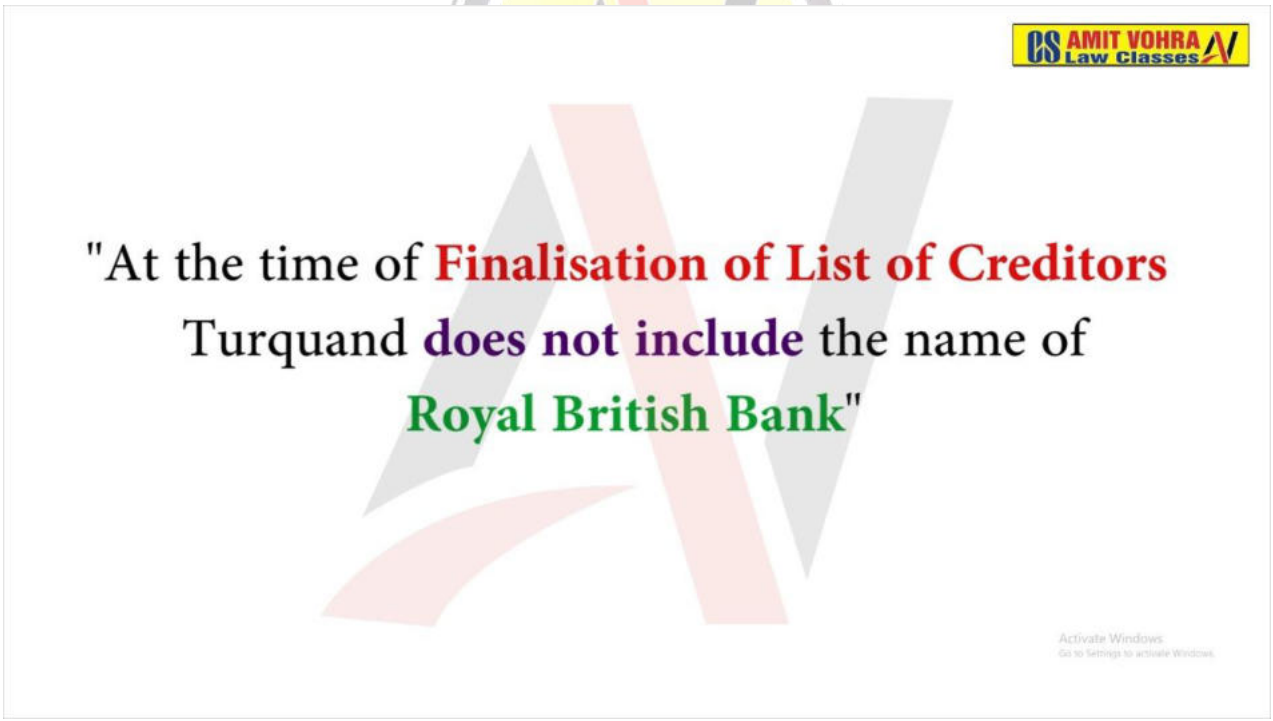
CS AMIT VOHRA Law Classes
Allotment of Bonds
worth 2000 pounds by
Cameron's Coal Brook Steam,
Coal and Swansea and
Loughor Railway Company
to
Royal British Bank


CS AMIT VOHRA Law Classes
Cameron's Coal Brook Steam,
Coal and Swansea
and Loughor Railway Company
Bonds worth 2000 pounds
To, Royal British Bank

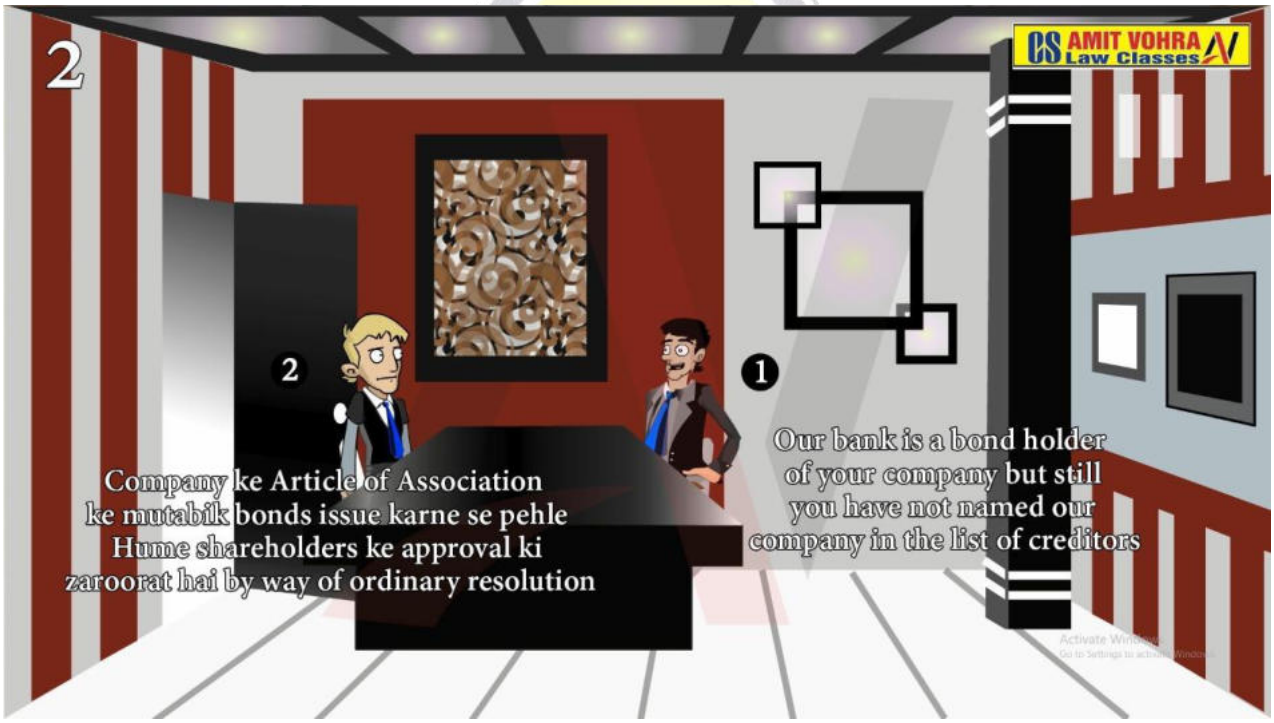

CS AMIT VOHRA Law Classes
Allotment Of Bonds

CS AMIT VOHRA Law Classes
After Few Years
Company Ran into
Difficulties and applied for
DECLARATION OF INSOLVENCY to the
HOUSE OF LORDS


1
CS AMIT VOHRA Law Classes
2
The company is declared insolvent and Mr.Tarquand aap is company ke official liquidator appoint kiye jaate hai, and you have to submit your report after one year
3
Yes,My Lord
1
My Lord! My Company is in heavy debts, and we are not able to pay even after realising entire assets of our Company


CS AMIT VOHRA Law Classes
"At the time of Finalisation of List of Creditors Turquand does not include the name of Royal British Bank"

CS AMIT VOHRA Law Classes
Managing Director
of Royal British Bank
in the office Of
Turquand


2
CS AMIT VOHRA Law Classes
2
1
Company ke Article of Association
ke mutabik bonds issue karne se pehle
Hume shareholders ke approval ki
zaroorat hai by way of ordinary resolution
Our bank is a bond holder
of your company but still
you have not named our
company in the list of creditors

3
CS AMIT VOHRA Law Classes
1
aapki company ne humare bank ko bonds allot karne se pehle apni General Meeting mein share holders ka ordinary resolution pass kar lia tha
2
haan ye sach hai lekin amount resolution me specified nahi tha, to bank ko kiya gaya bonds ka allotment invalid ha

4
CS AMIT VOHRA Law Classes
1
But, Sir !
2
No Sir !
You may leave

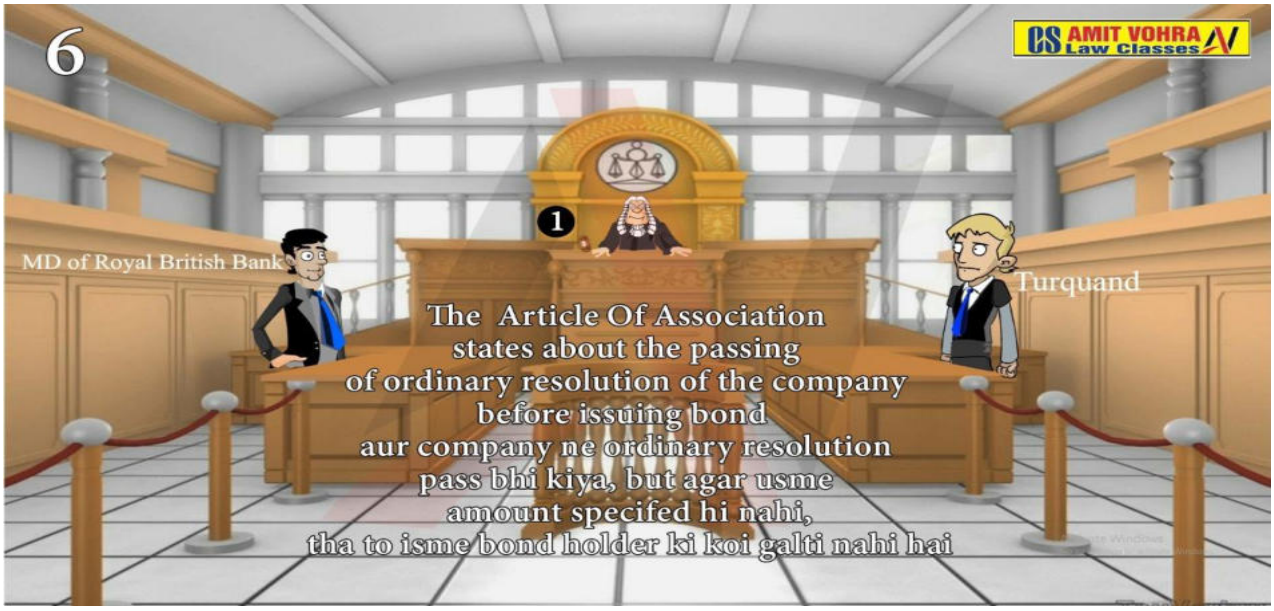
After rejection of claim by

Turquand (the official liquidator of Cameron's Coal Brook Steam,Coal and Swansea and Loughor Railway Company)

Royal British Bank

sued

Turquand


6
CS AMIT VOHRA Law Classes
MD of Royal British Bank
Turquand
The Article Of Association
states about the passing
of ordinary resolution of the company
before issuing bond
aur company ne ordinary resolution
pass bhi kiya, but agar usme
amount specifed hi nahi,
tha to isme bond holder ki koi galti nahi hai

7
CS AMIT VOHRA Law Classes
MD of Royal British Bank
Turquand
as it is an internal affair of the company.
And
outsider,
that is bond holder, can presume that
the company had duly complied with the provision
of its Article Of Association

8
CS AMIT VOHRA Law Classes
MD of Royal British Bank
Turquand
So,Royal British Bank
is a valid bond holder, which justified claim,
aur apko inhe bhi payment karni padegi
THE CASE IS DISMISSED

Chapter - 3
LIMITED LIABILITY PARTNERSHIP ACT, 2008

Synopsis

1. Introduction
2. Salient Features
3. Distinction between LLP and Partnership
4. Distinction between LLP and Company
5. Contribution of Capital
6. Statement of Solvency and Accounts
7. Limited Liability
8. Members and Designated Members
9. Roles and Responsibilities of Designated Partners
10. LLP Agreement
11. LLP for the Professionals
12. Making a Choice
13. Winding up and dissolution
14. Incorporation of Limited Liability Partnership
15. Name of LLP
16. Registered Office of LLP
17. LLP Agreement
18. Responsibilities of Designated Partner - Where the LLP has contravened the provisions of LLP Act
19. Partners' Obligations
20. Maintenance of Books and Account (Rule 24 of LLP Rules)
21. Audit of Limited Liability Partnership Accounts (Rule 24 of LLP Rules)
22. Filing of Annual Return (Rule 25 of LLP Rules)
23. Investigation of the Affairs of Limited Liability Partnership (Section 43)
24. Foreign Limited Liability Partnership
25. Draft LLP Agreement

1. Introduction

Limited liability partnership (LLP) is an incorporated partnership formed and registered under the limited liability partnership Act, 2008 with limited liability and perpetual succession.

The Act came into force, for most part, on **31st March 2009** followed by its Rules on 1st April 2009 and the registration of the first LLP on 2nd April 2009.

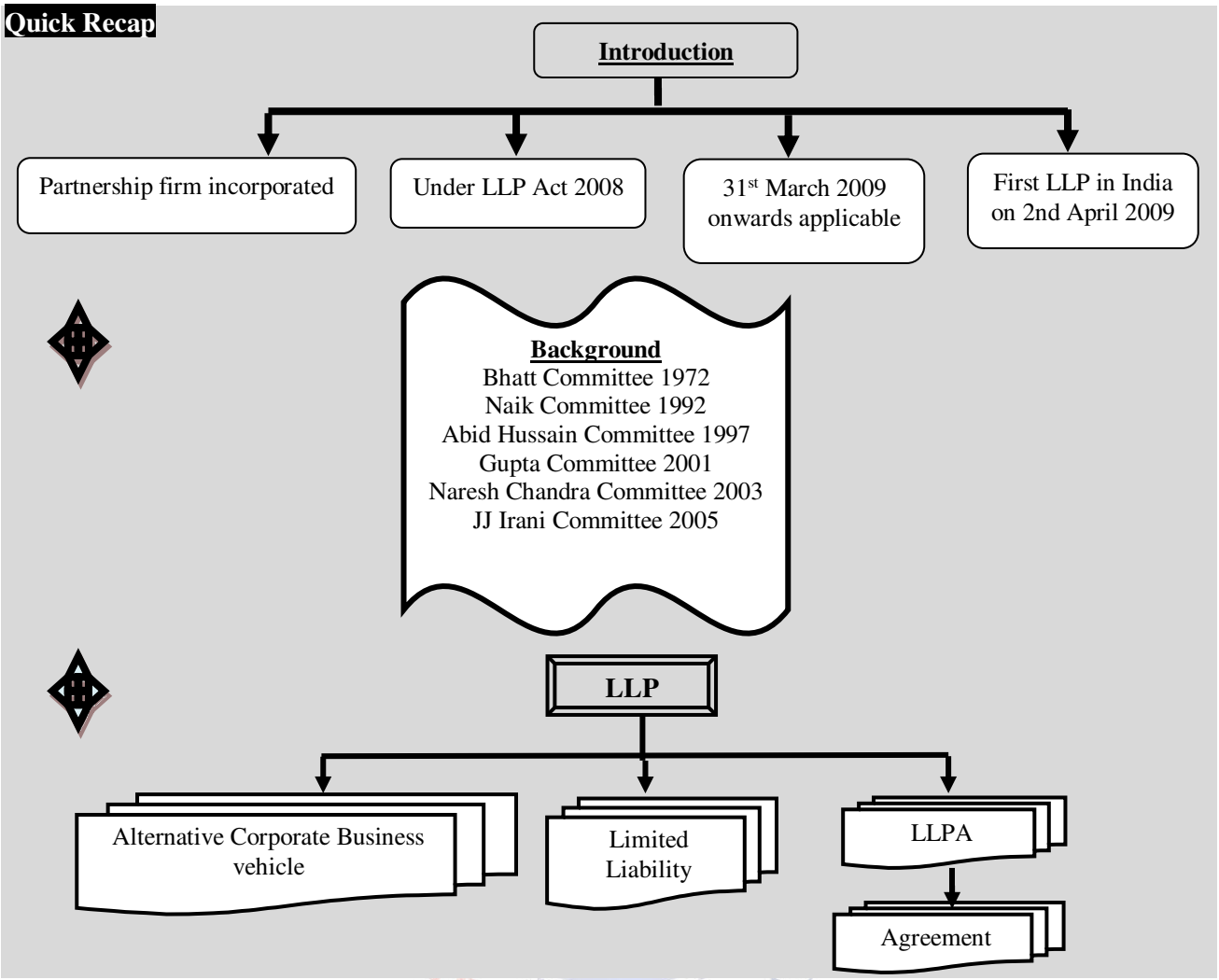
The arrival of the much-desired and long-awaited LLP marked the culmination of the efforts of several expert committees (given below) which recommended its introduction.

- Bhatt Committee of 1972
- Naik Committee of 1992
- Abid Hussain Committee of 1997
- Gupta Committee of 2001
- Naresh Chandra Committee of 2003
- JJ lrani Committee of 2005.

LLP is viewed as **an alternative corporate business vehicle** that provides the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement (LLPA).

The LLP would also be a suitable vehicle for small and medium enterprises and for investment by venture capitalists.

Quick Recap



VOHRA LAW CLA

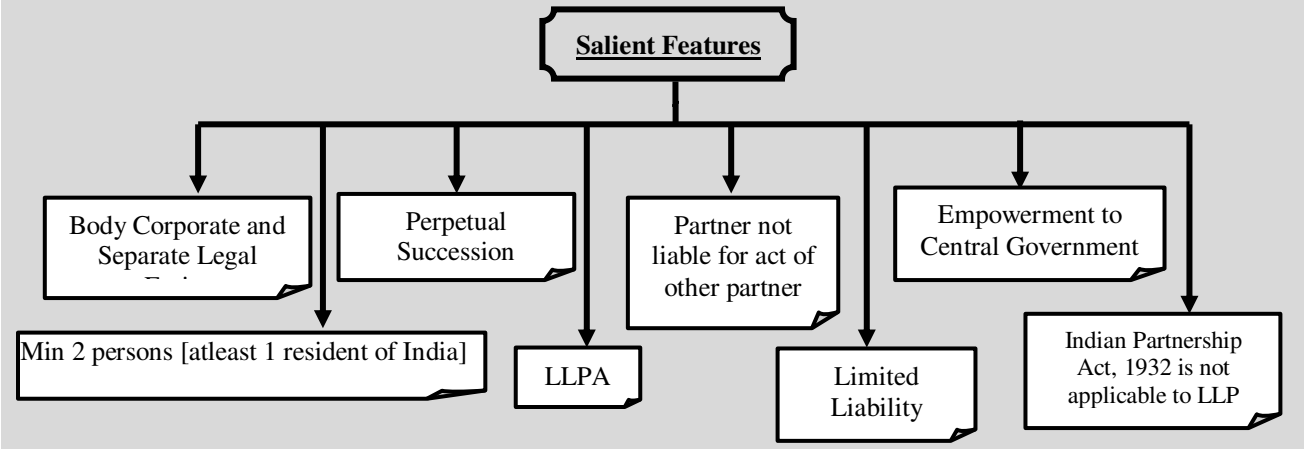
2. Salient Features

The salient features of the Limited Liability Partnership are as follows:—

1. The LLP is a body corporate and a legal entity separate from its partners.
2. Any two or more persons associated for carrying on a lawful business with a view to earn profit can form LLP.
3. The LLP has a perpetual succession.
4. The mutual rights and duties of partners of an LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation.
5. A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP.
    a. No partner would be liable on account of the independent or un-authorized acts of other partners or their misconduct.
6. Every LLP shall have at least two partners and shall also have at least two individuals as designated Partners, of whom at least one shall be resident in India.
7. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year.
8. The Central government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose.

9. The Indian Partnership Act, 1932 shall not be applicable to LLPs.

Quick Recap



3. Distinction between LLP and Partnership

The principle points of difference between the LLP and a partnership are as follows:—

1. LLP is a separate legal entity and therefore, can be sued or it can sue other without involving the partners. A partnership firm is not distinct from the several persons who compose it.

2. The partners of a LLP would have limited liability i.e., they would not be liable beyond the money contributed by them. Whereas, partners of a firm would have unlimited liability.

3. In a partnership, the property of the firm is the property of the partners comprising it. In a LLP, it belongs to the LLP and not to the individuals comprising it.

4. Whereas a partnership can be formed either orally or by a deed of agreement whether registered or not, LLP is formed by an incorporation document and an LLP agreement, thus giving it a legality.

5. Whereas a registered or unregistered partnership cannot have more than **50 partners**, LLP can have more than that number since no upper limit has been laid down by the Act.

6. A LLP has perpetual succession, i.e., the death or insolvency of a shareholder or all of them does not affect the life of the LLP, whereas the death or insolvency of a partner dissolves the firm, unless otherwise provided.

7. HUF can become partner in Partnership firm but HUF cannot become partner in LLP

Quick Recap

Difference between LLP and Partnership

S. No	Partnership	LLP
1.	No Separate Legal Entity	Separate Legal Entity
2.	Unlimited liability	Limited Liability.
3.	May be oral and unregistered	Written and Registered.
4.	Property of firm is property of partners	Property of LLP is property of LLP only
5.	No Perpetual Succession	Perpetual Succession
6.	Maximum 50 partners	No upper limit
7.	Partnership deed	LLPA
8.	No empowerment to CG	Empowerment to CG
9.	No such requirement	Atleast 1 partner must be resident of India.

10.	Not applicable	Designated partners.

4. Distinction between LLP and Company

1. In case of LLP, the need for classifying the object clauses into main, ancillary and other objects as well as framing the Share Capital clause in the memorandum for incorporating a Company is reduced into a simple procedure of filling of the prescribed information in the Incorporation document and statement in Form No.2.
2. In case of LLP, a 'limited liability partnership agreement' (LLPA) is prepared which is a variant of the 'articles of association' of a company.
3. Whereas the memorandum of a Company is required to name the State in which it is required to be incorporated, there is no such obligation in the case of LLP. Consequently, the detail procedure involved in changing the registered office from the state of Incorporation to another state is not required to be followed in case of a LLP.
4. In the LLP Act, there is no such stipulation for meeting of partners either periodically or compulsory at the yearend as stipulated for directors and shareholder meeting in the Companies Act.
5. There is no separation between management of the LLP and the ownership as is observed in a company since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.
6. In case of a company no individual director can conduct the business of the company but in an LLP, each partner has the authority to do so.
7. Whereas, the Companies Act contemplates regulating the remuneration payable to directors, there are no corresponding provisions in the LLP Act for remuneration payable to designated partners.
8. The LLP can choose to keep the accounts on cash basis whereas under the companies Act, accrual method is compulsory.
9. Audit of a company is compulsory. Conversely, the audit of LLP is not compulsory.
10. Cost audit as contemplated in Section 148 of the Companies act, 2013 has not been prescribed for LLPs.
11. The appointment of Company Secretaries as is required under **section 203** of the Companies Act, **2013** is not provided in the LLP Act.
12. HUF can become member in Company firm but HUF cannot become partner in LLP

Note 1: Karta can become partner in LLP only in his individual capacity

Note 2:-However, the annual return of a LLP in form 11 is to be certified as 'true and correct' by Company Secretary in practice.

Quick Recap

Difference Between

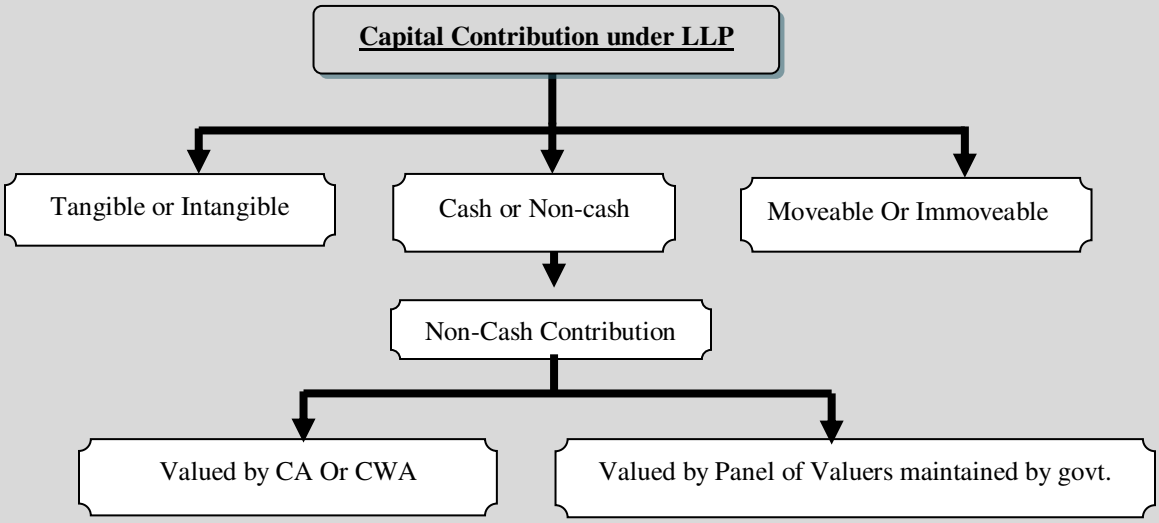
S. No	LLP	Company
1.	Registered under LLP Act 2008	Registered under Co. Act ,2013
2.	Partners	Members
3.	LLPA	AOA
4.	No such periodical Board Meeting	Periodical Board Meeting
5.	2 Clause I. Object Clause II. Capital Clause	6 Clauses
6.	No Separate Ownership and Management	Separate Management
7.	Cash Accounting Method	Accrual Accounting Method.
8.	No need to appoint C.S	Appoint C.S
9.	No such cost audit in LLP	Cost audit

10.	No max limit on remuneration	Max. 11% Managerial Remuneration
11.	Financial audit is not compulsory	Financial audit is Compulsory

5. Contribution of Capital

- The contribution of a partner to LLP may consist of tangible, movable or immovable or intangible property or other benefit to the LLP including money, promissory notes, other agreements to contribute cash or property.
- The Rules prescribe valuation of non-cash contribution to LLP by a Chartered Accountant or Cost Accountant or by a "Panel of Valuers" maintained by the Government.

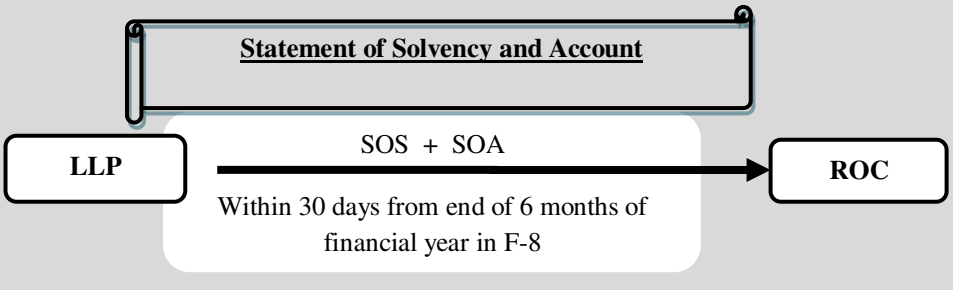
Quick Recap



6. Statement of Accounts and Solvency

- All LLPs 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 within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates i.e. 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.

Quick Recap



7. Limited Liability [Section 27

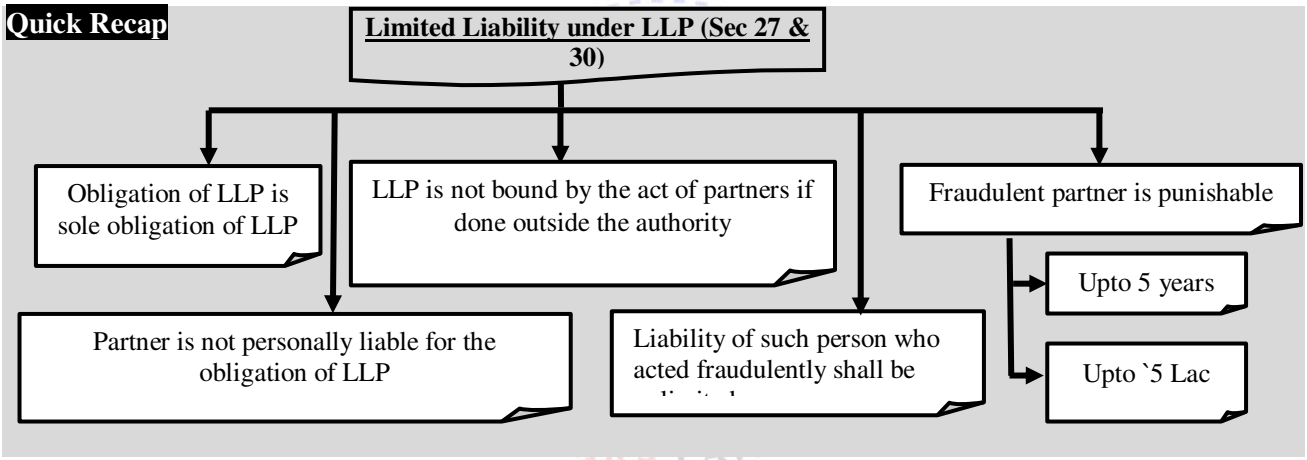
- Section 27 of the LLP Act, 2008 provides that an obligation of LLP whether arising in contract or otherwise, is solely the obligation of the LLP.
- A partner is not personally liable, directly or indirectly for an obligation of the LLP.

- A partner shall be personally liable for his own wrongful act or omission, but he shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.
  - Further, as per Section 27(1) of the Act, a limited liability partnership is not bound by anything done by a partner in dealing with a person if—
    - **(a)** The partner in fact has no authority to act for the limited liability partnership in doing a particular act.
    - **(b)** The person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

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

Unlimited Liability in case of Fraud [Section 30]

In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership and every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to five years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.



8. Members and Designated Members

There are partners and no shareholders in a Limited Liability Partnership.

Section 7 provides that every limited liability partnership shall have **at least two designated partners** who are individuals and **at least one of them shall be a resident in India**. Provided that in case of a limited liability partnership in which all the partners are body corporate, at least two partners shall nominate their respective individuals who are to act as "designated partners" and one of the nominees shall be as resident of India.

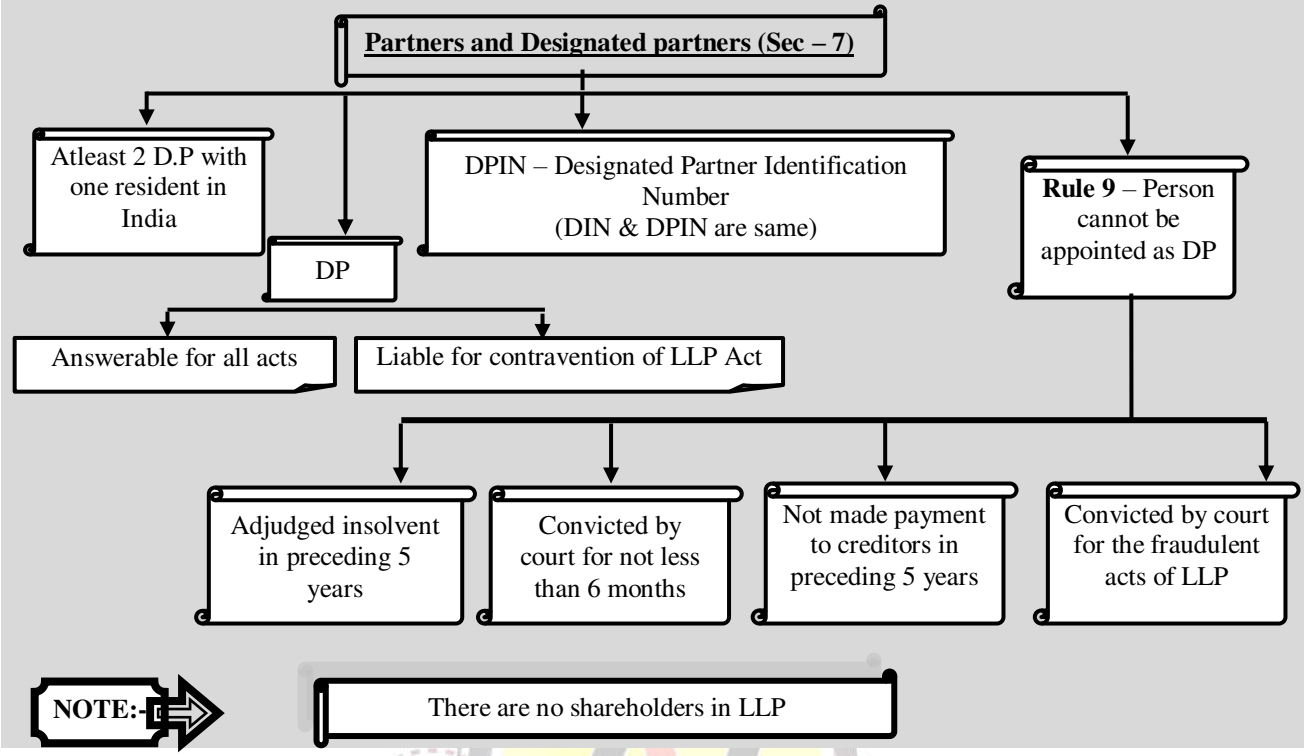
Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (PIN) from the Central Government and the provisions of **Sections 153 to Sec 159** (both inclusive) of the Companies Act, **2013** shall apply mutatis mutandis for the said purpose.

According to section 8, a designated partner shall be—

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

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

Quick Recap



Rule 9 of the Limited Liability Partnership Rules, 2009 provides that a person cannot be appointed as a designated partner if he–

- Has at any time within the preceding five years been adjudged insolvent.
- Suspends, or has at any time within the preceding five years suspended payment to his creditors and has not at any time within the preceding five years made, a composition within them.
- Has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.
- Has been convicted by a Court for an offence involving section 30 of the Act.

(*Section 30 deals with punishment for carrying out acts by the LLP or its partners with intent to defraud its creditors or for a fraudulent purpose).*

9. Roles and Responsibilities of Designated Partners

Amongst the designated partner, at least one must be an Indian Resident which means that a non-resident partner could also be appointed as designated Partner.

The Various obligations laid down in the LLP Act has to be fulfilled solely by the designated Partners by filing the required information through the relevant forms prescribed by the Limited partnership Rules, 2009.

The designated partner would be responsible for filing the following information in the prescribed forms mentioned against each of the point below:

- Incorporation document and statement in Form FiLLip.
- Information with regard to Limited Partnership Agreement and changes, if any, made therein if Form 3.
- Notice of Appointment of Partners/designated partner and changes among them, intimation of DPIN by LLP to Registrar and consent of Partner to become partner/Designated Partner in form No. 4.
- Notice of change of name of LLP in form No.5.
- Application for allotment of Designated partners in Form No. 9.

- Statement of Account & Solvency in Form 8.
- Consent to act as Designated Partners in Form No. 9.
- Intimation of changes in particulars of Designated partners in Form No. 10.
- Annual Return of Limited Liability Partnership in form 11.
- For intimating other address for services of documents in Form 12.
- Application to the Registrar for striking off name.
- Application for compounding of an office under the Act in Form 31.

In conformity with the duty designated above, a designated partner of an LLP is also required to sign the documents above mentioned.

Further in the following instances apart from the LLP, the designated partner would also be imposed monetary penalties under the Act;-

- *For non-compliance with the directions of the Central Government for change of name under Section 17 of the Act.*
- *For non-maintenance of books of accounts, non-filing of accounts, duly audited where such an audit is mandatory under Section 34 of the Act.*
- *For non-filing of the annual return of the LLP with the Registrar under Section 35 of the Act.*

Quick Recap

Role and Responsibilities of D.P

S. No	Form – No	Purpose
1.	Form – FiLLip	Documents at the time of incorporation
2.	Form – No 3	Intimation to Registrar about changes in F – 2
3.	Form – No 4	Appointment & Termination of D.P & Partner
4.	Form – No 5	Changes in name of LLP
5.	Form – No 9	Application for DPIN
6.	Form – No 8	SOS & SOA
7.	Form – No 9	Consent to act as DP
8.	Form – No 10	Changes in DP
9.	Form – No 11	Annual return of LLP
10.	Form – No 12	Intimation of other places
11.	Form – No 31	Compounding of offense

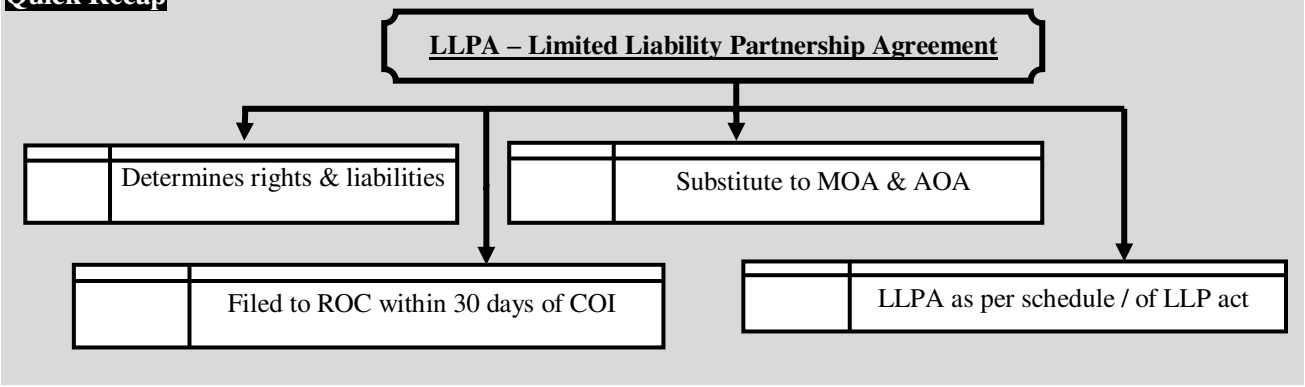
NOTE: Forms mentioned above are to be signed by DP

10. LLP Agreement

- The LLP agreement determines the mutual rights and duties of the partners and their rights and duties in relation to limited liability partnership.
- Limited liability partnership agreement should be filed with the Registrar within 30 days of incorporation.
- A person becomes a Partner by virtue of LLP agreement. This means that the LLP agreement is a must and it serves as a basic document and, to a certain extent, takes the place of MOA and AOA applicable in the case of a company registered under the Companies Act, **2013.**
- Any change in the LLP agreement is also required to be notified to the Registrar of Companies. The importance of the said document lies in the fact that it is a pubic document and it is open to public inspection being on the records of the Registrar.

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

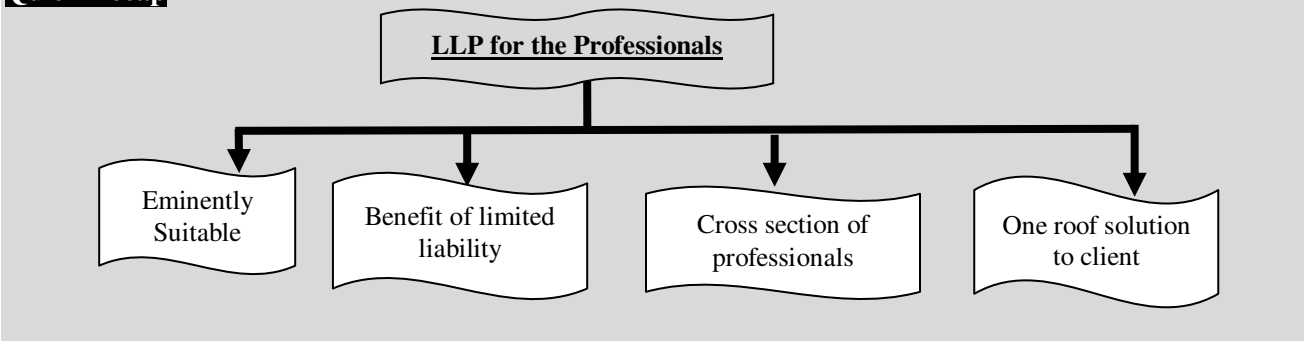
Quick Recap



11. LLP for the Professionals

- LLP are eminently suited to the professionals like Company Secretaries and others.
- They will get the benefit of limited liability and insulate them from third party claims against professional negligence or deficiency.
- A cross section of the professionals may come together under the banner of LLP to carry on the professional work in their respective field of specialization.
- Such an arrangement will bring the professionals closer and this will benefit the corporate and other clients, as they may be able to get solutions to their problems under one roof.
- This will also create a strong organisation of professionals and acts as a bulwark against keen competition expected to happen from the professionals abroad.

Quick Recap



12. Making a Choice

The advantages of a LLP include:—

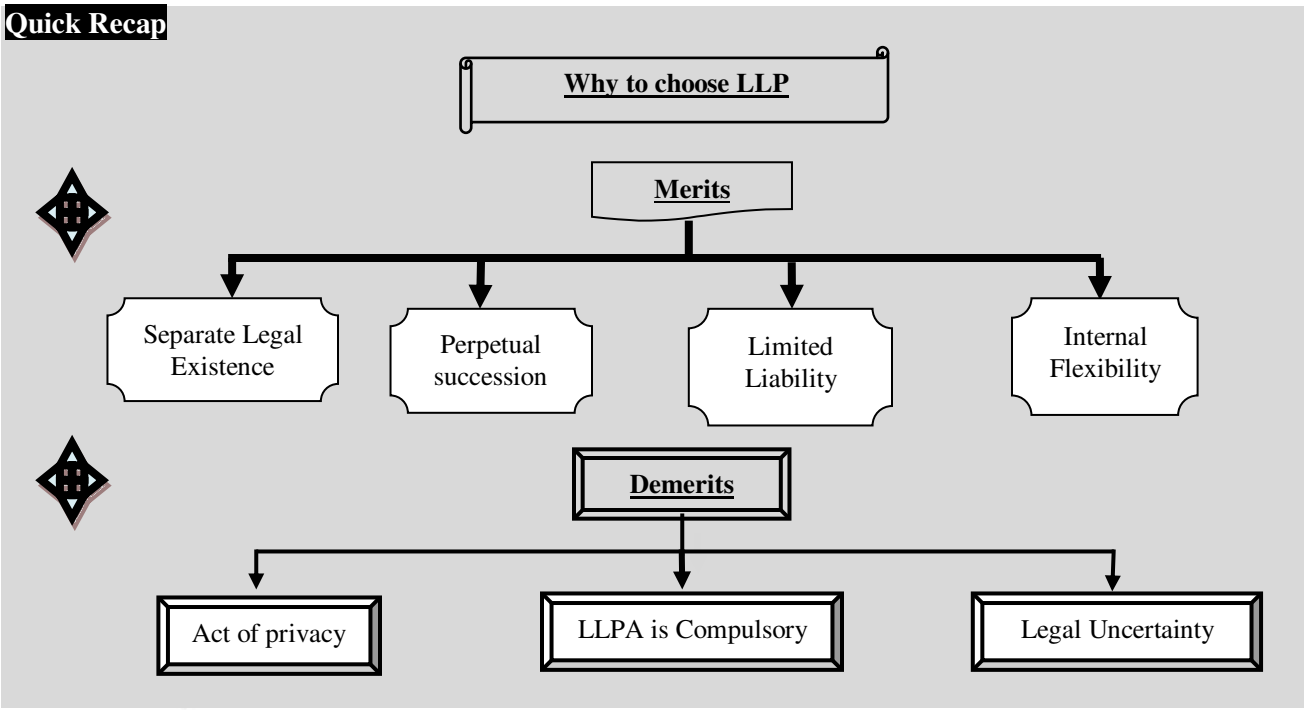
- ***Separate entity*** - A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- ***Perpetual Succession*** - A limited liability partnership shall have perpetual succession. In other words, partners may come and partners may go but a LLP will go on till the winding up of its affairs.
- ***Limited liability*** - Reduced risk to personal wealth from creditors' claims.
- ***Internal flexibility*** - Allows for participation in management and maintenance of ethos of partnership.
- ***Taxation*** **-** Since DDT is now not applicable for Income Tax purposes, LLP is treated at par with partnership firms. LLPs are liable to pay tax at the flat rate of 30% on its total income
- ***No compulsory audit required*** **-** Every business has to appoint an auditor for checking the internal management of the company and its accounts. However, in the case of LLP, there is no mandatory

audit required. The audit is required only in those cases where the turnover of the company exceeds Rs 40 lakhs OR where the contribution exceeds Rs 25 lakhs

The disadvantages include:—

- ***Lack of privacy*** - Disclosure of financial information required under Section 34.
- ***Requirement of a LLP agreement -*** A LLP agreement is a necessity so as to avoid the application of default provisions (first Schedule) and to provide for matters not covered in the default provisions.
- ***Legal uncertainty*** - This being a newly introduced concept in the corporate world, it is yet to prove itself as a commercial entity.
- ***Offenses and penalties*** - Limited Liability Partnership Act, 2008 provides that for non-compliance on procedural matters such as delay in filing of e-forms, one has to pay default fee for every day for which the default continues.

Quick Recap



13. Winding up and dissolution.

The winding up of a limited liability partnership may be either voluntary or by the Tribunal and limited liability partnership, so wound up may be dissolved **[Section 63]**.

Circumstances in which limited liability partnership may be wound up by the tribunal ***[Section 64]****.*

A limited liability partnership may be wound by the Tribunal,—

(a) If the limited liability partnership decides that limited liability partnership be wound up by the Tribunal.

(b) If for a period of more than six months, the number of partner of the limited liability partnership is reduced below two.

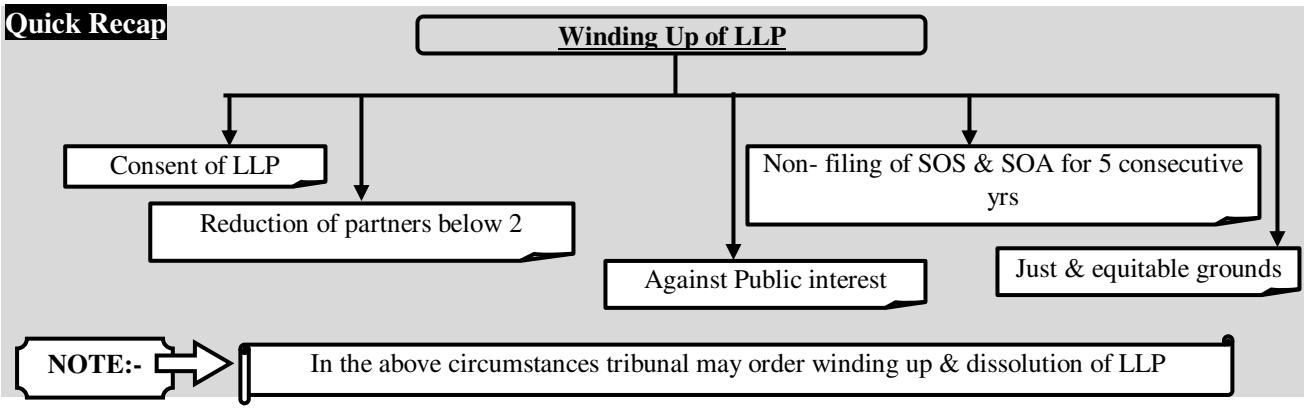
(c) Omitted

(d) If the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or pubic order.

(e) If the limited liability partnership has made a default in filling with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years.

(f) If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Quick Recap



CASE STUDY

Rich core services LLP has been incorporated on 11 May, 2013 with 20 partners & 2 designated partners. AV entered in LLP as a partner. AV entered in LLP as a partner on 20 March, 2016 and is willing to be appointed as DP on 18 April 2016. AV has been declared insolvent on 5 Aug, 2011. Can he be DP.

According to Section

Section 7 of LLP Act, 2008 read with Rule 9 LLP Rules 2010 states that a person is disqualified from being elected as DP if he was declared or adjudged insolvent in proceeding 5 years or convicted by court for not less than 6 months or not made payment to creditors in preceding 5 years or convicted by court for fraudulent acts of LLP.

Facts of the problem

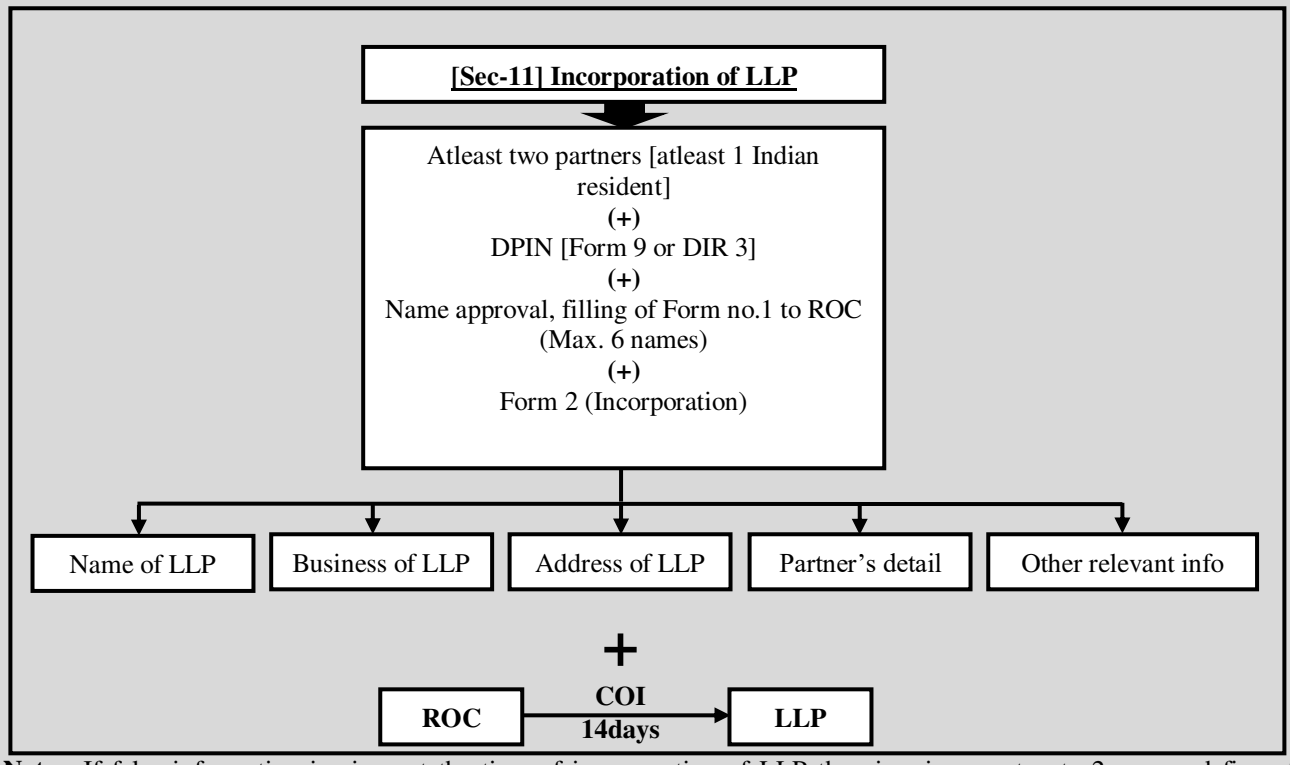
In the given problem AV was declared insolvent on 5 Aug 2011 and he wanted to be elected as DP on 18 April, 2016 and he became partner on 20 March 2016.

Conclusion

AV is not eligible to become a partner till 4 August, 2016.

14. Incorporation of Limited Liability Partnership

Quick Recap



Note:- If false information is given at the time of incorporation of LLP then imprisonment upto 2 year and fine of ` 10,000 which may extend to 5 Lac.

Step by Step Procedure to Register a Limited Liability Partnership

STEP 1 – OBTAIN DIRECTORS' IDENTIFICATION NUMBER (DIN)

Every applicant who would become the designated partner of the LLP must have a DIN. Application for DIN can be made online through Ministry of Corporate Affairs (MCA) website. The applicant can submit E-form DIR-3 to apply for DIN. A fee of ` 500/- has to be paid for each application.

There is no physical submission, and the entire process is online. Following are some important points in this regard –

(a) Proof- of Identity –- In case of Indian Nationals – PAN card, while in case of Foreign Nationals – Passport

(b) Proof of Residence – Passport, Election (Voter identity) card, Ration card, Driving license, Electricity bill, Telephone bill or Bank account statement. The telephone bill, electricity bill or bank account statement should not older than two months in the case of Indian Nationals and one year in the case of Foreign Nationals.

Any person **proposed to become the Designated Partner** in a **new LLP** shall have to make an **application through eform FiLLiP.** An application for **allotment of DIN up to two Designated Partners**, shall be **filed in eform FiLLiP with the Registrar**, in case of proposed Designated Partners not having approved DIN

STEP 2 – REGISTER DIGITAL SIGNATURE OF DESIGNATED PARTNERS

The applicants whose signatures would be placed on the application forms must have a Class 3 Digital Signature Certificate (DSC) from an authorized certifying agency. This DSC has to be registered on the MCA website.

STEP 3 – FILE FORM FOR NAME AVAILABILITY

The **first step in incorporation of an LLP** is **reservation of name** of the proposed LLP. 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. The promoters of LLP may make an application through the web service available at www.mca.gov.in by using **Reserve Unique Name (RUN)** under the head MCA Services alongwith fee as prescribed i.e. ` **1,000/-;**

(ii) Name can be **proposed in eform FiLLiP**, an **application for incorporation** of LLP.

Few features of RUN Service are as follows:

- RUN is a web service for Reserving a proposed name for a new LLP or for changing the name of an existing company;
- RUN can be accessed on www.mca.gov.in under the head MCA services;
- Promoters are permitted to apply two proposed names only;
- RUN form does not require Director Identification Number (DIN) or Digital Signature Certificate (DSC);
- The name approved shall be valid for a period of 3 Months from the date of approval.

- Rule 18 of the Limited Liability Partnership Rules, 2009, prescribed the following guidelines to be kept in mind, while deciding for the name of the LLP and suggest appropriate names for the LLP in the application, to ensure a speedy approval.

(1) The name of the limited liability partnership shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

(2) A name shall not generally be reserved, if -

(i) it includes any word or words which are offensive to any section of the people;

(ii) the proposed name is the exact Hindi or English translation of the name of an existing limited liability partnership in English or Hindi, as the case may be;

(iii) the proposed name has a close phonetic resemblance to the name of a LLP in existence, for example, J.K. LLP., Jay Kay LLP;

(iv) it includes the word Co-operative, Sahakari or the equivalent of word "co-operative" in the regional languages of the country;

(v) it connotes the participation or patronage of the Central or State Government, unless circumstances justify to, e.g., a name may be deemed undesirable in certain context if it includes any of the words such as National, Union, Central, Federal, Republic, President, Rashtrapati, etc;

(vi) the proposed name contains the words "British India";

(vii) the proposed name implies association or connection with any Embassy or Consulate or of a foreign Government which suggests connection with local authorities such as Municipal, Panchayat, Zila Parishad or any other body connected with the Union or State Government;

(viii) omitted

(ix) it is different from the name or names of the existing limited liability partnership only to the extent of having the name of a place within brackets before the word "limited liability partnership", for example, Indian Press (Delhi) LLP should not be allowed in view of the existence of the LLP named Indian Press LLP;

Provided that the name shall be reserved, in case the "No Objection Certificate" is granted by the registered Limited Liability Partnership of company, as the case may be.

(x) it includes name of registered Trade mark, unless the consent of the owner of the trade mark has been produced;

(xi) the proposed name is identical with or too nearly resembles the name of a firm or LLP or company incorporated outside India and reserved by such firm, LLP or company with the registrar in accordance with these rules;

(xii) it is identical with or too nearly resembles the name of the limited liability partnership or a company in liquidation or it is identical with or too nearly resembles names of the LLP or a company which is struck off, up to the period of 5 years;

(xiii) it includes words like 'Bank', 'Insurance', and 'Banking', 'Venture capital' or 'mutual fund' or business activity includes the words like 'Bank', 'Insurance', and 'Venture capital' or 'mutual fund' or such similar names without the approval of regulatory authority:

Provided that the approval of regulatory authority shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be.]

(xiv) omitted

(xv) the proposed name includes words like French, British, German, etc., unless the partners satisfy that there is some form of collaboration and connection with the foreigners of that particular country or place, the name of which is incorporated in the name;

(xvi) the proposed name of limited liability partnership includes the words company secretary, chartered accountant, advocates or such similar words as indicative of a profession, as part of the proposed name, the same shall be allowed only after obtaining approval from the Council governing such profession or such authority as may be nominated by the Central Government, in this behalf.

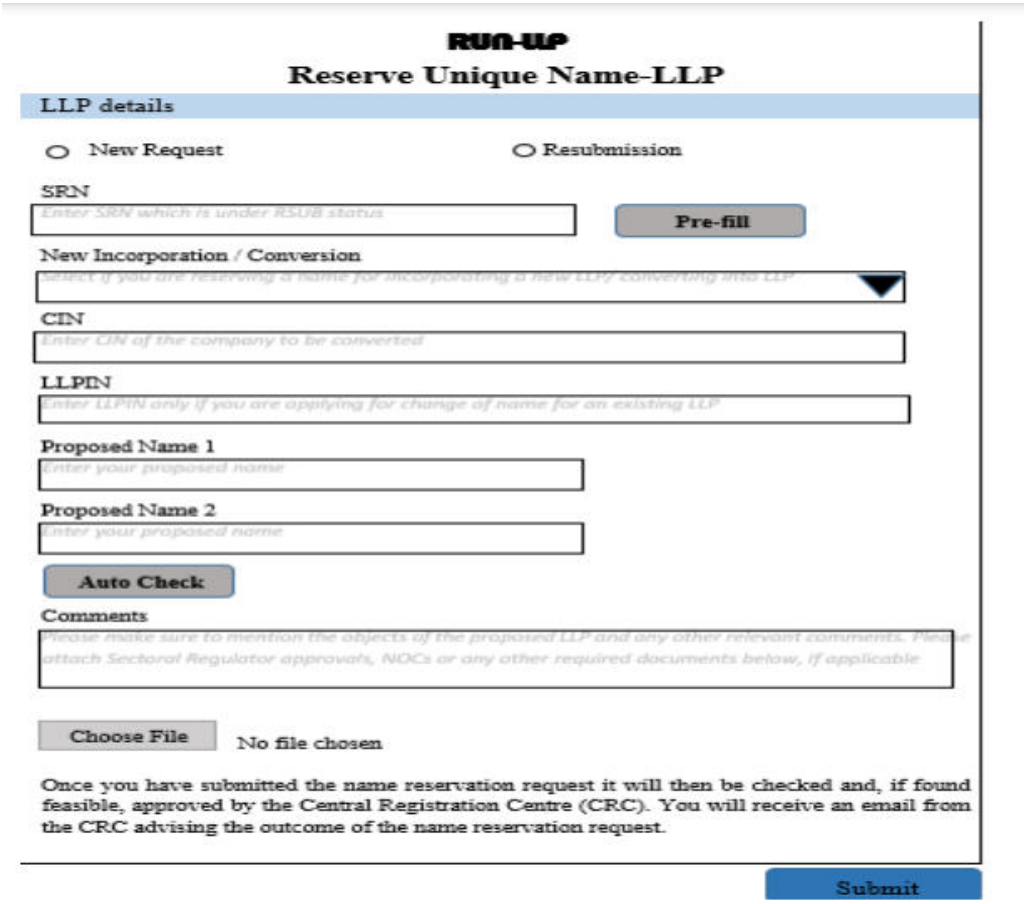
Provided that the approval of the council governing the profession shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be.

An application for reservation of name with which the proposed limited liability partnership is to be registered or for change of name, as the case may be, shall be made to the Registrar having jurisdiction where the registered office of the limited liability partnership is to be situate

Where the Registrar informs applicant about reservation of name with which the LLP is to be registered or changed name, as the case may be, such name shall be available for reservation for a period of three months from the date of intimation by the Registrar.

Further, in order to reserve the name of a LLP through RUN or incorporation of Company using Form FiLLip, the pre-requisite of having a DIN has been done away with.

Once the name approval application is accepted by the MCA, a LLP name approval letter will be issued to the proposed Partners. The Partners then have 3 Months to file the required incorporation documents and register the LLP. In case the LLP is not formed within 3 Months of name approval letter, the approval for name for the LLP would have to be obtained again.


RUN-LLP

Reserve Unique Name-LLP

LLP details

New Request Resubmission

SRN

Pre-fill

New Incorporation / Conversion

CIN

LLPIN

Proposed Name 1

Proposed Name 2

Auto Check

Comments

Choose File No file chosen

Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request.

Submit

STEP 4 – FILING OF FiLLip FOR INCORPORATION AND SUBSCRIPTION DOCUMENT

- After receiving the Name approval Letter from ROC, the incorporation document shall be filed in Form FiLLip with the Central Registration Centre, Ministry of Corporate Affairs along with the fee within 3 Months from the date of name approval. The form must be digitally signed by a person named in the incorporation document as a designated partner having DIN/applying DIN. Also, it has to be digitally signed by an advocate/Company Secretary/Chartered Accountant/Cost Accountant in practice.
- The application in Form FiLLip to the Registrar accompanied by a fee paid electronically should have the following documents as attachment:
  - (i) Consent of partners;
  - (ii) In case of partners are body corporates, certified true copy of board resolution passed by such body corporate partners;
  - (iii) Proof of address of registered office of LLP;
  - (iv) Subscribers' sheet including consent;
  - (v) Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner;
  - (vi) Copy of approval obtained from any sectoral regulator/in-principle approval;
  - (vii) Identity and address proof of individuals acting as Partner and/or Designated Partner;
  - (viii) List of main objects of an LLP;

(ix) If the name proposed is liked to registered trademark, NoC from the trade mark owner;

NOC of foreign body corporate for usage of name (In case of foreign entities intending to incorporate LLPs in India)

NOTE:

(a) After the Registrar is satisfied that all the formalities with respect to the incorporation has been complied, he will issue a Certificate of Incorporation in Form 16 as to formation of the LLP.

(b) The Certificate of Incorporation issued shall be the conclusive evidence of formation of the LLP.

(c) On incorporation, Every LLP so registered shall be assigned a LLP identification number (LLPIN) in one consecutive series.

Step 5 – DRAFTING & FILING OF LLP AGREEMENT

After incorporation of LLP, LLP agreement has to be drafted in consonance with LLP Act. LLP agreement is to be filed within 30 days of incorporation of LLP. The Designated Partners has to file the information in Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein).The LLP agreement has to be uploaded as an attachment to Form 3 in the MCA portal.

- Once it gets approved all the formalities for registration of LLP is deemed to have been completed.

According to section 11(1) of the Limited Liability Partnership Act, 2008, for a limited liability partnership to be incorporated—

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

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

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

2. The incorporation document shall—

(a) be in Form FiLLip.

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

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

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

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

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

(g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

3. If a person makes a statement under clause (c) of Sub-Section (1) which he—

(a) knows to be false; or

(b) does not believe to be true,

shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

Subject to prior compliance with the requirements of section 11(1) of the Act, section 12(1) mandates the Registrar to register the incorporation document and issue a certificate of incorporation within 14 days.

The certificate of incorporation shall be conclusive evidence that the limited liability partnership is incorporated by the name specified in the incorporation document.

15. Name of LLP

According to section 15(1), every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name. Section 15 (2) prohibits registration of a LLP with a name that is:

(i) either undesirable in the opinion of the Central Government or

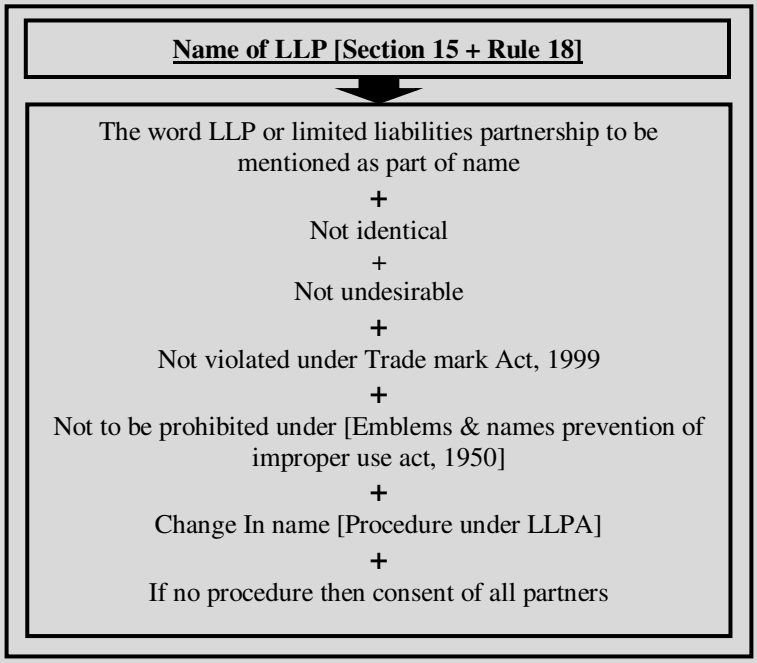
(ii) identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999

Rule 18 (1) of the LLP Rules, 2009 provides that the name of the limited liability partnership shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

Further, Rule 20 (1) provides that the limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

The MCA vide Circular no.2/2014 dated 11th February, 2014 clarified that no company should be allowed to be registered with the word "National" as part of its title unless it is a government company and the Central/State government(s) has a stake in it. Similarly, the word 'Bank' may be allowed in the name of an entity only when such entity produces a `No Objection Certificate' from the RBI in this regard. By the same analogy the word, "Stock Exchange" or "Exchange" should be allowed in name of a company only where No Objection Certificate from SEBI in this regard is produced by the promoters.

Quick Recap



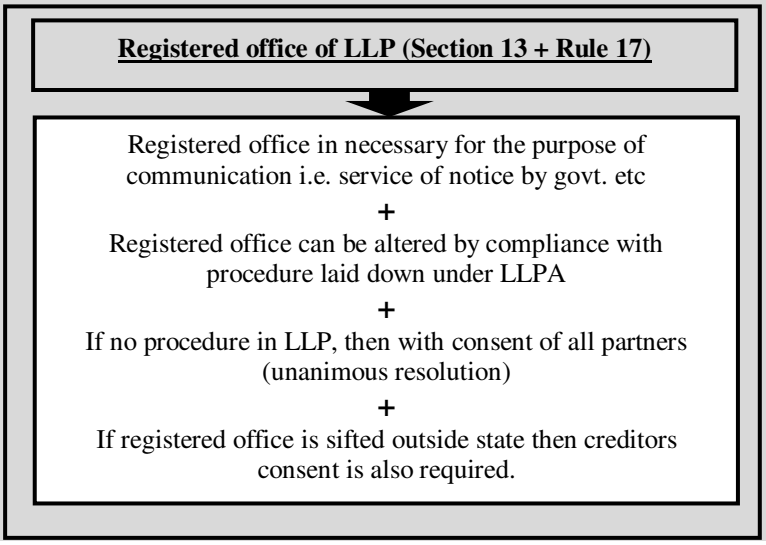
16. Registered Office of LLP

Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received. [Section 13(1)]

Rule 17 (1) of the Limited Liability Partnership Rules, 2009 provides that the limited liability partnership may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place:

Provided that where the change in place of registered office is from one state to another state, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Quick Recap



17. LLP Agreement

No provision has been made for directors or a board structure on the lines of Company Law. The LLP agreement determines the mutual rights and duties of the partners and their rights and duties in relation to limited liability partnership. This LLP agreement is required to be filed with the Registrar.

It has been provided under **Section 23 read with Rule 21** – Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

Limited liability partnership agreement should be filed with the Registrar within 30 days of incorporation in form 3.

A person becomes a Partner by virtue of LLP agreement. This means that the LLP agreement is a must and it serves as a basic document and, to a certain extent, takes the place of MOA and AOA applicable in the case of a company registered under the Companies Act, 2013. Any change in the LLP agreement is also required to be notified to the Registrar of Companies. The importance of the said document lies in the fact that it is a public document and it is open to public inspection being on the records of the Registrar.

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

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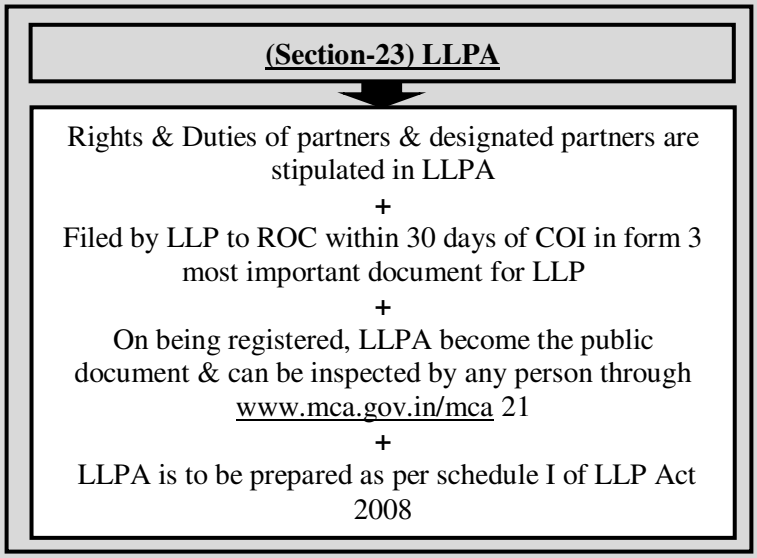
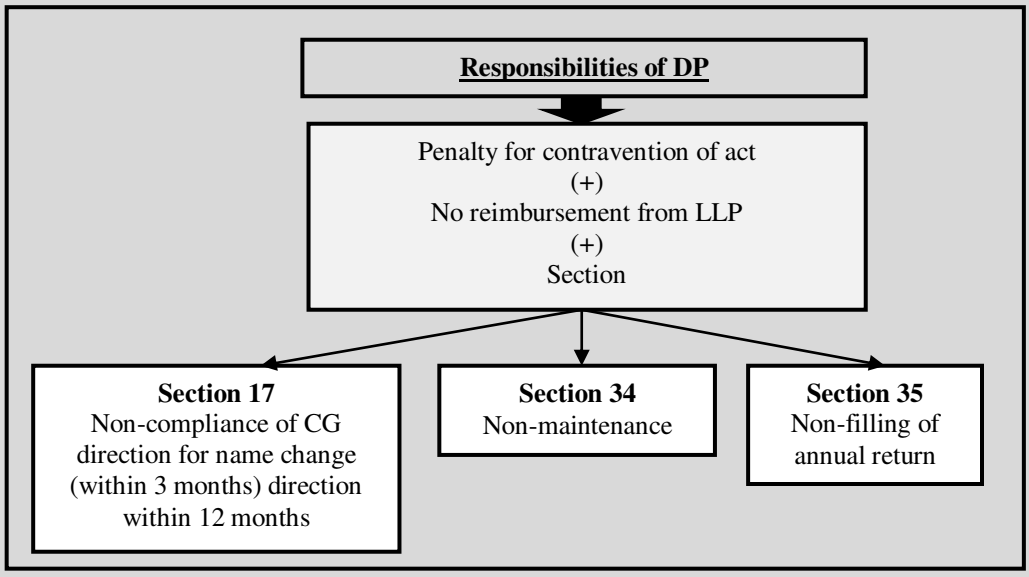


18. Responsibilities of Designated Partner - Where the LLP has contravened the provisions of LLP Act

The designated partner would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and as such the designated partner would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP. Further in the following instances apart from the LLP, the designated partner would also be imposed monetary penalties under the Act:-

- For non-compliance with the directions of the Central Government for change of name under Section 17 of the Act,
- For non-maintenance of books of accounts, non-filing of accounts, duly audited where such an audit is mandatory under Section 34 of the Act,
- For non-filing of the annual return of the LLP with the Registrar under Section 35 of the Act.

Quick Recap



19. Partners' Obligations

All partners, not just the designated partners, are agents of the LLP, but not of other partners. As such, all partners owe the duties of an agent to the LLP. The LLP shall not be bound by anything done by a partner in dealing with a person if that partner has no authority to act for LLP in doing a particular act and the person with whom he is dealing also knows that the partner has no authority for such act and to provide that an obligation of LLP, whether arising out of contract or otherwise will solely be the obligation of LLP.

It is also provided that liabilities of LLP are to be met from the property of LLP. Further the LLP shall be liable for a wrongful act or omission by a partner in the course of the business of the LLP or with its authority. The obligation of a LLP shall not affect the personal liability of a partner for his own wrongful act or omission but a partner shall not be personally liable for wrongful act or omission of any other partner. No partner is personally liable directly or indirectly for an obligation of LLP solely by reason of his being a partner of the LLP.

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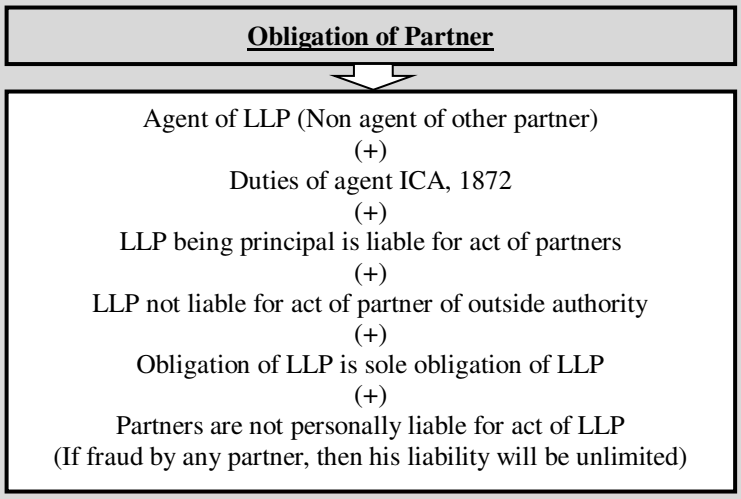


20. Maintenance of Books and Account (Rule 24 of LLP Rules)

(1) Every limited liability partnership shall keep books of accounts which are sufficient to show and explain the limited liability partnership's transactions and are such as to —

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

(b) enable the designated partners to ensure that any Statement of Account and Solvency prepared under this rule complies with the requirements of the Act. [Rule 24(1)]

(2) The books of account shall contain—

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

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

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

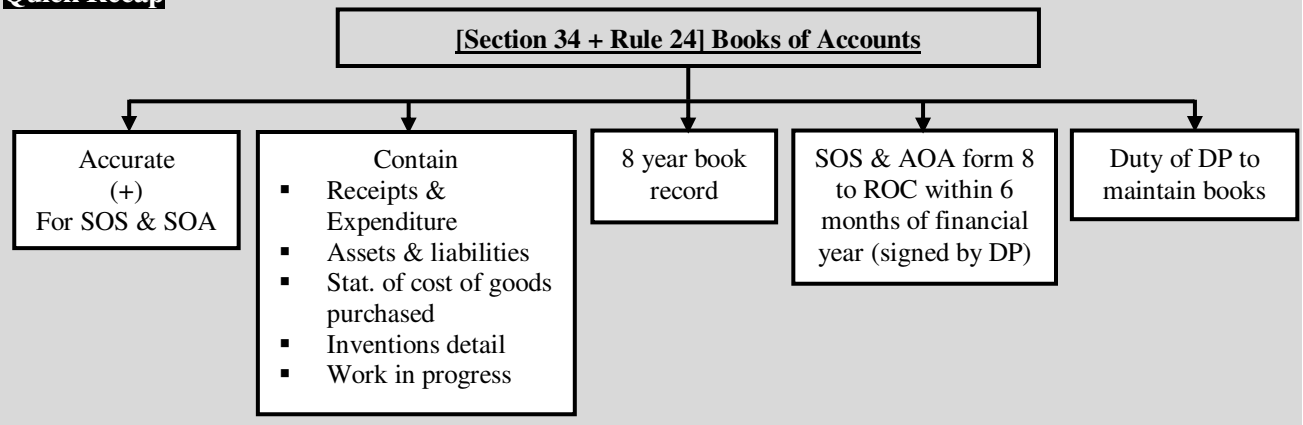
(d) any other particulars which the partners may decide. [Rule 24(2)]

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

(4) Every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates. [Rule 24(4)]

(5) A limited liability partnership's Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. [Rule 24(6)]

Quick Recap



21. Audit of Limited Liability Partnership Accounts (Rule 24 of LLP Rules)

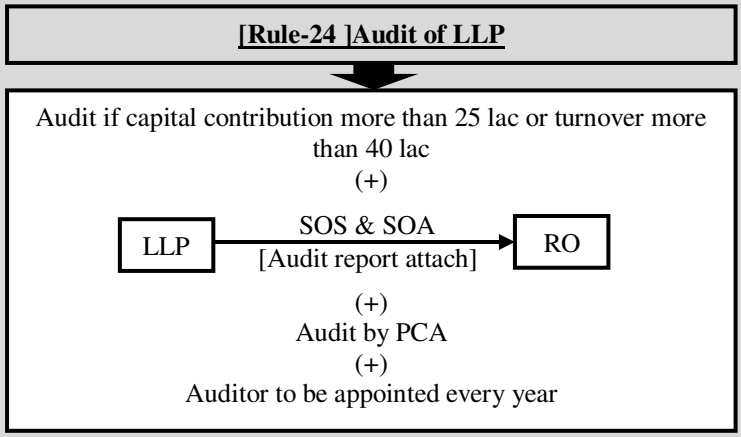
The accounts of every limited liability partnership shall be audited in accordance with these rules:

A limited liability partnership whose turnover does not exceed, in any financial year, forty lakh rupees or whose contribution does not exceed twenty-five lakh rupees is not required to get its accounts audited.

The Accounts of LLP should be audited as per LLP Rules, 2009. Where the partners of LLP do not decide for audit of the accounts of the LLP, such LLP shall include in the Statement of Account and Solvency a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the form specified in Form 8. [Rule 24(8)]. The audit of LLP may be done by a Chartered Accountant in Practice only.

An auditor or auditors of a limited liability partnership shall be appointed for each financial year of the LLP for auditing its accounts. [Rule 24(10)]

Quick Recap



22. Filing of Annual Return (Rule 25 of LLP Rules)

As per Section 35(1), every limited liability partnership shall file an annual return with the Registrar in Form 11. The annual return of an LLP having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

If any limited liability partnership **fails to file its annual return** under sub-section (1) before the expiry of the period specified therein, such **limited liability partnership and its designated partners** shall be **liable to a penalty** of **one hundred rupees** for **each day** during which such failure continues, subject to a **maximum of one lakh rupees** for the **limited liability partnership** and **fifty thousand rupees** for **designated partners.**

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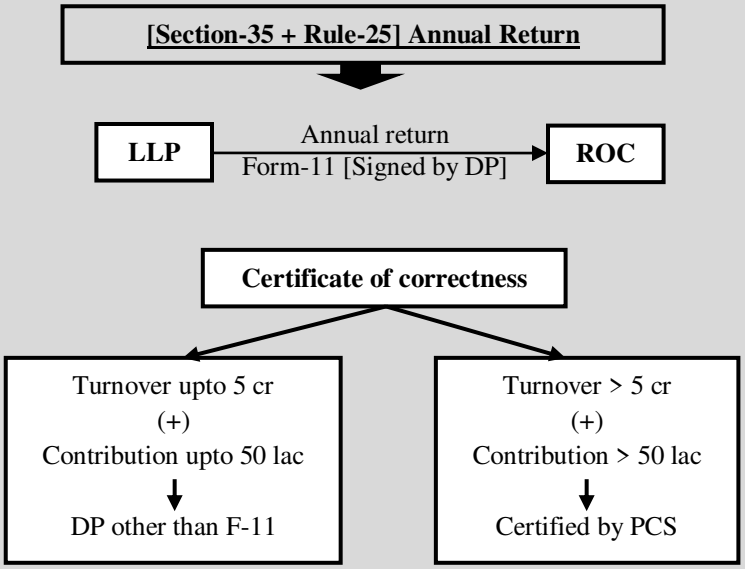

23. Investigation of the Affairs of Limited Liability Partnership (Section 43)

As per Section 43(2) the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.

As per Section 43(3) the appointment of inspectors pursuant to sub-section (2) may be made:

(a) if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or

(b) if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

(c) if, in the opinion of the Central Government, there are circumstances suggesting—

(i) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

(ii) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or

(iii) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

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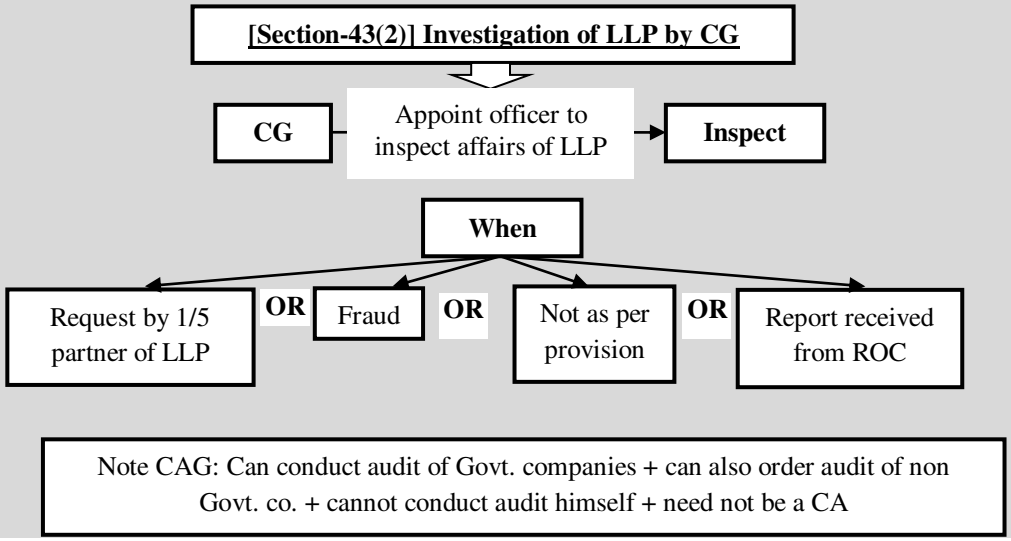


24. Foreign Limited Liability Partnership

As per rule 34(1) of the LLP Rules, a foreign limited liability partnership shall, within thirty days of establishing a place of business in India, file with the Registrar in Form 27—

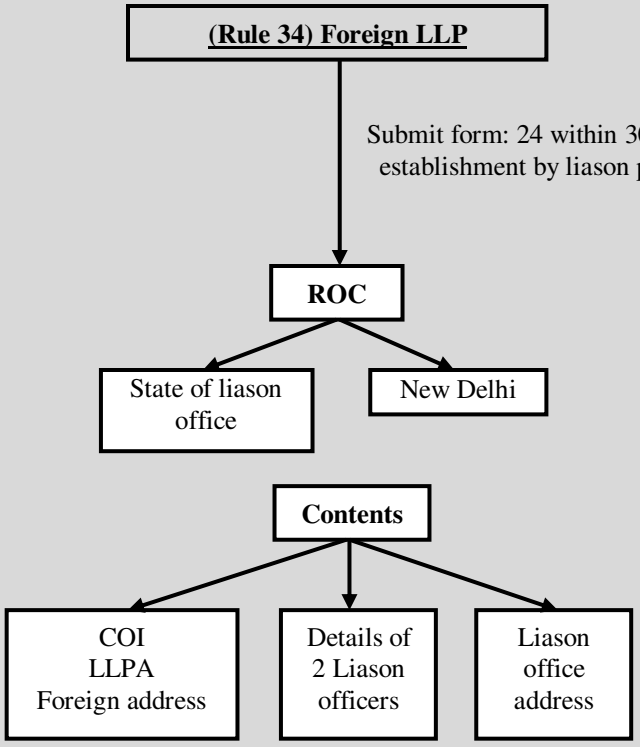
(a) a copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the limited liability partnership;

(b) the full address of the registered or principal office of the limited liability partnership in the country of its incorporation;

(c) the full address of the office of the limited liability partnership in India which is to be deemed as its principal place of business in India; and

(d) list of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the limited liability partnership, service of process and any notices or other documents required to be served on the limited liability partnership.

Quick Recap



25. Draft LLP Agreement

THIS Agreement of LLP made at ..... this..... Day of ..... 20.....

BETWEEN

1. …….. S/o …….. R/o……. residing at ……..which expression shall, unless it be repugnant to the subject or context -thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY, and

2. …….. S/o …….. R/o……. residing at ……..which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY, and

THAT THEY BOTH SHALL BECOME Partners who shall be Designated Partners on incorporation of the LLP to carry on the partnership business as a Limited Liability Partnership (LLP) registered under the provisions of Limited Liability Partnership Act, 2008 (LLP Act) with a view to shall the profits/losses on the following terms

DEFINITIONS: In this agreement unless the context otherwise requires:—

"Accounting year" means the financial year as defined in the Limited Liability Partnership Act, 2008.

"Act" or "LLP Act" means the Limited Liability Partnership Act, 2008

"Business" includes every trade, profession service and occupation.

"Designated Partner" means any partner designated as such.

"LLP" means the limited liability partnership formed pursuant to this LLP Agreement.

"LLP Agreement" means this Agreement or any supplement thereof determining the mutual right, duties and obligations of the partner in relation to each other and in relation to LLP.

"Partner" means any person who becomes a partner in the LLP accordance with this LLP Agreement

1. Name: Limited Liability Partnership shall be carried on in the name and style of M/s. …… LLP and hereinafter called as …X….. LLP.

2. Business: The Partnership business shall be _____until and unless changed as per the mutual decision of all the partners of the LLP at the time of the decision

3. Place of Office: The 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.

4. Duration : The Partnership shall commence from the date of registration of the firm, and shall continue to operate in accordance with the provisions of LLP Act, 2008 and rules framed thereunder, until termination of this agreement with the the mutual consent of all the partners.

5. Contribution: The Contribution of the LLP shall be `…… (Rupees …….. only) which shall be contributed by the partners in the following proportions. First Party …..% i.e. ` …….. (Rupees …….. only) Second Party ……% i.e. ` …… (Rupees …….. only)The further Contribution if any required by the LLP shall be brought by the partners in their profit sharing ratio.

6. Number of Designated Partners: The maximum number of designated partners appointed for the LLP shall be as mutually agreed between the partners initially at the time of incorporation of LLP or as decided by the designated partners of the LLP from time to time unanimously.

7. Sleeping Partners: All the partners other than those appointed as the designated partners of the LLP shall be sleeping partners, and they shall not interfere with the day to day conduct of business of the LLP.

8. Common Seal: LLP shall have a common seal to be affixed on documents as defined by partners under the signature of any of the Designated Partners.

9. Immovable Properties: The immovable properties purchased by the LLP shall be clear, marketable and free from all encumbrances.

10. Audit: The Statement of Accounts and Solvency of LLP mad each year shall be audited by a qualified Chartered Accountant in practice in accordance with the rules prescribed under section 34(3) of the LLP act, 2008, namely, rule 24 of the LLP Rules & Forms, 2008. It shall be the responsibility of the Designated Partners of the LLP to comply with Rule 24 of the rules.

11. Remuneration to Partners: No partners shall be entitled to any remuneration for taking part in the conduct of the LLP's business.

12. Drawings: Each partner may draw out of the partnership funds as drawings from the credit balance of his income account. Such drawls shall be duly accounted for in the yearly settlement of accounts and divisions of profits of the partnership at the end of each financial year.

13. Interest on Capital or Loan : Interest at the rate of _____ % per annum on the capital contributed or loan given or credited as given by each of the partners and standing to his credit as on the first day of each calendar month for the previous month out of the gross profits of the partnership business shall be credited in the respective accounts, and such interest shall be cumulative such that any deficiency in one financial year shall be made up out of the gross profits of any succeeding financial year or years.

14. Business transaction of partner with LLP : A partner may lend money to and transact other business with the LLP, and in that behalf the Partner shall have the same rights and obligations with respect to the loans or other business transactions as a person who is not a Partner.

15. Profits : The net profits of the LLP shall be divided in the following proportions:

To the said ---------- ____%

To the said ---------- ____%

16. Losses: The losses of the LLP including loss of capital, if any, shall be borne and paid by the partners in the following proportions:

To the said ---------- ____%

To the said ---------- ____%

17. Bankers: The bankers of the partnership shall be---------- Bank,--------- branch and/or such other bank or banks as the partners may from time to time unanimously agreed upon.

18. Accounting year: The accounting year of the LLP shall be from 1st April of the year to 31st March of subsequent year. The first accounting year shall be from the date of commencement of this LLP till 31st March of the subsequent year.

19. Place of keeping books of accounts: The books of accounts of the firm shall be kept at the registered office of the LLP.

20. Division of Annual profits of LLP: As soon as the Annual Statements of Accounts and Solvency shall have been signed by the Partners and the same duly audited and the auditor rendering his report thereon, the net profits, if any of the LLP business, shall be divided between the partners in the proportion specified in and in accordance with the provisions of this Agreement.

21. Term of validity of deed: Duration of this Agreement shall be _____ years beginning from the date first above mentioned, subject to the condition that this deed may be extended further by mutual consent in writing of the Parties hereto upon such terms and conditions or with such modifications as may be mutually agreed upon between them.

22. Arbitration: In the event of any dispute or differences arising between the parties hereto either touching or concerning the construction, meaning or effect of this Deed or the respective rights and liabilities of the parties hereto, or their enforcement there under, it shall be first settled amicably through discussions between the parties and if not resolved then otherwise referred to the arbitration of a Sole Arbitrator if agreed upon, failing which to the Sole Arbitrator as appointed by the Court in accordance with the provisions of the Arbitration and Conciliation, Act 1996. The arbitration proceedings shall be conducted at New Delhi in English language.

23. Auditors: The Auditors of the firm shall be _____ having their office at _____. The auditors shall be responsible for all the accounts/taxation related tasks of the firm including but not limited to income tax, VAT, preparation of balance sheet/assets and liabilities/ profit and loss of the LLP etc.

24. The legal advisors of the firm shall be _____

25. Severability: This deed constitutes the entire understanding/agreement between the parties taking precedence over and superseding any prior or contemporaneous oral or written understanding. Unless otherwise provided herein, this deed can not be modified, amended, rescinded or waived, in whole or part except by a written instrument signed by all the parties to this deed. The invalidity or unenforceability of any terms or provisions of this deed shall not affect the validity or enforceability of the remaining terms and provisions of this deed, which shall remain in full force and effect.

Admission of New Partner

26. The new partner may not be introduced with the consent of all the existing partners. Such incoming partner shall give his prior consent to act as Partner of the LLP.

27. The Contribution of the partner may be tangible, intangible, Moveable or immoveable property and the incoming partner shall bring minimum contribution of `……

28. Person whose business interests are in conflict to that of the firm shall not be admitted as the Partner.

29. The Profit sharing ratio of the incoming partner will be in proportion to his contribution towards the capital of LLP.

Rights of Partner

30. All the partners hereto shall have the rights, title and interest in all the assets and properties in the firm in the proportion of their Contribution.

31. Every partner has a right to have access to and to inspect the books of accounts of the LLP.

32. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as hitherto they might be doing or they may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto provided that the said partner has intimated the said fact to the LLP before the start of the independent business. Provided the business is not in competition to the existing business being carried on by the LLP.

33. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partner as herein provided.

34. Upon the death of any of the partners herein any one of his or her heirs will be admitted as a partner of the LLP in place of such deceased partner.

35. On the death of any partner, if his or her heir legal heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the firm.

Duties of Partners

36. Each Partner shall be just and faithful to the other partners in all transactions relating to the LLP.

37. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

38. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the LLP of any transaction concerning the limited liability partnership.

39. Every partner shall indemnify the limited liability partnership and the other existing partner for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.

40. In case any of the Partners of the LLP desires to transfer or assign his interest or shares in the LLP he can transfer the same with the consent of all the Partners.

41. No Partner shall without the written consent of other Partners:—

(a) Engage or except for gross misconduct, dismiss any employee of the partnership

(b) Commit to buy any immovable property for the LLP

(c) Submit a dispute relating to business of LLP business to arbitration.

(d) Assign, mortgage or charge his or her share" in the partnership or any asset or property thereof or make any other person a partner therein.

(e) Engage directly or indirectly in any business competing with that of the limited liability partnership.

(f) Withdraw a suit filed on behalf of LLP.

(g) Admit liability in a suit or proceedings against LLP.

(h) Share business secrets of the LLP with outsiders.

(i) Remit in whole or part debt due to LLP.

(j) Go and remain out of station in connection with the business of LLP more than ____ days at a time.

(k) Open a banking account on behalf of LLP in his name.

(l) Draw and sign any cheque on behalf of LLP unauthorizedly in excess of `_____ on its banking account.

(m) Give any unauthorized security or promise for the payment of money on account on behalf of the LLP except in the ordinary course of business.

(n) Draw or accept or endorse unauthorized any bill of exchange or promissory note on LLP's account.

(o) Lease, sell, pledge or do other disposition of any of the LLP's property otherwise than in the ordinary course of business.

(p) Do any act or omission rendering the LLP liable to be wound up by the Tribunal.

(q) Derive any profits from any transactions of the LLP or from the use of its name, resources or assets or business connection by carrying on a business of the nature as competes with that of the LLP.

Duties of Designated Partner

42. Devote their whole time and attention to the said partnership business diligently and faithfully by employing themselves in it, and carry on the business for the greatest advantage of the partnership.

43. The Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of Limited Liability Partnership Act, 2008.

44. Protect the property and assets of the LLP.

45. Upon every reasonable request, inform the other partners of all letters, writings and other things which shall come to their hands or knowledge concerning the business of the LLP.

46. Punctually pay their separate debts to the LLP.

47. The Designated Partners shall be responsible for the doing of all such other acts arising out of this agreement.

Cessation of Existing Partners

48. Partner may cease to be partner of the LLP by giving a notice in writing of not less than _____ days to the other partners of his intention to resign as partner.

49. Majority of Partners can expel any partner in the situation where the partner has been found guilty of carrying of activity/business of LLP with fraudulent purpose or has been found to engage in a business which competes with the business of LLP.

IN WITNESS WHEREOF THIS DEED IS SIGNED BY THE PARTIES HERETO THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

Party of the First Part ----------

Party of the Second Part ----------

Witness 1:

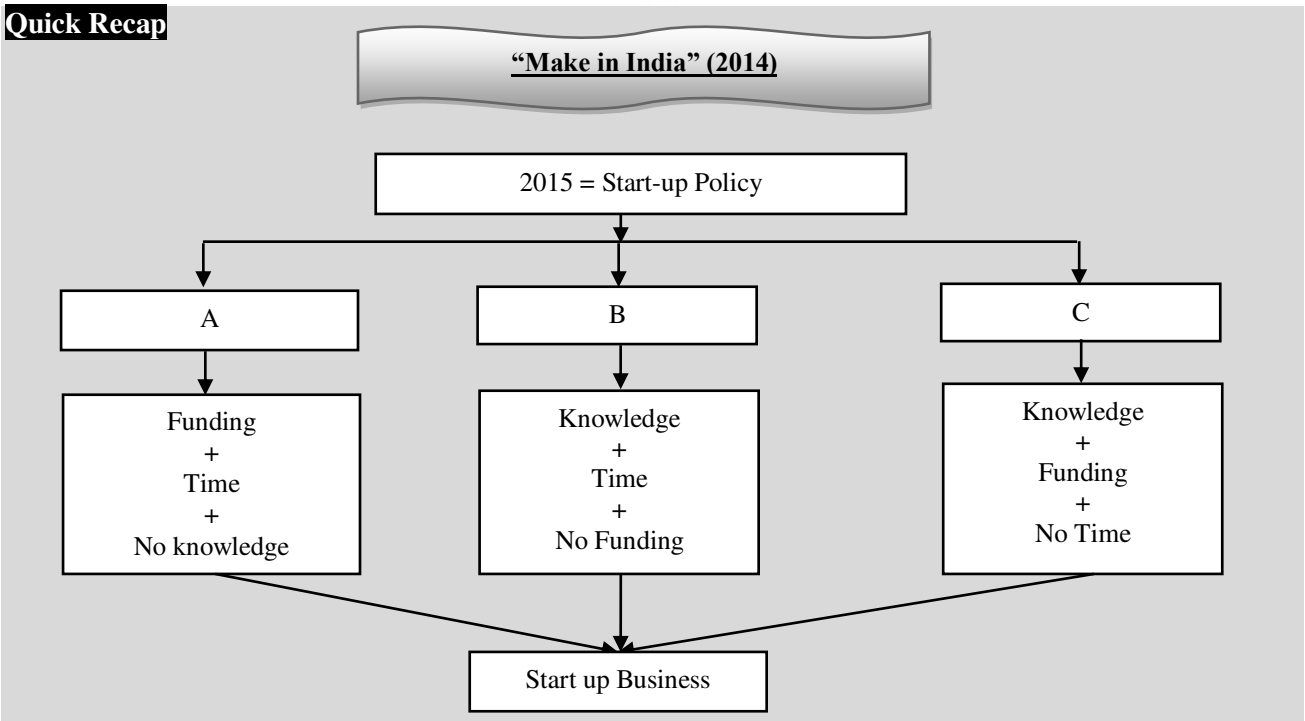
Witness 2:

Chapter – 4
STARTUPS AND ITS REGISTRATION

Synopsis

1. Introduction to Startups
2. Evolution of Start-ups
3. Startup Eco-system
4. Startup India Policy
5. Process of Recognition of Startup
6. Key Points
7. Indian States with startup Policies
8. Exemptions for Startups
9. Tax Exemptions for the Startups, Effective from 2017-18
10. Benefits or Exemptions to Start-ups under Companies Act, 2013
11. Following are the Important Points for a Start Up
12. Financing Options Available For Startup Companies
13. Different financing options
14. Mudra Banks (Micro Units Development and Refinance Agency Bank)
15. Procedure for loan from MUDRA Bank
16. MUDRA Card

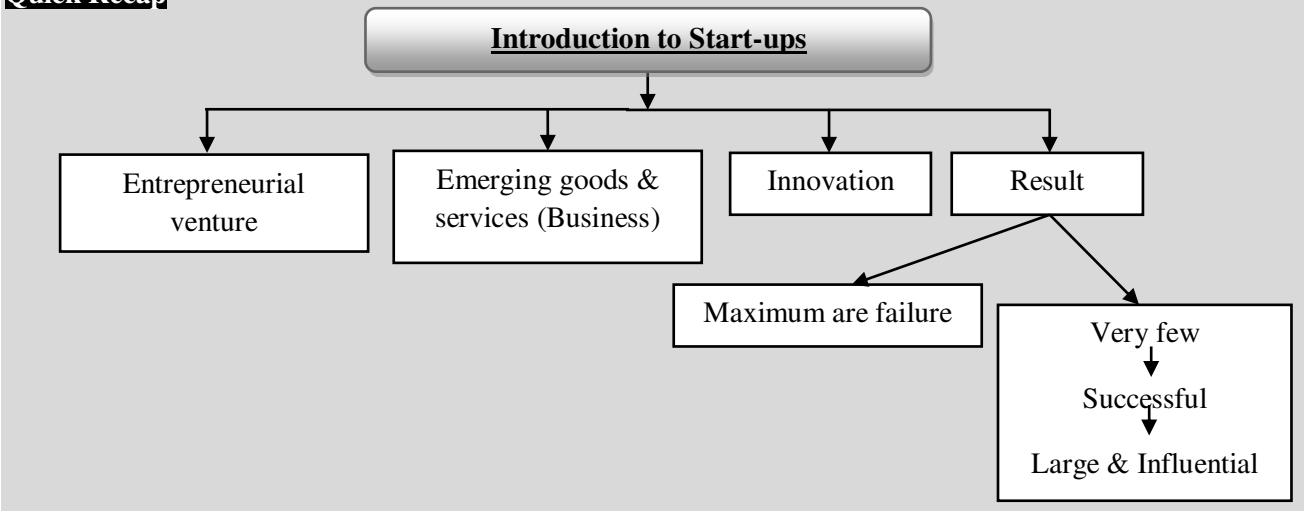
Quick Recap



1. Introduction to Startups

- A startup company is an **entrepreneurial venture** which is typically an emerging, fast- growing business that **aims to solve an unmet need** by **developing a viable business model** around an **innovative product**, **service, processor a platform**.
- A startup is usually a company designed to effectively develop and validate a scalable business model.
- Start-ups may have **high rates of failure,** but the **minority of successes** includes companies that have become **large and influential**.

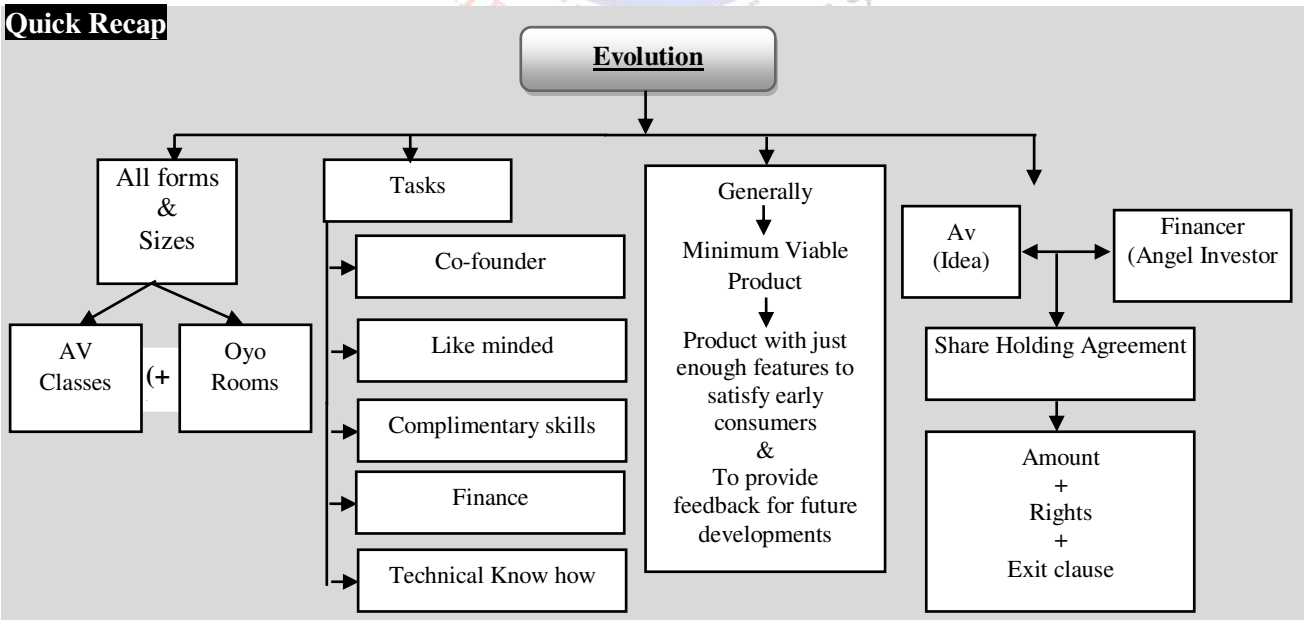
Quick Recap



2. Evolution of Start-ups

- Startup companies can come in **all forms and sizes.**
- Typically, a startup will begin by building a first **minimum viable product** (MVP), a prototype, to validate, assess and develop the new ideas or business concepts.
- In addition, startups **founders do research** to deepen their understanding of the ideas, technologies or business concepts and their commercial potential.
- A **Shareholders' Agreement (SHA)** is entered into between the founders and investors to confirm investment terms, rights of investors, exit clauses and any other important agreement terms.
- A **company may cease to be a startup as it passes various mile stones**, such as becoming publicly traded on the stock market in an Initial Public Offering (IPO), or ceasing to exist as an independent entity via a merger or acquisition.
- Given that startups operate in **high-risk sectors**, it can also be **hard to attract investors** to support the product or service development or attract buyers.

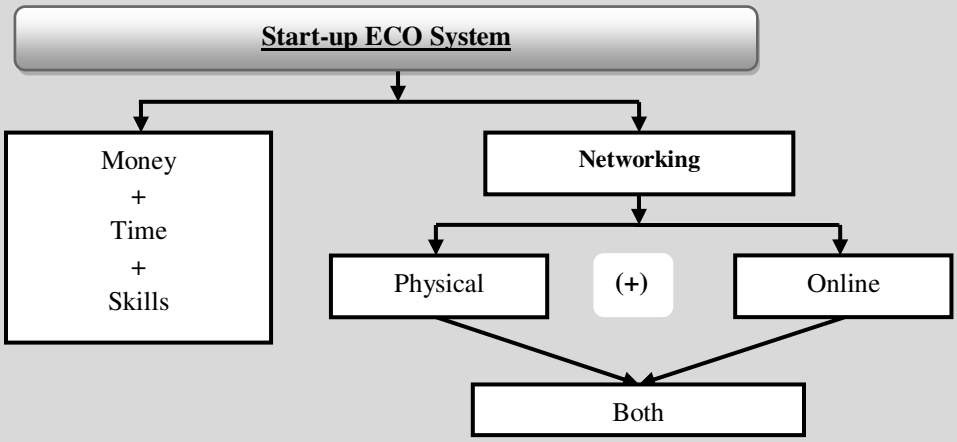
Quick Recap



3. Startup Eco-system

Startup ecosystems generally encompass the network of interactions among people, organizations, and their environment. Any particular **start-up ecosystem is defined by its collection of specific cities or online communities.** In addition, resources like **skills, time and money are also essential components of a start-up ecosystem.** The resources that flow through ecosystems are obtained primarily from the meetings between people and organizations that are an active part of those startup ecosystems. These interactions help to create new potential startups and to strengthen the already existing ones.

Quick Recap



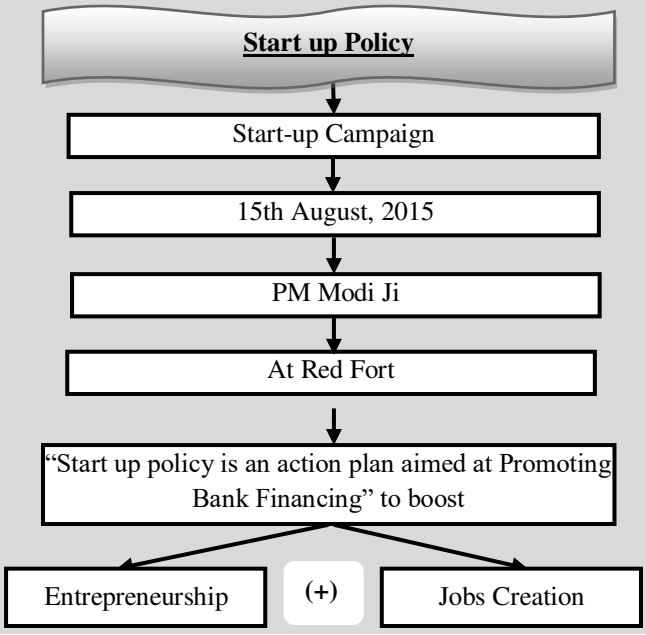
4. Startup India Policy

1. Start-ups Campaign
2. Government initiatives
3. Exemptions for Start-ups
4. Tax benefits
5. Cooling period for start ups

Startup India campaign is based on an action plan aimed at promoting bank financing for start-up ventures to **boost entrepreneurship and encourage startups with jobs creation.** The campaign was first announced by Prime Minister Narendra **Modi in his 15 August 2015 address from the Red Fort**.

The Government of India has announced 'Startup India' initiative for creating a conducive environment **(Environment of Certainty)** for startups in India. The various Ministries of the Government of India have initiated a number of activities for the purpose.

Quick Recap

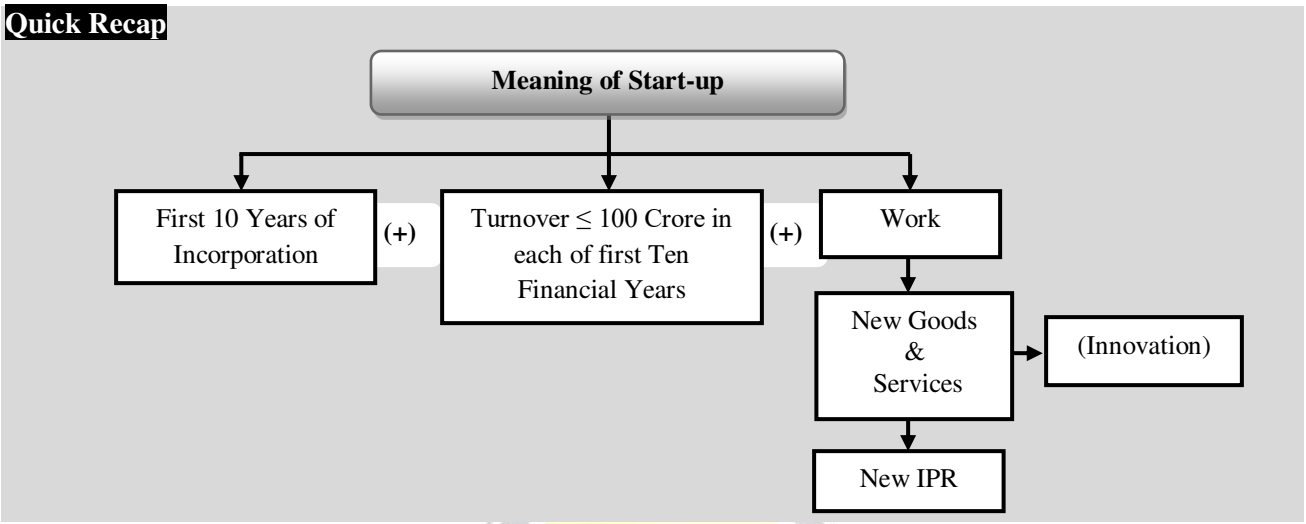


Definition of Start Up

An entity shall be considered as a 'startup'—

- **Up to Ten years** from the date of its incorporation.
- **If its turnover for any of the financial years has not exceeded Rupees 100 crore**.
- It is working towards **innovation, development, deployment or commercialization of new products, processes or services** driven by technology or intellectual property;

Quick Recap



Caution - Any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'startup'.

Startup company as defined in notification, by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up share capital upto10 (ten) years from the date of its incorporation or registration.

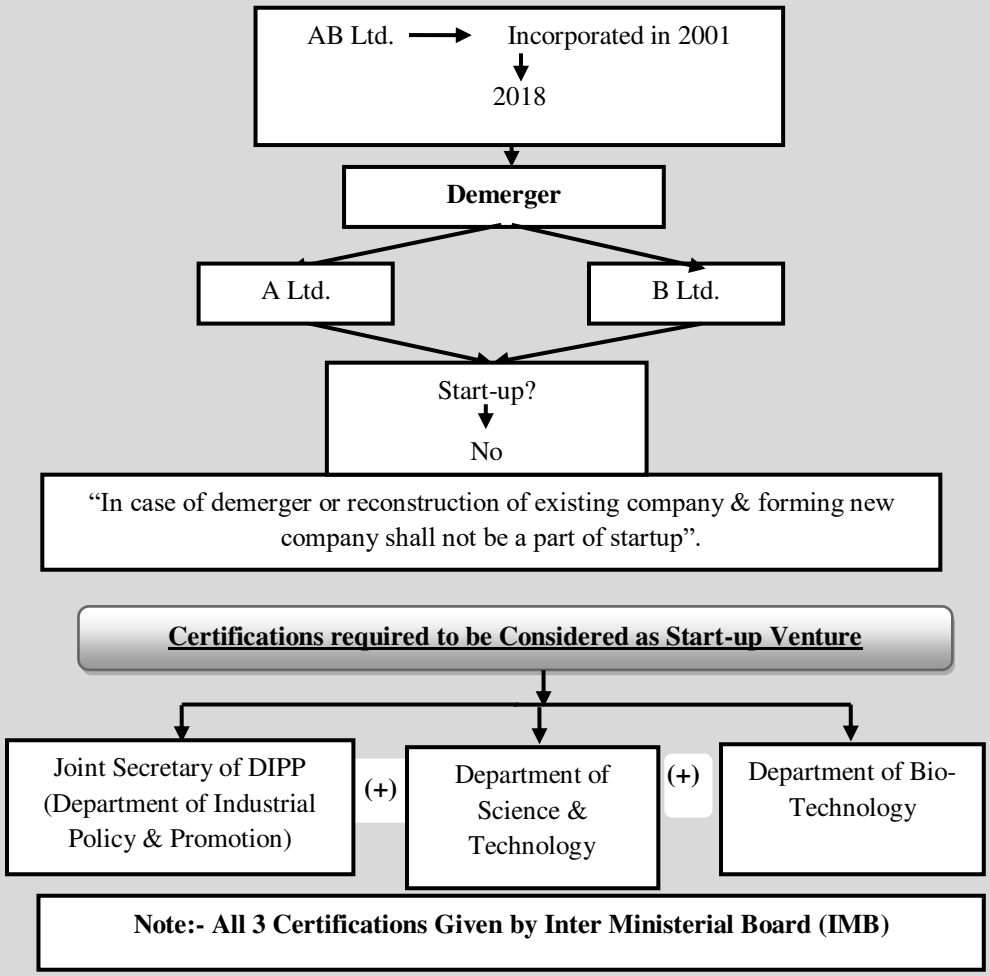
Upto a period of ten years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India

Further, in order to obtain tax benefits a startup so identified under the above definition shall be required to obtain a certificate of an eligible business from the **Inter-Ministerial Board of Certification** consisting of:

- Joint Secretary **Department of Industrial Policy and Promotion**
- Representative of **Department of Science and Technology**
- Representative of **Department of Biotechnology**

An entity shall cease to be a startup on completion of Ten years from the date of its incorporation or if its turnover for any previous year exceeds Rupees 100 crore.

Quick Recap



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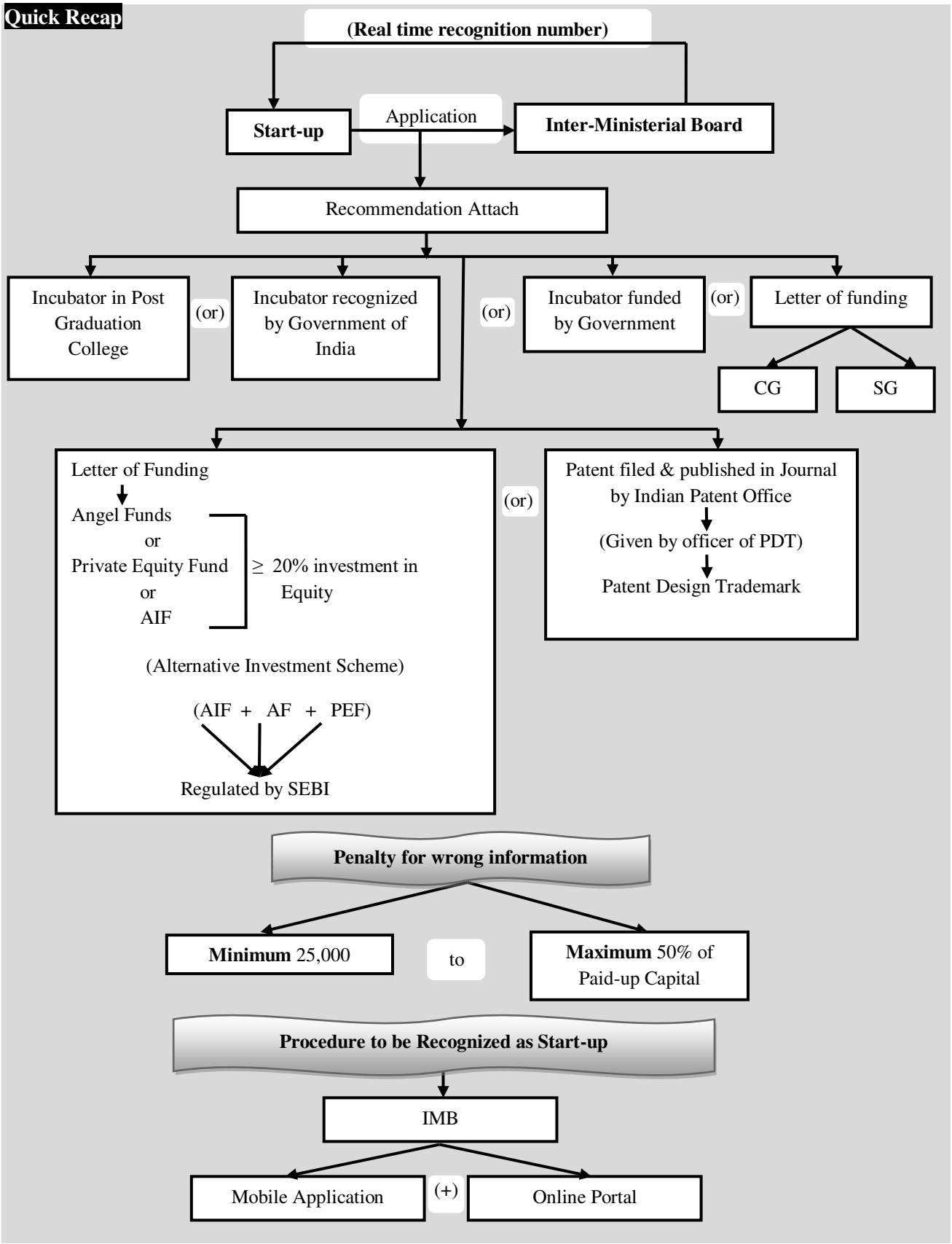
5. Process of Recognition of Startup

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

Quick Recap



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

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

or

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

or

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

or

- A letter of funding of **not less than 20 per cent** in equity by any Incubation Fund or **Angel Fund or Private Equity Fund or Accelerator or Angel Network duly registered with SEBI** that endorses innovative nature of the business

or

- A **letter of funding by Government of India or any State Government** as part of any specified scheme to promote innovation

or

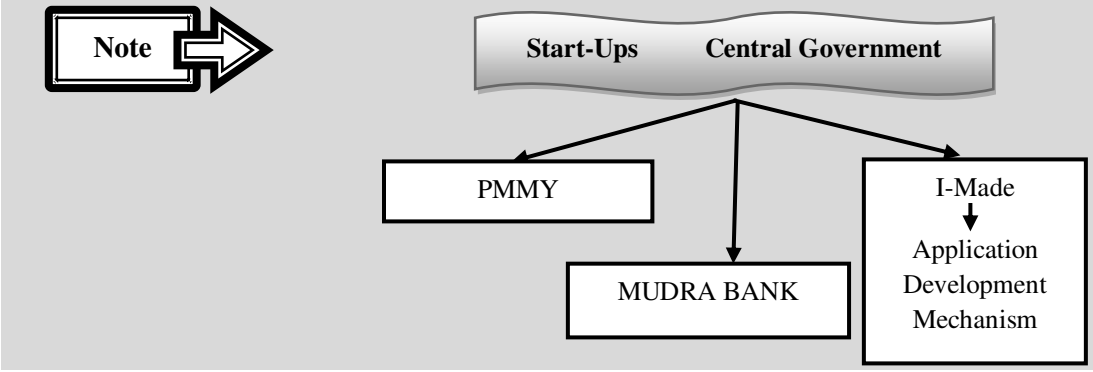
- A **patent filed and published in the Journal by the Indian Patent Office** in areas affiliated with the nature of business being promoted.

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

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

**A startup is an entity that is headquartered in India which was opened less than Ten years ago and has an annual turnover less than `100 crore**. The government has already launched I MADE, an app development platform aimed at producing 1,000,000 apps and PMMY, the MUDRA Bank, a new institution set up for development and refinancing activities relating to micro units with a refinance Fund of `200 billion.

Quick Recap



6. Key Points

- **Single Window Clearance** even with the help of a mobile application
- **10,000 crore fund**
- **Reduction in patent registration fee**
- Modified and more friendly Bankruptcy Code to ensure **90-day exit window**

- **Freedom from** mystifying **inspections for 3 years**
- **Freedom from Capital Gain** Tax for 3 years
- **Freedom from tax in profits** for 3 years
- **Self-certification** compliance
- **Innovation Hub** under Atal Innovation Mission
- Starting with **5 lakh schools to target 10 lakh children** for innovation programme
- **New schemes to provide IPR protection** to start-ups and new firms
- **Encourage entrepreneurship**
- **Stand India across the world** as a start-up hub.

7. Indian States with startup Policies

Few State Governments have also taken initiatives and launched startups policies for their states. A few of these states include:

1. **West Bengal**

   West Bengal launched its policies relating to startups in **January 2016**. They have launched a website by the name of **www.startupbengal.in** in an effort to get all the stakeholders in that community on a single platform. With this initiative, communication between startups, investors, service providers etc. is expected to become easier and smoother. These **policies will be in effect until December 2021.**

2. **Uttar Pradesh**

   The Government in this State is working to get **more IT investment** into the state and promoting upcoming startups in this particular segment.

3. **Odisha**

   The government of Odisha has launched its policy with a **vision** of making **Odisha one of the top three investment destinations in India**. To achieve their goal they have come up with a **10-year plan, which will work till 2025.** The Government has announced its plan along with **"Make In India"** in February, 2016.

4. **Rajasthan**

   Rajasthan launched its **plans in October, 2015**. The Government plans to help **set up around 500 startups** within the next five years. For this purpose, they have allocated funding and also **plan to set up around 50 incubators** across the state. With their efforts, they plan to bring in a **funding of around ` 500 crores in the next 5 years.**

5. **Karnataka**

   Karnataka has a **setup a 5-year plan** with very specific goals and targets which they hope to achieve by the end of the plan. They want to have **at least 25 technology related startups** that aim to solve the social problems faced by the state. Along with this, they want **around 2000 startups focused just on technology** and **600 startups based on products**. With their policies, they are aiming to create around **18 lakh jobs in the state** itself.

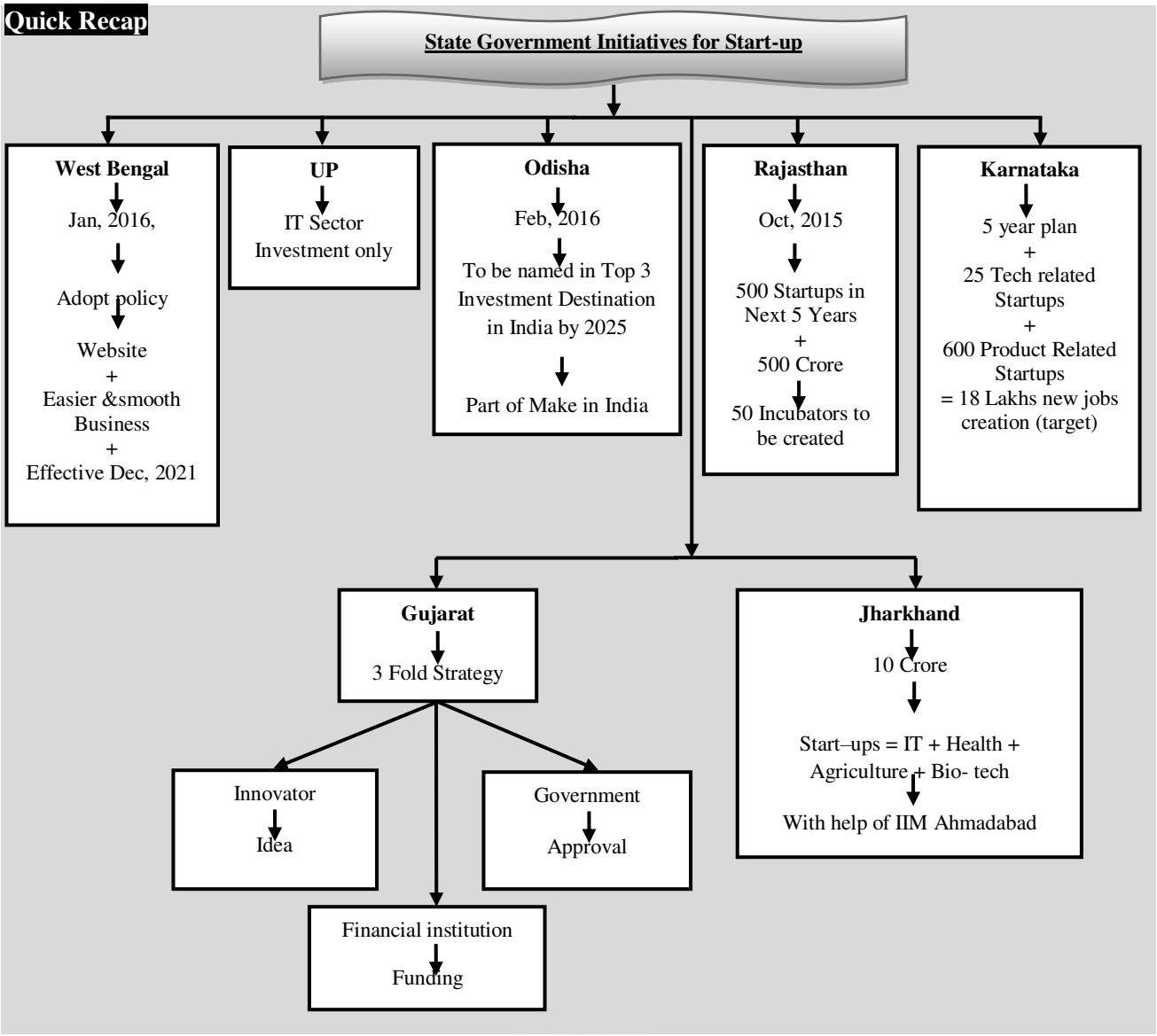
6. **Gujarat**

   They have a **threefold strategy** which involves the innovators, the Institutions, and the government committee. These three form a chain, wherein the **innovators come up with the idea** which will be **facilitated by the institutions** and then **approved and financed by the government committee.**

7. **Jharkhand**

   Jharkhand is the **most recent entrant** in Indian states with startup policy. The state government has facilitated **$1.5 Mn (INR 10 Cr)** for **Innovation and Incubation Centres** in different part of states. An innovation lab would also be set up with the **help of IIM Ahmedabad.** With this startup policy initiative, the state government aims to encourage **the startups in the sectors like Information Technology, Health, Tourism, Agriculture, Biotechnology, and alternative energy.**

Quick Recap



8. Exemptions for Startups

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

1. **Simple process**

   Government of India has launched a **mobile app and a website for easy registration** for startups. Anyone interested in setting up a startup can **fill up a simple form on the website and upload certain documents.** The entire process is completely online.

Note:-

Start-up Cost: Fee for filing SPICe+, MoA and AoA has been reduced to Zero for proposed companies, where the authorized capital is upto `15 Lakhs in case of company having share capital

Or

where the number of members are upto 20 in case of company not having share capital.

Note:-

Start can be incorporated as,

A private limited company (as defined in the Companies Act, 2013)

Or

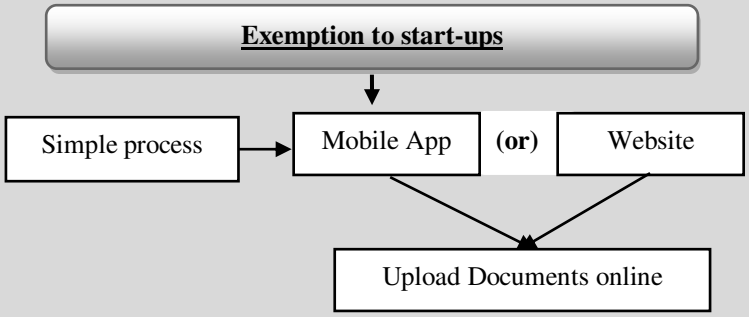
Registered as a partnership firm (registered under section 59 of the Partnership Act, 1932

Or

A limited liability partnership (under the Limited Liability Partnership Act, 2008) in India,

Upto a period of ten years from the date of incorporation/registration.

Quick Recap

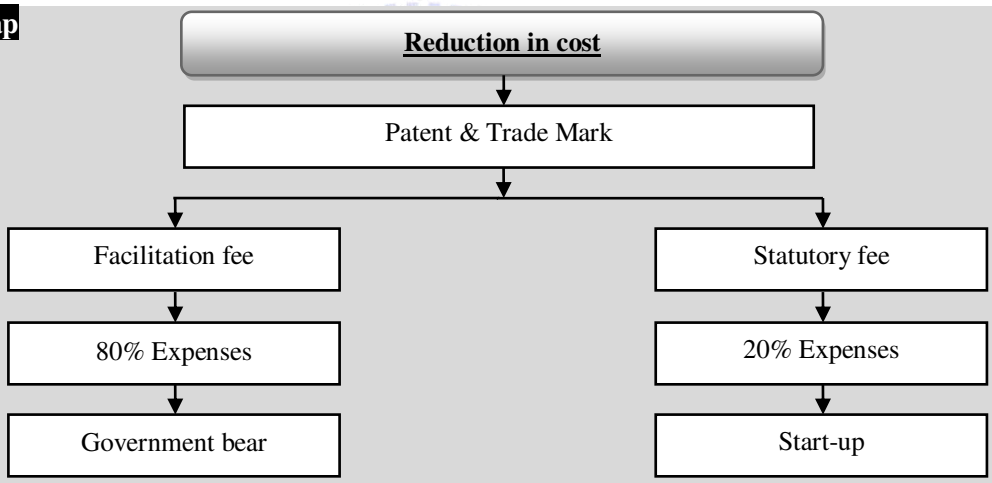


2. Reduction in cost

The government also provides lists of **facilitators of patents and trademarks**. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees.

The **government will bear all facilitator fees** and the **startup will bear only the statutory fees.** They will enjoy **80% reduction in cost of filing patents.**

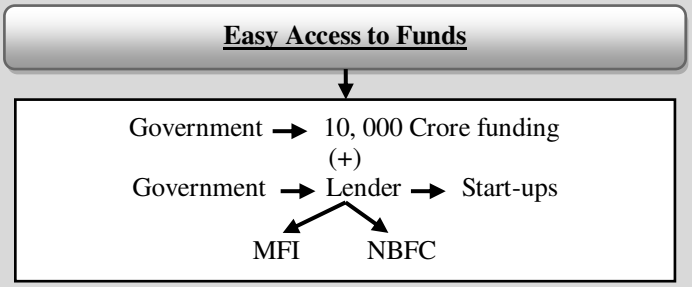
Quick Recap



3. Easy access to Funds

A **10,000 crore rupees fund is set-up by government** to provide funds to the startups as venture capital. The **government is also giving guarantee to the lenders** to encourage banks and other financial institutions for providing venture capital.

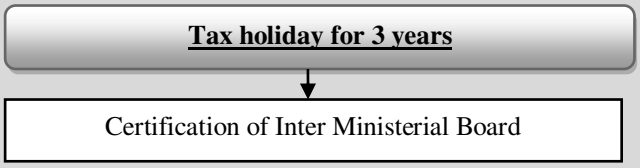
Quick Recap



4. **Tax holiday for 3 Years**

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

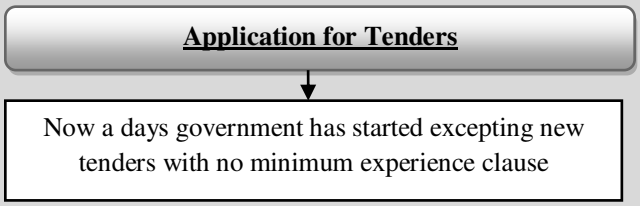
Quick Recap



5. **Apply for tenders**

Startups can apply for government tenders. They are **exempted from the "prior experience or turnover" criteria** applicable for normal companies answering to government tenders.

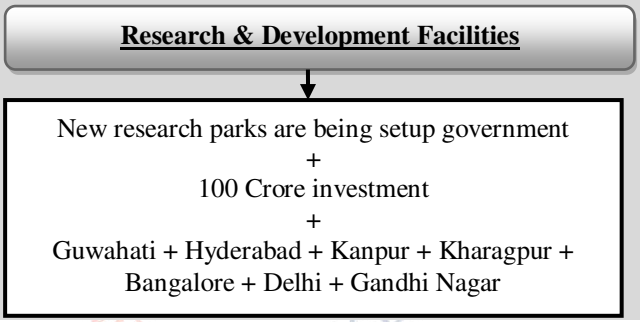
Quick Recap



6. **R&D facilities**

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

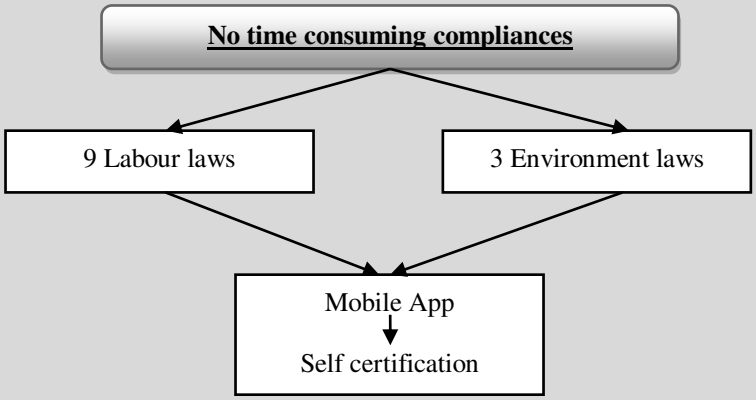
Quick Recap



7. **No time-consuming compliances**

Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the **Startup mobile app) with 9 labour and 3 environment laws.**

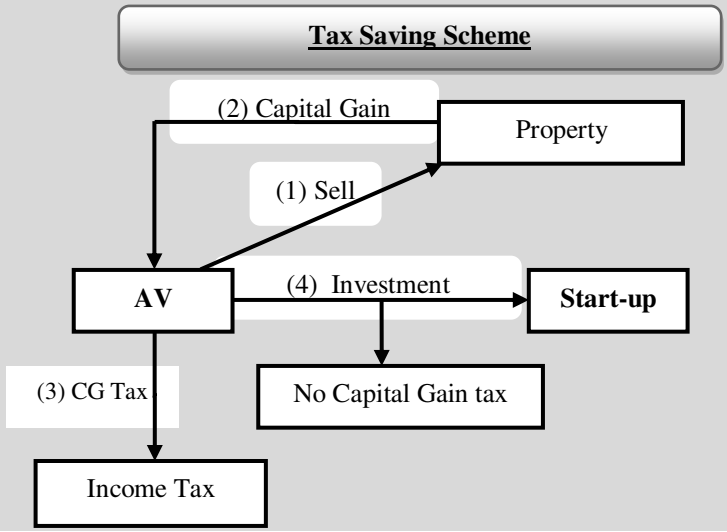
Quick Recap



8. Tax saving for investors

People investing their capital gains in the venture funds setup by government will get **exemption from capital gains**. This will **help startups to attract more investors.**

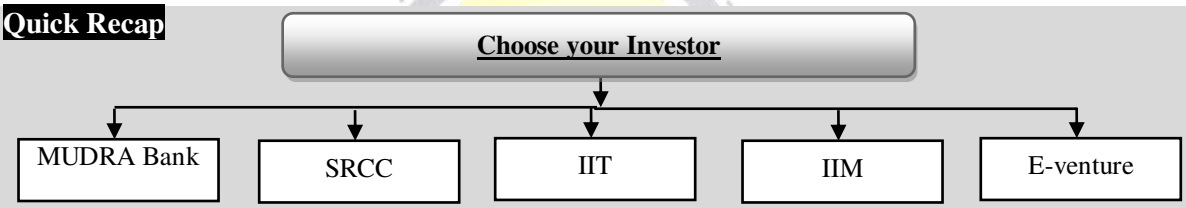
Quick Recap



9. Choose your investor

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

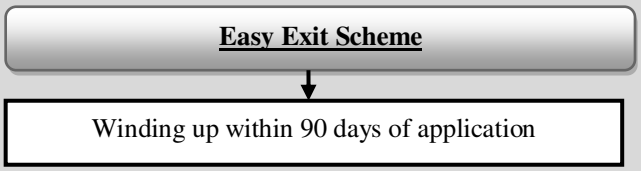
Quick Recap



10. Easy exit

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

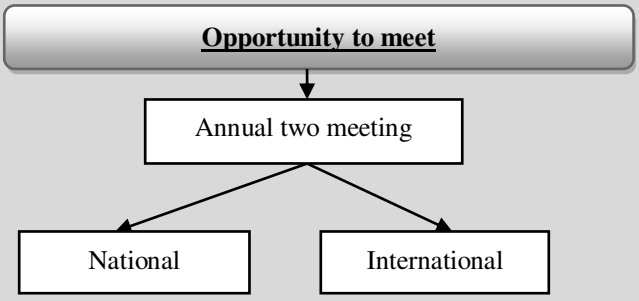
Quick Recap



11. Meet other entrepreneurs

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

Quick Recap



9. Tax Exemptions for the Startups, Effective from 2017-18

Following tax exemptions for the startups had been introduced that was made effective from 2017-18. The proposed incentives and exemptions are:

1. Income Tax Exemption on profits under Section 80-IAC of Income Tax (IT) Act. The Inter-Ministerial Board of Certification is a Board set up by Department for Promotion of Industry and Internal Trade (DPIIT) which validates Startups for granting tax related benefits.

   A DPIIT recognized Startup is eligible to apply to the Inter-Ministerial Board for full deduction on the profits and gains from business (exemption under Section 80-IAC of the Income Tax Act) provided the following conditions are fulfilled.

   The entity should be a private limited company or a limited liability partnership, Incorporated on or after 1st April 2016 but before 1st April 2021, and Products or services or processes are undifferentiated, have potential for commercialization and have significant incremental value for customers or workflow.
2. The deduction is for any three consecutive years out of seven years from the year of incorporation of start-up.
3. Tax Exemption on Investments above Fair Market Value. – DPIIT Recognized Startups are exempt from tax under Section 56(2)(viib) of the Income Tax Act when 212 EP-SBEC such a Startup receives any consideration for issue of shares which exceeds the Fair Market Value of such shares.
4. The startup has to file a duly signed declaration in Form 2 to DPIIT [as per notification G.S.R. 127(E)] to claim the exemption from the provisions of Section 56(2)(viib) of the Income Tax Act.
5. 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 `50 lakh
6. Amendment in Section 54GB of the Income-tax Act Exemption from tax on capital gains arising out of sale of residential house or a residential plot of land if the amount of net consideration is invested in prescribed stake of equity shares of eligible Startup for utilizing the same for purchase of specified asset:
   - The condition of minimum holding of 50% of share capital or voting rights in the start-up relaxed to 25%
   - The period of extension of capital gains arising from for sale of residential property for investment in start-ups has been extended up to 31st March 2021.
7. Amendment in Section 79 of Income Tax Act. Startups can carry forward their losses on satisfaction of any one of the following two conditions:
   - Continuity of 51% shareholding/voting power

     Or
   - Continuity of 100% of original shareholder.

     OR

DPIIT Start-up India Recognition

- The government of India under its flagship programme "Start-up India" introduced the concept of an "eligible start-up" in the year 2015.
- A formal national policy framework was launched in February 2016 called the Start-up India Action Plan.
- Department of promotion of Industry and internal Trade ("DPIIT") has defined the criteria for "Eligible start-up".
- "Eligible start-up" entitled to benefits announced by government under various programmes, schemes and regulations.
- Start-up can get recognition through an online application on www.startupindia.gov.in

- 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; orb. reject the application by providing reasons.

Registrations

- **Registration under Department of promotion of Industry and internal Trade ("DPIIT") to recognise as "Eligible start-up".**
  1. **Types of entities:** Incorporated as a **"Private Limited Company, Registered Partnership Firm or Limited Liability Partnership".**
  2. **Incorporation criteria:** not older than 10 years from the date of incorporation/registration.
  3. **Turnover:** Annual turnover not exceeding `100 crore for any of the financial years since its incorporation/Registration.
  4. **Innovation, Development/Improvement, employment/wealth creation:** working towards Innovation. Development/Improvement of a product, process or service and/or scalable business model with high potential of employment generation or creation of wealth.
  5. **NO splitting/reconstruction:** entity should not have been formed by splitting up or reconstructing an already existing business.
- **Information required for registration**
  1. Details of the company//LLP/Partnership firm: Name, Industry, Sector, Categories, PAN, Address
  2. Details of partners/Directors
  3. Current number of employees(including founder)
  4. Stage of the startup
     - Ideation-you have an idea for product or service
     - Validation-build prototype
     - Early traction- acquiring customers.
     - Scaling grow and create sustainable profits.
- Is your startup creating an innovative product/service/process or improving the existing product/service/ process.
- Is your startup creating scalable business model with high potential of employment generation or creation of wealth.
- Brief note about innovation, improvement and scalability.
- Start-up activities
  - What is the problem solving
  - How start-up will help in problem solving
  - Uniqueness of solution
  - How does your start-up generate revenue
- **Pitch-deck**

1. Brief how your start-up is innovative and/or scalable.
2. No of people employed and funding raised, if any
3. Credentials of founders/management.
4. Screenshots of images of product/website link, if any.

- Start-up video link
- Copy of Incorporation/registration certificate.
- **[U/Section 80-IAC] Certification of eligible business from Inter-Ministerial Board of Certification**

1. **Types of entities:** Incorporated as a **"Private Limited Company or Limited Liability Partnership".**
2. **Incorporation criteria:** incorporated on after 1st April, 2016 before 1st April, 2021
3. **Definition of "Eligible Business"** working towards Innovation. Development/Improvement of a product, process or service and/or scalable business model with high potential of employment generation or creation of wealth.

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4. **NO splitting/reconstruction** Entity should not have been formed by splitting up or reconstructing an already existing business.

   Entity should not be formed by the transfer to a new business of machinery or plant previously used for any purpose. (Except only 20% of the total value of the machinery or plant previously used can be utilised in start-ups).

- **[U/Section 80-IAC] Information required for registration**
  - Application can be made online in form 1 on www.startupindia.gov.in
  - Details of start-up: Name of start-up, date of incorporation, Incorporation no, address, Nature of business, DIPP no
  - Contact of details of start-up
  - Documents required for registration u/s 80-IAC: MOA/LLP deed, Annual accounts & ITR for last 3 financial years, Start-up video link, pitch-deck.

How to avail deduction

- **Amount of deduction**: **100%** of profits and gain derived from start-up business.
- **Turnover criteria:** Annual turnover not exceeding **`100** crore for any of the financial years for which deduction is claimed.
- **Period of deduction**: Deduction available, at the option of assesse for any **3** consecutive assessment years out of **10** years beginning from the year in which the eligible start-up is incorporated.

[Section 56(2)(viib)] Angel tax incentive

- Angel Tax is a term used for tax proposed to be levied on consideration received by privately held companies towards issue of shares for a value that exceeds the face value of such shares.
- Where such value i.e. essentially the premium on the shares cannot be justified.
- Valuation Report from merchant Banker for valuation carried out under discounted cash flow method.

Eased conditions for start-up

- Notification No. GSR 127(E), dated 19-02-2019
- Declaration in form 2 must be filled with DPIIT.

[Section 56(2)(viib)] - Exemption From the provisions, if it fulfills the following conditions:

- It has been recognized by DPIIT;
- Aggregate Amount of paid up share capital and share premium of the start-up after issue or proposed issue of share) <= INR 25cr.

Exclusion in the limit of INR 25 CR

- Investment from non-resident
- Or Venture Capital or Venture Capital fund.
- Or Specified Company (A company whose shares are frequently treated **and** whose net worth on the last date of financial year preceding the year in which shares are issued exceeds INR 100 Crore **or** turnover for the financial year preceding the year in which shares are issued exceeds INR 250 Crore.

[Section 54GB] Tax Exemption on capital gain

- Nature: Long term capital gain arising from transfer of residential property.
- Available to: Individual/HUF.
- How to Claim exemption: Utilization of the net consideration for the subscription in the equity shares of an eligible company.
- Eligible company: It is a company which qualifies to be a small and medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 or is an eligible start-up.
- **Incorporation Criteria** It is a company incorporated in India during the period from the 1st day of aril of the previous year relevant to the assessment year in which the capital gain arises and ending on the due date of furnishing of return of income under sub-section (1) of section 139 by the assesse;

- **Share Capital** It is a company in which the assesse has more than 25% of the share capital or more than 25% of voting rights after the subscription in shares by the assesse.
- **What Eligible company has to do**

➢ Investment in purchasing of new assets within one year from the date of subscription in the equity shares by the assesse,

➢ Block period of 5 years from the date of their acquisition of equity shares or asset by company.

➢ Company must be holding Certification from Inter-Ministerial Board.

❖ Restrictions on end use of investment:

New plant and machinery does not include:

- Any machinery or plant which, before its installation by the assesse, was used either within or outside India by any other person;
- Any machinery or plant installed in any of the office premises or any residential accommodation, including accommodation in the nature of a guest-house;
- Any office appliances including computers or computer software (except for technology-driven start-up, the holding period shall be three years);
- Any vehicles;
- Any machinery or plant, the whole of the actual cost of which is must not be allowed as a deduction (whether by way of depreciation or otherwise) in any previous year.

[Section 79] Relaxation in change of shareholding for carry forward of losses

Carry forward loss even if there is change in 51% shareholding, provided all shareholders as on year of losses continue to be shareholder in current year (i.e. year of set-off)

❖ 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 `50 lakh

- The condition of minimum holding of 50% of share capital

Or

- voting rights in the start-up relaxed to 25%

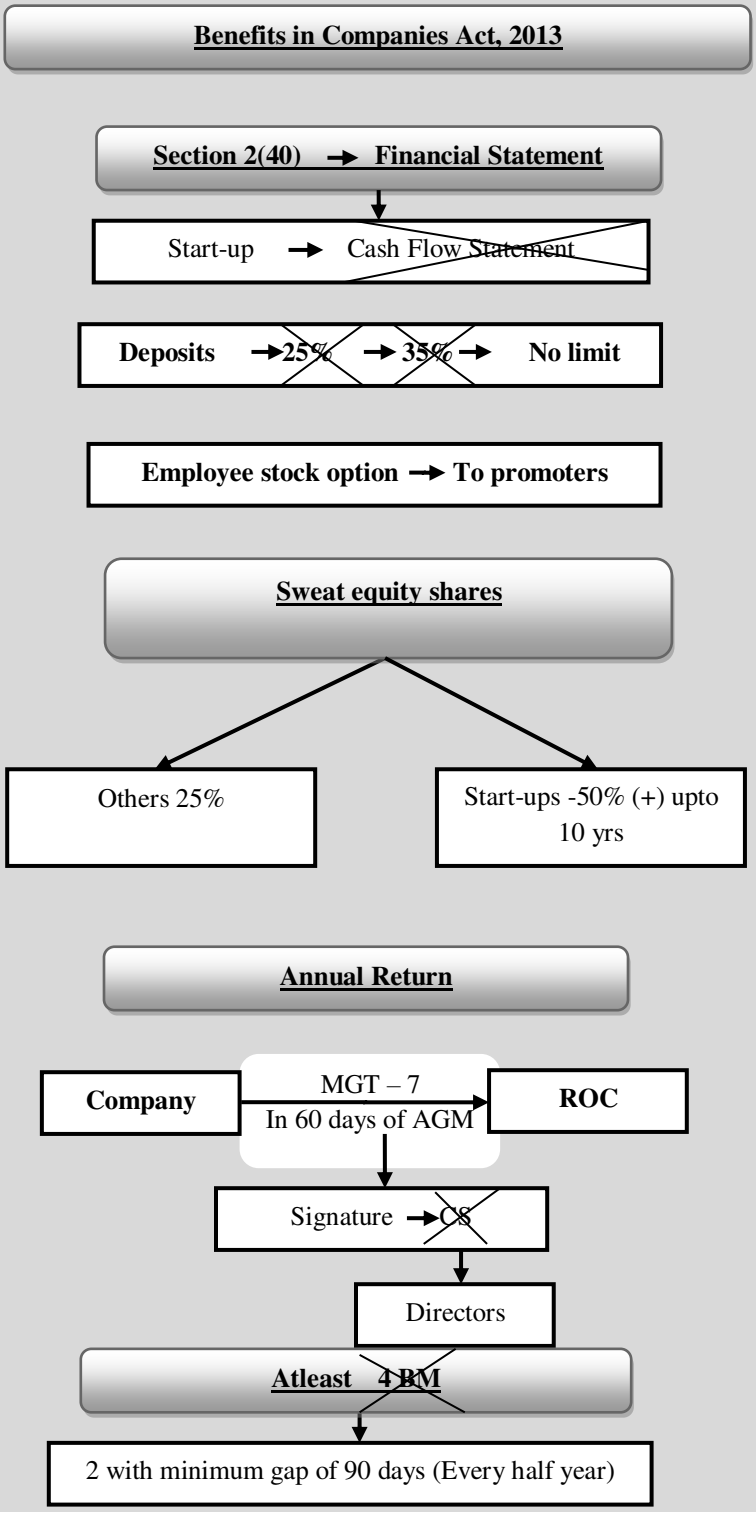
The period of extension of capital gains arising from for sale of residential property for investment in start-ups has been extended up to 31st March 2021

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

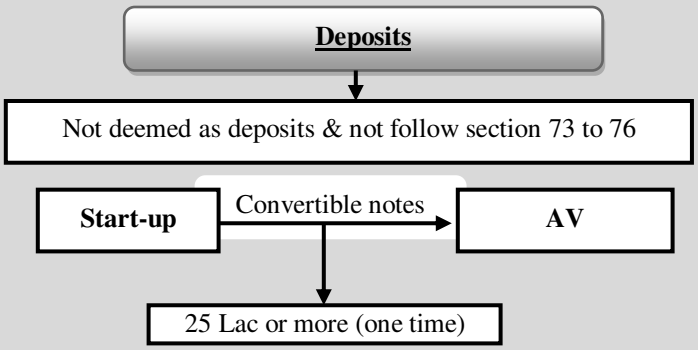
1. By Notification dated June 13, 2017 an explanation has been inserted in **Section 2(40)** of the Companies Act, 2013 i.e. **Financial Statement which provides the definition of a "Start up" or "start-up company."**
2. The **Companies (Acceptance of Deposit) Rules, 2014** have been amended to provide that an **amount of twenty-five lakh rupees or more received by a start-up company,** by way of a convertible note in a single tranche, from a person shall not be treated as a deposit.
3. The provisions of **clauses (a) to (e) of Section 73 of the Act shall not apply to a start-up company** for Ten years from the date of its incorporation.
4. Start-ups are **allowed to issue Employee Stock Options** to promoters working as employees.
5. The limits with regard to **sweat equity** that can be issued by a start-up company **has been increased** from **25% of paid up capital to 50% of paid up capital upto Ten years from the date of its incorporation.**
6. The **annual return** of a start-up company may be **signed by the company secretary**, **or** where there is no company secretary, **by the director of the company.**
7. For start-ups, **convening at least one meeting of the board of directors in each half of a calendar year** with the **gap between the two meetings of not less than Ninety (90)** days is sufficient to meet the requirement of Section 173(5) of the Act.

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

Quick Recap

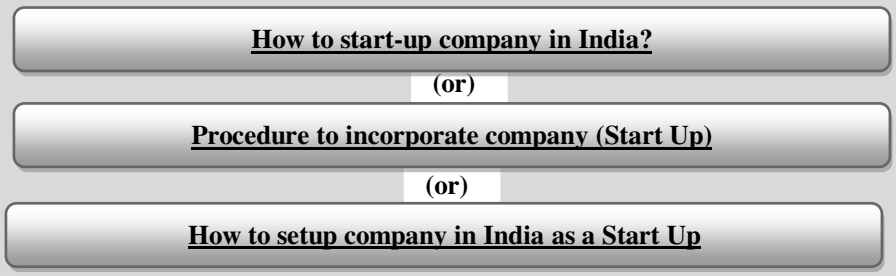

Benefits in Companies Act, 2013
Section 2(40) → Financial Statement
Start-up → Cash Flow Statement
Deposits →25% →35% → No limit
Employee stock option → To promoters
Sweat equity shares
Others 25%
Start-ups -50% (+) upto 10 yrs
Annual Return
Company
MGT – 7
In 60 days of AGM
ROC
Signature →CS
Directors
Atleast 4 BM
2 with minimum gap of 90 days (Every half year)

Quick Recap



11. Following are the Important Points for a Start Up

Quick Recap



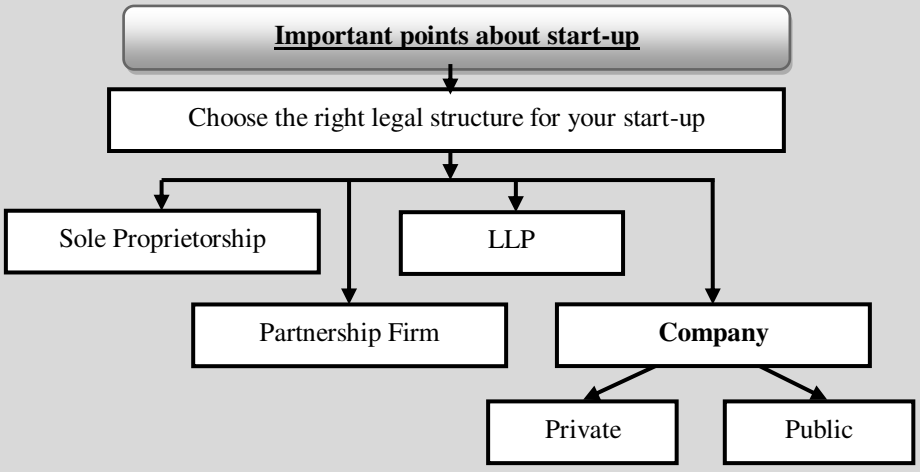
1. **Choose the right legal structure for your startup**

Choosing an appropriate legal structure is one of the most crucial decisions for any startup. The decision should be taken based on individual circumstances and a host of factors such as

- Nature of business operation
- Business trajectory
- Regulatory and tax considerations
- Costs of formation
- Ongoing administration
- External capital requirement
- Type of funding sought,
- Legal liability protection required
- Number of stakeholders
- Balance required between ownership and management
- Proposed mechanism for profit sharing or distribution amongst stakeholders

Note- Preferred entity structures for startups in India are limited liability partnership and private limited company.

Quick Recap



2. Registrations and business licenses

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

Business licenses are permits issued by government authority that allow startups to start or continue to operate a particular business within its territorial jurisdiction lawfully.

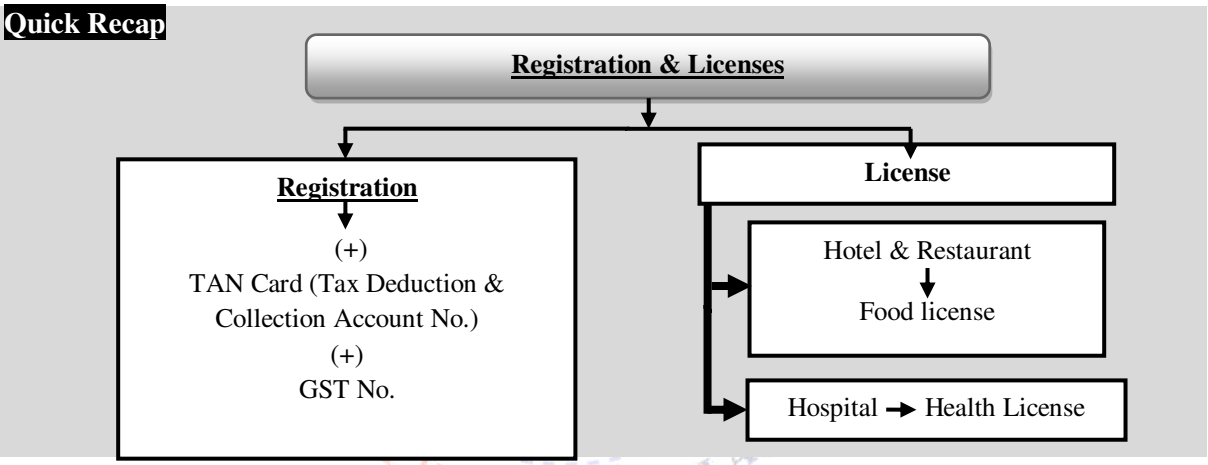
Factors determining License requirements are:

- Nature of business activity
- The number of employees
- Location of business
- Form of business ownership

Some examples are:

- Food Safety License
- Health License
- Trade license
- Shops & Establishment License etc.

Quick Recap



3. Intellectual Property Protection

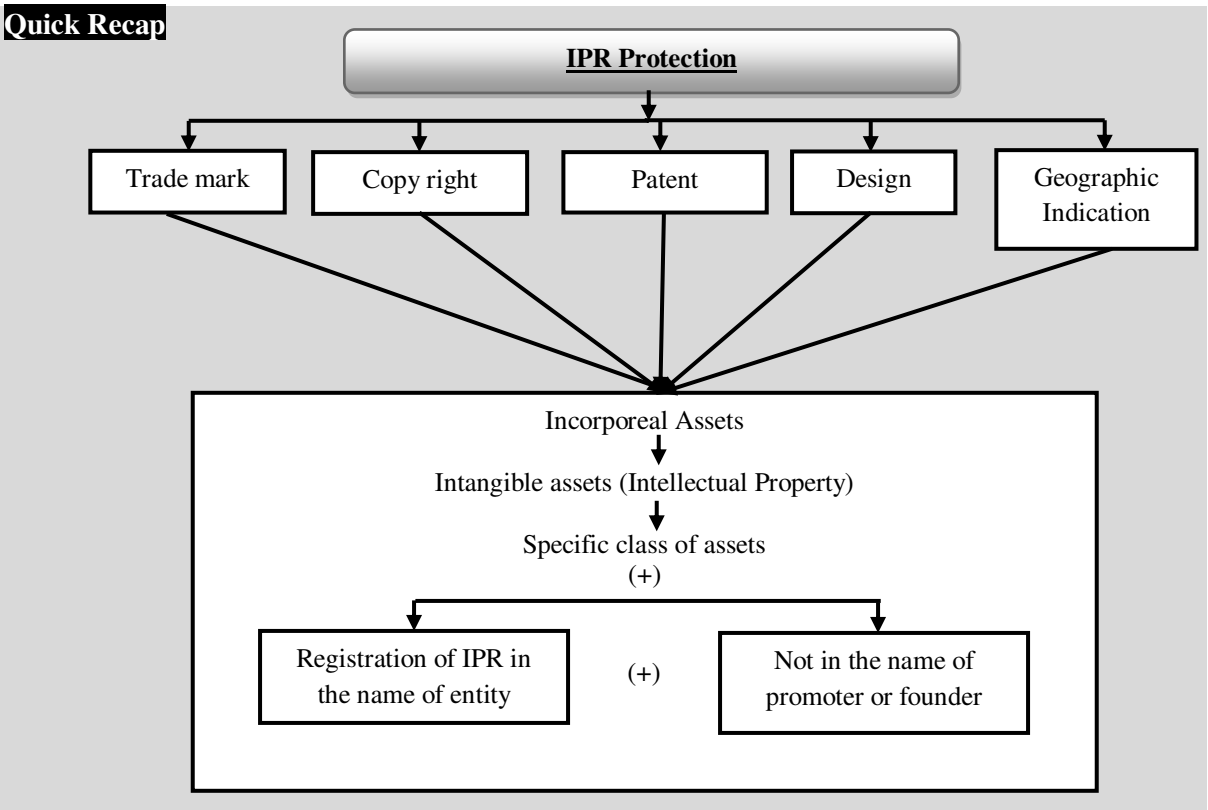
Intellectual Property Rights are a very important asset class for a startup. **Developing and protecting intellectual property with proper registration can help startups gain competitive advantage**. It is advisory to obtain trademark registration for the business name or trade name under the Trademarks Act.

All Intellectual Property including

- Trademark
- Copyright
- Design
- Trade secrets
- Inventions
- Patents

Should be registered in the name of the entity and not in the name of the promoters or founders of the startup.

Quick Recap



4. Founder Equity – Split and Vesting

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

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

Founder shares should be always subject to vesting schedule i.e. over a period of three to four years. When vesting is imposed on a founder equity, the unvested shares held by the founder become subject to a contractual **right to repurchase or transfer often at a nominal value, if one of the founders is terminated or voluntarily leaves the startup.** This is very important to ensure future viability of the business.

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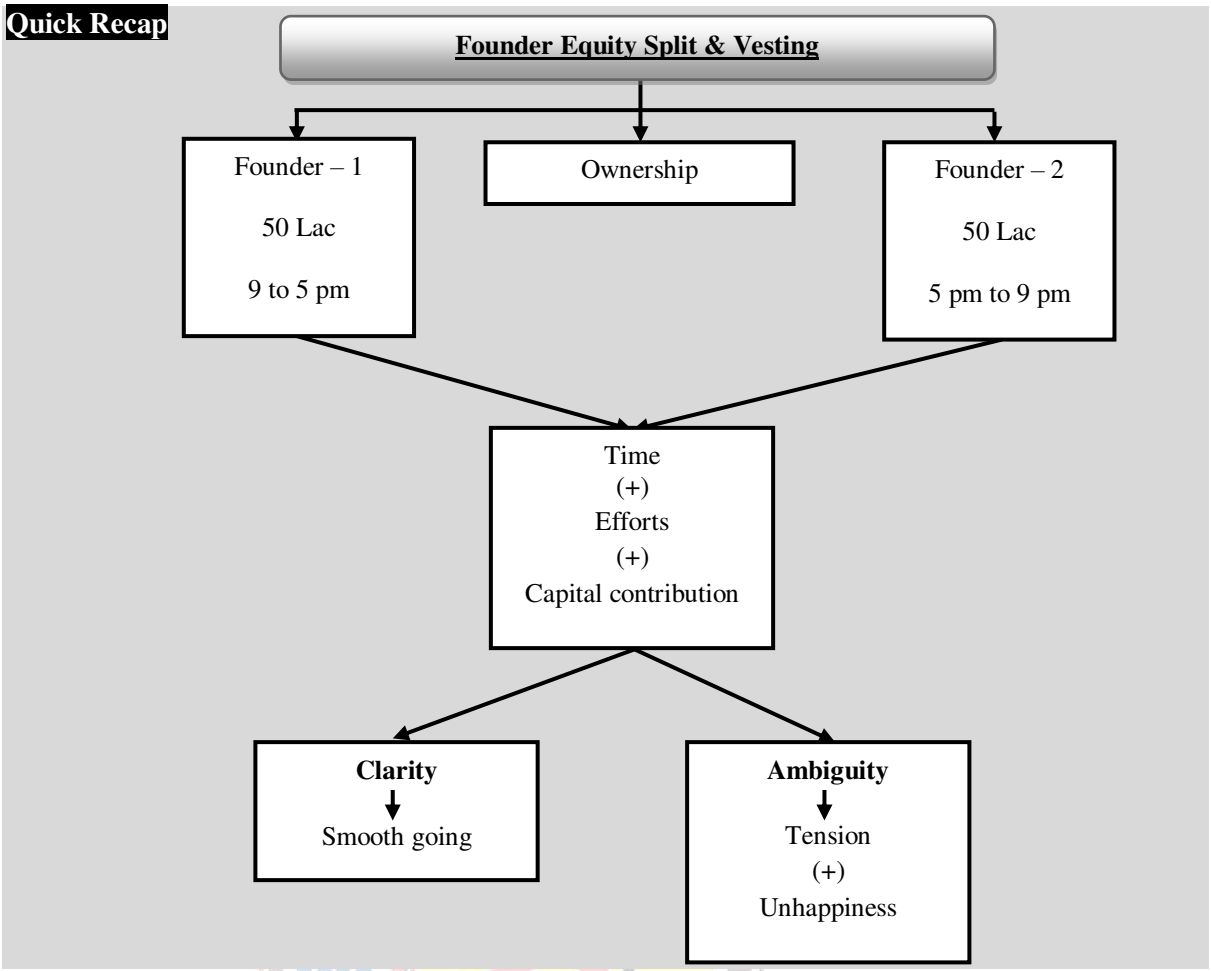
Quick Recap



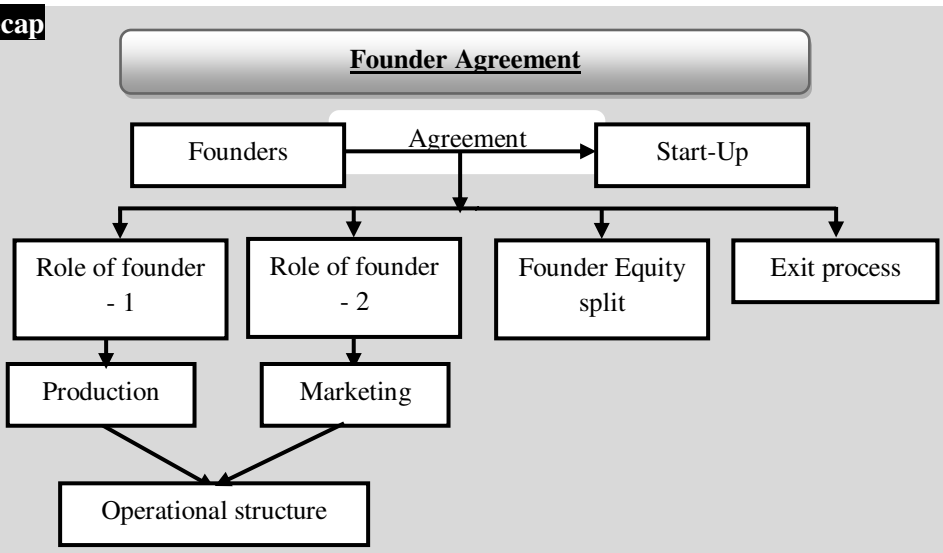
5. Founder agreements

The founder agreement is the most valuable tool to establish the relationship between the founders of a startup. The **agreement should represent a clear understanding between the founders on all key issues** related to the startup.

Founder agreements should clearly mention:

- Roles and responsibilities of the founders
- Clauses detailing the decision making
- Operating structure of the startup
- Founder equity split with vesting
- Assignment of all intellectual property in favour of the startup
- Termination of a promoter
- Exit process

Quick Recap



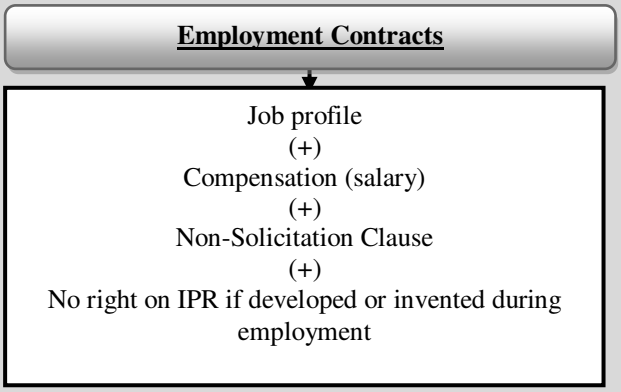
6. Employment contracts

Startups must ensure to enter into clear employment contracts detailing terms and conditions of employment with their employees.

While employment contracts are certainly valuable to the employees as it details terms regarding:

- Description of job profile
- Compensation
- Other associated benefits
- Non-Compete Clauses such as stopping employees from setting up competing entities
- Non-Solicitation Clauses such as poaching other employees or clients or customers.
- Preventing employees from claiming any intellectual property right on the work done or developed during the course of employment.

Quick Recap

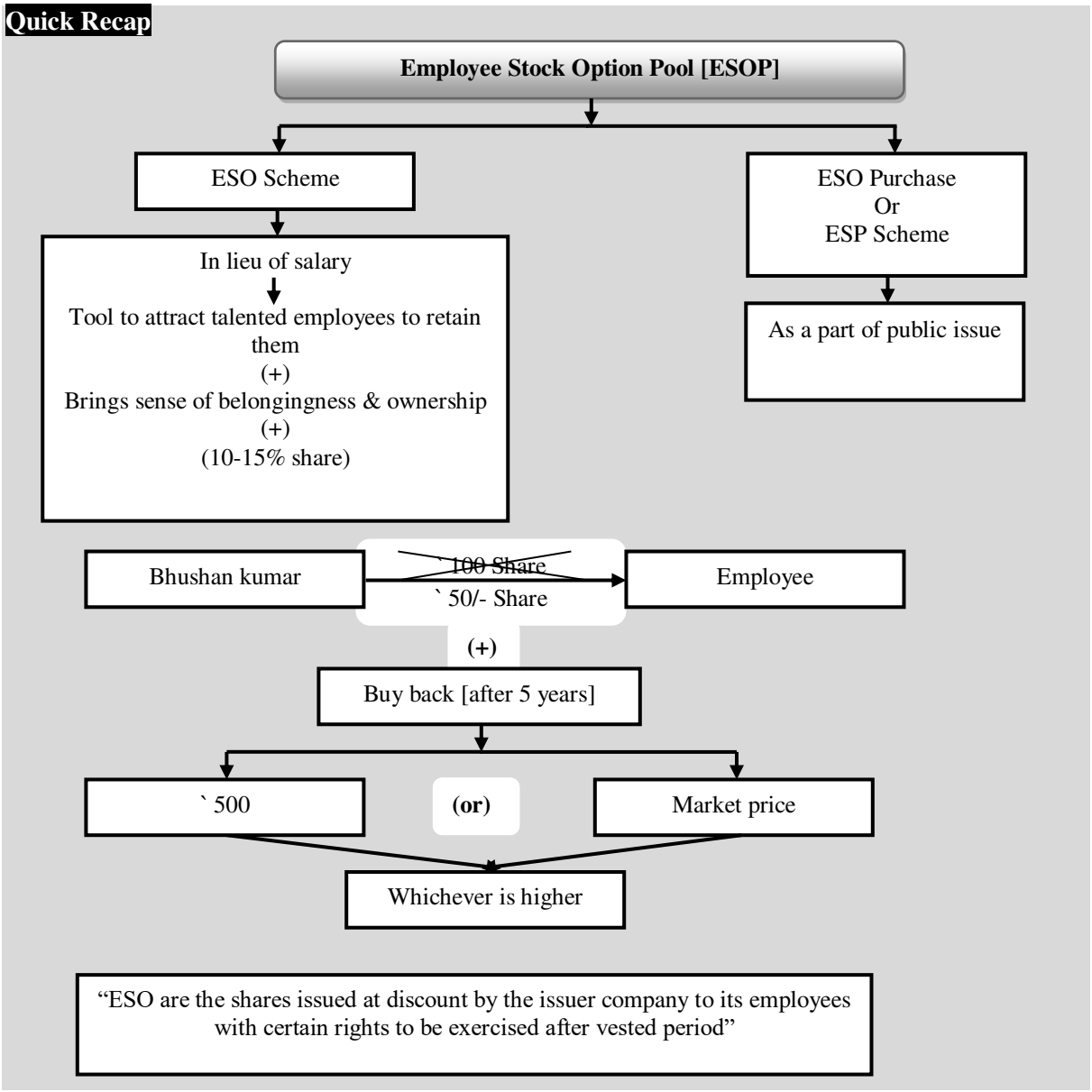


7. Employee Stock Option Pool (ESOP)

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

They are structured in a way that they are option to buy shares at a discounted price and can be exercised only after a certain vesting period which is decided by the company granting the ESOPs. **In India, we typically see a pool of 10 per cent to 15 per cent allocation towards an ESOP Pool.**

Quick Recap



8. <u>Third Party Agreements</u>

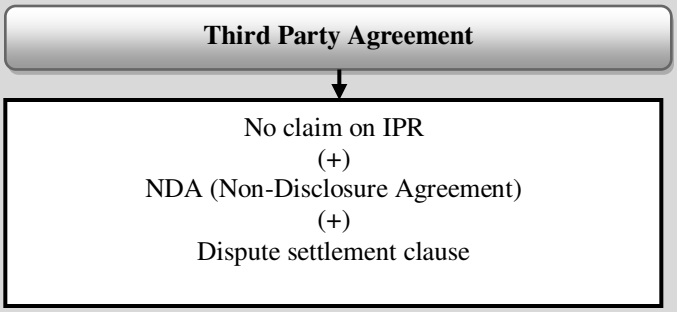
Prior to entering into a third-party agreement and while negotiating the terms, it is advisable to execute a non-disclosure agreement. **If creation or development of intellectual property is a component of such a third-party agreement, it must clearly state that all rights to the intellectual property rights shall vest and be owned by the startup and the third-party shall not stake any claim on the same and will do all acts to ensure the protection of the intellectual property.**

Clauses related to:

- Breach of terms
- Termination of Contract
- Dispute resolution

should be well negotiated and captured in all third-party agreements.

Quick Recap



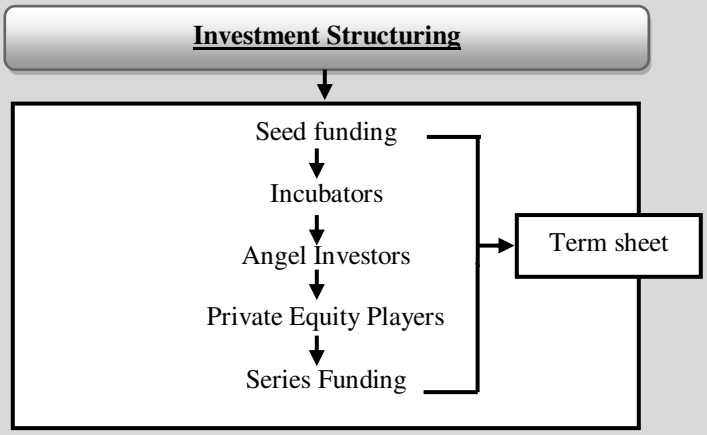
9. Investment structuring

One of the most challenging and time consuming aspects of operating a startup is to raise capital for working capital requirement and growth.

In India, Investors (HNIs or Angel Funds) invest in early and growth stage companies in different structures and on varied terms. It is imperative for startups to seek proper legal advice while negotiating the deal terms for investment and the rights of the investors.

Typically, as a process an intention document detailing the structure of the transaction called the **Term Sheet is executed** followed by due diligence of the startup and execution of investment related definitive agreements.

Quick Recap



10. Compliance management

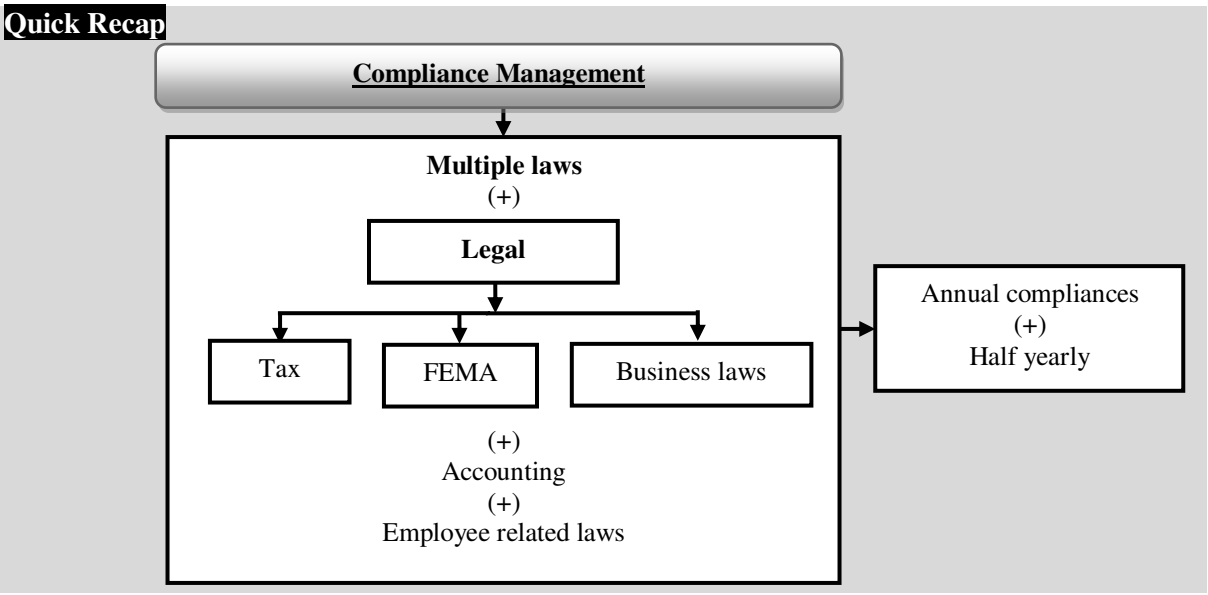
Compliance and its importance is often overlooked by many startups.

There are **multiple laws applicable to specific entity structures under which separate event based and annual compliance is mandated.** It is extremely critical for the sustainable growth of any business that the startup is in compliance with:

- Legal
- Secretarial
- Accounting
- Taxation
- Employee related compliances

The consequences of non-compliance can be levy of punitive fines on the startup.

Quick Recap



12. Financing Options Available for Startup Companies

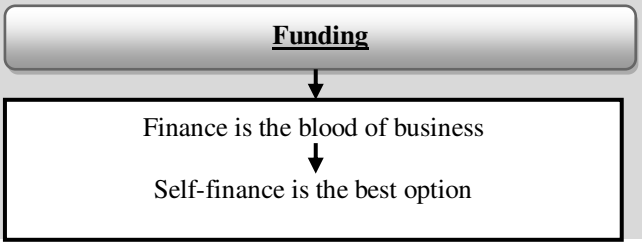
Finance is the **life blood** of any business. In case the venture is self-funded there can be no better option than that. However, a Startup is mostly the result of a novel idea that is the brainchild of its founders and more often than not, funds are always a challenge.

Analysis of the different financing options:

1. Equity financing
2. Debt financing
3. Grants

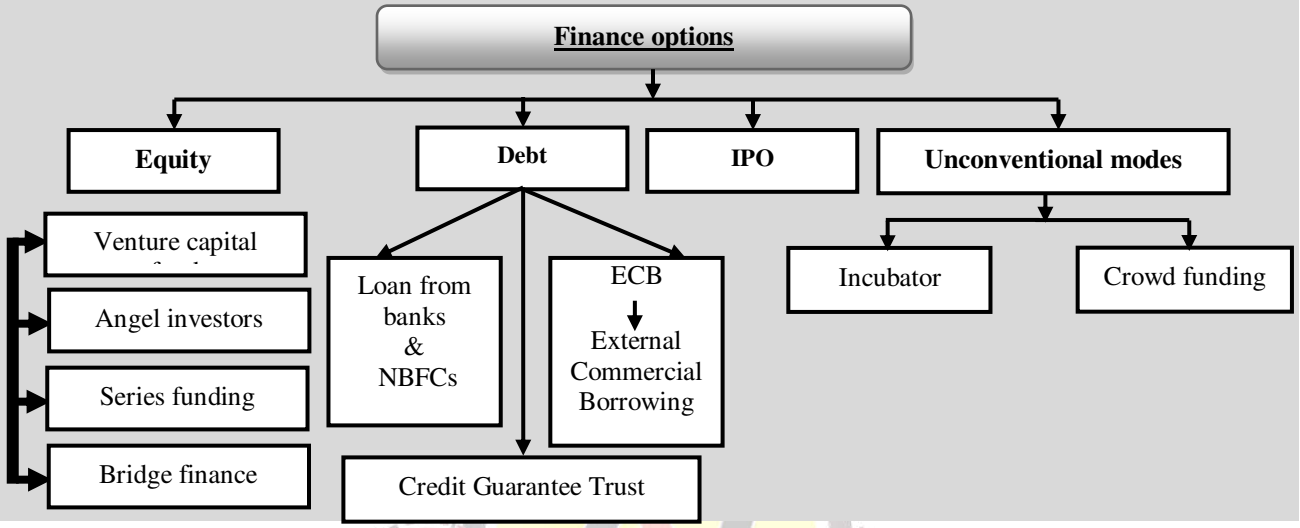
Characteristics of investment	Equity financing	Debt financing	Grants
Nature	There is no component of repayment of the invested funds	Invested funds to be repaid within stipulated time frame with interest.	There is no component of repayment of the invested funds.
Risk	Risk factor of the investor is higher as he has no guarantee against his investment	Risk factor for the investor is lower as he has collateral against his investment.	There is no risk factor for the start up as no collateral is involved.
Pressure for the payment	Less pressure for startup's to adhere to a repayment timeline, but added pressure from investor to achieve growth targets.	More pressure for startup's to adhere to repayment timeline and as a result more pressure to generate cash flows to meet interest repayments	No pressure for repayment as grants are a form of monetary support provided for a specific purpose.
Return to Investor	Capital growth for investors	Interest repayments.	No return
Involvement in decision making	Equity fund investors usually prefer to involve themselves in decision making process.	Debt fund has very less involvement in decision making.	No direct involvement in decision making.
Sources	Angel investors, self financing, family and friends, venture capitalist, crowd funding, Incubator.	Banks, non-banking financial institution, government loan, Schemes (MUDRA, Startup-India)	Central government, state government, Corporate challenge, grant programs of private.

Quick Recap



13. Different financing options

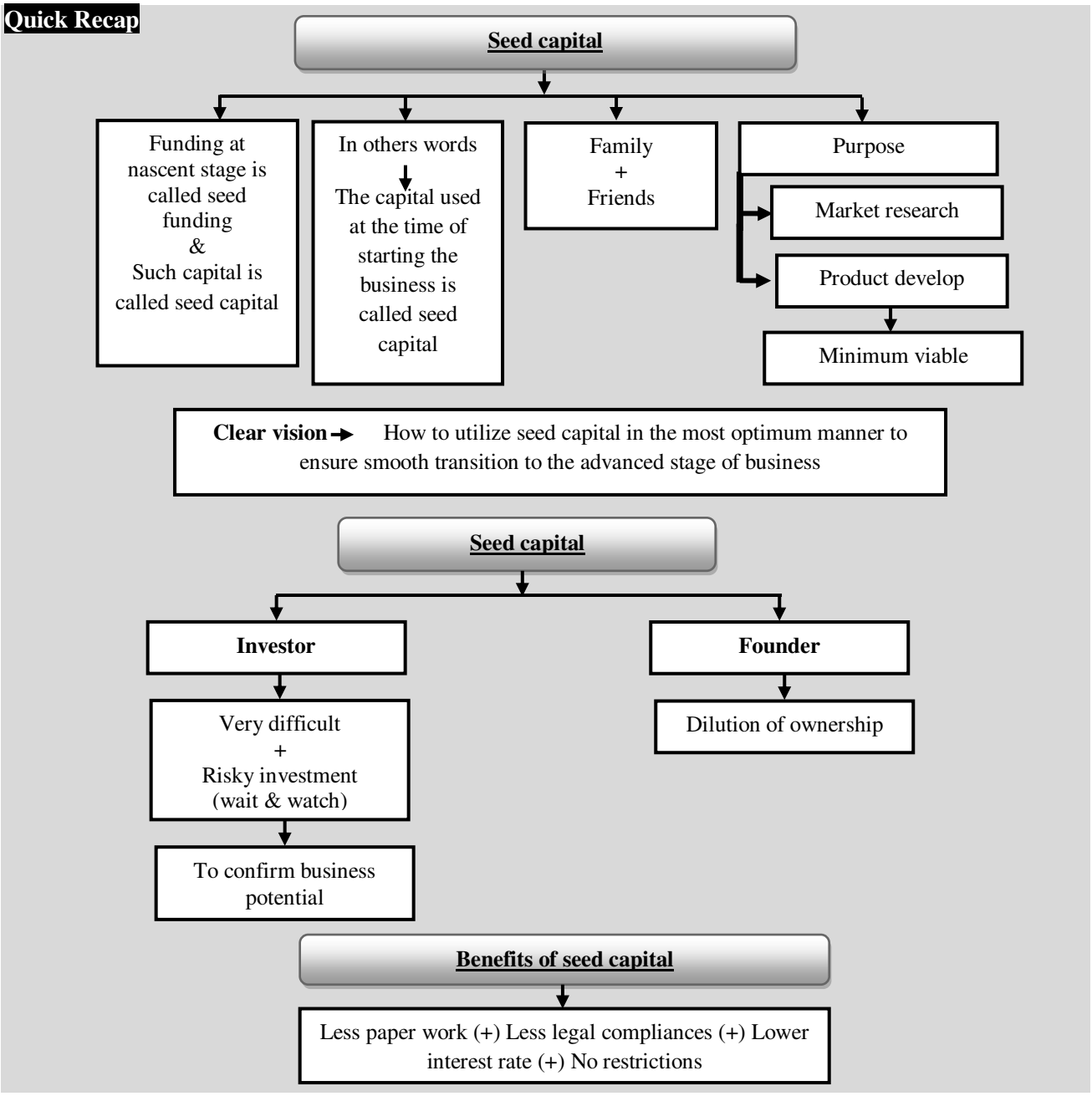
Quick Recap



Seed Capital

- Startup business needs the **nurturing of finance** to explore and grow. The funding done at the **nascent stage is called seed funding** and the **capital** is known as a **seed capital.**
- Technically, seed capital is the initial capital used at the time of starting the business.
- **This capital can come from the founders, families or friends.**
- It is required for the market research, product development, and other initial stage operations.
- **Seed funding permits exploration of the business idea and converting it into a viable product or service that further attracts venture capitalists**.
- A business founder must be clear on **how to utilise seed capital in the most optimum manner** to ensure smooth transition to the advanced stage of the business.
- Being a risky investment option, as **most funding agencies would like to adopt a wait and watch strategy to see the business potential**. From the founder's point of view, the option of obtaining seed funding has to be carefully utilised as obtaining seed funding may result in dilution of ownership of the founder.
- The **paperwork** involved in seed funding is **relatively less and straightforward**, compared to advanced rounds of funding. Even the **legal fees required are also quite less** as compared to the seed equity. The **interest rates too are usually lower** and there are mostly no restrictions in the manner of business working as it is still in the nascent stage.

Quick Recap



Types of Financing

- Equity financing
- Debt-financing

A. Equity Financing

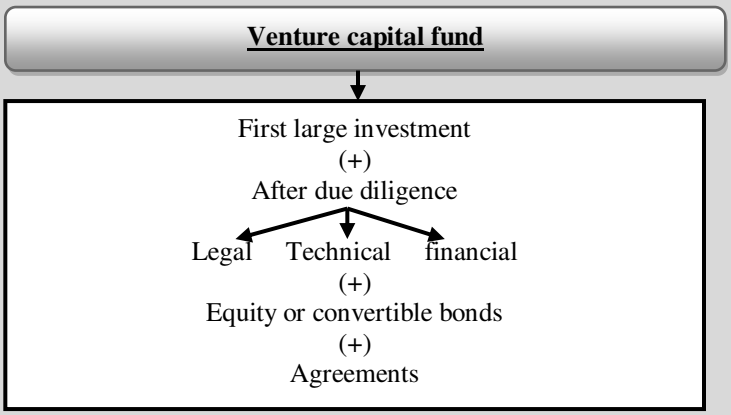
Startups are usually equity financed or funded by way of a venture capital or private equity investors or angel investors.

(1) Venture Capitalist or Private Equity

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

- The investor and startup will normally enter into a **non-binding offer** based on the preliminary valuation of the startup usually followed with a **financial, legal and technical due diligence** on the startup as required by the investors.
- **Due-diligence** will help the **investors to finalize the representation and warranties** and also to identify conditions precedent to the completion of investments and conditions subsequent in the aforesaid transaction documents.

Quick Recap



Funding Procedure

(a) A **Term Sheet** or **Letter of Intent** or **Memorandum of Understanding** is entered into, setting out the following:

- **Basic commercial understanding** between the VC and the startup.
- **Legal terms** for the agreements to follow the due-diligence.

(b) The contracting parties will enter into a **Share Subscription Agreement or Debenture Subscription Agreement**. It usually captures the following:

- The **issuance of shares** in the share capital or debentures at subscription amount determined based on the **valuation of the startup**.
- **Condition precedents to completion** of transaction or conditions subsequent to be completed within the agreed time frame after the completion date.
- **Sets of representation and warranties and indemnification** resulting from due-diligence exercise or otherwise, etc.

(c) Thereafter, the contracting parties may enter into a Shareholders' Agreement providing for the following:

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

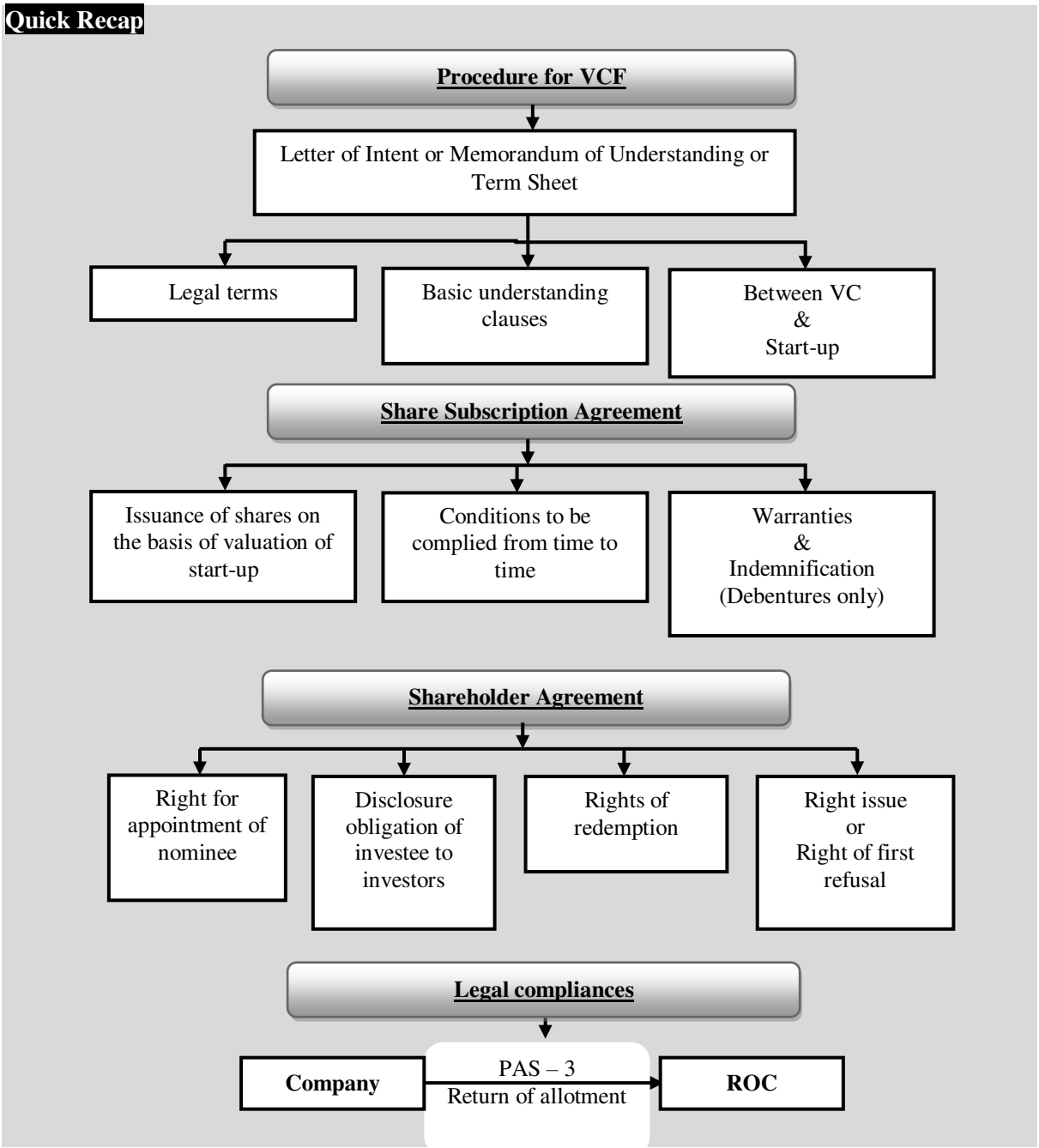
(d) Issuance of Securities through **Private Placement** process.

(e) Filing of necessary **e-Forms** with ROC for completing the process of issuance and allotment of securities.

(f) **Amendment of AOA** as per Shareholders' Agreement.

(g) **Completion of Condition** Subsequent.

Quick Recap



(2) Angel Investors

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake. Under the SEBI (Alternative Investment Funds) Regulations, 2012 which was subsequently amended in 2013, **SEBI has made the following restrictions applicable to angel funds investing in an Indian company**:

1. Angel funds shall invest in venture capital undertakings which:
   (a) **Complies** with the **criteria** regarding the **age of the venture capital** undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force;
   (b) Have a **turnover** of **less than `25 Crore**;
   (c) Are **not promoted** or **sponsored by** or related to an **industrial group** whose **group**

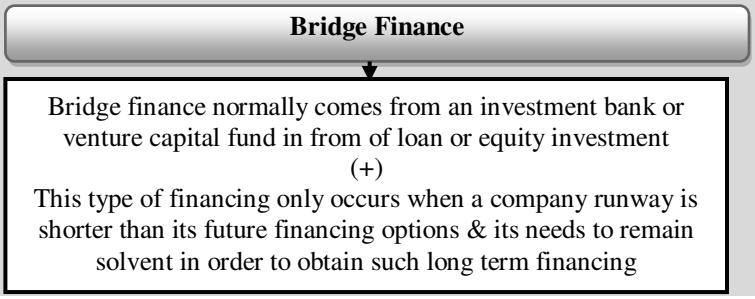
turnover exceeds `300 crore; and

(d) Are **not companies with family connection with** any of the **angel investors** who are investing in the company.

2. **Investment by** an **angel fund** in any venture capital undertaking shall **not be less than `25 Lakhs and shall not exceed `10 Crores**.
3. **Investment** by an **angel fund** in the venture capital undertaking **shall** be **locked-in for a period of one year.**

(3) Bridge Round

Quick Recap



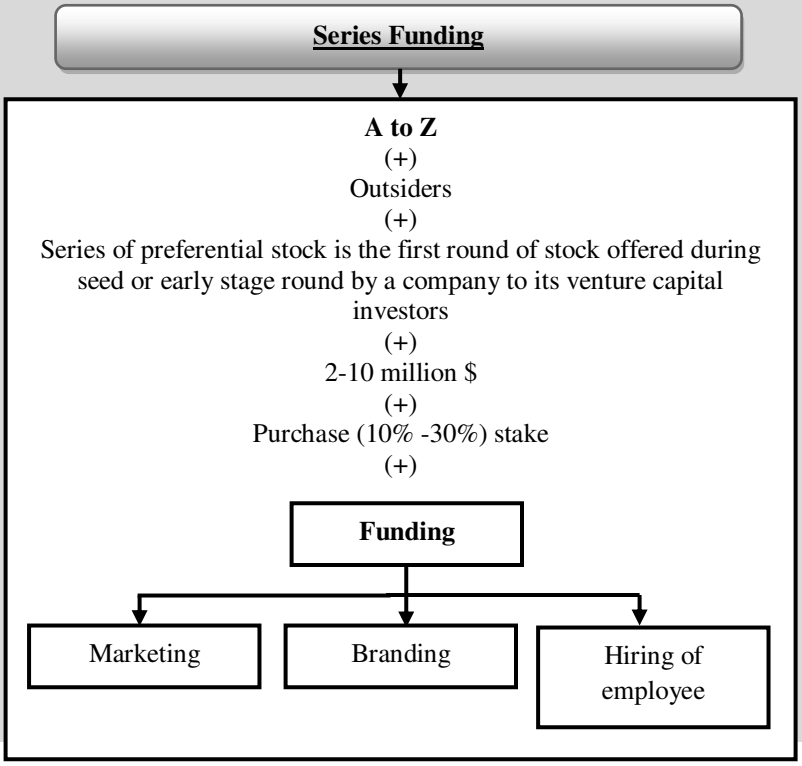
(4) Series Funding

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

Series preferred stock is the first round of stock offered during the seed or early stage round by a portfolio company to the venture capital investor. Series preferred stock is often convertible into common stock in certain cases such as an Initial public offering (IPO) or the sale of the company.

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

Quick Recap



Sources of capital

Because there are no public exchanges listing their securities, private companies meet venture capital firms and other private equity investors in several ways, including warm referrals from the investors' trusted sources and other business contacts, investor conferences and demo days where companies pitch directly to investor groups.

As equity crowd funding becomes more established, startups are increasingly raising part of their Series round online using platforms such as

- **One vest or Seed Invest in the USA**
- **Seeds in the UK**
- **VC-Circle, Private Circle, Lets Venture and Tracxn Labs etc. in India**

These blended rounds include a mix of angel investors, strategic investors and customers alongside the offline venture capital investors.

Structure

Smaller investment amounts are usually not worth the legal and financial expense, the burden on a company of adjusting its capital structure to serve new investors, and the analysis and due diligence on the part of institutional investors. **A company that needs money for operations but is not yet ready for venture capital will typically seek angel capital**. Larger amounts are usually unwarranted given the cost of business in fields such as software, data services, telecommunications, and so on. However, there are routinely series A rounds in excess of $10 million in fields such as pharmaceuticals, semiconductors, and real estate development.

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

If a startup is looking to raise a Series A, it might be a good idea to get familiar with what venture funds looks for to ascertain if your company is Series A ready.

The first time that a startup raises capital is normally called a 'seed round'. Other names include angel round or HNI round. Some even call it a pre-Series A round, but this term usually refers to a small interim fundraising exercise between the seed round and Series A.

1. **Be Series A Ready**

   If you are looking to raise a Series A, it might be a good idea to get familiar with what venture funds looks for to ascertain if your company is Series A ready.

   Some key factors that are taken generally taken into consideration

   - Promising unit economics
   - Revenue
   - Proof of business model
   - Systems ready to support efficient scaling
   - Product or market fit
   - Customer acquisition strategy and success,
   - Quality of team

   It is wise to evaluate where you company stands against these metrics to figure if you are ready for Series A.

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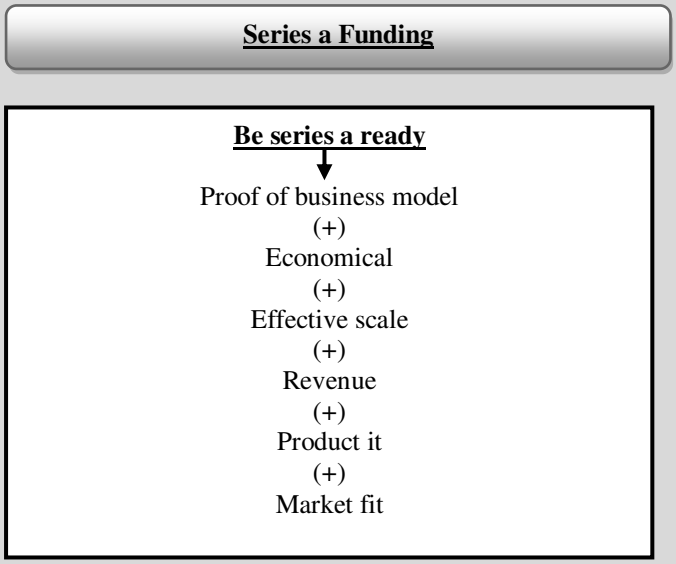
Quick Recap



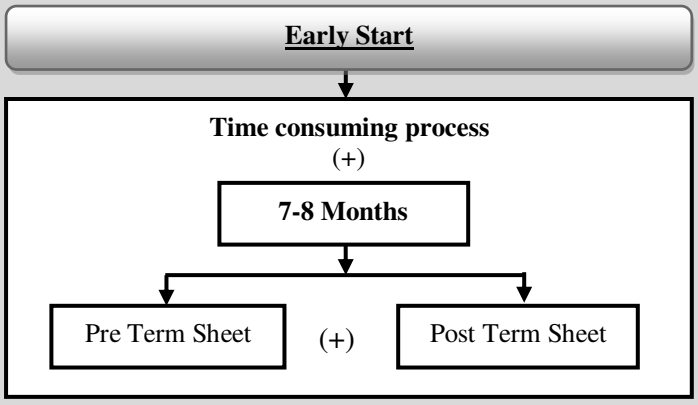
2. **Start Early**

Fundraising in the current environment is a time consuming process - be realistic about the timeframe. Make sure you start the process at least 7-8 months prior to when you want to raise a Series A financing. The deal process has two parts:

- Pre-Term sheet
- Post-Term sheet

Underestimating the time required inevitably leads to desperation and will often need to alter your funding strategy to include diverting attention to raise a bridge round to sustain the business.

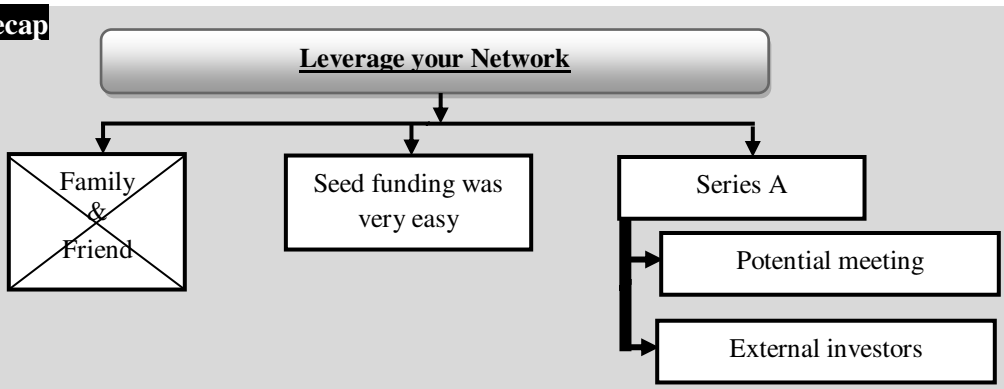
Quick Recap



3. **Leverage Your Network**

Seed funding is more plentiful and easier to raise as compared to Series A. Leveraging your network and building genuine relationships **before you start your Series A fundraise will make it easier for you to get potential meetings with investors**. Reach out to your extended **network and request them to reach out to their connections**. These second degree network have powerful and favourable outcomes. **Spreading word about your business through your network or through PR or marketing initiatives is always helpful.**

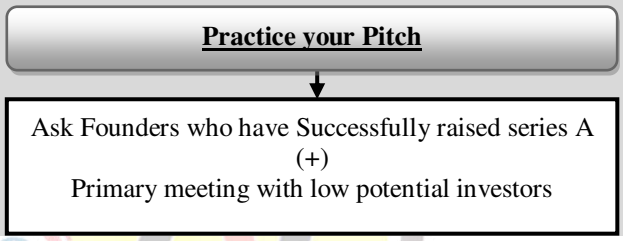
Quick Recap



4. **Practice your "Pitch"**

The key is to take as many meetings as possible. Speak to other founders who have successfully raised Series A and take their inputs for your pitch. **Meet the low priority investors on your list first - they will ask you relevant question and provide you valuable feedback which you should incorporate in your pitch before meeting the top priority investors on your list.** Treat the pitch a product – iterate on it until it is great.

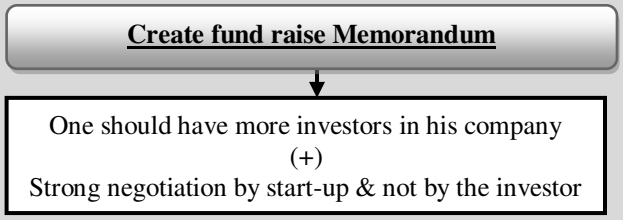
Quick Recap



5. **Create a Fundraise Momentum**

Approaching multiple venture funds at the same time is a good idea to get a competitive dynamic into the process. **Try keeping your conversations with interested investors moving along at as close to the same pace as possible**. This may not be easy but is if you manage to orchestrate well, you may be able to negotiate from a high bargaining power that generally leads to better valuation and deal terms. Nothing accelerates the process and you landing up a term sheet from one VC – you are likely to get few more.

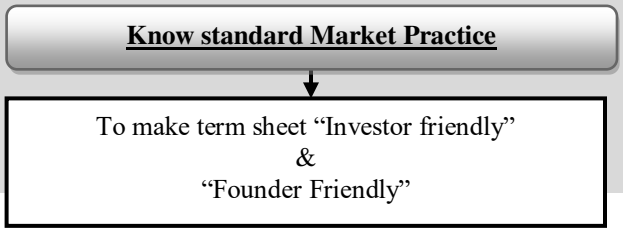
Quick Recap



6. **Know the "standard market practice"**

Keep yourself up to date with the commonly offered deal terms for a Series A. **It is highly possible that the first version of your term sheet you receive is not exactly "founder-friendly"**. The strongest line of defense and the most accepted rationale for negotiating such terms is that they are not standard market practice.

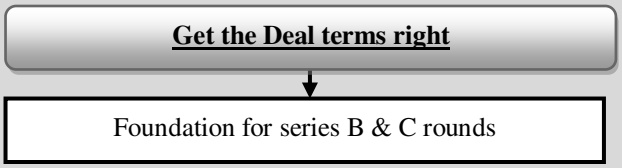
Quick Recap



7. **Get the deal terms right**

It is imperative that you ensure that the deal terms for your Series A are right and consistent with the trajectory of your business. **The Series A terms will play as a foundation for all future rounds** - many of those same terms that you have signed up for in your Series A are likely to carry through to future rounds **i.e Series B or Series C** – hence important to get them the right the first time itself.

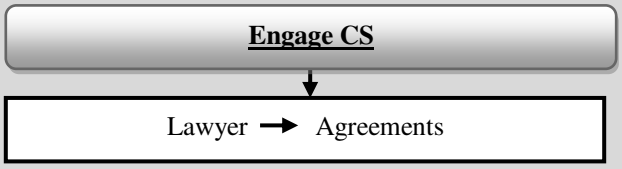
Quick Recap



8. **Engage a Company Secretary**

If you're raising venture capital, you need a lawyer who specializes in structuring venture capital financing. A lawyer who has done multiple such deals understands the nuances involved in structuring such rounds both from the perspective of which deal terms are important, what the **"standard market practice"** is and when to stay firm and when to concede to the investor. This will aid you to close your investment documents faster and more efficiently.

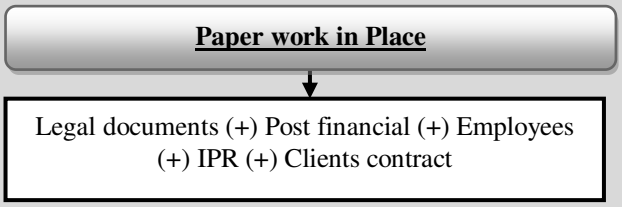
Quick Recap



9. **Paperwork in place**

Shorten your transaction closing time by having all paper work in place for due diligence. **Ensure that your company's legal documentation and compliance is up to date** and have your team put together all records relating to employees, past financing, corporate structure and establishment, client contracts, intellectual property, cap table, etc. The **paperwork should be organized and ready for review by the Investor appointed legal counsel or diligence team.**

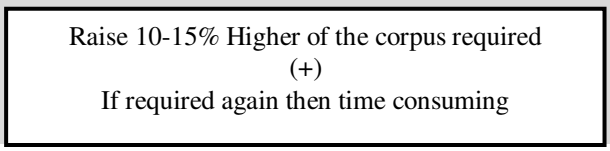
Quick Recap



10. **Raise 10-15% more than budgeted for**

Within reason, if you have access to capital and the deal terms including dilution are decent, raise **10-15% more than budgeted as the business initiatives or operations don't always materialise as planned.** Raise enough to allow you a fair shot to meet your milestones for the next round of financing so that you can channel all your focus on building the business and scaling it in the right direction. Raising every round of funding post Series A becomes significantly difficult and therefore is time consuming process and highly distracting. **Additionally, there is a transaction cost every time you close an additional round.**

Quick Recap



B. Debt Financing

(1) Loan from Banks & NBFCs

Loans from banks and NBFCs help finance the purchase of inventory and equipment, besides securing operating capital and funds for expansion. **More importantly, unlike a VC or angels, which have an equity stake, banks do not seek ownership in your venture**. However, there are several drawbacks of such funding option. Not only do you pay interest on loan but it also has to be done ontime irrespective of how your business is faring. They require **substantial collateral** and a good track record, besides the fulfilment of other terms and conditions and a lot of **documentation** as follows:

- **Application** for loan sanction by borrowers.
- Issue of **sanction letter** by the Bank.
- **Agreement** of Loan.
- Security or collateral documentation, such as
  - Deed of Mortgage
  - Deed of Hypothecation
  - Deed of guarantee
  - Share pledge agreement
  - Memorandum of Entry

(2) External Commercial Borrowings

External Commercial Borrowings (ECB) in form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. non-convertible, optionally convertible or partially convertible preference shares, floating rate notes and fixed rate bonds) **can also be availed from non-resident lenders to fund the business requirement of a company.** ECB can be accessed under two routes:

- Automatic Route
- Approval Route

depending upon the category of eligible borrower and recognized lender, amount of ECB availed, average maturity period and other applicable factors.

ECB raised has also certain end use restrictions such as that it cannot be used for

- On lending or investment in capital market
- Acquiring a company in India
- Real estate sector etc.

Under ECB also the borrower needs to create certain charge on immovable assets, movable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender, to secure the ECB raised by the borrower, subject to compliance of certain conditions as prescribed under ECB guidelines framed by Reserve Bank of India. **The documentation on similar lines as mentioned under bank loan section above will need to be executed.**

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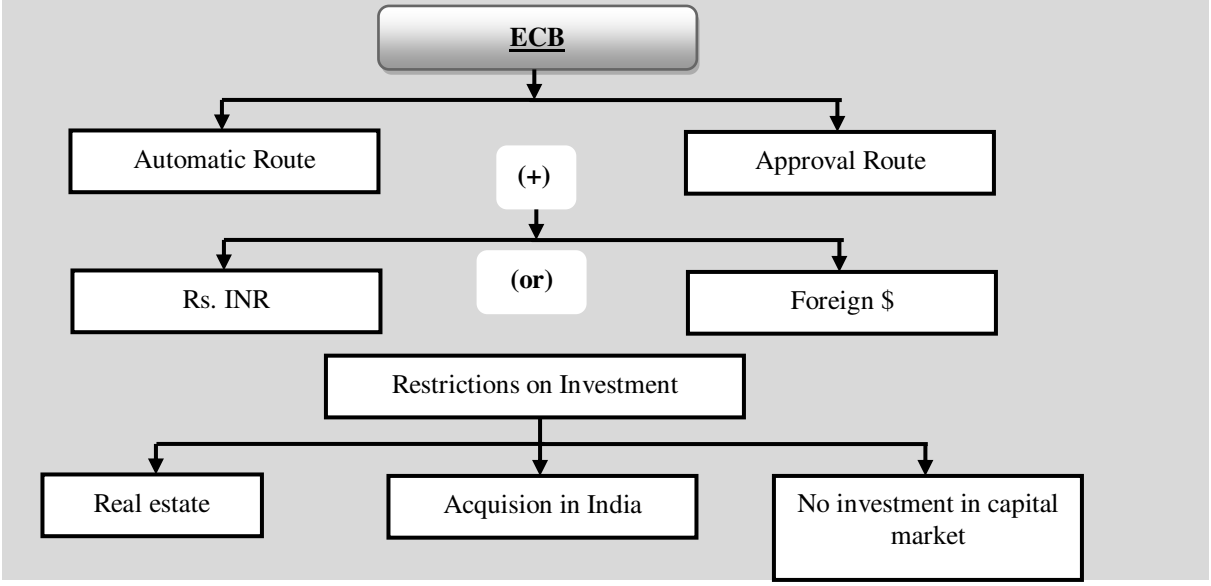
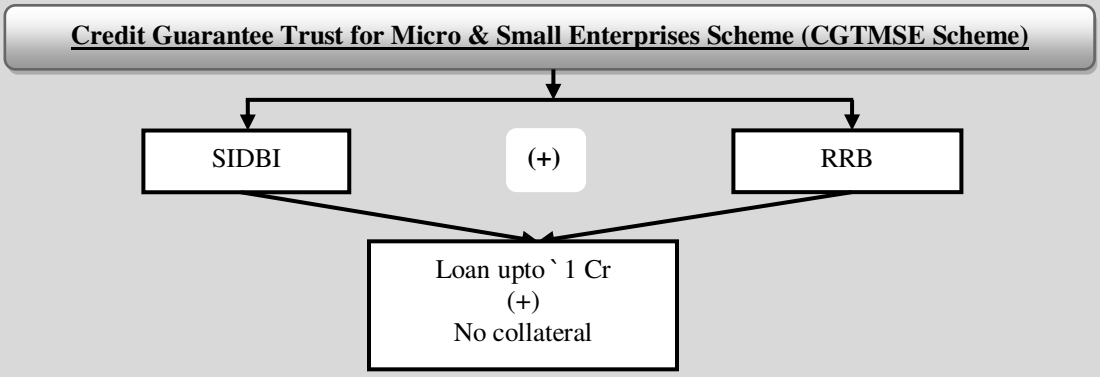
Quick Recap



(3) CGTMSE Loans

Under the Credit Guarantee Trust for Micro and Small Enterprises scheme launched by Ministry of Micro, Small & Medium Enterprises (MSME), Government of India to encourage entrepreneurs, **one can get loans of up to 1 crore without collateral or surety**. Any new and existing micro and small enterprise can take the loan under the scheme from all scheduled commercial banks and specified Regional Rural Banks, NSIC, NEDFI, and SIDBI, which have signed an agreement with the Credit Guarantee Trust.

Quick Recap



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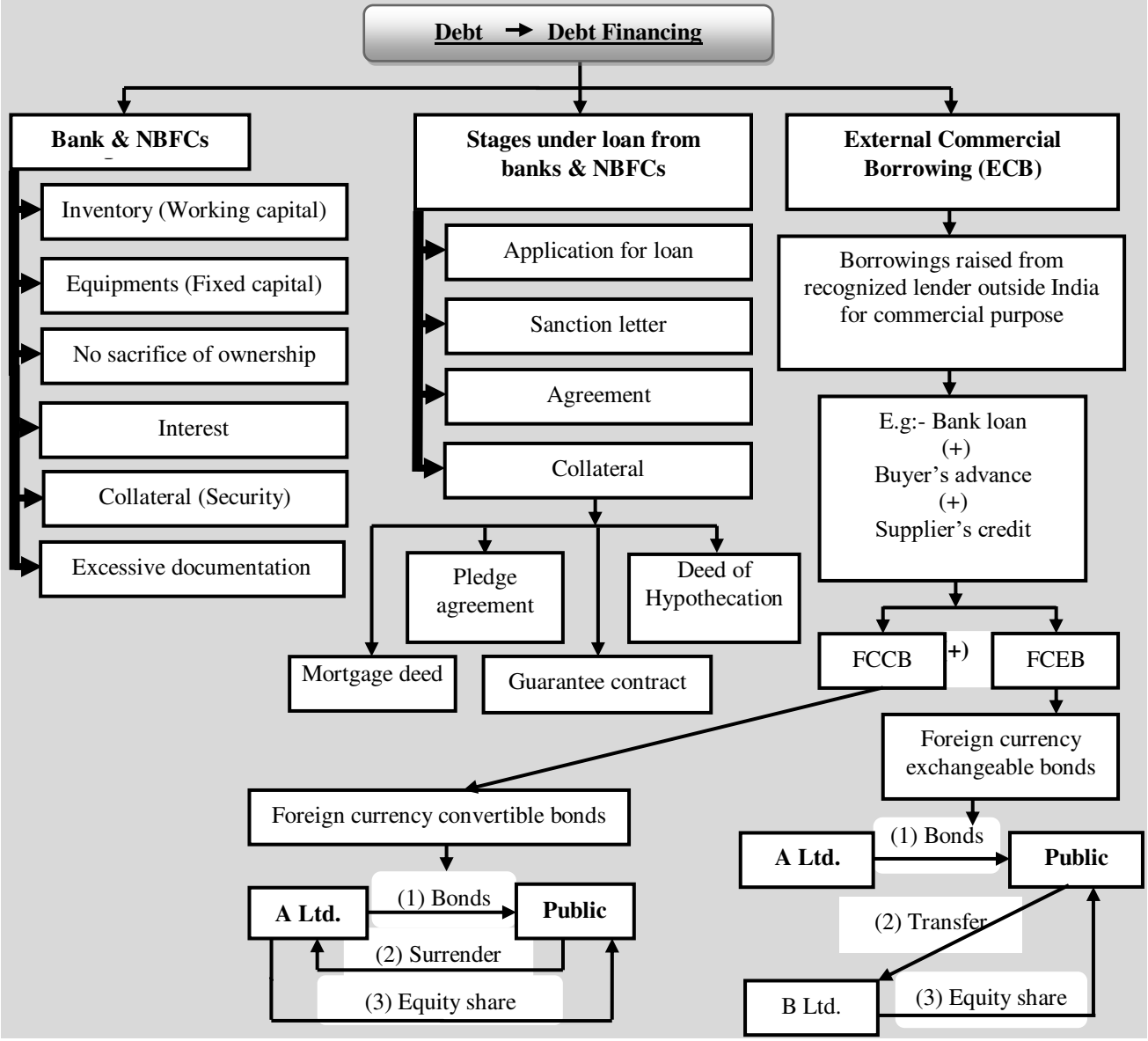
Quick Recap



C. IPO

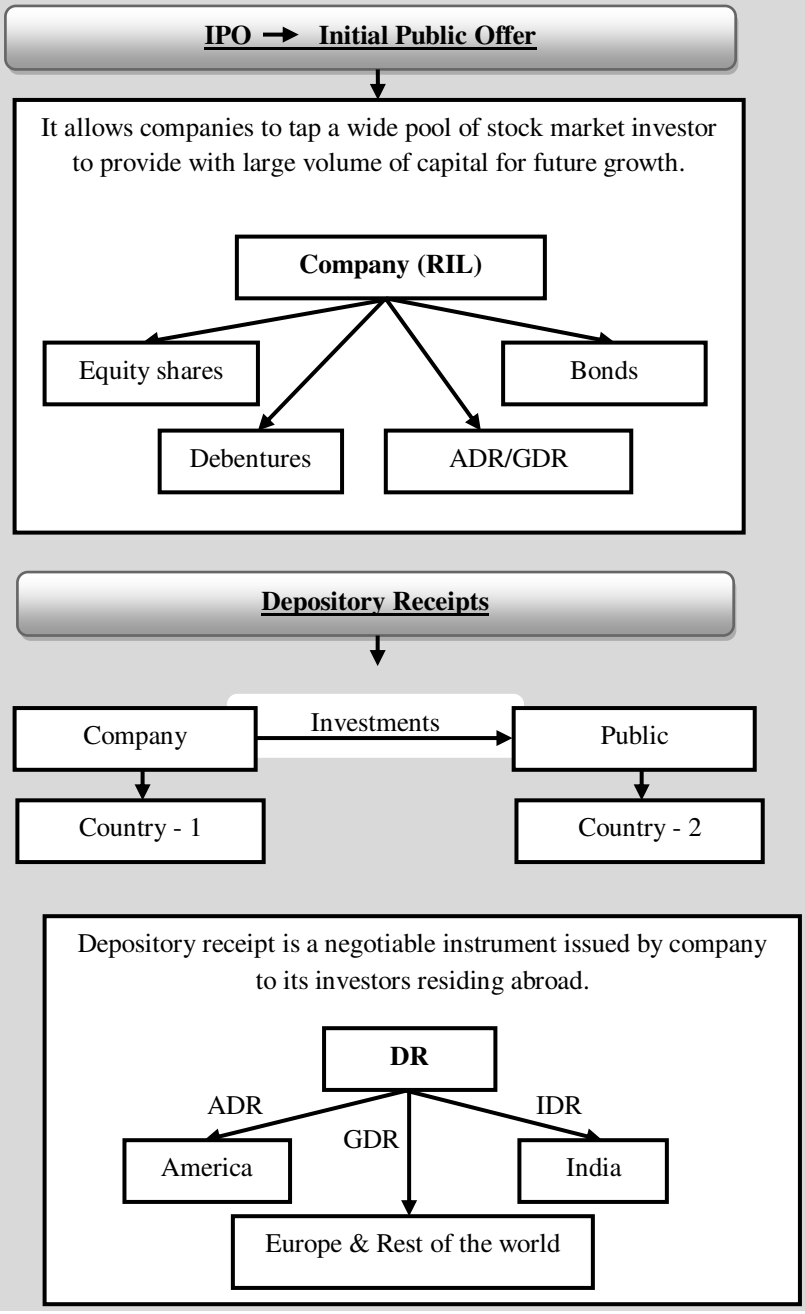
Once the startups achieve stable operations and revenue flows, it may consider an Initial Public Offering (IPO) to raise the funds or increase the magnitude of the business operations.

During the IPO, the Company raises funds by offering and issuing equity shares to the public. **An IPO allows a company to tap a wide pool of stock market investors to provide it with large volumes of capital for future growth.** The existing shareholding will get diluted as a proportion of the company's shares. However, existing capital investment will make the existing shareholdings more valuable in absolute terms.

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

Various parties such as investment bankers, underwriters and lawyers need to be engaged as part of the procedure of IPO.

Quick Recap



D. Unconventional modes

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

1. **Crowd Funding**

This is recent phenomena being practiced for getting **seed funding through small amounts collected from a large number of people (crowd),** usually through the **Internet.** Now we have companies existing in India which are specializing in "Crowd Funding".

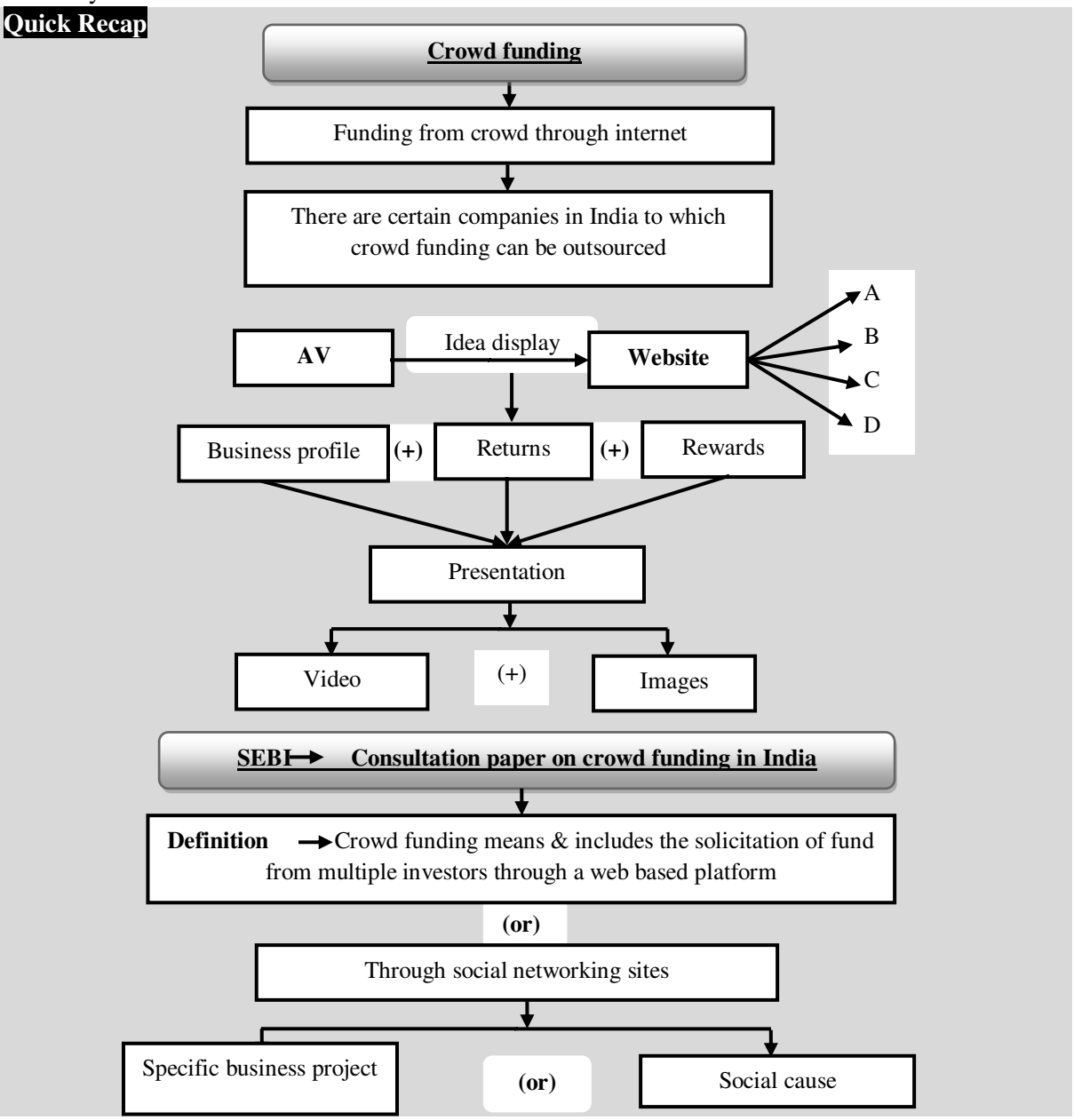
The **entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success.**

The **entrepreneur needs to put up on a portal his profile and presentation**, which should include:

- The business idea
- Its impact
- The rewards and returns for investors.
- It should be supported by suitable images and videos of the project.

SEBI in 2014, even rolled out a 'Consultation Paper on Crowd funding in India' proposing a framework in the form of Crowd funding to allow startups and SMEs to raise early stage capital in relatively small sums from a broad investor base.

Quick Recap



2. **Incubators**

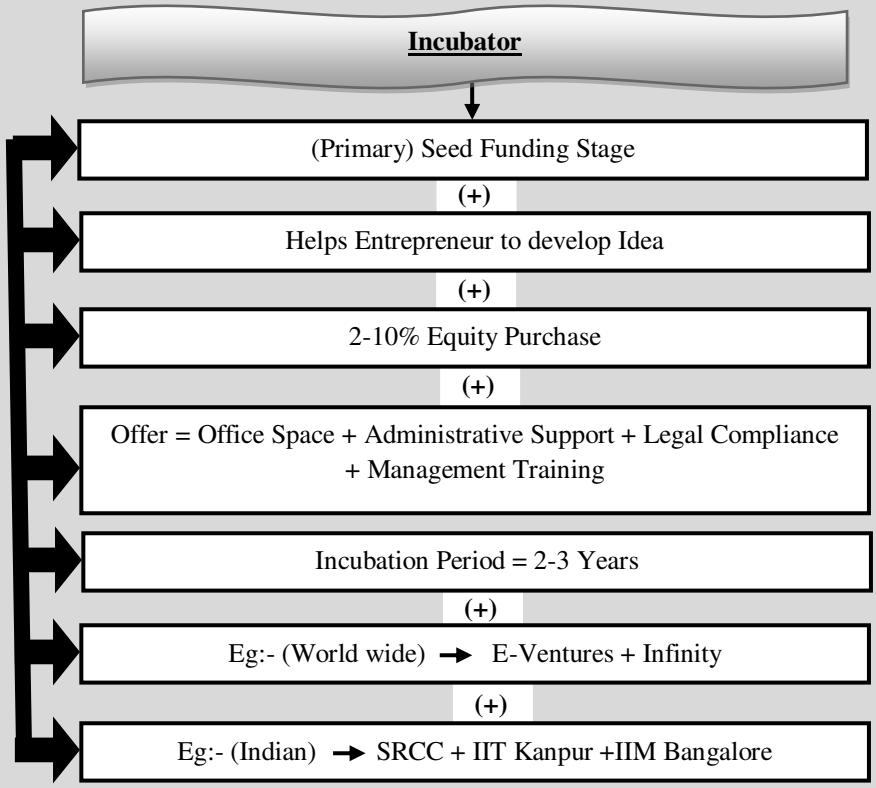
These set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an **equity stake** ranging from **2-10%.**

Incubators offer

- Office space
- Administrative support
- Legal compliances
- Management training
- Mentoring
- Access to industry experts
- Funding through angel investors or VCs.

These are usually government-supported institutes like the **IIMs or IITs, technical institutes or private business incubators run by industry veterans** or companies. The **incubation period can be 2-3 years** and admission is rigorous. Some of the top options in India include **IIM-Bangalore**, **IIT-Kanpur,** and the **Sriram College of Commerce (SRCC).**

Quick Recap



14. Mudra Banks (Micro Units Development and Refinance Agency Bank)

- MUDRA Bank is a **public sector financial institution** in India to provide **loans at low rates to micro-finance institutions and non-banking financial institutions which then provide credit to MSMEs.**
- It was **launched** by Prime Minister Narendra **Modi on 8 April 2015**.
- It will provide its services to small entrepreneurs outside the service area of regular banks.
- About **5.77crore** small businesses has been identified as target clients using the NSSO survey of 2013. **Only 4% of these businesses get finance from regular banks.** The bank will also ensure that its clients do not fall into indebtedness and will lend responsibly.

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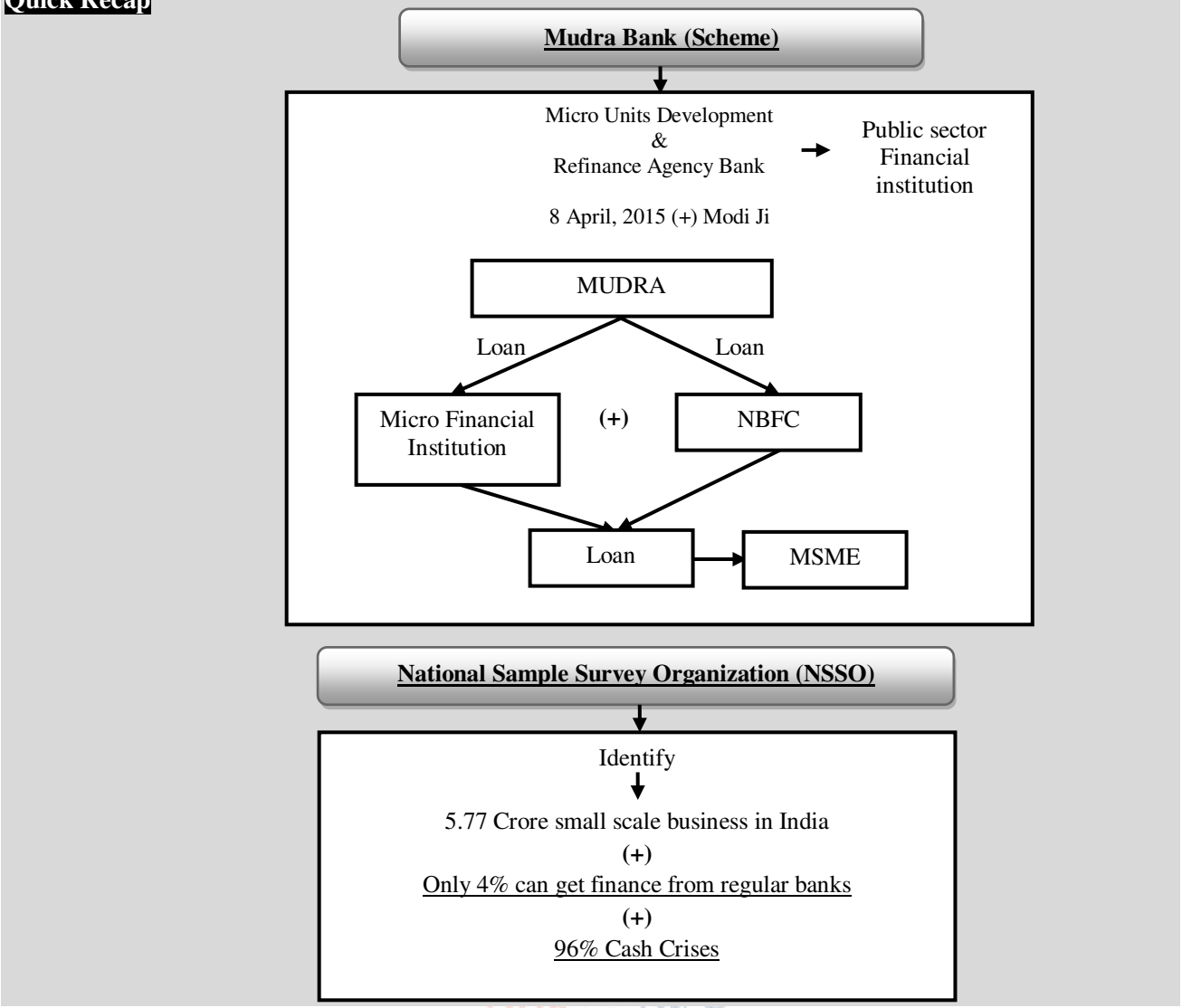
Quick Recap



Categories of Clients

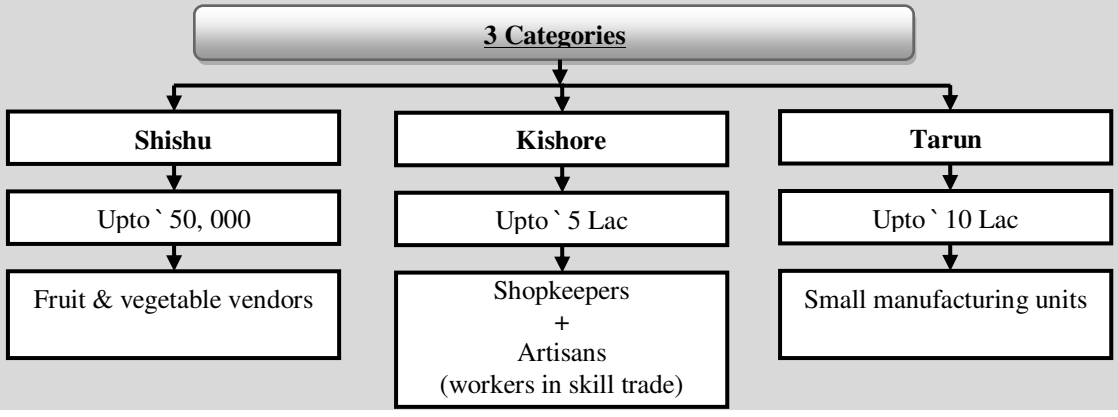
The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

Shishu- Allowed loans up to ` 50,000 to Fruit and vegetable vendors.

Kishore - Allowed loans up to ` 5 lakh to Shopkeepers and Artisans (Skilled worker).

Tarun- Allowed loans up to ` 10 lakh to Small manufacturing unit.

Quick Recap

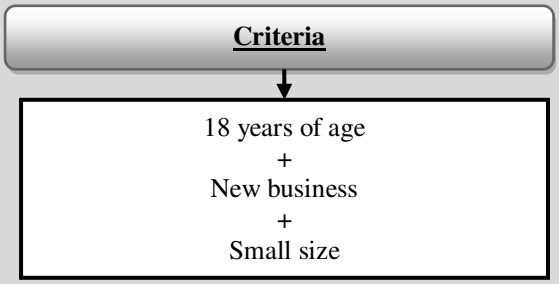


Points to Remember

1. The basic criteria of **age should be 18 years old.**
2. 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.
3. Lastly, this loan is for **new business and** is only applicable for **small business owners.**

Quick Recap



15. Procedure for loan from MUDRA Bank

Once the **beneficiary identifies an idea** and comes up with a business plan, he is supposed to **select the business** category under which he wishes to avail the loan (Shishu, Kishor or Tarun).

The **beneficiary can contact the nearest Public or Private sector bank** where he or she can apply for business loan under PMMY. The list of institutions partnering in the MUDRA initiative is available on the **MUDRA portal.**

An **application form** under this scheme will be available with each of the above listed institutions.

Documents to be attached with Application Form

This application form has to be submitted along with the following documents for the approval of the loan:

- Self-attested **Identity Proof** (Aadhaar Card)
- Self-attested **Residence Proof** (Recent Utility Bill or Property Tax Receipt (not older than 2 months) or Voter ID Card or Aadhaar Card or Passport or Domicile Certificate or Certificate Issued by a local authority)
- Applicant's **recent photograph** (not older than 6 months)
- **Quotation of Machinery** or other items to be purchases
- **Name of the Supplier** alongwith **details of Machinery and its price.**
- Proof of **Identity or Address of the Business Enterprise** (Business Registration Certificate)
- Proof of **Category** (**General or Reserved**)

The **Banks are not supposed to take any processing fee** and are **not supposed to ask for any collateral**. The **repayment period is also extended to 5 years**. But it is also made clear that **the applicant should not be a defaulter** to any Bank or financial institution.

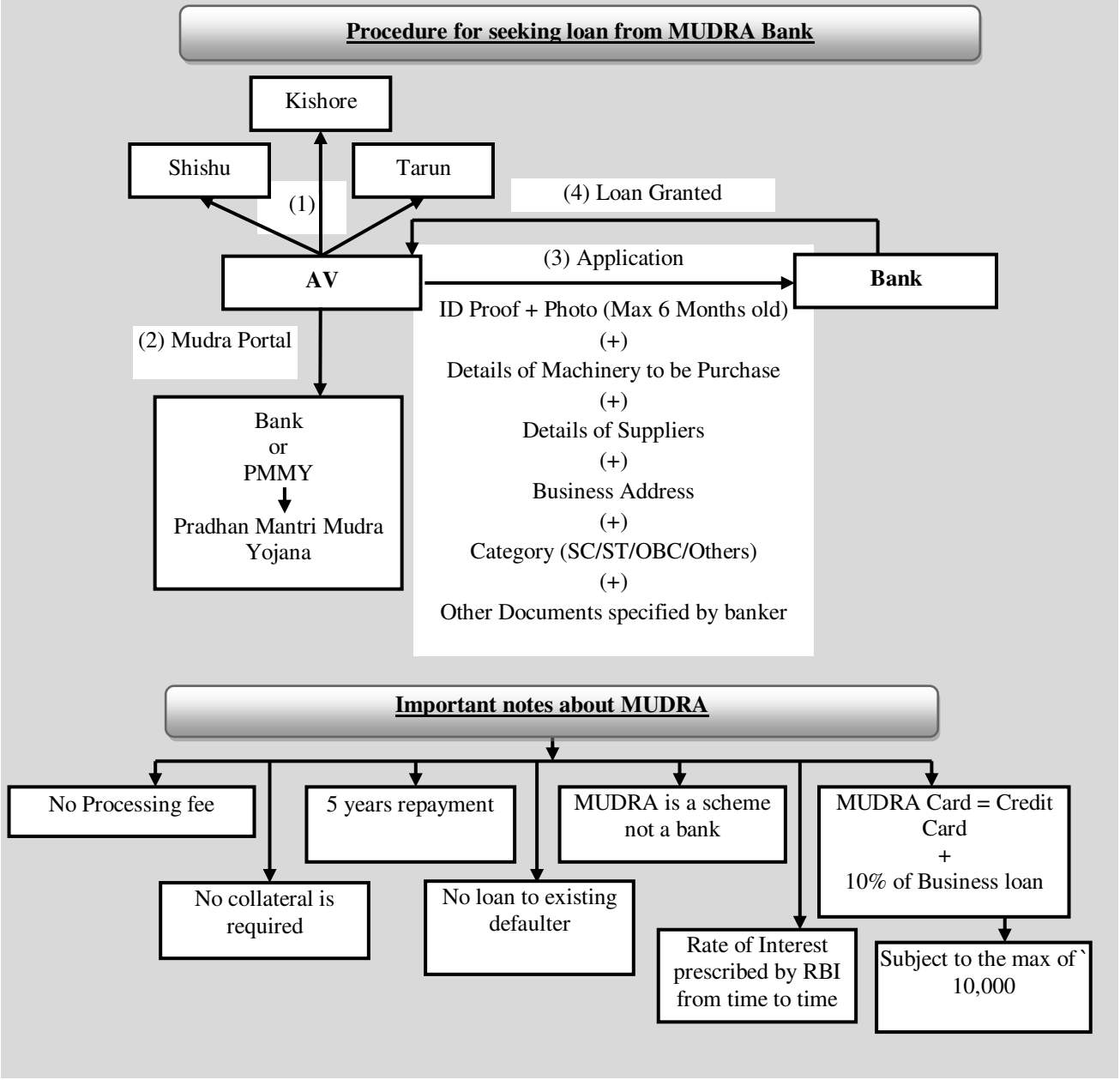
MUDRA Bank is **not a separate bank** (like SBI etc.). It is **a government financing scheme to provide business loan to new small businesses in India**.

The rate of interest will be fixed by the institutions time to time based on guidelines from the RBI.

16. MUDRA Card

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

Quick Recap



Case Studies On Unicorn

Unicorns Startups

A unicorn is a term used to indicate a privately held startup company with a valuation of over $1 billion. For a unicorn, the journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators.

However, in the past decade. There has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

The Indian Unicorns are flourishing in the fast-paced and dynamic economy of today. These startups are not only developing innovative solutions and technologies but are generating large-scale employment. Till FY 2016-17, approximately 1 unicorn was being added every year. Over the past four years (since FY 2017-18), this number has been increasing exponentially, with a whopping 66% Year-on-Year growth in the number of additional unicorns being added every year. As of 07th September 2022, India is home to 107 unicorns with a total valuation of $ 340.79 Bn. Out of the total number of unicorns, 44 unicorns with a total valuation of $ 93.00 Bn were born in 2021 and 21 unicorns with a total valuation of $ 26.99 Bn were born in 2022.

The year 2021, 2020, and 2019 saw the birth of the maximum number of Indian unicorns with 44, 11, and 7 unicorns coming each year, respectively. COVID-19 has caused a great amount of socio-economic suffering globally, but it is during this time when the resilient Indian Entrepreneurs have worked effortlessly to not only contribute to the economy but to also contribute toward COVID-19 relief efforts. The year 2020 witnessed the birth of more than 10 unicorns. 'Its raining unicorn' has been the motto of the year 2021 with 44 unicorns pumped in the ecosystem and many soonicorns waiting in line.

Geographically, the center of India's high-tech industry, Bengaluru is India's unicorn capital with the largest number of unicorns headquarters followed by Delhi (NCR) and Mumbai. Traditional sectors such as E-commerce, Fin-tech, E-commerce, Supply Chain & Logistics, and Internet Software & Services do dominate the arena but a strong wave of unconventional sectors such as Content, Gaming, Hospitality, Data management & analytics, etc are making their place on the list.

Indian Startups turned Unicorns

In 2021 itself, India witnessed the birth of 44 unicorns with a total valuation of $ 93 Bn. Bengaluru, Delhi NCR, and Mumbai continue to be the top cities preferred as unicorn headquarters in 2021. Unconventional sectors and sub-sectors marked an entry into the unicorn space including, NBFCs, Conversational Messaging, 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:

- Amagi
- Cred Avenue
- Deal Share
- Tata 1mg
- Livspace
- Purple.com
- Acko
- BharatPe
- Blink It
- Cred
- Car Dekho
- Ease My Trip
- Meesho
- Share Chat
- Mobikwik
- Mamaearth
- Groww
- PharmEasy
- Meesho
- Firstcry
- Byju's

- Delhivery
- Bigbasket
- Glance
- Lenskart
- Dream 11
- Unacademy.

Case Study On Zomato – India's First Listed Unicorn

About the Company:
Zomato was originally incorporated as "DC Foodiebay Online Services Private Limited" as a Private Limited Company under the Companies Act, 1956 at New Delhi, on January 18, 2010. The Company's name was changed to "Zomato Media Private Limited" on May 25, 2012. Subsequently, pursuant to a special resolution passed by the company's Shareholders on April 3, 2020, the name of the Company was changed to "Zomato Private Limited" on April 22, 2020.

Consequent upon conversion into a public limited company under the Companies Act, 2013 in the year 2021, the fresh certificate of incorporation was issued by the RoC with the name "Zomato Limited" on April 9, 2021.

The Company is a professionally managed company and does not have an identifiable promoter in terms of the SEBI (ICDR) Regulations and the Companies Act. It's Board has eight Directors comprising of one executive Director, two Non-Executive Nominee Directors and five Independent Directors including four women Independent Directors.

Growth of Business from year to year:
The business of Zomato has grown substantially in recent years. Since its incorporation in 2010, Zomato have evolved from a single -service category provider to a multi-category service provider, offering various services across food delivery, diningout, Hyperpure and Zomato Pro. Almost all aspects of its business, in particular food delivery, have experienced rapid growth in recent years. Its revenue from operations has grown from INR 13,125.86 million in Fiscal Year 2019 to INR 19,937.89 million in Fiscal Year 2021. In particular, as lockdowns in response to the COVID-19 pandemic eased in India towards the end of May 2020, Zomato's food delivery business started recovering and in the fourth quarter of Fiscal 2021 it recorded the highest gross order value (GOV) achieved by Zomato in any quarter till March 2021.

Main Products of Zomato:
The technology platform of Zomato connects customers, restaurant partners and delivery partners, serving their multiple needs. Customers use its platform to search and discover restaurants, read and write customer generated reviews and view and upload photos, order food delivery, book a table and make payments while dining-out at restaurants. On the other hand, Zomato provide restaurant partners with industry-specific marketing tools which enable them to engage and acquire customers to grow their business while also providing a reliable and efficient last mile delivery service. Zomato also operates a one-stop procurement solution, Hyperpure, which supplies high quality ingredients and kitchen products to restaurant partners. It also provide its delivery partners with transparent and flexible earning opportunities. The company products can be broken down in 3 parts:

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

Food-delivery app Zomato Ltd. became the nation's first unicorn to make its stock-market debut, raising $1.3 billion with backing from Morgan Stanley, Tiger Global and Fidelity Investments. The IPO, which opened on July 14, 2021 and closed on July 16, 2021 was oversubscribed by over 38.25 times. The IPO received very strong subscription from qualified institutional investors, non-institutional investors, and retail investors with each category being subscribed multiple times. The public issue was subscribed 7.45 times in the retail category, 51.79 times in the QIB category, and 32.96 times in the NII category and 0.62 times in Employee category.

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

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

Study On Delhivery – E-Commerce-Focused Logistics Platform

About the Company:
The Company was incorporated as "SSN Logistics Private Limited", a private limited company under the Companies Act, 1956, on June 22, 2011. Subsequently, the name of Company was changed to "Delhivery Private Limited", with effect from December 8, 2015. On the conversion of the Company from Private Limited to a Public Limited company, its name was changed to "Delhivery Limited" on October 12, 2021.

The main objects of Delhivery as placed in its MOA are:

1. To provide logistics and delivery solutions to consumers and a wide range of businesses, to provide logistics means, option and facilities to all kinds of business houses, corporates on contract or otherwise.
2. To provide web hosting, internet content development, web interface, web sites design, domain name services, and website maintenance services to other businesses.

The company have 11 Directors on its Board, comprising of 3 Executive Directors, 3 Non-Executive Nominee Directors and 5 Non-Executive Independent Directors, including one woman Director.
Delhivery became a unicorn in 2019 when it raised $413 million in a Series F round led by SoftBank Vision Fund, Carlyle Group, and Fosun International. It was then valued at $1.5 billion. Delhivery has last been valued at $4.77 Billion in May 2022.

Financial Aspects from year to year:
The company incurred restated losses for the year/period of INR 17,833.04 million, INR 2,689.26 million, INR 4,157.43 million, INR 2,974.92 million and INR 8,911.39 million in Fiscal 2019, Fiscal 2020 and Fiscal 2021 and the nine month periods ended December 31, 2020 and December 31, 2021, respectively. The restated losses included a fair value loss on financial liabilities at fair value through profit or loss of INR 14,806.64 million, nil, INR 91.95 million, nil and INR 2,997.39 million in Fiscal 2019, Fiscal 2020 and Fiscal 2021 and the nine month periods ended December 31, 2020 and December 31, 2021, respectively, which is a non-cash item.

As the scale of the company's business grows further, its revenue from contracts with customers has improved from INR 16,538.97 million in Fiscal 2019 to INR 36,465.27 million in Fiscal 2021 and from INR 26,438.66 million for the nine months period ended December 31, 2020 to INR 48,105.30 million for the nine months period ended December 31, 2021.

Main Offerings of Delhivery:

Delhivery has currently been hailed as India's leading supply chain Services Company. It is one of India's largest B2B, B2C, and C2C Logistics Courier Service providers. The company is best known for the economical shipping rates that it charges for its services. Furthermore, Delhivery claims to have - No Setup Fees or Subscription Charges. The services offered by Delhivery can be divided into 3 primary departments:

1. Warehousing - Flexible warehousing across 40+ cities in India

2. Transportation - Largest pan-India reach across 19000+ pin codes and 2500+ cities

3. E-Commerce - Ready integration with Shopify, WooCommerce, Magento & Opencart.

Since its inception, Delhivery has fulfilled over 1.4 billion orders across India. It has built a nation-wide network with a presence in every state, servicing over 18000 pin codes, 21 automated sort centres, 96 gateways, 93 fulfilment centres, 2948 direct delivery centres, and a team of over 58000 people make it possible to deliver 24 hours a day, 7 days a week, 365 days a year.

Its mission is to enable customers to operate flexible, reliable and resilient supply chains at the lowest costs. It provide supply chain solutions to a diverse base of over 29,200 active customers such as e-commerce marketplaces, direct-to-consumer e-tailers and enterprises and SMEs across several verticals such as FMCG, consumer durables, consumer electronics, lifestyle, retail, automotive and manufacturing. Delhivery achieved the same through high-quality logistics, infrastructure and network engineering, a vast network of domestic and global partners and significant investments in automation that drive network synergies within and across its services and enhance the value proposition to customers.

Delhivery's Role during COVID-19:

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

Conclusion:

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

Chapter - 5
Micro, Small and Medium Enterprises

Regulatory Framework

- Micro, Small and Medium Enterprises Development Act, 2006
- MSME Rules
- MSME Notifications and Circulars

Introduction

Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. MSMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country.

The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is specified. The Act was notified to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector. The Act seeks to facilitate the development of these enterprises as also enhance their competitiveness. It provides thefirst-ever legal framework for recognition of the concept of "enterprise" which comprises both manufacturing and service entities. It defines medium enterprises for the first time and seeks to integrate the three tiers of theseenterprises, namely, micro, small and medium. The Act also provides for a statutory consultative mechanism at the national level with balanced representation of all sections of stakeholders, particularly the three classes of enterprises; and with a wide range of advisory functions. Establishment of specific funds for the promotion, development and enhancing competitiveness of these enterprises, notification of schemes/programmes for thispurpose, progressive credit policies and practices, preference in Government procurements to products and services of the micro and small enterprises, more effective mechanisms for mitigating the problems of delayed payments to micro and small enterprises and assurance of a scheme for easing the closure of business by these enterprises are some of the other features of the Act.

The Micro, Small and Medium Enterprises Development Act, 2006

The Micro, Small and Medium Enterprises Development Act, 2006 came into force on 02nd October, 2006. Thedefinitions are provided under section 2 of MSMED Act, 2006.

Important Definitions

Some of the important definitions as provided in the Act is mentioned below:

***Advisory Committee*:**

Section 2 (a) states that Advisory Committee means the committee constituted by the Central Government under sub-section (2) of section 7.

Appointed Day:

Section 2(b) of the Act defines the term appointed day as to mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goodsor 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. Section7 deals with the classification of enterprises.

Micro Enterprise:

Micro Enterprise under Section 2(h) has been defined to mean an enterprise classified as such under sub- clause (i) of clause (a) or sub-clause (i) of clause (b) of Sub-section (1) of Section 7.

Small Enterprise:

Small Enterprise under Section 2(m) of the Act means an enterprise classified as such under sub-clause (ii) ofclause (a) or sub-clause (ii) of clause (b) of Sub-section (1) of Section 7.

Supplier:

The term supplier defined under Section 2(n) of the Act means a micro or small enterprise, which has filed a memorandum with the authority referred to in Sub-section (1) of Section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called,being a company registered under the Companies Act, 1956;

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

Establishment of National Board for Micro, Small and Medium Enterprises

The Central Government shall establish a board under section 3 of MSMED Act, 2006 known as National

Boardfor 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 inthis 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 dealingwith commerce and industry, finance, food processing industries, labour and planning to be appointedby 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 CentralGovernment 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 areas follows:

1. To examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises.
2. To make recommendations on matters relating to promotion and development of micro, small and medium enterprises or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises.
3. To advise the Central Government on the use of the Fund or Funds constituted under section 12 of MSMED Act, 2006.

Classification of Enterprises

The Government vide notification no. S.O. 2119 dated 26.06.2020 has notified the composite criteria of classification of MSMEs based on investment in plant and machinery or equipment and turnover of the enterprises by simplifying the Udyam Registration process for MSMEs by making it fully online, digital, and paperless and based on self-declaration. No documents or proof are required to be uploaded for registering as a Micro, Small and Medium Enterprise. Aadhaar and PAN are required for registration. PAN, GSTIN linked details on investment and turnover of enterprises are taken automatically from relevant Government databases.

The turnover with respect to exports is not counted in the limits of the turnover for any category of MSMEs. The criteria become applicable to all States/UTs with effect from 01.07.2020. Promotion and development of enterprises is a State subject. The Central Government supplements the efforts of the State/UT Governments through various schemes, programmes and policy initiatives for promotion, development and enhancing the competitiveness of MSMEs in the country uniformly including tier 2 and tier 3 cities.

Central Government vide Notification S.O. 1702(E) dated 1st June 2020 notifies the criteria for classification of Micro, Small and Medium Enterprises. Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

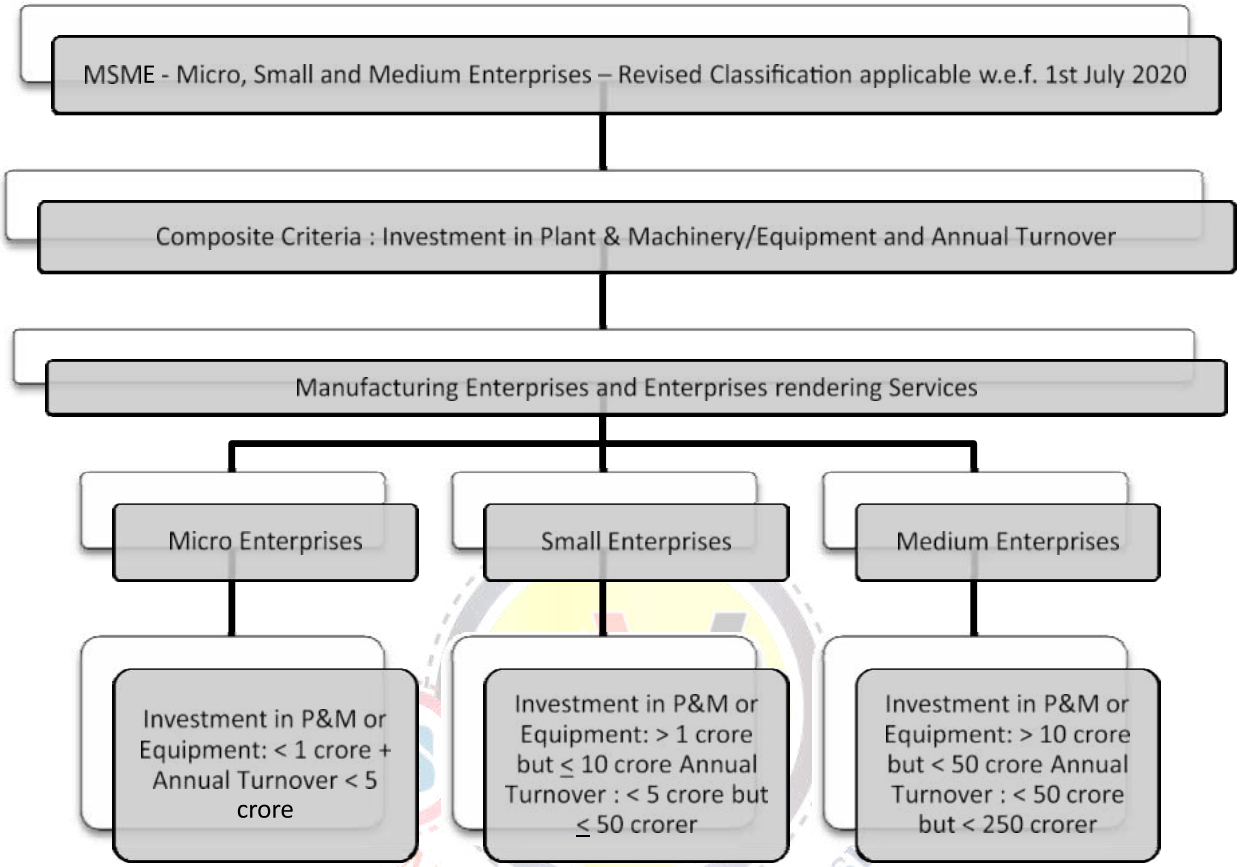
(i) A Micro enterprise, where the investment in plant and machinery or equipment does not exceed onecrore rupees and turnover does not exceed five crore rupees;

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

(iii) A Medium enterprise, where the investment in plant and machinery or equipment does not

exceed fiftycrore rupees and turnover does not exceed two hundred and fifty crore rupee.

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



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Memorandum of MSME

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

Measures for Promotion and Development

The Central Government may, from time to time, for the purposes of facilitating the promotion and developmentand enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development of skill in the employees, management and entrepreneurs, provisioning for technological upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit. (Section 9)

Registration Process

1. The form for registration shall be as provided in the Udyam Registration portal.
2. There will be no fee for filing Udyam Registration.
3. Aadhaar number shall be required for Udyam Registration.
4. The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a karta in the case of a Hindu Undivided Family (HUF).
5. In case of a Company or a Limited Liability Partnership or a Co-operative Society or a Society or a Trust,the organisation or its authorised signatory shall provide its GSTIN and PAN along with its Aadhaar number.
6. In case an enterprise is duly registered as an Udyam with PAN, any deficiency of information for previousyears when it did not have PAN shall be filled up on self-declaration basis.
7. No enterprise shall file more than one Udyam Registration: Provided that any number of activities including manufacturing or service or both may be specified or added in one Udyam Registration.
8. Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

It may be Noted that:

- An enterprise for the purpose of this process will be known as Udyam and its Registration Process willbe known as 'Udyam Registration'.
- A permanent registration number will be given after registration.

- After completion of the process of registration, a certificate will be issued online.
- This certificate will have a dynamic QR Code from which the web page on our Portal and details aboutthe enterprise can be accessed.
- There will be no need for renewal of Registration. No enterprise shall file more than one Udyam Registration. However, any number of activities including manufacturing or service or both may be specified or added in one Registration.

Benefits of Taking Udyam Registration

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

Nsic Registration

NSIC enlists Micro & Small Enterprises (MSEs) under Single Point Registration scheme (SPRS) for participation in Government Purchases. The units enlisted under Single Point Registration Scheme of NSIC are eligible to getthe benefits under Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012 as notified by the Government of India, Ministry of Micro Small & Medium Enterprises, New Delhi vide Gazette Notification dated 23.03.2012 and amendment vide order no. S.O. 5670(E) dated 9th November 2018.The enlistment under SPRSis completely online.

Both manufacturing and service provider enterprises having MSME or Udyog Aadhaar registration are eligible for obtaining NSIC registration. To obtain registration, enterprises having MSME or Udyog Aadhaar registration can apply online or by submitting an application at one of the NSIC offices. On submission of the application, the NSIC forwards the application to a zonal branch or sub-branch office nearest to the applicant for completing technical inspection of the unit and forwarding of recommendation for NSIC registration. On receiving the inspection report, NSIC grants registration to the MSME unit.

Benefits extended to MSEs having valid registration:

1. Issue of the Tender Sets free of cost.
2. Exemption from payment of Earnest Money Deposit (EMD).
3. In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price, where L1 is non MSEs.

4. Consortia facility for Tender Marketing.

Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 25% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste /Schedule Tribes and 3% isearmarked for the units owned by Women entrepreneurs. SPRS registered units are integral part of the supplychain to Government

Msme Schemes

MSMEs are amongst the strongest drivers of economic development, innovation and employment. Constant efforts are being made towards up-liftment of MSMEs under "Self Reliant India" through various schemes of MSMEs. Following are the major MSME schemes implemented by the Government of India:

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

The scheme aims to provide financial assistance to set up self-employment ventures and generate sustainableemployment opportunities in rural as well as urban areas. And to generate sustainable and continuous employment opportunities to rural and unemployed youth as well as prospective traditional artisans and thereby halt occupational migration. The scheme is applicable to all individuals above the age of 18 years.The scheme is designed in such a way that the own contribution of the beneficiary is 10% of the project costin case of general category and 5% of the project cost in case of special category (SC/ST/OBC/PH/Women/ExServicemen/ NER) Beneficiaries. If the application for loan is approved, then the banks sanction and release the balance amount of 90 to 95 percent of the total project cost suitably for setting up of the units by the beneficiaries.

B. 2nd Loan For Up-Gradation Of The Existing PMEGP/Mudra Units

The scheme caters to the need of the entrepreneurs for bringing new technology/ automation so as to modernizethe existing unit. With an objective to assist existing units for expansion and upgradation, the scheme provides financial assistance to successful/well performing units. The scheme is applicable to all the existing well performing PMEGP/MUDRA units.

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

The main objective of this scheme is to encourage the first generation entrepreneurs to venture into self- employment opportunities by facilitating credit guarantee support for collateral free / third-party guarantee- free loans to the Micro and Small enterprises (MSEs), especially in the absence of collateral. The scheme is applicable to all the existing entrepreneurs and aspiring entrepreneurs.

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

This scheme is formulated to support the sustainability and growth of MSEs by addressing common issues such as improvement of technology, skills & amp; quality, market access, etc and to create/upgrade infrastructural facilities in the new/ existing Industrial Areas/Clusters of MSEs. Its main objective is:

- To set up Common Facility Centers (for testing, training, raw material depot, effluent treatment,

complementing production processes, etc).

- Promotion of green & sustainable manufacturing technology for the clusters.

The scheme is applicable to the existing entrepreneurs (in form of a SPV). The key benefits of the scheme is Creation of Common Facility Centers including Plug & Play Facilities and Support for Infrastructure DevelopmentProjects including Flatted Factory Complexes.

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

The main objective of SFURTI is to organize traditional industries and artisans into collectives by increasing production and value addition to make products competitive and to promote traditional sectors and increase income of artisans providing sustainable employment. The scheme is applicable to existing artisans from traditional industries, Cluster of Artisans in sectors such as Handicraft, Textile, Agro-Processing, Bamboo, Honey, Coir, Khadi etc. The scheme aims toward assistance and support to traditional industry artisans and toprovide them sustainable employment through Hard Intervention in setting up physical infrastructure with CFCs,raw material banks, latest machineries. Soft Intervention in skill development, market promotion initiatives, etc. in clusters is also induced through this scheme. SFURTI provides financial assistance of up to 90% (95% in NER, J&K and Hill Areas) of Hard Intervention cost and entire cost of Soft Intervention.

F. Entrepreneurship And Skill Development Programme (ESDP) Scheme

ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country. It is applicable to all the aspiring and existing entrepreneurs. It facilitatesentrepreneurship/ self-employment awareness and motivation to different sections of the society includingSC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & SkillTraining in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/ Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/ Fabrication/ Sheet metal work, Basic/ Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme. The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Management/Documentation &Procedures, Materials Management, Financial/Working Capital Management, Information Technology, Digital Marketing, Quality Management/QMS/ISO 9000/EMS, WTO, IPR, Supply Chain Management, Retail Management, Logistics Management etc. The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

G. Assistance To Training Institutions (ATI) Scheme

The scheme targets to create and strengthen infrastructure and assistance for entrepreneurship and skill development training programmes. Providing proper support for infrastructure and capacity building of traininginstitutions of Ministry of MSME and existing State level EDIs. The scheme also aims in supporting the skill development programmes by training institutions of the Ministry of MSME.

H. Coir Vikas Yojana - Umbrella Scheme (Skill Upgradation and Mahila Coir Yojana)

The main objective of this scheme is to impart training in processing of coir and value addition to

potential workers, coir artisans/entrepreneurs through field training centers and training institution of Coir Board. The scheme aims to provide self-employment opportunities to rural artisans including women artisans in regions processing coconut husk. It is applicable to all the aspiring and existing entrepreneurs. The main benefits of thescheme are:

- Training to personnel in the cadres of supervisors/ instructors/artisans in coir industry.
- EDPs/Workshops/Seminars/Awareness programmes on development of coir industry.
- Conducting Exposure tours to the rural artisans for familiarizing with the newly incorporated technologiesin the coir sector.

I. Procurement And Marketing Support (PMS) Scheme

The scheme aims to promote new market access initiatives like organizing / participation in National / International Trade Fairs / Exhibitions / MSME Expo, etc. held across the country and to create awareness and educate the MSMEs about the importance / methods/ process of packaging in marketing, latest packaging technology, import-export policy and procedure, GeM portal, MSME Conclave, latest developments in international / nationaltrade and other subjects / topics relevant for market access developments.

J. International Cooperation (IC) Scheme

The scheme aims to Capacity build MSMEs for entering export market by facilitating their participation in international exhibitions/fairs/conferences/seminar/ buyer-seller meets abroad as well as providing them with actionable market-intelligence and reimbursement of various costs involved in export of goods and services. The Scheme provides opportunities to MSMEs to continuously update themselves to meet the challenges emerging out of changes in technology, changes in demand, emergence of new markets, etc.

K. National SC-ST Hub Scheme

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

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

The main objective of this scheme is to set up a network of Livelihood Business Incubation centers predominantly in the rural and underserved areas, to promote innovation and accelerate entrepreneurship by empowering the beneficiaries in creation of formal micro-enterprises and imparting skill development programs for creating wage/self-employment opportunities in the agro rural sector. The scheme is applicable to any agency/ institution of Government of India/ State government or existing training centers under Ministries/Departments of Government of India/State Government, Industry Associations, Academic Institutions and any not-for-profit private institutions with experience in successfully executing incubation and/or skill development programs may be eligible to set up an LBI.

M. Credit Guarantee Scheme for Subordinate Debt (CGSSD) for Stressed MSMES

The main objective of this scheme is to provide Subordinate debt. Subordinate debt will provide a substantial help in sustaining and reviving the MSMEs which have either become NPA or are on the brink of becoming NPA. Promoter(s) may infuse this amount in MSME unit as equity and thereby enhance the liquidity and maintain debt-equity ratio. In a situation, where an outright loan is difficult, sub-debt with guarantee will provide the requisite financing to the MSME Units. This Scheme seeks to extend support to the promoter(s) of the operational MSMEs which are stressed and have become NPA as on 30th April, 2020.

N. Self reliant India (SRI) Fund

This scheme is yet to be launched. India has embarked upon the path of self-reliant economic growth for achieving its aspiration of becoming an economic superpower. Towards this end, one of the initiatives taken bythe Government of India is the launch of the Self Reliant India (SRI) Fund. The Fund structure is designed in a manner that it will leverage the strength of the private sector in providing growth capital to viable MSMEs havinga definite growth plan.

SRI Fund will contribute towards achieving India's $5 trillion GDP target by creating a vibrant MSME ecosystem,and making an Aatmanirbhar Bharat.

O. MSME Sambandh

MSME Sambandh Portal is launched as the Public Procurement Portal, whose main objective is to monitorthe implementation of the Public Procurement from MSEs by Central Public Sector Enterprises. The Public Procurement Policy for Micro and Small Enterprises (MSME) order 2012 has mandated every Central Ministry/Department/PSU shall set an annual goal for procurement from the MSE sector at the beginning of the year, withthe objective of achieving an overall procurement goal of minimum 25 per cent of the total annual purchases from the products or services produced or rendered by MSEs. Out of 25% target of annual procurement 4% isexclusively reserved for MSEs owned by SC/ST and 3% for MSEs owned by Women entrepreneurs.

Reference to Micro and Small Enterprises Facilitation Council

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

Section 20 of the Act states that the State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Where the conciliation initiated is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any

institution or centre providing alternate dispute resolution services for such arbitration. The Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

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

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

Whereas pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

Composition of Micro and Small Enterprises Facilitation Council

The Micro and Small Enterprise Facilitation Council shall consist of not less than 3 but not more than 5 membersto 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 enterprisesin 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.

Chapter – 6
Conversion of Business Entities

Regulatory Framework

- The Companies Act, 2013
- The LLP Act, 2008
- The Companies (Incorporation) Rules, 2014

Introduction

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

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

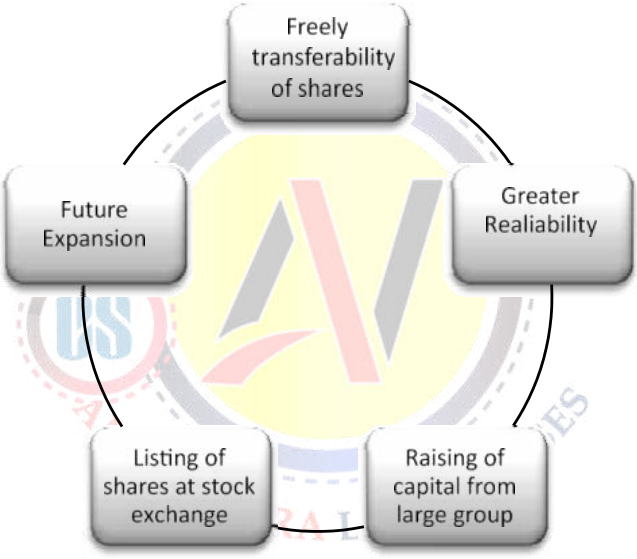
Section 14 of the Companies Act, 2013 plays an important role during conversion of a private company into a public company. Conversion of a private company into a public company involves alteration of article of association of private company, which cannot be done without passing special resolution by 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 generalmeeting etc., the company shall, as from the date of such alteration, cease to be a private company.

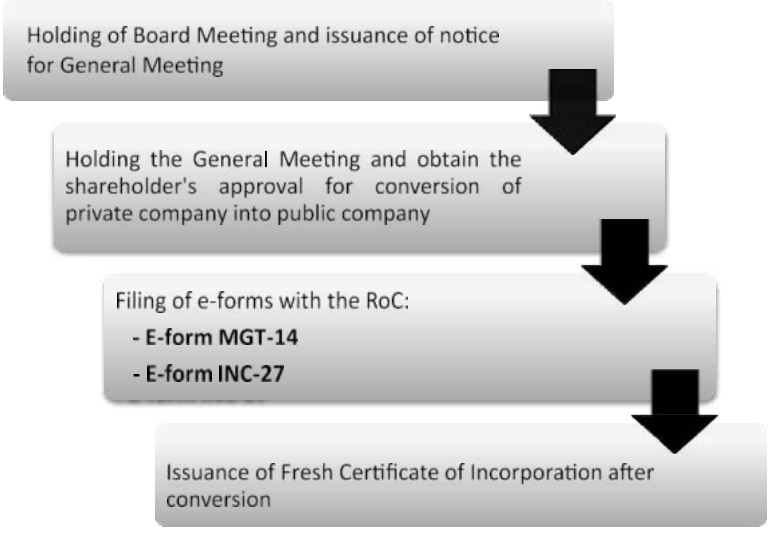
Benefits of Conversion of Private Company into a Public Company:

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

Benefits of Conversion of Private to Public Company



Procedure for Conversion of a Private Company into a Public Company



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

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Private Limited Company into Public Limited Company. The main agenda for this board meeting would be:
   (a) To pass a board resolution to get in-principal approval of Directors for conversion of private company into a public company.
   (b) To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Private company into a Public company.
   (c) To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of private limited company into public limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
   (d) To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
   (e) Pass Board resolution for increase in number of Directors, if Directors are less than 3 in the company.
   (f) To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
   (g) To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.

2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Shorter notice can be issued if the consent of majority of shareholders holding 95% of paid-up capital has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including the removal of restrictive provisions as applicable to the private limited company and for change of name of the company to delete the word "private".

4. **Filing of e-form MGT-14:** In case of conversion of Private Company into a Public Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly, as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
   (a) Notice of general meeting along with copy of explanatory statement under section 102;
   (b) Certified true copy of special resolution;

(c) Altered memorandum of association;
(d) Altered articles of association
(e) Certified true copy of board resolution may be attached as an optional attachment.

5. **Filing of e-form INC-27:** For giving effect to conversion of Private Company into Public Company, an application in E-Form INC-27 needs to be filed with the Registrar of Companies along with prescribedfees 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:
   (i) It is mandatory to attach minutes of the member's meeting where approval was given for conversionand altered articles of association;
   (ii) Certified True Copy of Special Resolution;
   (iii) Altered articles of association;
   (iv) Certified True Copy of Special Resolution;
   (v) Certified true copy of board resolution may be attached as an optional attachment;
   (vi) 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 companieshave 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 atleast 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 theconversion.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of thememorandum 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 likeGST department, Regional Provided Fund department, Income tax department, etc.
- Intimate all the banks where the current accounts of the company are opened about the conversionwith 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 regulatethe conversion of public company into private company. Conversion of status of company from public to private would become effective form the date of receipt of the approval of the Registrar by means of issuing a new certificate of Incorporation.

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

For conversion of public company into private company foremost requirement is Alteration in Article of Associationof Company. According to the Act, any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Regional Director.

For effecting the conversion of a public company into a private company, a copy of order of the Regional Director approving the alteration, shall be filled with the Registrar in Form No. INC -27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Regional Director.

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

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

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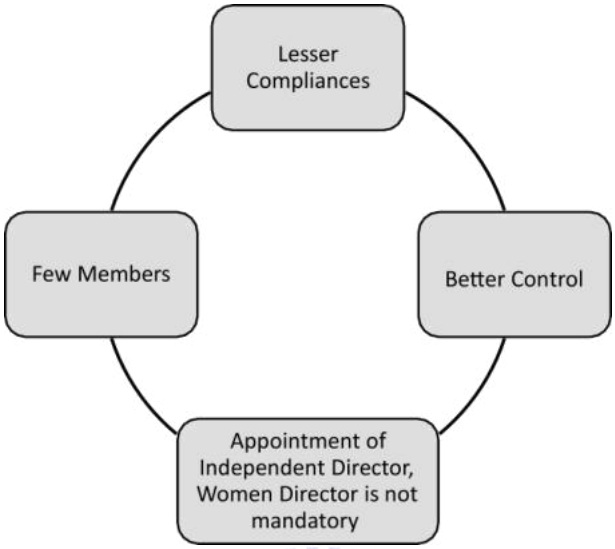
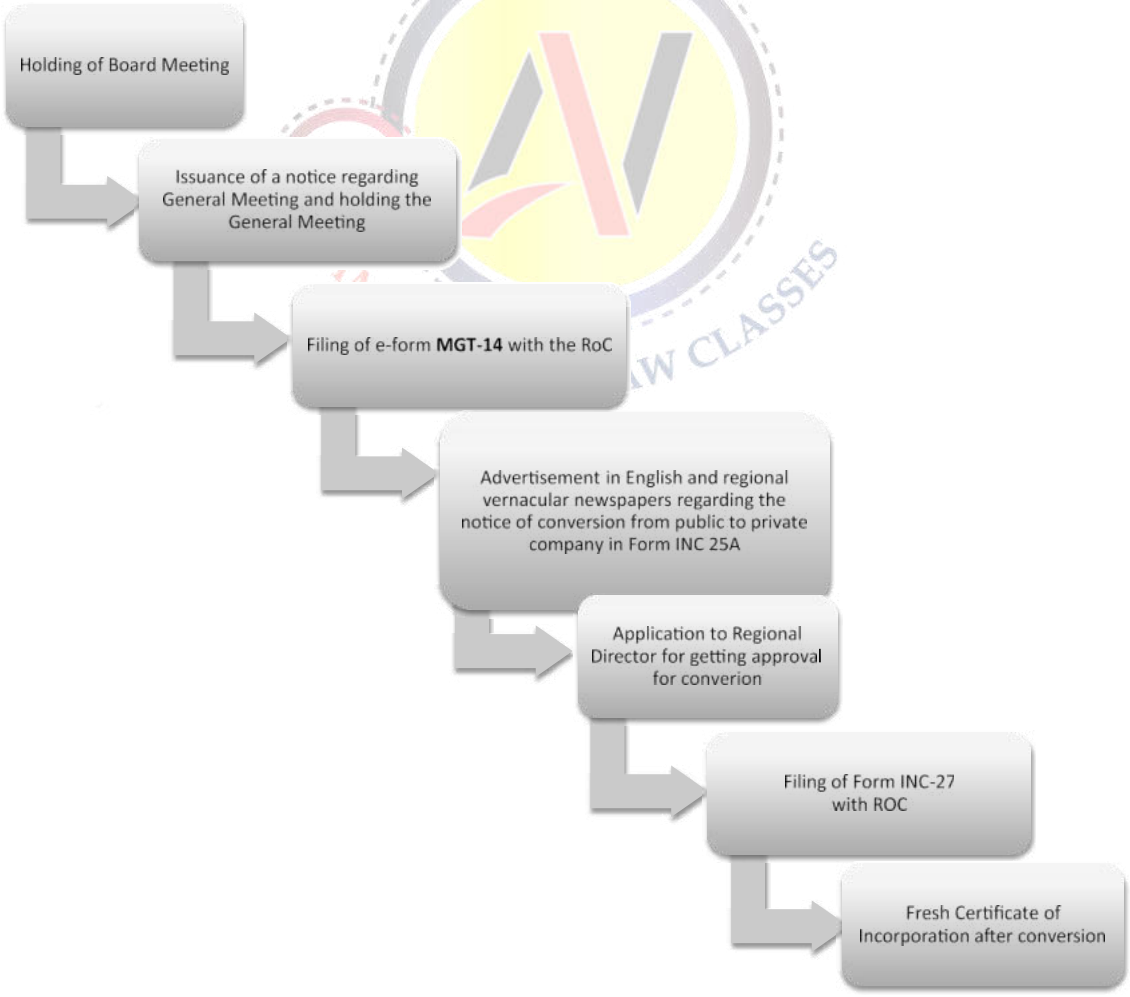
Benefits of conversion of Public Limited Company into Private Limited Company:



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



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

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting asper the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Public Limited Company into Private Limited Company. The main agenda for this board meeting would be:
   (a) To pass a board resolution for approving proposal of conversion of Public Company into a Private Company, and to recommend the proposal for conversion for approval of shareholders in the General Meeting of the Company.
   (b) To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Public company into a Private company.
   (c) To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of general meeting must contain the special resolution for effecting the conversion of public limited company into private limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
   (d) To authorize the Director or Company Secretary to issue notice of the general meeting as approvedby the board.
   (e) Pass Board resolution for considering and approving the reduction in the total number of membersof 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 ofGeneral 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 suchMeeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary SpecialResolution, 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 undersection 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 madethereunder.
   (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 contingentor 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 thedate 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 examiningthe 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 companyto 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 within30 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, directingthe 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. **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

thePrivate Company.

- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with theRegistrar.
- 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.

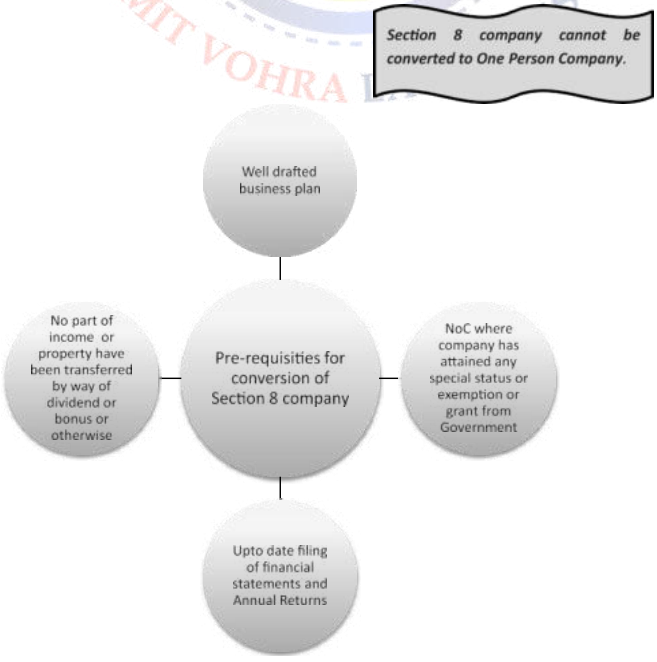
Post Conversion requirements to be arranged by the company

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:

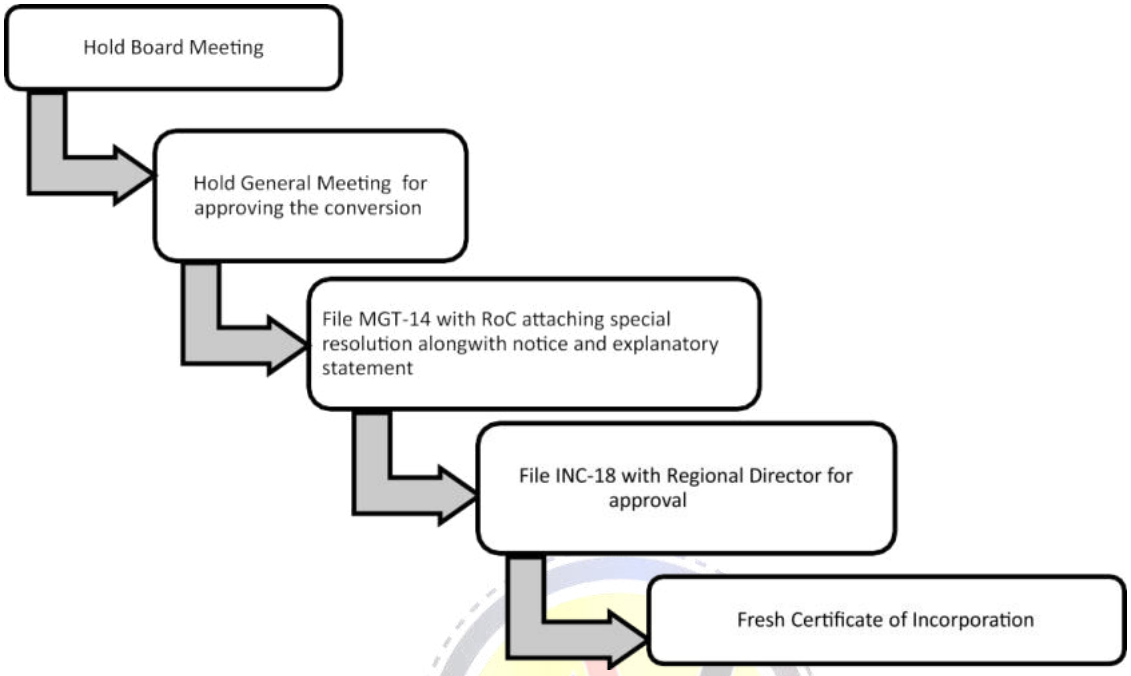
- Arrange new rubber stamps with the new name, and all the stationary in the new name of the Company.
- Arrange printing of fresh copies of Altered Memorandum of Association and Articles of Association withnew Certificate of Incorporation.
- Paint the new name of the Company outside every office, building etc. along with former name sochanged.
- Get the new name printed on its business letters, letter heads, Bill heads, Invoice Forms, Receipt Formsand 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 TaxDeduction 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.



Procedure for Conversion of a Section 8 Company into any other kind



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

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a BoardMeeting to consider the proposal for converting Section 8 Company into any other Company. The mainagenda 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 approvedby the board.
   (e) To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
   (f) To approve the draft new set of Memorandum of Association and the Articles of Association.

2. **Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given atleast 14 clear days'

before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Section 8 Company into any other Company along with alteration in Memorandum of Association and Articles of Association under section 14.

4. **Filing of e-form MGT-14:** In case of conversion of Section 8 Company into any other company special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
   - A certified true copy of Altered MoA.
   - A certified true copy of Altered AoA.
   - Notice of General Meeting along with an explanatory statement.
   - Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.

5. **Filing of e-form INC-18 with the Regional Director and Registrar:** 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

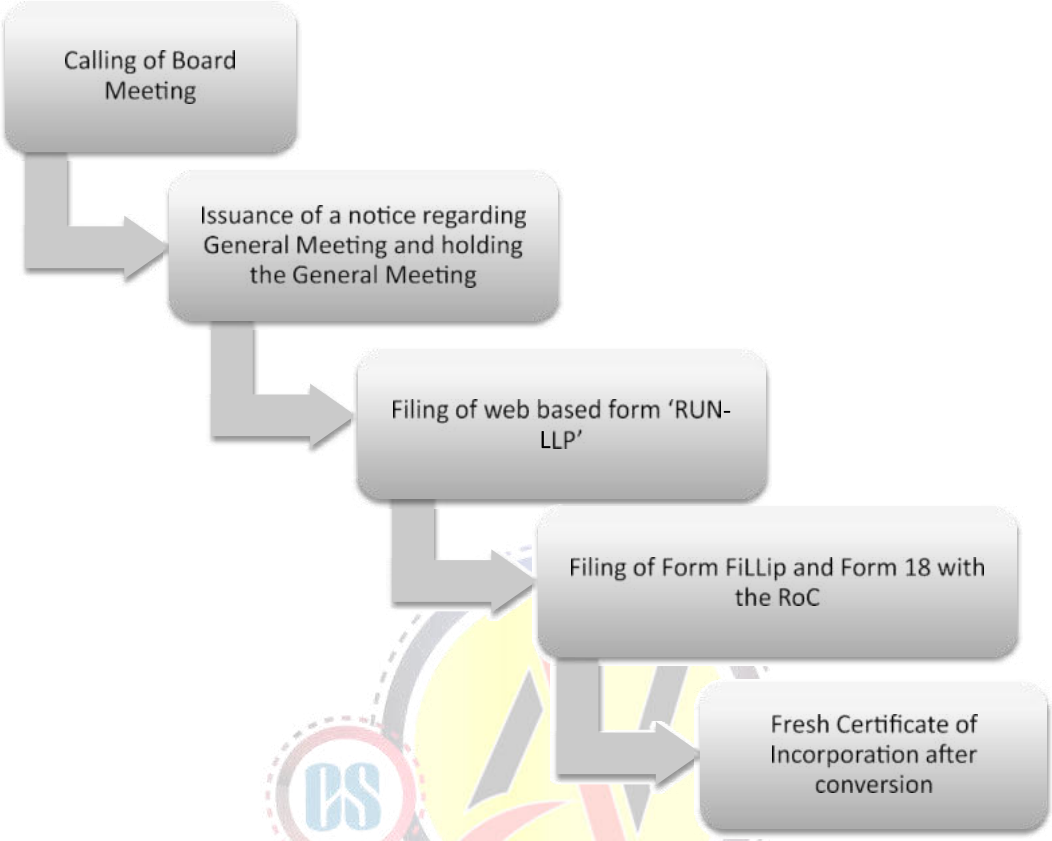
Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.

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.

Procedure for Conversion of Company into Limited Liability Company



Detailed Procedure for Conversion of Company into Limited Liability Partnership:

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

   Before conducting board meeting obtain DIN for all those designated partners who don't have DIN already.

2. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' written approval for Conversion of Company into Limited Liability Partnership.

3. **Application for Name Availability on LLP Portal:** The Company must apply for a name reservation, by filing web based form 'RUN-LLP'with ROC along with the board resolution passed by the Company approving the conversion into LLP and obtain Name Approval Letter

from ROC.

4. **Filing of incorporation documents in LLP Portal:** Once the Company reserves its name, LLP must file its incorporation in web based form FiLLip (Filing of Form of Incorporation) with ROC along with the below-mentioned documents:
   - Proof of Address of Registered office of LLP
   - Subscription sheet signed by the promoters
   - Latest Utility bill of registered office
   - NOC of owner of registered office, if taken on rent / lease
   - Notice of Consent & Appointment of Designated Partners with their personal details
   - Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner

5. **Application for Conversion of company into LLP:** For converting the existing Company into LLP, FiLLip Form 18 must be duly filled. The following information is required to be furnished along with the form 18:
   - Statement of shareholders
   - Incorporation Documents & Subscribers Statements
   - Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor
   - List of all the Secured creditors along with their consent to the conversion
   - NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return
   - Approval from any other body/authority as may be required
   - Particulars of pending proceedings from any court/Tribunal etc.

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

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

Effect of Conversion from Company to LLP:

- The Company gets dissolved after conversion.
- Registrar of Company will remove the name of Company from the register of Companies maintained with it.
- Conversion does not affect present liability, obligation, agreements and contracts.
- On conversion of Company into LLP, assets of the Company will be transferred to LLP. There is no

requirement of instrument of transfer. Hence, no stamp duty implication is required for such transfer.

- After conversion into LLP there is no requirement for holding minimum number of meetings as prescribed by the Companies Act, 2013.

Conversion OF LLP into Company

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

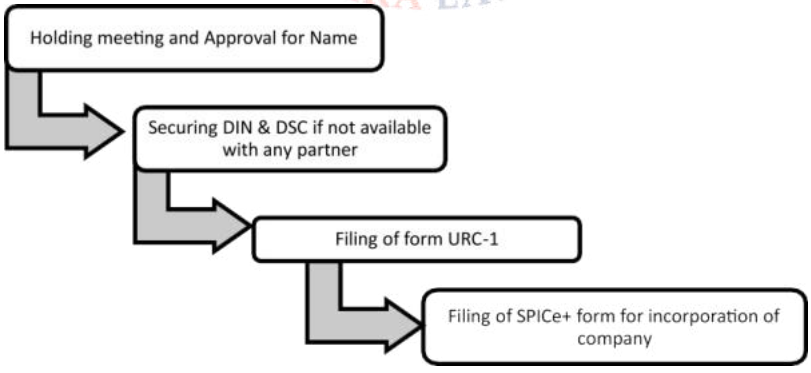
(i) Incorporation of a new corporate entity.
(ii) Conversion of existing entity (e.g. LLP / Partnership Firm) into a Company.

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

There were no provisions under Companies act, 2013 regarding Conversion of Limited Liability Partnership into Company. Ministry of Corporate Affairs has passed a notification on 31st May, 2016 in such notification conversion of LLP into Company is allowed. These rules called as "the Companies (Authorized to Register) Amendment Rules, 2016.

However, there are various requirements which need to be satisfied for converting an LLP into a Private Limited Company, for instance, an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company), approval from all the partners is required, advertisement in newspaper is to be done in a local and a national newspaper, a No Objection Certificate (NOC) is required from the ROC where such LLP is registered and then all the incorporation process has to be undertaken which includes:

Procedure for Conversion of Limited Liability Company into Company



Detailed Procedure for Conversion of Limited Liability Partnership into a Company:

1. **Approval of Name:** Hold a meeting of the partners to take assent of majority of its members summonedfor 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 rununder 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 applicantmust 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 6days 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 ageneral meeting, agreeing for such registration;
     - an undertaking that the proposed directors shall comply with the requirements of the IndianStamp Act, 1899 as applicable;
     - A copy of the latest income tax return of the Limited Liability Partnership or firm, as the casemay be.

   In case of an application by a Limited Liability Partnership or firm for registration as a company limitedby 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 maybe.

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

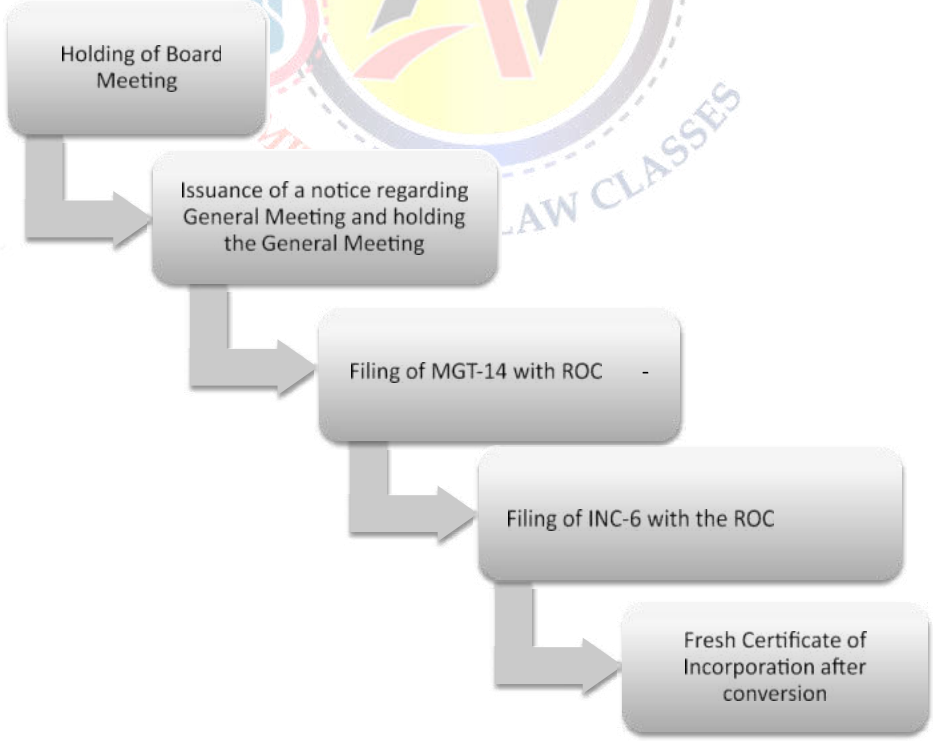
1. The One Person Company shall alter its memorandum and articles by passing a resolution in accordancewith section 122(3) of the Act to give effect to the conversion and to make necessary changes incidentalthereto.

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 directorsto two or seven members and two or three directors, as the case may be, and maintaining the minimumpaid-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.

Procedure for Conversion of One Person Company into other Company



Detailed Procedure for Conversion of OPC into company:

1. **Holding of Board Meeting**: Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a One Person Company into Other Company. The main agenda for this board meeting would be:
   (a) To pass a board resolution to get in-principal approval of Directors for conversion of One Personcompany 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 annexedto 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 andArticles of Association of the Company.
   (d) To authorize the Director or Company Secretary to issue notice of the general meeting as approvedby the board.
   (e) Pass Board resolution for increase in number of Directors as per the type of company chosen forconversion.
   (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 ofGeneral Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for One Person Company into Other Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion.

4. **Filing of e-form MGT-14:** In case of conversion of One Person Company into Other Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
   (a) Notice of general meeting along with copy of explanatory statement under section 102;
   (b) Certified true copy of special resolution;
   (c) Altered memorandum of association;

(d) Altered articles of association;
(e) Certified true copy of board resolution may be attached as an optional attachment.

5. **Filing of e-form INC-6:** The 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:
   (a) Altered Memorandum of Association and Articles of Association
   (b) Copy of Special Resolution along with explanatory statement
   (c) List of the proposed members and its directors together with their consent
   (d) List of creditors
   (e) Copy of latest duly attested financial statements that is audited balance sheet and profit and lossaccount
   (f) Declaration by way of affidavit of Directors duly sworn in confirming that all members and creditorsof 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 companyin Form INC-25.

Conditions to fulfill for conversion:

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

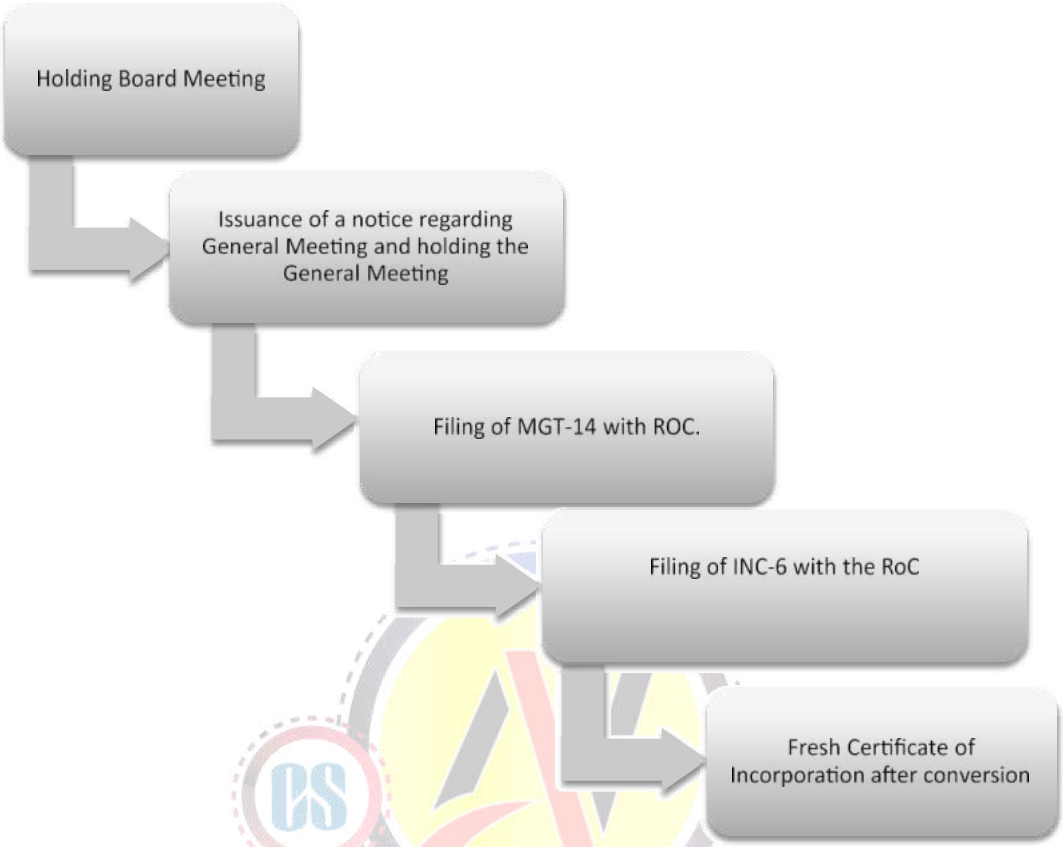
Points to ponder:

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

Conversion of Company Into One Person Company

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

Procedure for Conversion of One Person Company into other Company



Detailed Procedure for Conversion of company into OPC:

1. **Holding of Board Meeting**: Issue a notice (not less than 7 days) and agenda of the Board Meetingas per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Company into One Person Company. The main agenda for this board meeting would be:
   (a) To pass a board resolution to get in-principal approval of Directors for conversion of a Company into One Person Company.
   (b) To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Company into One Person Company.
   (c) To approve notice of general meeting along with agenda and explanatory statement to be annexedto 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 proposedconversion.

(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 ofGeneral 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 alongwith 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 resolutionis 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 arerequired 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: T**he application for the Conversion of Private Company into OPC should be filedto 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 shareholdershave 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 companyor 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 anyother 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 Authorized to Register Under the Companies Act, 2013

1. For the purposes of Part XXI Companies, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

2. With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other thanthis Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of two or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner asmay be prescribed and the registration shall not be invalid by reason only that it has taken place witha view to the company's being wound up:

   Provided that—

   (i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

   (ii) a company having the liability of its members limited by any Act of parliament other than this Actor 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, alsoof 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 suchof 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 presentin 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 bea 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 aspecified 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

registrationand on payment of prescribed fees under section 403 of the Act, he Registrar shall certify that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company thatit 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 thispart shall not affect its rights or liabilities in respect of any debts or obligations incurred or any contract enteredby 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 ormember thereof, which are pending at the time of the registration of a company in pursuance of this Part, maybe continued in the same manner as if the registration had not taken place.

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

Effect of Registration under Part XXI of the Act

Following are the effects of registration of companies under this Part of the Act:

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

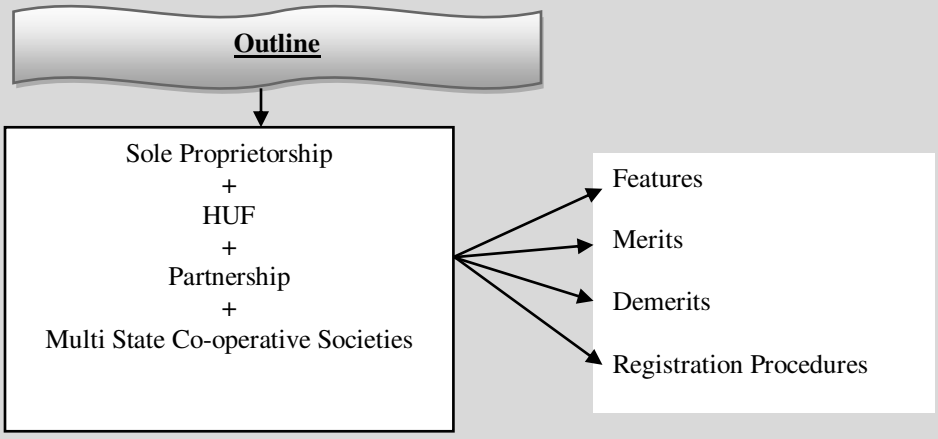
Chapter - 7
Non-Corporate Entities

Synopsis

1. Sole Proprietorship
2. Partnership
3. Hindu Undivided Family (HUF)
4. Multi State Co-Operative Society
5. Trust
6. Society
7. Mega Firm

QUESTIONS AS PER ICSI MODULE

Quick Recap



1. Sole Proprietorship

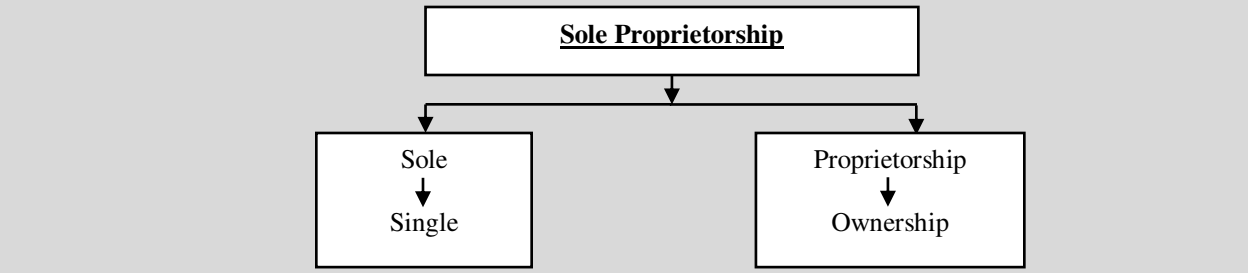
The vast majority of **small businesses** start out as sole proprietorships. The sole proprietorship is a form of business that is **owned, managed and controlled by an individual**. He has day-to-day responsibility for running the business. **He has to arrange capital** for the business and he alone is responsible for its management. He is therefore, **entitled to the profits and has to bear the loss of business**. Sole proprietorships own all the assets of the business. He also assumes complete responsibility for any of its liabilities or debts. **In the eyes of the law and the public, the sole proprietor and the business are one and the same.**

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

For instance

1. To start a **factory,** the permission of the local authorities is sufficient.
2. To start a **restaurant,** it is only necessary to get the permission of local health authorities
3. To run a **grocery store**, the proprietor has only to follow the rules laid down by local administration.

Quick Recap



Sole Proprietorship
Is a concern in which entire capital, management, decision making profitability & risk is vested in the single person named owner or proprietor
(+)
"Sole proprietor has to report to his boss, the one who is under his own hat"

Merits of Sole Proprietorship

A sole proprietary organization has the following advantages:

1. **Easy formation**

   A sole proprietorship business is easy to form where **no legal formality** involved in setting up this type of organization. It is **not governed by any specific law.** It is simply required that the business **activity should be lawful** and should **comply with the rules** and regulations laid down by local authorities.

2. **Better Control**

   In sole proprietary organization, all the **decisions** relating to business operations are **taken by one person**, which makes **functioning** of business **simple and easy**. The sole proprietor can also bring about changes in the size and nature of activity. This gives better control to business.

3. **Sole beneficiary of profits**

   The sole proprietor is the only person to whom the profits belong. There is a **direct relation between effort and reward.** This motivates him to work hard and bear the risks of business.

4. **Benefits of small-scale operations**

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

   For example, small industrial organizations can get **electricity and water supply** at **concessional rates** on a priority basis.

5. **Inexpensive Management**

   The sole proprietor **does not appoint any specialists** for various functions. He personally supervises various activities and can avoid wastage in the business.

Limitations of Sole Proprietorship

A sole proprietor generally suffers from the following limitations:

1. **Limitation of management skills**

   A sole proprietor may **not be able to manage the business efficiently** as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.

2. **Limitation of Resources**

   The sole proprietor of a business is generally at a disadvantage in raising sufficient capital. His **own capital may be limited and his personal assets may also be insufficient for raising loans** against their security. This reduces the scope of business growth.

3. **Unlimited liability**

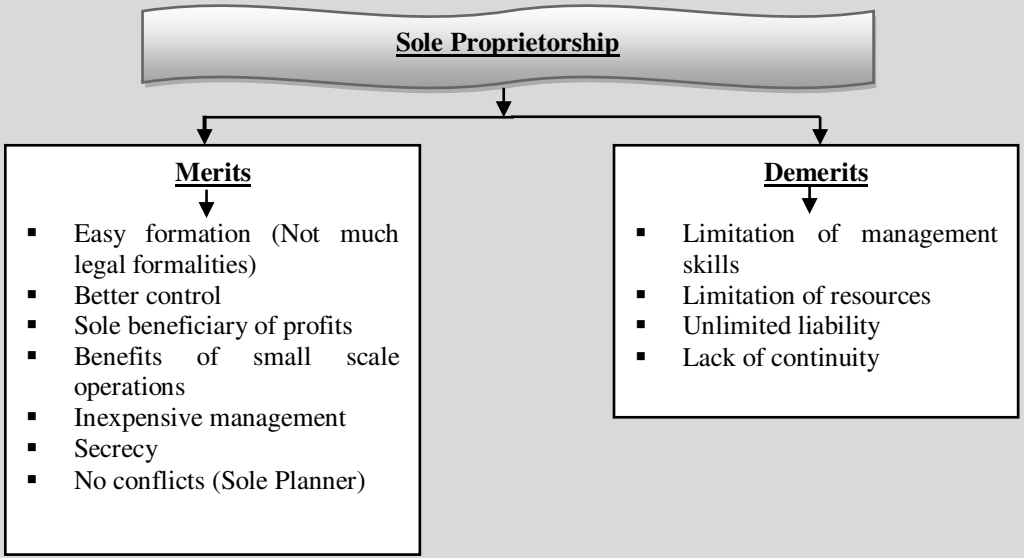
   The sole proprietor is personally liable for all business obligations. For payment of business debts, his **personal property can also be used if the business assets are insufficient.**

4. **Lack of Continuity**

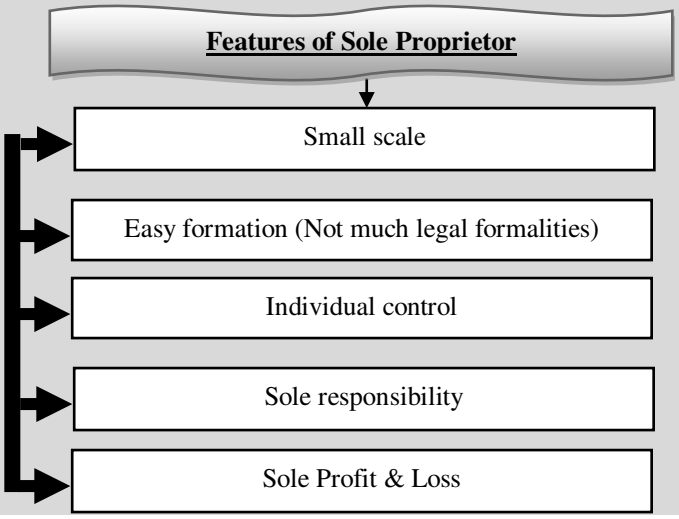
   A sole proprietary organization suffers from lack of continuity. If the proprietor is ill, this may cause temporary closure of business. **If he dies, the business may be permanently closed.**

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

Quick Recap



Quick Recap



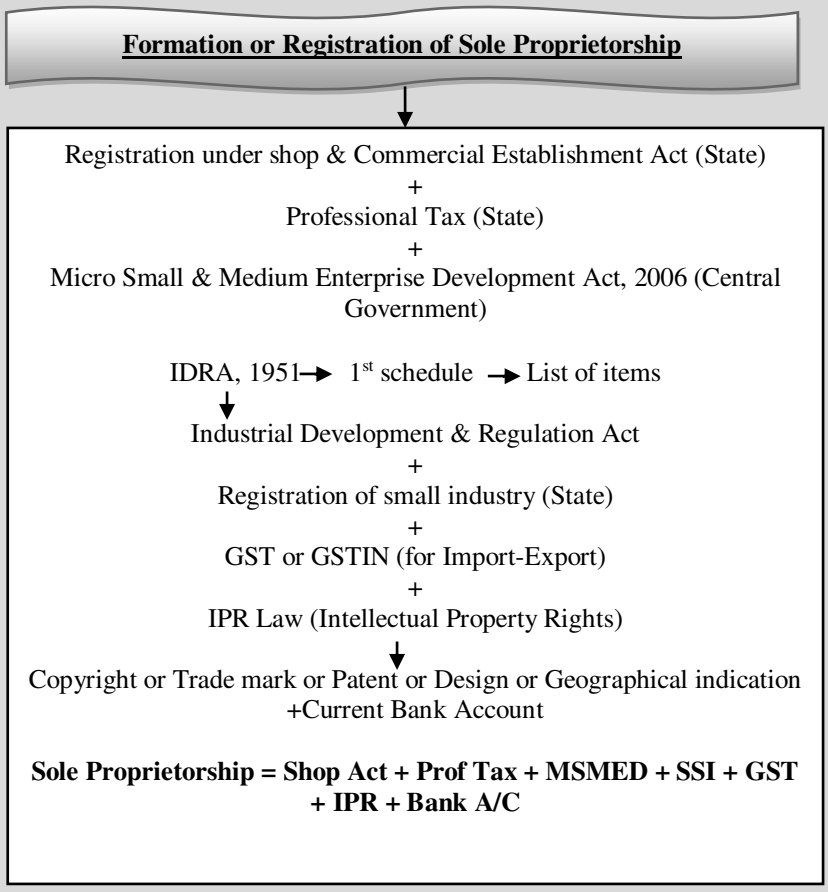
Procedure for Formation of Sole Proprietorship

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

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

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

Quick Recap



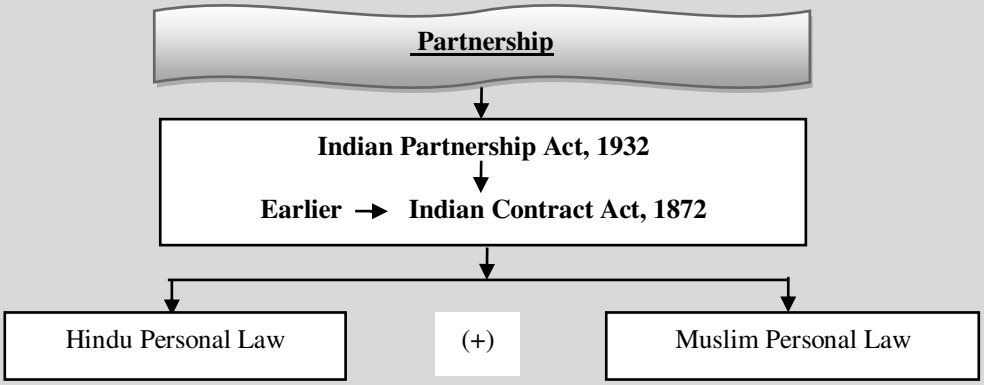
2. Partnership

Partnership is an **association of persons who agree to combine their financial resources and managerial abilities to run a business and share profits in an agreed ratio.**

Since the resources of a sole proprietor to finance, and his capacity to manage a growing business are limited, he feels the need for a partnership firm. Partnership business, therefore, usually grows out of the need for expansion of business with:—

- More capital
- Better supervision and control
- Division of work
- Spreading of risks.

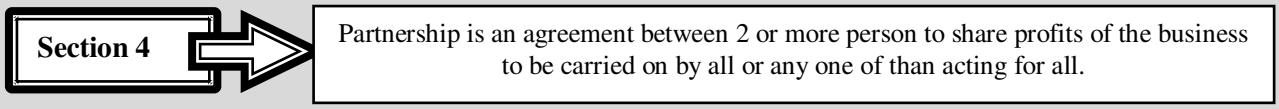
Quick Recap



[Section 4] Meaning of Partnership

"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**".

Quick Recap



Features of Partnership

The features of partnership are as follows:

1. **Existence of an agreement**

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

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** with a view to earning profits.

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 (Agent of Firm as well as Other Partners)**

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

5. **Unlimited Liability**

   Theliabilityofpartnersisunlimitedasinthecaseofsoleproprietorship.Incase 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**

   Every partner has a right to take part in the running of the business. It is not necessary for all partners to participate in the day-to-day activities of the business but they are entitled to participate. Even if partnership business is run by some partners, **the consent of all other partners is necessary for taking important decisions.**

7. **Restriction on transferability of share**

   No partner can transfer his share in partnership to any other person. He may, however, do so with the **consent of all other partners.**

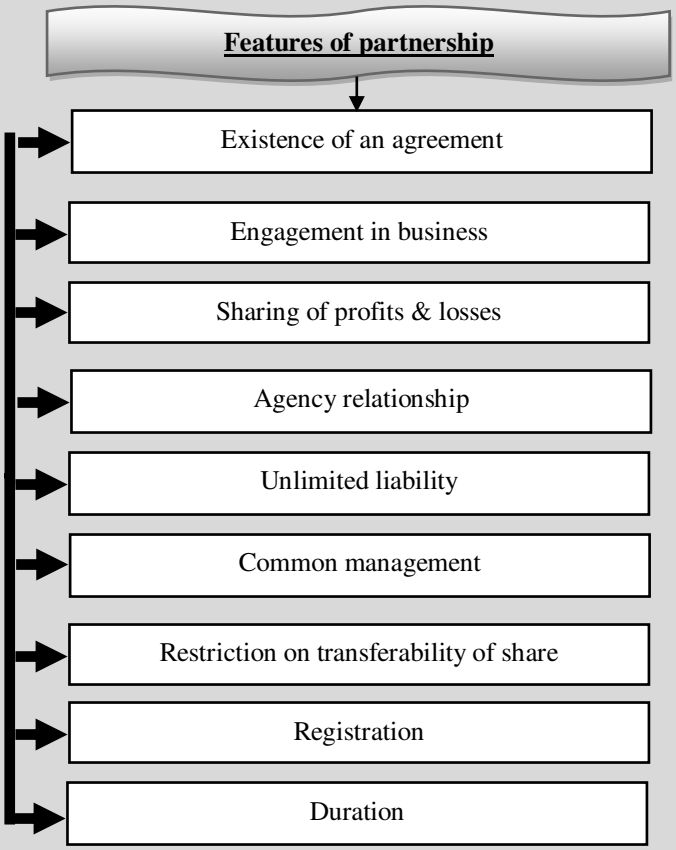
8. **Registration**

   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 will not be dissolved and will continue its business after settling the claim of the outgoing partner.

Quick Recap



Types of Partnership

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

- **Partnership at will**

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

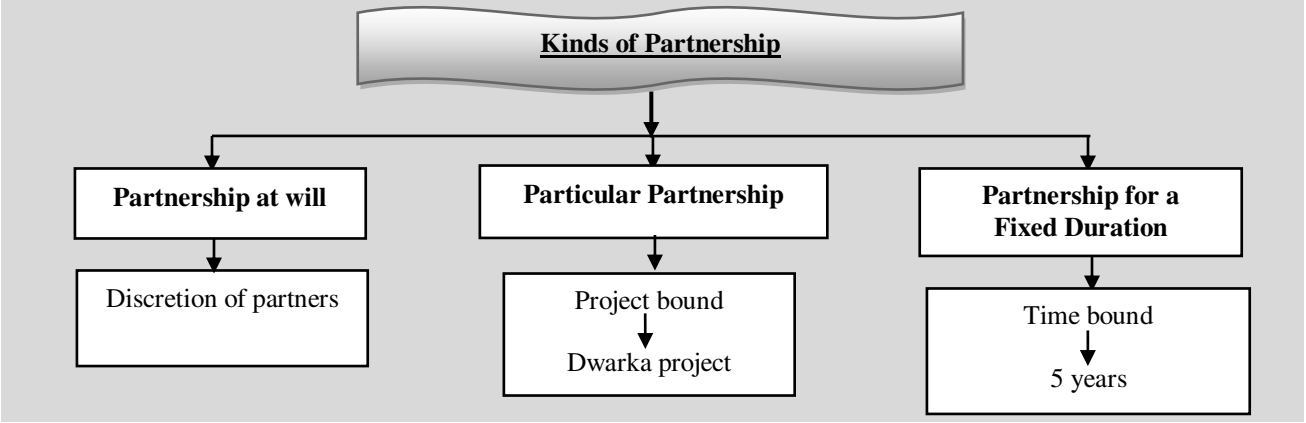
- **Particular partnership**

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

- **Partnership for a fixed duration**

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

Quick Recap



3. Types of Partners

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

1. **Active Partners**

   Partners who take **active part in the conduct of day-to-day business** of the firm are called active partners. These partners carry on business on behalf of the other partners.

2. **Sleeping or Dormant Partners**

   Sleeping or dormant partners are those who do **not take active part in the management of the business**. Such partners only contribute capital in the firm and are bound by the activities of other partners. However, they share in the profits and losses of the business.

3. **Others**

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

   (a) Nominal Partners

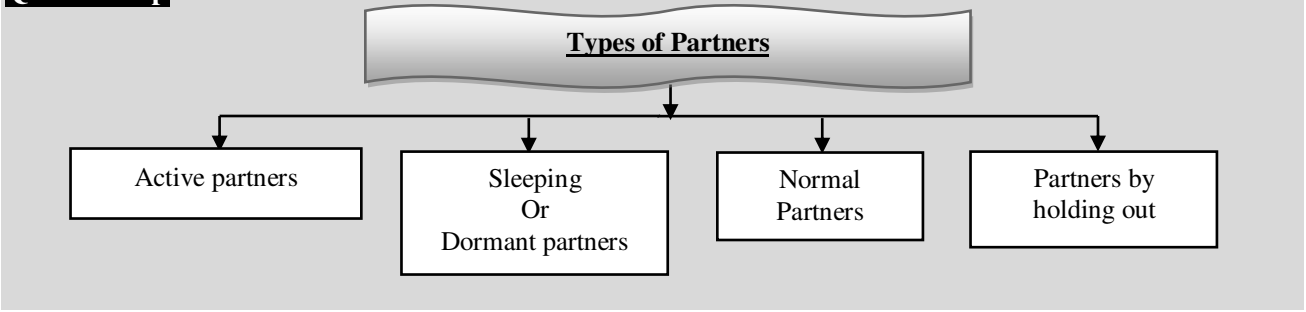
   Nominal partners are those who do not have interest in the business but lend their name to the firm. They do **not make any capital contribution, and are not entitled to take part in management, but are liable, like other partners, to third parties.** Such partners generally have a **pecuniary interest** (like a share in the profits) in **lending their name** to a firm.

   However in certain cases they may not have any pecuniary interest in doing so. For example, a reputed industrialist may, without any profit motive lend his name to a firm run by his family members.

   (b) Partners by holding out

   If a **person by his words or conduct holds out to another that he is a partner, he will be prevented from denying that he is not a partner**. The person who thus becomes liable to third parties to pay the debts of the firm is known as a partner by holding out.

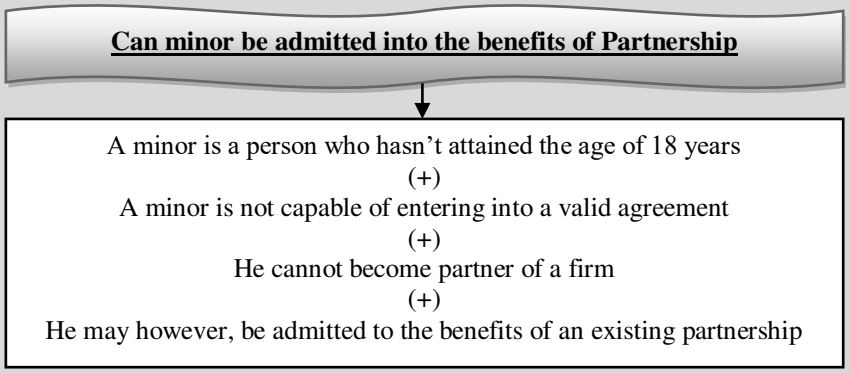
Quick Recap



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. He may, however, be admitted to the benefits of an existing partnership.**

Quick Recap



Merits of Partnership

A partnership form of organization offers the following advantages:

1. **Ease in formation**

   A partnership is very easy to form. All that is required is an agreement among the partners. Even the **expenses to be incurred for registration are-not much**.

2. **Pooling of financial resources**

   A partnership commands more financial resources compared to sole proprietorship. **This helps in expanding business and earning more profits**. More partners can be admitted at the time of requirement of more capital.

3. **Pooling of managerial stalls**

   A partnership facilitates pooling of managerial skills of all its partners. This leads to greater efficiency in business operations. For instance, in a big partnership firm, **one partner can handle production function, another partner can look after all marketing activity, still another can attend to legal and personnel problems, and soon.**

4. **Balanced business decisions**

   In a partnership firm, **decisions are taken unanimously after considering all the major aspects of a problem**. This ensures not only balanced business decisions but also removes difficulties in the smooth implementation of those decisions.

5. **Sharing of risks**

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

Limitations of Partnership

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

1. **Uncertainty of existence**

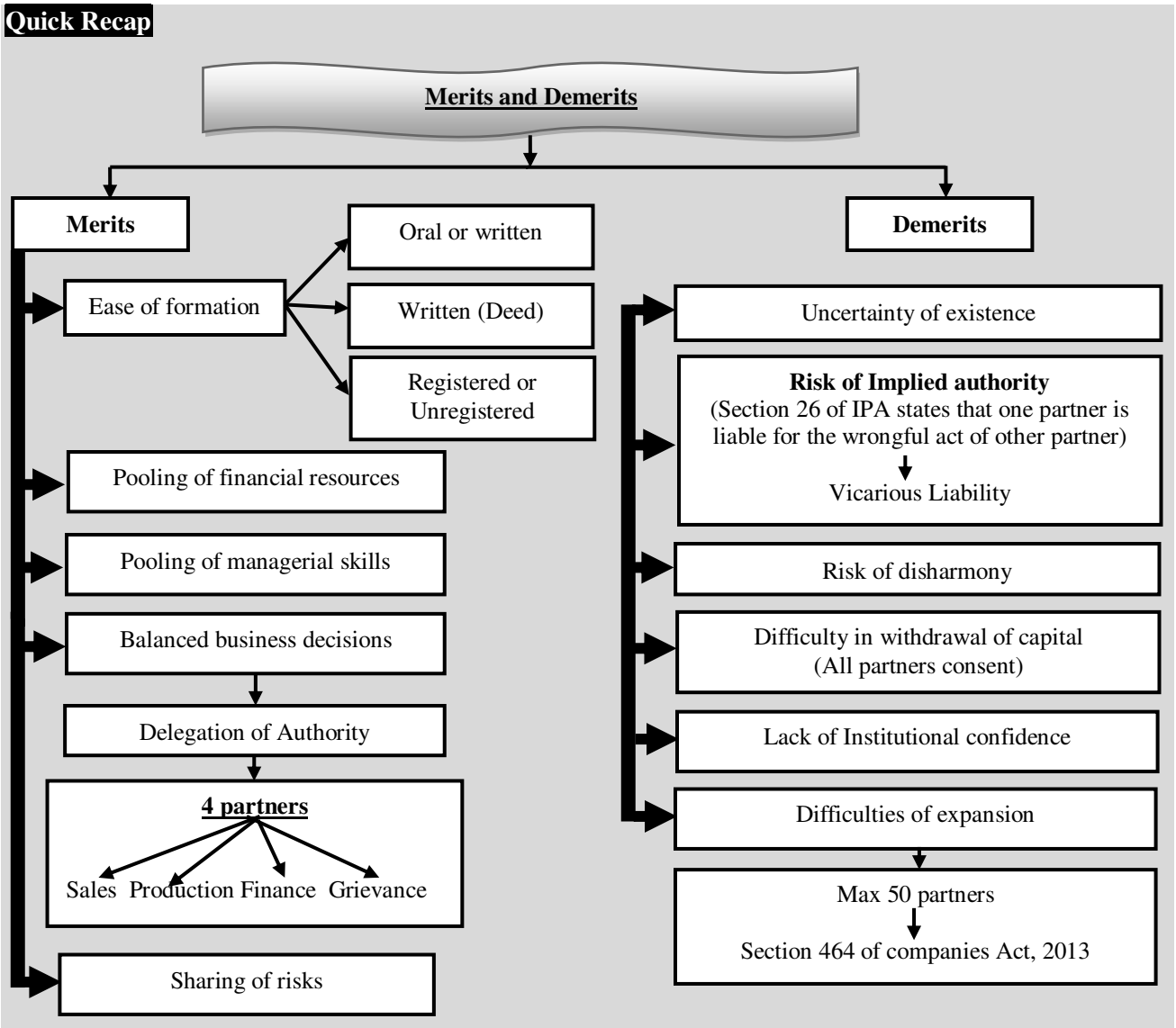
   The existence of a partnership firm is very uncertain. **The retirement, death, bankruptcy or lunacy of any partner can put an end to the partnership.** Further, the partnership business can come to a close if any partner demands it.

2. **Risks of implied authority**

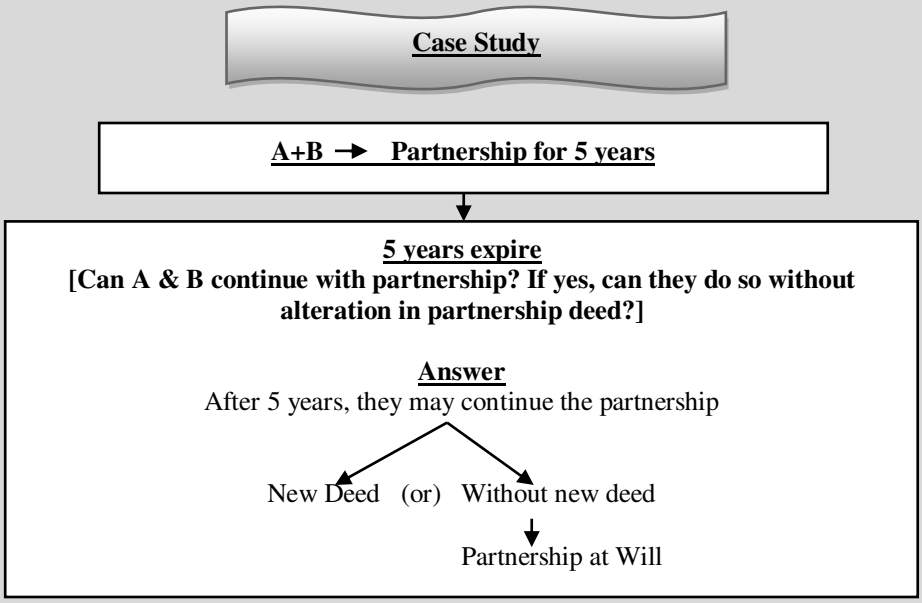
   It is true that like the sole proprietor each partner has unlimited liability. But his **liability may arise not only from his own acts but also from the acts and mistakes of co- partners over whom he has no control.** This discourages many persons with money and ability, to join a partnership firm as partner.

3. **Risks of disharmony**
   In partnership, since decisions are taken unanimously, it is essential that all partners reconcile their views for the common good of the organization. But there may arise situations when **some partners may adopt rigid attitudes and make it impossible to arrive at a commonly agreed decision. Lack of harmony may paralyse the business and cause conflict and mutual bickering (struggle).**
4. **Difficulty in withdrawal from the firm**
   Investment in a partnership can be easily made but cannot be easily withdrawn. This is so because the withdrawal of a partner's share requires the **consent of all other partners.**
5. **Lack of institutional confidence**
   A **partnership business does not enjoy much confidence of banks and financial institutions.** It is because the nature of its activities is not disclosed at public and the agreement among partners is not regulated by any law. As a result large financial resources cannot be raised by partnership and growth of business cannot be ensured.
6. **Difficulties of expansion**
   It is difficult for a partnership firm to undertake modernization of expansion of its operations. This is because of its **inability to raise adequate funds** for the purpose.
   Limited membership (restricted to 50) and their limited personal resources do not permit large amounts of capital to be raised by the partners. Therefore, large-scale business cannot generally be organised by partnerships.

Quick Recap



Quick Recap



Partnership Deed

Partnership deed, also known as a partnership agreement, is a document that outlines in detail the rights and responsibilities of all parties to a business operation. It **has the force of law and is designed to guide the partners** in the conduct of the business. It is **helpful in preventing disputes** and disagreements over the role of each partner in the business and the benefits which are due to them.

The key ingredients of a Partnership Deed are given below:

1. **Definitions and vital information**

   The partnership deed normally carries the **name of the business, the address of its principal place of business and a short summary** of the nature of business the partners intend to operate.

2. **Investment**

   The deed gives important financial details of the partnership, such as the **amount of capital** to be invested by each partner, the **Profit and Loss sharing** of each partner, the **salaries** to be paid to each partner and the **method of distributing the business income.** The partnership deed also documents the accepted method of raising additional capital, if necessary how loan funds may be raised and rate of interest if any, applicable on the loans.

3. **Accounting**

   The partnership deed provides for the **accepted method of accounting** for the cash flow, profit and loss, and assets and liabilities of the business. It also **defines the fiscal year** to be used in accounting statements and how these statements will be distributed among the partners and other shareholders.

4. **Duties, powers and obligations of the partners**

   The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed. The **Deed may also provide designate a partner as the Managing Partner, who will be responsible for day to day management and conduct of the business.**

5. **Withdrawals**

   The **document must also provide for actions to be taken in case of the voluntary withdrawal or death of a partner.** In such a case, accounts will have to be drawn up to ascertain the assets, liabilities and the entitlement of each partner (including the outgoing partner)

6. **Expulsion**

   If a partner is proving to be a hindrance or detriment to the business, or loses legal rights in a bankruptcy or other court action, the other partners must have a method of modifying the partnership rights of or expelling him.

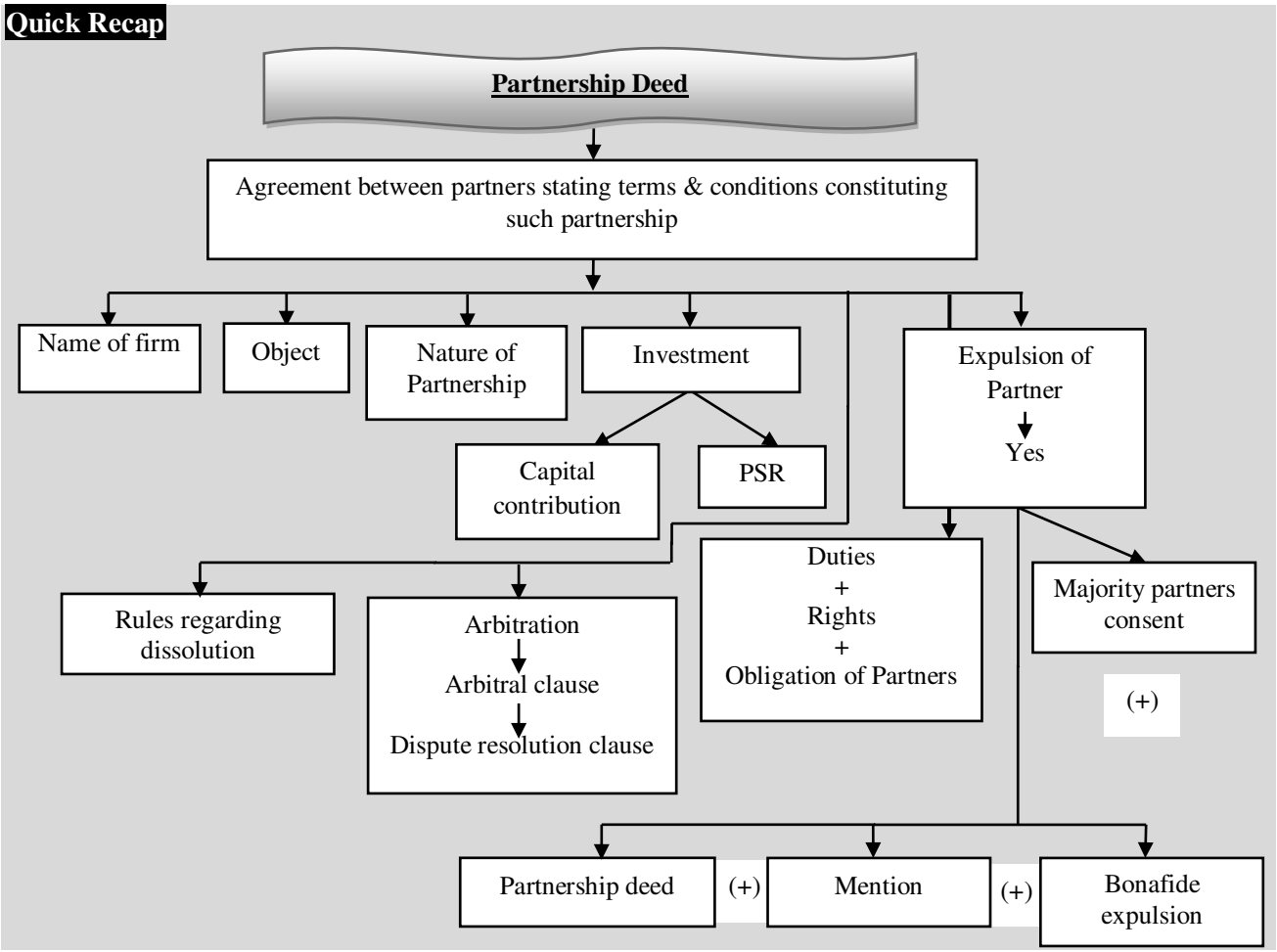
7. **Dissolution**

   The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts among the partners would be settled at the termination of the business.

8. **Arbitration**

   As in all business contracts, a partnership deed must provide for the means of arbitration of disputes. **The main goal of the deed is to avoid expensive litigation over details that have not been fully worked out in the signed agreement.**

Quick Recap



Procedure for Formation of a Partnership

Partnership firms in India are governed by the Indian Partnership Act, 1932. While it is not compulsory to register your partnership firm as there are no penalties for non-registration, **it is advisable since the following rights are denied to an unregistered firm:**

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

Registration Procedure

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

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
   - Duration of the firm

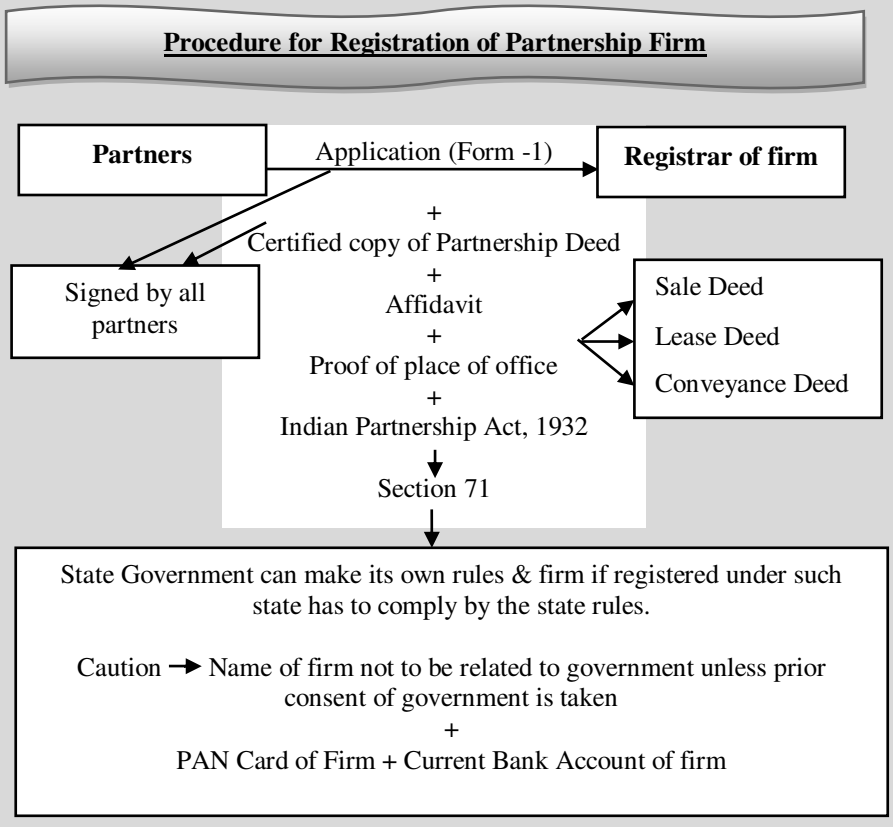
   The Application should be duly signed by all the partners of the firm or by their duly authorized agents.
2. **Every partner needs to verify and sign the application.**
3. Ensure that the following documents and prescribed fees are **enclosed** with the registration application:
   - Application for Registration in the prescribed **Form-1.**
   - Duly filled **Affidavit**.
   - **Certified copy of the Partnership deed.**
   - **Proof** of ownership of the **place of business** or the rental or lease agreement thereof.

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

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

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

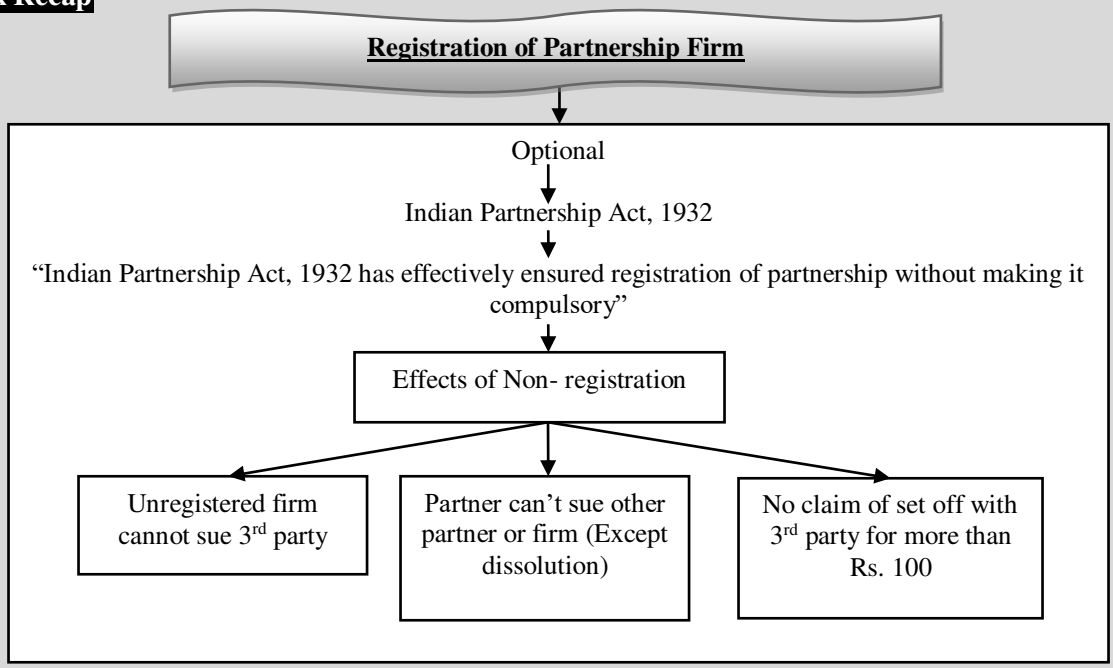
Quick Recap



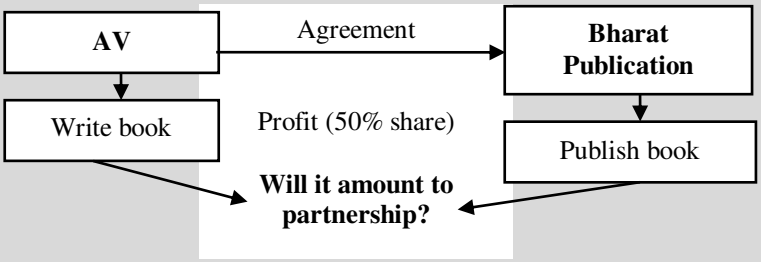
Registration of Partnership Firm under Income Tax

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.

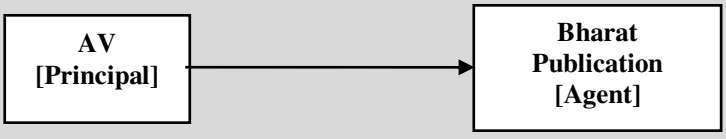
Quick Recap



Case Study



Ans.



AV is not the agent of **Bharat Publication.** Conclusions there is no mutual agency between both of them.

Quick Recap

Case Study

Mr. A (+) **Mr. B**

House purchase → Equally Borne

Renovate
+
Paint
↓
Rent equally share
Will it amount to be partnership?

Ans.

Income Tax Act, 1961

PGBP → Business Income
HP → Not a Business

Conclusion: - it is not a Partnership due to lack of business

Case Study

Santa (+) **Banta**

2 Taxi
+
Paint Exp.
+
Commercial Tax
+
Proceeds
→ Amount Equally Contributed

Will it amount to be partnership?

Ans.

Essential Elements

- 2 or more persons
- Agreement → Oral
- Lawful business
- Profit & loss sharing mutual agency
- Mutual Agency

Conclusion: - it is Partnership as it consist of all the essential element of a partnership

Quick Recap

Essential Elements of Partnership

- 2 or more persons
- Agreement
- Lawful Business
- P & L Sharing
- Mutual Agency
  - Both partners must act on behalf of one another

Section 2(a)

An **"Act of a firm"** means any act or omission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm.

Section 7

Where no provision is made by contract between the partners for the duration of their partnership for the determination of their partnership the partnership is partnership at will

Section 8

Particular partnership

A person may become a partner with another person in particular adventures or undertaking

Section 28

Partner by Holding out

One who becomes the partner by his conduct or behaviour

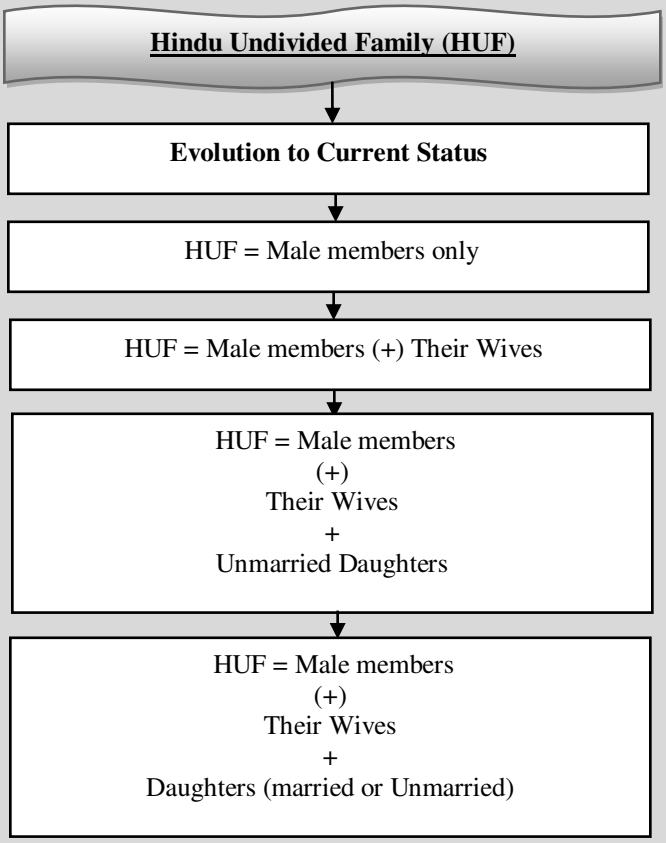
Section 39

Dissolution of a firm

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

4. Hindu Undivided Family (HUF)

Quick Recap



Note:—Daughters shall continue to be Coparceners in HUF of the father even after their marriage.

Meaning of Joint HUF

The Joint Hindu Family Business is a distinct form of organization 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, 1956 and the Income-tax Act, 1961.**

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

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

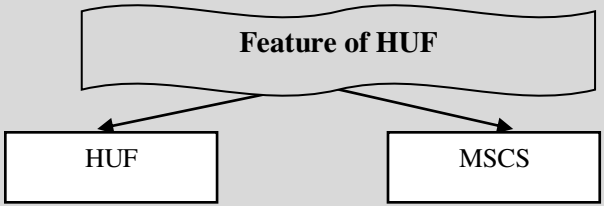
Schools under Hindu Law

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

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

Characteristics of a Joint Hindu Family Business

Quick Recap

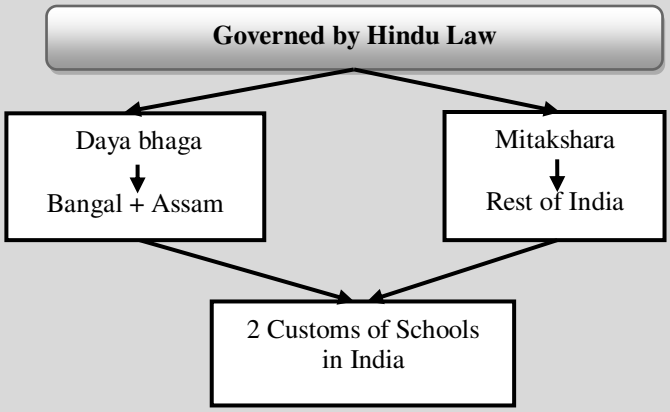


1. **Governed by Hindu Law**

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

Dayabhaga Mitakshara

Quick Recap

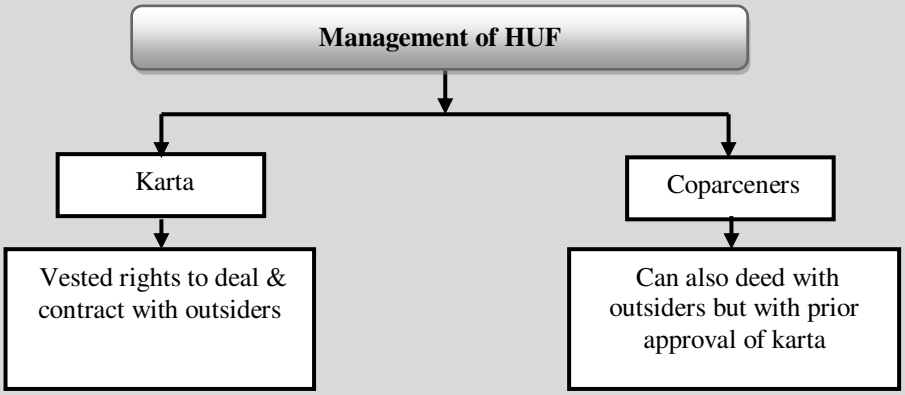


2. Management

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.

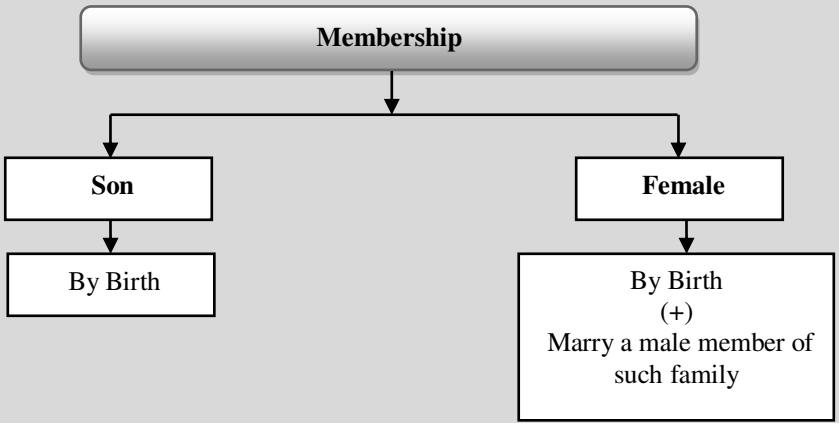
Quick Recap



3. Membership by Birth

The membership of the family can be acquired only by birth. As soon as a child is born in family, he becomes a member. **Membership requires no consent or agreement.**

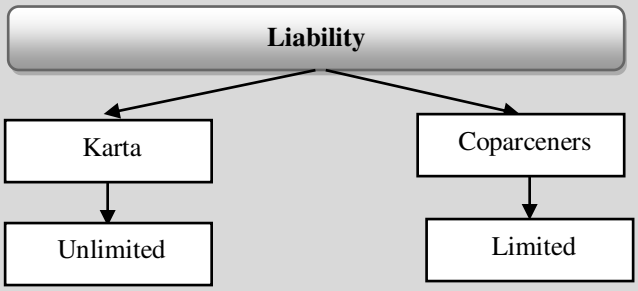
Quick Recap



4. Liability

Except the Karta, the liability of all other members is limited to their shares in the business. The Karta is not only liable to the extent of his share in the business but his separate property is equally attachable and amount of debt can be recovered from his separate property.

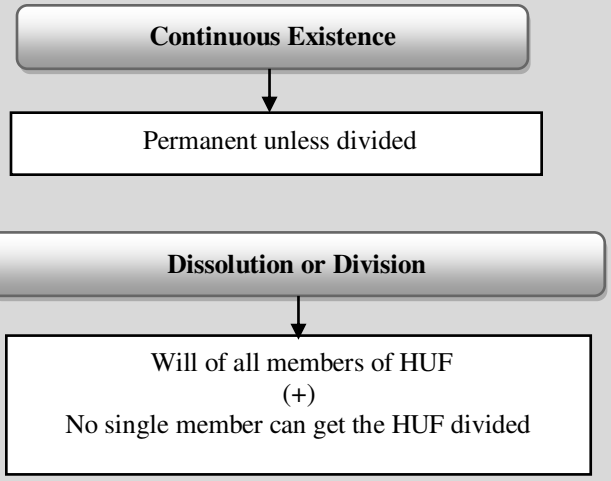
Quick Recap



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.

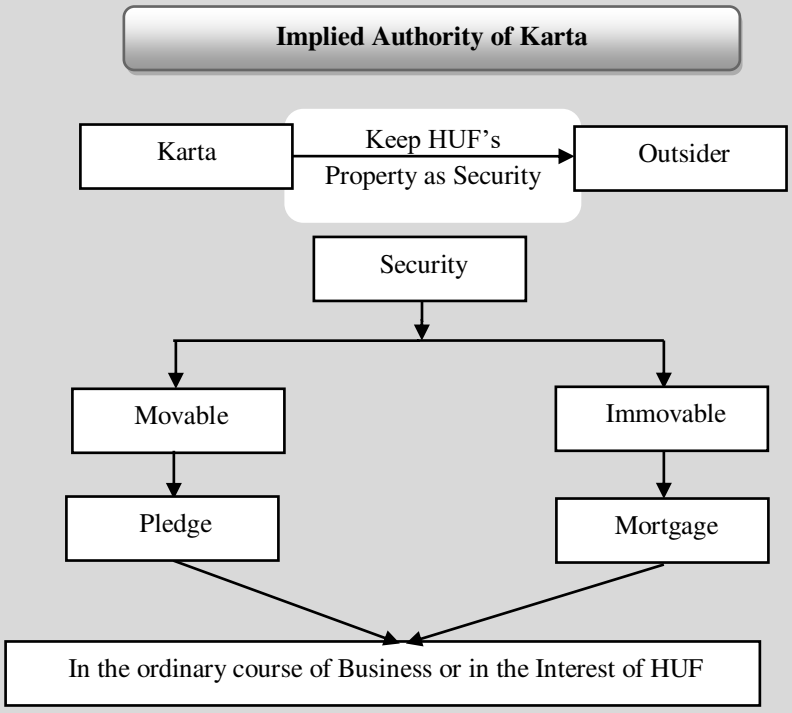
Quick Recap



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 course** of the businesses of the firm.

Quick Recap



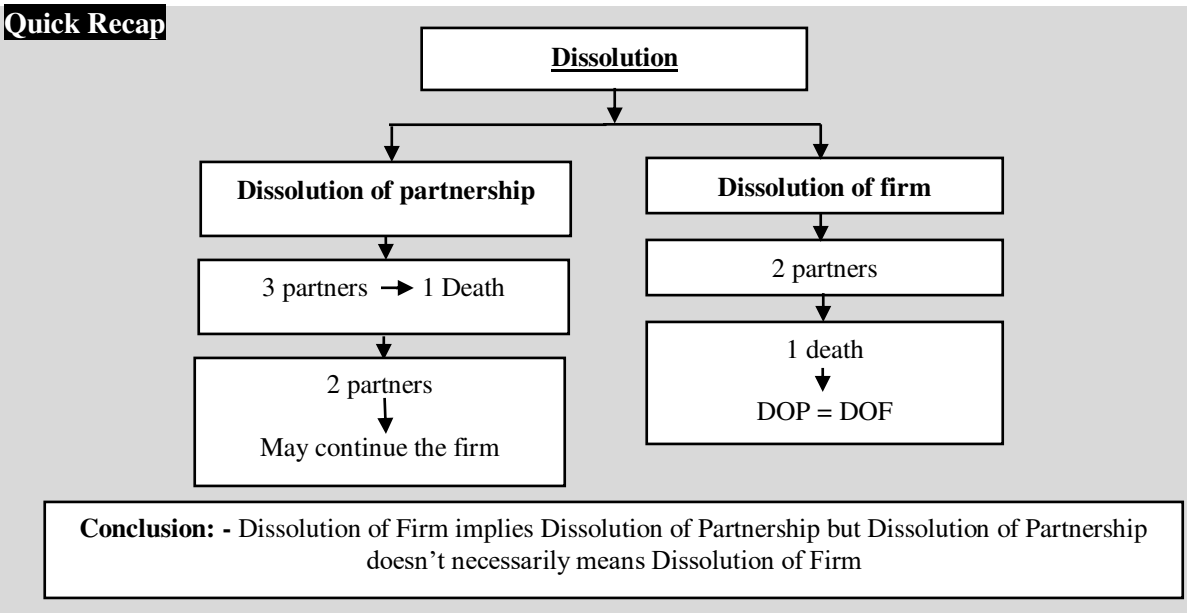
7. Minor also a Member

In a partnership, minor cannot become co-partner though he may be admitted to the benefit of partnership. In a Joint Hindu Family firm minor is a co-parcener.

8. Dissolution

The Joint Hindu Family Business can be dissolved only at the will of all the members of the family. **Any single member has no right to get the business dissolved.**

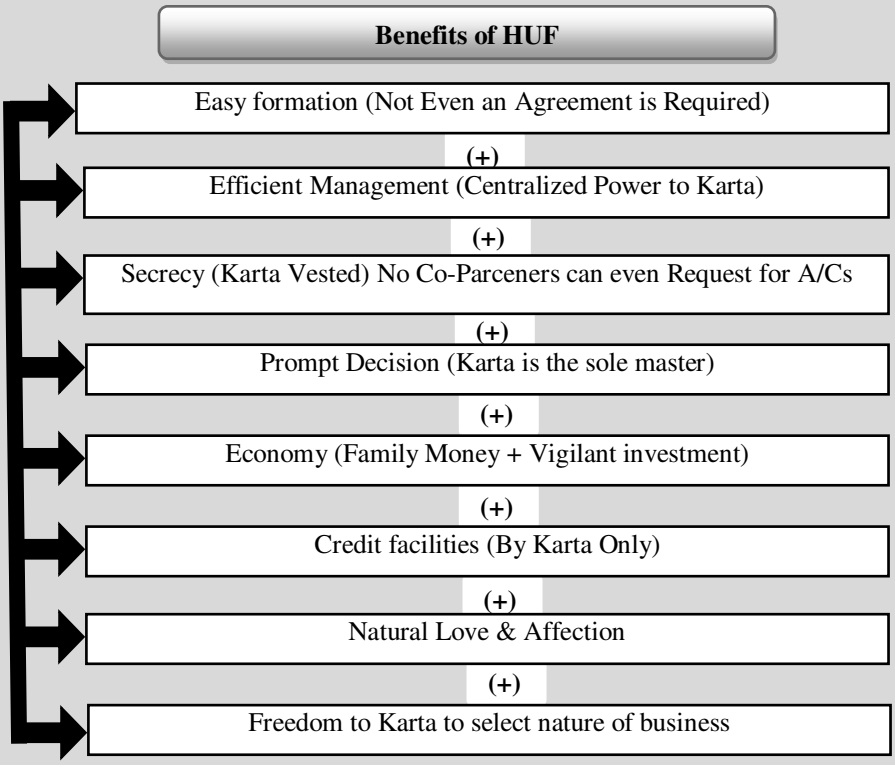
Quick Recap



Benefits of HUF

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

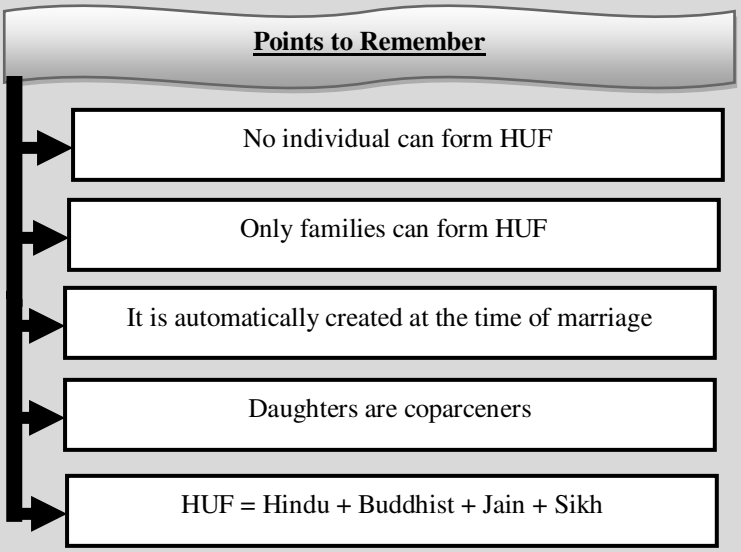
Quick Recap



Points to Remember regarding HUF

- **One person cannot form HUF**. An HUF is formed by a family.
- An HUF is **automatically created at the time of marriage.**
- HUF consists of a common ancestor and all of his lineal descendants, including their wives and unmarried daughters. **After 1-9-2005, daughter married or unmarried, is a coparcener like as on.**
- **Hindus, Buddhists, Jains and Sikhs can form HUFs.**
- **HUF usually has assets which come as a gift, a will, or ancestral property,** or property acquired from the sale of joint family property or property contributed to the common pool by members of HUF.
- Once an HUF is formed it must be formally registered in its name. An HUF **should have a legal deed**. The deed shall contain details of HUF members and the business of the HUF. **A PAN number and a bank account should be opened in the name of the HUF.**
- Use a capital asset to establish the corpus of the HUF. This can be ancestral property, assets gifted by relatives and friends, or received by the HUF through a will. If you give a personal asset to the HUF, the income will be clubbed with your own. **Gifts of over 50,000 a year received by HUF will be taxable. The best way is for the HUF to receive assets as part of a will.**

Quick Recap



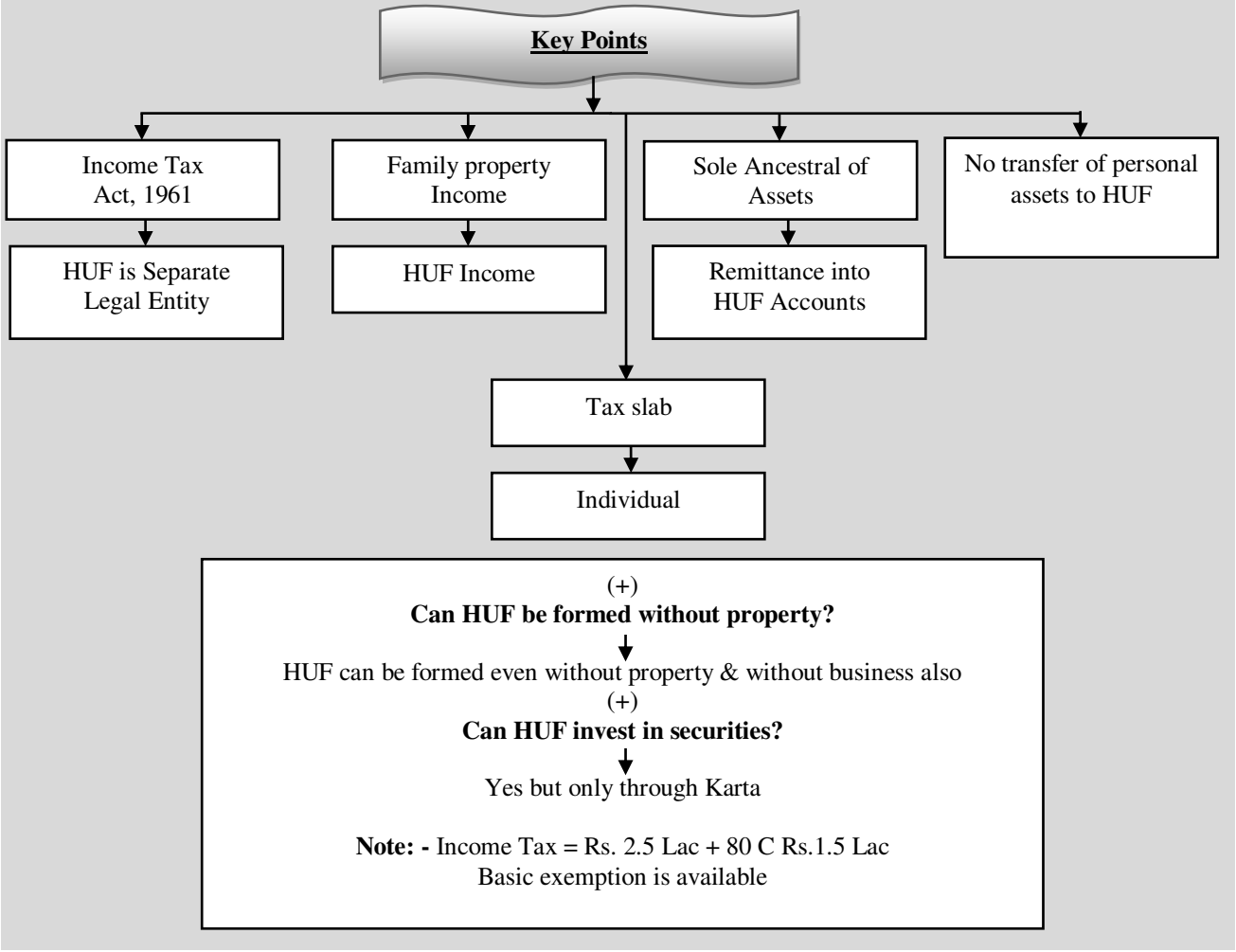
Key Points in creation of HUF

- 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**.
- You can**not transfer your own assets or money into HUF.**
- If you have ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- You can transfer the money received on sale of ancestral property or assets into your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc. and will be assessed under HUF.
- Existence of property or multiple members is not a pre-requisite to create -HUF. **A family which does not own any property may still have the character of Hindu joint family.** This jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.
- **Any gifts received by the members of HUF (birthday, marriage, etc.) can be treated as assets of HUF.**

- **The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh.** HUF will also gain from the tax slab structure of computing income tax.

Apart from basic exemption of Rs. 2.50 lakh, section 80C deduction up to Rs. 1.50 lakh is also available.

Quick Recap



Procedure for Registration of Hindu Undivided Family (HUF)

1. **Create a HUF Deed**

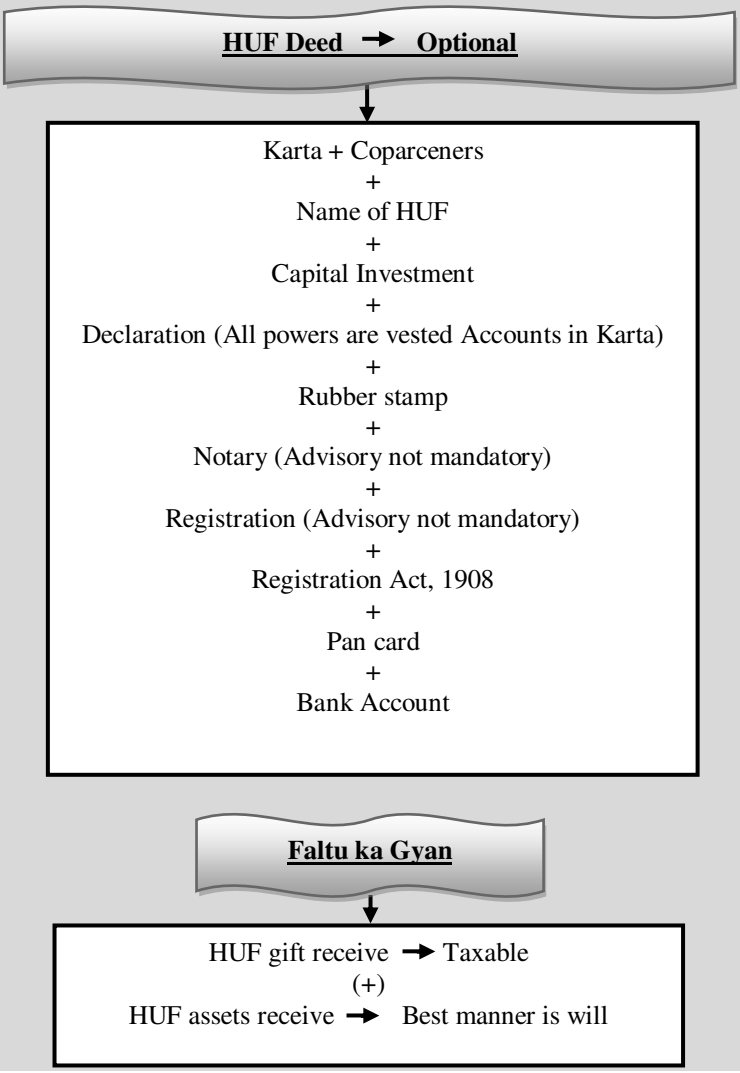
   You have to prepare a **deed on stamp paper declaring the formation of the HUF**. It should have all the details, including the name of karta, co-parceners, address and source of funds in the corpus. Creating a **HUF Deed is not mandatory.**

   However it is always beneficial to have a HUF Deed. Key issues to be noted in preparation of a HUF Deed are:

   - A 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.**
   - **The eldest male member of HUF becomes Karta** of HUF.
   - The name of members of HUF and the **name of the HUF** is also required to be stated in the HUF Deed at the time of creating of HUF.
   - The name of HUF is usually the name of the Karta followed by the word HUF E.g. Amit Vohra HUF.

- HUF Deed also **states the capital** with which the HUF has been initiated. There are various sources through which capital can be introduced.
- A declaration is also provided by each member of family where they declare the name of Karta and also state that—
  - **Karta has the authority of the accounts** vested in his hand
  - **Karta holds the right to govern all the transactions** of the HUF accounts on behalf of the members.
- Further, a **rubber stamp of HUF will also be prepared**. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.
- It is recommended that the **Deed should benotarised.**

Quick Recap



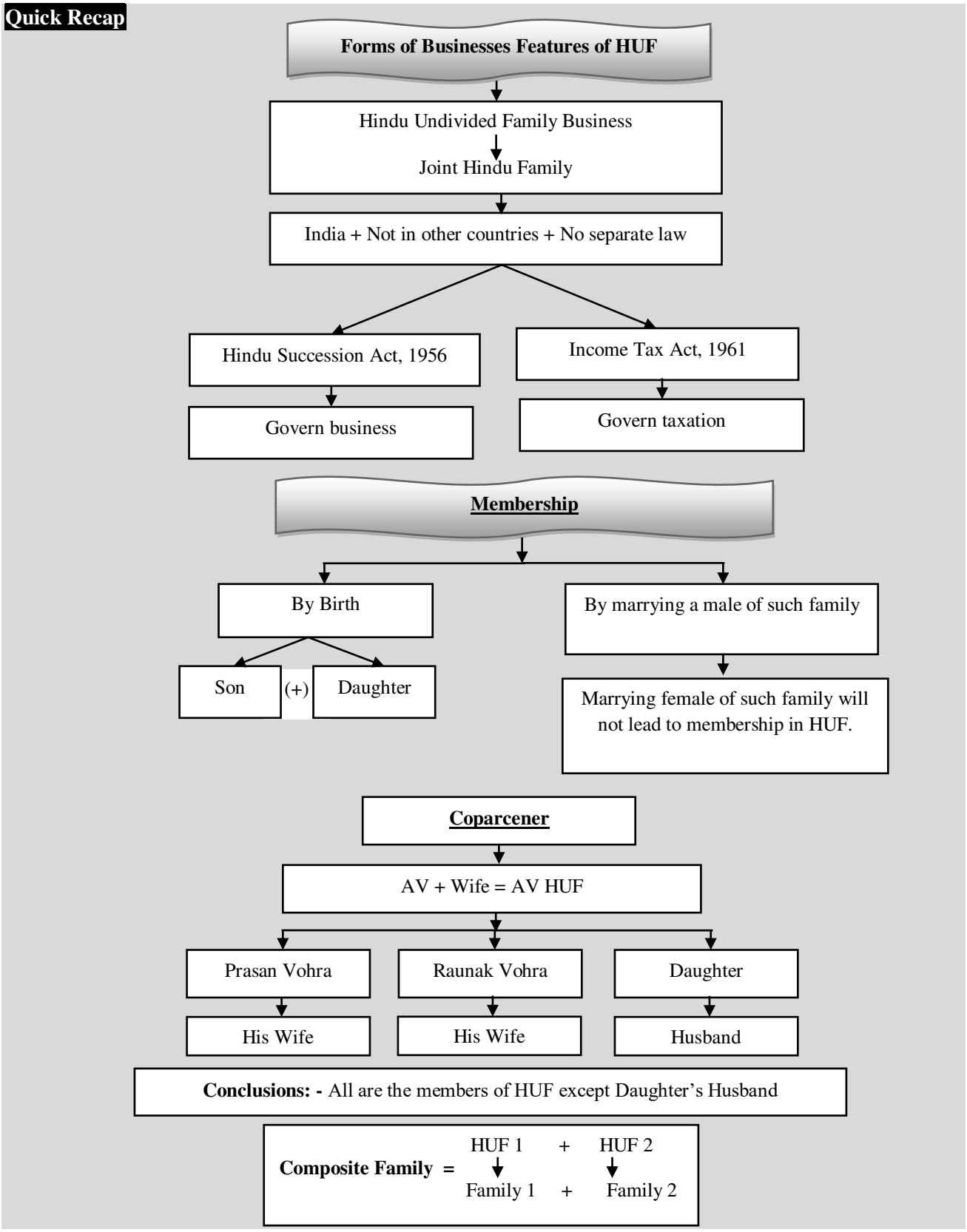
2. **Register the Deed**
3. **Obtain PAN**

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

4. Open bank account

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

Quick Recap

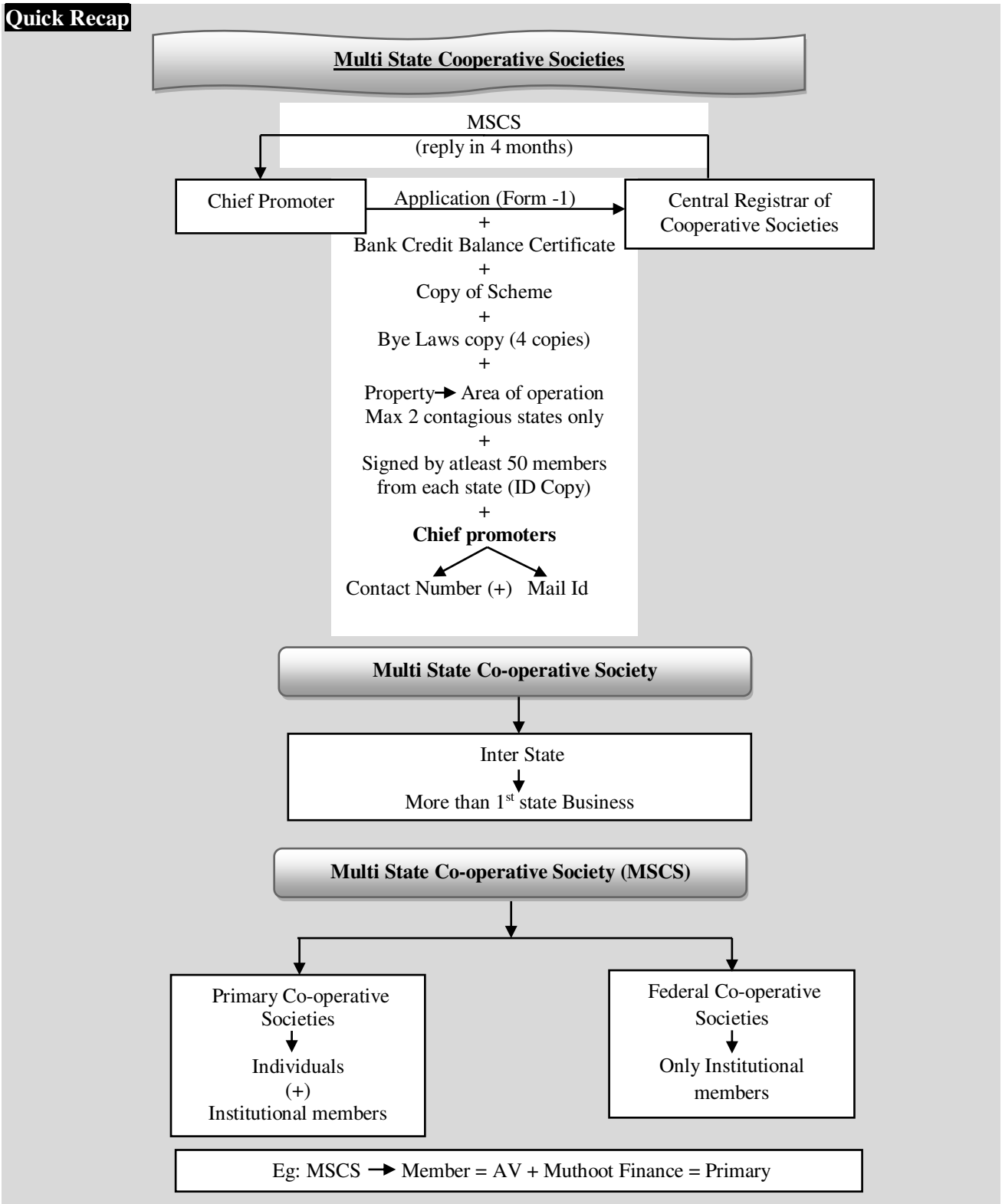


5. Multi State Co-Operative Society

The Multi-State Cooperative Societies (MSCS) Act, enacted in 1984, was modified in 2002, in keeping with the spirit of the Model Cooperatives Act. The **MSCS Act, 2002 replaced the earlier Act of 1984**. The Act and the Rules thereunder facilitates the incorporation of cooperative societies whose objects and functions spread over to several states.

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

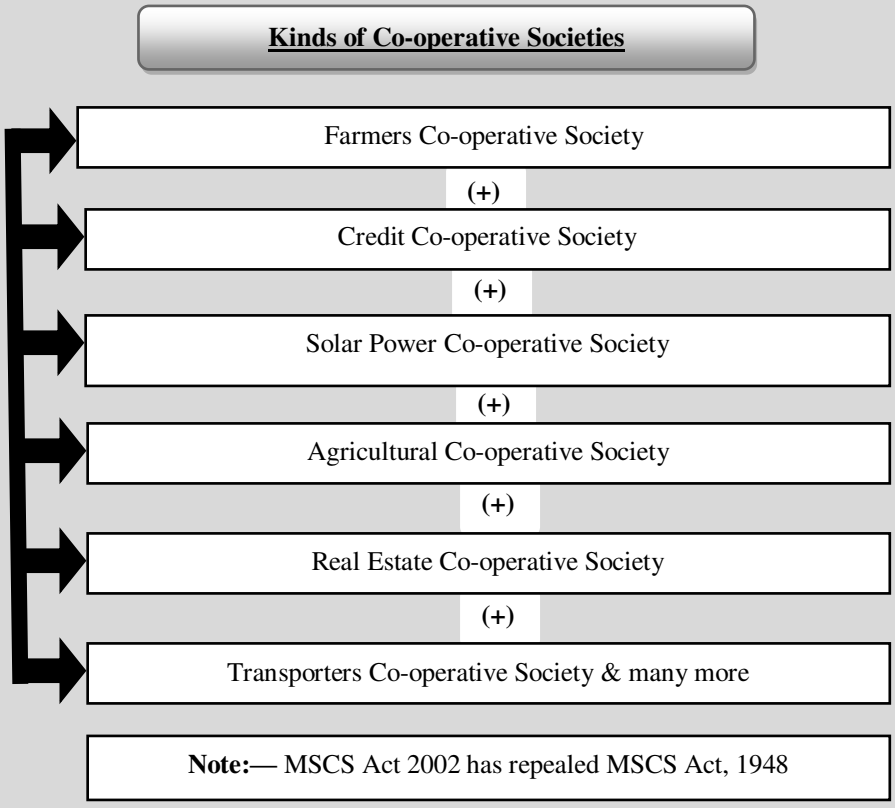
Quick Recap



Multi state cooperative societies are of several types:—

- Multi State Solar Cooperative Society
- Farming Cooperative Society
- Credit Cooperative Society
- Agriculture Cooperative Society
- Real Estate Cooperative Society
- Dairy Firm Cooperative Society
- Transport Cooperative Society and many more.

Quick Recap



Section 7

Their main objects shall be serving the interests of members in more than one state and their bye-laws shall provide for social and economic betterment of their members through self-help and mutual aid in accordance with co-operative principles. Otherwise, they are ineligible for registration.

Section 9

A multi-state co-operative society is a body corporate with limited liability.

Section 62

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.

Section 64

Investment of society's fund only in recognized securities is permissible.

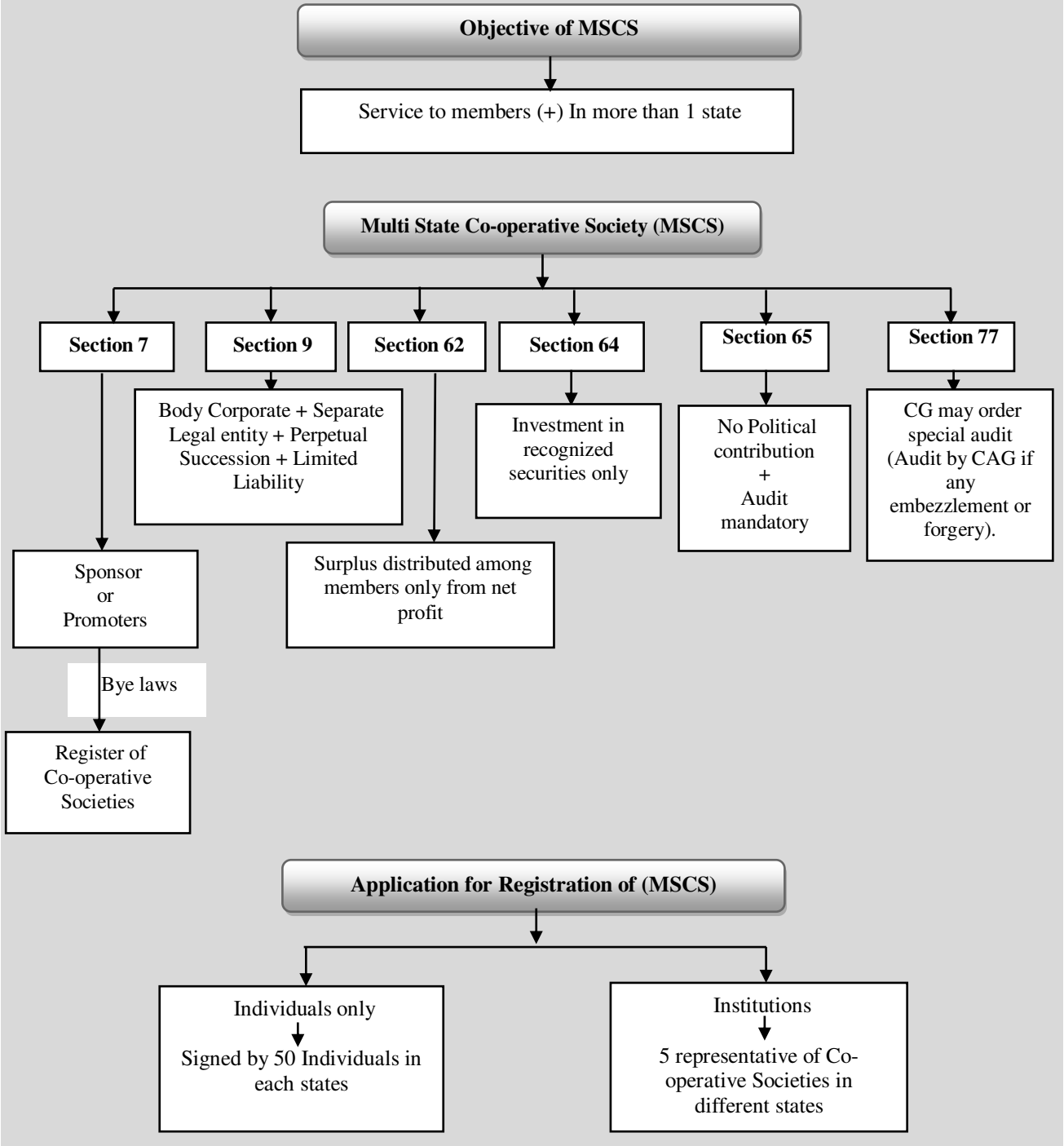
Section 65

Contribution to political parties or loans to non-members or borrowing from external sources are prohibited. Annual auditing by recognized auditors is mandatory.

Section 77

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

Quick Recap



MSCS with Individual Members

Any application for the registration of a multi-state cooperative society, of which all the members are individuals, **should be signed by at least fifty persons from each of the states concerned.**

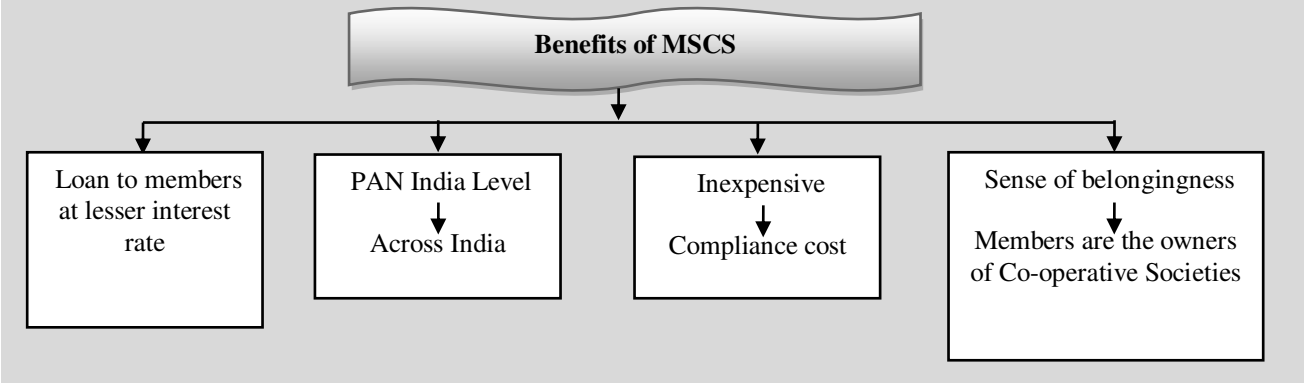
MSCS with Other Co-operative Societies as its Members

In the case of a society of which the **members are cooperative societies, it should be signed by duly authorized representations of at least five such societies registered in different states.**

Benefits of Multi State Co-Operative Society

- 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.**
- MSCS can **function pan India** as they can start branches in different districts and states. As regulatory requirements of filing, etc., is minimum, MSCS have low compliance costs.
- A Multi State Co-operative Credit Society belongs to its members, who are at the same time the owners and the customers of their Society. This creates a **sense of belonging and ownership** among the members.

Quick Recap



Procedure for Formation of Multi State Co-Operative Society

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

   For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted along with documents mentioned at point [A] above:
8. **No Objection Certificate** from the Registrar of Cooperative Societies of the States or U.T. where the area of operation of the society is proposed to be confined.
9. **A certificate to the effect that the credentials** of the Chief Promoter or 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 or Promoters on each page.

The application shall be signed by:—

- In the case of a multi-state Cooperative society of which all the **members are individuals, by at least fifty persons from each of the states concerned.**
- In case the **members are Cooperative Societies**, by duly authorised representatives on behalf of **at least five such societies as are not registered in the same state;**
- In case the members are other Multi-State Cooperative Societies and other Cooperative Societies, by duly authorised representatives of each of such societies; However, not less than two of the co-operative societies referred to in this clause, shall be such as are not registered in the same State.

The **application for registration** of the Multi-State Cooperative Society shall be **disposed of by the Central Registrar within a period of four months** from the date of receipt thereof by him and **if** the application for registration is not disposed of within a period of four months and in case the **Central Registrar fails to communicate the order of refusal to the applicant** within the period prescribed, **the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate** in accordance with the rules made there under which shall be conclusive evidence that the society is registered under the MSCS Act, 2002.

QUESTIONS AS PER ICSI MODULE

1. What are the various forms of business organizations?
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 Co-operative Society.

Mega Firms

Introduction

- In a rapidly changing economy, industrial environment and emergence of the need for corporate governance and ethical business practices of voluntary disclosures, role of a practicing company secretary has also changed substantially over last three decades.
- The stakeholders are becoming vigilant towards the compliances. It is the prime duty of a professional to meet the expectations of the stakeholders at any given point of time.
- The Company Secretaries profession has also obtained new dimensions from being conscience keeper to compliance officer, governance professionals, Advisor, strategist for the growth of corporate.
- Presently the Company Secretaries profession has achieved a significant position in corporate world to step in a leadership role in guiding the corporates for the success and sustainable growth.
- The Company Secretaries to assume the leadership position with new role, values and approach.
- It is now imperative for Company Secretaries to act as catalyst for change and, help decision makers in setting the direction of corporate to achieve excellence.
- The Companies Act, 2013, so also Insolvency and Bankruptcy Code 2016, has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company's compliance with the provision of the Act.

Adoption of Mode of Practice

To meet the expectation and to survive competition, moulding, changing and upgrading oneself is a must. For stability as well as growth one needs to join hands with professional fraternity and have synergy. Synergy is possible by way of establishing big firms, putting minds, hands and intelligence together. Such flow of synergies would enable the Practicing community as a whole to grow big, achieve higher goals and maintain highest degree of quality which otherwise one would not be able to achieve as a sole proprietor.

Before we talk about big firms let us understand the features of being in practice.

Decision whether to join a company as whole time secretary or to start one's own practice itself is a tough decision to make. Features (Limitations) of a single practicing professional are enumerated as under:

- Irregular Cash flows.
- Capital investment. (Fixed as well as Working).
- No limit on working hours , clients expect PCS to be available 24*7.
- No work no pay— ---is a rule.
- Need to continuously update oneself.
- No body to protect your mistakes, PCS is directly exposed to all kinds of acts of omission & commission.
- Has to create his own infrastructure – right from acquiring office premises, PCs, Computer networking, Office furniture, hardware, software, its maintenance.
- Has to have staff, their appointments, promotions, incentives, salaries, HR management.
- Cannot directly or indirectly solicit clients.

- No pension, no provident fund, no gratuity, no perquisites, no fringe benefits.
- May not afford air travel or even train travel in first class, on the first day.
- No paid leave, no leave travel concession, No casual leave, No sick leave.
- Encroachment on family time.

Of course there are lots of positive aspects of being in practice the most important being, Quid Pro Co i.e. more you work more you get. PCS is his own master, he generates employment, has flexibility of working hours, has reasonable assurance of sustained earnings in long run, no fear of loosing employment at advanced age.

Lets now discuss certain features of the two forms of enterprise a practicing professional may choose i.e.

Partnership Firm (including LLP) & Sole Proprietor:

No	**Firm with several partners**	**Proprietor**
1.	Various avenues of practice, un trodden areas can be explored.	Likely to get restricted to the "Routine" procedural matters.
2.	Knowledge management becomes easier as partners can help each other in their respective areas of expertise	Knowledge management becomes difficult being the only person. No other person is available to support/guide. Keeping track of latest developments, case law, notifications, circulars becomes a daunting task.
3.	Inherent risks associated with the practice are shared with others.	Risk bearing has to be shouldered by one person No one available to share the risks
4.	Several partners can render multidimensional services	Difficult for a single individual to provide multiple services say under GST, Income Taxes, FEMA along with Company Law.
5.	Partners inter-se should have full faith & trust	Not relevant since it is 'one man show'
6.	Frequencies of the partners should match. It is desirable that their family background, culture, political thinking should be more or less similar.	Not relevant since it is 'one man show'.
7.	Freedom of decision making gets restricted.	Not required Proprietor is his own master. No need to consult others
8.	All partners should be mentally prepared to share revenues.	Not required Proprietor is his own master. No need to share revenues.
9.	One is responsible to the wrongs & liabilities of his partners	Not relevant since it is 'one man show'
10.	There should not be communication gap inter-se	Not relevant since it is 'one man show'
11.	One of the partners can afford to become Resolution professional (RP) / valuer .	It is very difficult for a proprietor to act as RP / Valuer while simultaneously handing its routine Practice as PCS.

Applicable Rules, Regulations and Guidelines for PCS or Firm of PCS

Whether a Company Secretary in Practice or a Firm of Company Secretaries they are subject to Rules, Regulations and Guidelines enumerated as under:

- Company Secretaries Regulations, 1982.
- Schedule I and III of Company Secretaries Act, 1980 in relation to Professional misconduct.
- Guidelines for requirement of maintenance of a register of attestation certification services rendered by practising company secretary/firm of practising company secretaries.
- Guidelines for issuing compliance certificate and signing of annual return.
- Guidelines framed by the council relating to approval of proprietorship concern/firm's name under regulation 169 of the company secretaries Regulations, 1982.
- Guidelines for advertisement by Company Secretary in Practice.
- Guidelines for compulsory attendance of Professional development programmes by the members.
- Mechanism for maintenance of attendance records of members at professional development. programmes and issuance of Certificates for programme credit hours (PCH).
- Guidelines for peer review of attestation services by Practising Company Secretaries.
- Guidelines for professional dress of Company Secretaries.
- Guidelines for setting up and Conversion of Firms of PCS into LLP.

What Is Multidisciplinary or Mega Firm?

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

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

- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949.
- The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959.
- Bar Council of India established under the Advocates Act, 1961.
- The Institute of Engineers or Engineering from a University established by law or an institution recognized by law.
- The Indian Institute of Architects established under the Architects Act, 1972.
- The Institute of Actuaries of India established, under the Actuaries Act, 2006.
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act.

This actually introduces the concept of multi disciplinary firms or mega firms.

Why such firms?

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

comfort level in dealing with such firms. They are assured of timely and quality service since even if one of the Partners is not available for consultancy they can bank on the others.

Unless there are MDF/Mega firms, it may not be possible to cater to the bigger assignments.

Pre Requisites

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

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

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

Benefits

1. 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.

2. Exposure to various and different works

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

3. Cost effective

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

4. **Exceptional training and on-boarding**

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

5. Continuous learning

The partners of MDF having multi dimensional experience they can impart continuous training by adapting to new trends in the Profession. The great thing about staying on your toes is that clients appreciate it because you'll be able to develop relevant and successful ideas. Though it might sound overwhelming to always be on top of news and trends, it will eventually become habit – and the results are worth it!

6. Big growth opportunities

With the right work ethic and dedication, MDF can experience professional growth early compared to the other small firms. MDF may attract big multinationals. They get comfort about availability of at least one of the partners, if they are dealing with a firm rather than an individual. Senior partners can concentrate on critical assignments which obviously are more lucrative.

7. **Global Reach**

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

8. Revenue sharing

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

9. **Structure & Processes**

The structure for execution of works or assignments will be more systematic and the process will be cost effective due to the standard processes and procedure. The hiring and training of people will be more systematic there by productivity of the company will be improved.

10. Corporate or Industry perception

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

Risks

Lack of understanding and multiplicity of directions to the staff could be disastrous.

1. **More cost** on infrastructure and technology.
- **Dominance** of senior partners over the younger partners.
- Defining **exit route is difficult**
- **Lack of transparency** may lead to disputes.
- If **crack** develops in mutual faith & trust, very **difficult to cure**.
- **Communication gap** between partners.

Process of Constitution

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

Agreement between partners

Partners must enter into a partnership agreement defining *inter alia* the following:

- Process of decision making.
- Allocation of duties and responsibilities.
- Delegation of authorities.
- Revenue sharing.
- Exit route.

Management of Firms

The mega firm requires effective management skills including skills for handling finance, dealing with human resources and day to day administration of the office. The management of a MDF is in itself a major challenge.

1. Operational functions

Operational functions are for providing services by the firms, the operational functions requires expertise in the domain areas by each of the partners.

2. Administrative functions

Partners should allocate different administrative functions required for day to day functionality of the firm.

For example infrastructure availability- right from:

- acquiring office premises
- handling reception
- attending to calls
- inward-outward
- record keeping
- PCs
- library
- computer networking
- office furniture
- hardware
- software
- maintenance
- brand building, etc.

3. Human resources

The Mega firms over a period of time creates aa large pool of talented people. They need to be offered extremely competitive salaries and benefits, career and learning opportunities. Right from appointment of staff, promotions, incentives, salaries, HR management, require proper knowledge of human resources skills

4. Client relationship

Michael R. Caplan, chief operating officer of Goodwin Procter, argues the benefits of a multi-disciplinary, full- service model in the New York Law Journal: "When law firms treat client relationships as strategic partnerships, flexibility, transparency, and communication are paramount, investment in risk and reward is shared, and all firm resources are leveraged for the client's benefit. Only then does the relationship grow and prosper."

5. Public Relationship and Brand building

Admittedly a PCS firm cannot advertise or solicit clients . The only way to grow is rendering excellent timely and quality service to the client who certainly recommend the name of a good consultants to

their peers. There cannot be a marketing department in MDF but there has to be PR department which ensures cordial relations with the existing and probable clients.

Revenue Sharing Models

Partners may adopt **simple revenue sharing model** to share profits and losses equally. In this model it is assumed that **each one is bringing equal business and generating equal revenue**. However, in reality if it **doesn't happen** it may give rise to **sense of discomfort** against the person who is continuously showing less contribution but at the same time getting equal share of profits.

Therefore, it is essential to device **"performance, contribution and efficiency based**" revenue sharing model. Assume a situation where A,B,C,D and E are the partners expert in different disciplines. The revenue sharing model could be the following:

1. Partner bringing new client shall be given **referral or induction share**.
2. **Certain percentage** of fees, shall be **retained in business in common pool** for meeting expenses.
3. **Said Percentage** of the fees shall be **given to the partner** or partners **who actually work** on the assignment (assignment share). When more than one partners are involved in an assignment their share can be determined based on respective role.
4. At the year end after meeting expenses **resultant profit shall be shared** in proportion of contribution of individual in the gross earnings or net profit of the firm.
5. Internally, **different verticals can be created** and surplus generated by each one can be assessed as an independent cost centre.

This model motivates each partner to bring more and more business into the firm and also to work for maximization of his share and wealth of the firm.

There could be more tailor made revenue sharing models, however, the model based on performance, contribution and efficiency is likely to work better.

Conclusion

- One stop or **single window solutions** or services always attract clients or customers.
- There is need for corporate and business sector to have "**service malls**".
- It always works better for a business enterprise to have **handy team of consultants**, both from cost and management point of view.
- It is most likely that Multi Disciplinary Firms (MDF) giving professional advice considers **all angles and dimensions** rather than an advice only from one point of view.
- **MDF** is the right platform that **caters to the requirement of the business enterprises,** with specialized partner, "knowledge management" becomes **easier and less costlier**.
- MDF is a step towards mega firm. **Large firms will still become larger and one day the global** business enterprise will call them a "Mega Firm".

TRUST

A Trust is a relationship in which a person or entity holds a valid legal title to a certain property which is known as the Trust property. The Trust is bound by a fiduciary duty to exercise that legal title for the benefit of any one or more individuals or group of individuals or organisations, who are known as the Beneficiaries. The Trust shallbe governed by the terms of the Written Trust agreement.
Trust is defined in section 3 of the Indian Trust Act, 1882 as "an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner. In other words, it is simply a transfer of property by one person (the settlor) to another (the "trustee") who manages that property for the benefit of someone else (the "beneficiary"). The settlor must legally transfer ownership of the assets to the trustee of the trust.

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

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

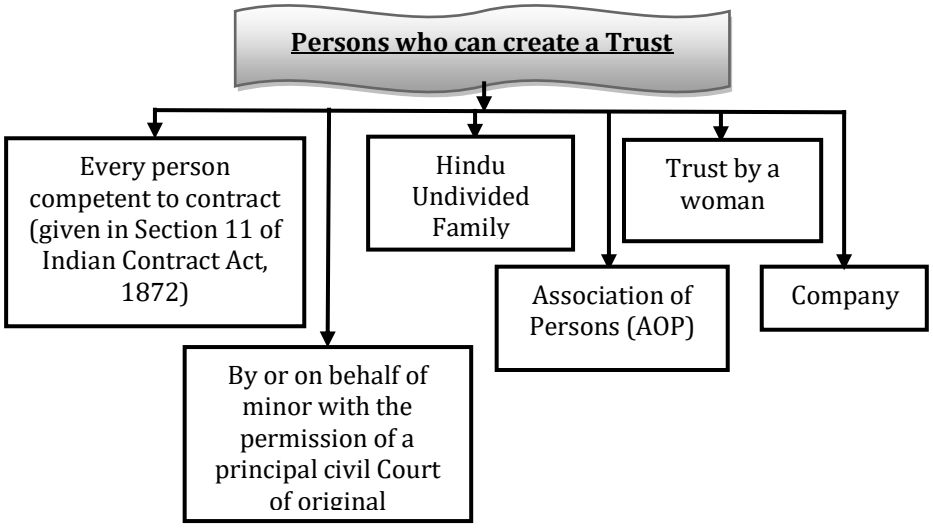
Objectives of a Trust

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

1. Forbidden by law, or
2. is of such nature that, if permitted, it would defeat the provisions of any law, or
3. is fraudulent, or
4. involves or implies injury to the person or property of another, or
5. the Court regards it as immoral or opposed to public policy

Persons who can create a Trust

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



Persons who can be a Trustee

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

Difference between Public Trust and Private Trust

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

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

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

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

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

Exemptions available to Trusts

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

Certain key exemptions are listed below:

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

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

Tax exemption under Section 11 of Income Tax Act, 1961

As per Section 11, any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust. Since such income shall not constitute to be a part of the trust's income, therefore, it is not taxable. However, as per section 13, there are certain situations where the tax exemptions under section 11 are not applicable.

Such instances include where –

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

(b) the entire income of a charitable trust which is established for a particular religion, community or caste, income of those charitable trust whose funds do not get invested in the modes specified under section11(5).

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

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

1. Income which is derived from the property that is held under the authority of trust with the purposeswhich are wholly charitable or religious in nature.
2. Income which is kept aside to the extent that does not exceed 25% of the total income received in lieuof the property.
3. In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India.
4. In furtherance of the above case, the income which is set apart to a certain extent and which does notexceed twenty five percent of the total income.
5. In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposesand spent outside India.
6. Income made by way of voluntary contributions towards the corpus of the trust.
7. Charitable trusts created for the benefit of any of the socially and economically backward castes suchas Scheduled Castes, Scheduled Tribes or women or children.

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

Tax exemption for a Private Trust

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

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

Section 161(1A) of the IT Act provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust including any profits and gains from business would be liable to income tax at the maximum marginal rate.

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

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

Formation of Trust

A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding.Before registration of a trust, the following aspects have to be decided:

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

1. **Creation of a Trust Deed**: A trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust arc present. Though the use of the word 'trust' is not needed to create a valid trust, the terms of the grant or will make it clear that an obligation is actually annexed to the ownership of the trust property.
   A trust-deed, generally, incorporates the following:
   (i) the name(s) of the author(s)/settlor(s) of the trust;
   (ii) the name(s) of the trustee(s);
   (iii) the name(s) if any, of the beneficiary/ies or whether it shall be the public at large;
   (iv) the name by which the trust shall be known;
   (v) the place where its principal and or other offices shall be situated;
   (vi) the property that shall devolve upon the trustee(s) under the trust for the benefit of thebeneficiary/ies;
   (vii) an intention to divest the trust property upon the trustee(s);
   (viii) the object and purpose of the trust;
   (ix) the procedure for appointment, removal or replacement of a trustee, their rights, duties andpowers, etc;
   (x) the rights and duties of the beneficiary/ies;
   (xi) the mode and method of determination of the trust.
2. **Obtain the signatures of Settlor, Trustees and Witnesses at the appropriate places**. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.
3. **Print the Trust Deed** on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.
4. **Register the Original deed** in a Sub-Registrar office paying registration charges: A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of settlor on all the pages.
5. At the time of registration, the settlor and witnesses must be personally present with

their identityproof 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:

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

Partnership Agreement & Trust Deed

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

Society

A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose. Societies are usually registered for promotion of charitable activities like education, art, religion, culture, music, sports, etc., In India, The Societies Registration Act, 1860 lays down the procedure for society registration and operation in India. The Act has been adopted by most of the State Governments with/without modifications as considered by the

respective State Governments.

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

1. Charitable societies;
2. the military orphan funds or societies established at the several presidencies of India;
3. societies established for the promotion of science, literature, or the fine arts for instruction, the diffusionof useful knowledge;
4. The diffusion of political education;
5. the foundation or maintenance of libraries or reading-rooms for general use among the members oropen to the public;
6. public museums and galleries of paintings and other works of art, collections of natural history,mechanical and philosophical inventions, instruments, or designs.

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

Advantages of Society

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

Disadvantages of Society

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

Formation of Society

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

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

With the completion of these processes, the society could be registered with the Registrar after payment of a fee, which will be specified by the State Government from time to time. As per Section 4

of the Act, once in everyyear, 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 themembers of the governing body should be presented to the Registrar, every year.

- Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies)
- Memorandum of association and rules and regulations
- Consent letters of all the members of the managing committee
- Authority letter duly signed by all the members of the managing committee
- An affidavit sworn by the president or secretary of the society on non-judicial stamp paper of Rs.20-/,together with a court fee stamp
- A declaration by the members of the managing committee that the funds of the society will be usedonly for the purpose of furthering the aims and objects of the society
- The documents needed to be submitted to the Registrar are:
    1. A letter requesting registration, signed by founding members. This letter will state the purpose of formation of the society and a requisition indicating that the society is registered under the Act. The signature of all members is mandatory.
    2. A certified copy of the MoA, signed by the founding members, with a duplicate.
    3. A certified copy of the rules and regulations, signed by the founding members, along with a duplicate copy.
    4. A table with the names and address and occupation of all members of the society with their signatures.
    5. Minutes of the meeting (general body meeting conducted to set the rules and regulations).
    6. Declaration by the president of the society.
    7. A sworn affidavit from the President or Secretary, declaring the relationship between the subscribers.
    8. Address proof of registered office and no-objection certificate from the landlord.

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

Benefits of forming a Society

1. Under Income Tax Act, and subject to fulfilment of certain conditions, a society can avail exemption from income tax, if it obtains registration under Section 12A/12AA of the Income Tax, 1961.
2. Donors to societies may claim a rebate under Income Tax Act for donations made to the Society, provided the society has applied and obtained approval under Section 80G. Registration under section 12A is one-time registration. Once the registration is granted to the trust, it will be hold good till the cancellation of registration. There is no provision which requires any renewal of registration. Thus, the benefits of registration can be claimed for lifetime by NGO.
3. Societies, being NGO's receive various grants from government and other agencies. They are eligible to get grants and financial funding from various agencies. These agencies generally make grants to societies registered under Section 12A.
4. Societies are run on democratic principles and ensures wider participation by members in the activities.
5. In view of the election process, there is scope for removing inefficient management and effect changesin the management to ensure better governance.

Registration of a Society in India

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

Society registration is maintained by state governments. Thus, the application for society registration must be created to the specific authority of the state, where the registered office of society is situated. For Society registration, the establishing members must agree with the name of society first and then preparefor the Memorandum, followed by Rules & Regulations of the society.

Selection of a Name

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

Memorandum of Association

The Memorandum of society along with Rules & Regulations of society must be signed by every establishing member, witnessed by Gazetted Officer/Notary Public/ Chartered Accountant/ Oath Commissioner/ Advocate/ Magistrate first class /Chartered Accountant with their official stamping and complete address. The memorandum must also contain details of members of the society registration along with their names, addresses, designations,and occupations.

The following documents have to be prepared, submitted and signed for the sake of registration:

- Requesting society registration by providing covering letter, signed by all establishing members
- Duplicate copy of memorandum of association of society along with certified copy
- Duplicate copy of Rules & Regulations of society along with duplicate copy duly signed by allestablishing members
- Address proof of registered office of society as well as no-objection certificate (NOC) issued by landlord
- Affidavit by secretary or president of society declaring relationship among subscribers
- Few minutes of meeting regarding the society registration along with providing some essentialdocuments.

Following are the documents required for the Society Registration in India:

1. **PAN Card of all the members** of the proposed society has to be submitted along with the application.
2. The **Residence Proof of all the members** of the society also has to be submitted. The following can beused as a valid residence proof:
   - Bank Statement
   - Aadhaar Card
   - Utility Bill
   - Driving License
   - Passport
3. **Memorandum of Association** has to be prepared which will contain the following clauses and information: The work and the objectives of the society for which it is being established
   - The details of the members forming the society
   - It will contain the address of the registered office of the society
4. **Articles of Association** also have to be prepared which will contain the following information:
   - Rules and regulations by which the working of the society will be governed and the maintenanceof day to day activities.
   - It will contain the rules for taking the membership of the society.
   - The details about the meetings of the society and the frequency with which they are

going to be held is to be mentioned.
- Information about the Auditors.
- Forms of Arbitration in case of any dispute between the members of the society.
- Ways for the dissolution of the society will also be mentioned once the rules have been formed, they can be changed but the new set of rules will be signed by the President, Chairman, Vice President and the Secretary of the Society.

5. A covering letter mentioning **the objective or the purpose** for which the society is being formed will be annexed to the beginning of the application. It will be signed by all the founding members of the society.
6. A **copy of the proof of address** where the registered office of the society will be located along with aNOC from the landlord if any has to be attached.
7. A **list of all the members** of the governing body has to be given along with their signatures.
8. A **declaration has to be given by the president** of the proposed society that he is willing and competent to hold the said post.

All the above documents have to be submitted to the Registrar of Societies along with the requisite fees in two copies. On receiving the application, the registrar will sign the first copy as acknowledgment and return it while keeping the second copy for approval. On proper vetting of the documents, the registrar will issue an Incorporation Certificate by allotting a registration number to it.

The signed Rules & Regulations, as well as Memorandum, has to be filed with concerned society or registrar of state with a mentioned fee. If the registrar is fulfilled with society registration application, then they will certify that the society is registered.

Consequences of Registration / Non-Registration of a Society

The Societies Registration Act, 1860 lays down procedure for registration of societies for various bonafide purposes. The registration gives the society a legal status and is essential for:
- obtaining registration and approvals under Income Tax Act;
- lawful vesting of property in the societies;
- provides authenticity and recognition to the society before all authorities and the world at large; and
- for opening bank accounts and transaction of business.

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

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

In the absence of registration, all the trustees in charge of the fund have alone a legal status and the society has no legal status, and, therefore, it cannot sue and be sued.

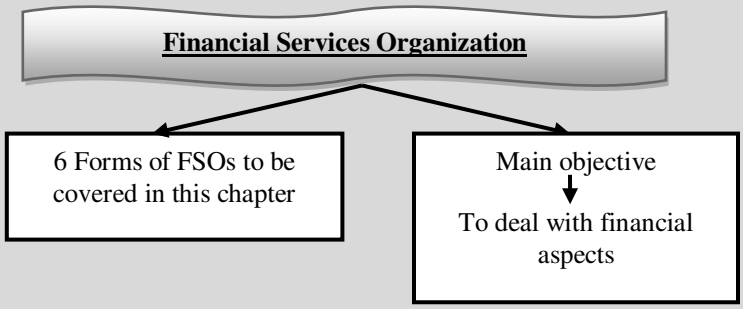
If a society is not registered, it may exist in fact and theory, but not in the eyes of law. If benefits are to be claimed, the registration of society under the Act us required. An unregistered society cannot claim benefits under the Income-tax act.

Chapter - 8
FINANCIAL SERVICES ORGANIZATION AND ITS REGISTRATION PROCESS

Synopsis

1. Introduction
2. Non-Banking Financial Company
3. Types or Categories of NBFC's
4. Incorporation of NBFC's
5. Registration Process of NBFC with Reserve Bank of India
6. Procedure for Filing Application with Reserve Bank of India
7. Benefits of Incorporating an NBFC
8. Housing Finance Companies (HFC)
9. Benefits of Incorporating a Housing Finance Company
10. Registration Process of Housing Finance Company
11. Meaning of Net Owned Funds
12. Micro Finance Institutions (MFI)
13. Characteristics of a Micro Finance Institution
14. Incorporation of MFI
15. Asset Reconstruction Company (ARC)
16. Benefits of Incorporating an Asset Reconstruction Company (ARC)
17. Procedure for Registration of ARC
18. Payment Banks (Ex-Paytm Payment Bank)

Quick Recap



1. Introduction

India has a **diversified financial sector** undergoing rapid expansion, both in terms of strong growth of existing financial services firms and new entities entering the market.

The sector comprises

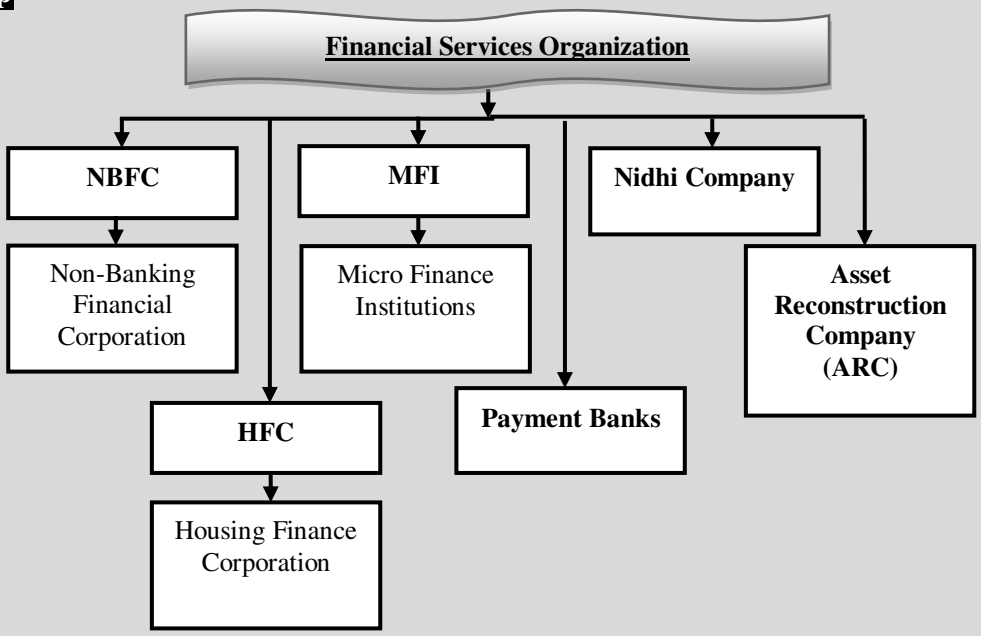
- Commercial banks
- Insurance companies
- Non-banking financial companies
- Co-operatives
- Pension funds
- Mutual funds
- Other smaller financial entities.

However, the financial sector in India is p**redominantly a banking sector with commercial banks accounting for more than 64 per cent of the total assets** held by the financial system.

The Government and Reserve Bank of India have taken various measures to facilitate easy access to finance including

- Different categories of Non-Banking Finance Companies (NBFC's)
- Asset Reconstruction Companies
- Housing Finance Company
- Micro Finance Institutions
- Nidhi Companies
- Payment Banks

Quick Recap



2. Non-Banking Financial Company

A Non-Banking Financial Company (NBFC) is a **company registered under the Companies Act, 2013** engaged in the business of

- Loans and advances
- Acquisition of shares and stocks or bonds or debentures or securities issued by Government or local authority or other marketable securities of a like nature
- Leasing
- Hire-purchase
- Insurance business
- Chit business

AMIT VOHRA LAW CLASSES

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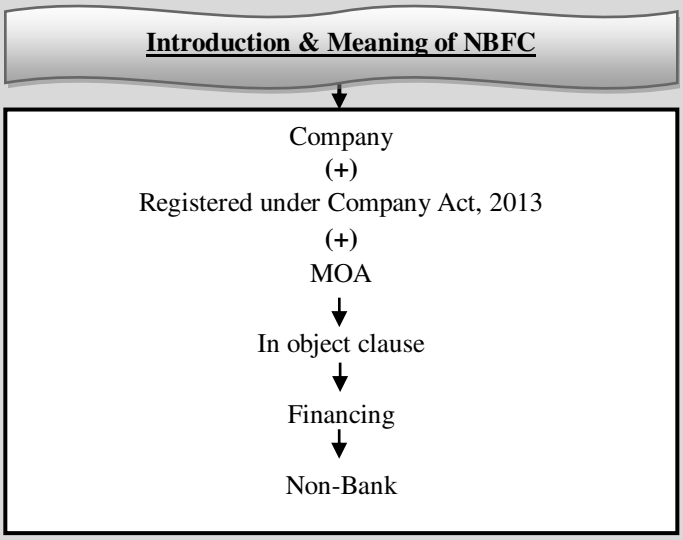
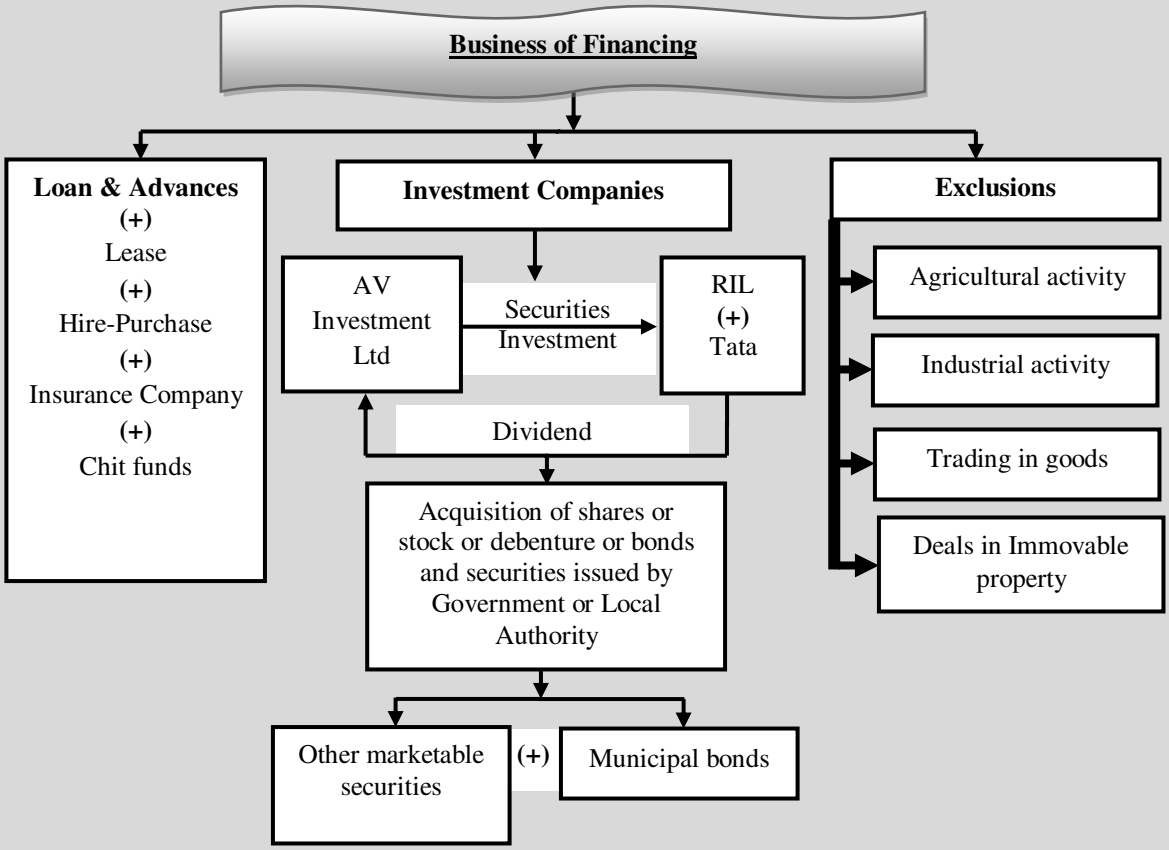
Quick Recap



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)
- Providing any services
- Sale, purchase and construction of immovable property.

Quick Recap



Residuary non-banking company (RNBC)

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 installments by way of contributions or in any other manner, is also a non-banking financial company (RNBC).

50-50 Test of NBFC

Financial activity as principal business is when a company's

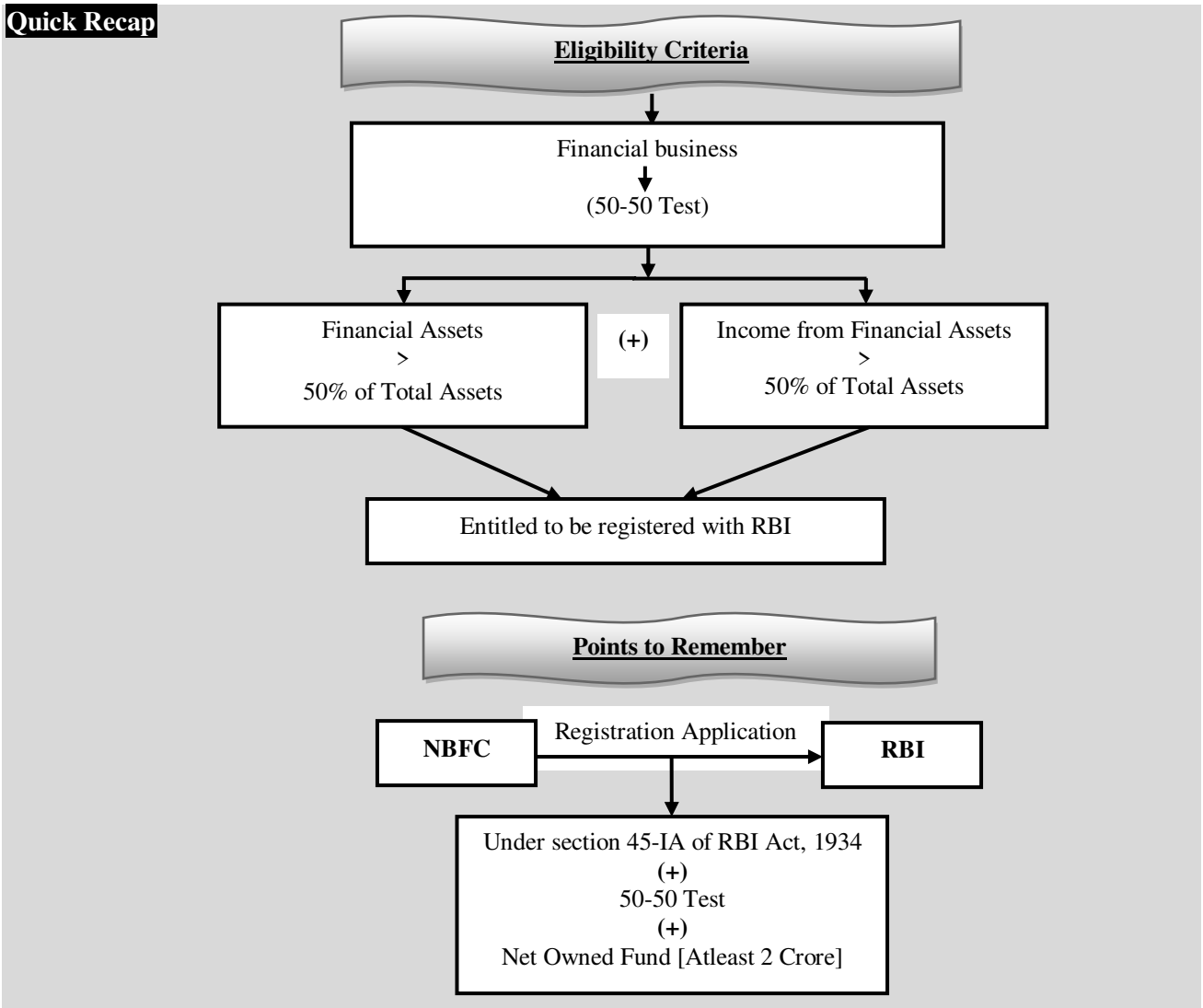
Financial assets constitute more than 50 per cent of the total assets

and

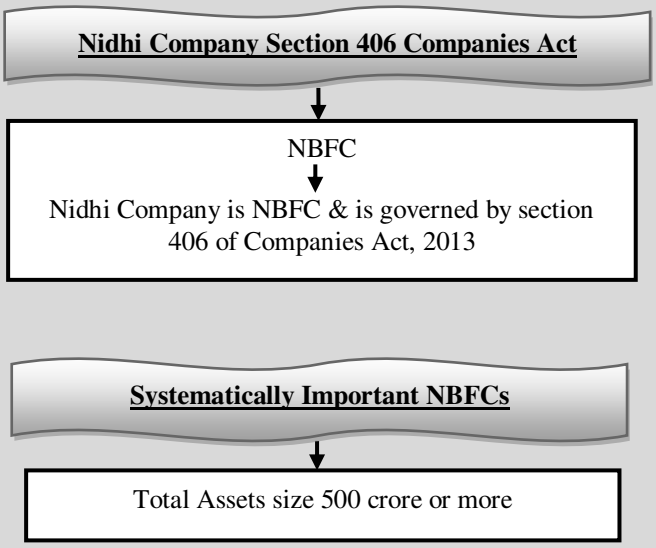
Income from financial assets constitute more than 50 per cent of the gross income.

A company which fulfils both these criteria will be registered as NBFC by RBI. Interestingly, this test is popularly known as **50-50 test** and is **applied to determine whether or not a company is into financial business.**

Quick Recap



Quick Recap



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

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

Quick Recap

Difference between Banks & NBFC	
Banks	**NBFC**
1. Accept deposits 2. Issue cheque book 3. Deposit insurance is available	1. Do not accept deposits 2. No such facility is provided 3. No such insurance is available

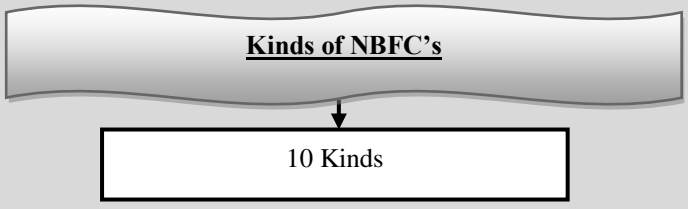
In terms **of Section 45-IA of the RBI Act, 1934**, **no Non-Banking Financial Company can commence** or carryon **business** of a non-banking financial institution **without obtaining a certificate of registration** from the RBI and **without having a Net Owned Funds of Two crore.**

3. Types or Categories of NBFC's

NBFCs are categorized on the basis of

- Size
- Kind of Business Activity
- Nature of liabilities

Quick Recap



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

1. **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 or economic activity** such as

- Automobiles
- Tractors
- Lathe machines
- Generator sets
- Earth moving and material handling equipments, moving on own power and general purpose industrial machines.

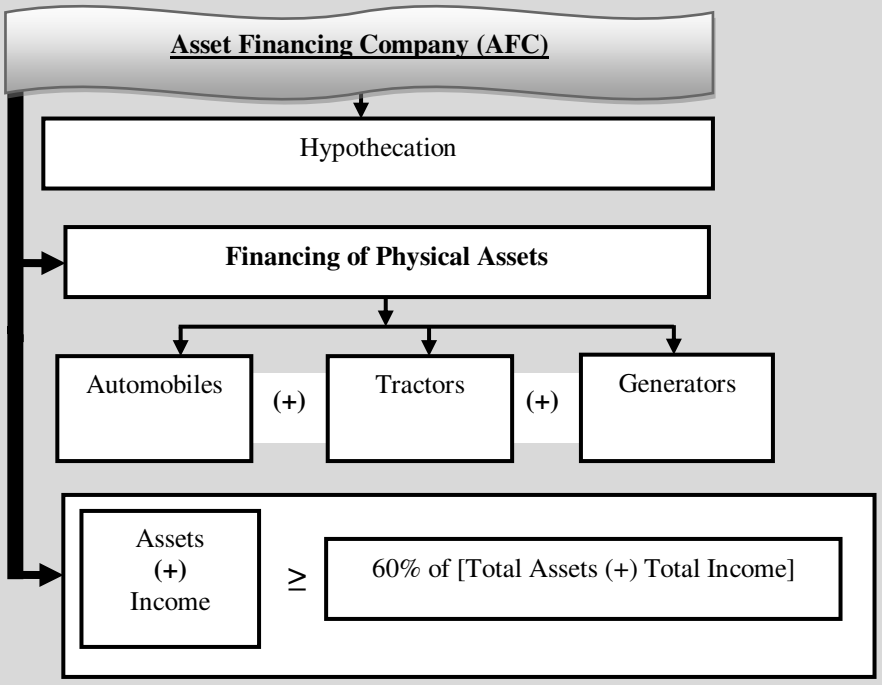
Principal business for this purpose is defined as:

Aggregate of financing real or physical assets supporting economic activity

and

Income arising there from is not less than 60% of its total assets and total income respectively.

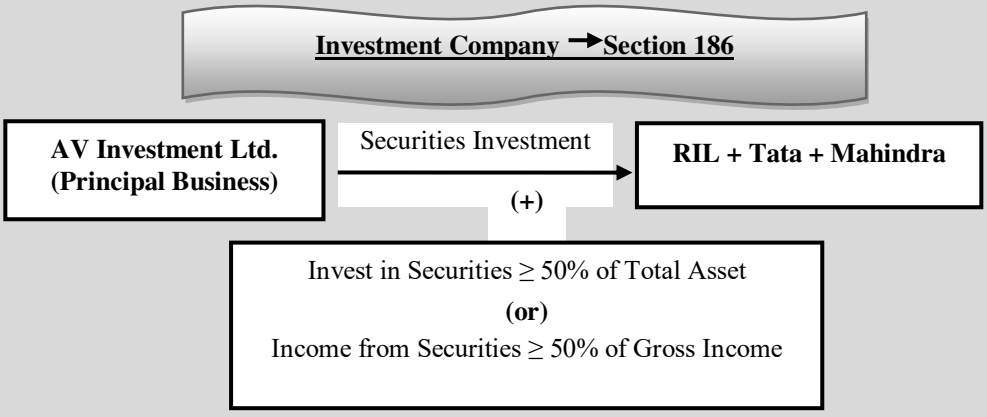
Quick Recap



2. **Investment Company (IC)**

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

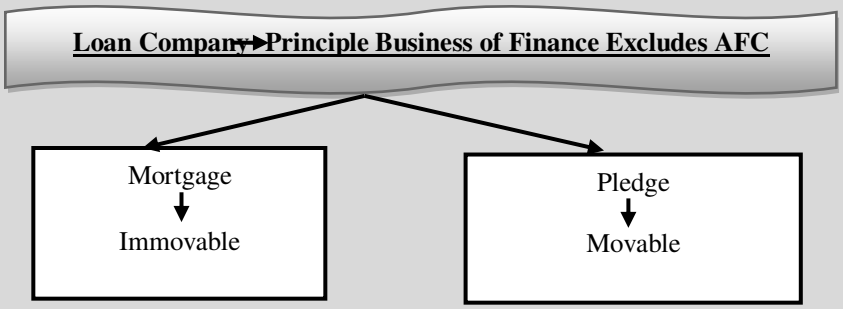
Quick Recap



3. 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.**

Quick Recap

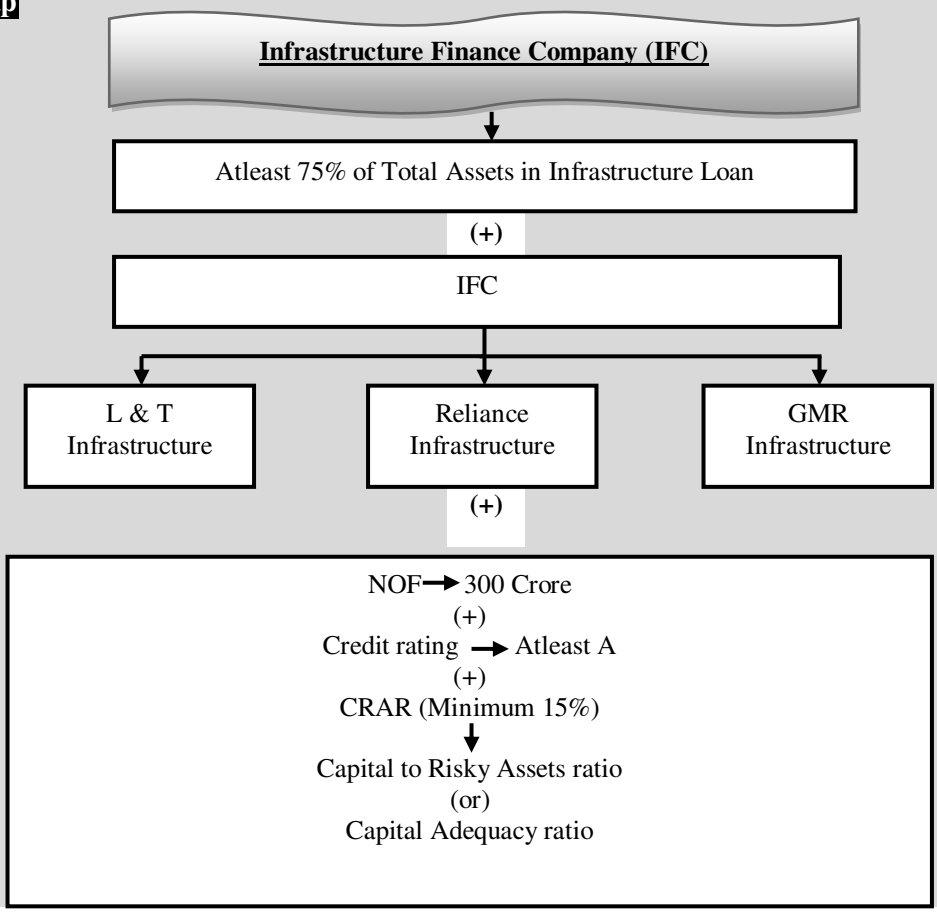


4. Infrastructure Finance Company (IFC)

IFC is a non-banking finance company

- Deploying at least 75 per cent of its total assets in infrastructure loans.
- Has a minimum Net Owned Funds of 300 crore.
- Has a minimum credit rating of 'A' or equivalent.
- Has a CRAR **(Capital to Risky Asset Ratio)** of 15% with Tier I capital at 10%.

Quick Recap

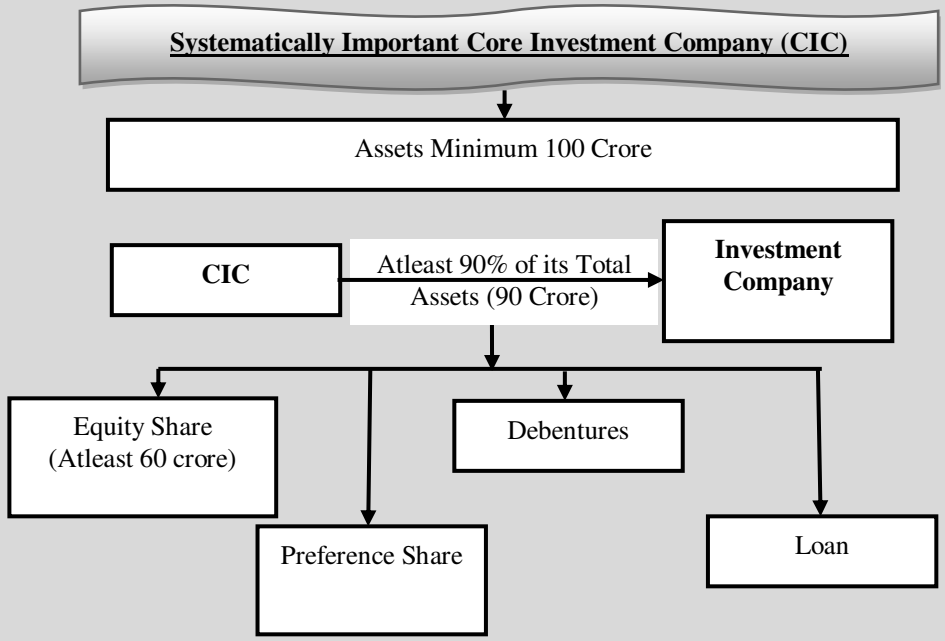


5. Systemically Important Core Investment Company (CIC-ND-SI)

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

- It holds **not less than 90% of its Total Assets in the form of investment** in equity shares, preference shares, debt or loans in group companies.
- Its **investments in the equity shares** (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) **in group companies constitutes not less than 60% of its Total Assets.**
- It **does not trade in its investments** in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.
- **It does not carry on any other financial activity** except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.
- Its **asset size is `100 crore**.
- It **accepts public funds.**

Quick Recap



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

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

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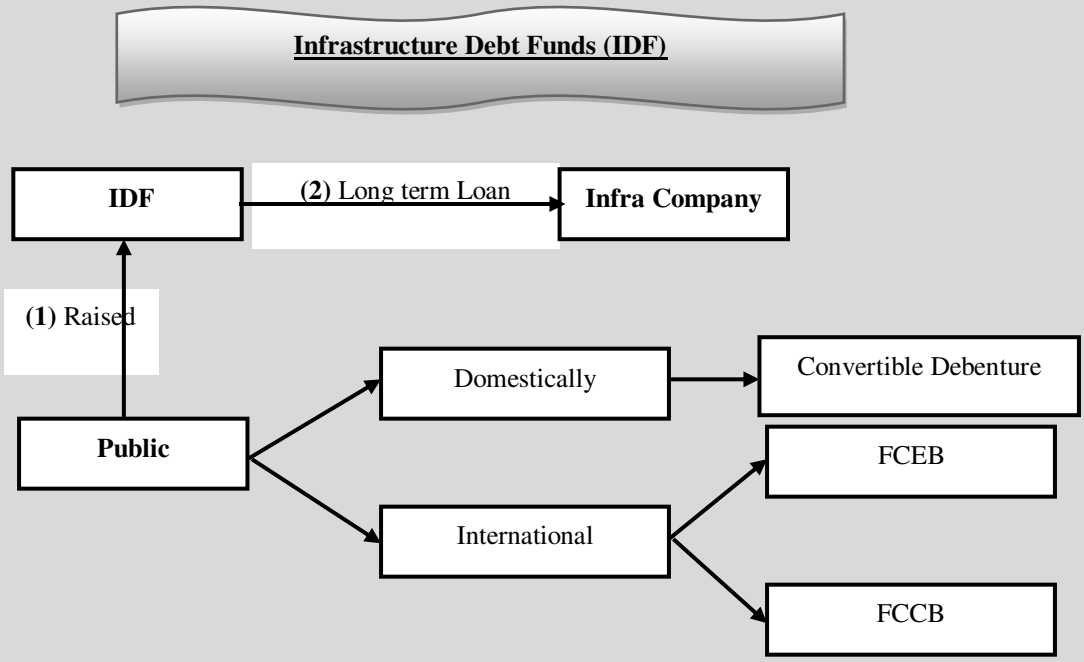
Quick Recap



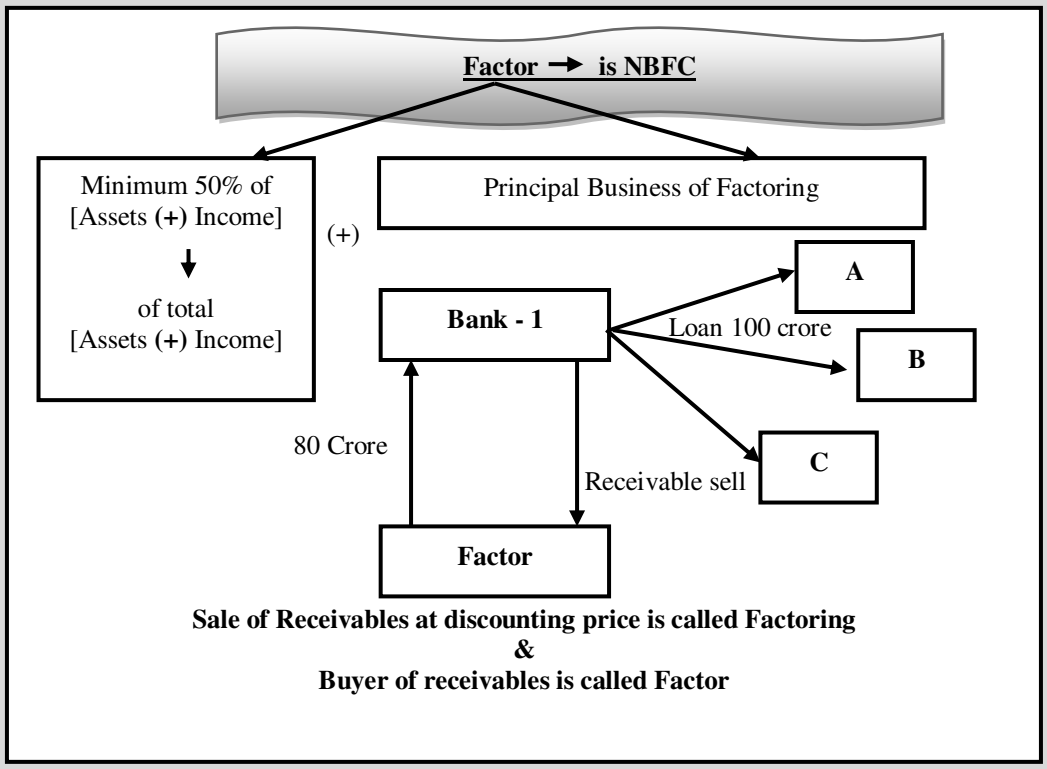
7. Factor NBFC

NBFC-Factor is a non-deposit taking NBFC engaged in the **principal business of factoring**. The **financial assets** in the factoring business should constitute **at least 50 percent of its total assets**

and

its income derived from factoring business **should not be less than 50 percent of its gross income.**

Quick Recap



8. Mortgage Guarantee Companies (MGC)

MGC are financial institutions for which

At least 90% of the business turnover is mortgage guarantee business

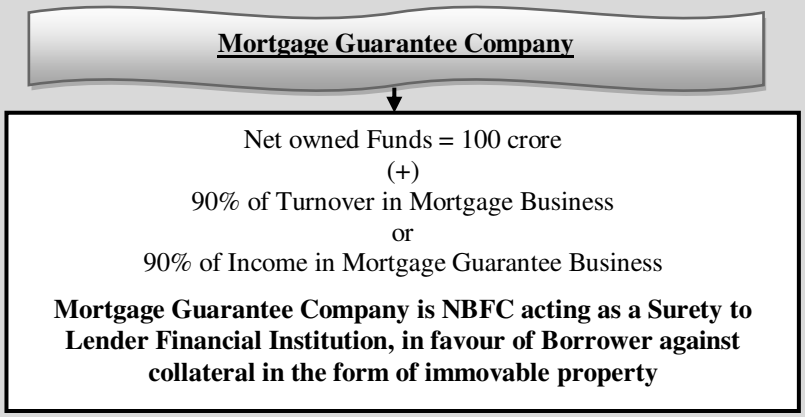
or

At least 90% of the gross income is from mortgage guarantee business

and

Net owned fund isRs.100 crore.

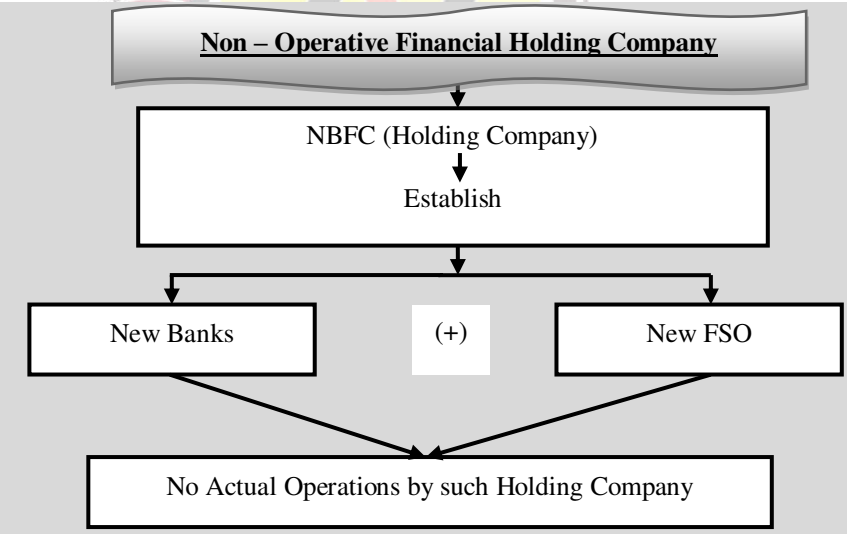
Quick Recap



9. Non-Operative Financial Holding Company (NOFHC)

It is financial **institution through which promoter or promoter groups will be permitted to set up a new bank** It's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which will hold the bank as well as all other financial services companies regulated by RBI or other financial sector regulators, to the extent permissible under the applicable regulatory prescriptions.

Quick Recap



10. Micro Finance Institution (NBFC-MFI)

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

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

- Minimum Net Owned Funds of ₹ 5 crore. (For NBFC-MFIs registered in the North Eastern Region of the country, the minimum NOF requirement shall stand at ₹ 2 crore)
- Not less than 85% of its net assets are in the nature of "qualifying assets"

What are Qualifying Assets?

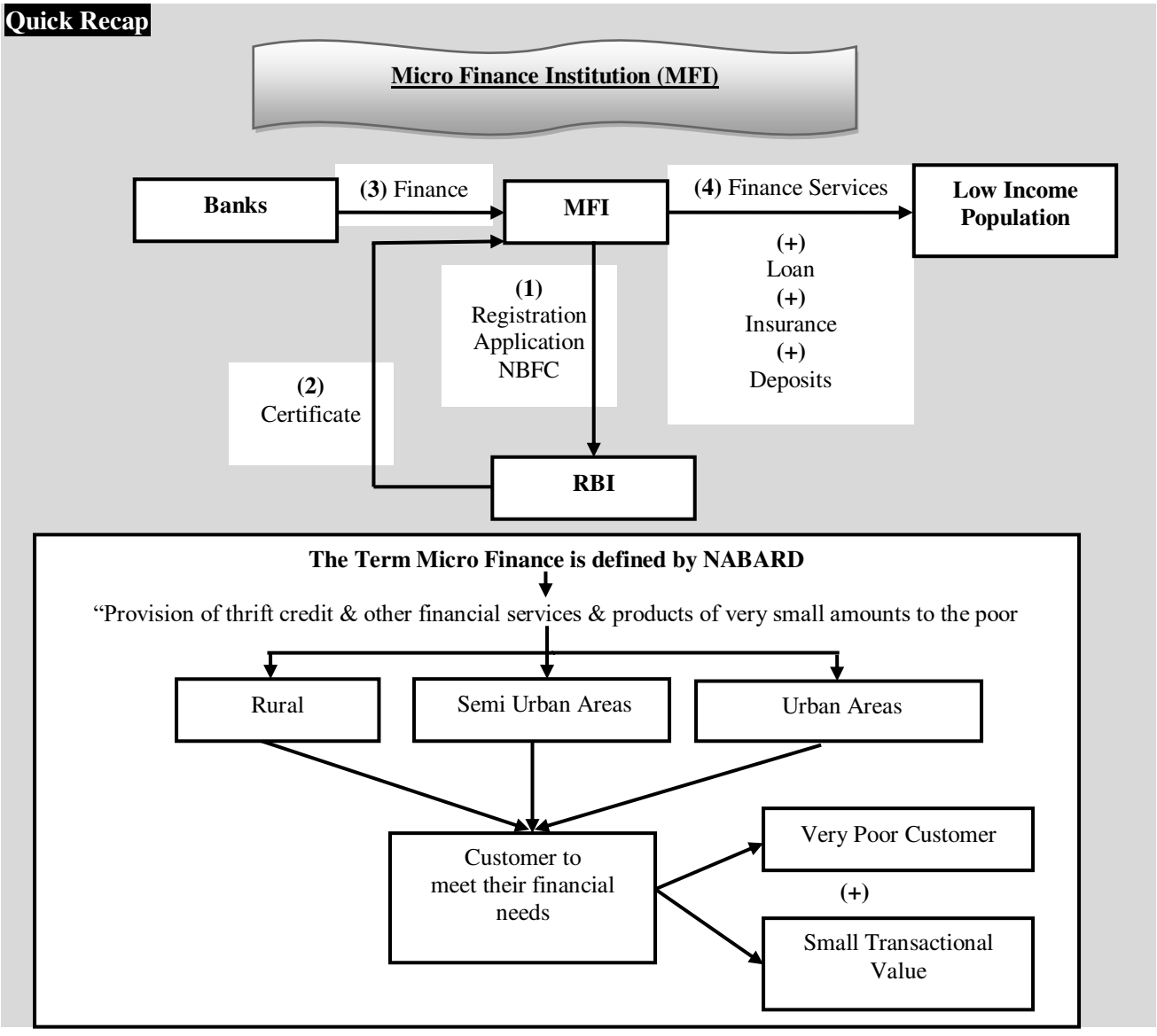
- "Net assets" are total assets excluding cash, bank balances, and money market instruments.

- "Qualifying assets" are those assets which have a substantial period of time to be ready for its intended use or sale.

or

- "Qualifying assets" shall mean a loan which satisfies the following criteria:-
  1. Loan distributed by an NBFC-MFI to a borrower with a rural household annual income not exceeding ₹1,25,000
     or urban and semi-urban household income not exceeding ₹2,00,000;
  2. Loan amount does not exceed ₹75,000 in the first cycle and ₹1,25,000 in subsequent cycles;
  3. Total indebtedness of the borrower does not exceed ₹1,25,000; however, if any loan is availed towards meeting education and medical expenses shall be excluded while arriving at the total indebtedness of a borrower.
  4. Tenure of the loan not to be less than 24 months for loan amount in excess of ₹ 30,000 with prepayment without penalty;
  5. Loan to be extended without collateral;
  6. Aggregate amount of loans, given for income generation, is not less than 50 per cent of the total loans given by the MFIs;
  7. loan is repayable on weekly, fortnightly or monthly instalments at the choice of borrower

Quick Recap



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

4. Incorporation of NBFC's

Non-Banking Financial Companies (NBFCs) are **companies incorporated under Companies Act, 2013** or under previous law related to Companies. (To be incorporated as any other company in Companies Act and Detailed procedure is covered by Amit Vohra Sir in the chapter named Promotion and Formation of Company).

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**.

Since the **Net Owned Funds** of the entity should **be not less than `Two Crore**, it must be ensured that the **Authorized Share Capital of the NBFC is not less than `Two Crore.**

5. Registration Process of NBFC 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:**

- It should have **minimum one director from NBFC background or senior Bankers** as full-time director in the company.
- Clean **CIBIL (Credit Information Bureau of India Limited) records.**
- **Understanding of NBFC or Finance business.**

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

- Obtaining a **certificate of registration** from the Reserve Bank of India

and

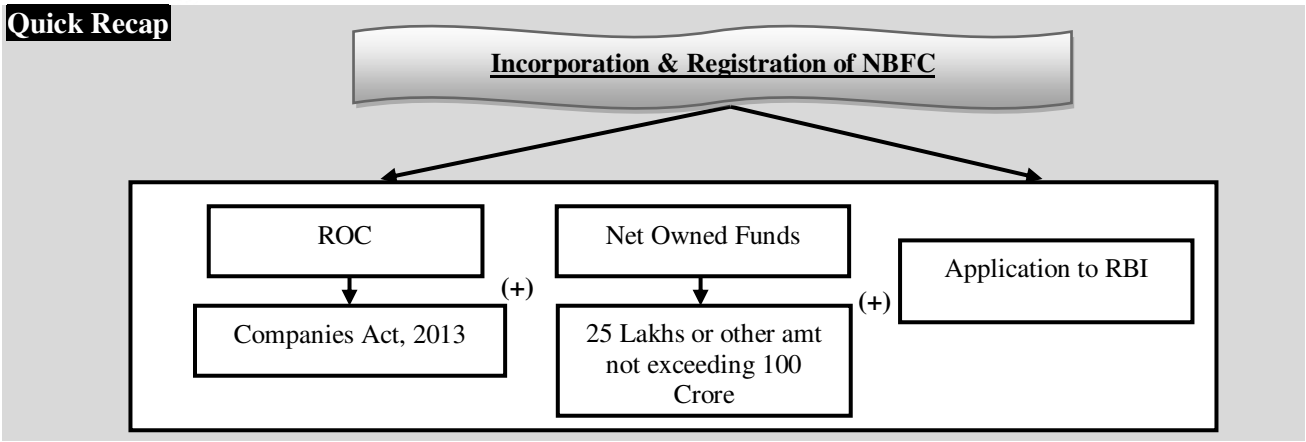
- Having the **net owned fund of twenty-five (25) lakh rupees** or such other amount, **not exceeding hundred (100) crore rupees**, as the Bank may, by notification in the Official Gazette, specify.

Note: Companies (Accounts) Amendment Rules, 2020, dated 31.01.2020.

The MCA has notified E-Form-AOC4 NBFC (Ind AS) and AOC-4 CFS NBFC (Ind AS).

Every Non-Banking Financial Company (NBFC) is under obligation to file financial statement to Registrar in Form No. AOC4 NBFC (Ind AS) and the consolidated financial statement, if any, in Form AOC-4 CFS NBFC (Ind AS).

Quick Recap

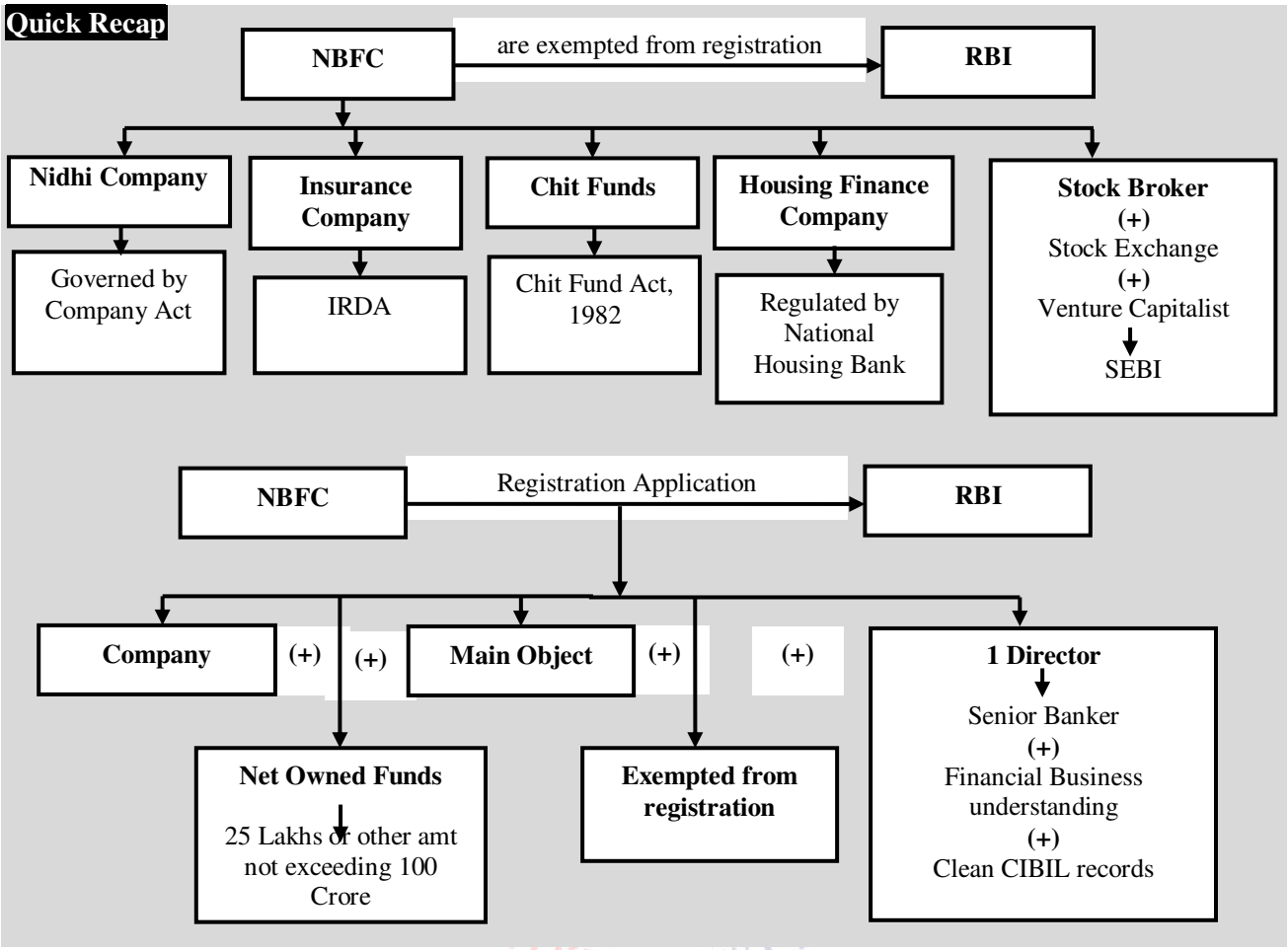


Following categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI:

- Venture Capital Fund or Merchant Banking companies or Stock broking **companies registered with SEBI**.
- **Insurance Company** holding a valid Certificate of Registration issued by IRDA.

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

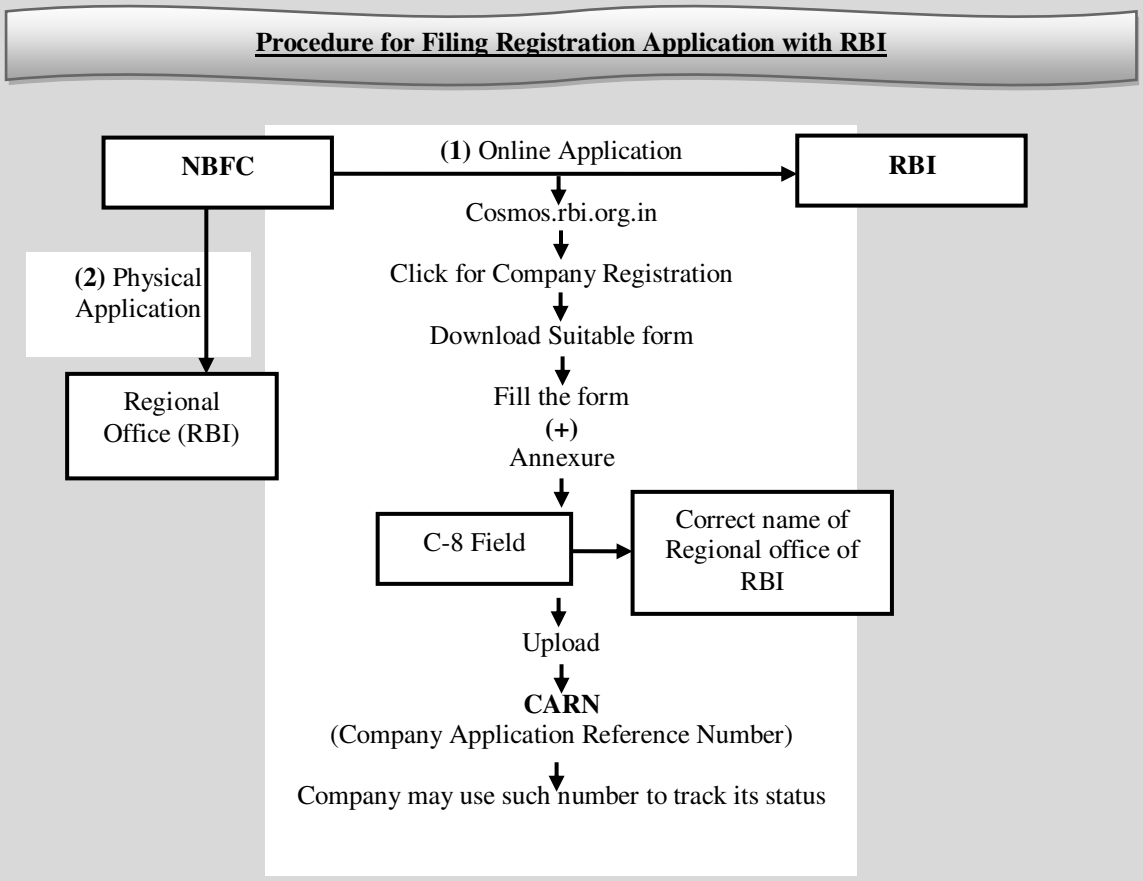
Quick Recap



6. Procedure for Filing Application with Reserve Bank of India

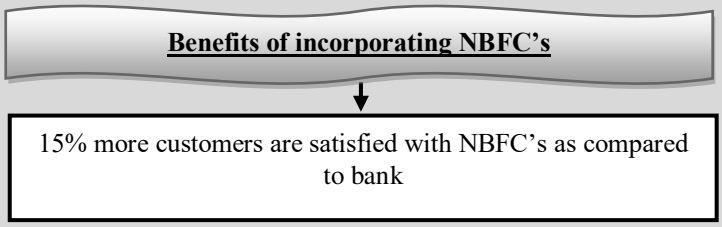
- The applicant company is required to **apply online and submit a physical copy** of the application along with the necessary documents to the **Regional Office of the Reserve Bank of India.**
- The application can be submitted **online** by accessing RBI's secured website https:**//cosmos.rbi.org.in.** At this stage, the applicant company will not need to log on to the COSMOS application and hence user ids are not required.
- The company can click **on "CLICK" for Company Registration** on the login page of the COSMOS Application. A window showing the Excel application form available for download would be displayed. The company can then **download suitable application form** (i.e. **NBFC or SC or RC**) from the above website, key in the data and upload the application form.
- The company may note to indicate the correct name of the Regional Office in the field **"C-8"** of the "Annex-Identification Particulars" in the Excel application form. The company would then get a **Company Application Reference Number (CARN)** for the COR application filed on-line.
- Thereafter, the company has to **submit the hard copy of the application form** (indicating the online Company Application Reference Number) along with the supporting documents, **to the concerned Regional Office.**
- The **company can then check the status of the application from** the above mentioned secure address, by keying in the acknowledgement number.

Quick Recap



7. Benefits of Incorporating an NBFC

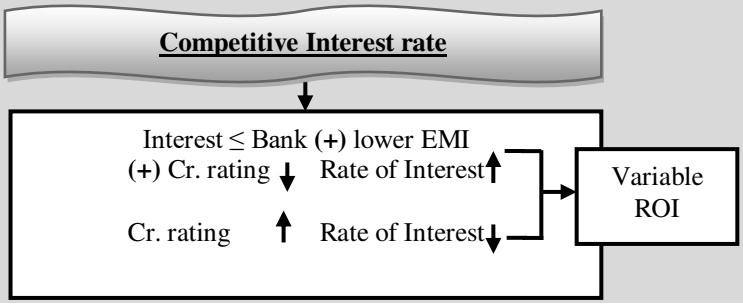
Quick Recap



1. Competitive interest Rates

Non-Banking Financial Sectors have started to concentrate on this area in the recent decades and **have brought down the interstates to either equal to bank lending rates or at times even lower to bank rates.** With all the other benefits when rate of interest is also lowered, borrowers found this **more easy and affordable**. This has also resulted in **lower EMI** (Equated Monthly Installment) for borrowers, Based on the income, credit scoring and repayment, rate of interest is charged on the borrowers.

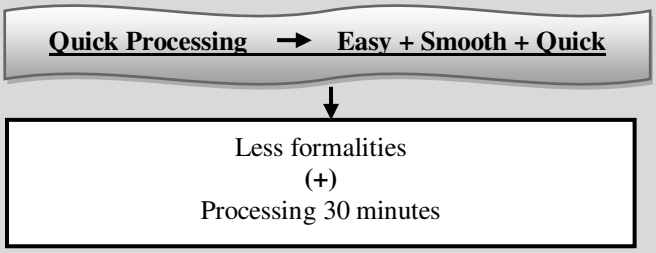
Quick Recap



2. Quick Processing

At banks, it is very important that the applicant should fulfill the eligibility criteria but **NBFC are lenient** in this aspect. This makes **loan approval easier, smoother process and quicker**. Most of the times, people apply for loan when they are in **immediate need of money.** NBFCs have taken this as an opportunity to meet the demand by quickly processing the loans at competitive rate of interest. At times, **borrowers** are even ready to compromise on the interest rates if the loan amount is huge and if they **could get it approved quickly.**

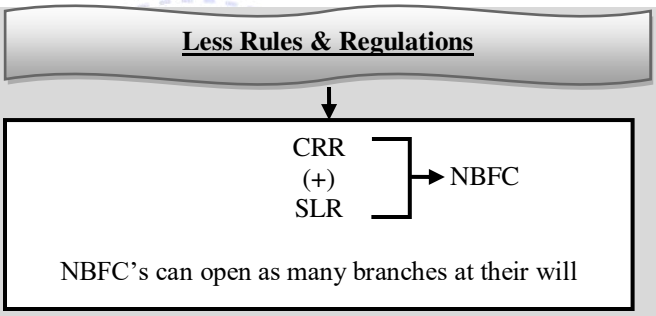
Quick Recap



3. Less Rules and Regulations

As NBFC are incorporated under the companies Act, though regulated India, by the Reserve Bank of the rules and regulations for lending are not as stringent as banks. This helps borrowers to get loans easily. In view of **less complicated loan processing requirements, borrowers are highly satisfied.**

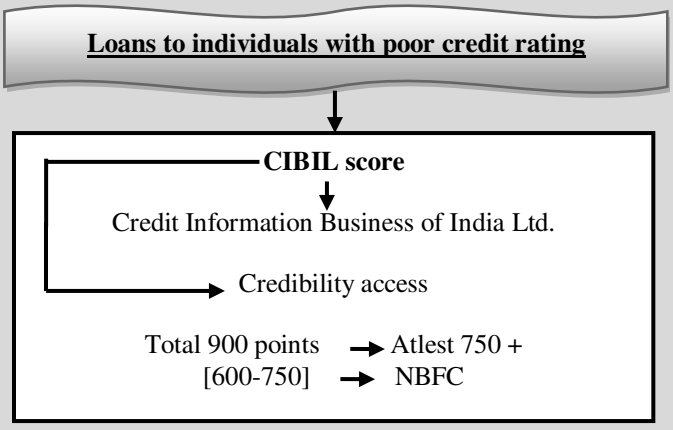
Quick Recap



4. Loan available for individuals with poor credit Rating

Individuals with poor credit rating generally will not get loans from banks. The reason for this is banks consider borrowers are high-risk individuals if the credit scoring is low. 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.**

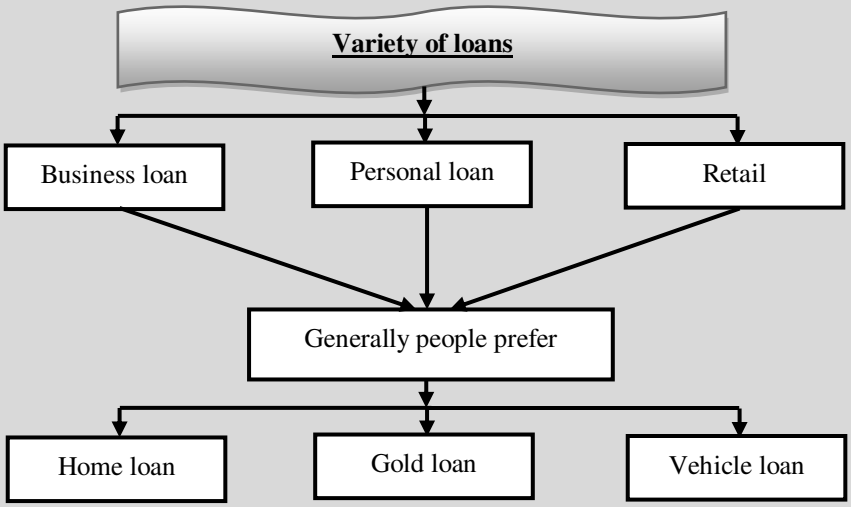
Quick Recap



5. Retail sector chooses NBFCs over banks

With regard to offering loans, banks and NBFCs will offer business, personal and retail loans. Most of the corporate sector prefers banks; however retail sector chooses NBFCs over banks. Simple loans such as **vehicle financing loans, gold loans, home loans and durable loans are offered by NBFCs** and customer satisfaction ratio is high here.

Quick Recap



8. Housing Finance Companies (HFC)

Introduction

A Housing Finance Company (HFC) is a company registered under the Companies Act, 2013 or any earlier enactment which primarily transacts or has as one of its principal objects, the transacting of the business of **providing finance for housing, whether directly or indirectly**.

In addition to it being a company registered under the Companies Act, an **HFC also requires registration with National Housing Bank (NHB)** for commencing or carrying on the business of housing finance. The National Housing Bank was set up under the National Housing Bank Act, 1987. Housing Finance Companies are governed by the said Act (i.e. National Housing Bank Act, 1987) and by Circulars, Guidelines, Notifications and Directions issued by National Housing Bank.

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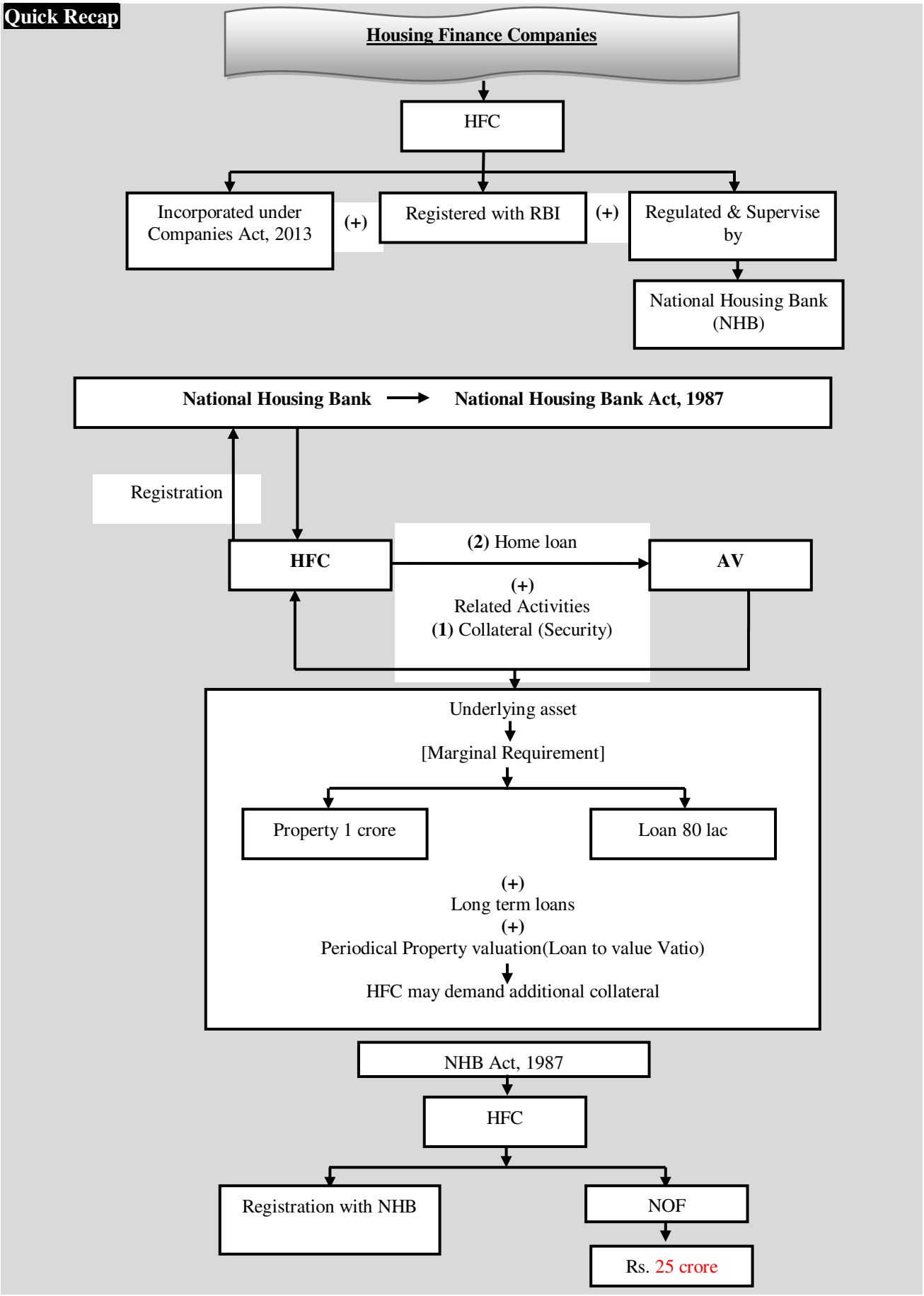
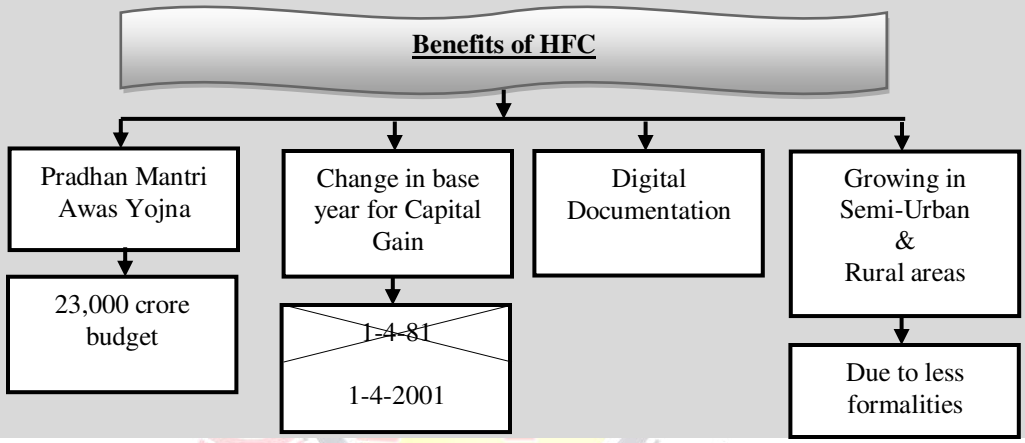

Housing Finance Companies
HFC
Incorporated under Companies Act, 2013
(+)
Registered with RBI
(+)
Regulated & Supervise by
National Housing Bank (NHB)
National Housing Bank
National Housing Bank Act, 1987
Registration
HFC
(2) Home loan
AV
(+)
Related Activities
(1) Collateral (Security)
Underlying asset
[Marginal Requirement]
Property 1 crore
Loan 80 lac
(+)
Long term loans
(+)
Periodical Property valuation(Loan to value Vatio)
HFC may demand additional collateral
NHB Act, 1987
HFC
Registration with NHB
NOF
Rs. 25 crore

9. Benefits of Incorporating a Housing Finance Company

- At present, the macro environment is extremely favourable for housing finance companies. The recent government incentives in terms of allocation related to Pradhan Mantri A was Yojana (PMAY) of `23,000 crore would provide the much-needed momentum to the sector**. The total allocation for the infrastructure sector in the Budget stood at `39,6135 crore in 2017-18.**
- The **holding period for capital gains tax** in case of immovable properties has been **reduced from three to two years**. Moreover, the Finance Minister has proposed to **shift the base year for indexation from 1.4.1981 to 1.4.2001** for all classes of assets, including immovable property would allow **more realistic calculation** of the cost of acquisition of the house while claiming indexation benefits.
- It is expected that with several associated benefits and the advantage of digital documents**, the cost of finance is expected to come down, which may be passed on to the real buyers.**
- In the days to come, supported by growth drivers such as rising disposable income, personal income-tax benefits, increasing urbanization and **economic growth of tier II and tier-II cities**, the sector is likely to see immense growth.

Quick Recap



10. Registration Process of Housing Finance Company

The procedure for incorporating a Housing Finance Company (HFC) is the same as any other company. Their **principal business**, to be stated in the MOA, while registering under the Companies Act shall be providing **finance for housing and related matters.**

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

- Obtaining a **certificate of registration** from National Housing Bank issued under Chapter V of the said Act.

and

- Having the **net owned fund of Rs. 25 Crore** or such other higher amount, as the National Housing Bank may, by notification, specify.

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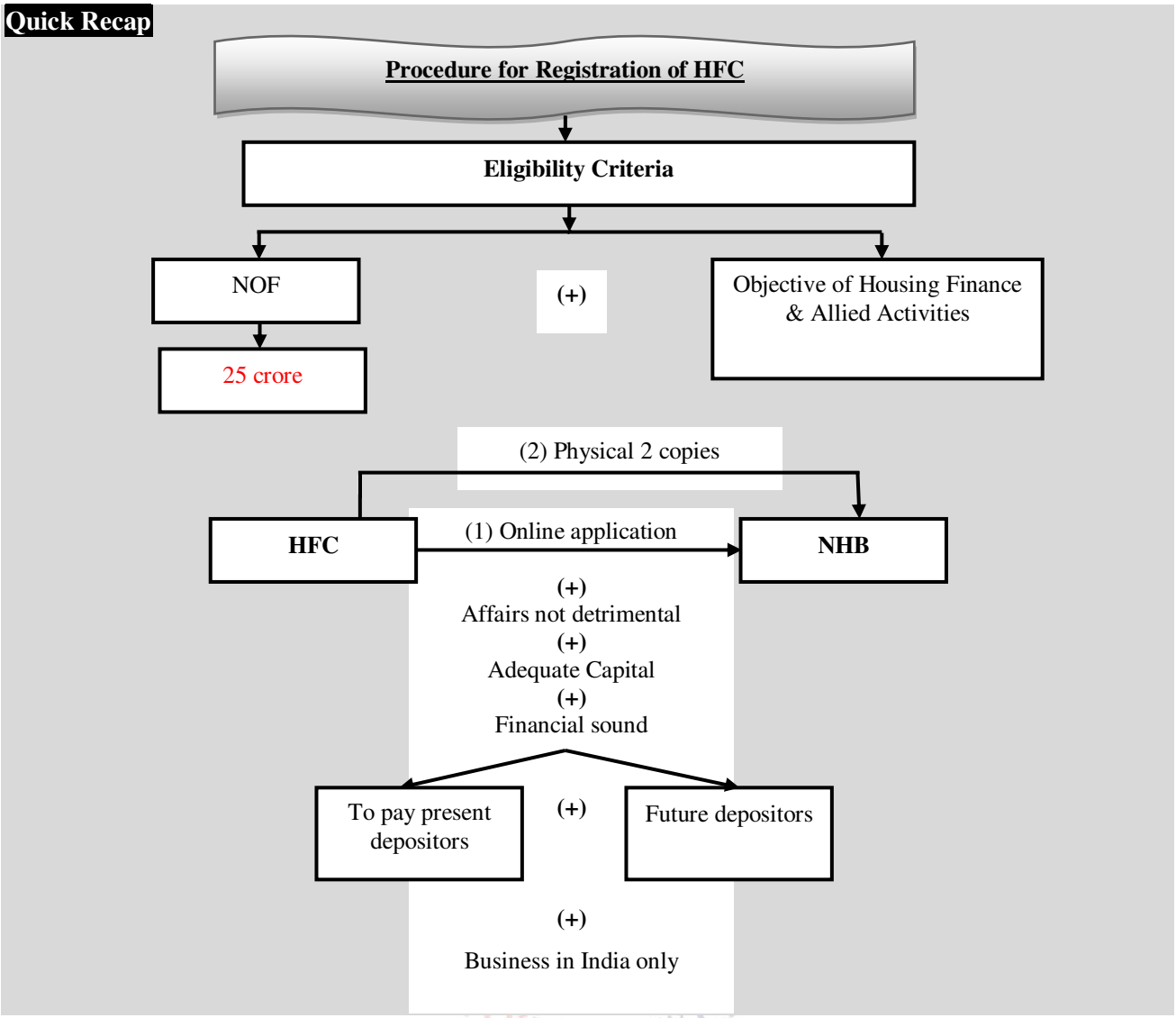
Quick Recap



NHB after satisfying itself on the fulfillment of following conditions provided under sub-section (4) of Section29A of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

- **HFC is or shall be in a position to pay its present or future depositors in full** as and when their claims accrue.
- Affairs of the HFC are not being or are **not likely to be conducted in a manner detrimental** to the interest of its present or future depositors.
- General character of the **management** or the proposed management of the HFC shall **not be prejudicial to the public interest** or to the interests of its depositors.
- HFC has **adequate capital structure** and **earning prospects.**
- **Public interest shall be served** by the grant of certificate of registration to the HFC to commence or carry on the business in India.
- Grant of certificate of registration shall **not be prejudicial to the operation and growth** of the housing finance sector of the country.
- **Any other condition,** fulfillment of which in the opinion of the NHB, shall be **necessary** to ensure that the commencement of or carrying on the business in India by a HFC shall not be prejudicial to the public interest or in the interests of the depositors.

11. Meaning of Net Owned Funds

Net Owned Funds is defined as

1. 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 there from** -
   - Accumulated balance of loss
   - Deferred revenue expenditure
   - Other intangible assets
2. **Further reduced** by the amounts representing –

   Investments of such institution in shares of-
   - Its subsidiaries
   - Companies in the same group
   - All other housing finance institutions which are companies
   - The book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with:
     - Subsidiaries of such company and
     - Companies in the same group, to the extent such amount exceeds ten per cent of above.

Quick Recap

Net Owned Funds → Formula

P.U. Capital
(+) Free Reserves
(-) Accumulated losses
(-) Intangible Assets
(-) Deferred revenue Exp
(-) Investment in Subsidiary Company
or
Associate Company
(-) Investment in other HFC
(-) Book value of Debenture or Bank or loans to subsidiary
= Net owned funds

It may be noted that "subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act.

12. Micro Finance Institutions (MFI)

Introduction and Meaning

A microfinance institution is an **organization that offers financial services to low income populations**. Almost all give loans to their members, and many offer insurance, deposit and other services.

NABARD has defined microfinance as **a 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

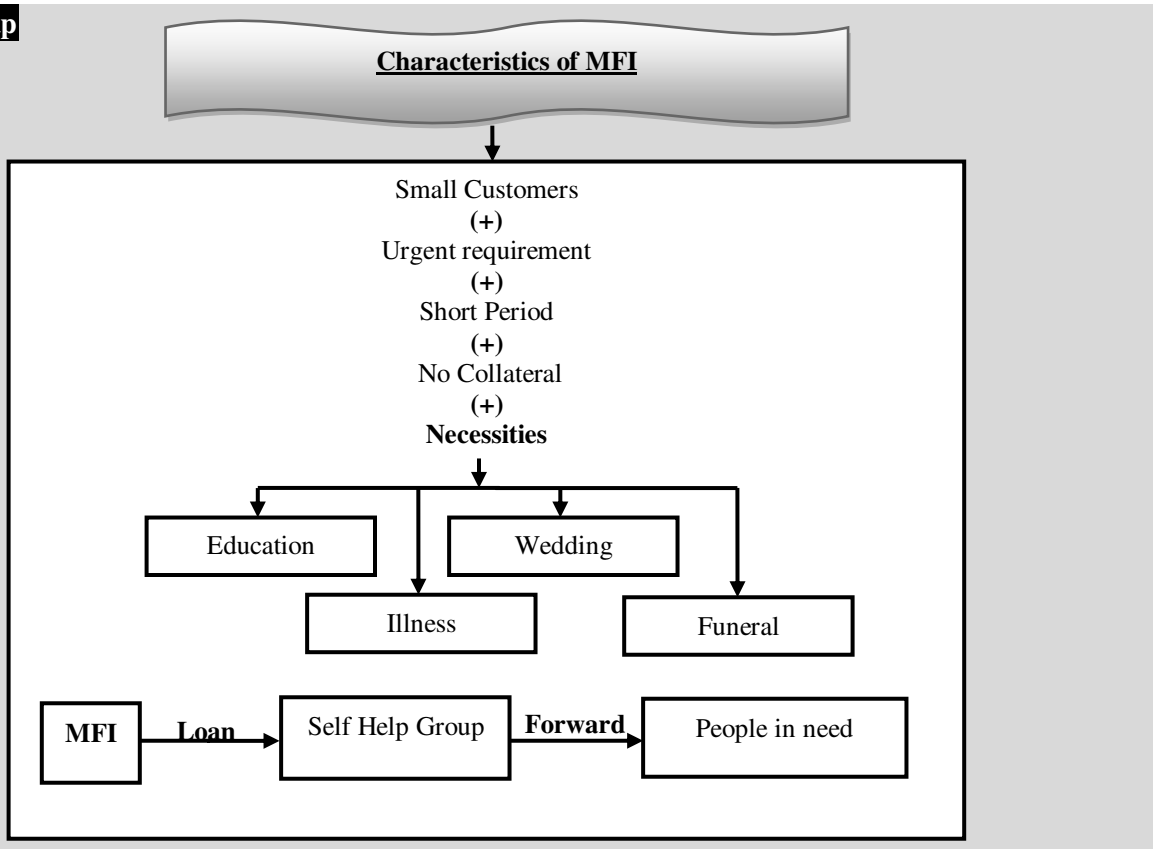
- Transactions value is small
- Customers are poor

13. Characteristics of a Micro Finance Institution

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

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

Quick Recap



14. 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 (MFI) is regulated by the Reserve Bank of India.

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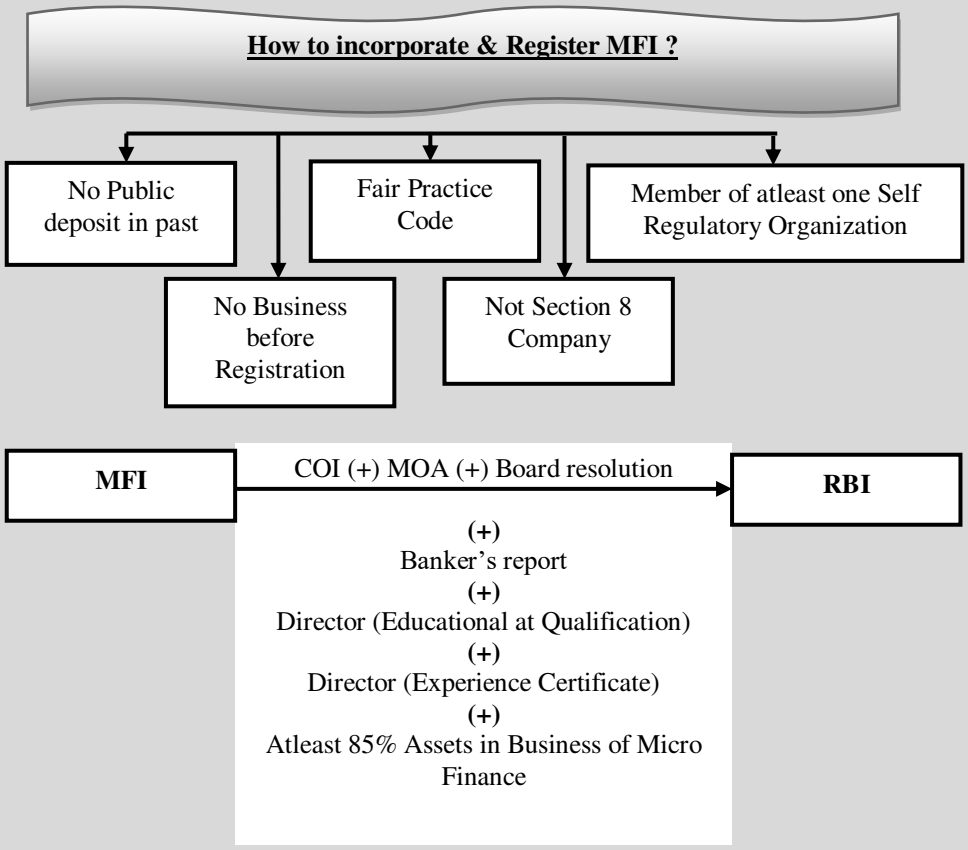
Quick Recap

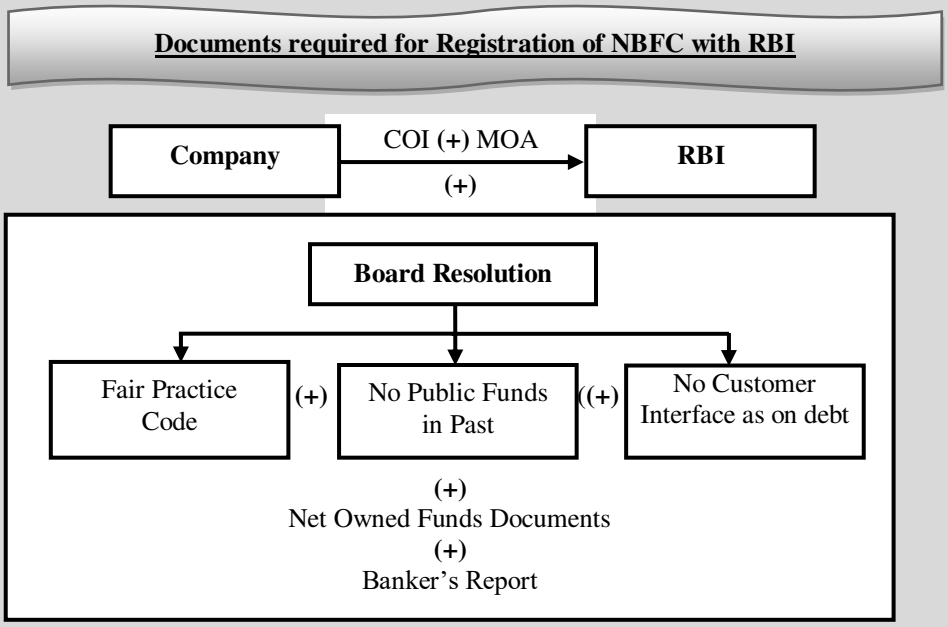


The list of documents to be filed with RBI for registration are given below:

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 or 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) or 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 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 Net Owned Funds.
5. For companies already in existence, the **Audited balance sheet and profit & loss account** along with directors & auditor's 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 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 or subsidiary or associate or holding company or 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.

Quick Recap



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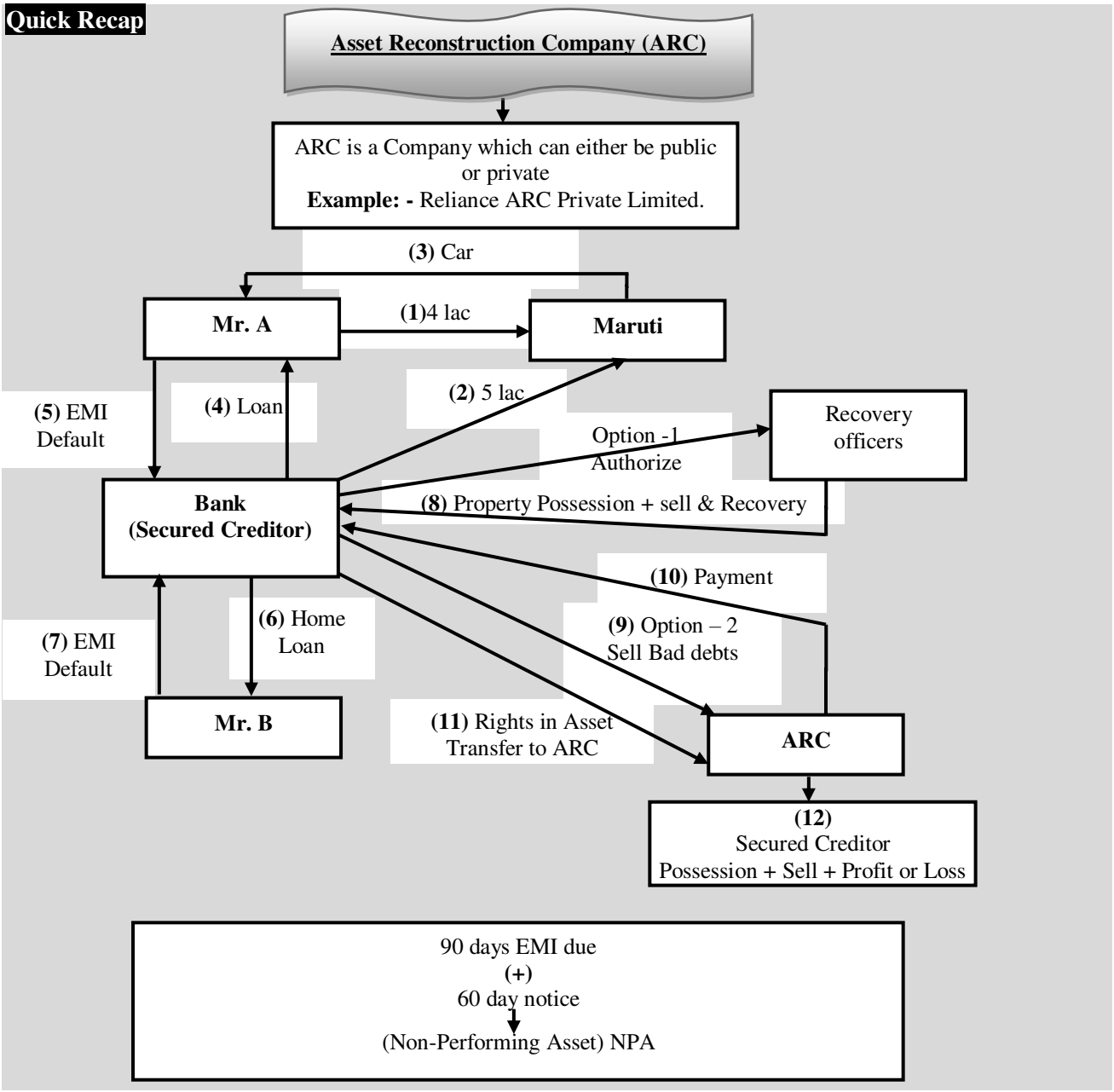
15. Asset Reconstruction Company (ARC)



Introduction and Meaning of Asset Reconstruction Company

Asset Reconstruction Company **(Securitization Company or Reconstruction Company)** is a company registered under **Section 3** of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest **(SARFAESI) Act, 2002**. **It is regulated by Reserve Bank of India as a Non-Banking Financial Company**.

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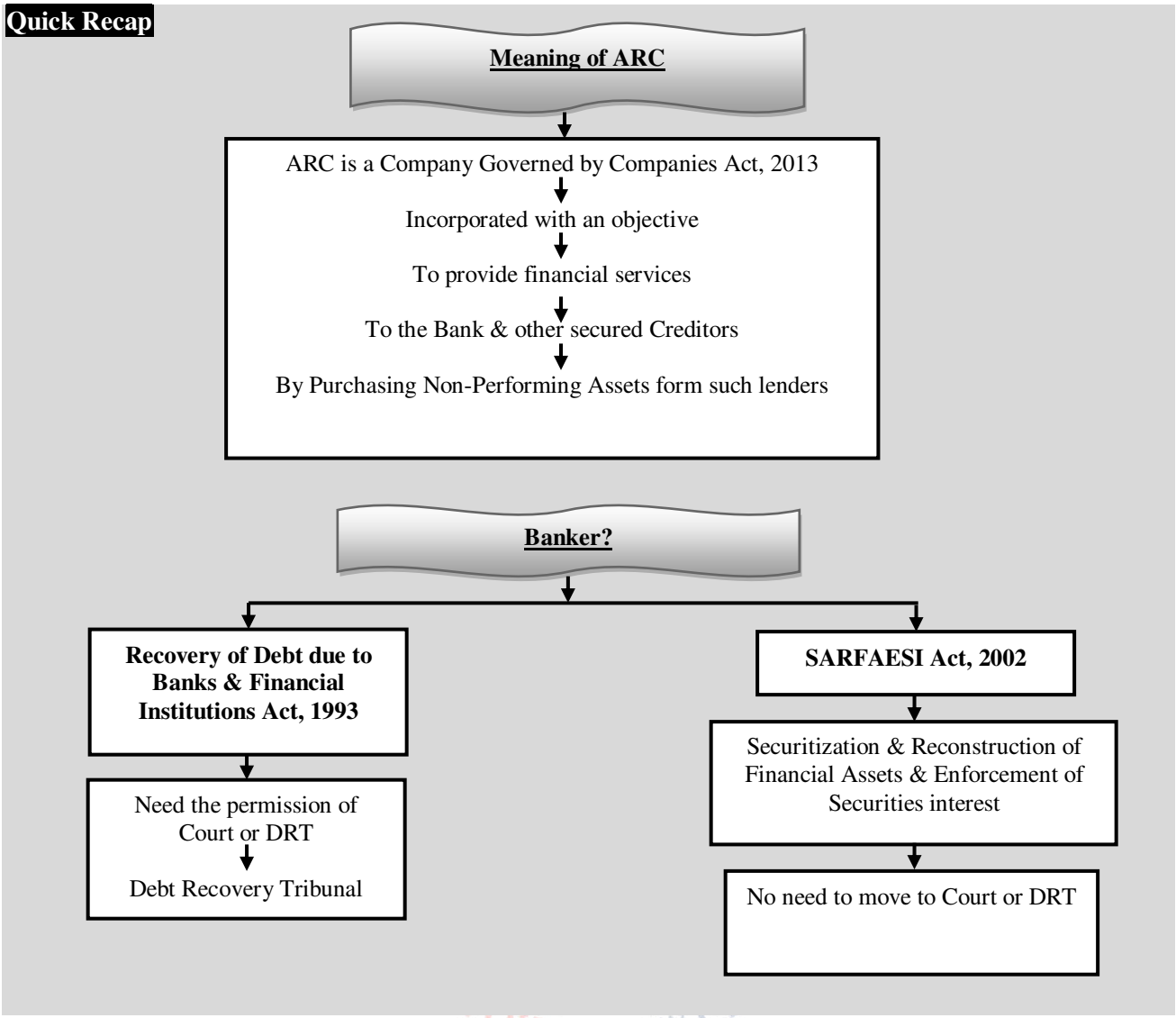
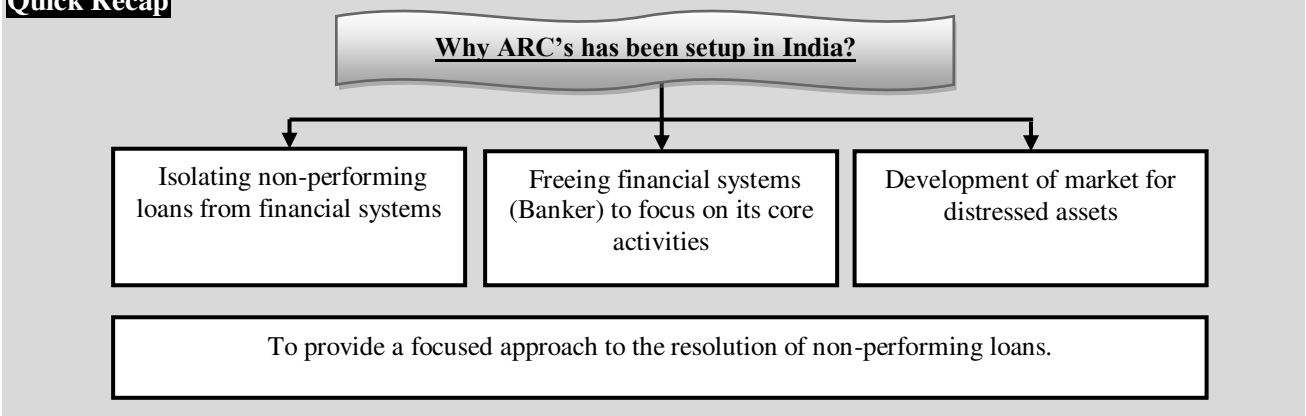
Quick Recap



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

- **Isolating Non Performing Loans (NPLs)** from the Financial System (FS).
- **Freeing the financial system to focus on their core activities**.
- **Facilitating development of market for distressed assets**.

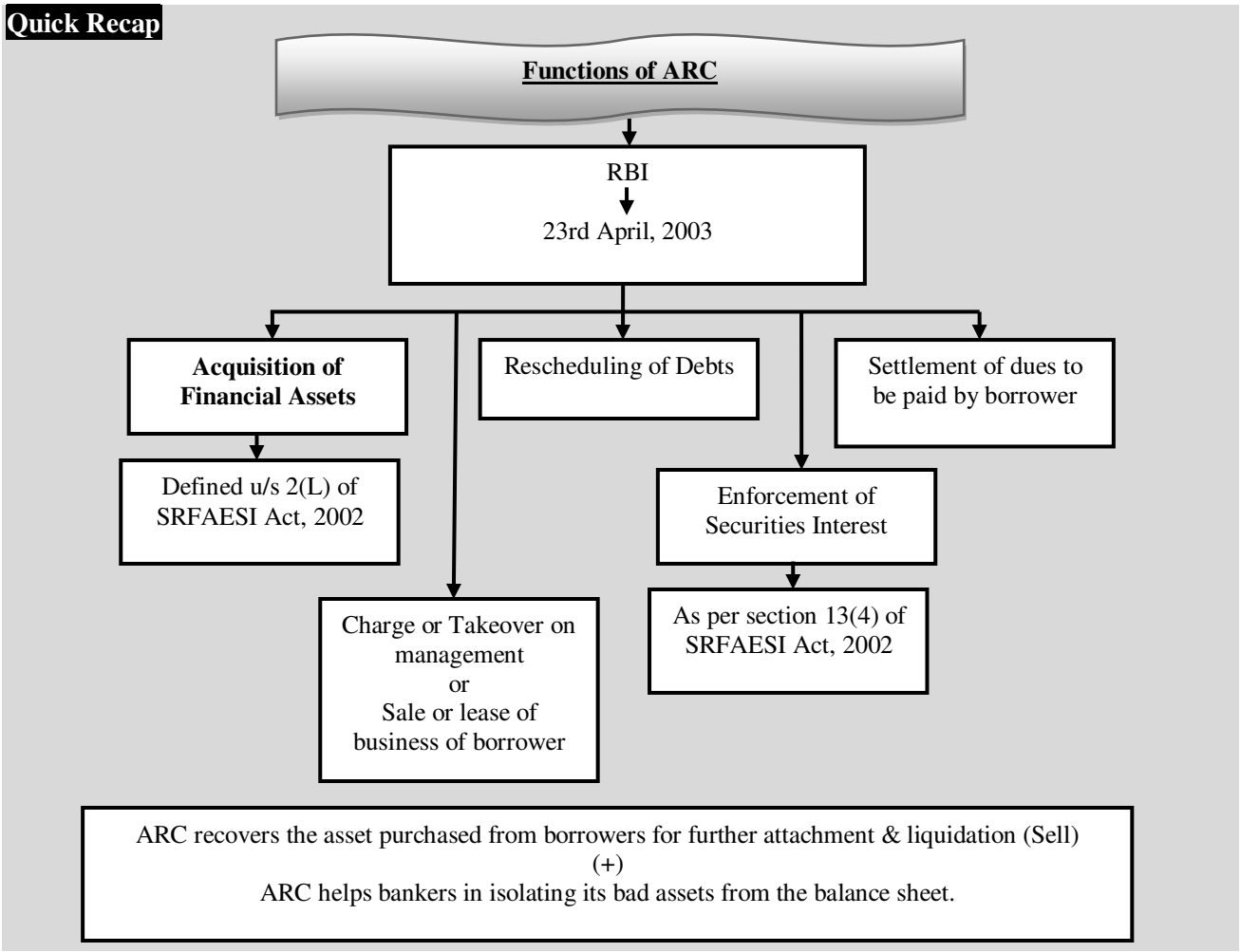
Quick Recap



As per RBI Notification dated April 23, 2003, ARC performs the **following functions:**

- Acquisition of financial assets.
- Change or takeover of Management or Sale or Lease of Business of the Borrower.
- Rescheduling of Debt.
- Enforcement of Security Interest.
- Settlement of dues payable by the borrower.

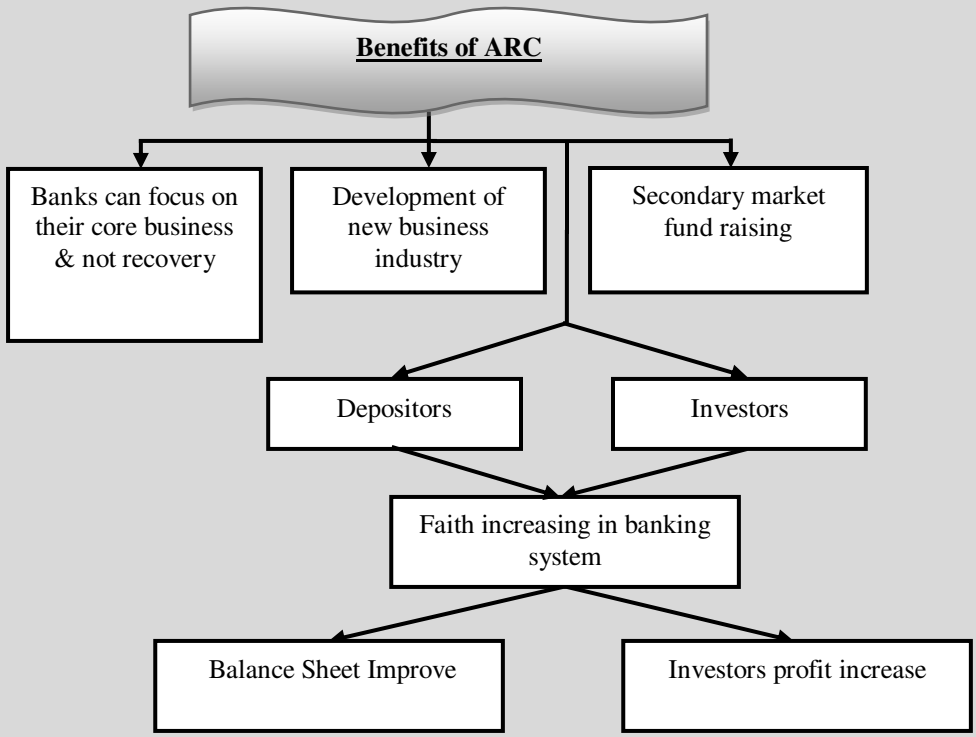
Quick Recap



16. Benefits of Incorporating an Asset Reconstruction Company (ARC)

- As the **cash realization activity from defaulting borrowers is a lengthy and cumbersome procedure**, **relieving banks of the burden of NPAs will allow them to focus better on managing the core business** including providing new business opportunities for the ARC.
- The **transfer should help restore depositor and investor confidence by ensuring the lender's financial health.** The banks use it as a method to hive off the bad loans from their balance sheet. ARCs can maximize recovery value while minimizing costs.
- **ARCs also helps building industry expertise in loan resolution and restructuring management,** besides serving as a catalyst for important legal reforms in bankruptcy procedures and loan collection.
- ARCs play an **important role in developing capital markets through secondary asset instruments**.

Quick Recap

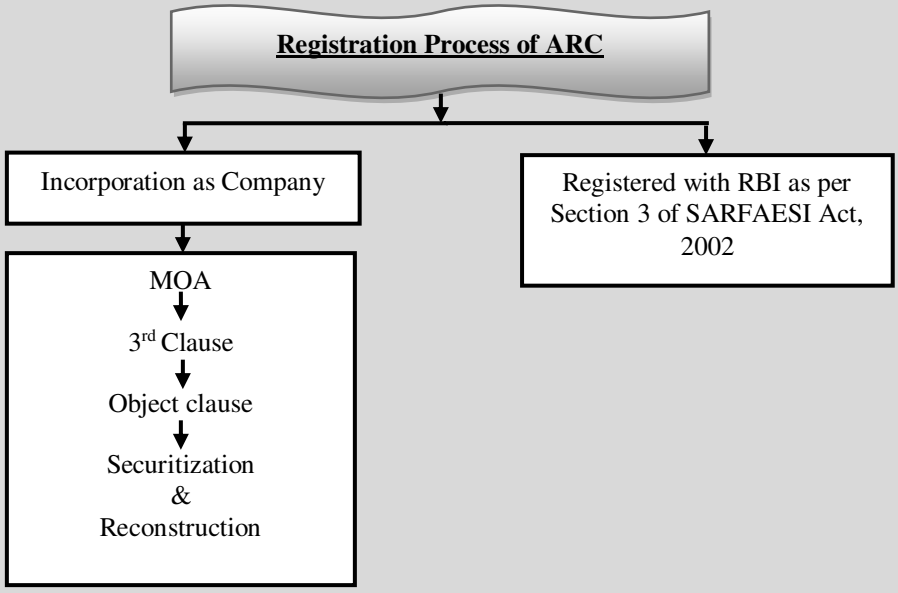


17. Procedure for Registration of ARC

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.

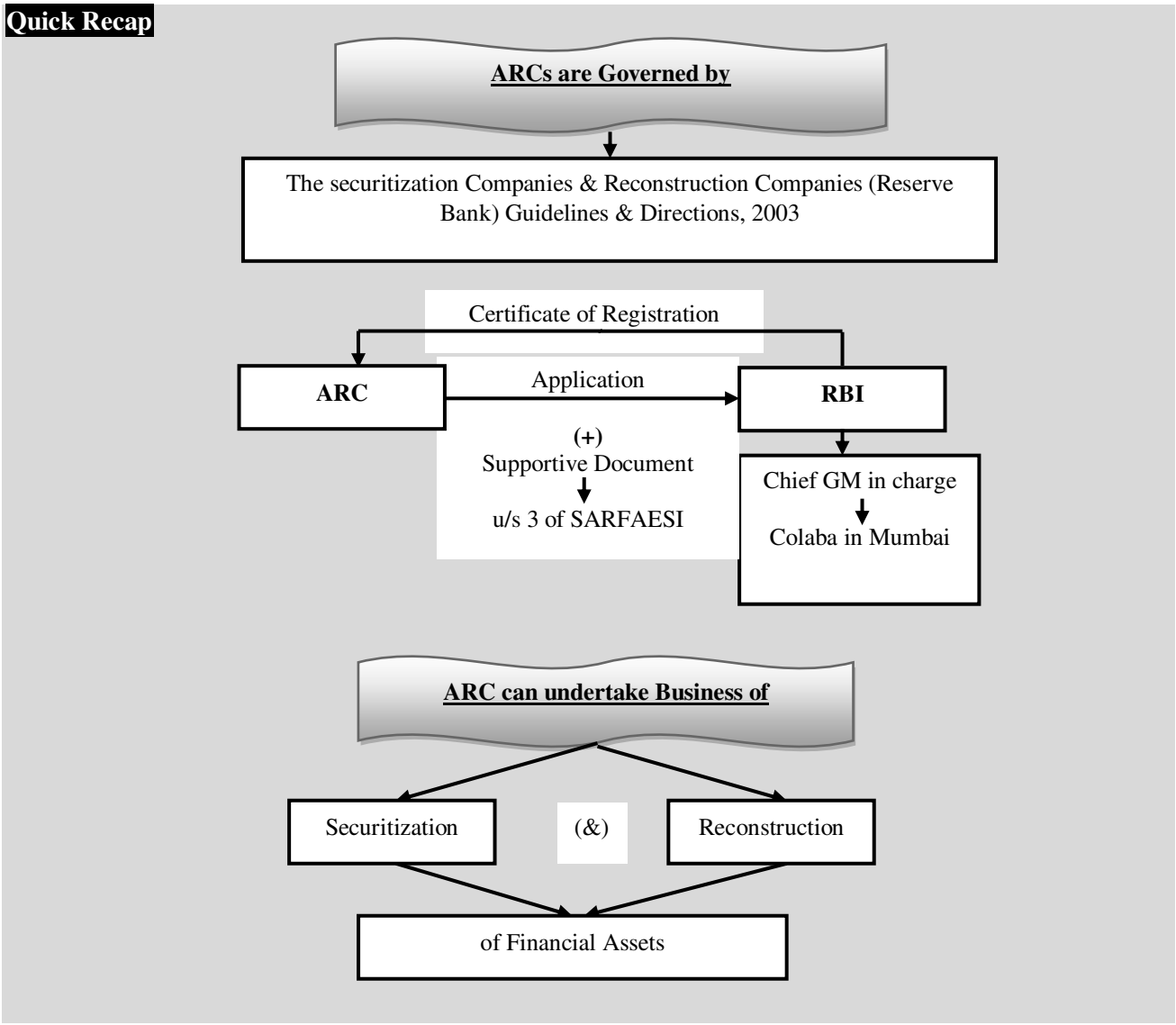
Quick Recap



Following are the important aspects of registration with the RBI:

- Every ARC shall **apply for registration in the form of application specified by the Reserve Bank of India** and **obtaina certificate of registration** from the Bank as provided under **Section 3 of the SARFAESI Act, 2002.**
- The **ARC's shall submit their application** along with all the relevant annexure or supporting documents **to the Chief General Manager-in-Charge, Department of Non-Banking Regulation, Central Office, Reserve Bank of India, Centre 1, World Trade Centre, Cuffe Parade, Colaba, Mumbai 400 005.**
- **An ARC**, which has obtained a certificate of registration issued by the Bank under Section 3 of the Act, **can undertake both securitization and asset reconstruction activities.**
- **An ARC shall commence business within six months from the date of grant of Certificate of Registration by the Bank** whereas RBI may grant extension for further period not exceeding 12 months.
- **Provisions of section 45-IA, 45-IB and 45-IC of RBI Act,1934 shall not apply to non-banking financial company, which is an ARC** registered with the Bank under Section 3 of the SARFAESI Act, 2002.

Quick Recap



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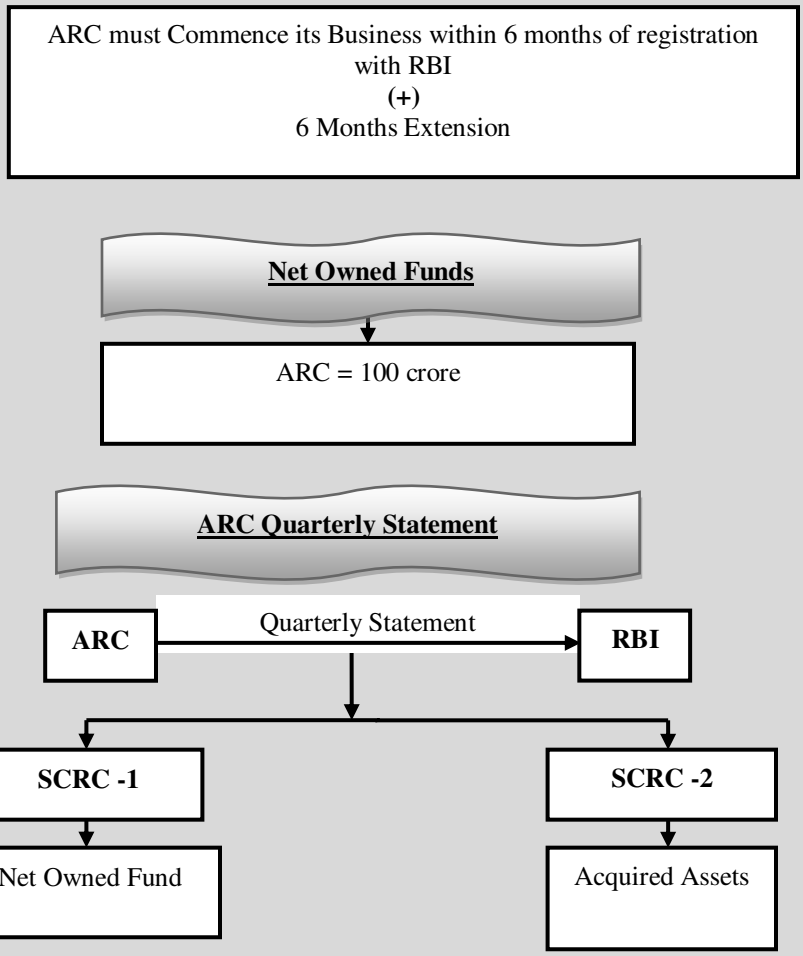


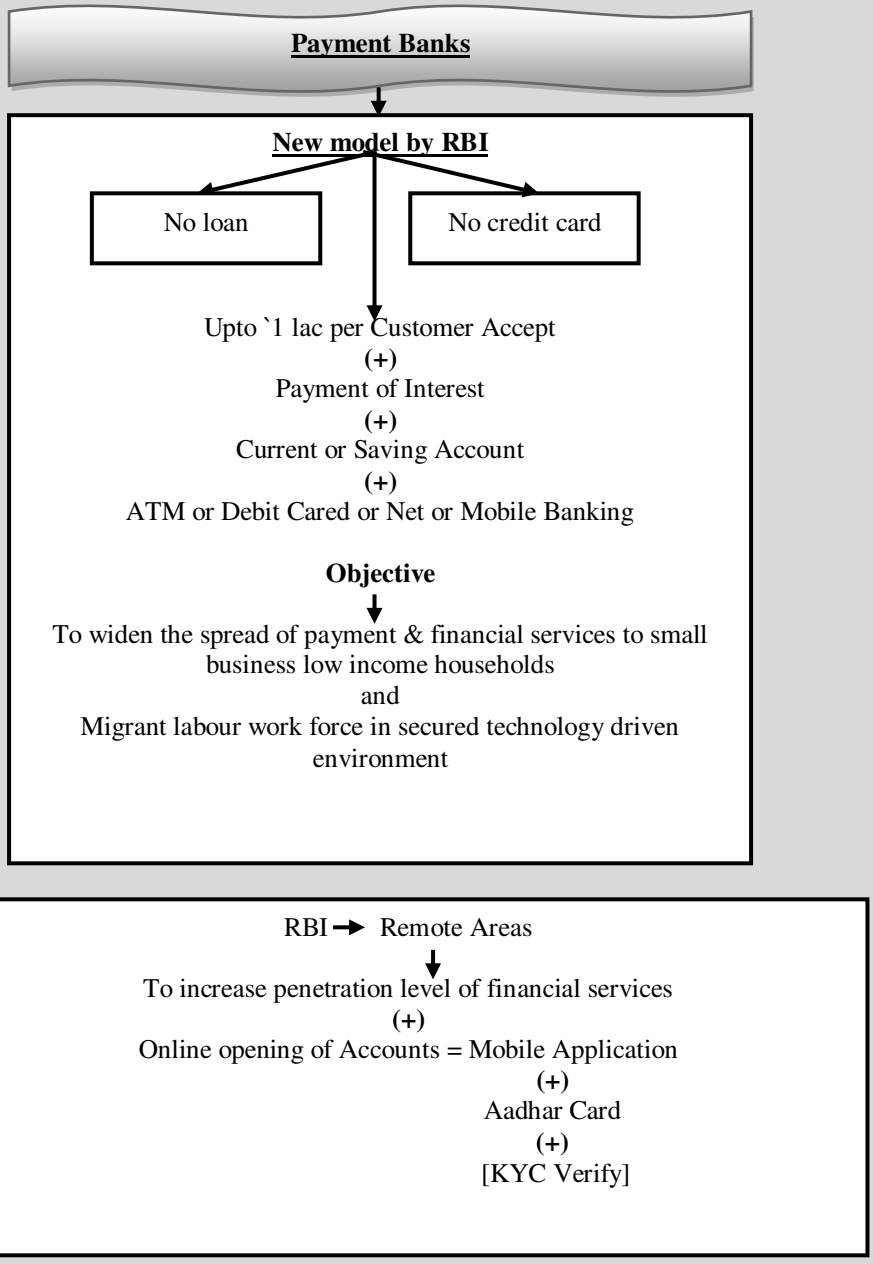
Quarterly Statements by SCRC

Quarterly statements in the **Format SCRC 1 and SCRC 2** on owned funds, assets acquired, securitized and reconstructed assets, assets realised during the year, value of financial assets unresolved at the end of the year, value of security receipts pending for redemption, etc. are to be **submitted to RBI within 15 days from the close of the quarter** to which it pertains. These statements can be filed **online** on the Bank's website, viz, **https://cosmos.rbi.org.in.**

18. Payment Banks (Ex-Paytm Payment Bank)

1. Payments banks is a **new model of banks** conceptualized by the Reserve Bank of India (RBI).
2. These banks **can accept a restricted deposit, which is currently limited to `1 lakh per customer** and may be increased further.
3. **They can pay interest on these deposits just like savings bank account**. Both **current account and savings accounts can be operated** by such banks.
4. Payments banks can issue services like:
   - ATM cards
   - Debit cards
   - Net-banking
   - Third party transfers
   - Mobile-banking
   - Remittance services
5. These banks cannot grant loans or issue credit cards.

Quick Recap



Objective of Payment Banks

The main objective of payments bank is **to widen the spread of payment and financial services to small business, low-income households, migrant labour workforce in secured technology-driven environment**. With payments banks, RBI seeks to increase the penetration level of financial services to the remote areas of the country.

To open a bank account and the application process of payments bank is made very easy as compared to other banks. These bank accounts can be **opened instantly through their respective mobile apps** just by providing details like **Aadhar number with KYC verification.**

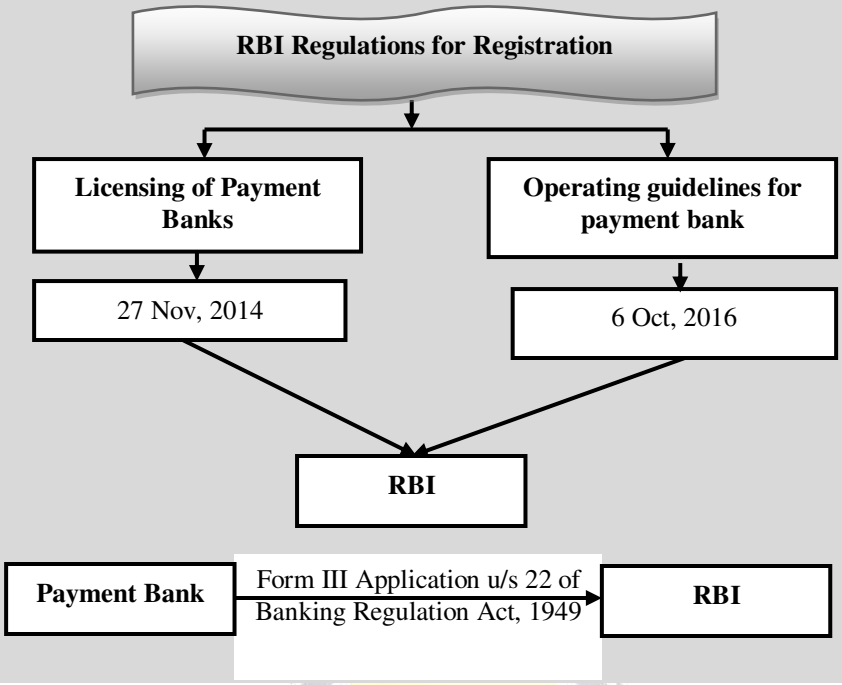
Most of the payment banks have **a non-NBFC heritage and will use payment bank as a customer retention and acquisition mechanism.**

RBI Regulations regarding Payment Banks

Payment Banks are regulated by the Reserve Bank of India. It released Guidelines for **Licensing of Payment Banks on November 27, 2014** and **Operating Guidelines for Payment Banks on October 6, 2016**. An application has to be filed with Reserve Bank of India in Form III under Section 22 of the Banking

Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence banking business.

Quick Recap



Key issues which requires compliance by an applicant company are summarised below:

1. The **minimum capital requirement is `100 crore**. For the **first five years, the stake of the promoter should remain at least 40%.**
2. **Foreign shareholding will be allowed** in these banks as per the rules for FDI in private banks in India.
3. The **voting rights will be regulated by the Banking Regulation Act, 1949**. The voting right of any shareholder is **capped at 10%, which can be raised to 26%** by Reserve Bank of India.
4. **Any acquisition of more than 5% will require approval of the RBI.**
5. The **majority** of the bank's board of directors should consist of **independent directors**, appointed according to RBI guidelines.
6. The bank should be fully networked from the beginning. The bank **can accept utility bills**. **It cannot form subsidiaries to undertake non-banking activities.**
7. Initially, **the deposits will be capped at `100,000 per customer**, 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** to differentiate it from other types of bank.
11. The banks will be **licensed as payments banks under Section 22** of the Banking Regulation Act, 1949.
12. It will be registered as **public limited company** under the Companies Act, 2013.

Quick Recap

Key Issues to be Complied by Applicant Company

1. Minimum 100 crore Capital Requirement
2. Atleast 40% Capital by Promoter for first 5 years.
3. FDI is also permitted (Private Bank)
4. Voting right maximum 10% (RBI may increase to 26%)
5. Acquirer>5%Payment Bank
   ↓
   Share Acquire
   ↓
   With prior approval of RBI
6. Majority Directors of Payment Bank must be Independent
7. No Subsidiary Company of Payment Bank
8. Per Person Deposit Maximum `1 Lac
9. No Lending
10. 25% Branches in Rural areas
11. Name (use of Payment Bank)
12. License u/s 22 of Banking Regulation Act, 1949
13. Only Incorporated as Public Company

AMIT VOHRA LAW CLASSES

Chapter - 9
Business Collaborations

Synopsis

Regulatory Framework

- The Companies Act, 2013
- The Foreign Exchange Management Act, 1999
- The Limited Liability Partnership Act, 2008
- FDI Policy

Business Collaboration

Collaboration is when two or more entities work together through idea sharing and thinking to accomplish a common goal is known as Collaboration. Collaboration provides solutions, give a strong sense of purpose and also reinforce the objectives of coming together.

Types of Business Collaboration

Horizontal Collaboration: When the businesses in the same set of functional area agree to collaborate in a way to improve their competencies is known as Horizontal Collaboration. For example: conducting research toward new or improved products and services requires monetary investment, time, and worker capacity.

Vertical Collaboration: Vertical Collaboration is a collaboration wherein the business collaborates with companies in its supply chain either upward and/or downwards (its suppliers and/or distributors). Vertical collaboration often allows businesses to minimize risk in the supply chain and obtain lower prices in exchange for long-term commitment. For example: Computers shipping with pre-installed third-party software, discounted airport transfers offered by airlines etc.

Intersectional Collaboration: When the Businesses from different functional areas agree to share their special knowledge for the advancement of all partners in collaboration is known as Intersectional Collaboration. For example: Manufacturing and Marketing collaborations, Referral rewards, tie-ups.

Joint Venture: Two or more businesses form a new company. The new company is its own legal entity, and its profits are split according to terms spelled out in a formal contract is a Joint Venture. For example: One party in the joint venture provides technical support and another party provides manufacturing and marketing arrangements in joint venture.

Equity: A company acquires a minor equity stake in another business in exchange for a monetary investment. Such exchanges can accompany other types of collaboration and, to a certain extent, agreed-upon access to decision making. For example: Funding to start-ups on equity basis, equity partnership in technical know-how.

Foreign Collaboration

Meaning of Foreign collaboration

1. Foreign Collaboration is analliance of resident and non-resident entities to carryon the agreed taskl (work) collectively
2. Within Country or Resident or Dometic orNative Entity
3. Outside Country or Non-resident or Foreign or Abroad Entity

- Foreign collaboration is an alliance incorporated to carry on the agreed task collectively with the participation (role) of resident and non-resident entities. Foreign collaboration is an alliance of domestic (native) and foreign (non-native) entities like individuals, firms, companies, organizations, governments, etc., that come together with an intention to finalize a contract on

some tasks or jobs or projects.

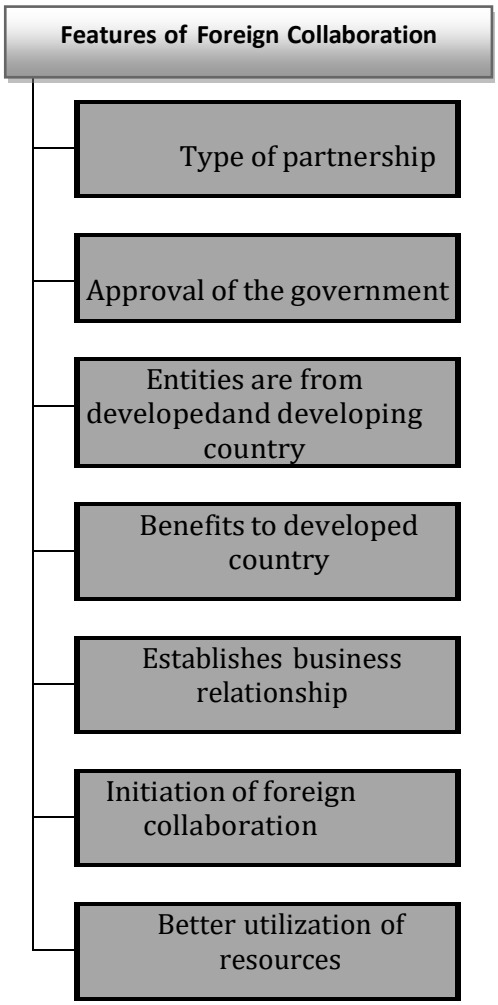
- Foreign collaboration is an alliance (a union or an association) formed for mutual benefit of collaboratingparties.
- Foreign collaboration is a mutual co-operation between one or more resident and non-resident entities. In other words, for example, an alliance (a union or an association) between a foreign based company and a domestic company forms a foreign collaboration. It is a strategic alliance between one or more resident and non-resident entities. Only two or more resident (native) entities cannot make a foreign collaboration possible. For its formation and as per above definitions, it is mandatory that one or more non-resident (foreign) entities must always collaborate with one or more resident (domestic) entities.
- Before starting a foreign collaboration, both entities, for example, a resident and non-resident company must always seek approval (permission) from the Governmental Authority of the domestic country.
- During an ongoing process of seeking permission, the collaborating entities prepare a preliminary agreement.
- According to this preliminary agreement, for example, the non-resident company agrees to provide finance, technology, machinery, know-how, management consultancy, technical experts, and so on. On the other hand, resident company promises to supply cheap labour, low-cost and quality raw-materials,sufficient land for setting factories, etc.
- After obtaining the necessary permission, individual representative of a resident and non-resident entity signs this preliminary agreement. Signing the agreement acts as a written acceptance to each other's expectations, terms and conditions. After acceptance, a contract is executed, and foreign collaborationgets established. Contract is a legally enforceable agreement.
- After establishing foreign collaboration, resident and non-resident entity start business together in the domestic country.
- Collaborating entities share their profits as per the profit-sharing ratio mentioned in their executed contract.
- The tenure (term) of the foreign collaboration is specified in the written contract.

Examples of Foreign Collaboration

Some prominent examples of foreign collaboration between an Indian and Foreign entity are depicted below.

- ICICI Lombard GIC (General Insurance Company) Limited is a financial foreign collaboration betweenICICI Bank Ltd., India and Fairfax Financial Holdings Ltd., Canada.
- ING Vysya Bank Ltd. is a financial foreign collaboration formed between ING Group from Netherlandsand Vysya Bank from India.
- Tata DOCOMO is a technical foreign collaboration between Tata Teleservices from India and NTT Docomo, Inc. from Japan.
- Sikkim Manipal University (SMU) from India runs some academic programs through an educational foreign collaboration with abroad universities like Liverpool School of Tropical Medicine from UK, Loma Linda and Louisiana State Universities from USA, Kuopio University from Finland, and University of Adelaide from Australia.

Features of Foreign Collaboration



1. **Type of partnership**: Foreign collaboration is a type of partnership between a domestic entity and foreign based entity. In such an alliance, each partner plays some crucial role. Foreign entity generally provides support for finance, technology, engineering, management, etc. On the other hand, a domestic based entity provides cheap labour, high-quality raw materials, land and so on. Here, domestic and foreign entity share their profits as per profit-sharing ratio mentioned in their contract.

2. **Requires an Approval of the government:** Before initiating foreign collaboration, collaborating entities (domestic and foreign) must seek permission from the government of the domestic country. The government gives approval only when the contract of foreign collaboration is prepared in accordance with the industrial or foreign policy of its country.

3. **Entities are from developed and developing country**: In foreign collaboration, one or more abroad entities are generally from developed countries like U.S.A., Germany, Japan, etc. Whereas, a domestic entity is from a developing country or less-developed country (LDC). Some examples of developing countries are India, Sri-Lanka, Indonesia, and so on.

4. **Benefits to developed country**: The benefits of foreign collaboration to a developed country are as follows:
   - Foreign collaboration helps a developed country earn good returns on its overall investments made in a domestic country.
   - It also aids a developed country earn a good reputation for providing financial and technicalassistance (support) to the developing country.

5. **Benefits to developing country:** The benefits of foreign collaboration to a developing country are asfollows:
   - Foreign collaboration helps a developing country to get finance, technology, machinery, know- how, management and technical expertise, etc. from a developed country.
   - It also assists a developing country to achieve a faster economic growth.

6. **Establishes business relationships**: Foreign collaboration establishes business (trade) relationships among different countries. It removes their economic gaps (hurdles) and brings them closer to each other.

7. **Initiation of foreign collaboration**: A foreign collaboration is initiated at the government and/or corporate level. At governmental level foreign collaboration, a government of some foreign country collaborates with the government of a domestic country. Similarly, at corporate level foreign collaboration, a company from some foreign country collaborates with the company from a domestic country. These companies may be either private or public in nature.

8. **Better utilization of resources:** Though developed countries are good with finance, technology, management and technical expertise, generally, they face difficulties to meet a continuous supply of low-cost labour and quality raw materials. On the other hand, generally, a developing country has more availability of low-cost labour and plenty of quality raw materials. Foreign collaboration brings developed and developing country together and helps them to satisfy each other's needs by exchanging their excess resources. Finally, this leads to a better utilization of available resources.

9. **Scope of foreign collaboration**: The scope of foreign collaboration is very wide. It covers core business activities such as: Finance, Production, Management and Technical consultancy, Advertising and Marketing, etc.

10. **Miscellaneous features**: Miscellaneous features of foreign collaboration are listed as follows:
    - Foreign collaboration reduces unemployment in a developing country.
    - It improves infrastructure in a developing country.
    - It helps to increase revenue of the governments in the form of taxes and duties.
    - It also aids to achieve economic growth in developed and developing country

Objectives of Foreign Collaboration

The main intention/ prime goal or objective of foreign collaboration is to:

- Improve the financial growth of the collaborating entities.
- Occupy a major market share for the collaborating entities.
- Reduce the higher operating cost of a non-resident entity.
- Make an optimum and effective use of resources available in the resident entity's country.
- Generate employment in the resident entity's country.

Types of Foreign Collaboration

1. **Financial collaboration**: In case of financial collaboration, the inflow of foreign investment takes placein the domestic (host) country. In this method, the foreign company lends finance by:
   - **Purchasing ownership shares:** Here, foreign company purchases ownership shares of thedomestic company and in return gets the dividend for these shares.
   - **Giving long-term loans**: Here, foreign company gives long-term loans to the domestic companyand in return gets interest from these loans.
   - **Giving credit facility**: Here, foreign company gives credit facility to the domestic (native) company.
   - The native company uses this credit facility to purchase raw-materials, plant and machinery.

   Thus, in financial collaboration, there is an inflow of finance from developed countries to developing countries.

2. **Technical collaboration**: In case of technical collaboration, the inflow of foreign technology takes place in the domestic (host) country. Technical collaboration includes integration of foreign technology with domestic (indigenous) technology. In technical collaboration, the foreign company provides technological know-how, professional services and expertise, installs automated machineries, etc., in the domestic country. Here, an inflow of modern technology takes place from the developed country to the developing country. Technical collaboration helps to remove an existing technological gap. Therefore, the governments of developing countries encourage such collaborations. In developing countries, most of the foreign collaborations are technical in nature.

3. **Marketing collaboration**: In case of marketing collaboration, the inflow of foreign goods and services take place in the domestic (host) country. In marketing collaboration integration of domestic and foreign market takes place. In marketing collaboration, foreign company agrees to sell goods produced by the domestic company. The foreign company sells these goods in its own country and/or in the international market. It uses its distribution network to sell the goods. From the viewpoint of a developing country, marketing collaboration is very beneficial for increasing its exports of goods and services.

4. **Management consultancy collaboration**: In case of management consultancy collaboration, the inflow of foreign management consultancy takes place in the domestic (host) country. In management consultancy collaboration integration of domestic and foreign consultancy takes place. In management consultancy collaboration, foreign company provides management skills to the domestic company and teaches it everything about management. In other words, it gives advice and solves management problems of the domestic company. It teaches management skills for the following:
   - Production management.
   - Marketing management.
   - Personnel management.
   - Financial management.

The foreign company also helps the domestic company to modernize and diversify its business process. So, in management consultancy collaboration, the foreign company increases the management efficiency of the domestic company. This type of collaboration is found in both private and public sector.

Foreign Collaboration in India

In India there are basically two forms of foreign collaboration. The collaboration may be either financial collaboration or it may be technical. In case of financial collaboration the approving

authority is the Reserve Bank of India and in the case of technical collaboration the approving authority is Department for Promotion of Industry and Internal Trade (DPIIT) in the Ministry of Commerce and Industry, Government of India.

The approach of the Government has been roughly the same since the year 1949 that is to allow foreign direct investment on preferential basis in sectors that will be beneficial for the country. The foreign or Indian undertakings will have to conform to the Industrial policy of the country. Foreign investors are in all cases considered equal to their Indian partners. The Government has enforced The Foreign Exchange ManagementAct 1999 (FEMA) which seeks to regulate foreign exchange.

A breach of the provisions of the old act resulted in a criminal offence with the burden of proof lying on the guilty. However the new Act provides for only a civil remedy and for an offence the accused cannot be arrestedunless he defaults in payment of penalty for contravention.

For setting up a foreign collaboration, approval from the government under the relevant foreign exchange lawsin force and the requisite Government policy is required.

Under the Act now a foreign collaboration may be formed by a foreign company without the necessity of forming a company with an Indian counterpart. Any foreign collaboration which exceeds the minimum limited set out in the automatic route requires approval from the government.

The Government has set up a Foreign Investment Promotion board to encourage foreign investment in India. Some of the functions of the Board include:

- speed up clearance of proposals
- to review the collaborations cleared
- ear-marking and ascertaining of contacts to invest in India

1. Meaning of Joint Venture
2. Definition of Joint Venture
3. Stages and Documents for Joint Ventures
4. Factors to be considered while drafting JVA or SHA or LLPA
5. Essential components of a Joint Venture Agreement
6. LLP Firm as a Joint Venture or Special Purpose Vehicle
7. Strategies of Joint Venture
8. Formation of Joint Ventures
9. Restrictions under FDI Policy of Government of India
10. Meaning of Special Purpose Vehicle (SPV)
11. Benefits of Special Purpose Vehicle
12. Purpose of Special Purpose Vehicle

1. Meaning of Joint Venture

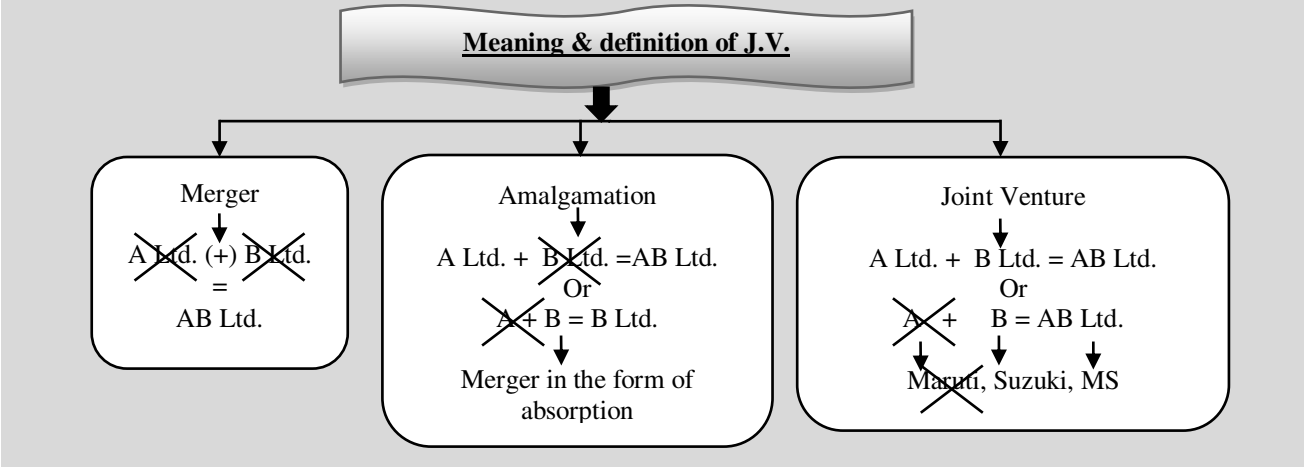
A simply dictionary meaning of the word 'Joint Venture' is a **commercial enterprise** undertaken **jointly by two or more parties** which otherwise **retain their distinct identities**.

It is an **entity formed** between two or more parties to undertake **economic activity together**. The parties agree to create a new entity to share in the

- Revenues
- Expenses
- Control of the enterprise.

Joint Ventures are generally created for a single activity or project, and may have a limited time span.

Quick Recap



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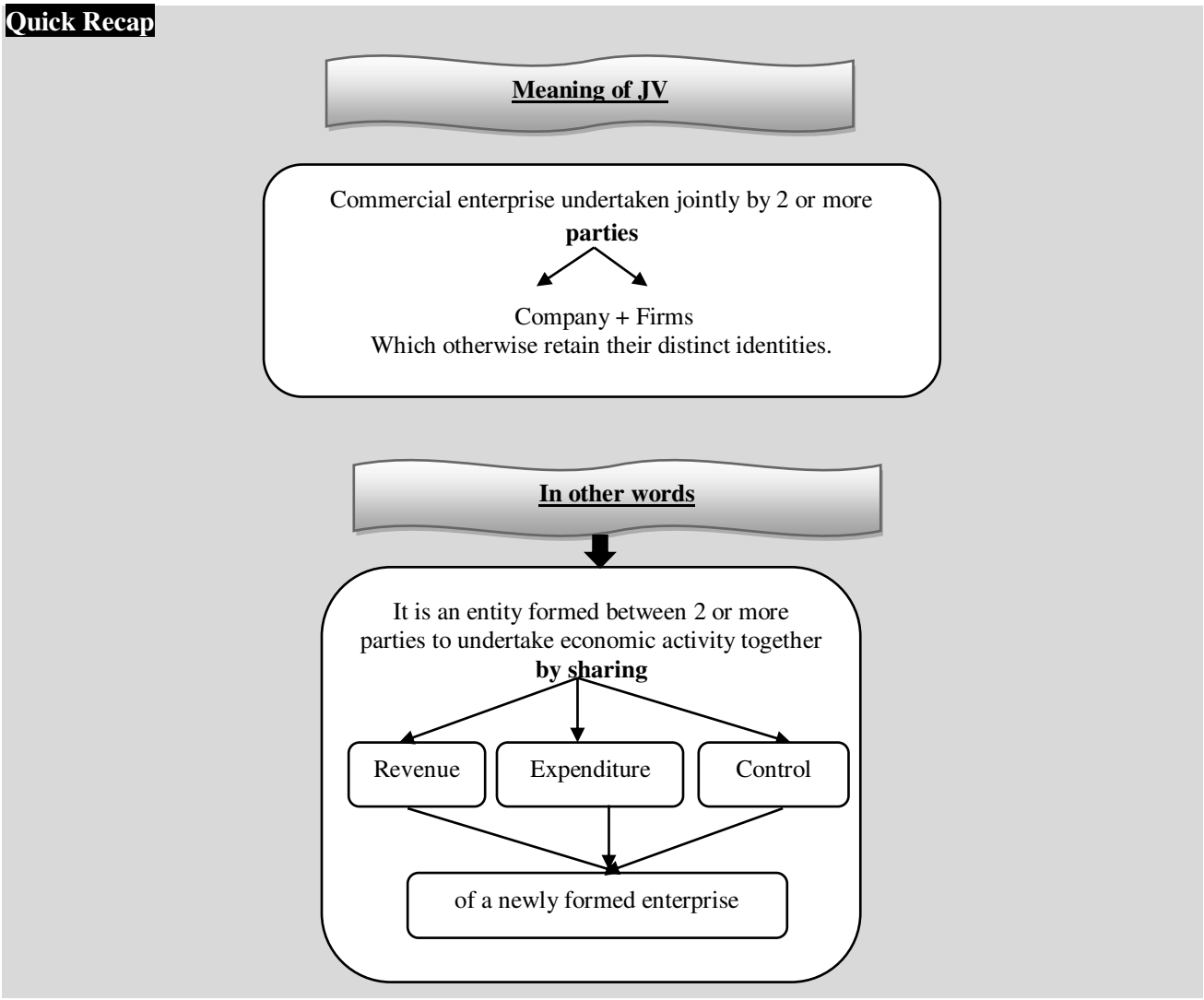


2. Definition of Joint Venture

Joint ventures can be defined as "an enterprise in which **two or more investors share ownership and control over property rights and operation**".

Alternatively, we can define a joint venture is an **association of two or more individuals or business entities who combine and pool their respective**

- Expertise
- Financial resources
- Skills
- Experience
- Knowledge

in the furtherance of a particular project or undertaking.

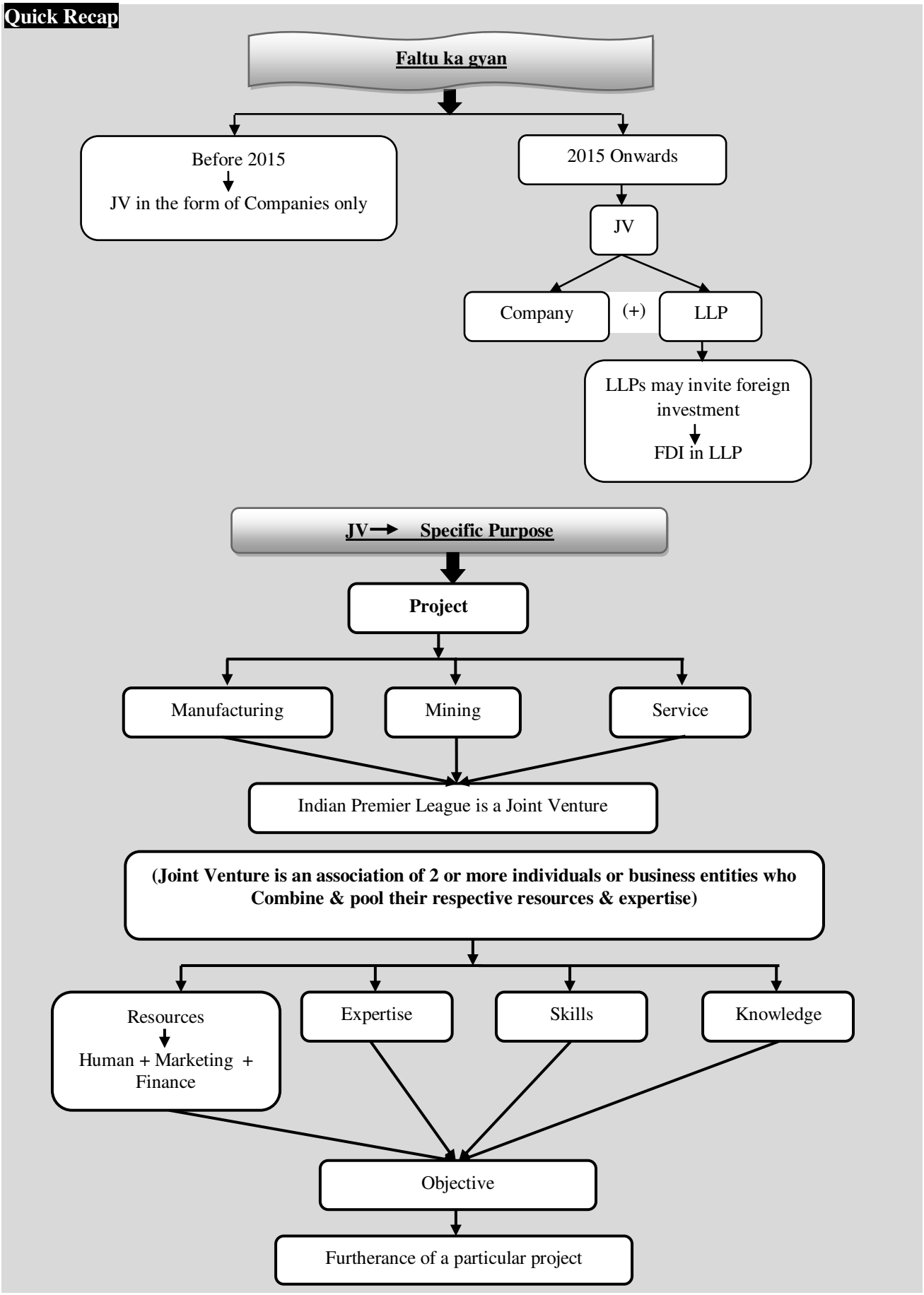
Small business entities, which do not individually have the capacity, in terms of resources, finances and technical know-how **can benefit with by forming Joint Venture** for pooling of resources, sharing technical know-how and exploring larger markets for their goods and services.

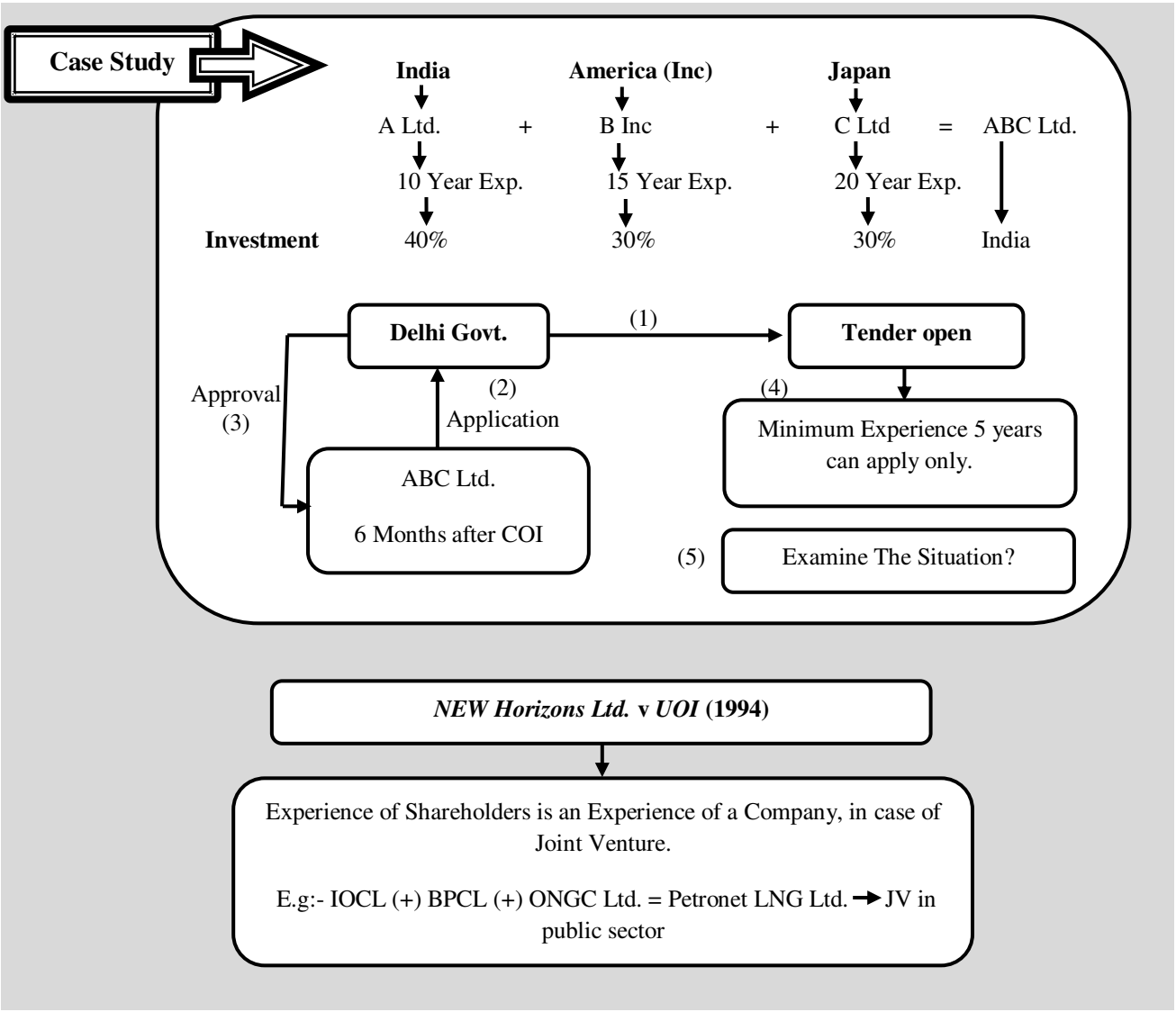
JVs are also common in the manufacturing, mining, and service industries.

Examples of Joint Venture Companies (PSUs) in India

- Indian Oil Sky tanking Ltd. (between Holders - Ruchi Soya and Indian Oil)
- Ratnagiri Gas & Power Private Limited (between NTPC Ltd and GAIL India Ltd.)
- Mahanagar Gas Ltd. (BG Group of U.K. and GAIL India Ltd.)
- Petronet LNG Ltd. (between PSU's, namely, BPCL, GAIL India Ltd., ONGC and IOCL)

Quick Recap


Faltu ka gyan
Before 2015
JV in the form of Companies only
2015 Onwards
JV
Company
(+)
LLP
LLPs may invite foreign investment
FDI in LLP
JV → Specific Purpose
Project
Manufacturing
Mining
Service
Indian Premier League is a Joint Venture
(Joint Venture is an association of 2 or more individuals or business entities who Combine & pool their respective resources & expertise)
Resources
Human + Marketing + Finance
Expertise
Skills
Knowledge
Objective
Furtherance of a particular project



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 provide solutions, give a strong sense of purpose and also reinforce the objectives of coming together.

Types of Business Collaboration

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

Vertical Collaboration: Vertical Collaboration is a collaboration where in the business collaborates with companies in its supply chain either upward and/or down wards (its suppliers and/or distributors). Vertical collaboration often allow businesses to minimize risk in the supply chain and obtain lower prices in exchange for long-term commitment.

Intersectional Collaboration: When the Businesses from different functional areas agree to share their special knowledge for the advancement of all partners in collaboration is known as Intersectional Collaboration. For example: Manufacturing and Marketing collaborations, Referral rewards, tie-ups.

Joint Venture: Two or more businesses form a new company. The new company is its own legal entity, and its profits are split according to terms spelled out in a formal contract is a Joint Venture.

For example: One party in the joint venture provides technical support and another party provides manufacturing and marketing arrangements in joint venture.

Equity: A company acquires a minor equity stake in another business in exchange for a monetary investment. Such exchanges can accompany other types of collaboration and, to a certain extent, agreed-upon access to decision making. For example: Funding to start-ups on equity basis, equity partnership in technical know-how.

Various advantages of forming Joint Venture are as follows

1. **Risk Sharing**

   Risk sharing is one of the biggest advantage of forming a Joint Venture, particularly, in those industries where the **cost of product development** and **likelihood of failure** of any particular product is **very high**.

2. **Economies of Scale**

   For the industries having **high fixed costs**, a **JV with a larger company** can provide the economies of scale necessary to compete locally or globally and can be an effective way by which two companies can pool resources and **achieve good mass (customer base).**

3. **Market Access**

   Forming a **JV with the right partner can provide instant access to established, efficient and effective distribution channels and receptive customer bases**.

   This is important to a company because **creating new distribution channels** and identifying new customer bases can be **extremely difficult, time consuming and expensive**.

4. **Exploring the Global Market**

   Partnering with foreign company would provide an ease to that Company for penetrating a foreign market, which can **otherwise be difficult** both because of a **lack of experience** in such market and **local barriers** to foreign-owned or foreign-controlled companies.

5. **Easy acquisition of other entity or business**

   When a company wants to acquire another, but cannot due to cost, size, or geographical restrictions or legal barriers, teaming up with a JV Partner can be an attractive option. The JV **is substantially less costly and thus less risky than complete acquisitions**, and is sometimes used as a first step to a complete acquisition with the JV Partner.

6. **Cost Efficiency**

   For a **small-scale entity**, it is difficult to set up the infrastructure and the machinery required product development. **Joint venture is the perfect solution in the moment of need**.

   For example -If a company has a plan for the perfect product, however, due to financial shortage there is not enough machinery or resources available. At such a time, if another company, which is equipped, lends a hand in the form of joint venture, by way of resource sharing and cost sharing it becomes easier to produce.

7. **Flexible Nature**

   The joint venture enterprises provide flexibility, **each participant has the freedom to continue with their individual businesses**. The joint venture **participants can only interfere within the participated project.**

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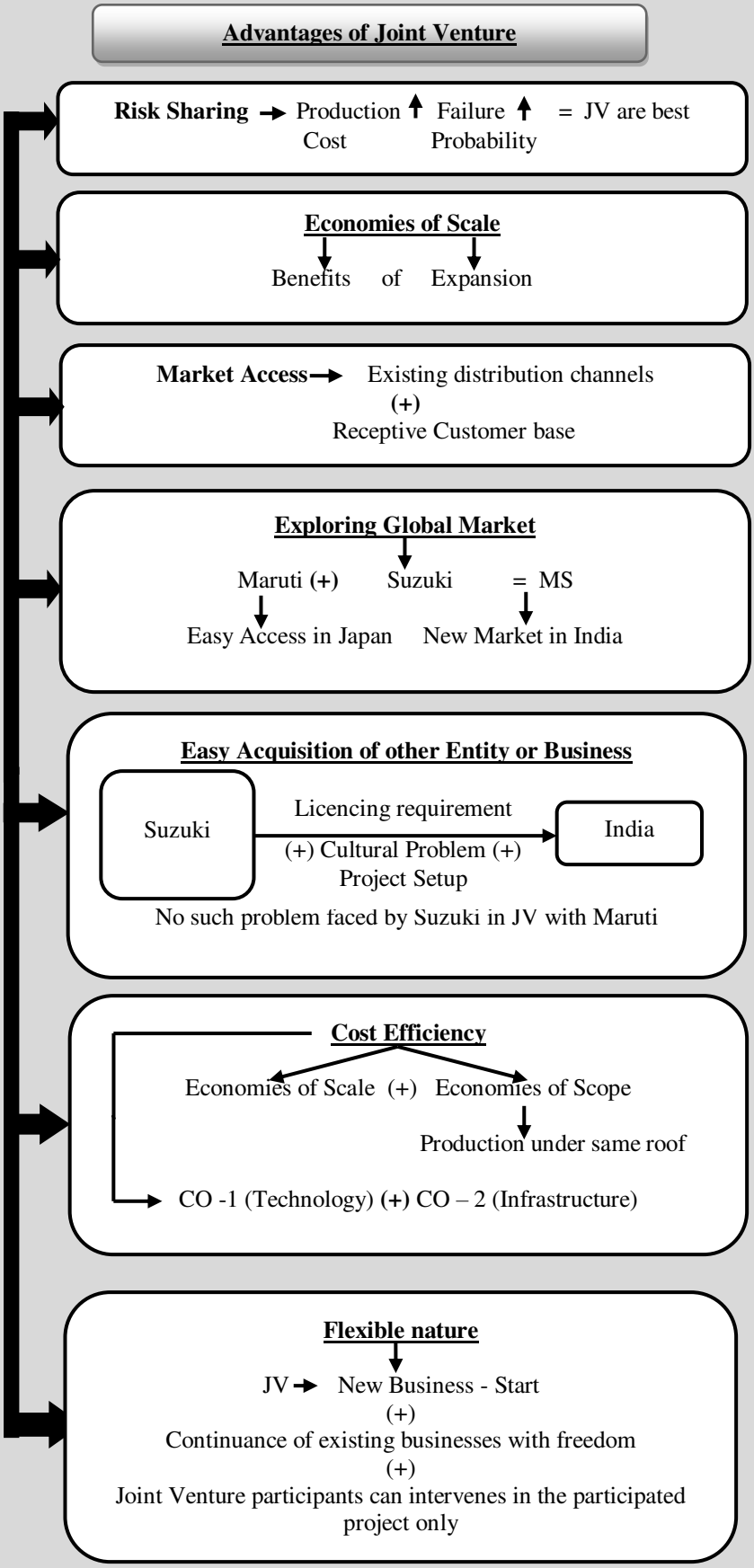
Quick Recap


Advantages of Joint Venture
Risk Sharing → Production Cost ↑ Failure Probability ↑ = JV are best
Economies of Scale
Benefits of Expansion
Market Access → Existing distribution channels
(+)
Receptive Customer base
Exploring Global Market
Maruti (+) Suzuki = MS
Easy Access in Japan
New Market in India
Easy Acquisition of other Entity or Business
Suzuki
Licencing requirement
(+) Cultural Problem (+)
Project Setup
India
No such problem faced by Suzuki in JV with Maruti
Cost Efficiency
Economies of Scale (+) Economies of Scope
Production under same roof
CO -1 (Technology) (+) CO – 2 (Infrastructure)
Flexible nature
JV → New Business - Start
(+)
Continuance of existing businesses with freedom
(+)
Joint Venture participants can intervenes in the participated project only

Disadvantages of Joint Venture

Quick Recap

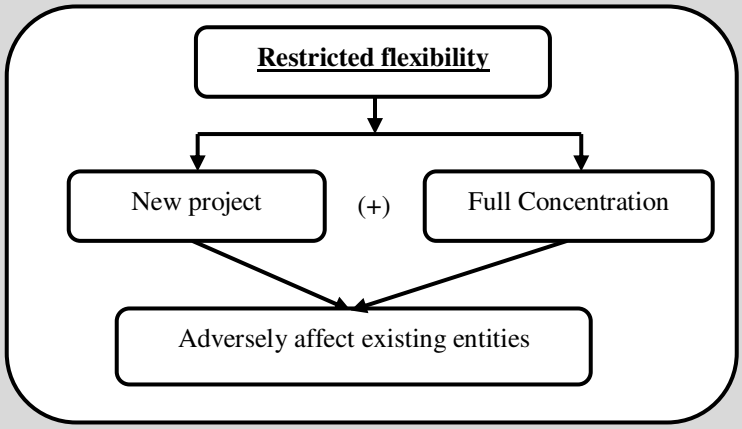
Disadvantages of Joint Venture

1. **Restricted flexibility where full concentration is required for JV Project**

   In times JV participants need to focus on the product of the joint venture and **the individual businesses suffer in the process.**

   For example-Company A requires technological assets thus in joint venture company B avails the facility. In the same time, if the company B requires those technical assets then he has to postpone the individual project for the time being.

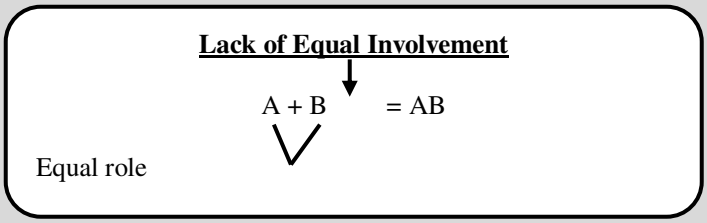
Quick Recap



2. **Lack of equal involvement**

   An equal involvement from all the Joint Venture partners may not be possible. It is extremely **unlikely** for all the companies working together **to share the same involvement and responsibilities**.

Quick Recap



3. **Cultural Differences**

   Different cultures and management styles **may result in poor co-operation and integration**. People with different beliefs, tastes, and preferences can get in the way big time if left unchecked.

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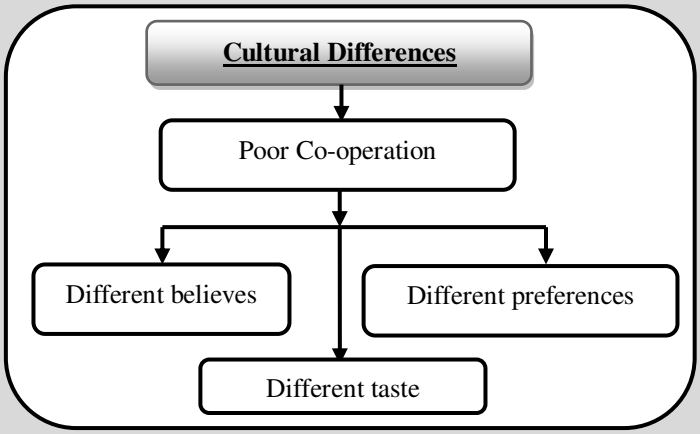
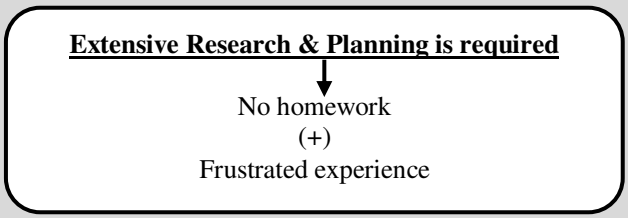


4. **Extensive Research and planning required**

Joint venture can result in a **frustrating experience and ultimately a failure** if it lacks adequate planning and research.

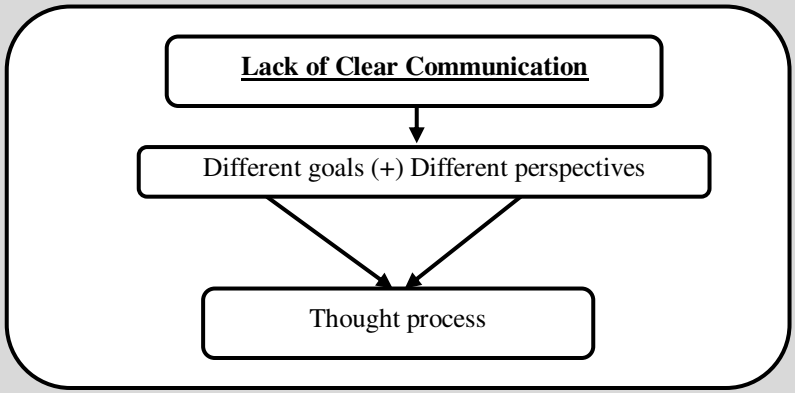
Quick Recap



5. **Lack of clear communication**

Joint venture involves **different companies from different horizons with different goals**, there is often a severe lack of communication between partners. **(Tata can never form a JV with Reliance due to difference in their respective ideologies.)**

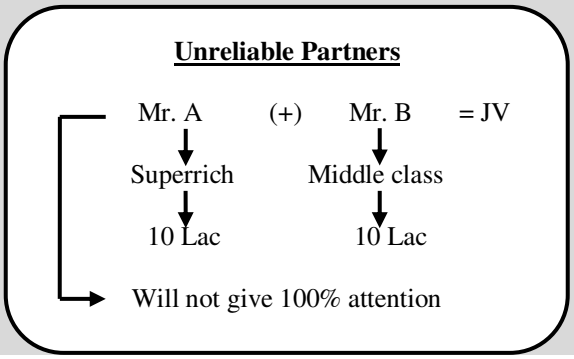
Quick Recap



6. **Unreliable partners**

Because of the separate nature of a joint venture, it is possible that the **partners do not devote 100% of their attention to the project and become unreliable.**

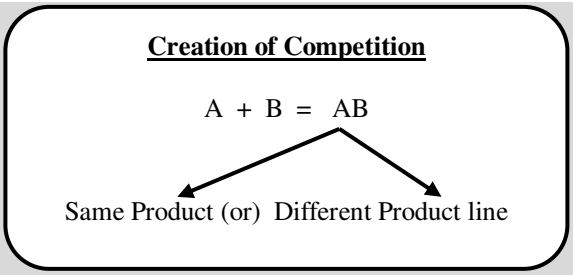
Quick Recap



7. **Creation of competitor**

Another potential disadvantage of a JV is the possibility of the creation of a competitor or a potential competitor in the form of one's own joint venture partner. **(Suzuki created its own competitor by forming Maruti Suzuki).**

Quick Recap



3. Stages and Documents for Joint Ventures

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

1. **MOU at Familiarization Stage**

   The first may be called the Familiarization Stage when the two partners generally attempt to know each other. Generally speaking, Indian companies wish to have a Memorandum of Understanding (MOU) to define the relationship at the initial stage. The MOU is a brief document without **much legal jargon**. The MOU states the **duties of both parties and lays down a road map for the future.**

2. **Contractual Joint Venture at Engagement Phase**

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

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

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

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

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

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

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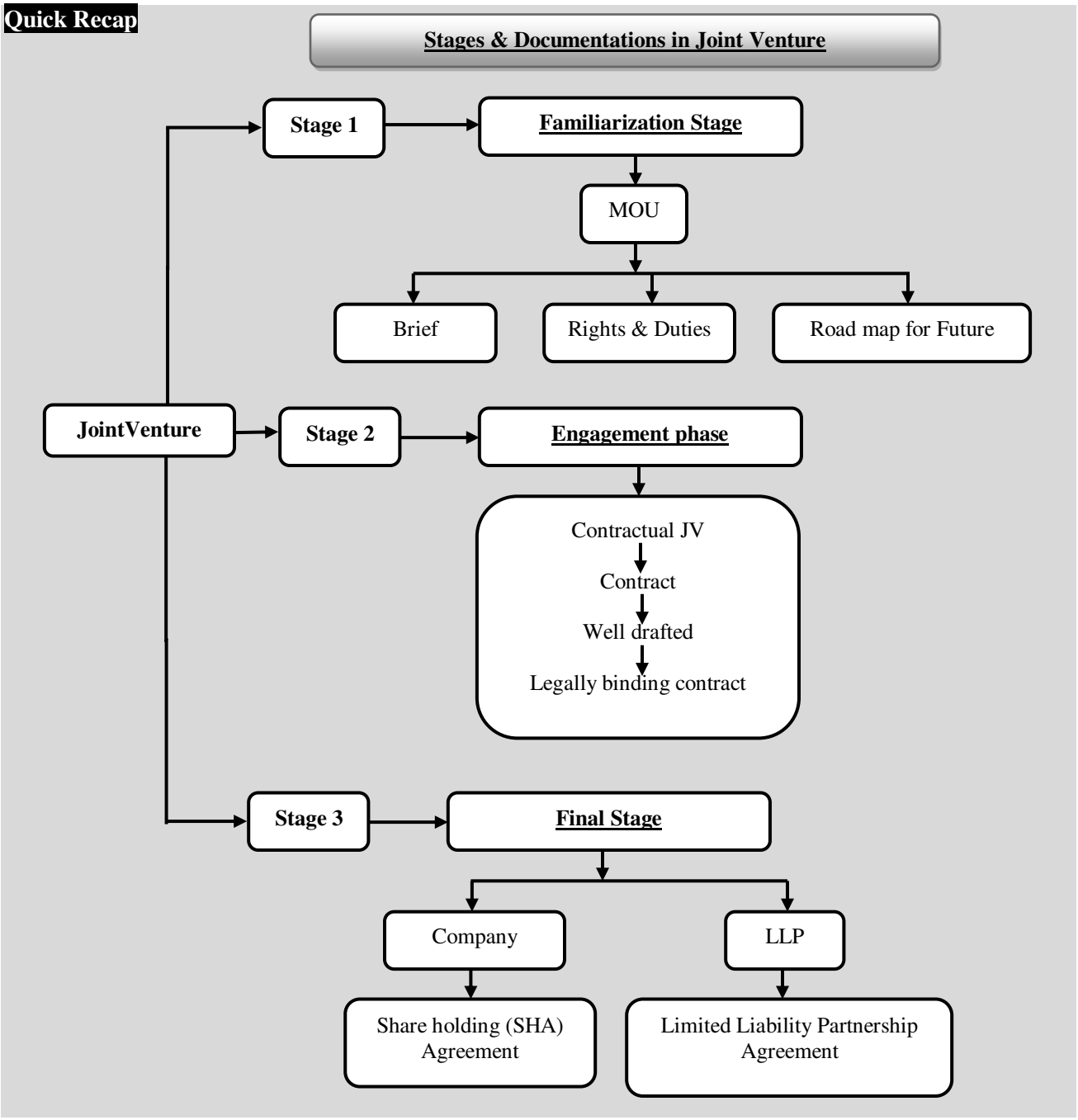
Quick Recap



4. Factors to be considered while drafting JVA or SHA or LLPA

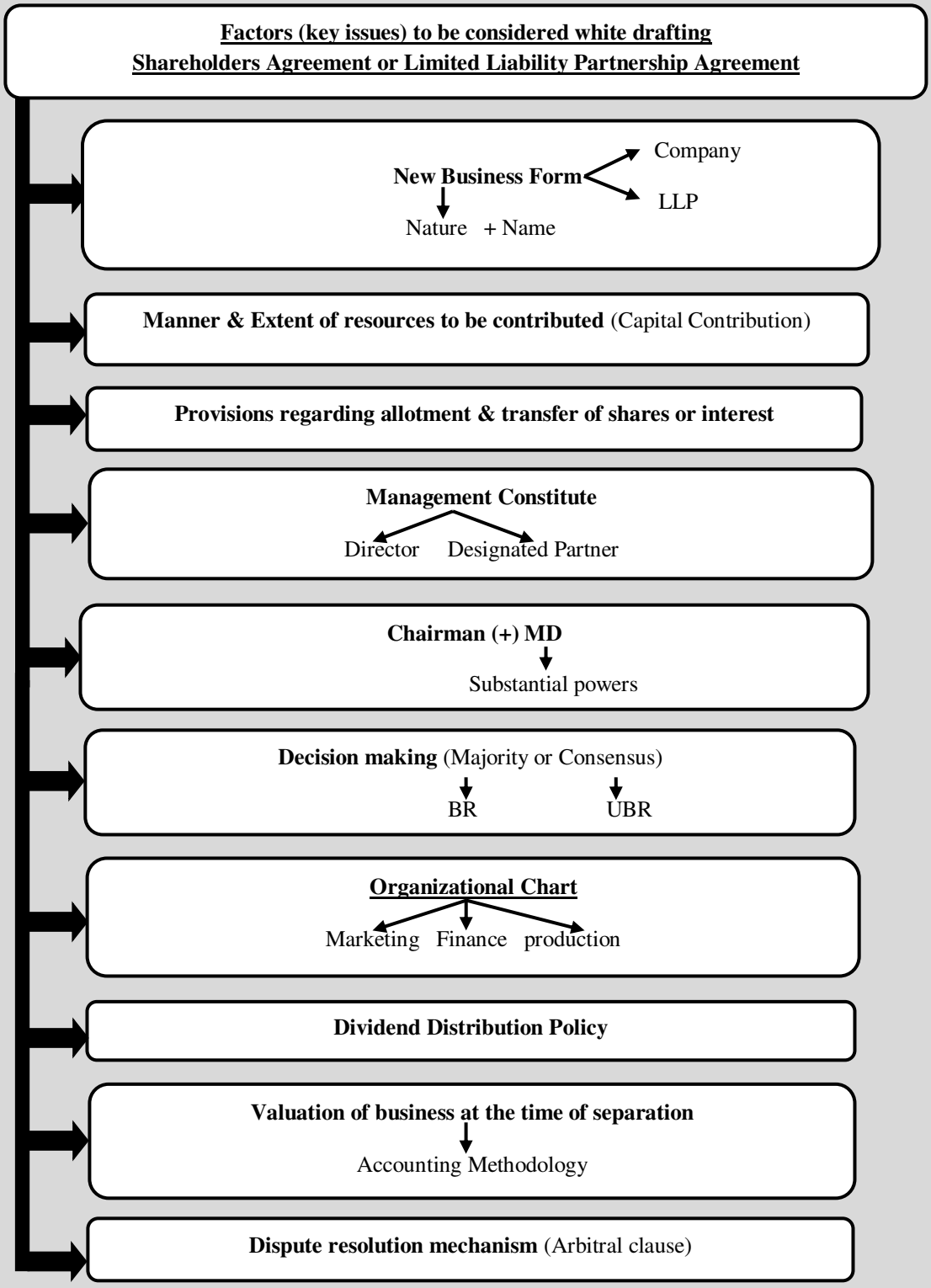
The SHA or LLPA is not a document for the government or the courts. It is a working document and should be drafted with business essentials in focus.

Some of the key issues which must be kept in mind while drafting the SHA or LLPA are summarized below:

1. The **business** of the new company or LLP.
2. Manner and extent to which **resources** (Financial, manpower, technology, etc.) will be brought in.
3. Provisions relating to **allotment and transfer** of shares.
4. Constitution of the **Board of Directors or Designated Partners.**
5. Manner in which **decision making** will take place whether majority vote or consensus building.
6. Rights, duties and responsibilities of **Chairman and MD.**

7. **Fixation of responsibility** for managing finances, marketing, production, etc.
8. Dividend Distribution Policy(**Mandatory for Top 500 Listed companies by SEBI)**
9. **Term of office** of the directors, the manner of their appointment and changes among them.
10. **Valuation methodology** of the company at the time of separation.
11. **Dispute resolution mechanism.**

Quick Recap



5. 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:

1. **Non- Operative Part**
   - Description of the nature of the Agreement
   - Date of Execution
   - Place of Execution
   - Full description of Parties to the Agreement
   - Recitals i.e. the clear intention of the parties
2. **Operative Part**
   - Name and constitution of the new entity being set up
   - Equity investments
   - Rules relating to loans by either party
   - Activities to be undertaken, role of each party
   - Constitution of the Board
   - Names of the Chairman and Managing Director and their powers, duties, etc.
   - Matters to be decided by consensus
   - Managerial remuneration
   - Milestones to be reached and plan of action

   Legal aspects in Operative Part
   - Amendments of the JV Agreement
   - Duration of the JV
   - Termination
   - Dispute resolution by amicable consultation or Arbitration mechanism or Alternate form of Dispute Resolution
   - Confidentiality and Non-Disclosure Agreement
   - Non- compete clause
   - Indemnification
   - Procedure for execution
3. **Formal Part**
   - Signature of parties
   - Attestation by witnesses

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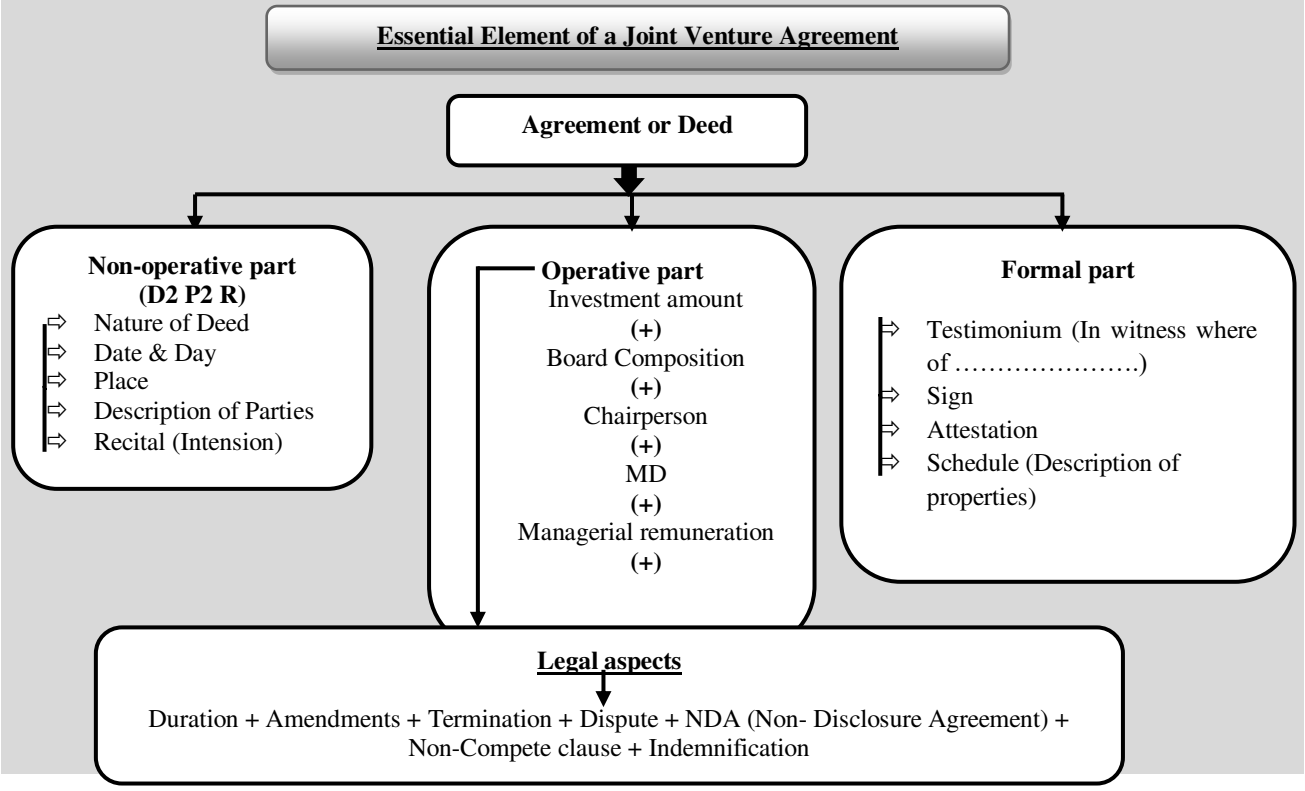
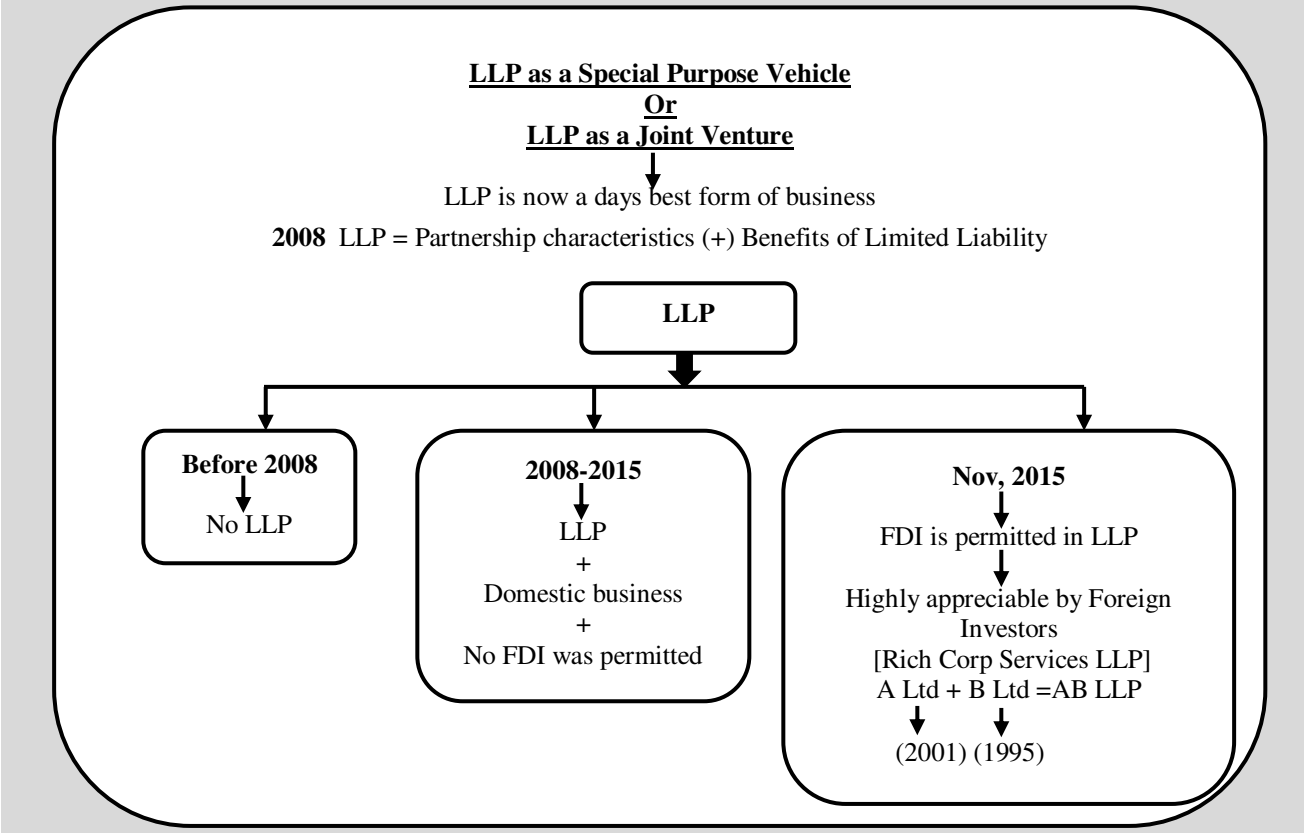


6. LLP Firm as a Joint Venture or Special Purpose Vehicle

- A Limited Liability Partnership (LLP) Firm **combines the simplicity of a partnership firm with the advantage of limited liability as available in the case of a company.**
- **Before the passing of The Limited Liability Partnership Act in 2008,** a **foreign company** intending to participate in tender or some other project in consortium with an Indian company **had only the option of setting up a company** (whether private or public) as a Special Purpose Vehicle (SPV). The disadvantage was that winding up such a company is difficult.
- **Foreign companies are not permitted to invest in partnership firms.**
- Moreover, consortium members do not want to be saddled (burdened) with **unlimited liability** as is the case in a partnership firm under **The Indian Partnership Act, 1932.**
- **Till November 2015, foreign companies were not allowed to invest in any form of structure except a company but in Nov 2015, Foreign Partners were permitted to enter into JVs in India in the form of LLP.**
- 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.

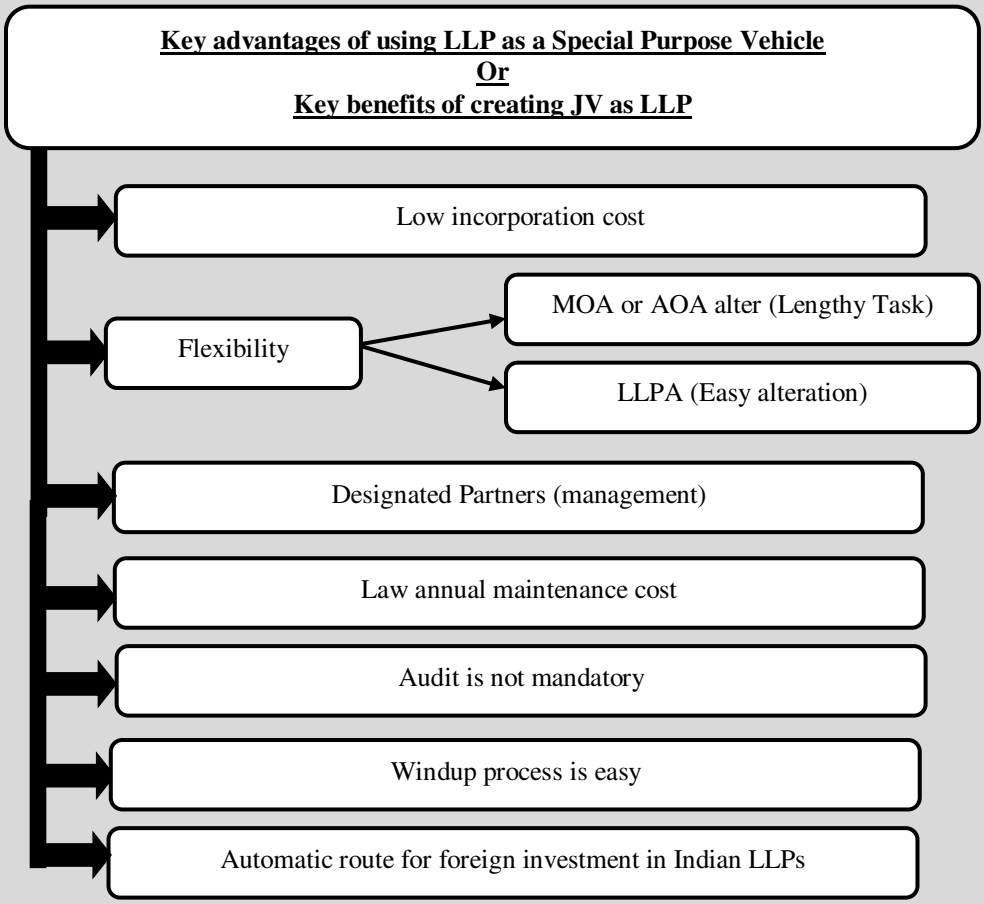
Quick Recap



Key advantages of using an LLP firm as an SPV as compared to a company are as follows

1. **Low cost of incorporation** of an LLP.
2. **Flexibility of rules** of management and governance based on Agreement between the contracting Partners (Easy Alteration of LLPA).
3. Partners can be companies while management is by Designated Partners who are individuals. By this, there is **separation between ownership and management.**
4. **Low annual maintenance cost (Minimal Filing Requirements).**
5. There may **not be any necessity of getting the accounts audited** before the project takes off.
6. 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.
7. **Voluntary winding** of an LLP firm which has no creditors is very easy and can be done **without intervention of any court or tribunal.**
8. **Investment in LLP Firms is permitted in sectors in which 100% FDI** is permitted through **automatic route** without any performance linked conditions.

Quick Recap



7. Strategies of Joint Venture

Following are the strategies for forming a successful Jointing Venture

Strategies of Joint Venture

1. Identification of prospective JV partners
2. Reliable partners
3. Strong JV relationship
4. Equal contribution
5. Written agreement
6. Limiting scope of JV
7. Defined Business model
8. Flexibility
9. Exit routes

1. Identification of prospective Joint Venture Partner

The prospective partner should be strong in terms of business, technology and resources. One partner must be able to **compliment the other partner specially in those areas where it lacks.**

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

2. Reliable Partners

Joint Venture with **weak or untrustworthy partners** would definitely **lead to failure**, however, JV with **strong and trustworthy partner** would generate **enormous benefits** for both the partners and Joint Venture entity.

3. Development of Strong Joint Venture Relationship

Partners must strive to develop joint venture relationships that are **easy to maintain, financially profitable, intellectually rewarding, and long- lasting**.

4. Equal Contribution

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

5. Written Agreement

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

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,** once the trust amongst the partners is developed, **the scope** of Joint Venture **can be increased** with the **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

- The proposition to the customer
- The channels and relationship management
- The value chain
- The structure and roles
- Investments
- Income, costs and payments
- Success factors
- The timetable for delivery.

A well-defined business model provides a base for the legal and financial frameworks.

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 winding the relation if it fails to meet the expectations or in case there arises any dispute.

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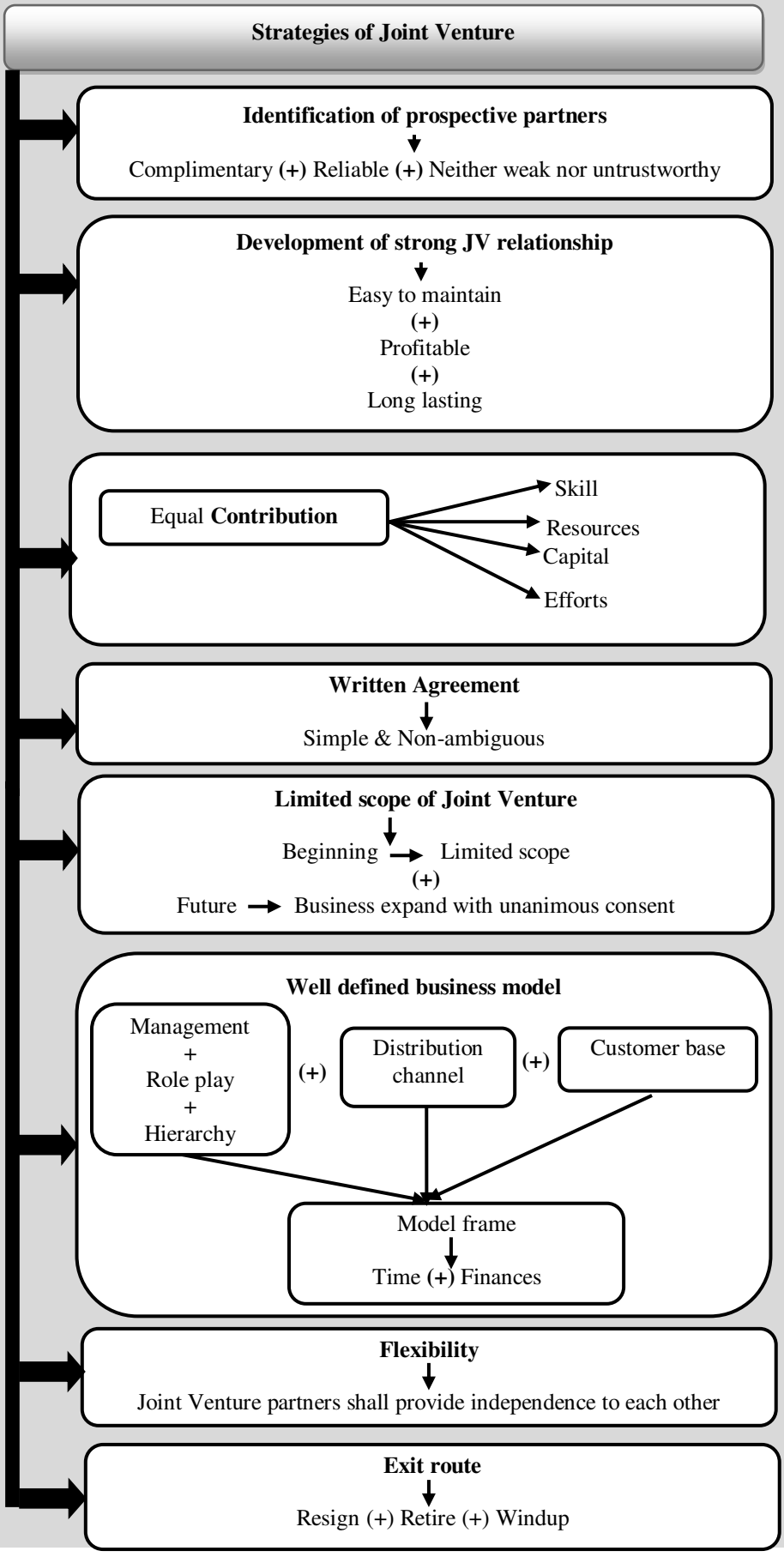
Quick Recap

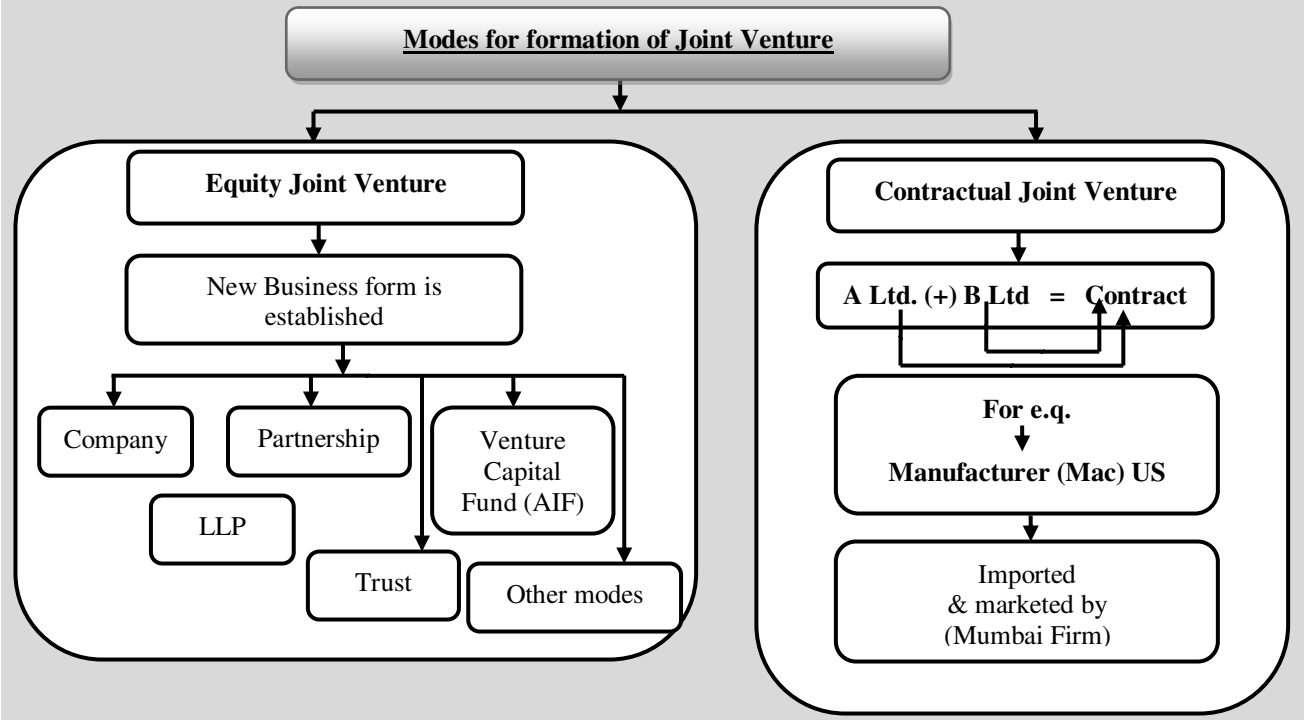

Strategies of Joint Venture
Identification of prospective partners
Complimentary (+) Reliable (+) Neither weak nor untrustworthy
Development of strong JV relationship
Easy to maintain
(+)
Profitable
(+)
Long lasting
Equal Contribution
Skill
Resources
Capital
Efforts
Written Agreement
Simple & Non-ambiguous
Limited scope of Joint Venture
Beginning
Limited scope
(+)
Future
Business expand with unanimous consent
Well defined business model
Management
+
Role play
+
Hierarchy
(+)
Distribution channel
(+)
Customer base
Model frame
Time (+) Finances
Flexibility
Joint Venture partners shall provide independence to each other
Exit route
Resign (+) Retire (+) Windup

8. Formation of Joint Ventures

Joint Ventures can be formed via two modes/methods:

- Equity Joint Venture
- Contractual Joint Venture

Quick Recap



Equity Joint Venture

The equity joint venture is an arrangement whereby a **separate legal entity** is created in accordance with the **agreement of two or more parties.**

The parties undertake to **provide money or other resources** as their contribution to the assets or other capital of that legal entity. The entity is generally established as a limited liability company and is distinct from either of the parties which participate in its creation.

The newly created company, thus, becomes the owner of the resources contributed by the parties to the joint venture arrangement. Each of the parties in turn **becomes the owner** of the company having equity in the company.

The parties to a joint venture agreement agree on purposes and functions of the newly created entity, the proportion of capital contribution by each party and the share of each party in the profits of the company and on other matters such as its management, operation, duration and termination.

Generally speaking in an equity based joint venture, the profits and losses of the jointly owned entity are distributed among the parties according to the ratio of the capital contributions made by them. However, the division of profits and losses is not the only characteristic of an equity-based joint venture.

Quick Recap

Equity Joint Venture is an arrangement

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Where by a separate legal entity is created by two or more parties

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To contribute money & other resources

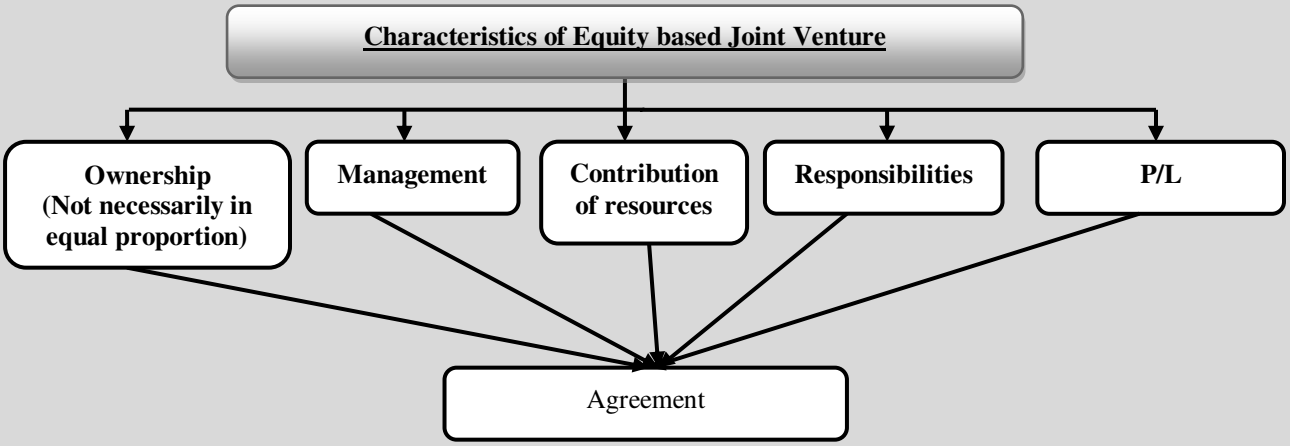
↓

To receive the ownership of the newly formed business

The key characteristics of equity-based joint ventures are as following:

- There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity.
- Shared Ownership by the parties involved.
- Shared management of the jointly owned entity.
- Shared responsibilities regarding capital investment and other financing arrangements.
- Shared profits and losses according to the Agreement.

Quick Recap

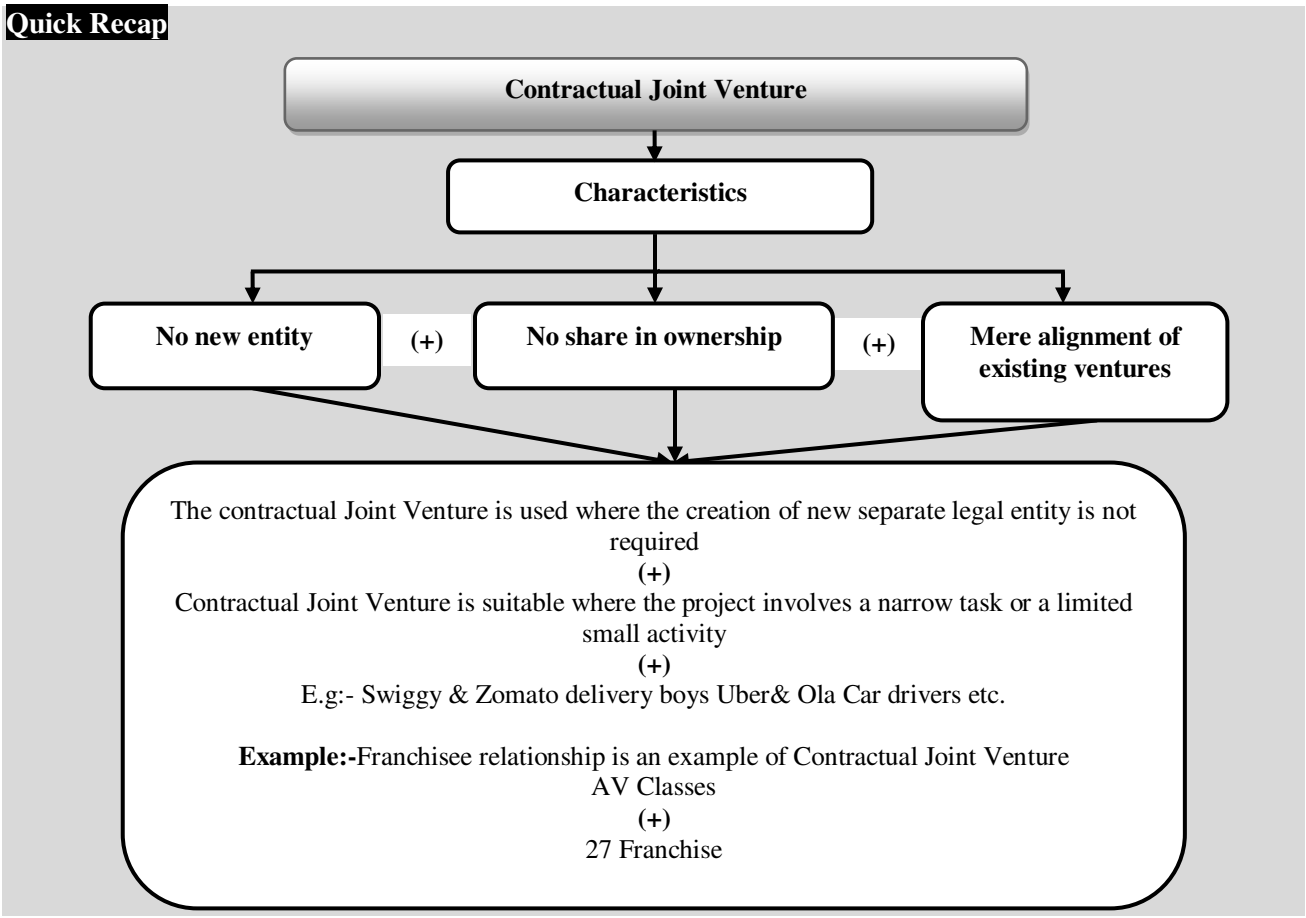


Contractual Joint Venture

The contractual joint venture might be used where the establishment of a separate legal entity is not needed or the creation of such a **separate legal entity is not feasible** in view of one or the other reasons. The two **parties do not share ownership** of the business entity but each of the two parties exercises some elements of control in the joint venture.

The contractual joint venture agreement can be entered into in situations where the **project involves a narrow task or a limited activity** or is for **a limited term** or where the laws of the **host country do not permit the ownership of property by foreign citizens.**

Quick Recap



Franchisee as a Contractual JV

An example of a contractual joint venture is a franchisee relationship.

The key characteristics of such a relationship are:

- Two or more parties have a **common intention** of running a business venture.
- Each party will bring **some inputs** in the form of money or materials.
- Both parties exercise some a **certain degree of control** on the venture.
- The relationship is not a transaction to transaction relationship but has a character of relatively **longer time duration.**

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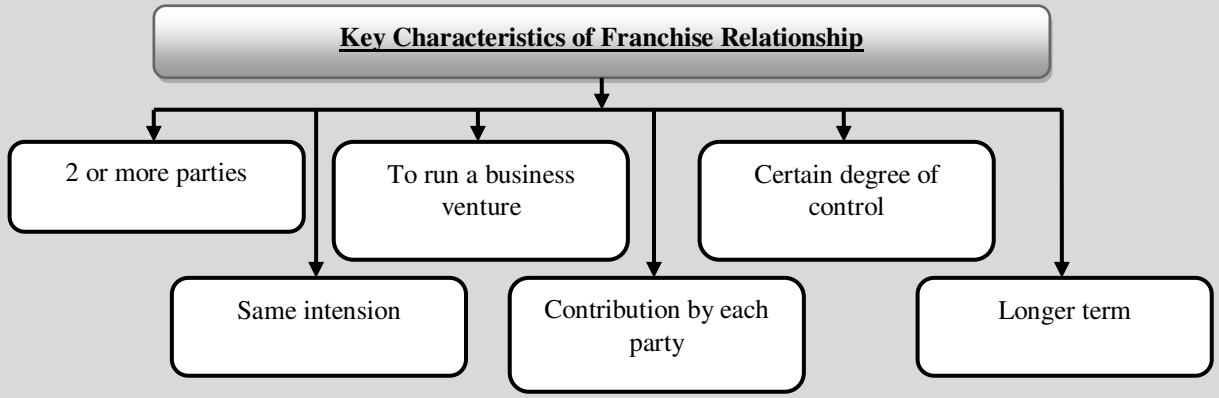
Quick Recap



9. Restrictions under FDI Policy of Government of India

Generally speaking, any **non-resident entity can set up an equity based joint venture in India**. However, some entities face restrictions under FDI Policy of Government of India. The restrictions are as follows:

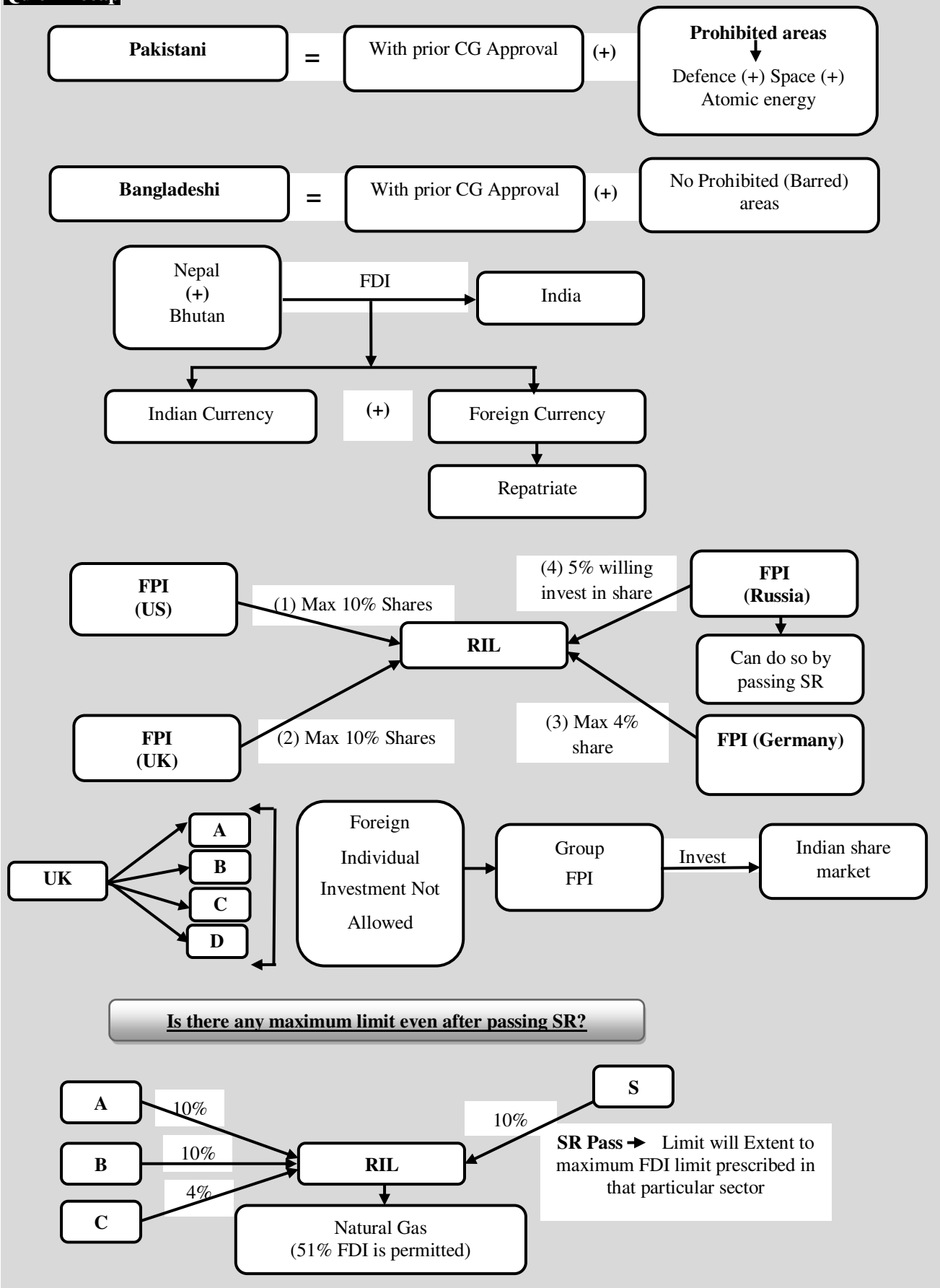
1. **Citizen or entity of Pakistan can invest only after approval of Government of India.** They cannot invest in defence, space, atomic energy and sectors prohibited for foreign investment.
2. **Citizen or entity of Bangladesh can invest only after approval of Government of India**. However, there are no barred areas as in the case of entities from Pakistan.
3. **NRI residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan can invest on repatriation basis** subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.
4. A **Foreign Portfolio Investor (FPI)** can invest only under the Portfolio Investment Scheme which limits the **individual holding of an FII to 10%** of the capital of the company and the **aggregate limit for FPI investment to 24%** of the capital of the company.

   This **aggregate limit of 24% can be increased** to the sectoral cap or statutory ceiling, as applicable, by the Indian Company concerned through a **resolution by its Board of Directors followed by a special resolution** to that effect by its General Body and subject to prior intimation to Reserve Bank of India. The aggregate FPI investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.
5. **A Foreign Venture Capital Investor (FVCI) duly registered in India may contribute up to 100% of the capital of an Indian Company under the automatic route** and may also set up a domestic asset management company to manage the fund. Such investments are subject to the relevant regulations and FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and other regulations.

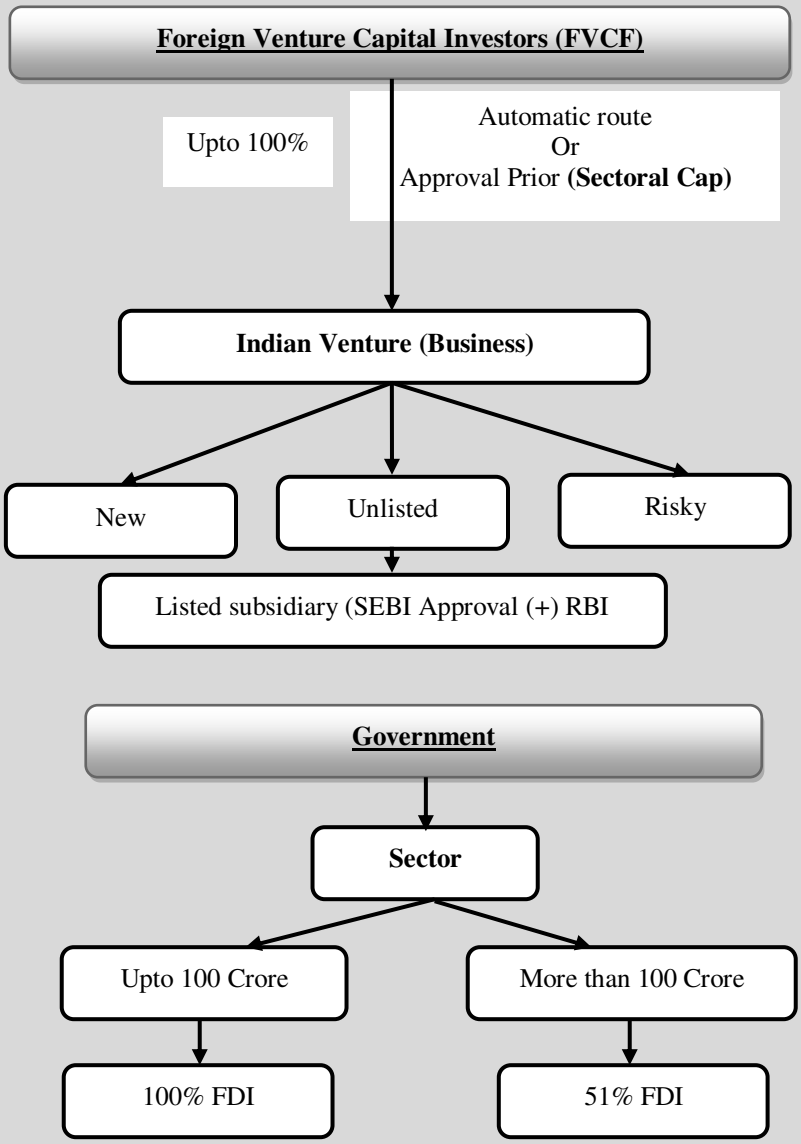
Every equity based joint venture gives birth to a new entity. Different types of entities are summed up below:

- **Company**
- **Limited Liability Partnership (LLP) Firm**
- **Venture Capital Fund**
- **Trusts**
- **Other Entities**

Quick Recap


Pakistani
=
With prior CG Approval
(+)
Prohibited areas
Defence (+) Space (+) Atomic energy
Bangladeshi
=
With prior CG Approval
(+)
No Prohibited (Barred) areas
Nepal (+) Bhutan
FDI
India
Indian Currency
(+)
Foreign Currency
Repatriate
FPI (US)
(1) Max 10% Shares
RIL
(4) 5% willing invest in share
FPI (Russia)
Can do so by passing SR
FPI (UK)
(2) Max 10% Shares
(3) Max 4% share
FPI (Germany)
UK
A
B
C
D
Foreign Individual Investment Not Allowed
Group FPI
Invest
Indian share market
Is there any maximum limit even after passing SR?
A
B
C
10%
10%
4%
RIL
S
10%
SR Pass → Limit will Extent to maximum FDI limit prescribed in that particular sector
Natural Gas
(51% FDI is permitted)

Quick Recap



10. Meaning of Special Purpose Vehicle (SPV)

- A Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are formed for a **special purpose**.
- Scope of these kind of companies or entities are **limited only to those activities** which are required to be performed to attain that specific purpose.
- These entities **close their operations once the purpose is attained.**
- The operations of these entities are limited to the **acquisition and financing of specific assets**.
- SPVs are **generally a subsidiary company** whose obligations are secured even if the parent company goes bankrupt.
- A SPVs or SPEs may be **formed through limited partnerships, trusts, corporations, limited liability corporations or other entities.**
- An SPV or SPE may be designed for independent ownership, management and funding of a company or as **protection of a project from operational or insolvency issues.**
- **SPVs help companies securitize assets, create joint ventures, isolate corporate assets** or perform other financial transactions.

Quick Recap

Meaning of SPV

↓

Special Purpose Vehicle also know as special Purpose Entity are formed for a special purpose i.e., an entity is limited only to these activities & will shut down its operations once its objective has been accomplished.

Introduction to SPV

↓

SPV or SPE
(+)
Special Purpose
(+)
Limited Activities
(+)
Object Accomplished
(+)
Windup
(+)
Generally subsidiary company
(+)
Formed as company & LLP & trust
(+)
Protection from Insolvency

Conclusion - SPV is an entity which has distinct identity from its promoters or sponsors or constituents or shareholders.

For Example- Smart City Project

- Smart Cities Mission Project of the Ministry of Housing & Urban Affairs, Government of India at the City level will be done by a Special Purpose Vehicle (SPV) created for the purpose.
- The SPV will plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.
- Each smart city will have a SPV which will be headed by a full time CEO and have nominees of Central Government, State Government and ULB on its Board.
- The SPV will be a limited company incorporated under the Companies Act, 2013 at the city-level.

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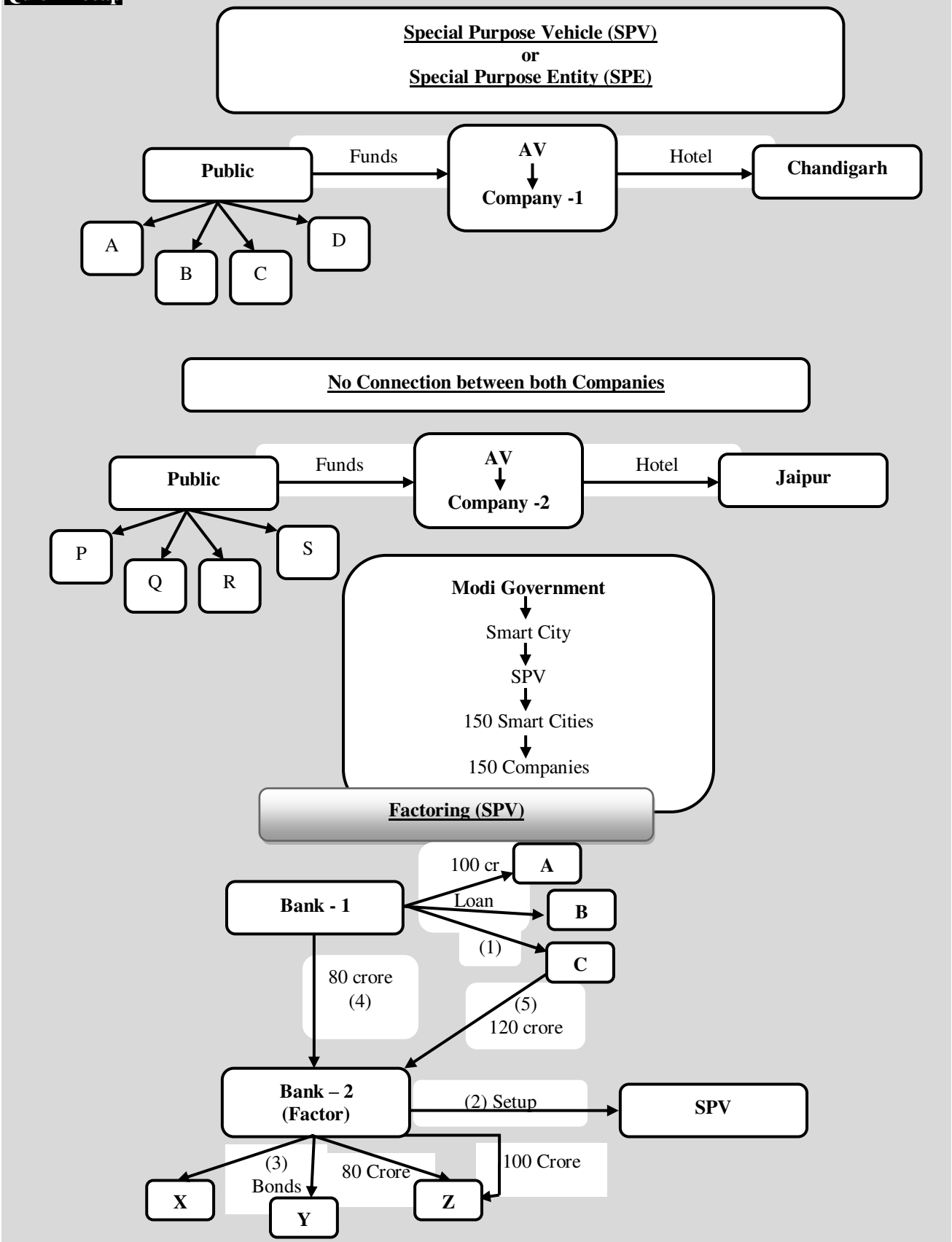
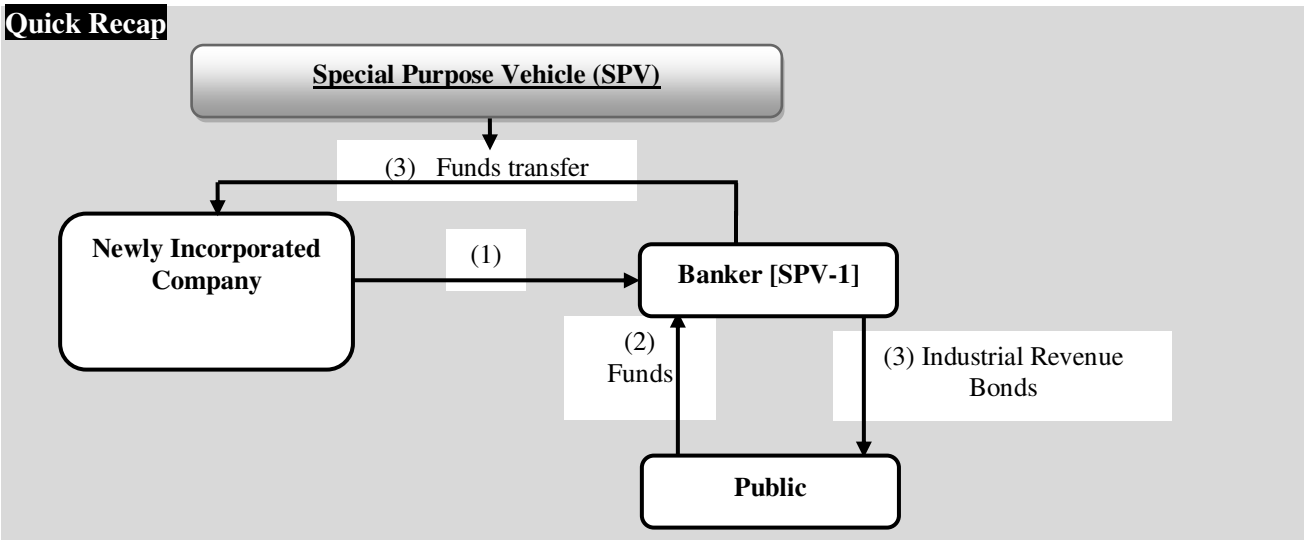
Quick Recap


Special Purpose Vehicle (SPV)
or
Special Purpose Entity (SPE)
Public
Funds
AV
Company -1
Hotel
Chandigarh
A
B
C
D
No Connection between both Companies
Public
Funds
AV
Company -2
Hotel
Jaipur
P
Q
R
S
Modi Government
Smart City
SPV
150 Smart Cities
150 Companies
Factoring (SPV)
100 cr
A
Bank - 1
Loan
B
(1)
C
80 crore
(4)
(5)
120 crore
Bank – 2
(Factor)
(2) Setup
SPV
(3)
Bonds
80 Crore
100 Crore
X
Y
Z

Quick Recap



How is an SPV established?

- SPV must have promoter(s) or sponsor(s), like a company
- Parent company creates SPV, to isolate or securitize assets in in a separate company that is often kept off the balance sheet.
- It may be created in order to undertake risky project, while protecting the parent company from the most risk if its failure.
- It is formed to keep distance from parent company, the performance of the new entity as spell not affect the parent company or original entity.
- SPV is formed generally as a subsidiary company.
- A good SPV should be able to stand on its feet, independent of the sponsoring company.
- Unfortunately, this does not happen in practice.
- SPV is created as a separate company with its own balance sheet.

SPV as preferred vehicle for funds raising by Infrastructure sector:

- The funds requirement for Infra structure sector are huge.
- There are different organisations, like the Infrastructure Development Finance Company (IDFC), Power Finance Corporation (PFC), Indian Rail Finance Corporation (IRFC) etc., which are engaged in raising funds for development of infrastructure sector projects for the sectors they are involved in.
- The proposed SPV, which is likely to be a government company, will add to the availability of long-term funds for infrastructure sector projects.
- The implementation of the Smart Cities Mission at the City level done by a Special Purpose Vehicle (SPV) created for the purpose.
- The SPV plan, appraise, approve, release funds, implement, manage, operate, monitor and evaluate the Smart City development projects.
- The execution of projects may be done through joint ventures, subsidiaries, Public-Private Partnership (PPP), turnkey contracts, etc.

11. Benefits of Special Purpose Vehicle

1. **Ownership of Assets**

   An SPV allows the **ownership of a single asset by multiple parties** and allows for ease of transfer between parties.

2. **Minimum Statutory Requirement**

   Depending on the choice of jurisdiction, it is relatively **cheap and easy** to set up an SPV.

3. **Clarity of documentation**

   It is easy to **limit certain activities or to prohibit unauthorised transactions** within the SPV documentation.

4. **Tax benefits**

   SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.

5. **Legal protection**

   The sponsor may limit legal liability in the event that the underlying project fails.

6. **Accounting Reasons**

   - Debts raised through SPV are not reflected in the balance sheet of the sponsor.
   - It reflects a pleasant picture and enhances the debt raising ability of the sponsor.
   - Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.

7. **Separation of the risk and capital between Sponsor Entity and its SPV**

   As a result, the **SPV and the sponsoring company are protected against risks like insolvency,** which may arise during the course of operation.

8. **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.**

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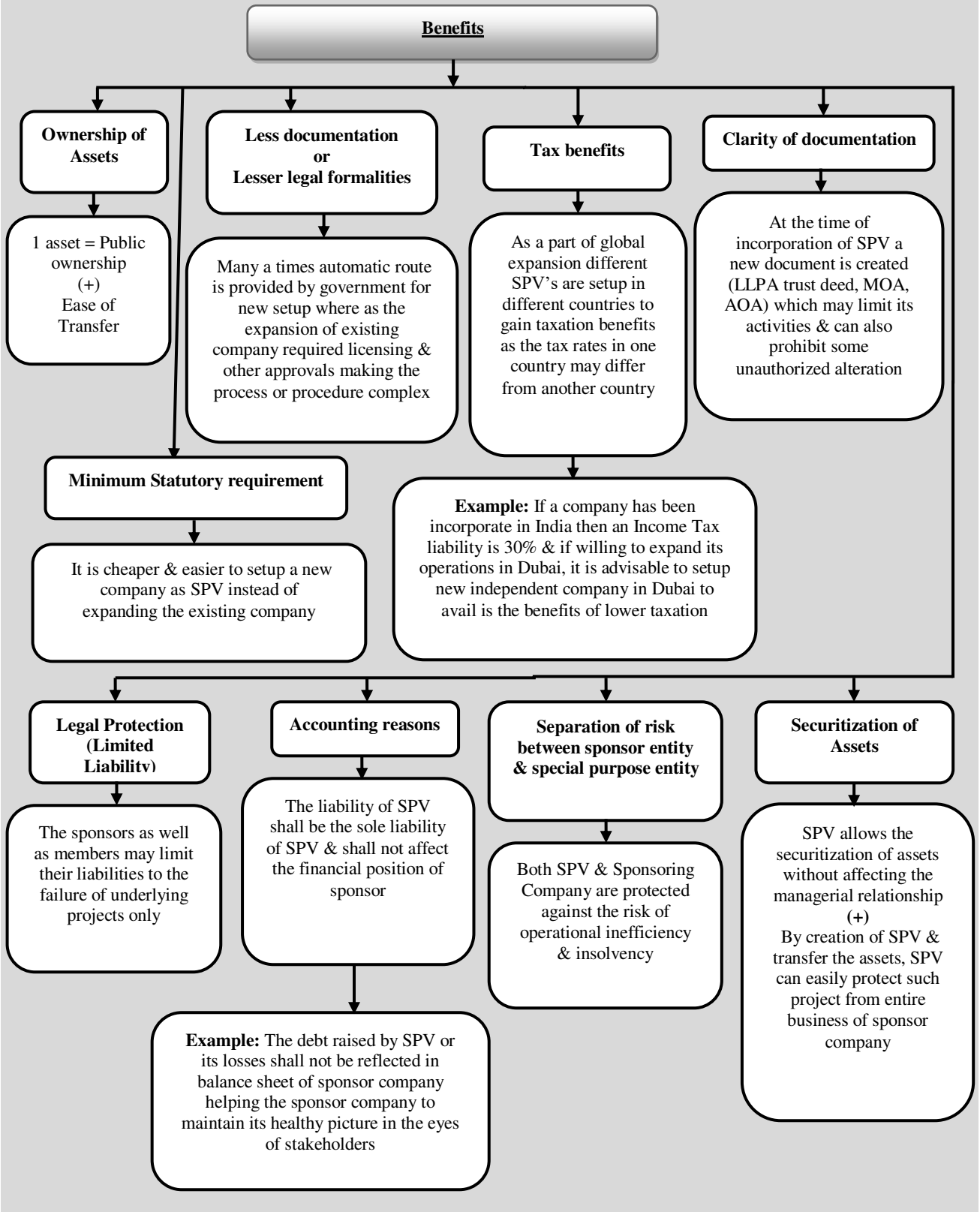
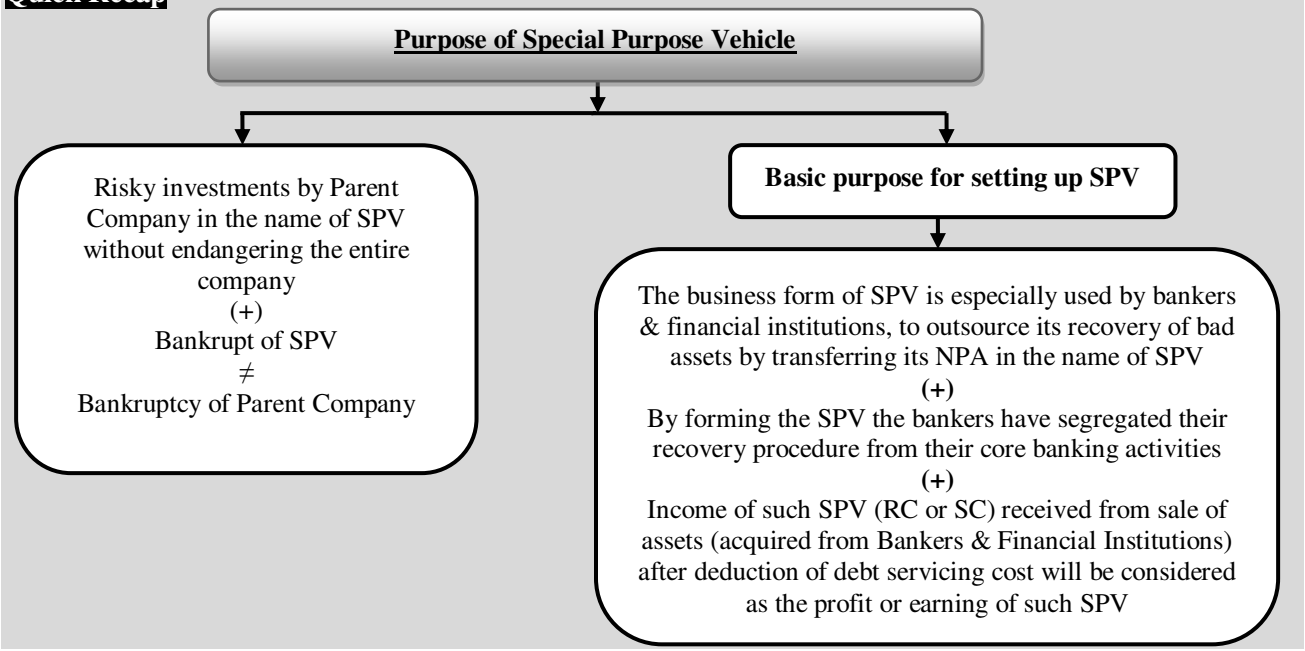
Quick Recap


Benefits
Ownership of Assets
1 asset = Public ownership (+) Ease of Transfer
Less documentation or Lesser legal formalities
Many a times automatic route is provided by government for new setup where as the expansion of existing company required licensing & other approvals making the process or procedure complex
Tax benefits
As a part of global expansion different SPV's are setup in different countries to gain taxation benefits as the tax rates in one country may differ from another country
Clarity of documentation
At the time of incorporation of SPV a new document is created (LLPA trust deed, MOA, AOA) which may limit its activities & can also prohibit some unauthorized alteration
Minimum Statutory requirement
It is cheaper & easier to setup a new company as SPV instead of expanding the existing company
Example: If a company has been incorporate in India then an Income Tax liability is 30% & if willing to expand its operations in Dubai, it is advisable to setup new independent company in Dubai to avail is the benefits of lower taxation
Legal Protection (Limited Liability)
The sponsors as well as members may limit their liabilities to the failure of underlying projects only
Accounting reasons
The liability of SPV shall be the sole liability of SPV & shall not affect the financial position of sponsor
Example: The debt raised by SPV or its losses shall not be reflected in balance sheet of sponsor company helping the sponsor company to maintain its healthy picture in the eyes of stakeholders
Separation of risk between sponsor entity & special purpose entity
Both SPV & Sponsoring Company are protected against the risk of operational inefficiency & insolvency
Securitization of Assets
SPV allows the securitization of assets without affecting the managerial relationship
(+)
By creation of SPV & transfer the assets, SPV can easily protect such project from entire business of sponsor company

12. Purpose of Special Purpose Vehicle

- The **main purpose** of a Special Purpose Vehicle is **to allow the parent company to make highly leveraged or speculative investments without endangering the entire company.**
- If the SPV goes bankrupt, it will not affect the parent company.
- SPVs are created by a parent company to implement large-scale projects and operations of an SPV are legally limited to specific assets.
- SPVS are also formed by banks and financial institution for Securitisation. The total assets of banks or financial institution mainly comprise of loans and receivables along with their future cash flow to a separate entity, which may be formed for a specific purpose. **The SPV is allowed to raise debt which will be backed by these receivables and their future cash flows.**
- The difference between the incomes received from these receivables and cost of servicing that debt will be profit or earning of the SPV.
- By securitization through SPV the risk involved in this activity is separated from the general business of the bank.

Quick Recap



Tax Benefit (Win – Win Strategy for both SPV and its Sponsor Company)

- 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.

Difference Between a SPV and a Company

Special Purpose vehicle	Company
SPV is special purpose vehicle	Company is a general purpose vehicle
SPV are mostly formed to raise funds from market, it is formed for any lawful purpose.	Company may do many things which are mentioned in MOA or permitted by Companies Act, 2013

Special Purpose vehicle	**Company**
SPV is generally formed as subsidiary company, however, can be formed as partnership, LLP, Trust.	Company can be formed in any form either as public company, private company, OPC or as LLP.
SPV is an artificial company, like company	Company is also an artificial person
SPV is formed to accomplish object, i.e., for short period, after accomplishing goal company may be wound up.	Company has perpetual succession
The MOA of the SPV is narrow	The MOA of the company is wide.
SPV's scope of operation is limited and focused.	Company's scope of operation is not limited, but within it's MOA.
SPV can sue other company and can be sued by other company.	Company can sue and can be sued by other company.
SPV is formed to perform limited activities	Company is formed to perform as per its object clause.

Chapter - 10
Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary byForeign Company

Regulatory Framework

- The Companies Act, 2013 and Rules made thereunder
- Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016

Introduction

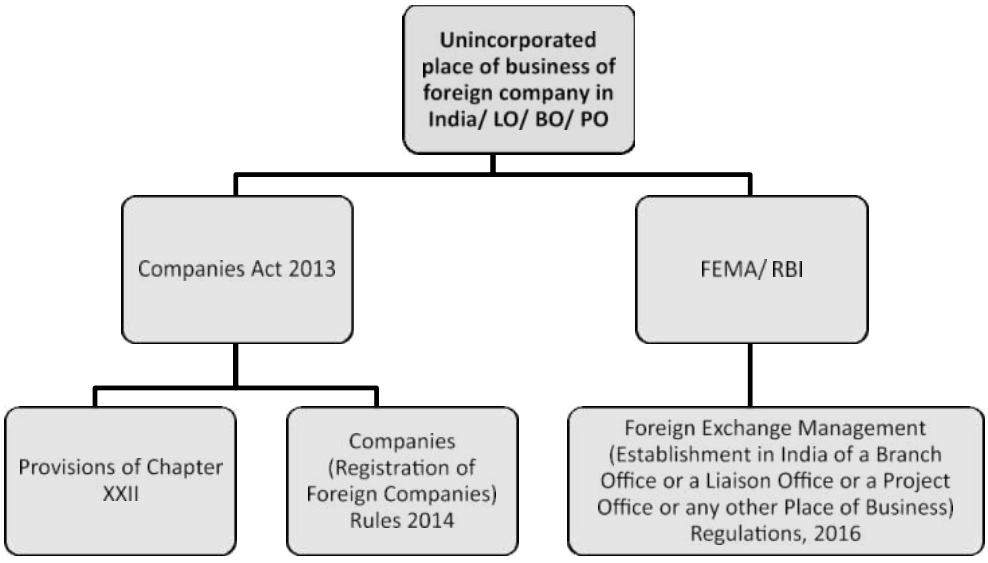
With India possessing vast natural and human resources and being among the fastest-growing economies in the world with a large market, it provides immense opportunities for foreign companies to grow and diversify their business. Therefore, there is a lot of interest among foreign companies and foreign nationals to open a wholly owned subsidiary, branch, liaison or project office in India or start a business in India.

Foreign company can also open an office in India without starting necessarily as a subsidiary company or associate company. There are basically three ways for a foreign company to conduct business/activities in India without starting a subsidiary company in India. Branch Office / Liaison Office allow for long-term functioning of a foreign company's office in India with approval from the Reserve Bank of India, while project offices can be started under General approval of the Reserve Bank of India if certain criteria are fulfilled.

There are mainly two types of entry strategy for foreign businesses in India, registration of a company or establishing a branch, liaison and project office:

- **Incorporation of a private limited company:** It is the easiest and fastest type of India entry strategy for foreign nationals and foreign companies. Foreign direct investment of upto 100% into a private limited company or limited company is under the automatic route, wherein no Central Government permissionis 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 andforeign 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 Indiaand are regulated by the Companies Act as well under FEMA.



Important Terms

As per Section 2(42) of the Companies Act, 2013, "Foreign Company" means any company or body corporateincorporated outside India which–

(a) has a place of business in India whether by itself or through an agent, physically or through electronicmode; and
(b) conducts any business activity in India in any other manner.

s per Section 2(87) of the Companies Act, 2013, Subsidiary Company or Subsidiary, in relation to any othercompany (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Directors; or
(ii) exercises or controls more than one-half of the 19[total voting power] either at its own or together withone or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers ofsubsidiaries 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 appointor 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 officeor a project office or any other place of business) Regulations, 2016, Branch Office, Liaison Office or Project Office are defined as follows:

- 'Branch Office' in relation to a company, means any establishment described as such by the

company.

- 'Liaison Office' means a place of business to act as a channel of communication between the principalplace of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.
- 'Project Office' means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Sections 379 to 393A under Chapter XXII of the Companies Act, 2013 ('Act') deal with Companies IncorporatedOutside India.

Section 379 of the Act provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference of a foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act, as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India.

Section 380 of the Act lays down that every foreign company which establishes a place of business in India must,within 30 days of the establishment of such place of business, file with the Registrar of Companies for registration:

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrumentconstituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
(b) the full address of the registered or principal office of the company;
(c) a list of the directors and secretary of the company containing such particulars as prescribed;
(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required tobe 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 everbeen 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 beaccompanied by list of place of business established by the foreign company in India. Sections 380 to 386 (both inclusive) and sections 392 and 393 of the Act shall apply to all foreign companies.

Section 376 of the Act provides further that when a foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company underSections 375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

As regards the applicability of the provisions of the Act to foreign companies, the following provisions of section384 are to be noted:

(i) The provisions of section 71 relating to Debentures shall apply *mutatis mutandis* to a foreign company.

(ii) The provisions of Section 92 regarding (filing of annual returns) and Section 135 (Corporate Social Responsibility) shall, subject to such exceptions, modifications or adaptations as may be made therein by the rules made under the Act, apply to a foreign company as they apply to a company incorporatedin India.

(iii) The provisions of Section 128 relating to the (to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India), Section 209A (inspection of accounts), Section 233A (Special audit), Section 233B (audit of cost accounts), Section 234-246 (investigations), so far as may be, apply only to the Indian business of a foreign company having an established place of business in India as they apply to a company incorporated inIndia.

(iv) The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.

(v) The provisions of Chapter XIV (Inspection, Inquiry and Investigation) shall apply mutatis mutandis to theIndian business of a foreign company as they apply to a company incorporated in India.

As per Section 386(c) of the Act, having a share transfer office or registration office will constitute a placeof business. In *Tovarishestvo Manufacture Liudvig Rabenek, Re* [1944] 2 All ER 556 it was held that where representatives of a company incorporated outside the country frequently stayed in a hotel in England for looking after matter of business, it was held that the company had a place of business in England.

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

Provisions pertaining to name

As per Rule 8 of the Companies (Incorporation) Rules, 2014 ("hereinafter referred to as the Rules") states thatif 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 otherwiseavailable.

Provided further that provisions of Rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India.

The name shall be considered undesirable, if-

- The proposed name implies association or connection with an embassy or consulate of a foreign government.
- The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations

with such foreign country like memorandum of understanding with a company of such country.

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shallbe incorporated using the name of an enemy country.

Establishment Of Branch Office (Bo)/ Liaison Office (Lo)/ Project Office (Po) In India

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time.

Branch Office

A branch office is a suitable business model for foreign companies looking to establish a temporary presence in India. The branch office serves as an extension of the head office business and carries on the same businessand activity as that of its parent company.

Branch office in relation to a company, means any establishment described as such by the company. These BOs represent the parent company and usually undertake the same activities as the latter. The profits from these are easily remittable from India, subject to the taxes applicable.

Eligibility for setting up a Branch Office

- The applicant company must be a body corporate incorporated outside India;
- The name of the Indian branch office must be the same as the parent company (if the branch office doesnot have revenue from India operations, its expenses must be met by the head office);
- The net worth of the branch office must not be less than US $100,000; and
- The parent company should have a profit making record in the immediately preceding five financialyears 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 activityis done in a special economic zone (SEZ) with the purpose of exporting products out of India. It may also sub-contract such activity to an Indian manufacturer.
Furthermore, following activities are permitted for a branch office in India of a person resident outside India:

1. Export/import of goods.
2. Rendering professional or consultancy services.
3. Carrying out research work in which the parent company is engaged.
4. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
5. Representing the parent company in India and acting as buying/ selling agent in India.
6. Rendering services in Information Technology and development of software in India.
7. Rendering technical support to the products supplied by parent/group companies.
8. Representing a foreign airline/shipping company.

A branch office is not allowed to undertake any Retail Trading Activities. Manufacturing or Processing activities,undertaken directly or indirectly, are also barred.

The RBI has given general permission to foreign companies to set up branch offices in Special Economic Zones(SEZs) subject to the following conditions:

1. such BOs are functioning in those sectors where 100 per cent FDI is permitted;
2. such BOs comply with Chapter XXII of the Companies Act, 2013;
3. such BOs function on a stand-alone basis.

Every Branch Office has to deliver documents as specified in Section 380 of the Companies Act, 2013 withinthirty days of its establishment to the Registrar.

Registration of a Branch Office in India

Foreign company must apply for approval from the Reserve Bank of India (RBI) under provisions of the ForeignExchange Management Act (FEMA), 1999 to open a branch office in India.
Foreign entities whose principal business falls under sectors where 100 per cent foreign direct investment (FDI)is permissible under the automatic route must complete the form FNC and submit it to the RBI, along with the associated documents.

For other sectors, the form must be submitted to the Ministry of Finance. In this case, the application for establishing branch office must be forwarded by the foreign entity through a designated AD Category – I bankto 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 necessaryfor each activity the branch office intends to undertake in India.
The procedures for registration requires a foreign company to deposit the following set of forms:

- FNC form duly signed by AR;
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration;
- The incorporation documents of the branch office to be established in India;
- Proof of registered office;
- Note on location or proposed activity;
- The latest audited balance sheet of the applicant entity;
- Board resolution to open a branch office;
- KYC of the authorized signatory; and
- Information about the local representatives of the parent company in the branch office.

Funding of the BO by the Foreign Company

(a) Equity Share Capital: in the usual way Indian companies are financed.
(b) Preferred Share Capital: such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).
(c) Debentures and Borrowings: there can be redeemable, convertible or non-convertible. Companies can issue debentures, bonds and other debt securities. These also, when convertible into equity shares, aretreated as FDI.

Liaison Office

Liaison Office means a place of business to act as a channel of communication between the principal place ofbusiness or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out

of inward remittances received from abroad through normal banking channel.

Eligibility for setting up a Liaison office

- The applicant company must be a body corporate incorporated outside India;
- The name of the Indian branch office must be the same as the parent company (if the branch office doesnot have revenue from India operations, its expenses must be met by the head office);
- The net worth of the liaison office must not be less than US $ 50,000; and
- The parent company should have a profit making record in the immediately preceding three financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

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

The Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed inthe case of the Bar Council of India vs. A. K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India.

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyersor any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category – I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of theAdvocates Act comes to their notice

Extension of the validity period for Liaison Office

1. A person resident outside India may establish a liaison office for a period of three years.
2. The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a period of three years fromthe date of expiry of the original approval / extension granted, subject to such directions issued by theReserve Bank in this regard.
3. The application for extension of the validity period of the liaison office of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Regulation (DBR), Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively.
4. Entities engaged in construction and development sectors and which are Non-Banking Finance Companies are permitted to open a Liaison Office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance

Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted intoa Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

	Branch Office	***Liaison Office***
Track Record	A profit making track record during the immediately Five Financial years in the homecountry	A profit making track record during the immediately Three Financial years in the home country
Net Worth	Not less than USD 100,000 or its equivalent.	Not less than USD 50,000 or its equivalent.
Permissible Activities	▪ Export & Import of goods – only on wholesale basis. ▪ Rendering professional or consultancyservices. ▪ 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 aproject 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, acontract to execute a project in India, and

1. the project is funded directly by inward remittance from abroad; or
2. the project is funded by a bilateral or multilateral International Financing Agency; or
3. the project has been cleared by an appropriate authority; or
4. 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 Governmentauthority/ Public Sector Undertaking may open a bank account with an Authorised Dealer Category-I bank without any prior approval from the Reserve Bank.

Cases in which RBI Approval is required for Setting up BO, PO and LO in India

- The applicant is a citizen of or is registered/incorporated in Pakistan;
- The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting;
- The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.

Master Direction - Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) in India by foreign entities

A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The process of setting up is an easy one with minimalcompliance requirements. The permission to set-up a BO has to be obtained by the RBI under the FEMA, 1999provisions. RBI provides guidelines to be followed for establishing a BO; the former also reserves the right to reject an application on the non-fulfilment of the same. The Applications are to be made in **form FNC** and are considered by the RBI under two routes determined by the degree of Foreign Direct Investment (FDI):

- **Reserve Bank Route**: If the principal business of the foreign company falls under sectors where 100%FDI is permissible under the automatic route, applications will be processed by RBI.
- **The Government Route**: If the principal business of the foreign parent company does not fall under the 100 sectors where 100% FDI is permissible under the automatic route or the application is from companies that are Non- Profit Organisations/ Non – Government Organisations / Government Bodies/ Departments, such applications will be considered by the RBI in consultation with the Ministry of Finance, Government of India.

Additionally, the RBI will also consider the following criteria while sanctioning the Liaison office/ Branch office of a parent company. The RBI has a few other considerations:

- ***Track Record***: For a BO a company will require a profit making track record in the in the immediately preceding five financial years in the home country.
- ***Net Worth***: "a total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement Certified by a Certified Public Accountant or any Registered Accounts Practitioner". The net worth has to be equal to or more than USD 100,000.

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-Ibank as per the guidelines given by Reserve Bank of India (RBI). If the principal business of the entity resident outside India falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000,as amended from time to time, and the entity seeks to open a BO/LO/PO, the AD Category-I bank may considersuch applications under the delegated powers.

An application from a foreign for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India and shall be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110 001 who shall process the applications in consultation with the Government of India, in the following cases:

- The applicant is a citizen of or is registered/incorporated in Pakistan;
- The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. However, prior approval of Reserve Bank of India shall not be required in cases where Government approval or license/permission by the concerned Ministry/ Regulator has already been granted. Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. The term "permission" usedin the Government of India Notification dated January 21, 2019 does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the above four sectors;
- The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government. However, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act and shall not seek permission under FEMA 22(R).

The application by the foreign company has to be made through a designated AD Category-I bank to the General Manager of the Foreign Exchange Department of RBI. Some prescribed documents have to be attached with the application. The RBI Master Circular of 2016 provides two of the documents that have to be attached:

1. English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
2. Latest Audited Balance Sheet of the applicant entity."

Even if applications do not satisfy the criteria if an agent files them on behalf of a parent company, that parentcompany ought to satisfy the criteria. The AD-I Category bank involved in the process will conduct due diligenceon the Applicant in the following areas- "background, antecedents of the promoter, nature and location of activity, sources of funds, etc.", along with compliance of the Know Your Customer (KYC) norms.

The BO hence, once approved by the RBI, will be allotted a Unique Identification Number (UIN). Once the offices have been set up, the BO must also obtain a Permanent Account Number (PAN) from the Income Tax Authorities. This should be reported in the Annual Activity Certificate (AAC) that the BO is required to present atthe end of each ear to show that the activities are undertaking in the permitted categories only.

Section 382 of the Companies Act, 2013, states that the company has to 'conspicuously' exhibit outside the office, the company's name and the specify country it was incorporated in. The name must be in English Language and in the local language of the area where the office is set-up. If the members of the company havelimited liability, then the same has to be specified with the name of the company outside

the office and also mentioned in all the broachers, prospectus and any other circulars generated by the company. The Act also provides for the registration of the prospectus of the company with the registrar before it circulates and spreadsany information about the issuance of securities by the company.

Procedure for Establishment of BO/LO/PO

Following steps are followed for establishing the Branch Office/ Liaison Office/ Project Office of ForeignCompany:

1. **Submission of Form FNC**: The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC to a designated AD Category - I bank (i.e. an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations) along with the prescribed documents and the LOC, wherever applicable.
   Following are the prescribed documents:
   (a) Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles ofAssociation attested by the Notary Public in the country of registration.
   [If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate inthe home country].
   (b) Audited Balance sheet of the applicant company for the last three/ five years in case of branchoffice/ liaison office respectively.
   [If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitionerby any name, clearly showing the net worth may be submitted].
   (c) Bankers' Report from the applicant's banker in the host country / country of registration showingthe 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 isnot signing the Form FNC.

   The AD Category-I bank shall after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms grant approval to the foreign entity for establishing BO/LO/PO in India.

2. **Allotment of Unique Identification Number (UIN):** However, before issuing the approval letter to theapplicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/ LO.

3. **Issue of Approval letter:** After receipt of the UINfrom the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-residententity for establishing BO/LO in India. This isin order to enable the Reserve Bank to keep, maintain and upload up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India, on its website.

   The validity period of an LO is generally for three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only. The validity period of the project office is for the tenure of the project.

4. **Intimation to Designated AD Category I bank**: An applicant that has received permission for settingup of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/ PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly. In case an approval granted by the AD bank has either been surrendered by the applicant or has expired without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly.

5. **Extension for setting up office:** The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/ PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require the prior approval of ReserveBank of India in this regard.

6. **BO/LO by foreign banks and insurance companies**: All applications for establishing a BO/LO in Indiaby foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from theForeign Exchange Department, Reserve Bank of India.

Opening of bank account by BO/LO/PO

I. An LO may approach the **designated AD Category I Bank** in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India. The permitted Credits and Debits to the account shall be:
   (a) Credits
      1. Funds received from Head Office through normal banking channels for meeting the expensesof the office.
      2. Refund of security deposits paid from LO's account or directly by the Head Office throughnormal banking channels.
      3. Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
      4. Sale proceeds of assets of the LO.
   (b) Debits: Only for meeting the local expenses of the office.

A BO may approach **any AD Category I Bank** in India to open an account for its operations in India. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process ofits business operations. Debits to this account shall be for the expenses incurred by the BO and towardsremittance of profit/ winding up proceeds.

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)	

<table>
<tr><th colspan="4">Permitted debits (Dr.) and credits (Cr.)</th></tr>
<tr><th>Permitted Dr.</th><th>Permitted Cr.</th><th>Permitted Dr.</th><th>Permitted Cr.</th></tr>
<tr><td>Only for meeting the local office expenses of the office</td><td>Funds from head office for meeting office expenses</td><td>Expenses incurred by branch office</td><td>Funds from head office to meet office expenses</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">Refund of security Deposit paid from liaison office account or directly by head office
Refund of taxes, duties etc. paid from liaison office bank account Sale proceeds of assets of liaison office</td><td>Remittance of profits and winding up proceeds</td><td>Legitimate receivables arising from business operations</td></tr>
<tr><td colspan="2"></td></tr>
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II. Any foreign entity except an entity from Pakistan who has been awarded a contract for a project by theGovernment authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank. An entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its project office in India.

III. AD Category – I banks can open non-interest bearing foreign currency account for POs in India subjectto the following:

(a) The PO has been established in India, with the general / specific permission of Reserve Bank of India, having the requisite approval from the concerned Project Sanctioning Authority concernedas per FEM (Establishment in India of Branch Office or a Project Office or any other Place of Business Regulations, 2016).

(b) The contract governing the project specifically provides for payment in foreign currency.

(c) Each PO can open two foreign currency accounts, usually one denominated in USD and other in home currency of the project awardee, provided both are maintained with the same AD Category–I bank.

(d) The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/ Group Company abroad or bilateral / multilateral international financing agency.

(e) The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category I bank. Further, the accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD Category–I bank.

(f) The foreign currency accounts have to be closed at the completion of the project.

Project Office
To open the bank account approval AD Bank is required
▪ If the project office is of an entity not from Pakistan: No prior approval of RBI is required ▪ If the project office is of an entity from Pakistan: Prior approval of RBI is required Project office can have two foreign currency accounts- one denominated in USD and other in the homecurrency 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 sanctioning receipts from project 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:
   (a) In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
   (b) In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

   The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to thedesignated AD Category -I bank.

(ii) The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank,the same should immediately be reported to the General Manager, Reserve Bank of India, CO Cell, New Delhi,along with the copy of the AAC and their comments thereon.

Extension of validity period of the approval of LO and PO

(i) Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval,to the AD Category-I bank concerned under whose jurisdiction the LO/nodal office is located. The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval/ extension granted if the applicant has complied with the following conditions and the application is otherwise in order:
   (a) The LO should have submitted the Annual Activity Certificates for the previous years; and
   (b) The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

Such extension has to be granted, as expeditiously as possible as and in any case not later than one month from the receipt of the request under intimation to the General Manager, Reserve Bank of India, CO Cell, New Delhi quoting the reference number of the original approval letter and the UIN. ReserveBank shall update the information on its website immediately.

(ii) Further, entities engaged in construction and development sectors and Non- Banking Finance Companies are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are Non- Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies).

Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

Application for additional offices and activities

i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
   (a) If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), theapplicant 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 theactivities 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 anotherplace 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 Delhiby the AD Category-I bank at the earliest.

ii. Requests for undertaking activities in addition to what has been permitted initially (Annex C) by Reserve Bank of India / AD Category-I bank may be submitted by the applicant to the Reserve Bank through thedesignated AD Category -I bank justifying the need.

Extension of Fund and Non-Fund Based Facilities

AD Category-I bank may be based on their business prudence, Board approved policy and compliance to extant rules/ regulations stipulated by DBR, RBI extend fund/non-fund based facilities to BOs/POs only.

Remittances of Profits/ Surplus

An overview of remittances of profits or surplus for branch and project offices is given below. As liaison office cannot undertake any business activities, the question of remittance of profits etc. by them does not arise.

Branch Office	***Project Office***
Permitted, net of taxes	Intermittent remittances permitted pending windingup or completion of the project
Following documents to be submitted with AD Bank: (i) Certified copy of audited balance sheet and profit and loss account for the relevant year. (ii) Chartered Accountant certificate certifying: ▪ the manner of arriving remittable profits ▪ that the remittable profit has been earned by undertaking permitted activities ▪ that the profits do not include any profit on revaluation of assets of the branch	Following documents to be submitted with AD Bank: (i) Auditors/ Chartered Accountant Certificate confirming that a sufficient provision has been made to meet the liabilities in India including income tax (ii) Undertaking from the project office that remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittances from abroad.

Closure of BO/PO/LO

1. **Submission of request for closure:** Requests for closure of the BO / LO/ PO and allowing the remittance of winding up proceeds of BO / LO/ PO may be submitted to the designated AD Category - I bank by theBO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submittedalong with the following documents:
   (a) Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
   (b) Auditor's certificate:
      (i) indicating the manner in which the remittable amount has been arrived at and supported bya statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
      (ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
      (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
   (c) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
   (d) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.
   (e) The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respectiveAACs.
   (f) Any other document/s, specified by Reserve Bank of India / AD Category- I bank while granting approval.
2. **Remittance of winding up proceeds:** Designated AD Category-I bank may allow remittance of windingup proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

Checklist for BO/LO/PO

Sl.No.	*Particulars*	*Details*
1.	Register with the Registrar of Companies (ROC)	A BO/LO/PO or any other place of business to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
2.	Application to an Authorised Dealer Category I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaisonoffice or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profitmaking track record.
4.	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain Permanent Account Number (PAN) from the IncomeTax Authorities on setting up of their office in India and report the same in the AACs.
6.	LO upgrade intoa BO	The existing PAN and bank accounts can be continued when an LO is permittedto upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-Ibank only.
8.	Annual Activity Certificate (AAC)	The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
9.	BO/LO/PO change their existing AD Category-I bank	BO/LO/PO can change their existing AD Category- I bank subject to both the AD banks giving consent in writing for the transfer and the transferring AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.
10.	Acquisition of property by BO/ PO	Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
11.	Carry out permitted/ incidental activities from leased property	As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.

12.	Term Deposit Account	AD Category- I bank can allow term deposit account for a period not exceeding6 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 ofthe term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/ airline companies.
13.	LO or BO established in the pre-FEMA period	In case a BO/LO has been established and continues to exist without approval of the Reserve Bank, such BO/LO may approach their AD Category-I bank to regularise their offices under FEMA 1999, even if permission of Reserve Bank was not required as per the regulations existing at the time of setting up of the office. Such cases may be brought to the notice of Reserve Bank immediately for allotment of UIN. The foreign entities who may have established LO or BO with the permission from the Government of India in the pre-FEMA period shallalso approach their AD Category–I bank with a copy of the said approval for allotment of a UIN by the Reserve Bank.
14.	Change in the name of the existing LO/BO	Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and if the application to this effect is received with the Board resolution for change of name and documents/certificate from ROC India showing change of name. The change in name of the BO/LO should be reportedto FED, CO Cell, New Delhi. Where change in name is requested on account ofacquisitions or mergers of foreign entities involving change in ownership, the acquired entity or new entity is required to apply afresh by closing the existing entity. Foreign entities should note that the approvals are given by the Reserve Bank/AD Category-I bank after detailed scrutiny as per laid down guidelines and FDI policies and hence the approvals given to one foreign entity is not transferrable to another foreign entity.
15.	Change in the Top Management	Change in the Top Management or CEO/MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, ADCategory-I bank should be intimated about the same.
16.	Closure of the Branch office/ Liaison office	Requests for closure of the branch office/liaison office may be submitted tothe Authorised Dealer Category - I bank along with the copy of the Reserve Bank's/ Authorised Dealer Category - I bank's approval for establishing the office; Auditor's certificate; Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance; A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India and any other document/s specified by the Reserve Bank/ Authorised Dealer Category-I bank while granting approval.

17.	Remittance of winding upproceeds	Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

AMIT VOHRA LAW CLASSES

Chapter - 11
Setting up of Business outside India and Issues Relating Thereto

Regulatory Framework

- The Foreign Exchange Management Act, 1999

Introduction

The year 1991 was the golden year for Indian economy. The foreign investment policies of the country changedand opened gates for foreign investments to enter the Indian Territory. This also made Indians eligible to set upbusiness abroad or make an investment abroad as the case may be.

Prior to 1991, exports were a predominant way of expanding business abroad and hence the emphasis was on export promotion strategies with restrictions on cash outflows so as to conserve our foreign exchange reserves.

Till 1991, India's economic integration with the rest of the world was very limited. Business houses across industries realised that for expansion and growth of Indian companies, it is necessary that they increase their share in the world market not only by exporting their products but also by acquiring overseas assets and establishing their presence abroad. This meant that business had to be set up outside India in order to ensuretheir presence in the concerned markets. This requirement, paved the way to formulate regulations to make investments abroad. Accordingly, the policy for outward capital flows has evolved.

While India has traditionally been an attractive destination of FDI, it has also emerged as an important source of Foreign investments for various countries particularly after the introduction of economic reforms in 1991. The policy on Indian investments overseas was first liberalised in 1992. Under this policy, an Automatic Route for overseas investments was introduced and cash remittances were allowed for the first time with restrictions on the total value. The basic intent for opening up the regime of Indian investments overseas had been the need toprovide Indian industry access to new markets and technologies with a view to increase their competitivenessglobally and help the country's export efforts. The introduction of Foreign Exchange Management Act in the year 1999 changed the entire perspective on foreignexchange particularly those relating to investment abroad. This new change brought in more of management of "Foreign Exchange" and not "Regulation" unlike the earlier Act. This Act made sweeping changes in relaxingthe norms for most of the policies including the overseas investments. It aimed to facilitate external trade and payments as well as to promote an orderly development and maintenance of foreign exchange market in India.

Overseas investment is a substantial way to enter the international market, and in the last decade, India has been successful to establish its presence felt in the global arena. India has been instrumental in signing various memorandum of understandings (MOUs), free trade agreements (FTAs) and Bilateral talks with other nations.Recently, India has signed various Free Trade Agreements (FTAs) with its trading partners, including agreements such as India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA) and India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA). This paves way for India to increase its economy's competitiveness on a global scale and allows Indian corporates to increase their overseas direct investments. The projections for overseas markets look promising in few realms. For instance,

the Indian industry is expected to grow its revenue from Africa through IT services, infrastructure, agriculture, pharmaceuticals, and consumer products. According to the Ministry of External Affairs, India has initiated a move to set up a direct sea and air link between India and the Latin American region as Indian corporates plan significant investments in the mining, oil, IT and pharmaceutical sectors in that region. Overseas investment by Indian companies is anticipated to upsurge, backed by stable market conditions and the considerable impact of the investment on local economies.

According to the Reserve Bank of India, "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent of the paid-up equity capital of a listed foreign entity. Where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to alevel below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity.

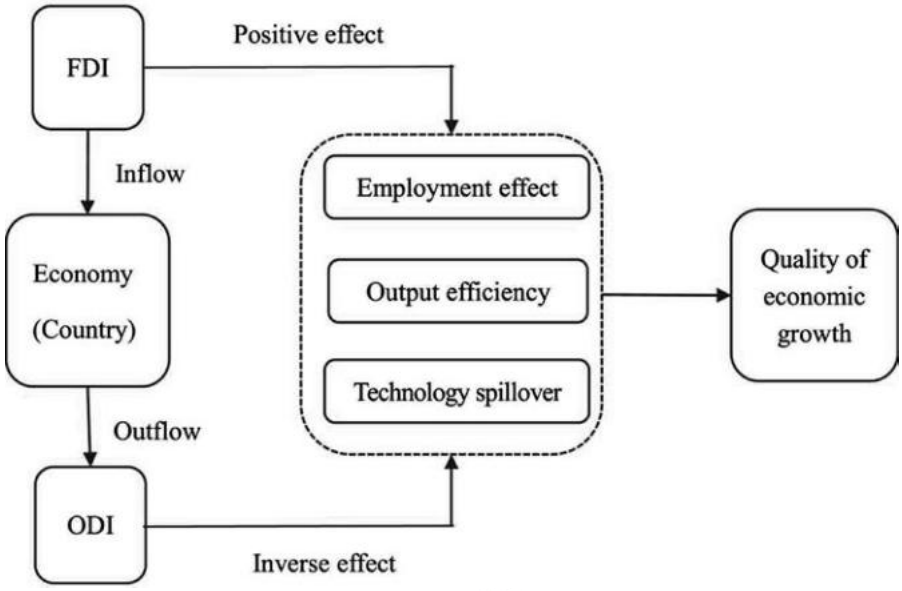
Evolution

The origin of India's overseas investment can be traced back to the early 1960s. During that time, Sri Lanka and some African countries had emerged as attractive investment destinations for a selected number of Indian business conglomerates like Tata, Birla and Kirloskar, which sought to expand their production bases by investing in cross-border activities. Even though a few Indian enterprises had begun to assume a global foothold through direct overseas investments since the 1960s, Overseas Investment became a prominent feature of Indian businesses only in the aftermath of economic reforms of 1991.

The phenomenal upsurge in India's Overseas Investment flows in the 1990s and consecutive decades can, to a considerable degree, be attributed to a dramatic shift in India's domestic and foreign policy environment.

Prior to the 1990s, India's restrictive macroeconomic, trade and industrial policies were predominantly responsible for the inward-orientated nature of Indian businesses which often led them to seek protection from incoming FDI and imports. In the 1990s, however, significant reforms in trade policy like the abolition of import licensing system, gradual removal of non-tariff barriers (NTBs), major reductions in tariff rates, etc. led to an increased inflow of cheaperimports, which compelled Indian firms to become more competitive in the global market.

Post 1991, Overseas Investment has emerged as an important pathway for private as well as public enterprises to garner greater market access and gain global presence in the areas of mutual synergies and knowledge. Such investments have resulted in enhanced economic integration via business cooperation between India and the other countries, increased foreign trade and entitlements on such investments are an important source of foreign exchange earnings.



India's outbound investments have evolved dramatically, not only in terms of volume but also in terms of geographic distribution and sectoral makeup. A developing nation like India, constantly looks for opportunities to invest extensively outside India as it helps the economy as a whole. Overseas investments by Indian companies also helps in improving the performance of the country's service and manufacturing sectors and aids in the battle against rising unemployment rates. With rising M&A activity, companies will get direct accessto newer and more extensive markets and better technologies, enabling them to increase their customer baseand achieve a global reach.

Investments & Developments

India is primarily a domestic demand-driven economy, with consumption and investments contributing to 70% ofthe economic activity. With an improvement in the economic scenario and the Indian economy recovering fromthe Covid-19 pandemic shock, India is relatively well placed than the rest of the world. Despite major headwinds that continue to pose risks in the short term, the Indian economy has remained strong owing to robust policy measures in place. This gives Indian businesses an advantage to make investments abroad and broaden their operational footprint in such nations. New innovations from abroad would be brought to India with the help of knowledge spillover, and India itself would contribute to the growth of other nations. In this manner, a mutual benefit is achieved. In this regard, there have been several overseas investments made by Indian companies.

The Government has reduced the restrictions on Indian companies investing overseas by removing the cap onraising funding through the pledge of shares, local assets, and foreign assets in order to encourage international investment. In addition to this, improving social and economic stability in the nation enables RBI to support foreign investments and other international collaborations. One of the key elements of economic progress in every nation is its robust foreign investments. It demonstrates the confidence and trust that one country hasin another and also aids in domestic companies to explore better worldwide networks, markets, technology, talents, and resources while enhancing their brand image. In this view, the government has undertaken a number of steps to support Indian investments abroad.

Laws /Authority Governing Setting Up Of Business Outside India

Reserve Bank of India

The Reserve Bank of India has started issuing Master Directions on all regulatory matters beginning January 2016. The Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The process of issuing Master Directions involves issuing one Master Direction for each subject matter covering all instructions on that subject.Any change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. The Master Directions will be updated suitably and simultaneously whenever there is a change in therules/ regulations or there is a change in the policy. All the changes will get reflected in the Master Directions available on the RBI website along with the dates on which changes are made. Explanations of rules and regulations will be issued by way of Frequently Asked Questions (FAQs) after issue of the Master Directions ineasy to understand language wherever necessary.

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999.

Overseas Investments are prohibited unless made in accordance with the FEMA Act, OI Rules and OI Regulations. The investments already made in accordance with the erstwhile ODI Regulations will be deemedto have been made under OI Rules and Regulations.

Foreign Exchange Management Act, 1999

Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits upto which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers conferred under the Act, the Reserve Bank, with effect from August 22, 2022, has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 ('erstwhile ODI regulations') and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 ('OI Rules') and FEMA (Overseas Investment) Regulations, 2022 ('OI Regulations') and the erstwhile regulations stand superseded.

RBI has also issued the compiled FEMA (Overseas Investment) Directions, 2022 ('OI Directions') coveringthe OI Rules and OI Regulations grouping the requirements under three categories viz. General provisions, Specific provisions and Other operational instructions to the AD Banks. It also provides for certain compliancerequirements from the erstwhile ODI Master Directions, which are not covered in OI Rules or Regulations.

A significant step has been taken with operationalisation of a new Overseas Investment regime. The new regimesimplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

The changes brought about through the new rules and regulations are summarised below:

1. enhanced clarity with respect to various definitions;

2. introduction of the concept of "strategic sector";
3. dispensing with the requirement of approval for:
   (a) deferred payment of consideration;
   (b) investment/ disinvestment by persons resident in India under investigation by any investigative agency/ regulatory body;
   (c) issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);
   (d) write-off on account of disinvestment;
4. introduction of "Late Submission Fee (LSF)" for reportingdelays.

"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 CentralGovernment. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks mayallow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

OI Rules v/s OI Regulations

OI Rules provides the regulatory framework for making of overseas investment covering the permissions, conditions for making overseas investment, restrictions from making Overseas Direct Investment ('ODI'), pricing guidelines,transfer, liquidation and restructuring of ODI. While the OI Rules have been framed by CG, however, the same will be administered by the RBI as per Rule3(1).

OI Regulations, on the other hand, provides only the operational part covering conditions for undertaking Financial Commitment ('FC'), other than by investment in equity capital, consideration in case of acquisition ortransfer of equity capital of a Foreign Entity ('FE'), mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.

Segregation of the regulatory and the operational part in OI rules and regulations respectively.

Overseas Investment

Under the erstwhile ODI regulations, effective till August 21, 2022, there was a concept of direct investment outside India in JV and WOS that excluded portfolio investment and FC.

OI Rules combine the two to define Financial Commitment and separately define the term Overseas Portfolio Investment ('OPI').

"Financial commitment" by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund based facility or facilities extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity, including overseas Step down Subsidiaries of such Indian entity, subject to the following conditions:

(a) the Indian entity is eligible to make ODI;
(b) the Indian entity has made ODI in the foreign entity;

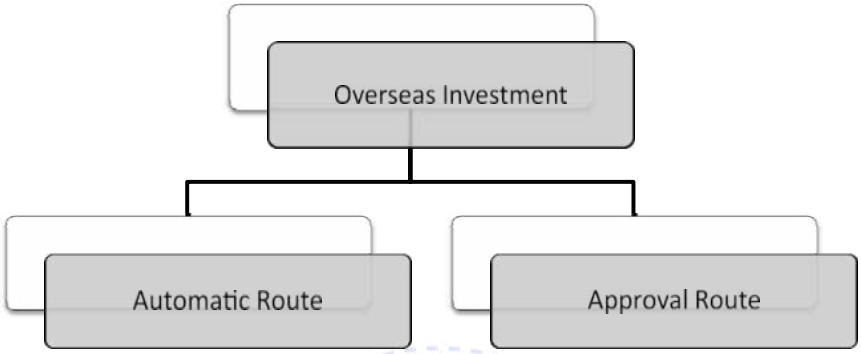
(c) the Indian entity has acquired control in the foreign entity on or before the date of making such financialcommitment.

"Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

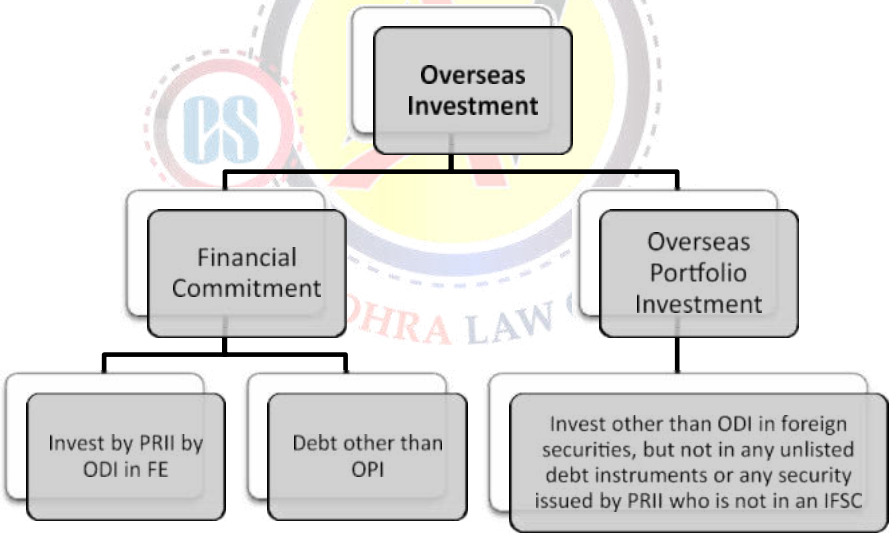
$$\therefore \text{OI} = \text{FC} + \text{OPI}$$

Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and

(ii) Approval Route subject to the provisions contained in the OI Rules, OI Regulations and OI Directions.



The classification as ODI depends on the nature of instruments in which investment is made, the nature of theentity in which investment is made and whether control has been acquired or not.



Eligibility (Entities Are Referred to As "Indian Entity")

The extant concept of Indian party (IP) where all the investors from India in a foreign entity were together considered as IP, has been substituted under the new regime with the concept of Indian entity where each investor entity shall be separately considered as an Indian entity. Indian entity shall mean:

- a Company defined under the Companies Act, 2013 or
- a Body Corporate incorporated by any law for the time being in force or
- a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or
- a Partnership Firm registered under the Indian Partnership Act, 1932.

The extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

'Limited liability' would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited.

In case of a foreign entity being an investment fund or vehicle, duly regulated by the regulator for the financial sector in the host jurisdiction and set up as a trust outside India, the liability of the person resident in India shallbe clear and limited not exceeding the interest or contribution in the fund in any manner. Further, the trustee ofsuch fund shall be a person resident outside India.

Non-Applicability

- Investments made by a financial institution in an IFSC. The OI Rules prescribes the conditions for investment in IFSC vide Schedule V to OI Rules;
- Acquisition or transfer of any investment outside India made out of Resident Foreign Currency Account;
- Acquisition or transfer of any investment outside India made out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereofor for a specific job or assignment, duration of which does not exceed three years; or
- Acquisition or transfer of any investment outside India made in accordance with Section 6(4) of FEMA Act i.e. where the investment in the foreign security or any immovable property situated outside India was acquired when the person was resident outside India or inherited from a person who was residentoutside India.

The erstwhile ODI Master Directions provided general permission for purchase/acquisition of securities by a personresident in India as bonus shares on existing holding of foreign currency shares and also for rights shares against holding of shares in accordance with provisions of law. The OI Rules covers the same under Rule 7.

Prohibitions

1. No person resident in India shall make ODI in aforeign entity engaged in –
   - real estate activity;
   - gambling in any form; and
   - dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

   The expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or

commercialpremises, roads or bridges for selling or leasing.

2. Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case maybe, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such anindividual.
3. No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:
   Provided that such restriction shall not apply to the following classes of companies mentioned in Rule 2of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time,namely –
   (a) a banking company as defined in the Banking Regulation Act, 1949;
   (b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-bankingfinancial company by the Reserve Bank;
   (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and
   (d) a Government company referred to in the Companies Act, 2013.

Automatic Route

Rule 9 of OI Rules, 2022 lays down the general rule for overseas investments under the automatic route. It states that subject to prescribed limits and conditions, any overseas investment by a person resident in India shall be made in a foreign entity engaged in bona-fide business activity, directly or through step-down subsidiary or the special-purpose vehicle.

Step-down subsidiary, in respect of a foreign entity, has been defined as an entity in which the foreign entity has control. It is also provided that for investments made through a step-down subsidiary to qualify as overseas investment and be permissible under OI Rules, the step-down subsidiary shall comply with the structural requirements of a foreign entity, i.e. it shall have limited liability. Earlier, overseas direct investments (ODI) wasonly allowed in an entity engaged in bona-fide business activity either directly, or through one layer of SPV.In this context, the new Rule seems to be expansive in as much as it allows overseas investment into an entity engaged in bona-fide business, including through multiple layers of step-down subsidiary or special purpose vehicle. In other words, it may now be possible to invest in a foreign holding company (SPV) which has one of more layers of foreign subsidiaries as long as the ultimate foreign subsidiary is engaged in a bona fide businessactivity.

'Bona-fide business activity' has been defined as any business activity permissible under any law in force in India and the host country / host jurisdiction. Hence, the business activity must be permitted under the laws ofIndia as well as the host country for it to qualify as 'bona-fide' business activity.

The definition of the term bona-fide business activity is a welcome move as it brings about a certain level of clarity. Having said that, confusion still prevails in terms of what is meant by permitted under laws of India (andalso the laws of the host country). There may be activities, such as gambling, which are state subjects and maybe permitted in some states whilst not being permitted in others. Additionally, whether a pure holding company will qualify as a bona-fide business activity also remains a question due to the manner in which the definition has been worded.

Further, keeping in mind that control is defined to mean 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 may be 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

Rule 9 of OI Rules, 2022 also provides that overseas investment under the automatic route, shall not be made into a company incorporated in Pakistan (including by way of swap of securities) or such other country as maybe decided by the Central Government, from time to time.

The OI Rules provide for investments that will require prior approval of CG, RBI and NOC from lender banks/ regulatory bodies etc. The Erstwhile ODI Regulations only mandated prior approval of RBI in case eligibility conditions stipulated were not met by the Indian party or resident individual. The OI Rules read with the OI Directions provide that:

Approval from Central Government: The applications for overseas investments (including financial commitment) in Pakistan / other countries as may be restricted by the Central Government from time to time or in strategic sectors / specific geographies beyond the prescribed limits, shall be made to the Central Government through the RBI. As such, the applications shall be forwarded by the AD banks to the RBI for onward submission to the Central Government.

Approval from Reserve Bank: As set out under the Erstwhile Regime, the OI Rules also provide that financial commitment by an Indian entity, exceeding USD 1 billion (or its equivalent) in a financial year shall require prior approval from the RBI even when the total financial commitment of the Indian entity is within the eligible limit.

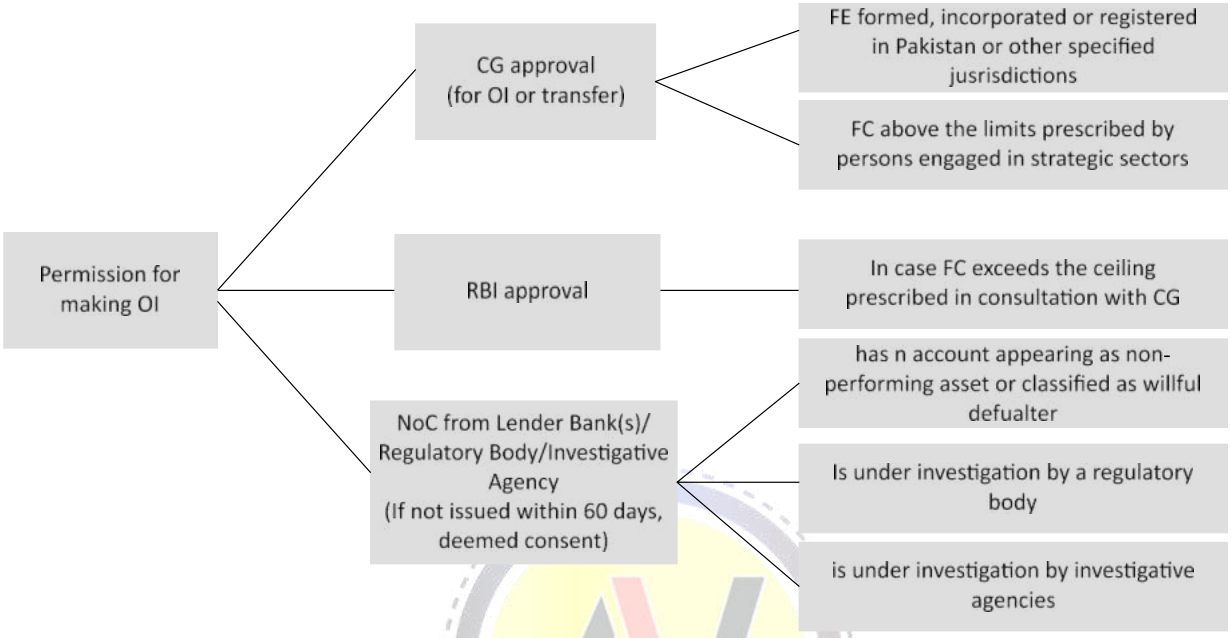
In essence, the Rule provides that approval with respect to investment in restricted geography / sector has to be obtained from the Central Government, whereas approval for investments beyond the monetary limit has to be obtained from the RBI.

The erstwhile ODI Master Directions prohibited an Indian Party from making direct investment in countries identified by Financial Action Task Force ('FATF') as 'non co-operative countries and territories' as per the list available on FATF website or as notified by RBI. The OI Rules do not expressly provide for such prohibition, however, empowers the CG to advise countries or jurisdictions where overseas investment shall not be made.

Further, as provided in the erstwhile ODI Master Directions for prior approval of RBI for any FC exceeding USD 1 billion or its equivalent in a financial year even when the total FC of the Indian Party was within the eligible limit under automatic route (i.e. within 400% of the net worth as per the last audited balance sheet), the requirement continues under the current regime as well. Procedure for seeking approval of RBI has been provided in the OI Directions.

Approval requirement has been dispensed for deferred payment of consideration, investment/

disinvestment by PRII under investigation by any investigative agency/ regulatory body, issuance of corporate guarantee to or on behalf of second or subsequent step down subsidiary and write-off on account of disinvestment.



No Objection Certificate

Rule 10 provides that if any person resident in India who –

1. has an account appearing as a non-performing asset (NPA); or
2. is classified as a willful defaulter by any bank; or
3. 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.

Given that this requirement is only for financial commitment, it seems to not be applicable for making OPI investments.

It is provided that if the bank, regulator or investigative authority, as the case may be, fails to furnish the NOC within 60 days from the receipt of application, an NOC may be presumed to have been obtained. The concept of 'deemed consent' in case of NOCs upon expiry of sixty days from the date of application may be a cause ofconcern for the lenders/ banks/ regulatory agencies etc.

Further, the OI Directions clarify that where an Indian entity has already issued a guarantee in accordance with the OI Rules before an investigation has begun or account is classified as an NPA/ willful defaulter and is subsequently required to honour such guarantee, such remittance will not constitute fresh financial commitmentand hence NOC shall not be required.

Method Of Funding

The mode of payment by a person resident in India for making overseas investment shall be in

accordance with regulation 8 of the OI Regulations. A person resident in India making Overseas Investment may make payment –

1. by remittance made through banking channels;
2. from funds held in an account maintained in accordance with the provisions of the Act;
3. by swap of securities;
4. by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Actand the rules and regulations made thereunder for making ODI or financial commitment by way of debtby an Indian entity.

It is further provided in the OI Directions that:

(a) Overseas investment by way of cash is not permitted.

(b) In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015, an Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/ office outside India for making any overseas investment.

(c) A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

(d) Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

Foreign Direct Investment Policy

The Department for Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulation of the policy of the Government on Foreign Direct Investment (FDI). It is also responsible for maintenance and management of data on inward FDI into India, based upon the remittances reported by the Reserve Bank of India. The FDI policy is reviewed on an ongoing basis, with a view to making it more investor-friendly. Witha view to attracting higher levels of FDI, Government has put in place a liberal policy on FDI, under whichFDI up to 100% is permitted under the automatic route in most sectors/activities. Significant changes have been made in the FDI Policy regime in recent times to ensure that India remains an increasingly attractive investment destination. The DPIIT plays an active role in the liberalization and rationalization of the FDI policy and has been constructively engaged in extensive stakeholder consultations on various aspects ofthe FDI Policy.

The Government has put in place a policy framework on FDI, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated on an annual basis, to capture and keep pace with the regulatory changes, effected in the interregnum. The DPIIT, Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Consolidated FDI Policy Circular/Press Notes/Press Releases which are notified by the Department of Economic Affairs (DEA), Ministry of Finance, Government of India as amendments to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 under the FEMA, 1999.

Reporting requirements

The OI Regulations provide for various reporting requirements for FC and OPI including in case of disinvestment and restructuring. Reporting is very crucial as the OI Rules provide for prohibition on

further FC or transfer to continue until any delay in reporting is regularized with payment of Late Submission Fees ('LSF') for an amountand in the manner as provided in the OI Directions. LSF amount is levied per return and the maximum amountfor LSF will be limited to 100% of amount involved in the delayed reporting. The erstwhile ODI regulations restricted only in case of non-filing of Form APR. The format of forms has been provided in the Master Directionson Reporting under FEMA Act. Incomplete filing will be considered as non-submission.

As per the OI Regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.A person resident in India who has made ODI or making financial commitment or undertaking disinvestment ina foreign entity shall report the following, namely –

(a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the timeof sending outward remittance or making a financial commitment, whichever is earlier;
(b) disinvestment within thirty days of receipt of disinvestment proceeds;
(c) restructuring within thirty days from the date of such restructuring.

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end. In case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee BenefitsScheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in Indiaof an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding wherethe resident individual is an employee or director.

Annual Performance Report (APR): A person resident in India acquiring equity capital in a foreign entity whichis reckoned as ODI, shall submit an APR with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year. No APR shall be required where–

i. a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or
ii. a foreign entity is under liquidation.

An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and InformationManagement, Reserve Bank of India.

Issues In Choosing Location Outside India

Choosing business location is depends on the entry barriers in the governing law as some of the countries provide easy access to the businesses such as Property transfer, Reliability of electricity, Labor market regulation, Trade regulation and costs, Court efficiency, Creditors' rights, Credit information, Shareholders' rights, Tax regulation, Foreign direct investment, Overall business regulatory environment. However, the same can be categories asunder:

Geographical Location of the business

- Infrastructure (ports, airports, storage, specific storage types – such as cold-storage, secure storage)
- Access (transportation of goods, materials and personnel)

- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce
- Availability of talent pool for productions (labour), services and management
- Risks: The outbreak of COVID-19 highlights the pitfalls of global interdependency and the challenge forglobal governance. Epidemics and pandemics do not just come and go, they impact the economy and society as well. One should consider threats to the organization due to pandemic and other risks suchas earthquake, tsunami etc.

Economic Aspects

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability
- Cost of doing business: return on investment computations *vis-à-vis* comparable locations
- Laws relating to labour and Quality of labour force; availability of labour force; unemployment rate; labour unions; attitudes towards work and labour turnover; motivation of workers and work force management
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as FATCA, TRC, etc.
  A complete picture of the local, regional, and state tax environment must be obtained in order to make certain that the business can operate profitably. In several areas of the country, states have made changes to their tax structures, and it is important to understand how these changes negatively or positively impact a company's project
- Incentives: Local, regional, and/or state economic development incentives available to help the company lower project costs. Incentives should never drive site selection decisions, but they are important to ensure the economic feasibility of the project.

Political Aspects

- Friendly country, MFN status
- Long-standing and established legislative precedents with companies going through regulatory recourse
- Their relations with nearing countries and neighbours and your country
- Regulatory environment: Impact of local, regional, and state governmental regulations on business and project. Critical issues such as building plan approvals, environmental permits, utility connection approvals, and waste disposal permits can have a significant financial and timing impact on a company'sproject.

Social Aspects

- Trade bodies, interaction between commercial entities of both nations
- Expatriate-friendliness of the nation for relocating key employee personnel.

Technological Aspects

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof fromanother location to the nation with free entry and egress.
- Power, communication, telecom – availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stabilityof the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent

within the framework of law.

Setting up of a Business in New Zealand

Regulator: New Zealand Companies Office

After choosing business name, business structure, apply online for registration with the Companies Office including IRD number application, registration for GST and New Zealand Business Number (NZBN). To file an online application to incorporate a company with the Company's office, you must have:

- A RealMe Login
- an online services account with the Companies Register.

Secure your business name

Whether you're new to being self-employed or in business, a small investment now will mean you won't lose your ability to market and protect your name while getting other things in order. Use our ONE Check tool as yourstarting point.

i. **Register a domain name**: Get a web address. This is a low cost, quick and easy process. Entrepreneurs can visit Domain Name Commission's list of authorised registrars.

ii. **Reserve your company name:** To reserve a company name online, entrepreneurs can visit the New Zealand Companies Office Web site (www. companies.govt.nz). A new company's name must be unique and can bereserved for up to 20 working days with the Companies Office. To be incorporated under the Companies Act1993, a company must have a name reserved by the Registrar of Companies, at least one share, at least oneshareholder, at least one director, a registered office, and an address for service.

The applicant(s) can apply for company registration online by completing forms on company details and paying the registration fee.

To register the company online, you can either click on the link in the email sent, when your company name reservation is approved, or log in to your account or follow these steps:

1. Select 'My unfinished business'
2. Select 'My tasks'
3. Find the 'Complete Coy Application' task
4. Progress through each screen (Directors, Shareholders, Tax Registration), entering the requested information
5. Select how you want to pay your application fee
6. Select 'Review' to check the information you've provided and then 'Submit'.

When the application is processed, the founder(s) will receive a notification within a few minutes by email along with the appropriate director and shareholder consent forms, which are generated by the Companies Office. The applicant must then fax the signed director and shareholder consent forms within 20 working days, after which the application will expire. The certificate of incorporation will be issued via email in a few minutes when the last consent form is accepted.

Promoters can apply online for a company IRD (Inland Revenue Department) number and register for the GST (Good and Service Tax) at the same time as incorporating a company online with the New Zealand Companies Office. The list of the information needed when applying for a company IRDnumber and registering for GST is as follows:

- Contact details
- The date the company will begin employing

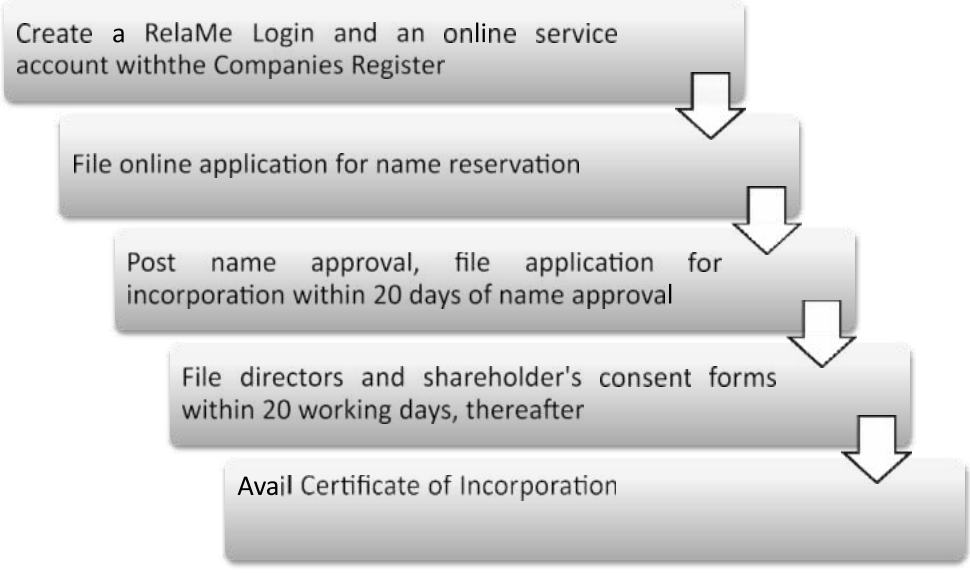
- The number of employees and contractors (including the number of employees that will have a student loan)
- IRD number – The IRD number of each Director and all individual shareholders that are NZ residents, Main Business Activity, Place of Business and Postal Address, Trading Name of the company (if different from the Business Name), Company Contact details, a Business Industry Description and Code, and whether or not the Fringe Benefit Tax for employees is applicable.
- GST number – GST accounting method, frequency of filing returns, business activity code, details of how you would like refunds to be paid, whether or not the company will be making tax exempt supplies, Business Industry Description and Code, and whether or not the company will be making imports/ exports and ACC uses the business activity code to calculate levies for personal injury cover and residual claims *(www.businessdescription.co.nz).*
- The New Zealand Business Number (NZBN) is a unique identifier for a business in New Zealand.NZBN links to the information others need in order to work with the Company, like a trading name,phone number or email. An NZBN makes it easier to carry on the business because the same information doesn't need to be repeated when dealing with new clients or on occurrence of any new event. In case of a company, an NZBN is automatically issued. Sole traders, self-employed people or partnerships can register for an NZBN online and it's free of cost.

iii. **Check for trademarks:** Get an initial assessment report from the Intellectual Property Office (IPONZ) before you invest in applying for a registered trade mark. This can be done by applying online fora search and preliminary advice (SPA) report on the IPONZ website. It's low cost, easy and it will be received within five days. We can also search the trade mark register for free.

Before registering, make sure the business name has been given the green light from IPONZ SPA check.

iv. **Regulatory Check:** Specific regulations might apply in the industry or region. For example, fair trading, consumer guarantees, privacy, health and safety, food licensing. Central and Local government regulations apply to the business must be checked.

Since July 1st 2008, it has been mandatory to file most documents with the Companies Office online. Starting in November 2014, clients had the ability to pay the incorporation prescribed fees using



internet banking.

Business Reforms in New Zealand (World Bank Doing Business Report 2020)

2019

- **Starting a Business:** New Zealand made starting a business less expensive by reducing the fees forname search and company incorporation.

2018

- **Paying Taxes:** New Zealand made paying taxes easier by improving the online portal for filing and paying general sales tax.
- **Enforcing Contracts:** New Zealand made enforcing contracts more difficult by suspending the filing of new commercial cases before the Commercial List of the High Court of New Zealand during the establishment of a new Commercial Panel.

2017

- **Paying Taxes:** New Zealand made paying taxes easier by abolishing the cheque levy. New Zealand made paying less costly by decreasing the rate of accident compensation levy paid by employers. At the same time, New Zealand made paying taxes more costly by raising property tax and road user levyrates.

2016

- **Getting Electricity:** The utility in New Zealand reduced the time required for getting an electricity connection by improving its payment monitoring and confirmation process for the connection works.

2015

- **Getting Credit:** New Zealand improved access to credit information by beginning to distribute bothpositive and negative credit information.

2014

- **Enforcing Contracts:** New Zealand made enforcing contracts easier by improving its case managementsystem to ensure a speedier and less costly adjudication of cases.

2013

- **Getting Credit:** New Zealand improved access to credit information by allowing credit bureaus tocollect positive information on individuals.

2012

- **Paying Taxes:** New Zealand reduced its corporate income tax rate and fringe benefit tax rate.

2011

- **Enforcing Contracts:** New Zealand enacted new district court rules that make the process for enforcingcontracts user friendly.

2010

- **Dealing with Construction Permits**: New Zealand made dealing with construction permits more costlyby raising fees.

2009

- **Starting a Business:** New Zealand made starting a business easier by making it possible to completethe process in one simple online registration in less than a day.
- **Paying Taxes:** New Zealand made paying taxes less costly for companies by reducing the corporate income tax rate.
- **Resolving Insolvency**: New Zealand introduced a reorganization procedure with the aim of providingan alternative to liquidation and receivership and maximizing a company's chances of continuing as agoing concern.

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 electronicfiling system.

BizFile+ is ACRA's online filing and information retrieval system. It enables the public to access a suite of over300 electronic services ranging from the submission of statutory documents, and to retrieve and purchase information pertaining to business entities registered with ACRA. Currently, BizFile+ handles more than 1 million transactions each year. Since 2007, Bizfile platform (further enhanced to Bizfile+) has been providing one-stop business facilitation services to customers at the point of registration. These services include reserving domainnames, goods and services tax (GST) registration, subscribing for the relevant e-newsletter and registering for e-service alerts on latest government procurement opportunities, activating Customs Account and application for a corporate bank account.

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application.

Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The lodger can proceed to register the business immediately after the name application is approved.

Once a name has been approved, it will be reserved for 120 days.

As of 2 June 2017, every newly incorporated business receives a free copy of its Business Profile upon the successful filling up of the incorporation forms and paying the incorporation fee. The processing time is about 15 minutes from the time of successful submission of all documents and all information, and the registration fee payable is SGD 300. The ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the companytogether with the registration number of the company.
The registration with the Inland Revenue Authority of Singapore (IRAS) for the goods and services tax (GST) when (a) its annual taxable turnover exceeds SGD 1 million can be done using the same online forms.

Key Notes:

There are 7 types of companies which can be incorporated in Singapore. On submitting the companyname application, the relevant company type must be specified. The available options are:

1. Exempt private company
2. Private company limited by shares
3. Public company limited by shares
4. Public company limited by guarantee
5. Unlimited private company
6. Unlimited exempt private company
7. Unlimited public company

The private limited company is governed by the Singapore Companies Act and must comply with its laws under ACRA and the Inland Revenue Authority of Singapore (IRAS). Designations include:

- Company name – Must be approved by the ACRA.
- Shareholders – Minimum of one.
- Directors – At least one director must reside in Singapore.
- Company Secretary – Also must be a Singapore resident.
- Paid-up capital – At least S$1
- Registered address – A physical office address is required

Sign up for Employee Compensation Insurance at an insurance agency:
Agency: Insurance Agency
Under Section 23(1) of the Work Injury Compensation Act (WICA), Chapter 354, of Singapore, every employer shall insure and maintain insurance under one or more approved policies with an insurer against all liabilities which the company may incur under the provisions of this Act in respect of any employee employed by the company unless the Minister, by notification in the Gazette, waives the requirement of such insurance in relation to any employer. The purchase of Workman Injury Compensation Insurance (WICI) has been incorporated into ACRA's online registration process as of November 2017. Business owners can now apply for WICI from NTUCIncome (via ACRA's online Bizfile+ system) immediately after completing the online registration process. Timeand cost may depend on the arrangement between the company and the insurance agency.

Recent Initiatives in Singapore for Setting up of Business (World Bank Doing Business Report 2020)

2020

- **Dealing with Construction Permits:** Singapore made dealing with construction permits easier by enhancing its risk-based approach to inspections, improving public access to soil information and streamlining the process to obtain a construction permit.

2019

- **Starting a Business:** Singapore made starting a business easier by abolishing the corporate seals.
- **Enforcing Contracts:** Singapore made enforcing contracts easier by introducing a consolidated law onvoluntary mediation.

2018

- **Trading across Borders**: Singapore made exporting and importing easier by improving infrastructureand electronic equipment at the port.
- **Resolving Insolvency:** Singapore made resolving insolvency easier by establishing a new scheme of arrangement procedure with features of the debtor-in-possession reorganization regime and introducingprovisions applicable to prepackaged restructurings.

2017

- **Dealing with Construction Permits**: Singapore made dealing with construction permits easier by streamlining procedures and improving the online one-stop shop.
- **Registering Property:** Singapore made it easier to transfer a property by introducing an independentmechanism for reporting errors on titles and maps.
- **Paying Taxes:** Singapore made paying taxes easier by introducing improvements to the online system for filing corporate income tax returns and VAT returns. At the same, the social security contribution ratepaid by employers increased and the rebate of 30% on vehicle tax expired.

2015

- **Enforcing Contracts:** Singapore made enforcing contracts easier by introducing a new electroniclitigation system that streamlines litigation proceedings.

2014

- **Registering Property:** Singapore made transferring property easier by introducing an online procedurefor property transfers.
- **Getting Credit**: Singapore improved its credit information system by guaranteeing by law borrowers'right to inspect their own data.

2011

- **Getting Credit:** Singapore improved its credit information system by collecting and distributinginformation on firms.

2010

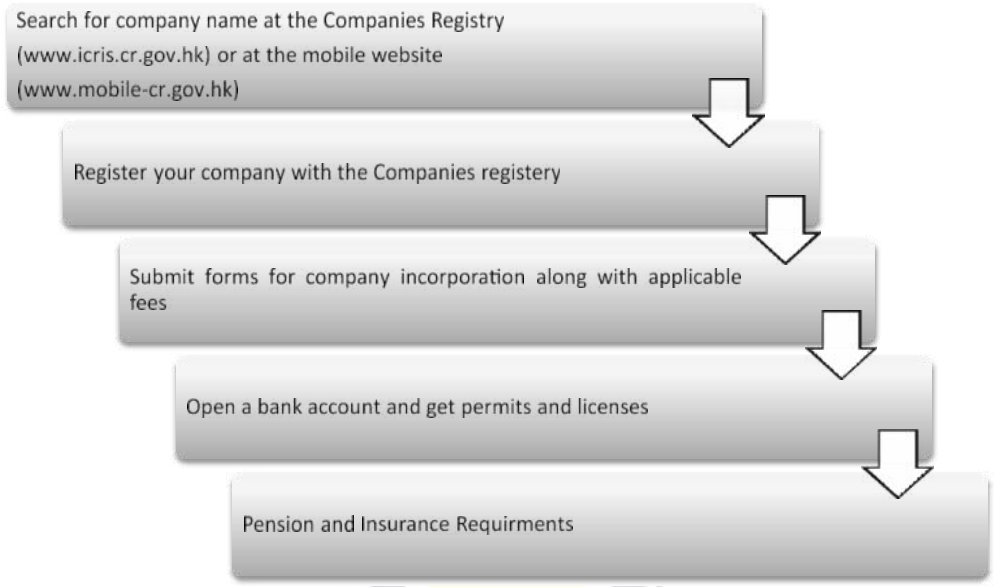
- **Starting a Business:** Singapore made starting a business easier by combining tax registration withbusiness registration on a single online form.
- **Dealing with Construction Permits:** Singapore made dealing with construction permits easier through new workplace safety and health regulations allowing companies in low-risk industries to submit documents online.
- **Registering Property:** Singapore made registering property easier by upgrading electronic systems and streamlining the administrative procedures of the government agencies involved.

2009

- **Starting a Business:** Singapore reduced the time and number of procedures to start a business by simplifying the online start-up process.
- **Dealing with Construction Permits:** Singapore made dealing with construction permits easier by improving internal data management and processing at agencies involved in the

permitting process.

Setting up of a Business in Hong Kong SAR, China



Agency : Companies Registry

Choose a company name and obtain a certificate of incorporation and a business registration certificate

A company name (which may be in English, traditional Chinese or both) can be searched online free of charge at the Companies Registry (www.icris.cr.gov.hk) or at the mobile website (www.mobile-cr.gov.hk). When an application is delivered online at the e-Registry, the applicant will be informed of the acceptability of the company name before he/she proceeds with the payment process.

If there is no existing company registered with the name chosen by the applicant, a certificate of incorporation and a business registration certificate will be issued upon the filing of an incorporation form signed by the founder member(s) (for companies limited by shares this is a Form NNC1), a copy of the articles of association and a Notice to Business Registration Office (IRBR1). The incorporation form contains comprehensive information on the address of the registered office and particulars of the first secretary and first directors of a company. Paper submissions for incorporation normally require approximately four working days for the certificates to be issued (excluding the day of submission of form NNC1).

With the implementation of the "e-Registry" in 2011, applicants can now complete the incorporation and business registration process by submitting electronic applications online to the Companies Registry (www.eregistry. gov. hk) or using the mobile application "CR eFiling". In straightforward cases, this enables registered usersto complete the relevant procedures and download the electronic Certificate of Incorporation and Business Registration Certificate in less than a day. According to the performance pledge of the Companies Registry (at www.cr.gov.hk/en/ about/performance.htm), the service standard for applications for registration of local companies which are submitted electronically is one hour.

At the moment of incorporation, the company will also be automatically registered with the Inland Revenue Department for registration for tax purposes.

Sign up Employee's Compensation Insurance and Mandatory Provident Fund (MPF) Schemes with a privatecompany or a bank

Agency: Compensation Insurance and Mandatory Provident Fund (MPF) providers (banks/insurance firms)

Pursuant to the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) ("ECO"), an employer must take out insurance to cover liabilities for his employees (both full- and part-time) who experience accidents arising out of and in the course of employment, and resulting in injuries or fatalities.

In addition, under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong),employers must enroll their regular employees (i.e. employees who are at least 18 but under 65 years of age and employed for 60 days or more) and where applicable, their casual employees (i.e. employees are at least 18 but under 65 years of age and employed in the construction or catering industry on a day-to-day basis or for a fixed period of less than 60 days) in an MPF scheme administered by an MPF approved trustee in Hong Kong and make MPF contributions accordingly. Scheme enrollment can be arranged through MPF registered intermediaries, which include banks and insurance companies. This requirement does not apply for persons exempted from joining a Mandatory Provident Fund ("MPF") scheme.

The newly incorporated company can apply for setting up the Employee's Compensation Insurance and MPF Scheme anytime after incorporation.

The procedure can be done online via various private insurance/MPF providers' web portals. However, most businesses prefer to have advisory meeting with insurance/MPF provider rather than reviewing all informationonline by themselves.

Business Reforms in Hong Kong SAR, China (World Bank Doing Business Report 2020)

2020

- **Dealing with Construction Permits**: Hong Kong SAR, China, made dealing with construction permitseasier by enhancing its risk-based approach to inspections.

2019

- **Getting Electricity:** Hong Kong SAR, China, made the process of getting an electricity connection faster by establishing a specialized task force to undertake the trenching, excavation and reinstatement of the underground cables.

2018

- **Starting a Business:** Hong Kong SAR, China, made starting a business more expensive by reintroducingthe business tax fee.
- **Registering Property:** Hong Kong SAR, China, improved the quality of its land administration system byenhancing its reliability and establishing a complaints mechanism.

2017

- **Starting a Business:** Hong Kong SAR, China, made starting a business less costly by reducing thebusiness registration fee.
- **Getting Electricity:** Hong Kong SAR, China, streamlined the processes of reviewing applications for new electrical connections and also reduced the time needed to issue an excavation permit.

2016

- **Starting a Business:** Hong Kong SAR, China, made starting a business easier by eliminating the requirement for a company seal.

- **Getting Electricity:** The utility in Hong Kong SAR, China, made getting electricity easier by streamlining the process for reviewing connection applications and for completing the connection works and meter installation. In addition, the time needed to issue an excavation permit was reduced.
- **Getting Credit:** Hong Kong SAR, China, improved access to credit by implementing a modern collateral registry.
- **Paying Taxes:** Hong Kong SAR, China, made paying taxes easier and less costly for companies by simplifying compliance with the mandatory provident fund obligations and increasing the allowance for profit tax. At the same time, it increased the maximum contribution to the mandatory provident fundand reduced the property tax waiver.

2015

- **Starting a Business:** Hong Kong SAR, China, made starting a business more difficult by increasing theregistration fee.
- **Protecting Minority Investors:** Hong Kong SAR, China, strengthened minority investor protections by introducing requirements for directors to provide more detailed disclosure of conflicts of interest to theother board members.

2014

- **Starting a Business:** Hong Kong SAR, China, made starting a business less costly by abolishing thecapital duty levied on local companies.
- **Registering Property:** Hong Kong SAR, China, made transferring property more costly by increasingthe stamp duty.

2012

- **Starting a Business:** Hong Kong SAR (China) made starting a business easier by introducing onlineelectronic services for company and business registration.
- **Getting Electricity:** Hong Kong SAR (China) made getting electricity easier by increasing the efficiency of public agencies and streamlining the utility's procedures with other government agencies.
- **Employing Workers:** Hong Kong, China introduced a Minimum Wage.

2011

- **Paying Taxes:** Hong Kong SAR (China) abolished the fuel tax on diesel.
- **Enforcing Contracts:** Reforms implemented in the civil justice system of Hong Kong SAR (China) willhelp increase the efficiency and cost-effectiveness of commercial dispute resolution.

2010

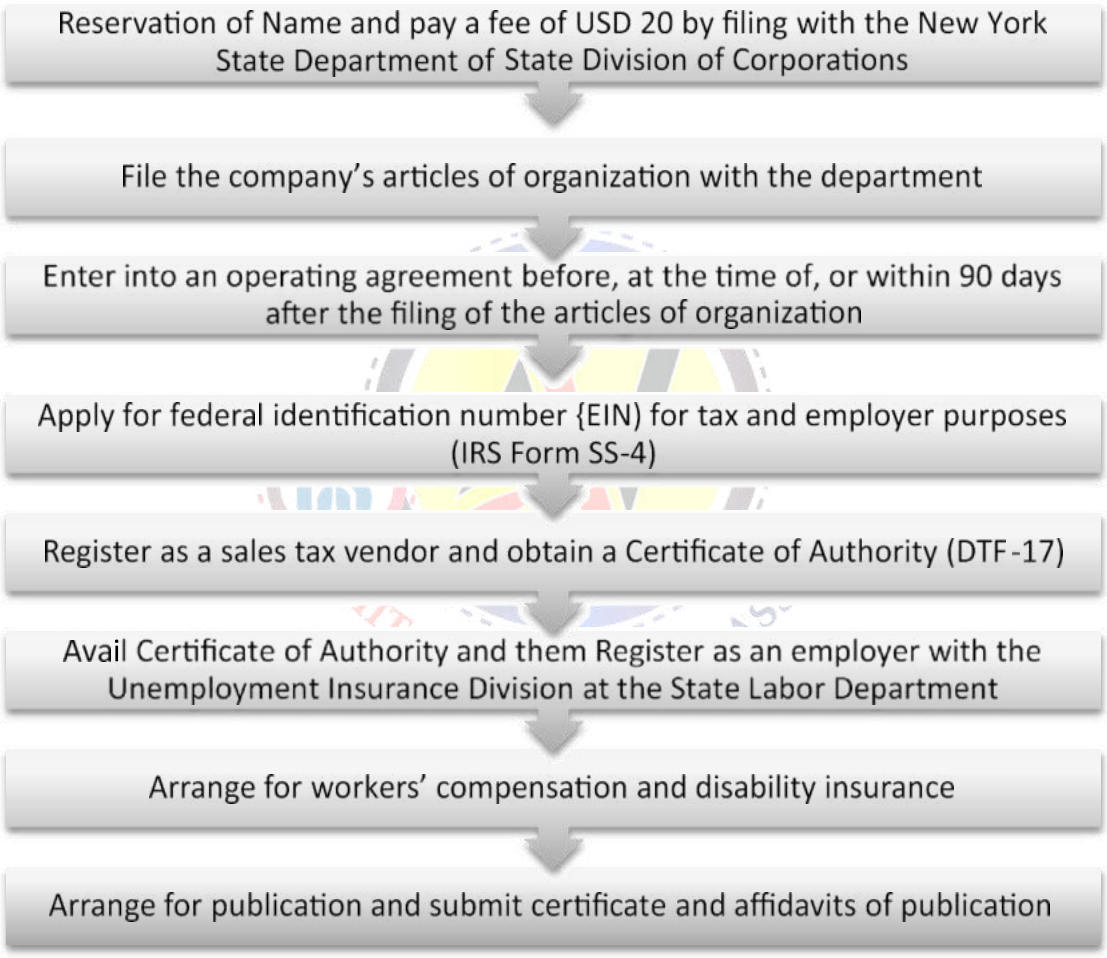
- **Starting a Business:** Hong Kong SAR, China, made starting a business easier by simplifying registrationformalities and merging certain procedures.
- **Dealing with Construction Permits:** Hong Kong SAR, China, reduced the time required to obtain a building permit by establishing a one-stop center that brings together 6 local departments and 2 privateutility companies under the same roof.
- **Registering Property:** Hong Kong SAR, China, made registering property easier by making it possibleto submit the stamp duty for the sale act (property assignment) online.

2009

- **Dealing with Construction Permits**: Hong Kong SAR, China, made dealing with construction permits easier through the "Be the Smart Regulator" Program addressing business licenses in multiple sectors, which eliminated some procedures related to building inspections and preapprovals.
- **Resolving Insolvency:** Hong Kong SAR, China, improved its insolvency process by granting more power to trustees, a change expected to make the liquidation procedure more efficient.

Setting up of Business in New York City

A limited liability company (LLC) is a hybrid, combining the most sought after characteristics of a corporation (credibility and limited liability) with those of a partnership (flexibility and pass-through taxation). Plus, an LLC is not saddled with many of the reporting and documentation formalities that a corporation faces. For example, an LLC does not have to hold regular, annual meetings. These characteristics make it an extremely popular business structure.



Agency: New York State Department of State, Division of Corporations

1. **Reserve the company's business name (optional), file the company's articles of organization andadopt the company's operating agreement**
   The company founders may reserve the name of the company with the New York State Department of State Division of Corporations prior to filing the company's articles of organization. To reserve a name, the founders should file an application for Reservation of Name and pay a fee of USD 20. The name reservation can be done online at the following: http://www.dos.ny.gov/corps/llccorp.html. The application holds the name for 60 days and may be extended twice for additional periods of 60 days. The fee to extend the reservation of name is also USD 20. The company name must contain the words"Limited Liability Company," "L.L.C.," or "LLC."

   The founders must file the company's articles of organization with the New York Department of State Division of Corporations. Forms can be purchased at a legal supply store or downloaded from the department's website. The application processing time is about seven business days. However, optionalexpedited processing is available according to the following fee schedule:
   - 2-hour turnaround: USD 150 (additional fee)
   - Same-day service: USD 75 (additional fee)
   - 24-hour turnaround: USD 25 (additional fee)

   New York State requires an LLC to have a written operating agreement but such agreement does not have to be filed with the state. The business members may enter into an operating agreement before, at the time of, or within 90 days after the filing of the articles of organization. Regardless of whensuch an agreement was entered into, it may be effective upon the formation of the LLC or at a later date specified in the operating agreement (provided, however, that under no circumstances shall an operating agreement become effective prior to the formation of such company). Section 203(e) of NY LLC Law contains specific requirements as to what is required to be in the articles of incorporation.

2. **Apply for federal identification number (EIN) for tax and employer purposes**
   Agency: US Internal Revenue Service
   The company needs to apply for a federal Employer Identification Number ("EIN"), which is used for tax and employer purposes. Founders must file IRS Form SS-4 (available from the US Internal RevenueService).

   It is possible to apply online at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/ Employer-ID-Numbers-EINs (processing time: immediate), by telephone (processing time: immediate),by fax (processing time: 4 business days), or by mail (processing time: 4 weeks). If applicants apply online, they do not need fill out IRS Form SS-4.

3. **Register to collect state sales tax**
   Agency: New York State Department of Taxation and Finance
   Businesses that "sell taxable tangible personal property, perform taxable services, receive amusement charges, or operate a hotel or motel, and restaurants, taverns, or other establishments that sell food and drink" must register as a sales tax vendor and obtain a Certificate of Authority, as well as those businesses that buy and sell for resale (for example, a wholesale distributor).

To register, the founders must file Form DTF-17 or register online at the website of the New York StateDepartment of Taxation and Finance (http://www.tax.ny.gov/) After the company has registered, it generally must file quarterly sales and use tax returns regardless of whether it has started or done anybusiness.

If the company expects to make taxable sales in the State of New York, it must register with the Tax Department at least 20 days before it begins business. New York State will then send to the companya Certificate of Authority which must be displayed at your place of business at all times.

4. **Register as an employer with the Unemployment Insurance Division at the State Labor Department**
Agency: New York State Department of Labor
Founders must register as an employer by completing Form NYS-100 to determine whether or not thecompany is liable under the New York State Unemployment Insurance Law. If the company is determined liable, the Department of Labor will send the company quarterly combined withholding, wage reportingand unemployment insurance returns for reporting wages paid to the company's employees. General business employers may register online at the New York State Department of Labor website (https:// applications.labor.ny.gov/eRegWeb/registerEmployer/uiEPMWelcomeMain.faces) or by completing Form NYS-100 and submitting it by mail or fax.

5. **Arrange for workers' compensation and disability insurance**
Agency: New York State Workers' Compensation Board
As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy from an authorized private insurance carrier or through the NYS Insurance Fund (or by self- insurance for workers' compensation).

The company's federal Employer Identification Number ("EIN") is the company's primary identification with respect to communications with the Workers' Compensation Board or by becoming a member of agroup self- insurer authorized by the board. The company must give its EIN to its insurance carrier when obtaining or maintaining its workers' compensation or disability coverage. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.

Each "covered employer" must post and maintain at the place of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees. An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer" subject to the Disability Benefits Law after the expiration of four weeks following the 30th day of such employment (WCL §202).These 30 days of employment need not be consecutive days.

6. **Arrange for publication and submit certificate and affidavits of publication**
Agency: New York State Department of State, Division of Corporations
Section 206 of the New York State Limited Liability Company Law requires that within 120 days (after the effectiveness of the initial articles of organization), a limited liability company (LLC) must publish intwo newspapers a copy of the Articles of Organization or a notice related to the formation of the LLC once a week for six successive weeks. The newspapers must be designated

by the county clerk of thecounty in which the office of the LLC is located, as stated in the Articles of Organization. One newspapermust be "printed daily" and the other "printed weekly.

The State of New York website has a directory of all New York county websites (http://www.nysegov.com/ citguide.cfm?context=citguide&content=munibycounty1), which entrepreneurs can use as a reference to find their relevant county for publishing. The cost of notice of publication varies by county.

After publication, the printer or publisher of each newspaper 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, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The fee for filing the Certificate of Publication is USD 50.

Business Reforms in New York City

2020

- **Starting a Business:** The United States made starting a business easier in California by introducing onlinefiling of the statement of information for limited liability companies. This reform applies to Los Angeles.
- **Paying Taxes:** The United States made paying taxes less costly by decreasing the corporate incometax rate. This reform applies to both New York City and Los Angeles.
- **Enforcing Contracts:** The United States (Los Angeles) made enforcing contracts easier by introducingelectronic filing and electronic payment of court fees.

2019

- **Employing Workers:** The United States (New York City) changed regulations pertaining to parental leave.

2018

- **Employing Workers**: The United States – Los Angeles increased the maximum paid days of sick leavea year.

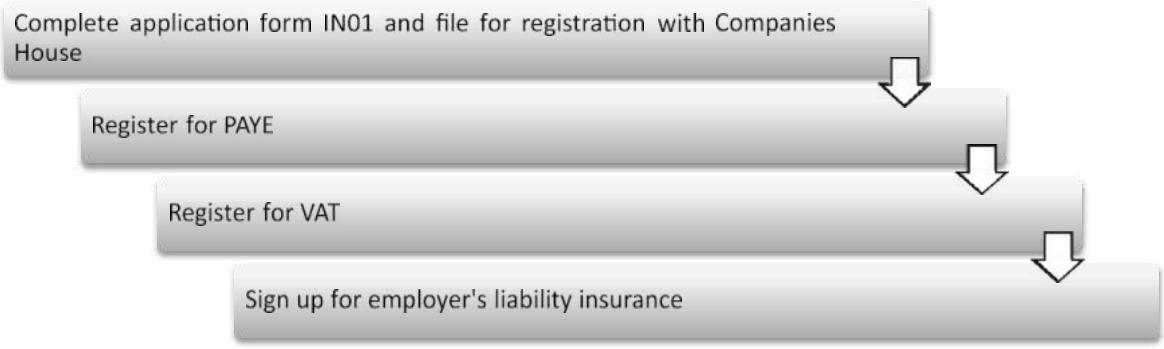
2015

- **Starting a Business:** In the United States starting a business became easier in New York City thanks tofaster online procedures.

2011

- **Paying Taxes:** In the United States the introduction of a new tax on payroll increased taxes on companiesoperating within the New York City metropolitan commuter transportation district.

Setting up of a Business in United Kingdom



Agency : Companies House

Complete application form IN01 and file for registration with Companies House

Founders of the Company have the option to check for unique company name and file for registration themselves, or to retain incorporation professionals to do so. The option to complete registration is through paper application or electronically.

In case the company chooses to file for incorporation itself online, model articles of incorporation and companymemorandum are generated automatically by the registration website www.gov.uk/register-a-company-online.In addition the above forms, all companies must provide the following information to the relevant Registrar of Companies (i.e., for England and Wales, Scotland, or Northern Ireland):

- Statement of compliance with all requirements of the 2006 Companies Act;
- Application form IN01, which includes:
  - proposed company name;
  - country of registration office (e.g. England and Wales (or Wales), Scotland or Northern Ireland);
  - Whether the liability of the members is to be limited and if so whether by shares or guarantee;and;
  - Whether the company is public or private;
- In the case of a company with a share capital, the application must also include a statement of thecapital and initial shareholdings, including the name and address of the subscriber.
- A statement of the proposed officers, being the first director and company secretary (unless in the caseof a private company, where the appointment of a company secretary is optional);
- A statement of the intended registered office address.

On completing the online form if the company name provided cannot be used the website will alert you to this and you have the option of selecting another name. Fees for filing incorporation documents are as follows: GBP 12 for a Web filed incorporation and GBP 40 for paper filers (or GBP 100 for a same day service). The standard digital registration fee through a third party agent is GBP 10 (or GBP 30 for a same day service). There is no requirement for a company to use a third party agent. Third party agents may charge additional fees as well asthe standard registration fee.

In case the company chooses to retain incorporation agents to file for registration, in addition to the above documents, the application file must include the agents' name and address. Note that in case the company wants to amend model articles of association or company memorandum it cannot file for registration online via www.gov. uk/register-a-company-online. Instead, the company must use professionals to compose incorporation documents and submit them via specialized software to Companies House.

From 30 June 2016, new companies have to provide their People with Significant Control information as part of the incorporation process. The data on beneficial ownership will be accessible and searchable from the database of Companies House.

Register for PAYE

Agency: HMRC

The company must contact the HMRC to set up a contribution scheme for national insurance and pay-as- you-earn (PAYE) tax, which deducts tax from employee wages or salary. The company will be issued with an activation PIN within 5 business days – typically less - and will have to activate this PIN within 28 days (or elserequest a new PIN). The company will use the PIN to register and enroll online. For security reasons, a check is run on the data provided. A small percentage of registrations who fail the

security check can take longer. Otherwise, activation is instant.

Since 6 April 2013, companies have to report their PAYE in real time. This means that companies must either report online or require their accountants to submit reports every time they pay their employees.

Register for VAT

Agency: HMRC

A business will need to register for VAT if its taxable goods and services supplied within the UK for the previous 12 months is more than the current registration threshold of GBP 85,000 or the business expects it to go over that figure in the next 30 days alone, it must register for VAT. However, the business may also voluntarily choose to register for VAT if its VAT taxable goods fall under the GBP 85,000 threshold.

Most businesses, including Limited Companies, can register for VAT account online at: *https://online.hmrc.gov. uk/* registration or send paper forms through the post. Most applications for VAT registration can be completed online but there are some circumstances where a business has to apply by post. To register online for VAT oruse other VAT online services, a business will first need to sign up for HMRC Online Services or the Government Gateway.

Sign up for employer's liability insurance

Agency: Insurance company

The Employers' Liability (Compulsory Insurance) Act of 1969 requires all employers in the United Kingdom to maintain employers' liability insurance from an approved insurance company. The minimum legal requirementfor employers' liability insurance is a limit of indemnity of GBP 5,000,000. In addition, a fine of GBP 2,500 per day can be imposed if employer's liability insurance is not taken out. The Employers' Liability (Compulsory Insurance) Act of 1969 requires that proof of insurance be posted at theworkplace. Since October 1, 2008, it is possible to display this information electronically, although a company that wishes to do this will need to ensure that its employees know how and where to find the certificate andhave reasonable access to it.

Business Reforms in United Kingdom (World Bank Doing Business Report 2020)

2020

- **Paying Taxes:** The United Kingdom made paying taxes more difficult by introducing a new pensionscheme paid by the employer.

2019

- **Getting Electricity:** The United Kingdom made getting electricity faster by implementing severalinitiatives to expedite the external connection works performed by sub-contractors.

2016

- **Paying Taxes:** The United Kingdom made paying taxes less costly for companies by reducing the corporate income tax rate and increasing the wage amount per employee that is exempted from social security contributions paid by employers. On the other hand, the United Kingdom increased municipaltax rates and environment taxes.
- **Enforcing Contracts:** The United Kingdom made enforcing contracts more costly by increasing the court fees for filing a claim.

2015

- **Starting a Business:** The United Kingdom made starting a business easier by speeding up taxregistration.
- **Paying Taxes:** The United Kingdom made paying taxes less costly for companies by reducing thecorporate income tax rate. On the other hand, it increased the landfill tax.

2014

- **Starting a Business:** The United Kingdom made starting a business easier by providing model articlesfor use in preparing memorandums and articles of association.
- **Registering Property:** The United Kingdom made transferring property easier by introducing electroniclodgment for property transfer applications.

2013

- **Paying Taxes:** The United Kingdom made paying taxes less costly for companies by reducing thecorporate income tax rate.

2012

- **Dealing with Construction Permits**: The United Kingdom made dealing with construction permits easierby increasing efficiency in the issuance of planning permits.

2011

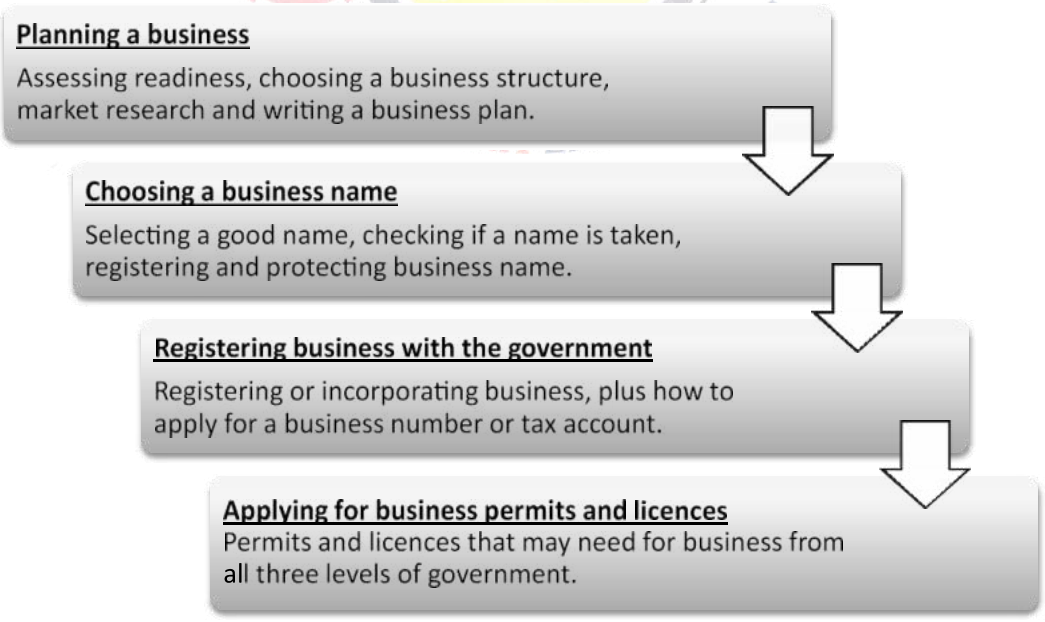
- **Enforcing Contracts:** The United Kingdom improved the process for enforcing contracts by modernizingcivil procedures in the commercial court.
- **Resolving Insolvency**: Amendments to the United Kingdom's insolvency rules streamline bankruptcy procedures, favor the sale of the firm as a whole and improve the calculation of administrators' fees.

2010

- **Dealing with Construction Permits**: The United Kingdom made dealing with construction permits easierand less time consuming through wider use of approved inspectors.
- **Registering Property:** The United Kingdom speeded up property registration by introducing automaticelectronic processing of the land transaction return.

Setting up of a Business in Canada

Following are the steps involved in setting up of business in Canada:



Setting up of a Business in Australia

To run the business in Australia, one need to register the business. This makes sure that business gets taxed atthe right rate, avoids penalties and protects brand and ideas. Following are the steps in brief for setting up of business in Australia:

- **Australian business number (ABN):** An Australian business number (ABN) is unique to business. Customers, suppliers and the Australian Taxation Office (ATO) use this number to help identify business. An ABN is free to register.
- **Business name:** A business name helps customers identify business from others.
- **Tax registrations for business:** Not all taxes will apply to business. It depends on the type of businessa person starting.
- **Licences and permits:** From zoning laws to a food licence, the licences and permits will vary. Theyoften depend on the location of the business and the industry.
- **Company:** A company is a legal entity in its own right. If a person has decided a company is the rightbusiness structure for the business, this need to register.
- **Trade mark:** Register the business as a trade mark to protect the business name and brand from beingused by others.

Chapter - 12
Identifying Laws applicable to various Industries and their Initial Compliances

Compliance of Industry Specific Laws Applicable to an Entity at the Time of Setting up Of The Enterprise

Introduction

Under the transforming move of vision New India 2022, India is venerating an emerging market, registering itself as one of the biggest and fastest growing economies in the world. According to various reports, India is cited as having the potential to become the third largest economy in the world in the coming 30 years, behind only China and the USA. Keeping in pace with the contemporary global market and emerging stand of Indian economy, government initiated various flagship programs to boost the entrepreneurship environment in the country. Few of the major flagships including Make in India" coupled with "Ease of Doing Business in India" (EoDB), "Skill India", "Digital India", Atmanirbhar Bharat, etc., were started to build the interest and ease among various domestic and overseas stake holders to set up and advance entrepreneurship in India.

Among the chosen 190 countries, India ranked 63rd in Ease of Doing Business 2020 according to the World Bank Report. In 2014, the Government of India launched an ambitious program of regulatory reforms aimed at making it easier to do business in India. The program represents a great deal of effort to create a more business-friendly environment. India as one of the top 10 improvers, for the 3rd time in a row, with an improvement of 67 ranks in 3 years.

India has emerged as one of the most attractive destinations not only for investments but also for doing business. With the aim to improve the ease of living and the ease of doing business in India, more than 25,000 compliances have been reduced by the Government of India. Positive changes have led to this impressive improvement in India's ranking in the EoDB index.

Indeed, when the entrance and advancement to Indian business market would be of ultimate fortune, there are various laws which need to be abided for successfully setting up and taking forward an enterprise in India.

Certain concepts taught in Lesson 1 and Lesson 2 are recapitulated below to read the same in sync with industries specific laws. A quick understanding of setting up the enterprise along with the laws applicable to them could be learnt at below*:*

Formalizing and Deciding the Business Structure

The foremost requirement for setting up this business is to understand and decide what kind of business venture it would be. For example, if it's a company, it would be governed under Companies Act, 2013; Limited Liability Partnership is governed by the LLP Act 2008; in case of Partnership, the Partnership Act, 1932 would be applicable; if it is an MSME, the MSME Act, 2006 would come into picture. It shows that there is a plethora of laws which need to be complied with the respective form of businesses.

Therefore, the first thing for starting any business is to determine the nature and type of the business. Founders need to incorporate the business as a specific business type - sole proprietorship, private limited, public limited, partnership, limited liability partnership etc. It is very essential to have this clarity at the very beginning as this will be integral to the business' overall vision and goals, both short term and long term.

Each business type comes with its own set of legal requirements and regulations and businesses should pay special attention to them before they are incorporated or registered.

Here is a quick look into the legal implications for the major business types in India

Legal Details	***Business Types***				
	Proprietorship	***Partnership***	***Limited Liability Partnership (LLP)***	***Public/Private Limited Company***	***One Person Company***
Registration	No formal registration required	Registration is optional	Has to be registered with the Ministry of Corporate Affairs under the LLP Act 2008	Has to be registered with the Ministry of Corporate Affairs under the Companies Act 2013	Has to be registered with the Ministry of Corporate Affairs under the Companies Act, 2013
Legal Status	Not recognised as a separate entity and promoter is personally responsible for all liabilities	Not recognised as a separate entity and promoters are personally responsible for all liabilities	Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP	Is a separate legal entity. The promoters of the company are not personally liable towards the company	Is a separate legal entity. The promoter of the company is not personally liable towards the company
Member Liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company.	Limited Liability to the extent of share capital or the amount of guarantee undertaken, unless the company is an unlimited company

Number of Members Required	Can only have one person	Minimum of two persons required to start a Partnership (Max: 50)	Minimum of two persons required to start a LLP (Max: No limit)	Minimum of two persons required to start a Private Limited Company (Max: 200) and seven persons for a public limited company (No Max limit)	One person is required to start a One Person Company. Appointment of nominee is mandatory
Transfer-ability	Not transferable	Not transferable	Ownership can be transferred	Ownership can be transferred by means of share transfer	Ownership can be transferred by means of share transfer.

Legal Details	***Business Types***				
	Proprietorship	***Partnership***	***Limited Liability Partnership (LLP)***	***Public/Private Limited Company***	***One Person Company***
Taxation	Taxed as individual, based on total income of proprietor	Partnership profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable	LLP profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable.	Profits of both Public and Private Limited Company are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable	Profits of One Person Company are taxed as per the provisions of the Income Tax Act, 1961.
Annual / Statutory Meetings	No requirement for annual / statutory meetings	No requirement for annual / statutory meetings	No requirement for annual / statutory meetings	Board and General Meetings should be conducted periodically, as the case maybe	Board Meetings should be conducted twice a year

Annual Filings	No requirement to file annual report with the Registrar of Companies. Income tax return to be filed on the income of the proprietorship	No requirement to file annual report with the Registrar of Companies. Income tax return to be filed for the partnership	To file Annual Accounts & Returns & Solvency and Annual Return with the Registrar every year. Tax returns must also be filed annually	To file Annual Accounts & Returns and Annual Return with the Registrar every year. Tax returns must also be filed annually	To file Annual Accounts & Returns and Annual Return with the Registrar every year. Tax returns must also be filed annually
Legal Details	Proprietorship	Partnership	Limited Liability Partnership (LLP)	Public/Private Limited Company	One Person Company
Existence or Survivability	Proprietorship existence is dependent on proprietor	Partnership existence is dependent on partners. Can be dissolved at will or upon on the death of partners	Existence not dependent on partners. Can be dissolved voluntarily or by order of the Company Law Board	Existence not dependent on directors or shareholders. Can be dissolved voluntarily or by Regulatory Authorities	Existence not dependent on directors or shareholder. Can be dissolved voluntarily or by Regulatory Authorities
Foreign Ownership	Foreigners are not allowed to be sole proprietors	Foreigners are not allowed to be part of a partnership	Foreigners are allowed in invest with/ without the approval of the Reserve Bank of India (RBI) and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are allowed to invest with without the approval of RBI and other applicable permissions for the relevant Government of India authorities depending on the category of business they are interested to invest.	Foreigners are not allowed to be part of OPC

India is an emerging market with wide scope and opportunities for both Indian and foreign investors. The Government of India offers entrepreneurial friendly policies which makes invasion and growth of businesses in India easier. Before starting a business, it is very important to prepare a blueprint of the business. Other business structures are as follows:

Section 8 Company

A Section 8 Company, also called as a Non-profit Company, can be incorporated under the provisions of the Companies Act, 2013 having the status of limited company without the addition to its name of the word "Limited" or "Private Limited" for the purpose of promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and the Company shall use its profits or other income in promoting its objects only and prohibit the payment of any dividend to its members as well.

Section 8 company shall enjoy all the privileges and be subject to all the obligations of limited companies. A firm may also be a member of section 8 company.

Eligibility to apply for Section 8 Company License

An individual or an association of individuals are eligible to be registered as Section 8 Company if it has below- mentioned objectives. The objectives must be confirmed to the satisfaction of the Central Government.

- When the company intends to promote science, commerce, education, art, sports, research, religion, charity, social welfare, protection of the environment or alike other objectives;
- When the company holds an intention to invest all the profits (if any) or any other income generated after incorporation in the promotion of such objects only;
- When the company does not intend to pay any dividend to its members;
- Any failure to meet the prescribed norms formulated by the Central Government may lead to the closure of the Company on the orders of the Central Government.

The Companies registered under the Section 8 of Companies Act, 2013 enjoy the following advantages:

- *Access to Tax benefits*: Since Section 8 companies are charitable institutions, they have access to the various exemptions available under the Income Tax Act. Section 80G of the Income Tax Act renders plenty of tax-related benefits to these companies.
- *Zero Stamp Duty*: The Section 8 Companies are not liable to pay stamp duty on the Memorandum of Association (MOA) and Articles of Association (AOA), unlike other entities incorporated under the Companies Act, 2013.
- *Minimal share capital*: Unlike private limited, public limited, or OPC, a Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company.
- *Exempted from suffix/prefix of name*: Section 8 companies do not have the compulsion to affix the term like Limited or Private Limited in their name. These entities are registered with limited liability.
- *Separate legal entity*: Section 8 company possesses a distinct legal status which implies that entity's existence is independent of its members. The section 8 entity has perpetual existence.
- *Improved Credibility*: The flexible and transparent constitutional framework of Section 8 companies allows them to garner better credibility than other types of NGOs such as Society and trust.

Reliance Foundation, Infosys Foundation, TATA Foundation, Reliance Research Institute are some commendable examples of successful Section 8 companies registered in India.

Exemptions Granted to section 8 companies

- **General Meetings:** The Annual General Meetings (AGM) for the Companies can be convened after the short notice period of 14 days under section 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 six months. As the companies have to keep four board meetings annually will not apply.
- **Constitution of nomination and remuneration committee and related compliances:** Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee and nor a Stakeholders Relationship Committee.
- **No appointment of Company Secretary**: As per the new notification, they do not have to appoint a company secretary. This is the most significant reduction for non-profit companies.

Exemptions Granted to section 8 companies

- General Meetings at shorter notice period
- Recording of Minutes of the Meeting not required unless Articles states so
- Audited Financial Statements can be sent before14 days to the members
- No maximum limit of 15 directors
- No Appointment of Independent Director
- One Board Meeting within six months
- No appointment of Company Secretary

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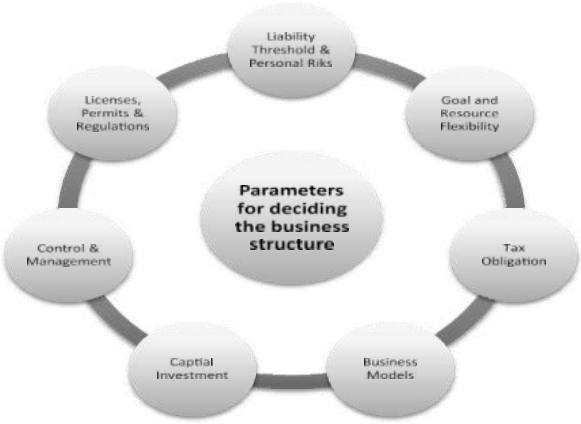
Parameters For Deciding Business Structure

The business structure could be a decisive element in ensuring the success of the organization. Selecting the right structure from various structures can be an intimidating task for anyone but the clarity about the goal and scale of business ease out the process to a considerable extend. The parameters for deciding the business structure are listed below:



- **Control & Management:** Single Business Owners who has the ownership of all the investments should rather go for a One Person Company. However, entrepreneurs with 2 or more proposed owners/directors looking to attract more investments into the firm should rather go for an LLP or a Public / Private Limited Company.

- **Capital Investments:** If you wish to obtain funds from an outside entity, such as an investor, bank, or venture capitalist, you must opt for an authentic business model such as private limited company. Unlike sole proprietorships, Corporations don't necessarily encounter any complication while raising funds from an outside source.

  Also, bigger companies have the liberty to escalate funds by selling shares of stock whereas, sole proprietors can only raise funds via their personal accounts or by taking on partners. An LLP can encounter identical issues, although, as its own entity, it is not always required for the owner to utilize their personal assets or credit.

- **Liability Threshold & Personal Risk:** Owners would want to safeguard their risk under financial pressure. The right business structure could limit exposure to such risks. In the case of partnerships, the partner shares the responsibility to confront risk individually. Certain business structures such as HUF, Sole Proprietors and Partnerships have unlimited liability. Therefore, in case there is any default in the repayment of loans, the money will be recovered from the members or partners in profit sharing ratios. In these cases, the risk to the personal assets of the owners is high.

  Meanwhile, the business models like LLP & Company provide comprehensive protection to the owner's liability with a few exceptions. Furthermore, one can also opt for a One Person Company if he/she wishes to mitigate the personal risk to a larger extend.

- **Tax Obligation:** A tax obligation for an LLP owner is more or less equal to the sole proprietor. The income generated from the business is considered personal income and taxed accordingly. Small business owners do not wish to confront double taxation in the early stages. The LLP structure prevents that mishap and allows the owner to reap more income. Individuals in a partnership claim their respective profits as a personal income.

  A corporation addresses their tax liability each year, paying taxes on profits after deducting the expenses and payroll. If you pay yourself from the company, you will be liable to pay personal taxes such as for medicare and social security, on your personal return.

- **Licenses, Permits, & Regulations:** Apart from getting legal registration for the business, specific permits and licenses may be required to obtain to operate. Depending on the type of activities and business nature, it may require to be licensed at the local, state, and central levels.
  States imposed distinctive requirements for different business models. Based on where the business is established, there could be different prerequisites at the municipal level as well. There is no such thing as "generalized structure", so the business must be observant of what applies to them. Liability, tax structure, and industry regulations are the few key parameters that one has to take into account before opting for a business structure.

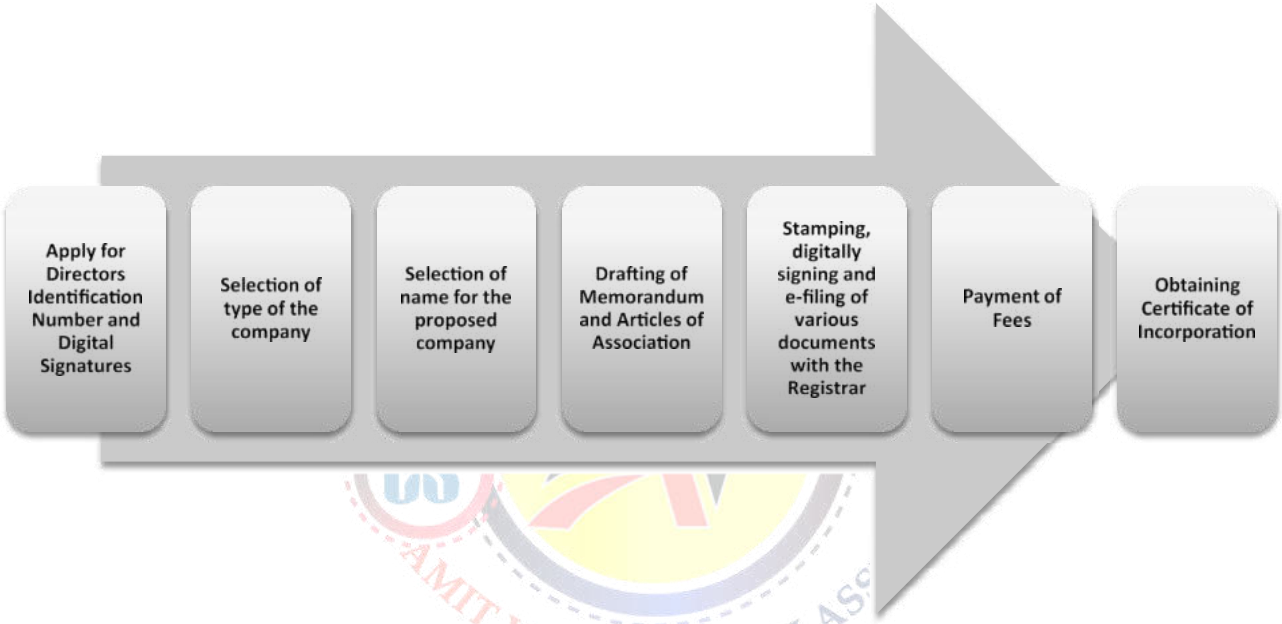
- **Attracting Investors:** Having an unregistered business structure can be a hindering obstacle to attract an investor to raise some capital for the business. Legally established business structures like OPC, Public Company, LLP etc are much more likely to get the vote confidence

from investors firm.

Among others, one important form of business is the Company which is governed under the Companies Act, 2013. The procedure for setting up an enterprise in the form of company could be seen as below:

Formation of A Company

Company registration is also referred to as incorporation of company or formation of a business. Registering the company makes it a distinguished entity and gives legal existence. The company registration process in India is done under the Ministry of Corporate Affairs.
It is crucial to be well informed by the registration process and a step-by-step guide to the company registration process in India is given below:



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(i) Apply for Director Identification Number (DIN)

The first step towards the company registration process in India begins by obtaining the unique identification number. According to the Companies Amendment Act 2006, all directors in a company need to acquire their Director Identification Number (DIN). DIN is a unique 8-digit number that is issued under section 153 of the Companies Act. The requirements for DIN include full name, father's name, date of birth, identity proof, address with proof, PAN card copy and two photographs of all the directors proposed.

The application form is available online on the official website of the Ministry of Corporate Affairs (MCA Website) as the DIN-1 Form. The DIN-1 Form must be duly filled and uploaded after paying the applicable fees.

(ii) Apply for Digital Signature Certificate (DSC)

The authenticity of the documents and information provided in the DIN-1 Form can only be assured by getting a valid digital signature on all the documents submitted in the e-filing process.

The company registration process in India requires every business to acquire a Digital Signature Certificate (DSC) to ensure a secure way to get the documents submitted electronically. The requisites for application of digital signature includes proposed directors' full name, father's name, date of birth, address with proof, PAN card copy, identity proof and a photograph.

A DSC is distinguished for every business entity and should not be shared by businesses. Normally this digital certification is valid for a period of one or two years, and after expiry, it should be renewed by the Controller of Certification Agencies (CCA) again.

(iii) Filing for New User Registration

It is important to get registered on the MCA portal. A user account needs to be created for filing an eForm, carrying out different transactions and paying the prescribed fees. The Ministry of Corporate Affairs does not charge any fee for creating an account.

(iv) Application for Company Name

The proposed company name should be unique and descriptive of the products and services offered by the business. It provides them with a distinguished entity from their competitors in the same field.

The Ministry of Corporate Affairs (MCA) has a RUN (Reserve Unique Name) web service for incorporating a company. However, this service can be used only once. Due to a similarity in names or failure to abide by the Companies Incorporation Rules, once rejected, RUN cannot be re-used.

Hence, the proposed name must be unique and fulfils all the guidelines prescribed. In case of rejection, the applicant must re-file another RUN form after paying the prescribed fees.

(v) Filing for Charter Documents

In a company registration process, the applicants are required to create charter documents like Memorandum of Association (MOA) and Articles of Association (AOA).

Charter Documents of a Company

Before the registration of the company under the Companies Act 2013, the company should comply with the various charter documents made essential under the concerned law. These are:

Memorandum of Association

The MoA sets out the objects for which the company is proposed to be incorporated in the manner provided hereunder:

- The first and foremost clause in MoA shall be the name of the proposed company suffixed with the words limited or private limited, as the case may be;
- The second is the Registered Office Clause, stating the place where the registered office of the company shall be situated;
- The third clause contains the main objects for which the company is going to be formed / incorporated;
- The MoA binds the area of operation of the company in respect to the objects mentioned therein and any decision or actions taken in contravention of the MoA shall be void. A company cannot run any business contrary to the main objects mentioned in their MoA.

The MoA and AoA of a company can be modified post incorporation in accordance with the applicable provisions of the Companies Act.

Articles of Association

The articles of a company contain regulations for the management of the company. This document is confined to the applicability of the provisions of the companies act on private limited company or public limited company, as the case may be.

The Constitutional documents of the Company should be prepared diligently as in many cases, the authorization from Memorandum and Articles are required.
Example- Issuance of new class of shares, Buy-back of shares, Issue of Bonus Shares

(vi) Stamping of Company Documents

The Memorandum of Association and Articles of Association are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The Memorandum of Association is a document that states the constitution of the company, objectives, scope of activities of the company and also defines the relationship of the company with the outside world. The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. These documents should be stamped and submitted to the ROC along with relevant forms and registration fee.

(vii) Certificate of Incorporation

The ROC scrutinizes the documents and, if necessary, instructs the authorised person to make necessary corrections. Thereafter, a Certificate of Incorporation is issued by the ROC, from which date the company comes into existence. It takes one to two weeks from the date of filing of the Memorandum of Association and Articles of Association to receive a Certificate of Incorporation. Although a private company can commence business immediately after receiving the certificate of incorporation, a public company cannot do so until it obtains a Certificate of Commencement of Business from the ROC.

(viii) Register Other Details

The next step in the company registration process in India includes registering the company name & address and notice for appointment of directors, secretary and manager.
Following this, the company is required to register with the Office of Inspector, Shops and Establishment Act (State/Municipal). The form provides details about the manager's and employer's name, the establishment's name, postal address, the legitimate category. It should be sent to the office of the local shop inspector along with applicable fees. It is obligatory to register the Establishment Act within a month of the opening of your business.

Documents required for Company Registration

The general documents that are to be submitted for registration of LLP, One Person Company, Private Limited and Public Limited Company are as follows:

Documents of the Directors and Shareholders of the company/ Partners of the LLP

- Proof of identification of all the company's directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as proof of identification:
  - Pan card
  - Aadhar card
  - Driving license
  - Passport

- Proof of address of all the directors and shareholders (partners in case of LLP). Any one of the below documents can be submitted as address proof:
  - Latest telephone bill (not older than 2 months)
  - Latest electricity bill (not older than 2 months)
  - Bank account statement having address
- DIN (DPIN in case of LLP) and DSC of all the directors (partners in case of LLP)

Documents of the Company/LLP

- Proof of registered office of the company. The below documents must be submitted as address proof of the company:
  - Tenancy/rental agreement between the landlord and company/LLP.
  - Letter or NOC from the landlord of his/her permission to use the office/premises as the LLP's/ company's registered office.
  - Sale deed of the company/LLP office premises in the name of the company/LLP.
- The Memorandum of Association (MoA) which contains the objects of the company for which the company is going to be incorporated and the liability of the members of the company.
- The Articles of the Association (AoA) which lays down the by-laws on which the company will operate.

Reservation of name or change of name

An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any.

The SPICe+ is an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. This Form will also facilitate allotment of GSTIN wherever so applied for by the stakeholders. In case the applicant wants to apply for name, incorporation and other integrated services together, he can do so together by filling necessary information in Part A and Part B.

Features of Spice+ Form

Part A	***Part B***
Part A represents the section wherein all details with respect to name reservation for a new company has to be entered. Part A can either be submitted individually ONLY for name reservation or can be submitted together with SPICe+ Part B for both name reservation as well as incorporation. In case SPICe+ Part A is submitted individually for name reservation, Part B and all other linked forms shall be enabled only after the SRN of SPICE+ Part A is 'Approved' i.e. the name is reserved.	Part B represents the section wherein all remaining details required for incorporation of a company has to be entered. Part B of SPICe+ offers following services viz. (i) Incorporation (ii) DIN allotment (iii) Mandatory issue of PAN (iv) Mandatory issue of TAN (v) Mandatory issue of EPFO registration (vi) Mandatory issue of ESIC registration (vii) Mandatory issue of Profession Tax registration(Maharashtra) (viii) Mandatory Opening of Bank Account for the Company and (ix) Allotment of GSTIN (if so applied for).

An approved name is valid for a period of:

- 20 days from the date of approval (in case name is being reserved for a new company), or
- 60 days from the date of approval (in case of change of name of an existing company).

Users are permitted to apply for two proposed names and one Resubmission (RSUB) is permissible while Reserving Unique Names for companies through the Spice+ Form.

Guidelines to reserve a company name

The name of a company should be:

- Unique
- Contain a noun and an activity word that reflects its objectives
- Be in line with Company Name Guidelines issued by Ministry of Corporate Affairs. The Company Name should not be:
- Be same, similar, identical or resembling to the name of an existing Company or LLP registered. Phonetically similar names are also to be avoided.
- Be similar to a registered trade mark or a trade mark for which an application has already been filed.
- The name chosen should not constitute an 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.

Simplified Proforma for Incorporating Company [Electronically Plus (SPICe+)]

(Rule 38 of Companies (Incorporation) Rules, 2014)

1. The Application for incorporation of a company shall be in [SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32)] alongwith e-Memorandum of Association (e-MOA) in Form No. INC- 33 and e-Articles of association (e-AOA) in Form no. INC-34.

   Provided that in case of incorporation of a company falling under section 8 of the Act, SPICe+ shall be filed along with Form No. INC- 13 (Memorandum of Association) and Form No. INC-31 (Articles of Association) as attachments.

   Provided further that in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India or in case of Section 8 Company, MOA/AOA shall be filed with SPICe+ in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34.

2. The application for allotment of Director Identification Number upto three Directors, PAN/ TAN, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act shall be filed in SPICe+. with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five

hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules. 2014:

Provided that where an applicant has applied for reservation of a name and which has been approved therein, he may fill the reserved name as proposed name of the company.

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

3. For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in SPICe+, and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in SPICe+ in case of proposed directors not having approved Director Identification Number.

4. The promoter or applicant of the proposed company shall propose only one name in SPICe+ .

5. The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in Form No. INC-33 and Articles of Association (e-AoA) in Form no. INC-34.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA

6. For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. Rule 9, and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply.

7. A company using the provisions of this rule may furnish verification of its registered office under sub- section (2) of section 12 of the Act by filing SPICe+ in which case the company shall attach along with such Form No.INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.

8. Form No.INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.

9. Declaration by first subscribers and Directors inform INC-9 shall be generated in PDF and have to be submitted in electronic form except where total number of subscribers and / or directors is greater than 20 or any such subscribers and/ or directors does not have DIN/ PAN.

10. (a) Where the Registrar on examining SPICe+, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for re-submission of documents shall not exceed thirty days.

11. The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.

Application for registration of Goods and Service Tax Identification Number (GSTIN). Employee State Insurance Corporation (ESIC) Registration, Employees' Provident Fund organisation (EPFO) Registration and Profession Tax Registration, Opening of Bank Account and Shops and Establishment Registration

The application for incorporation of a company shall be accompanied by e-form [AGILE-PRO-S] (INC- 35) containing an application for registration of the following numbers, namely:-

- GSTIN - Optional
- EPFO - Mandatory
- ESIC - Mandatory
- Profession Tax Registration – Mandatory in Maharashtra
- Opening of Bank Account - Mandatory
- Shops and Establishment Registration – Mandatory

Applying For Business Licenses

Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. Knowing the applicable licenses for the enterprises and obtaining them is always the best way to start a business. The lack of relevant licenses can lead to costly lawsuits and unwanted legal battles. Business licenses are the legal documents that allow a business to operate while business registration is the official process of listing a business (along with relevant information) with the official registering authority.

For instance, an e-commerce company may require additional licenses like GST Registration, Professional Tax etc. while a restaurant may require licenses like Food Safety License, Certificate of Environmental Clearance, FSSAI Act, Health Trade License etc. along with the above mentioned licenses.

There are many factors affect for authorizations of business licenses which may include the type of business ownership, such as partnership, sole proprietor or company, & the number of employees, location of business etc. Business licenses are not only required for new business entity but also required for already established Companies.

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.

To obtain TAN, application must be made for allotment of TAN in Form 49B along with the required supporting documents. Based on the application, the TAN will be allotted to the entity and the entity must quote the TAN in all TDS/TCS returns, TDS/TCS payment challans and all TDS/TCS Certificates. India Filings can help you obtain your TAN registration quickly and hassle-fee. India Filings is an authorized TAN Facilitation Center.

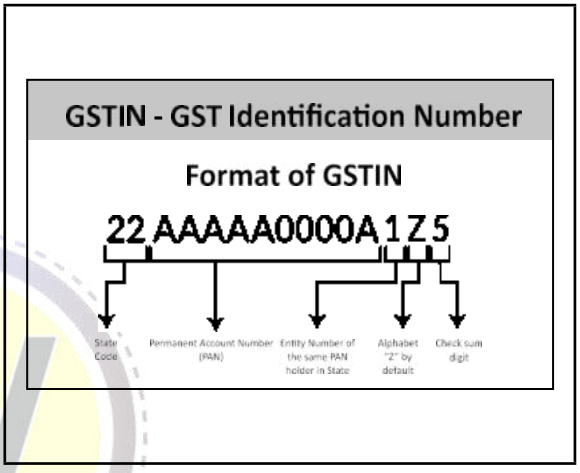
Employee's State Insurance Registration: Employee's State Insurance(ESI) is a self-financing social security and health insurance scheme for Indian workers.it offers an economic & medical assurance to workers and its dependents. Besides providing medical benefits to workers and its dependents it also insures worker from temporary or permanent disablement and sickness.

ESI Registration is mandatory for employers having 10 or more employees. For all employees earning Rs. 25,000 or less per month as wages. This compulsory insurance also helps employers to cover up their contingent liability of treatment and medical expenses, which may be incurred if any accident is happened at the business premises or factory.

EPF Registration: 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. 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. Those establishments which do not have the prescribed number of employees but willing to register themselves to provide the benefits of Provident Fund to their employees can register voluntarily with the Regional Provident Fund Office. i.e. covered voluntarily registration.

GST Registration: GST Registration is mandatory for every business or corporation involved in buying and selling of goods or services. Those with an annual turnover of more than 20 lakh rupees for supply of services and 40 lakh rupees in case of supply of goods is the threshold limit (exemptions provided to special category states). If a business is carried on without registering under GST, then it will be an offence under GST law. A casual taxable person/ Non-Resident Taxable Person, e-commerce aggregator, agents of supplier and input service distributor etc. are required to register under GST. Moreover, Every GST taxpayer is given a unique identification number called GSTIN during the registration process.



Category	Region	Aggregate Annual Turnover (Inr)
Services	Special Category States- Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand & Himachal Pradesh.	10 Lakhs
Services	Rest of India	20 Lakhs
Goods	Special Category States- Assam, Arunachal Pradesh, Manipur, Mizoram, Meghalaya, Nagaland, Tripura, Sikkim, Uttarakhand & Himachal Pradesh	20 Lakhs
Goods	Rest of India	40 Lakhs

Udyam Registration: The Udyam online site handles India's small businesses, there are several advantages to registering, including government credit programmes, subsidies, etc. The requirements for Udyam registration are specified in terms of a composite criteria that takes into account business revenue and investment in machinery and plants.

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 three 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 under the Ministry of Commerce. 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: There are many more company categories that are not included in the list above. Wherever it is judged essential, the government requires licenses and permits to guarantee the welfare of the public and the environment. For example, the Insurance Regulatory and Development Authority supervises insurance firms, while the Reserve Bank of India oversees the banking and microfinance industries.

Understanding Taxation and Accounting Laws

Taxes are part and parcel of every business. There are a broad variety of taxes, such as, GST state tax and even local taxes that may be applicable for certain businesses. Different business and operating sectors attract different taxes and knowing this beforehand can prove to be useful.

Adhering to Labour Laws

Labour Laws are needed to ensure that the workers in an organization are not exploited. It acts as a safety net for the weakest segment of society. Hence, the objective of the Labour Laws is to protect the employees and hold the employers accountable for their actions. Thus, these laws are only enforcible in the work environment. The main goal of the said labour law is to create a good atmosphere in the workplace so that people can be productive and can be ensured of their security, both physical and mental. If a company or organisation doesn't comply with the Labour Laws, punitive actions can be taken against them, i.e. they can be punished.

Adhering to labour laws is integral to every organization, small or big. When you are established as a company and have hired people to work for your organization, you are subject to several labour laws regardless of the size of the organization. Laws with regards to minimum wages, gratuity, PF payment, weekly holidays, maternity benefits, Prevention from sexual harassment, payment of bonus among others will need to be complied with.

Objective of the Labour Laws

Labour Laws aim to correct the power disbalance between the employees and employers. It provides the employees with security so that they can't be unjustly dismissed. Therefore, they give the employees the power to negotiate and ensure a good working conditions. The most important factors that the Labour Laws aim to work on are:

- Productive Work & Adequate Earning
- Proper Working Hours
- Security to the Employees
- Work-Life Balance
- Secure Working Environment
- Sickness and Accident benefits to the employees
- Social Security
- Labour Welfare
- Fair Treatment in the Workplace
- Prevention of Children at Work
- Forced Labour.

Some major labour laws applicable under this scheme are:

- The Industrial Disputes Act, 1947
- The Trade Union Act, 1926
- Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- The Industrial Employment (Standing Orders) Act, 1946
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Payment of Gratuity Act, 1972
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- The Employees' State Insurance Act, 1948
- The Factories Act, 1948.

Having a well-designed employee policy can be a major differentiator for new companies to set up and advance well. An attractive employee policy can be the key to attract and retain good talent. Employee policies can also prove to be the starting point for boosting employee morale and increasing productivity.

Recent Development in Labour Laws

Labour Laws emerged when Employers tried to restrict the powers of Worker's Organisations & keep labour costs low. These mediate the relationship between workers, employing entities, trade unions, and the government. In India, these laws have traditionally been governed by contract as well as various legislations, both at the central and state level. With the objective to simplify, modernize, rationalize and consolidate the various legislations with respect to employment, wages, industrial disputes and other relevant labour/employment related matters, Ministry of Labour and Employment ("Ministry") introduced four bills in 2019 to amalgamate 29 central laws related to labour laws. These bills have been codified and enacted as:

- The Code of Wages, 2019.
- The Industrial Relation Code, 2020.
- The Occupational Safety, Health and Working Conditions Code, 2020.
- The Code on Social Security, 2020.

The Indian Parliament passed these four labour codes in the 2019 and 2020 sessions. While the Parliament passed The Code on Wages in August 2019, the other three labour legislations, namely, The Industrial Relations Code, 2020, The Occupational Safety, Health and Working Conditions Code, 2020 and The Code on Social Security, 2020 were passed by the Parliament in September 2020. These four codes will consolidate 44 existing labour laws.

The notification for implementation of the codes are yet to be issued as various states have different codes and the central government intends to implement this code on all the states simultaneously. Drafts are yet to be sent by the states to the centre in all four labour codes.

The new labour codes can be termed as much-needed improvements to the current labour regime in the country. The labour codes will ensure the creation of "One India & One Law", reducing the number of laws with the often conflicting definitions of terms and provisions, to only four codes thereby ensuring tremendous ease in doing business. The "Final Goal" of Labour Laws is to bring both "Employer & Employee" on the same level, thereby mitigating the differences between the two ever-warring groups. The new labour reforms finally overtake the redundant existing labour law regime in terms of simplifying and modernising the labour system. But it is pertinent to note that these labour reforms are more employer-friendly. Although the new reforms have simplified various compliances, they have also created several confusions by not defining key terms in the Codes. Only time will tell how effective these Codes will be in the long run.

Adherence to Laws relating to Intellectual Property

The twenty-first century witnessed the emergence of "Intellectual Capital" as a key wealth driver of international trade between countries, thanks to rapid globalization and liberalization of economies the world over. Intellectual property rights have become an irreplaceable element of India's business fraternity, whether in terms of new statues or judicial pronouncements. India's consent of the WTO (World Trade Organization) agreement has paved the way for its compliance with TRIPS (Trade Related Aspects of Intellectual Property Rights).

Further, Intellectual property is vital for most businesses in the contemporary regime of knowledge and innovation, especially for tech centric businesses. Codes, algorithms and research findings among others are some of the most common intellectual property owned by organizations. Therefore, one has to ensure strict adherence to the Laws relating to Intellectual Property in India as well as of International Application to which India is a signatory. For the effective implementation of the IP Laws, facilitators have been empaneled by the Controller General of Patents, Trademarks and Design. Such facilitators help the new enterprises in setting up their business under the vigil of IPRs by providing advisory services, assisting in patent filing and disposal of patent application among other services at a minimum charge.

The TRIPS agreement has made way for the harmonization of Indian laws connected with Intellectual Property Rights. The agreement was implemented with the minimum standards for the protection of IPR. A time-frame has been specified within which the participating countries are required to effect changes in their respective laws to meet the requisite compliance standards. The rest of the article seeks to highlight the amendments brought forth by the agreement in intellectual property laws. The Office of the Controller General of Patents, Designs and Trademarks controls all patents in India.

The well-timed and careful examination of IP rights of third parties can prevent, or at least shorten, the infringement of rights and the associated long legal processes. For this reason, these processes are now considered as compliance for many companies. Patent attorneys can assist companies in developing tailored solution for its industry requirements and setting up corresponding IP guidelines.

Ensuring Effective Contract Management

Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time.

Contract management involves overseeing agreements made with suppliers, customers, partners and employees. Effective oversight is critically important because sales can be lost and regulatory penalties can ensue from poor contract management. In the early stage of operations and post operation too, there are various contracts that a company has to abide by, therefore, the adherence to contract law is one of the most important requirement for the company.

Details about winding 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.

Trading & Retail Industry

List of laws that are specifically applicable to trading and retail industries:-

1. The Trade Marks Act, 1999;
2. The Patents Act, 1970;
3. The Indian Copyright Act, 1957;
4. Legal Metrology Act, 2009;
5. Shops and Establishment Act & Rule (State wise);
6. The Food Safety & Standard Act, 2006;
7. Local Municipal Corporation Act & Bye Laws (city-wise);
8. Acts prescribed related to Retail activities;
9. The Consumer Protection Act, 2019 and Rules & Regulations made thereunder;
10. Acts prescribed under prevention and control of Pollution;
11. Acts prescribed under Environmental protection;
12. Acts as prescribed under Direct Tax and Indirect Tax including GST and others;
13. Land Revenue laws of respective States;
14. Labour Welfare Act of respective States;
15. Local laws as applicable to various stores as per the respective Municipal Authority;
16. Whistle Blowers Protection Act, 2014;
17. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

IFSC & Bullion Exchange Industry

List of laws that are specifically applicable to IFSC and bullion exchange companies:
Act and Guidelines

1. SEZ Act, 2005;
2. The Securities and Exchange Board of India Act, 1992;
3. The Insurance Regulatory and Development Authority Act, 1999;
4. The International Financial Services Centres Authority Act, 2019;
5. The Foreign Exchange Management Act, 1999
6. The Pension Fund Regulatory and Development Authority Act, 2013;
7. The Payment and Settlement Systems Act, 2007;
8. The Government Securities Act, 2006;
9. The Credit Information Companies (Regulation) Act, 2005;
10. The Depositories Act, 1996;
11. The General Insurance Business (Nationalisation) Act, 1972.

Start-ups

List of laws that are specifically applicable to Startups:-

1. Shop and Establishment Act, (State-wise);
2. Environment and Protection Act, 1986;
3. Competition Act, 2002;
4. The Trade Unit Act, 1926;
5. The Inter-State Migrant Workmen (Regulation of Employment and Service) Act, 1979;
6. Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
7. Foreign Investments - For encouraging foreign investment in the start-up there are regulations for foreign venture capital investors (FVCI). Foreign Exchange Management Act (FEMA), 1999;
8. 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;
9. Whistle Blower Protection Act, 2014;
10. The Consumer Protection Act, 2019 and rules made thereunder;
11. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Non-Banking Financial Company (NBFC)

List of laws that are specifically applicable to NBFCs:-

1. The Reserve Bank of India Act, 1934 & Rules, Regulations, guidelines, circulars, directions, and notifications made there under;
2. Rules, regulations and guidelines issued by the Reserve Bank of India as are applicable to Deposit taking Non-Banking Financial Companies, Non-Deposit taking NBFC; Systematically Important NBFC;
3. Prevention of Money Laundering Act, 2002;
4. The Competition Act, 2002;
5. Labour and Social Security Laws as applicable.

Pharma Industry

List of laws that are specifically applicable to Pharma Industries:-

1. The Food Safety and Standards Act, 2006;
2. The Narcotic Drugs and Psychotropic Substances Act, 1985;
3. The Drugs and Cosmetics Act, 1940 and Drugs Rules, 1945;
4. The Drugs and Cosmetics Act, 1940 and The New Drugs and Clinical Trials Rules, 2019;
5. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
6. The Essential Commodities Act, 1955 - Drug Price Control Order, 2013;
7. Pharmacy Act, 1948;
8. Drugs (Price Control) Order, 1995;
9. Uniform Code for Pharmaceutical Marketing Practices, 2014;
10. Bio Medical Waste (Management and Handling) Rules, 1998;
11. The Air (Prevention and Control of Pollution) Act, 1981;
12. The Water (Prevention and Control of Pollution) Act, 1974;
13. The Indian Standard Code of Practice for Selection, Installation and Maintenance of Portable First Aid Fire Extinguishers;
14. The Maharashtra Non-Biodegradable Garbage (Control) Act, 2006;
15. The Water (Prevention and Control of Pollution) Act, 1974;
16. The Environment (Protection) Act,1986 and allied rules;
17. The Electricity Act, 2003;
18. The Explosives Act, 1884 read with The Gas Cylinder Rules 2016;
19. The Explosives Act, 1884 read with The Static and Mobile Pressure Vessels (Unfired) Rules, 2016;
20. The Petroleum Act, 1934;
21. The Boilers Act, 1923;
22. State Shop and Establishment Act (Respective States where Company has presence);
23. The Cigarette and Other Tobacco Products (Prohibition of Advertisement and the Regulation of Trade and commerce, Production, Supply and Distribution) Act, 2003;
24. The Rights of Persons with Disabilities Act, 2016;
25. The Industries (Development and Regulation) Act 1951;
26. The Legal Metrology Act, 2009;
27. Trademarks Act, 1999;
28. The Patents Act, 1970;
29. The Sales Promotion Employees (Conditions of Service) Act, 1976.

Banking Industry

List of laws that are specifically applicable to Banking industries:-

1. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with The Banking Regulation Act, 1949;
2. Banking Regulation Act, 1949, Master Circulars, Notifications and Guidelines issued by the RBI

from time to time;

3. The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970;
4. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
5. Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
6. Transfer of Property Act, 1882;
7. Negotiable Instruments Act, 1881;
8. Sale of Goods Act, 1930;
9. Foreign Contribution Regulation Act, 2010;
10. Prevention of Money Laundering Act, 2002;
11. Credit Information Companies (Regulation) Act, 2005;
12. Trade Union Act, 1956;
13. Micro, Small and Medium Enterprises Development Act, 2006;
14. Public Liability Insurance Act, 1991;
15. Insurance Act, 1938 and Insurance Rules, 1939;
16. The Shops and Establishments Act, 1953;
17. Indian Stamp Act, 1899;
18. Indian Contract Act, 1872;
19. The Foreign Trade (Development and Regulation) Act, 1992;
20. The Reserve Bank of India Act, 1934 and Guidelines issued by RBI;
21. National Tax Tribunal Act, 2005;
22. Limitation Act, 1963;
23. Indian Trusts Act. 1882;
24. Society Registration Act, 1860;
25. Information Technology Act, 2000;
26. Energy Conservation Act, 2001;
27. Right to Information Act, 2005;
28. Trade Marks Act, 1999;
29. Copyright Act, 1957;
30. Patents Act, 1970;
31. Labour Laws (Exemptions from furnishing returns and maintaining returns) by certain Establishments Act, 1988;
32. Weekly Holiday Act, 1942;
33. General Clauses Act, 1897.

AMIT VOHRA LAW CLASSES

Insurance Industry

List of laws that are specifically applicable to Insurance industries:-

1. Insurance Act, 1938 and Insurance Rules, 1939;
2. Insurance Regulatory and Development Authority (IRDAI) Act, 1999;
3. Anti-Money Laundering Regulation issued by IRDAI;
4. The State Shop and Establishment Act;
5. Indian Stamp Act, 1899 and the State Stamp Acts;
6. Copyright Act, 1957;
7. Prevention of Money Laundering Act, 2002;
8. Trademarks Act, 1999;
9. Indian Contract Act, 1872;
10. Negotiable Instruments Act, 1881;
11. Registration Act, 1908;
12. Limitation Act, 1963;
13. Information Technology Act, 2000;

14. Employment Standing Orders Act, 1946;
15. Employees' Provident Fund and Miscellaneous Provisions Act, 1952 & the scheme provided thereunder.

Housing Finance Companies

List of laws that are specifically applicable to Housing Finance Companies:-

1. National Housing Bank Act, 1987;
2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
4. Guidelines for Asset Liability Management System in Housing Finance Companies;
5. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;
6. Housing Finance Companies - Corporate Governance (National Housing Bank) Directions, 2016;
7. Housing Finance Companies - Auditor's Report (National Housing Bank) Directions, 2016;
8. Guidelines on Fair Practices Code for Housing Finance Companies; 10. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
9. Information Technology Framework for HFCs – Guidelines;
10. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
11. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations, 2015;
12. Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021.

Real Estate Companies

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

(A) Pre-constructions

1. Real Estates (Regulations & Development) Act, 1916
2. Environment (Protection) Act, 1986;
3. The Air (Prevention and Control of Pollution) Act, 1981;
4. The Water (Prevention and Control of Pollution) Act, 1974;
5. The Aircraft Act, 1934;
6. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
7. The Electricity Act, 2003;
8. The Control of National Highways (Land and Tariff) Act, 2002;
9. The Forest (Conservation) Act, 1980;
10. The Mines and Minerals (Development and Regulation) Act, 1957;
11. The Petroleum Act, 1934;
12. The Railways Act, 1989;
13. The Transfer of Property Act, 1882 and Registration Act, 1908;
14. The Wildlife Protection Act 1972;
15. The Works of Defence Act 1903;
16. The Ancient Monuments and Archaeological Sites and Remains Act, 1958;
17. The Special Economic Zones Act, 2005;
18. Housing Board Act, 1965.

(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 Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
8. The Emblems and Names (Prevention of Improper Use) Act, 1950;
9. The Food Safety and Standards Act, 2006;
10. The Forest (Conservation) Act, 1980;
11. The Motor Vehicles Act, 1988;
12. The Indian Wireless Telegraphy Act, 1933;
13. The Private Security Agencies (Regulation) Act, 2005;
14. The State municipal Corporation Act; The State Town & Country Planning Act; The State Building Bye- laws; The Development Control Regulations;
15. The Real Estate (Regulation and Development) Act, 2016 including rules & regulations made thereunder;
16. The Equal Remuneration Act, 1976;
17. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
18. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(C) Post constructions

1. The Air (Prevention and Control of Pollution) Act, 1981;
2. The Electricity Act, 2003;
3. The Emblems and Names (Prevention of Improper Use) Act, 1950;
4. The Environment (Protection) Act, 1986;
5. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
6. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
7. The Human Immunodeficiency Virus and Acquired immune Deficiency Syndrome (Prevention and Control) Act, 2017;
8. The Indian Wireless Telegraphy Act, 1933;
9. The Motor Vehicles Act, 1988;
10. The Petroleum Act, 1934;
11. The Public Liability Insurance Act, 1991;
12. The Representation of the People Act, 1951;
13. The Rights of Persons with Disabilities Act, 2016;
14. The Water (Prevention and Control of Pollution) Act, 1974;
15. Transgender Persons (Protection of Rights) Act, 2019;
16. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Telecom Industry

List of laws that are specifically applicable to Telecom industries:-

1. The 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

List of laws that are specifically applicable to Information & Technology industries:-

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. Indian Stamp Act, 1899 and amendments thereto;
9. Limitation Act, 1963;
10. Indian Contract Act, 1872;
11. Negotiable Instrument Act, 1881 and amendments thereto;
12. Sale of Goods Act, 1930;
13. Designs Act, 2000;
14. Trade Unions Act, 1926;
15. Weekly Holidays Act, 1942;
16. The Telecom Regulatory Authority of India Act, 1997;
17. The Insurance Act, 1938;
18. Foreign Trade (Development and Regulation) Act, 1992;
19. Bureau of Indian Standards Act, 1986;
20. The Information Technology (Certifying Authorities) Rules, 2000;
21. The State Acts, rules, guidelines and regulations to the extent applicable to the Company based on the location of its offices across India.

Media and Communication Industry

1. List of laws that are specifically applicable to Media and Communication industries:-
2. The Right to Information Act, 2005;
3. The Information Technology Act, 2000;
4. The Telecom Regulatory Authority of India Act, 1997;
5. Copyright Act, 1957;
6. State Emblem of India (Prohibition of Improper Use) Act, 2005;
7. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007;
8. The Cable Television Networks (Regulation) Act, 1995;
9. The Delivery of Books and Newspapers (Public Libraries) Act, 1954;
10. The Newspaper (Prices and Pages) Act, 1956;
11. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
12. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957;
13. The Working Journalists (Fixation of Rates of Wages) Act, 1958;
14. The Working Journalists and other Newspaper Employees Tribunal Rules, 1979;
15. Registration of Newspapers (Central) Rules, 1956;
16. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
17. The Emblems and Names (Prevention of Improper Use) Act, 1950;
18. The Parliamentary Proceedings (Protection of Publication) Act, 1977;
19. The Young Persons (Harmful Publications) Act, 1956;

20. The Dramatic Performances Act, 1876 (Relevant Provisions);
21. The Cinematograph Act, 1952;
22. The Cine-workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;
23. The Cine-Workers Welfare Cess Act, 1981;
24. The Cine-Workers Welfare Fund Act, 1981;
25. The Prasar Bharati (Broadcasting Corporation of India) Act, 1990;
26. The Press and Registration of Books Act, 1867;
27. The Press and Registration Appellate Board (Practice and Procedure) Order, 1961;
28. The Press Council Act, 1978;
29. The Indian Telegraph Act, 1885 (Relevant Provisions);
30. The Indian Post Office Act, 1898 (Relevant Provisions);
31. The Common Charter of Telecom Services, 2005;
32. The Regulation on Quality of Service of Basic and Cellular Mobile Telephone Services, 2005.

Infra Industry

List of laws that are specifically applicable to Infra industries:-

1. 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 economic development propelled by rapid industrial growth and urbanization is causing severe 551 environmental problems that have local, regional and global significance. Recognizing the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

Legal Framework India has an elaborate legal framework with number of laws relating to environmental protection. The key national laws include the following:

(a) Water (Prevention and Control of Pollution) Act, 1974;
(b) Water (Prevention and Control of Pollution) Cess Act, 1977;
(c) Air (Prevention and Control of Pollution) Act, 1981;
(d) Environment (Protection) Act, 1986;
(e) The Public Liability Insurance Act, 1991;
(f) The Biodiversity Act, 2002;
(g) The National Green Tribunal Act, 2010;
(h) Hazardous Wastes (Management, Handling and Transboundary Movement) Rules;
(i) Plastic Waste Management Rules;
(j) Bio-Medical Waste Management Rules;
(k) Construction and Demolition Waste Management Rules;
(l) E-waste Management Rules, 2016;
(m) The Batteries (Management and Handling) Rules made under the Act.

Chapter - 13
VARIOUS INITIAL REGISTRATIONS AND LICENSES

Synopsis

1. Introduction
2. Registration under Shops & Establishments
3. FSSAI
4. Drug License
5. PAN
6. TAN
7. GST
8. IE Code
9. Telecom
10. Information & Broadcasting
11. Banking
12. IRDA Introduction
13. Functions and Duties of IRDAI
14. Industrial Entrepreneurs Memorandum (IEM)
15. Polluting Control

1. Introduction

A business entity is required to secure **various registrations and licenses** in order to set up its businesses in India.

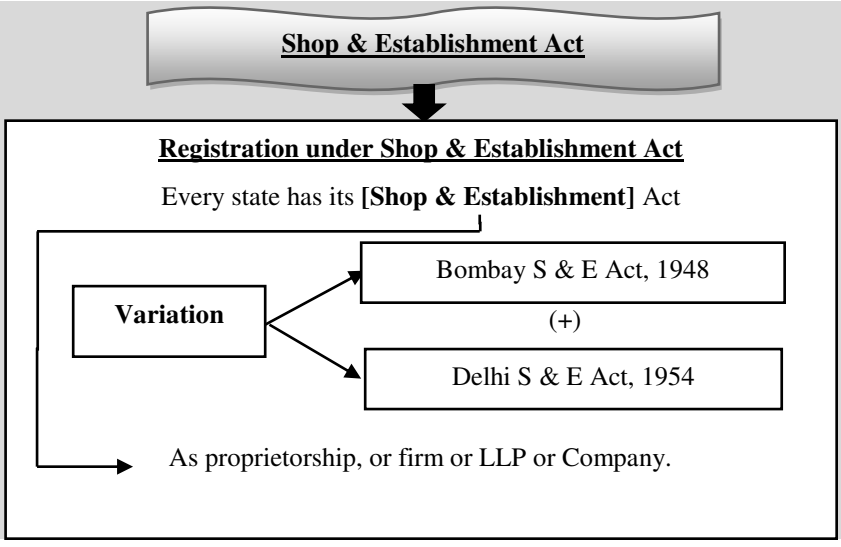
2. Registration under Shops & Establishments

One of the important regulation to which most businesses in India are subject to is the Shop and Establishment Act, **enacted by every state in India.**

The Act is designed to regulate

- Payment of wages
- Hours of work
- Leave
- Holidays
- Terms of service
- Other work conditions of people employed in shop and commercial establishments.

Quick Recap

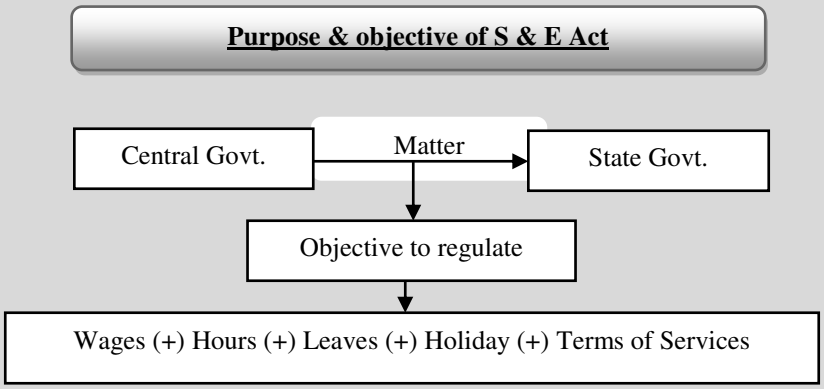


Purpose of Shop and Establishment Act

The Shop and Establishment Act in India is promulgated by the state and may slightly **differ from state to state.**

However, as per the Act, **all shops and commercial establishments operating within each state are governed** by the respective Shop & Establishments Act.

Quick Recap



Definition and Meaning of Shop and Establishment

Shops are defined as:

- Premises
- Where goods are sold
- Either by retail or wholesale

  Or
- Where services are rendered to customers

And includes

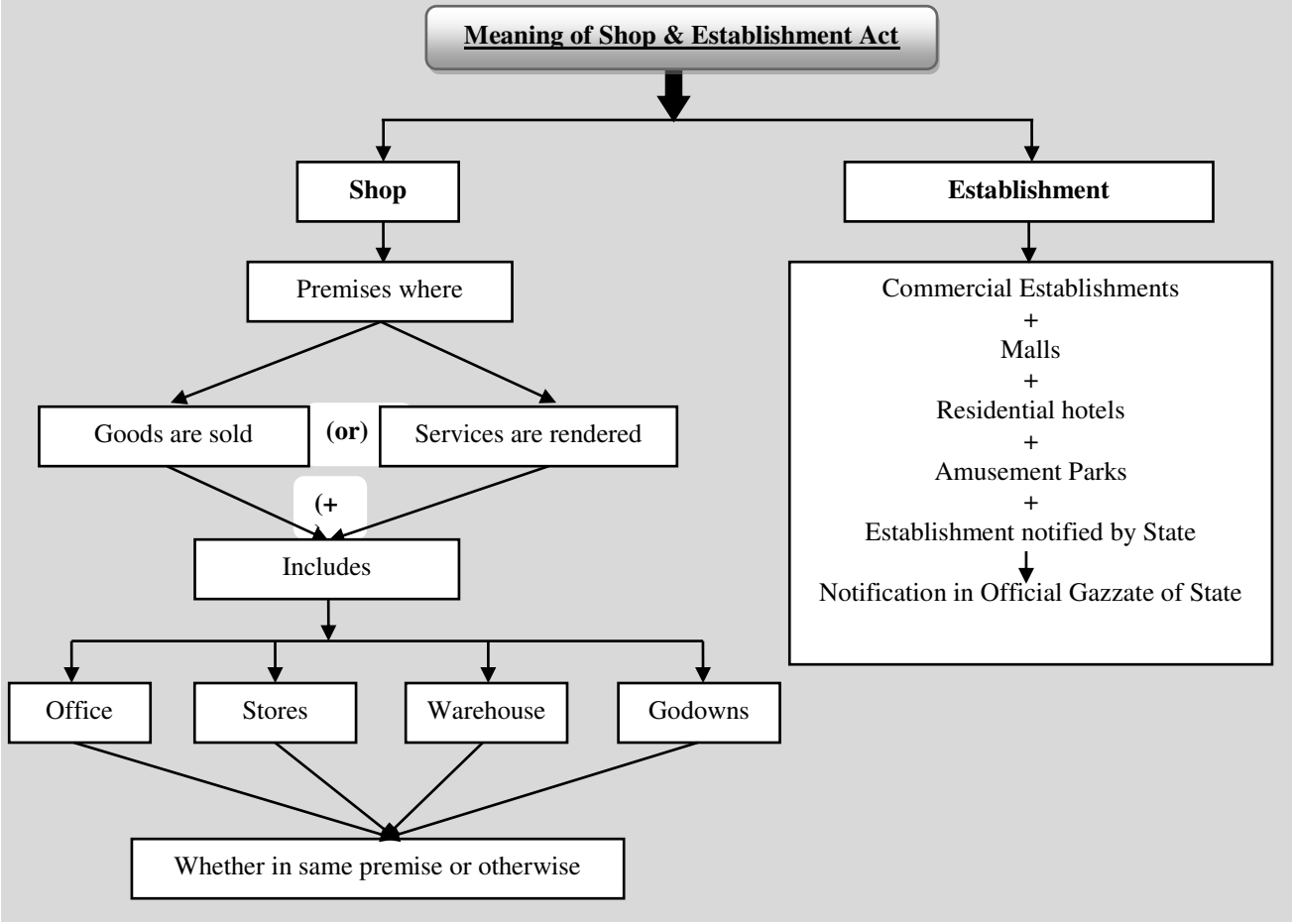
- An office
- A store-room
- Godown
- Warehouse
- Workhouse or work place.

Establishments are defined as:

- Shop
- A commercial establishment
- Residential hotel
- Restaurant
- Eating-house
- Theatre
- Other places of public amusement or entertainment
- Such other establishments as defined by the Government by notification in the Official Gazette.

Note- Factories are not covered by the shops & establishments act and are regulated by the Factories Act, 1948.

Quick Recap

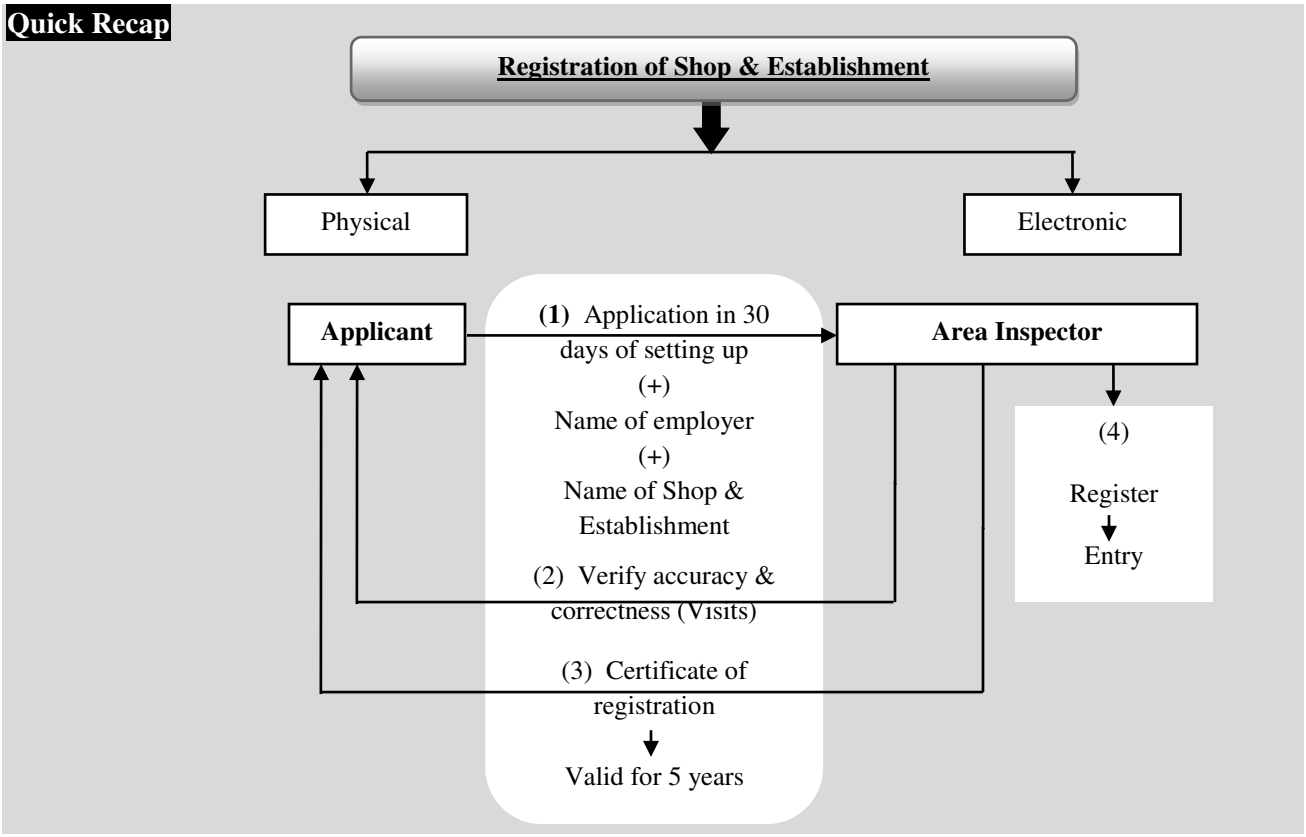

Meaning of Shop & Establishment Act
Shop
Establishment
Premises where
Goods are sold
(or)
Services are rendered
(+
Includes
Office
Stores
Warehouse
Godowns
Whether in same premise or otherwise
Commercial Establishments
+
Malls
+
Residential hotels
+
Amusement Parks
+
Establishment notified by State
Notification in Official Gazzate of State

⇒ ⇒ ⇒

Registration of Shops & Establishments

A business owner of a shop or establishment is **compulsorily required to get the same registered under the Shops and Establishment Act**.

Quick Recap



Here are the specific rules:

1. **Submit an application to the Inspector of the area within 30 days of starting any work** in your shop or establishment.

   The application should contain the following information:

   - Your **name as the employer and the name of a manager**, if any.
   - The **postal address** of your establishment.
   - The **name of your establishment.**
   - **Other prescribed particulars.**

2. Upon receiving the application for registration, the **Inspector shall verify the accuracy and correctness of the application** and on being satisfied he shall **enter the details in the Register of Establishments** and **issue a registration certificate** of your establishment to you.

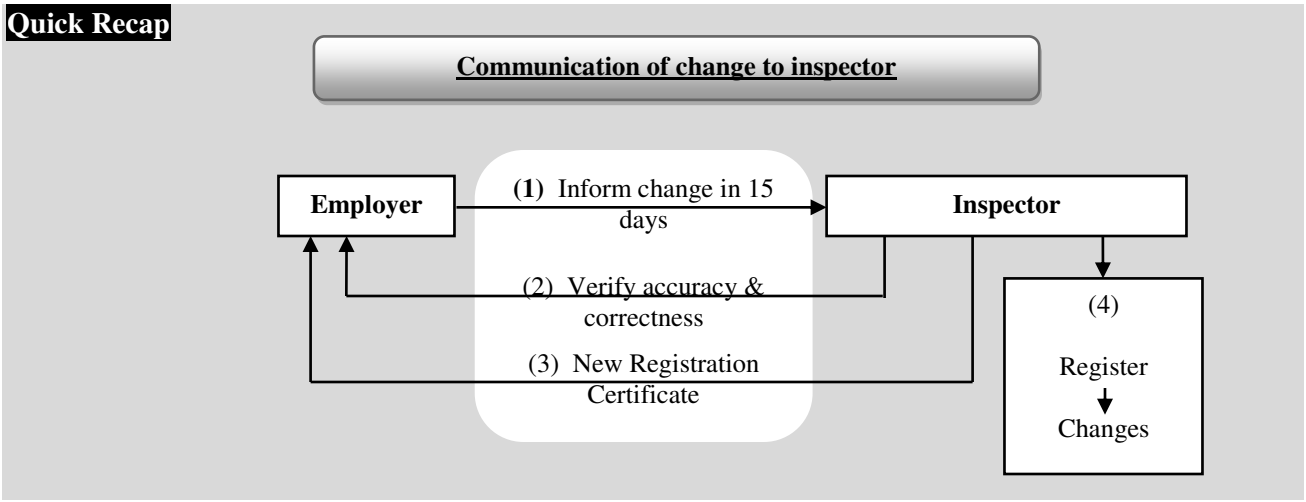
   This **certificate will be valid for 5 years and has to be renewed** thereafter.

   Note- It is mandatory for the employer to get the registration certificate prominently be displayed at his establishment.

Communication of Change to the Inspector

In case of any change with respect to any of the information given during the application for registration, the same **has to be notified to the Inspector's office within 15 days after the change has taken place**. Once again the **Inspector will** verify the correctness of the details furnished, make the related change in the Register of Establishments, **amend the registration certificate or issue a fresh registration certificate,** as he may deem fit.

Quick Recap

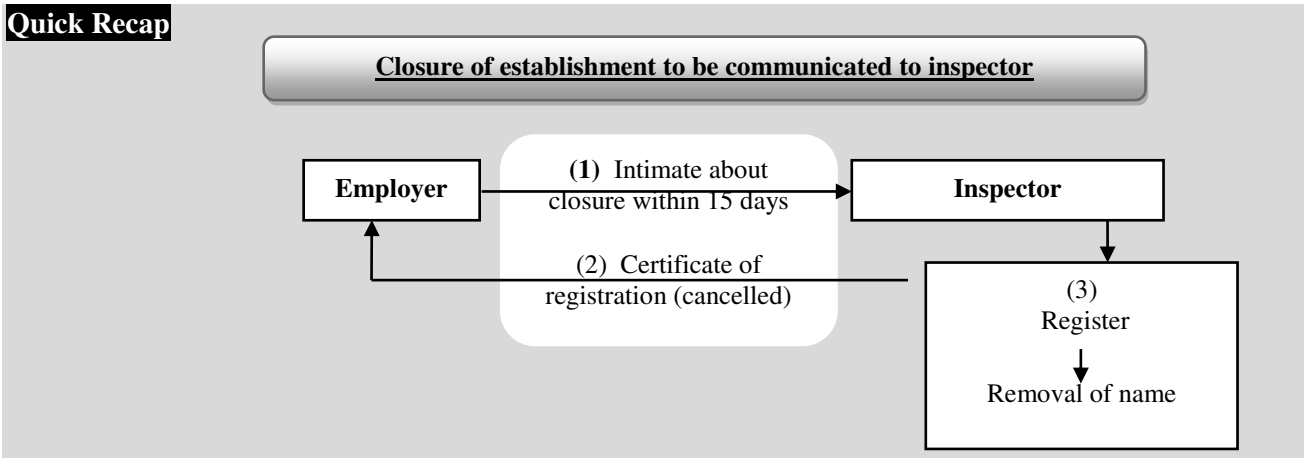


Closing of Establishment to be communicated to Inspector

- In case the shop or establishment would like to close down the business, **the occupier should notify the Chief Inspector in writing within 15 days of the closing.**
- The **Chief Inspector** after reviewing the request for closure **can**
  - **Remove the shop or commercial establishment from the register**

    and
  - **Cancel the registration certificate**

Quick Recap



SSI/MSME

Small scale industries are those industries in which the manufacturing, production and rendering of services are done on a small or micro scale. These industries make a one-time investment in machinery, plants, and industries, but it does not exceed Rs 1 Crore. Essentially the small scale industries are generally comprised of those industries which manufacture, produce and render services with the help of small machines and less manpower. These enterprises must fall under the guidelines, set by the Government of India

Micro, Small and Medium Enterprises

The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is as under:

- Enterprises engaged in the manufacture or production, processing or preservation of goods as specified below:

  Note: The MSME ministry also said that an MSME in the country will now be referred to as 'Udyam' since the term comes closer to the meaning of an enterprise.

Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

- Micro units: Those with investments up to Rs 1 crore and turnover of less than Rs 5 crore.
- Small units: Those with investments up to Rs 10 crore and turnover of less than Rs 50 crore.
- Medium units: Those with investments up to Rs 50 crore and turnover of less than Rs 250 crore.

Eligibility apply for Udyog Aadhar/MSME registration

MSME registration or Udyog Aadhaar can be obtained by any type of business entity, namely, Proprietorships, Hindu Undivided Family, Partnership Firm, One Person Company, Limited Liability Partnership, Private Limited Company, Limited Company, Producer Company, any association of persons, co-operative societies or any other undertaking. Small businesses having MSME registration enjoy various benefits under the Micro, Small and Medium Enterprises Development Act, 2006.

Udyam Registration Procedure

- The Udyam registration for MSMEs can be performed completely online with just Aadhaar and is based on self-declaration, PAN & GST linked details on investment and turnover of enterprises will be taken automatically from government databases. This system has also been integrated with Income Tax and GSTIN systems. Businesses which have the EM-II (entrepreneurs memorandum)

  Or Udyog Aadhaar Memorandum or any other registration issued by an authority under the MSME ministry, will have to re-register themselves
- The government has notified https://udyamregistration.gov.in as the only government portal for the Udyam Registration. The registration is free of cost and paperless
- No offline or online agency, institution or consultancy is authorised to charge any fee for this registration.
- Having PAN & GST number is mandatory from 1 April, 2021. New entrepreneurs not already registered as MSME as well as those registered as EM-II or UAM can use the portal for registration/re-registration.

Note:

- A permanent registration number will be given after registration.
- After completion of the process of registration, a certificate will be issued online.
- This certificate will have a dynamic QR Code from which the web page on our Portal and details about the enterprise can be accessed.
- There will be no need for renewal of Registration. No enterprise shall file more than one Udyam Registration. However, any number of activities including manufacturing or service or both may be specified or added in one Registration.

- ***Note:***

- Obtaining MSME registration or Udyog Aadhaar is not mandatory
- It is at the sole discretion of the Entrepreneur. However, it is recommended that most businesses obtain MSME/SSI/Udhyog.

Documents Required for Renewal of the Registration

- Original GP Registration Certificate.
- A copy of Acknowledgement of Entrepreneurs Memorandum Part-II/UAM;
- List of major Govt. Orders executed during last 2 years on letter head as per format of Annexure 'G'.
- Copies of Audited Balance sheet for last 3 years duly signed by the authorized person under his seal.
- Annexure 'C' of GP Application form duly signed by Chartered Accountant (same as in fresh case).
- List of addition/deletion in the plant and machinery after the initial registration/preceding renewal in the letter head duly signed.
- Annexure 'D' and 'E' duly signed by MSE. 8. For renewal of registration where monitory limit is more than Rs 10 Crores and inspection has not been carried out by Technical Inspecting Agency or

NSIC during the last one year, such units will be inspected by the respective Branch Office of NSIC before issue of renewal Certificate.

Benefits of Udyam Registration

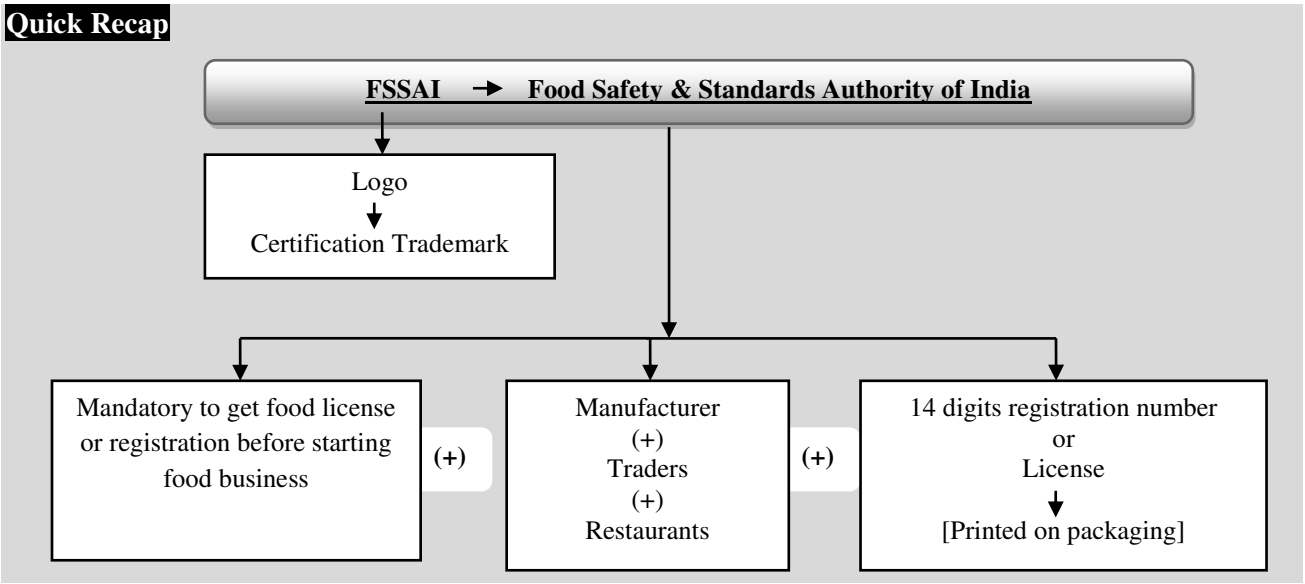
- Protection against delayed payments under MSMED act.
- One can avail 100% collateral free loans from banker.
- Exemption under direct tax laws.
- Claim for stamp duty and registration fee waiver.
- Subsidy is available for patent registration.
- Preference in procuring Government tenders.
- Stamp duty and Octroi benefits.
- Concession in electricity bills.
- Reservation policies to manufacturing/production sector enterprises.
- Time-bound resolution of disputes with Buyers through conciliation and arbitration.
- Reimbursement of ISO Certification Expenses.
- Credit prescription (Priority sector lending), differential rates of interest, easy discounting of bills through online system of RBI, etc.
- Excise Exemption Scheme.
- Financial Assistance for setting up testing facilities through NSIC.
- Statutory support such as reservation and the Interest on Delayed Payments Act.
- Subsidy on ISO Certifications.
- Subsidy on NSIC Performance and Credit ratings.
- Participation in Government Purchase registrations.
- Registration with NSIC.
- Counter Guarantee from Government of India through CGSTI.
- Waiver in Earnest Money (Security Deposit) in Government tenders.
- 15% weightage in price Preference.
- Reduction in rate of Interest from banks (Subject to ratings).
- Free of cost government tenders.

3. FSSAI

1. FSSAI is an abbreviation used for **Food Safety and Standards Authority of India**.
2. FSSAI license is **mandatory before starting any food business.**
3. All the **manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration** or a license number **which must be printed on food packages**.
4. 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.
5. **FSSAI Online Registration** is done through office website of FSSAI for **central level**.
6. **For state**, the FSSAI registration is also done through **offline mode**.

The registration and licensing of food business in India is governed by the **Food safety and Standards (Licensing and Registration of Food businesses) Regulation, 2011**.

Quick Recap



Difference between a FSSAI registration and license

FSSAI Registration

FSSAI registration is required for all **petty food business operators**.

Petty food business operator is any person or entity who:

1. Manufactures or sells any article of food himself or a **petty retailer, hawker, itinerant vendor or temporary stall holder**

   or

2. **Distributes foods** including in any **religious or social gathering** except a caterer

   or

3. 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 ` 12 lakhs**

   and whose:

   - **Production capacity** of food (other than milk and milk products and meat and meat products) **does not exceed 100 kg/ltr per day**

     or

   - **Procurement or handling and collection of milk is up to 500 litres** of milk per day

     or

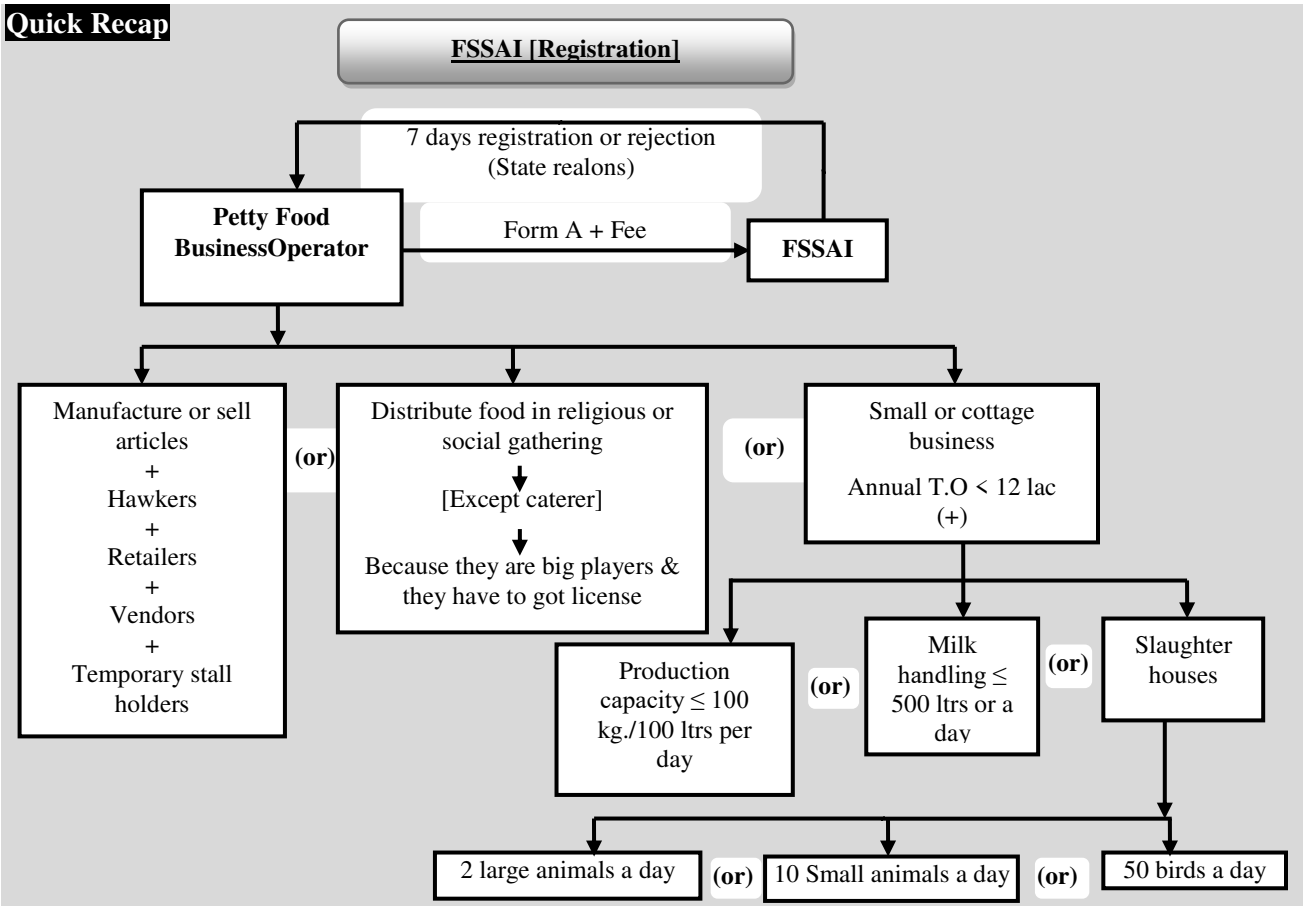
   - **Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.**

Petty food business operators are required to obtain a FSSAI registration by submitting an **application for registration in Form A**. On submission of a FSSAI registration application, **the registration should be provided or application rejected in writing within 7 days** of receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant.

Note - The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.

Quick Recap



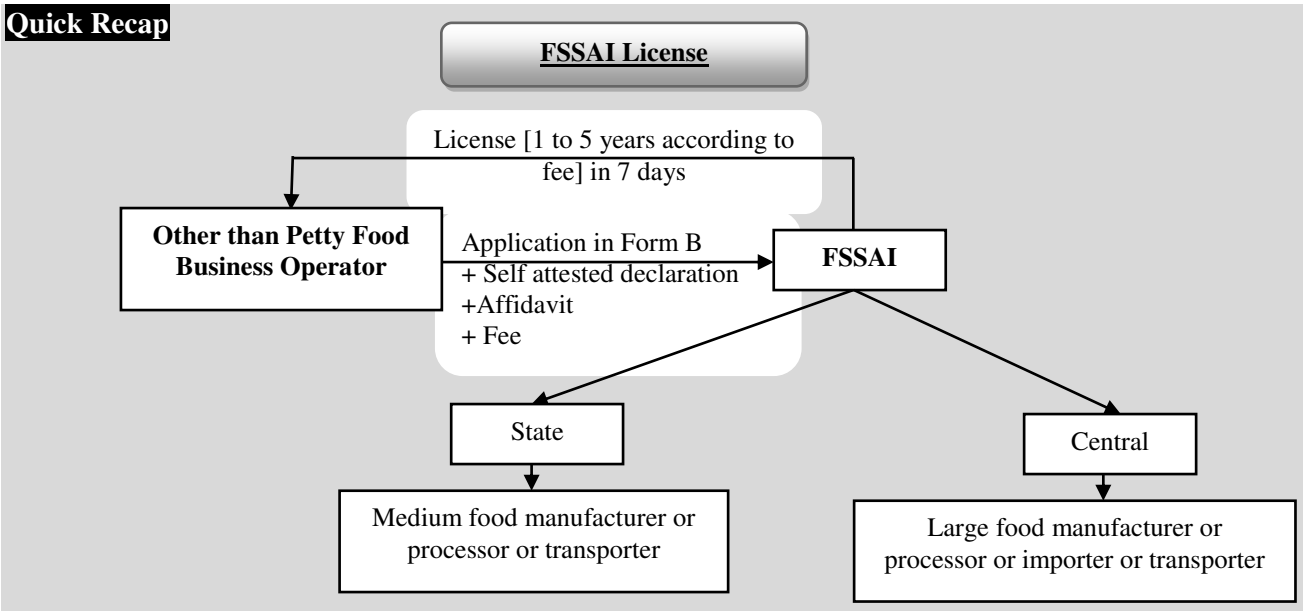
FSSAI License

Any person or entity other **than a petty food business operator is required to obtain a FSSAI license** for operating a food business in India.

FSSAI license application should be made in **Form B** to the appropriate Licensing Authority along with the necessary self-attested declaration, affidavit and annexures, as applicable.

FSSAI license is granted for a period of 1 to 5 years as request by the food business operator. 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.

Quick Recap



Types of FSSAI License

FSSAI license is of two types:

- State FSSAI License
- Central FSSAI License

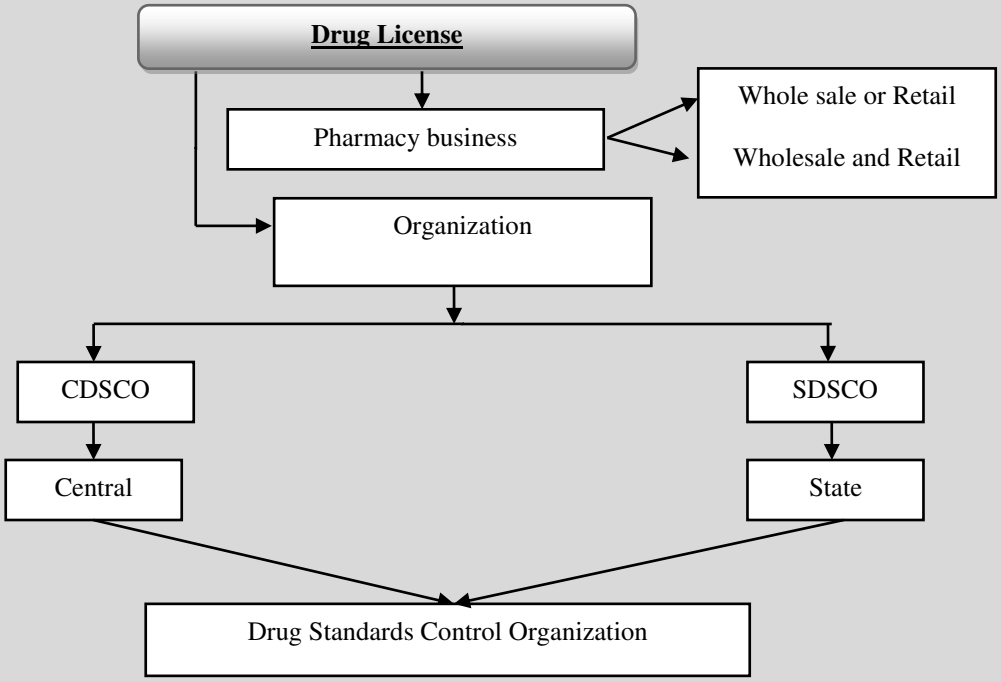
Central FSSAI License v/s State FSSAI License

Large food manufacturer or processor or transporters and importers of food products require central FSSAI license whereas state FSSAI license is required for medium sized food manufacturers, processor and transporters.

4. Drug License

To start a **pharmacy business**, a drug license is required. **The Central Drugs Standard Control Organization (CDSCO) and State Drugs Standard Control Organization (SDSCO)** control the issue of drug license in India. Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization.

Quick Recap



Requirement for obtaining Drug License

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

- **Area**
  The minimum area of **10 square meter** is required to start a **medical shop or pharmacy or wholesale** outlet.
  In case, the pharmacy business combines **retail and wholesale,** a minimum of **15 square meter** is required.
- **Storage Facility**
  The store must have **refrigerator & air conditioner** in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.
- **Technical Staff**
  - **Wholesale** – The sale of drug by wholesale 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

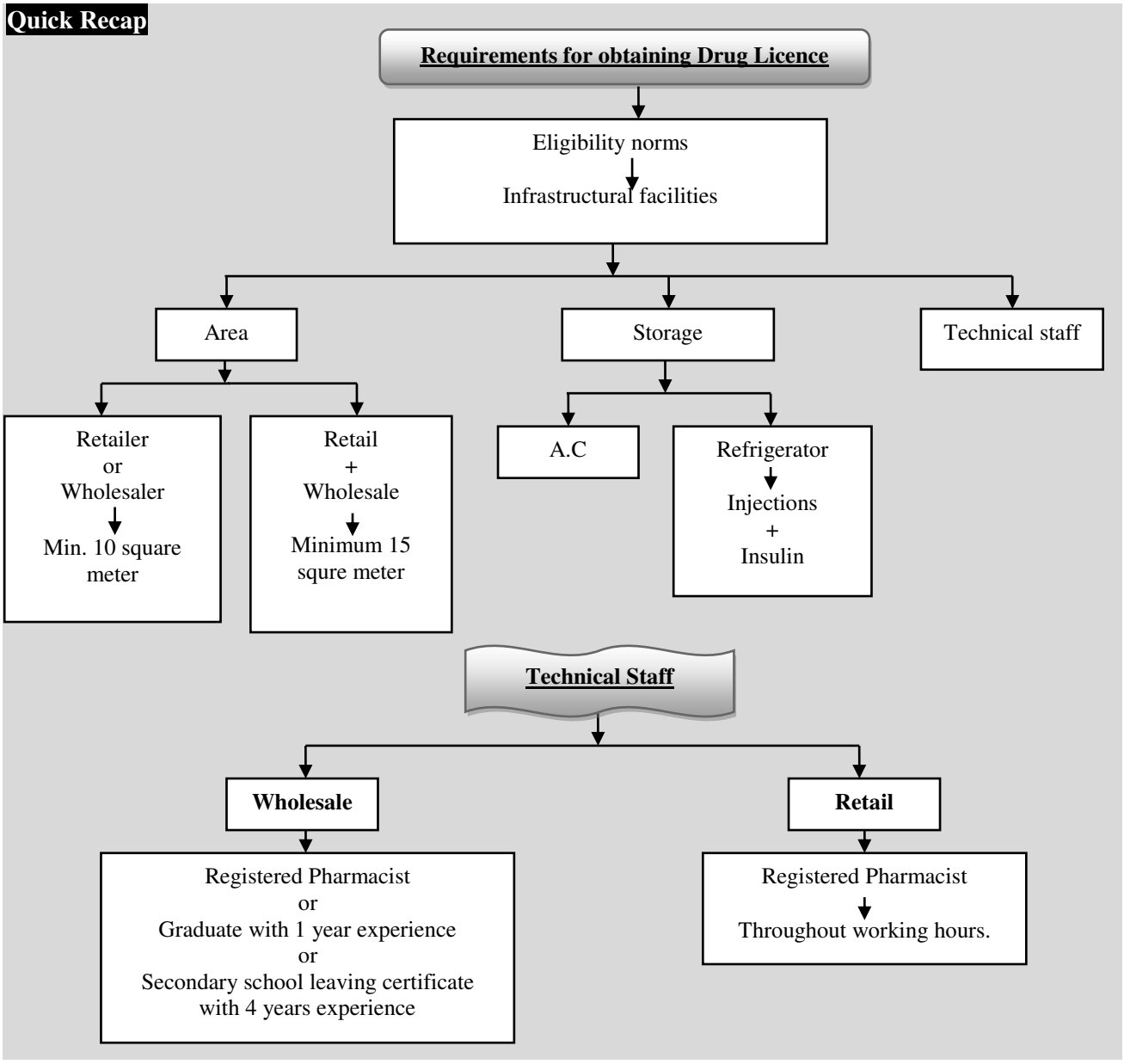
    or

A **person who has passed Sec School Leaving Certificate with 4 years experience** in dealing in drugs

specially approved by the department of drug control for the purpose.

- **Retail** – The sale of drug by retail must be made in the presence of **registered pharmacist** approved by the department, registered pharmacist is required to be present throughout the working hours.

Quick Recap



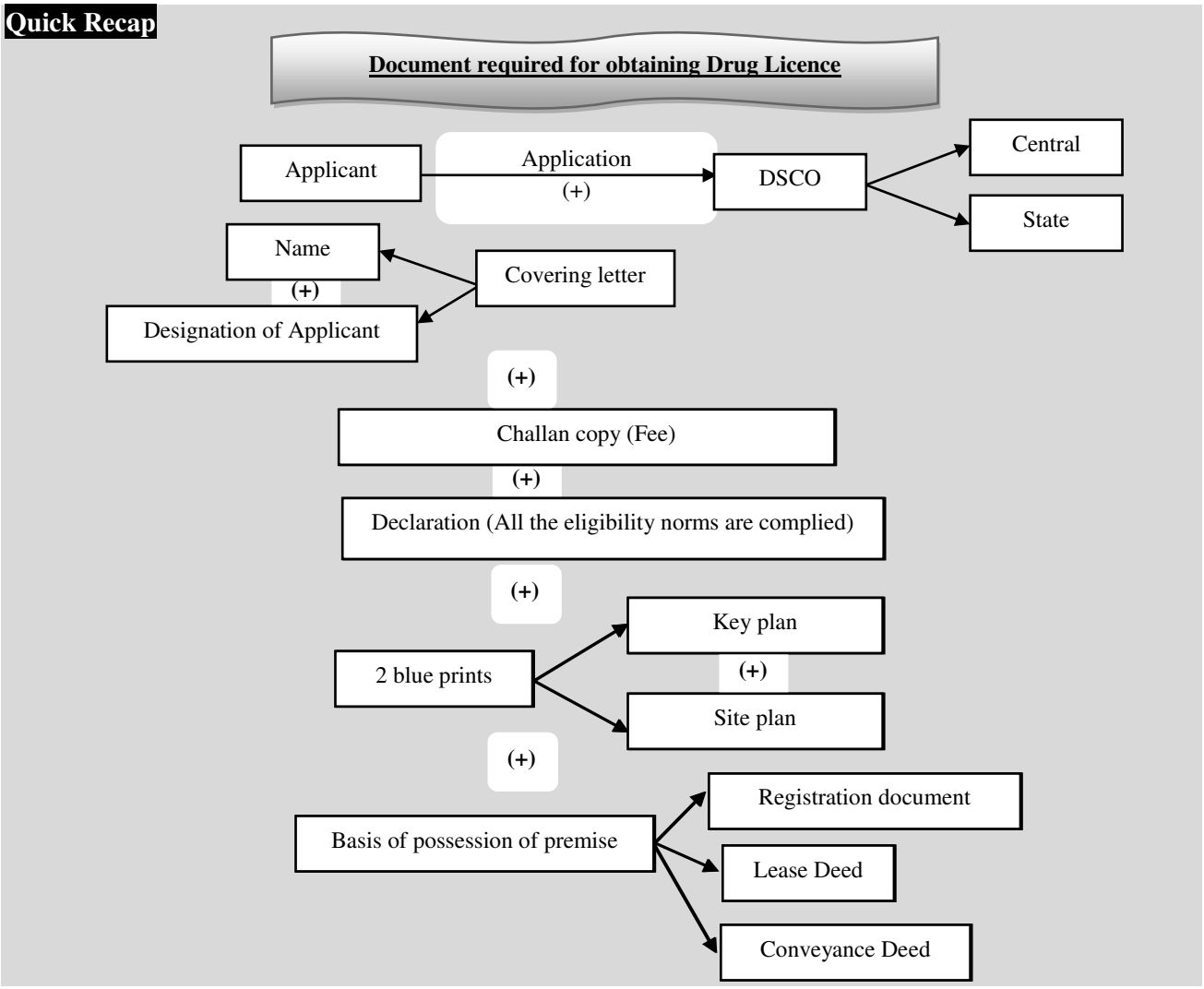
Documents required for obtaining Drug License

The documents required for starting a pharmacy business varies from state to state. However, the following is an **indicative list of documents** required for obtaining drug license in India:

- Application **form**
- **Covering Letter** with the intent of the application signed with name and designation of the applicant.
- **Challan of fee** deposited for obtaining drug license.
- **Declaration** form
- **Key plan** (Blue print) for the premises.
- **Site plan** (Blue print) for the premises.

- **Proof of ownership of the premises.**
- Basis of **possession of the premises, if rented.**
- **Proof of constitution of the business** (Certificate of Incorporation or MOA & AOA or Partnership Deed or LLPA).
- **Affidavit of non-conviction** of proprietor or partners or directors under **Drugs and Cosmetics Act, 1940**
- **Affidavit** of registered pharmacist or competent **person working full time.**
- **Appointment letter** of registered pharmacist or competent person, if employed person.

Quick Recap



5. PAN

A permanent account number (in short called as PAN) is a **vital document for any taxpayer**. It is a **10-character alphanumeric number consisting of letter and digits.** PAN card requirements are detailed in the Income Tax Act of 1961. This number is **unique to each cardholder** and helps identify the income tax payer. It also serves as an **identity proof** from a large number of purposes.

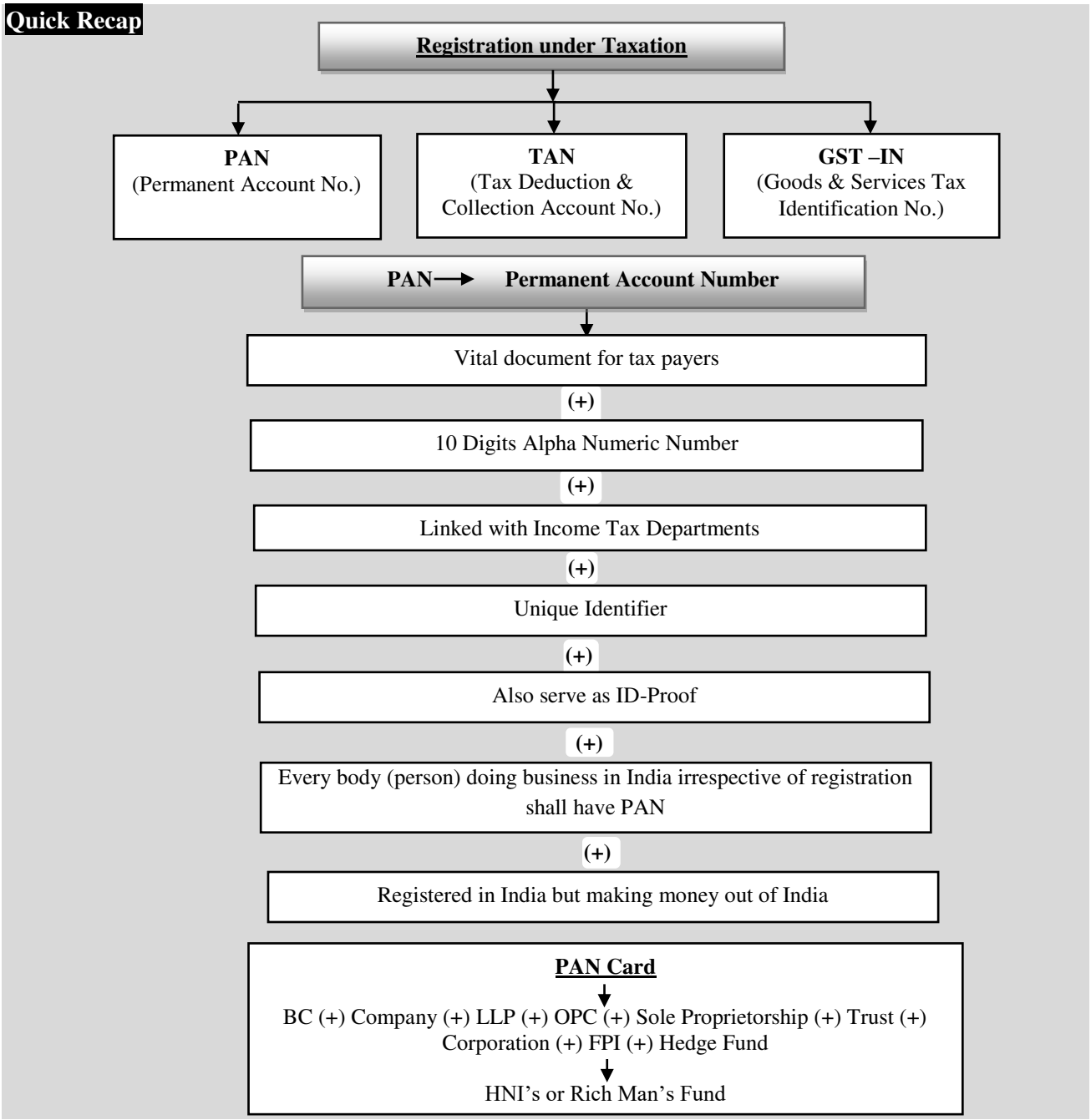
Any corporate **body doing business in India requires a PAN card** whether it is registered in India or abroad.

It is also required for anybody who is involved in **generating money out of India** whether the company is **registered, or has a permanent establishment, or an office in India.** Given below is a list of the bodies that are required to hold a PAN card in India.

- Body Corporate

- Companies
- Firms other than LLP
- One Person Company
- LLP Firm
- Sole proprietorship
- Trusts
- Corporations
- Limited Liability companies
- Private firms
- Other Associations
- Foreign Institutional Investors
- Hedge funds

Quick Recap

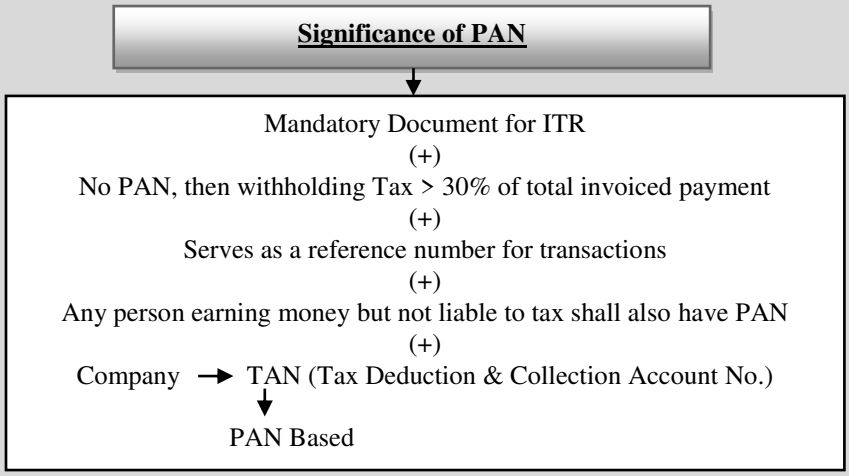


Significance of PAN for setting up of a Business

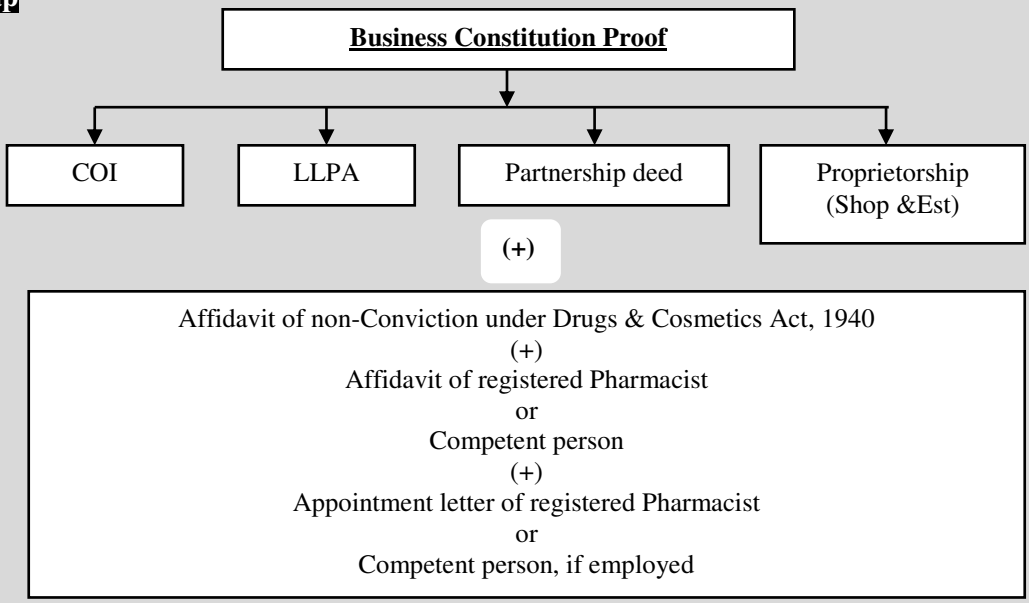
Some of the reasons confirming the significance of holding a PAN for every business entity are listed below:

- It was **made mandatory** by the Government of India under the Income Tax Act, 1961.
- In the **absence of the PAN,** the Government will charge **withholding tax** which can be at the rate of **more than 30%** of the total invoiced payment.
- It serves as a **reference number** of its holder for the Income Tax Department to track the financial transactions carried out by it.
- **Even if one is not required to pay income tax, it is mandatory for him to hold a PAN if he is earning money**.
- 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 is required and thus 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**.

Quick Recap



Quick Recap



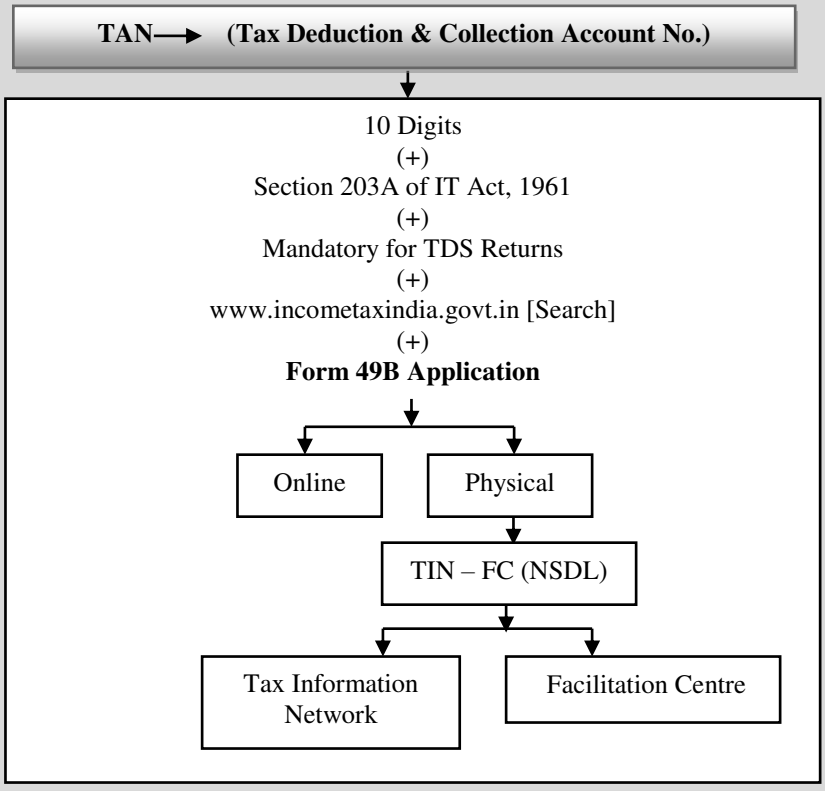
6. TAN

TAN or Tax Deduction and Collection Account Number is a **10 digit alphanumeric number** required to be obtained by all persons who are responsible for deducting or collecting tax. Under **Section 203A** of the Income Tax Act, 1961, it is mandatory **to quote** Tax Deduction and Collection Account Number (TAN) allotted by the Income Tax Department (ITD) **on all TDS returns.**

Since last few years ITD has **revised the structure of TAN.** It is a unique 10 digit alphanumeric code. Accordingly, they have issued TAN in this new format to all existing TAN holders.

To facilitate tax deductors find their new TAN, ITD has now introduced a search facility on their website **(www.incometaxindia.gov.in)**. Through this facility, the **tax deductors can search their name** with their old TAN to find the new TAN.

Quick Recap



7. GST

Registration of any business entity under the GST Law implies obtaining a **unique number** from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail Input Tax Credit for the taxes on his inward supplies.

Section 22 of Central Goods & Services Tax Act, 2017 **mandates** that **every supplier** shall be **liable to be registered** under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if **his aggregate turnover in a financial year exceeds twenty lakh rupees**.

It must be noted that for North-Eastern states, the threshold is Rs 10 Lacs.

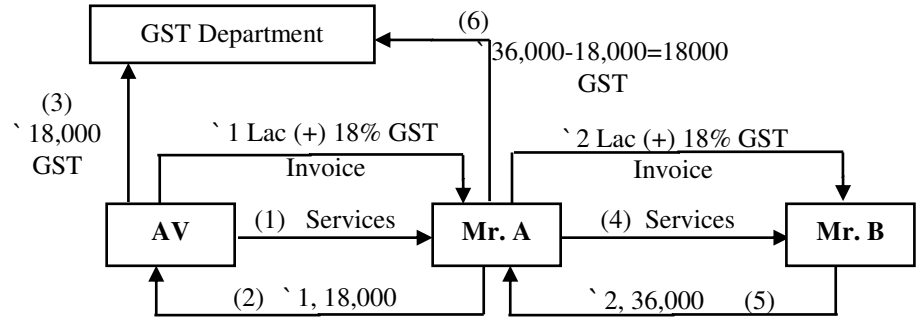
The **registration under GST** is **Permanent Account Number (PAN) based** and state-specific. GST Identification Number (GSTIN) is a **15-digit number** and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

- The **first two digits** of this number will represent the **state code.**
- The **next ten digits** will be the **PAN number of the taxpayer.**
- The **thirteenth digit** will be assigned based on the **number of registrations within a state.**
- The **fourteenth** digit will be **Z** by default.
- The **last digit** will be for **check code.**

Quick Recap

GST – IN (Goods & Services Tax Identification No.)

GST law implies obtaining a unique number from GST Authority for the purpose of collecting tax on behalf of govt. to avail input tax credit for tax on his inward supplies.

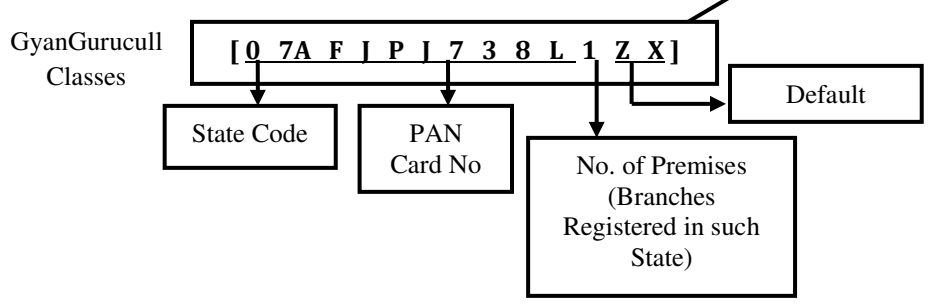


Mandatory

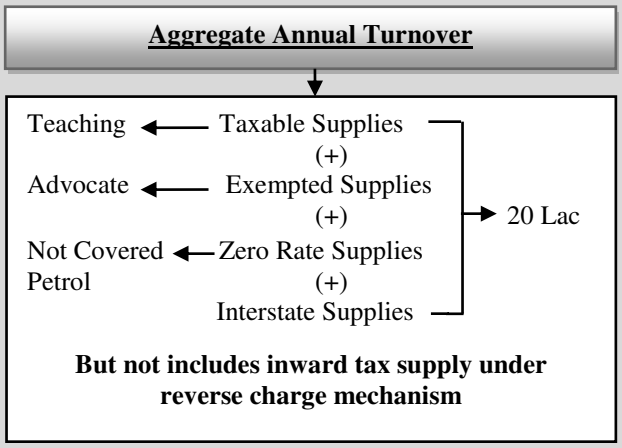
- Annual T.O ≥ 10 Lac
  - Sikkim
  - Meghalya
  - Mizoram
  - Manipur
  - Arunachal Pradesh
  - Nagaland
  - Assam
  - Tripura
  - H.P (hilly areas)
  - Uttarakhand (hilly areas)
- Annual T.O ≥ 20 Lac
  - Rest of India

GST – IN is PAN Based

15 Digits



Quick Recap



Compulsory Registration irrespective of the aggregate turnover

In the following cases, registration is made compulsory, **irrespective of the aggregate turnover**:

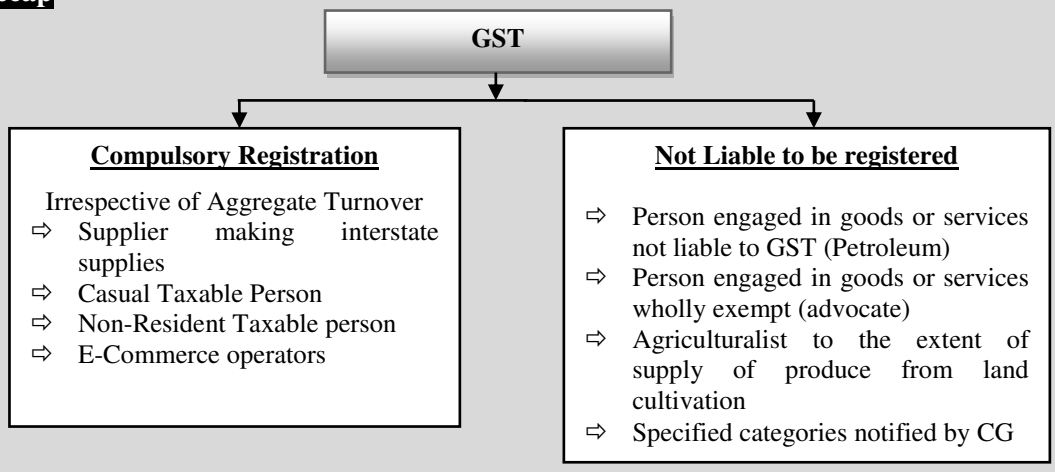
- For a **supplier** who makes **inter-state** supplies
- **Casual taxable person**
- **Non-resident taxable person**
- **E-commerce operators**
- **Persons discharging liabilities under reverse charge mechanism**

Persons not Liable to register

The following people are not liable to register under the **Central Goods & Services Tax Act, 2017**:

- Engaged exclusively in the **supply of goods or services or both which are not liable to tax.**
- Engaged exclusively in the supply of goods or services or both which are **wholly exempt from tax.**
- **Agriculturalist** to the extent of supply of produce from land cultivation.
- Specified categories as may be **notified by the Government.**

Quick Recap

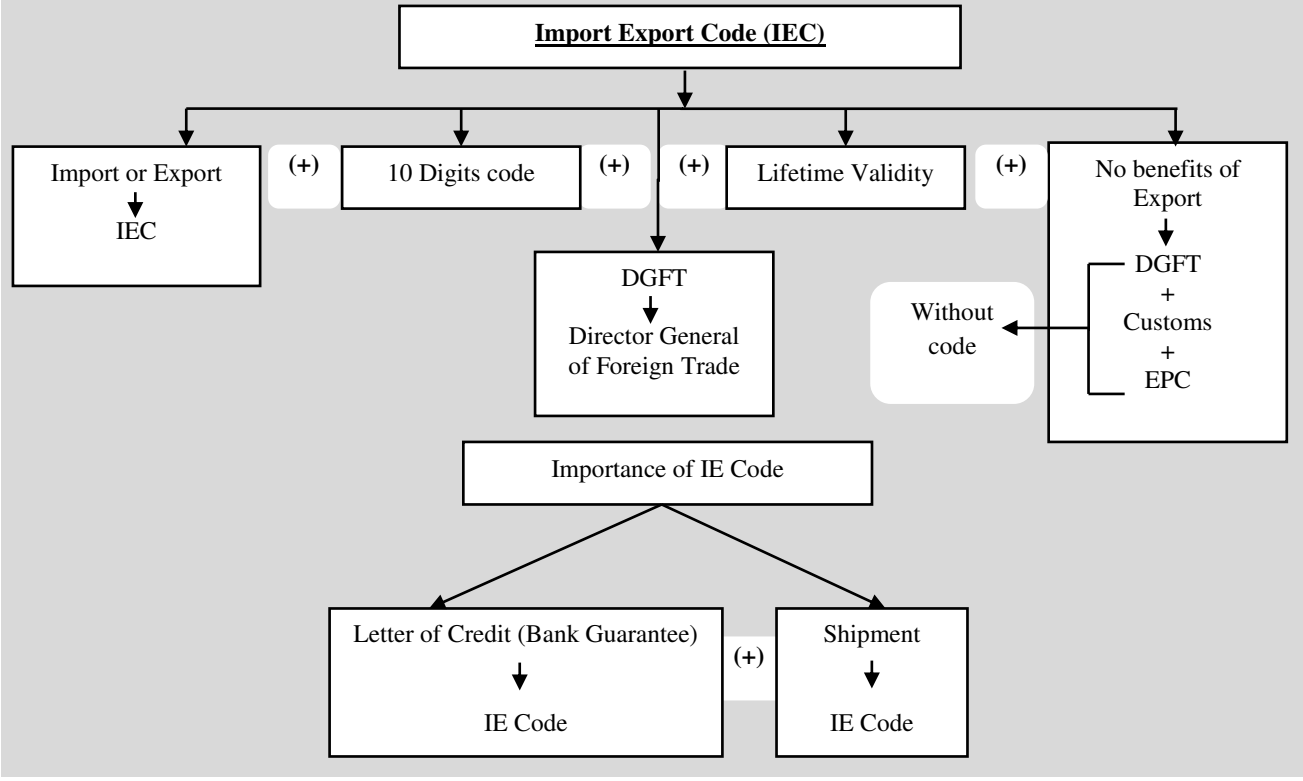


8. IE Code

1. IEC registration is **required** by a person for **exporting or importing goods.**
2. It is a **10 digit code** which is **issued by** the Directorate General of Foreign Trade **(DGFT).**
3. All businesses which are engaged in Import and Export of goods require registering Import Export Code.
4. IE code has **lifetime validity**.

5. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.
6. **For Importers**, the IE Code must be quoted by importers while clearing customs. Banks also require the importers IE Code while sending money abroad.
7. **For exporters**, the IE Code must be quoted while sending shipments. And banks require the exporters IE Code while receiving money from abroad.

Quick Recap



Requirement of IE Code

The **first thing** one require to start Export Import business is **Import Export Code (IEC).** It is same as the PAN, however, it is **compulsory to apply for IEC and register the firm with DGFT**. IEC is issued to any bonafide Individual or Company. **As a Passport is mandatory for traveling abroad, similarly an IEC Code is mandatory to Export or Import anything from or into India.**

IEC Certificate is issued by Directorate General of Foreign Trade (DGFT) which comes under Ministry of Commerce and Industry, Government of India. The **main objective of DGFT is regulating and promoting Exports from India. It has a total of 36 branches across India**. One have to make an application electronically and submit it to that particular DGFT office that falls under your jurisdiction.

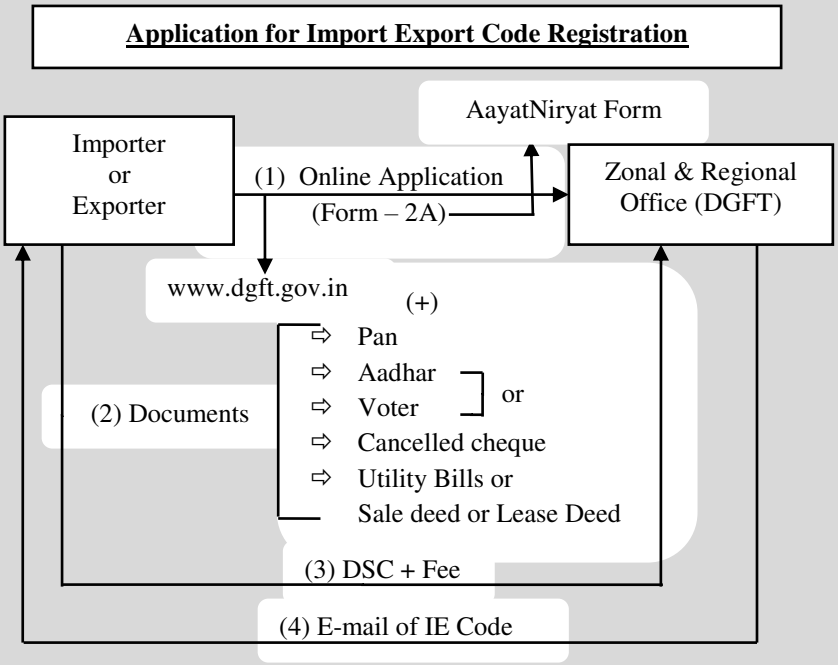
Application for IE Registration

IEC can be obtained from any of **the Zonal and Regional offices of Director General of Foreign Trade** depending on area or region where the individual or company is located. An application has to be submitted **online** at DGFT web **site http://dgft.gov.in**duly filled in along with required documents:

1. **First** of all we have to prepare an application form in the prescribed format i.e. **Aayaat Niryaat form-2A** format and filed with the proper DGFT Regional office.
2. In the **second step** we have to **prepare the necessary documents** related to the applicant identity &**address proof and legal entity proof** with the bank details & certificate in respect ofANF2A.
3. In the **third step** once application has been completed, **we file with the DGFT through DSC** of the applicant and pay the appropriate fee or cost of the IEC Registration.

4. Once **application has been approved then you will get the IEC Code in the soft copy** from the government department.

Quick Recap



Documents Required for Import Export Code (IEC) Registration

- Individual's or Company's or Firm's **Pan Card Copy.**
- Person's **Aadhar card or Voter id** or **Passport copy.**
- Person's or Company's or Firm's current bank account **cancel cheque copy.**
- **Electricity Bill copy** or **Copy of Rent Agreement or Sale deed** of the premise copy.

Features of the Import Export Code (IEC) Registration

1. **International Exposure**

   IEC Code helps you to **grow your business from local market to international market** and expand your product or service across the global.

2. **Government Benefits**

   Government of India always promotes the export activity in India so through IEC Code Registration you can **avail all the export scheme benefits** from DGFT, Customs and Export Promotion Council.

3. **No Renewals**

   IEC Code issued by the DGFT for the **lifetime validity** so you have not required renew every year so it's a just **one time cost** of the registration.

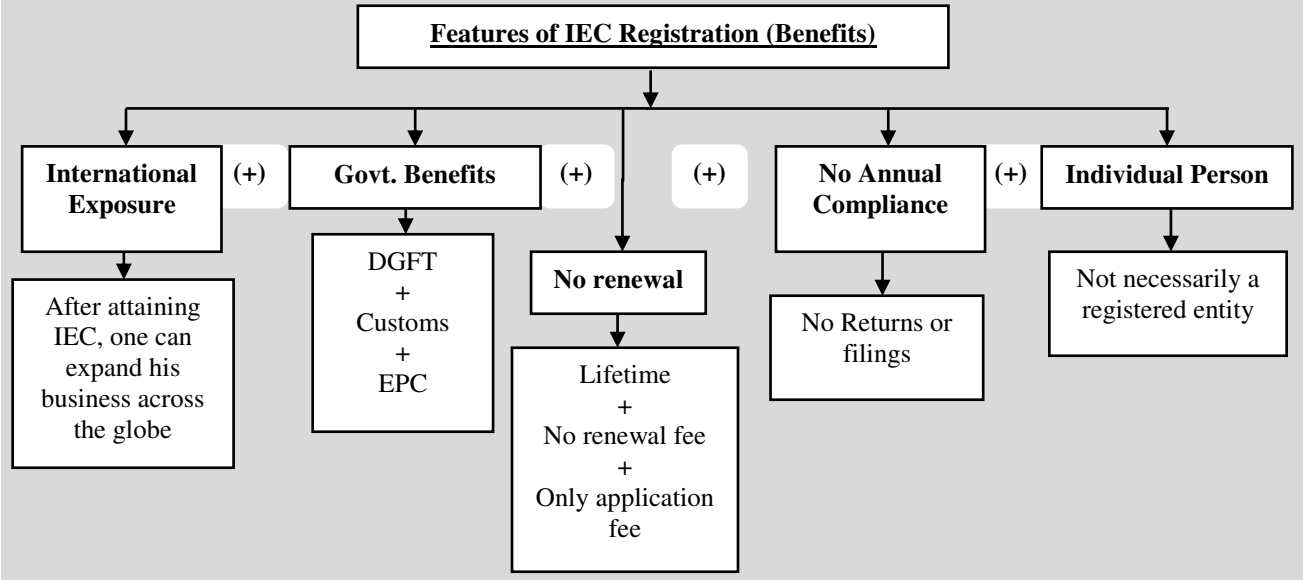
4. **No Annual Compliance**

   IEC Code have **no annual compliance** like returns filings etc. Even you have not shown anywhere the transactions.

5. **Individual person**

   IEC Code can be obtain by the individual person also, they have **not required to register the legal entity.**

Quick Recap



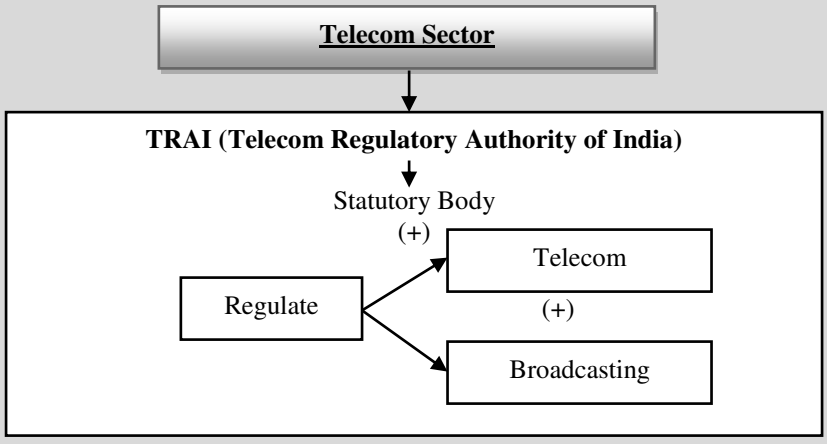
9. Telecom

In India, the telecom market and business there under are governed and regulated by the **Telecom Regulatory Authority of India (TRAI),** which is a statutory body set up for regulating the Telecom and Broadcasting Sectors.

The entry of private service providers brought with it the inevitable need for independent regulation.

The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

Quick Recap



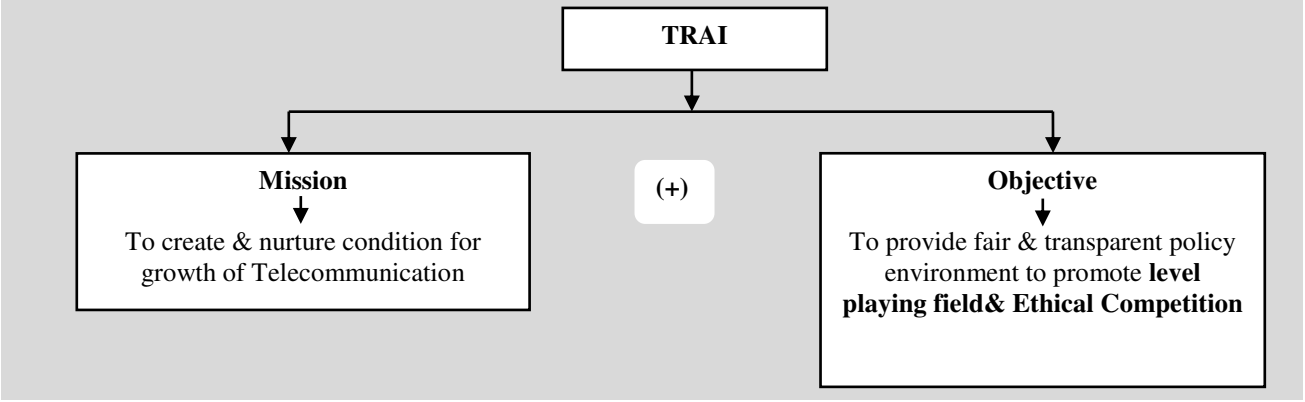
- **Mission of TRAI**

  To create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

- **Objective of TRAI**

  To provide a fair and transparent policy environment which promote a level playing field and facilitate fair competition.

Quick Recap



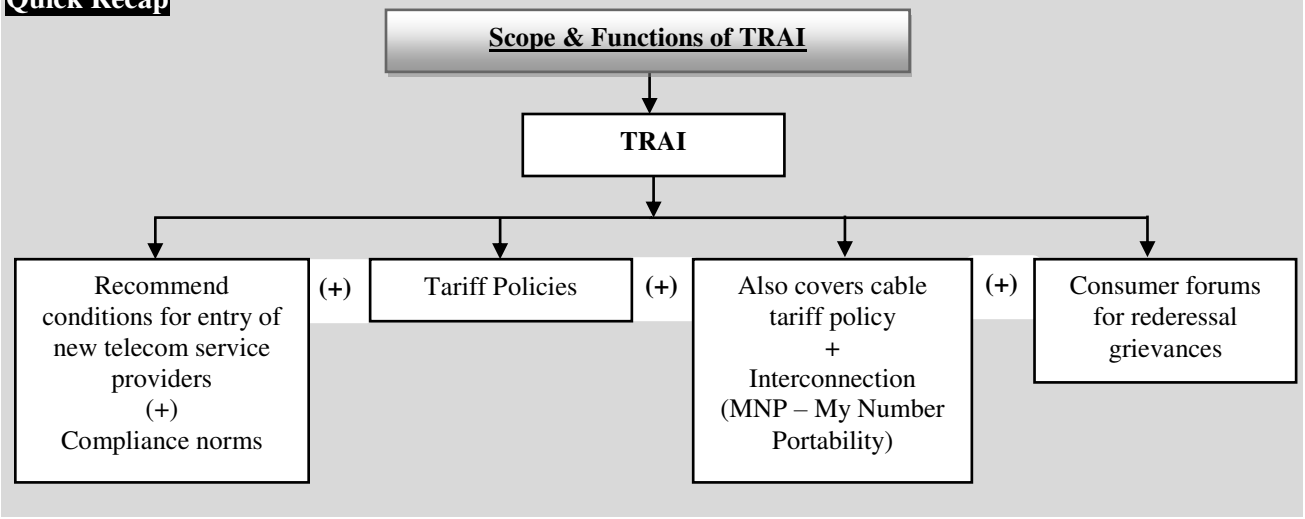
- **Scope of TRAI**

  TRAI's scope of work also includes issues relating to telecom and cable tariff policy, commercial and technical aspects of interconnection, free choice and equal ease of access for the public to different telecom services, resolution of conflicts that may arise due to market developments and diverse network structures for various telecom services. TRAI also facilitates development of forums for interaction amongst service providers and interaction of the Authority with consumer organizations to further the consumer interest.

- **Powers of TRAI**

  TRAI is empowered to lay down the standards of quality of service and ensure compliance, specify the tariff policy and make recommendations regarding terms and conditions on which Addressable Systems of TV shall be provided to customers and parameters for regulating maximum time for advertisements in pay as well as other TV channels.

Quick Recap



OSP Applicability and Registration in India

As per the New Telecom Policy (NTP) 1999, service providers in India involved in providing services like

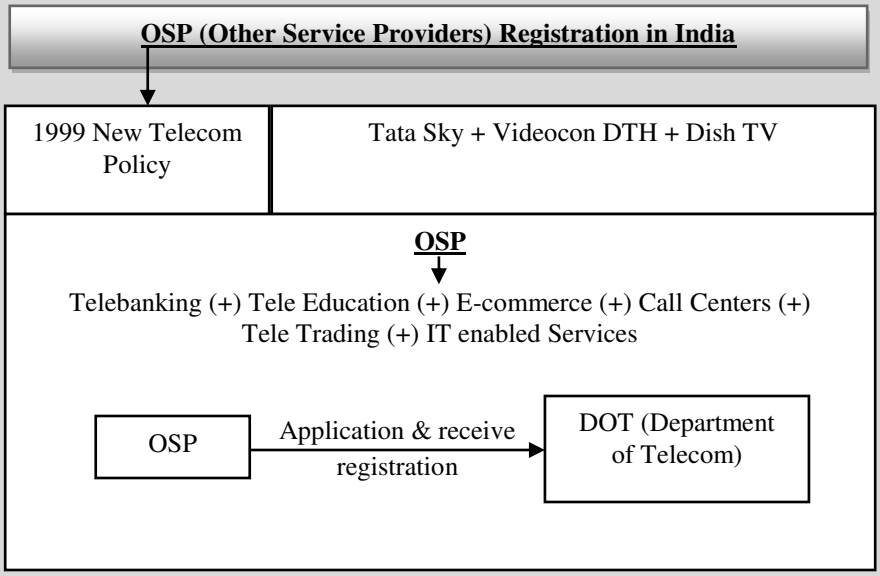
- Tele-banking
- Tele-medicine
- Tele-education
- Tele-trading
- E-commerce
- Call center

- Network operation center
- Other IT Enabled Services, using telecom resources

are termed as "Other Service Providers" (OSP).

These Other Service Providers or OSP's are **required to obtain an OSP Registration from the Department of Telecommunication (DOT).**

Quick Recap



OSP Registration Requirement

To obtain an OSP Registration in India, it is **mandatory** for the entity to be a **Private Limited Company.**

Therefore, Entrepreneurs having plans for starting a call center or BPO or e-commerce or other IT Enabled Services must incorporate a Private Limited Company.

The following are the documents necessary for OSP Registration in addition to the application in the prescribed format:

- **Certificate of Incorporation** of Private Limited Company
- Memorandum of Association **(MOA)** and Articles of Association **(AOA)**
- **Board of Resolution** or **Power of Attorney** authorizing the authorized signatory
- **Name of Business and Activities** Proposed
- **List of Directors**
- Present **Shareholding**

The above documents must be certified with seal by any of the following:

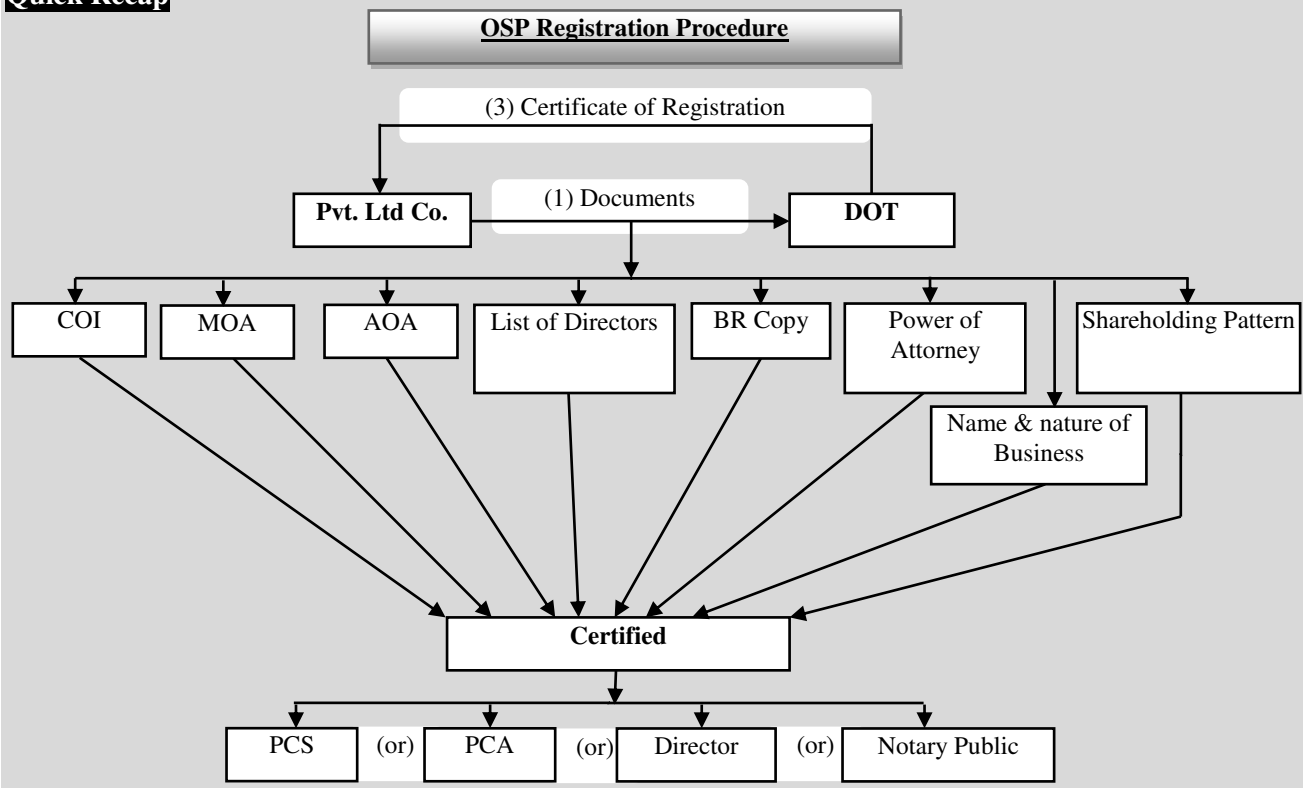
- Company Secretary

  or
- Director of the Company

  or
- Statutory Auditor

  or
- Public Notary

Quick Recap

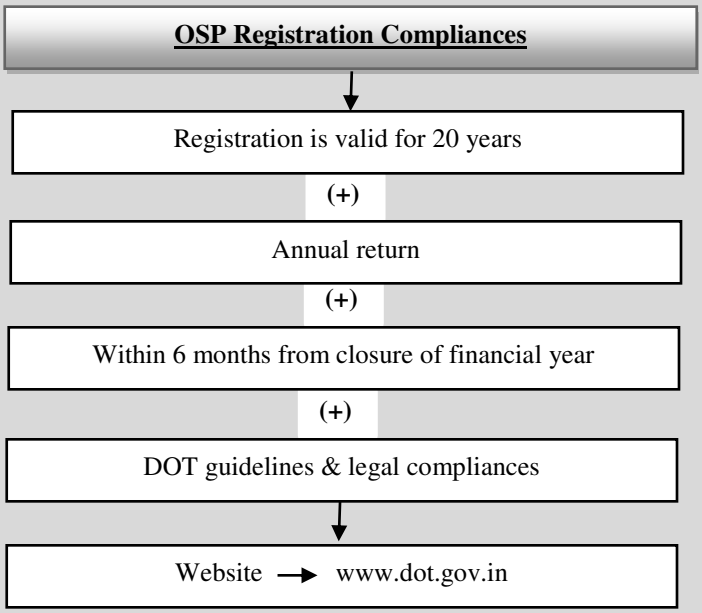


OSP Registration Compliance

Once an OSP Registration is approved, **the license is valid for a period of 20 years** – unless otherwise expressly mentioned. To maintain compliance, each of the OSPs are required to submit an **"Annual Return" to the DOT** mentioning the activities undertaken and the present status of the OSP. The annual return for OSP License renewal must be submitted **within 6 months of completion of financial year.**

In addition to the above, OSPs must maintain compliance with the Terms and Conditions prescribed by the Department of Telecommunication for OSPs. The detailed terms and conditions for OSP Registration and OSP Operation to be maintained are available at the website of Department of Telecommunications, Government of India.

Quick Recap



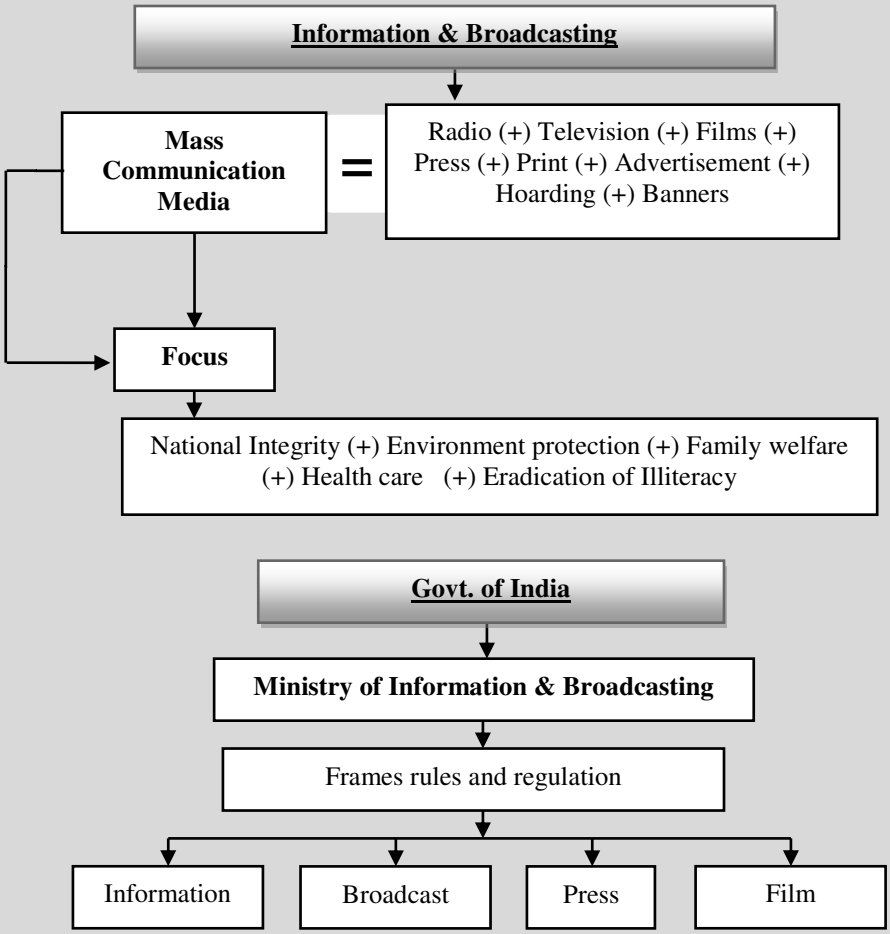
10. Information & Broadcasting

The mass communication media such as radio, television, films, press and print publications, advertising and traditional modes of communication plays an important role in helping people to access free flow of information. In India the mass communication media emphasizes on facilitating entertainment needs of various age groups and focus attention of people on issues of national integrity, environmental protection, health care, family welfare, eradication of illiteracy etc.

The **Ministry of Information and Broadcasting** (Ministry of I&B) is a branch of the Government of India which is **apex body** for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.

The Ministry is responsible for the administration of **Prasar Bharati - the broadcasting arm of the Indian Government.** The **Central Board of Film Certification** is the other important functionary under this ministry being responsible for the regulation of motion pictures broadcast in India.

Quick Recap



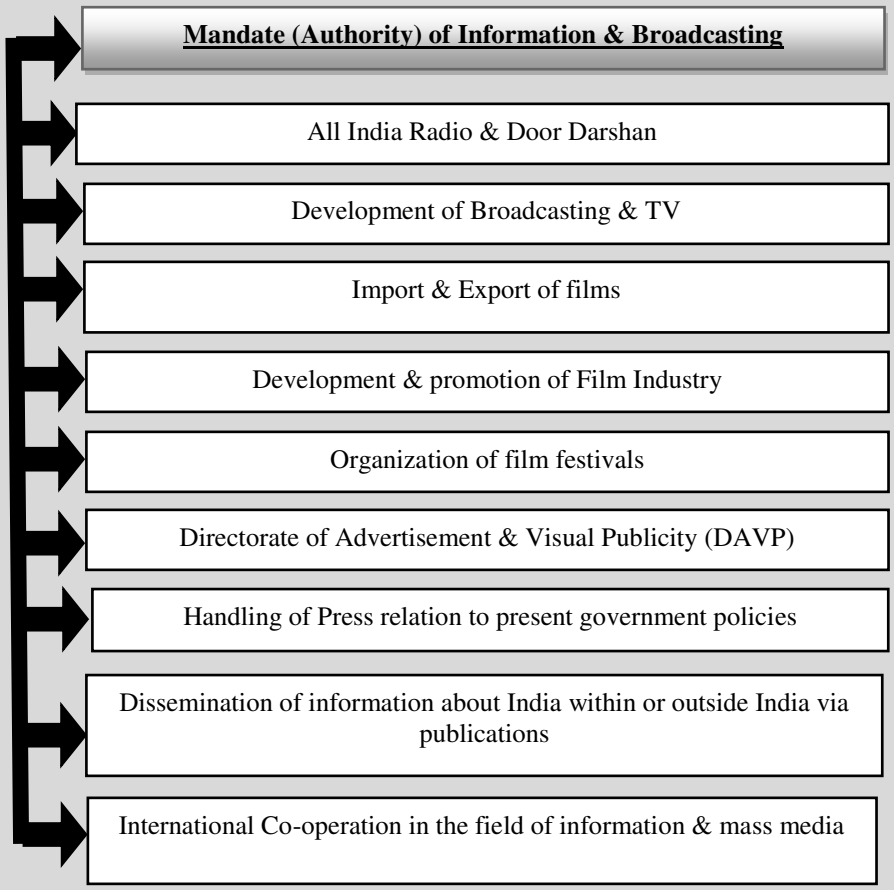
Mandate of I& B

The mandate of the Ministry of Information & Broadcasting are:

- News Services through All India Radio (AIR) and Doordarshan (DD) for the people
- Development of broadcasting and television.
- Import and export of films.
- Development and promotion of film industry.
- Organisation of film festivals and cultural exchanges for the purpose.
- Directorate of Advertising and visual publicity DAVP.

- Handling of press relations to present the policies of Government of India and to get feed-back on the Government policies.
- Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.
- Dissemination of information about India within and outside the country through publications on matters of national importance.
- Research, Reference and Training to assist the media units of the Ministry to meet their responsibilities.
- Use of interpersonal communication and traditional folk art forms for information/publicity campaigns on public interest issues.
- International co-operation in the field of information & mass media.

Quick Recap



Regulating and Certification Head under I& B

1. **Broadcasting**
   - Conditional Access System (CAS)
   - Community Radio Stations
   - PrasarBharati
   - Doordarshan
   - Akashvani (All India Radio)
   - Broadcast Engineering Consultants India Limited
   - Uplinking/Downlinking of TV Channels
   - Content Regulation on Private TV Channels
   - Direct to Home (DTH)
   - Internet Protocol Television (IPTV)

- Headend-in-the-Sky (HITS)
- Digital television transition
- Radio And Television Licence Around The World
- Broadcasting Authority of India 1977

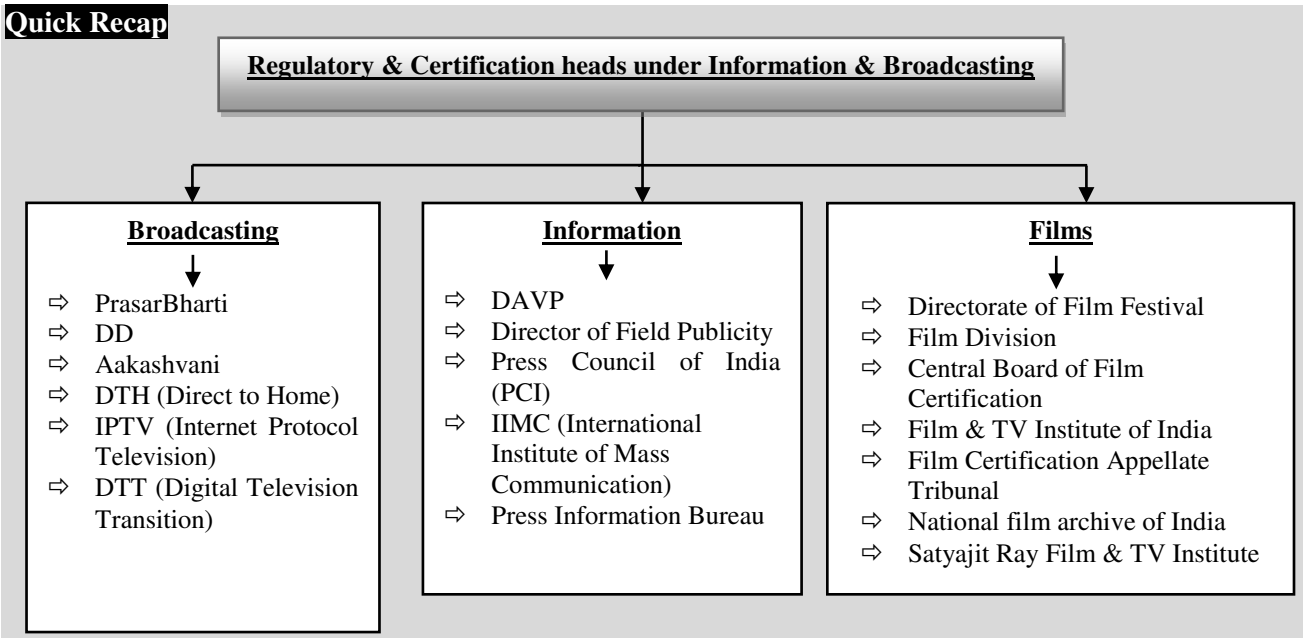
2. Information

- Directorate of Advertising and Visual Publicity (DAVP)
- Directorate of Field Publicity
- Photo Division
- Publications Division
- Research Reference & Training Division
- Song & Drama Division
- Office of the Registrar of Newspapers for India (RNI)
- Press Council of India
- Press Information Bureau (PIB)
- Indian Institute of Mass Communication (IIMC)

3. Films

- Directorate of Film Festivals (DFAI)
- Films Division (FD)
- Central Board of Film Certification
- Children's Film Society, India
- Film and Television Institute of India, Pune (FTII)
- Film Certification Appellate Tribunal
- National Film Archive of India (NFAI)
- Satyajit Ray Film and Television Institute (SRFTI)
- National Film Development Corporation

Quick Recap



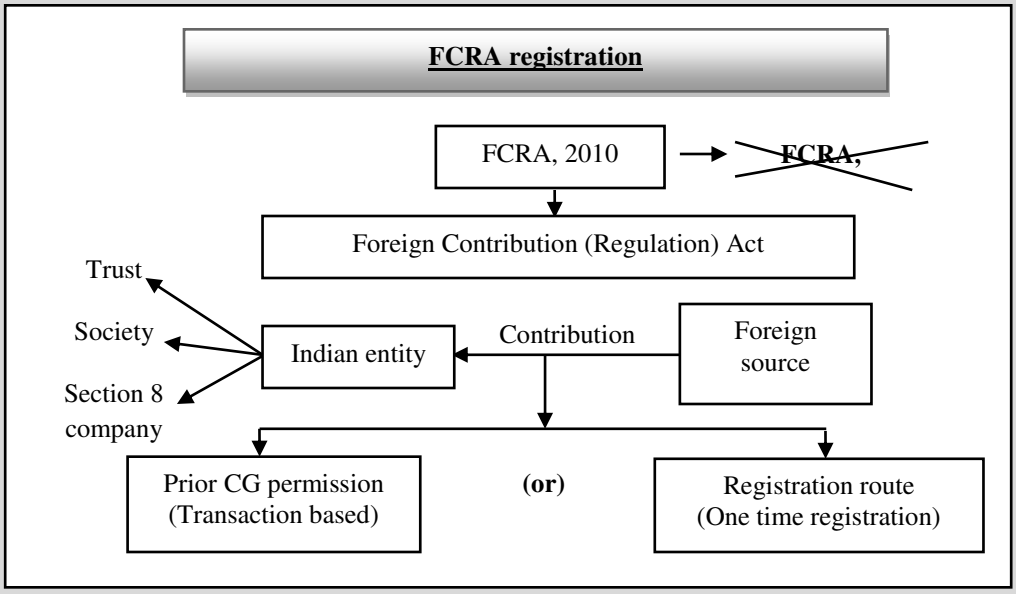
FCRA Registration

Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through "prior permission" route. It is preferable for an FCRA applicant to be a Trust or Society or a Section 8

Company. The not-for-profit entity must have also been in existence for a minimum of three years while making the FCRA application and should not have received any foreign contribution prior to that without the Government's approval.

Additionally, the entity seeking registration should have spent at least `10,00,000/- over the last three years on its aims and objects, excluding administrative expenditure. Statements of Income & Expenditure, duly audited by Chartered Accountant, for last three years are to be submitted to substantiate that it meets the financial parameter.

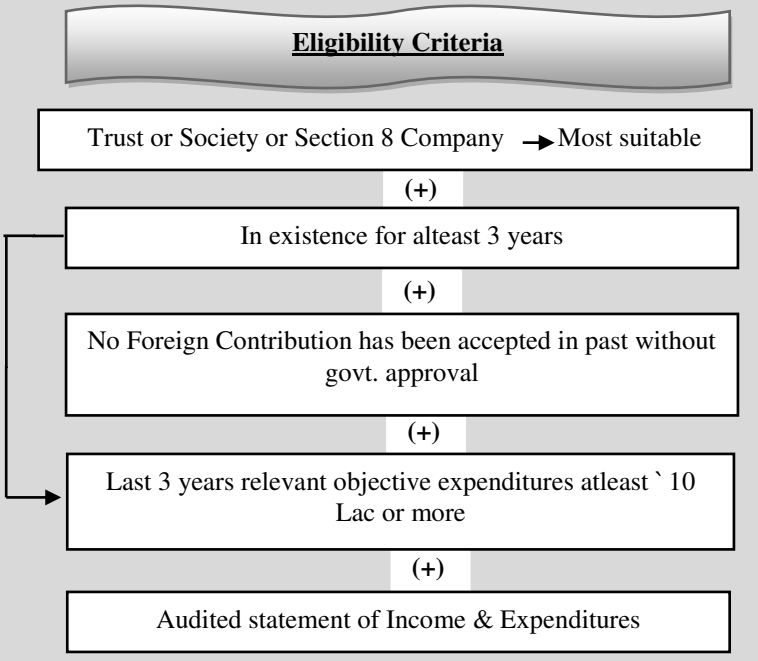
Quick Recap



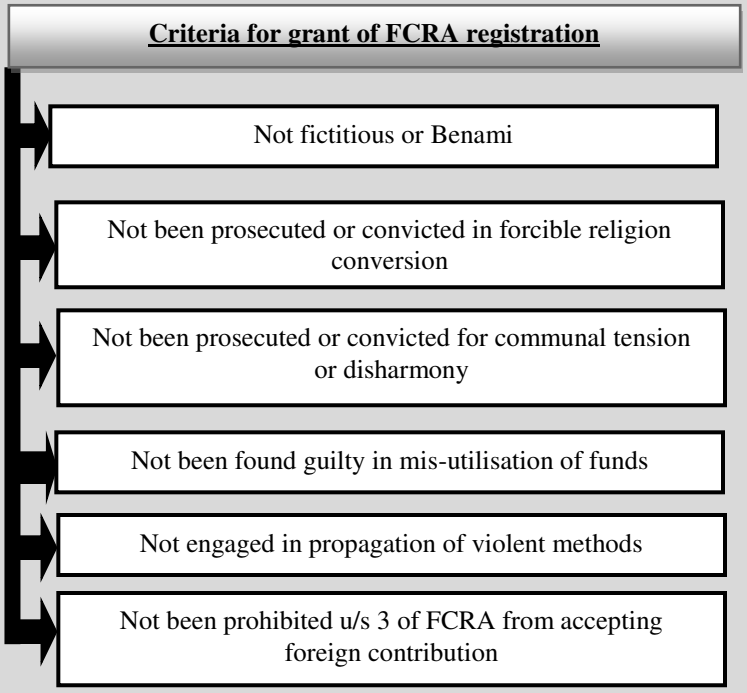
Criteria for grant of FCRA Registration

Once, an FCRA application is made in the prescribed format, the following criteria are check before providing registration.

Quick Recap



Quick Recap



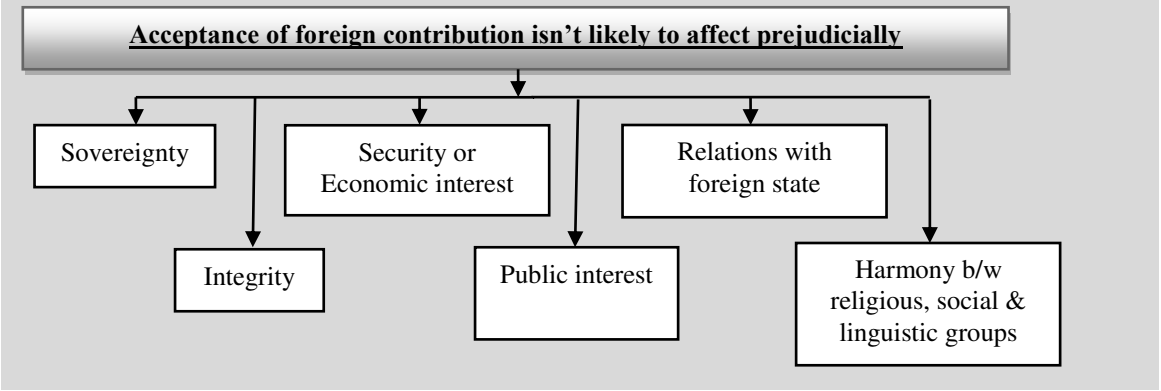
(a) The 'person' or 'entity' making an application for registration or grant of prior permission-

- Is not fictitious or benami;
- Has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
- Has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
- Has not been found guilty of diversion or mis-utilisation of its funds;
- Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- Has not contravened any of the provisions of this Act;
- Has not been prohibited from accepting foreign contribution;
- The person being an individual, such individual has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.
- The person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.

(b) The acceptance of foreign contribution by the entity/person is not likely to affect prejudicially

- The sovereignty and integrity of India;
- The security, strategic, scientific or economic interest of the State;
- The public interest;
- Freedom or fairness of election to any Legislature;
- Friendly relation with any foreign State;
- Harmony between religious, racial, social, linguistic, regional groups, castes or communities.

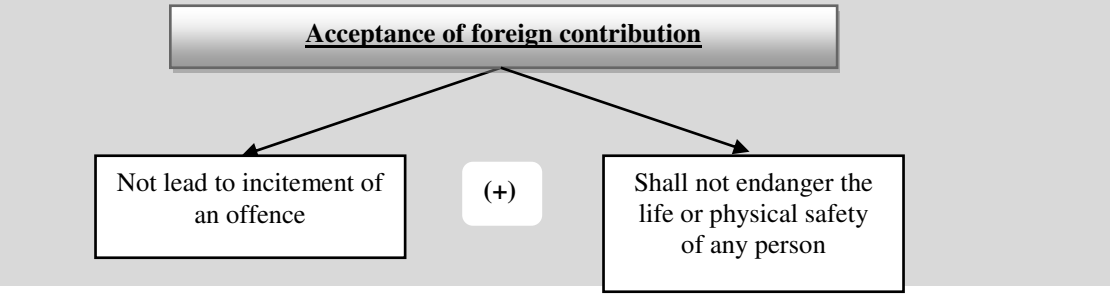
Quick Recap



(c) The acceptance of foreign contribution

- Shall not lead to incitement of an offence;
- Shall not endanger the life or physical safety of any person.

Quick Recap



Applying for FCRA Registration

Application for FCRA registration can be made using Form FC-3. Along with the application, the following documents must be submitted:

- Self-certified copy of registration certificate/Trust deed etc., of the association
- Self-certified copy of relevant pages of Memorandum of Association/Article of Association showing aim and objects of the association.
- Activity Report indicating details of activities during the last three years;
- Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure.

Once FCRA registration is granted, it is valid for a period of five years. An application for renewal of FCRA registration can be made 6 months prior to the date of expiry, to keep the registration valid.

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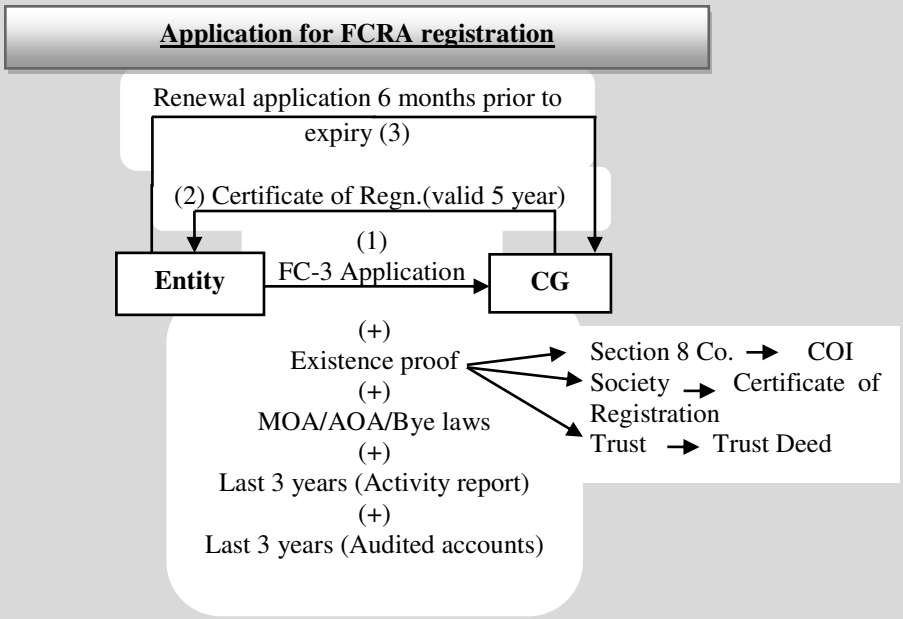
Quick Recap



Telecom

In India, the telecom market and business there under are governed and regulated by the **Telecom Regulatory Authority of India (TRAI),** which is a statutory body set up for regulating the Telecom and Broadcasting Sectors.

The entry of private service providers brought with it the inevitable need for independent regulation.

The Telecom Regulatory Authority of India (TRAI) was, thus, established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

- **Mission of TRAI**

  To create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

- **Objective of TRAI**

  To provide a fair and transparent policy environment which promote a level playing field and facilitate fair competition.

- **Scope of TRAI**

  TRAI's scope of work also includes issues relating to telecom and cable tariff policy, commercial and technical aspects of interconnection, free choice and equal ease of access for the public to different telecom services, resolution of conflicts that may arise due to market developments and diverse network structures for various telecom services. TRAI also facilitates development of forums for interaction amongst service providers and interaction of the Authority with consumer organizations to further the consumer interest.

- **Powers of TRAI**

  TRAI is empowered to lay down the standards of quality of service and ensure compliance, specify the tariff policy and make recommendations regarding terms and conditions on which Addressable Systems of TV shall be provided to customers and parameters for regulating maximum time for advertisements in pay as well as other TV channels.

OSP Applicability and Registration in India

As per the New Telecom Policy (NTP) 1999, service providers in India involved in providing services like

- Tele-banking
- Tele-medicine
- Tele-education
- Tele-trading
- E-commerce
- Call center
- Network operation center
- Other IT Enabled Services, using telecom resources

are termed as "Other Service Providers" (OSP).

These Other Service Providers or OSP's are **required to obtain an OSP Registration from the Department of Telecommunication (DOT).**

OSP Registration Requirement

To obtain an OSP Registration in India, it is **mandatory** for the entity to be a **Private Limited Company.**

Therefore, Entrepreneurs having plans for starting a call center or BPO or e-commerce or other IT Enabled Services must incorporate a Private Limited Company.

The following are the documents necessary for OSP Registration in addition to the application in the prescribed format:

- **Certificate of Incorporation** of Private Limited Company
- Memorandum of Association **(MOA)** and Articles of Association **(AOA)**
- **Board of Resolution** or **Power of Attorney** authorizing the authorized signatory
- **Name of Business and Activities** Proposed
- **List of Directors**
- Present **Shareholding**

The above documents must be certified with seal by any of the following:

- Company Secretary

  or
- Director of the Company

  or
- Statutory Auditor

  or
- Public Notary

OSP Registration Compliance

Once an OSP Registration is approved, **the license is valid for a period of 20 years** – unless otherwise expressly mentioned. To maintain compliance, each of the OSPs are required to submit an **"Annual Return" to the DOT** mentioning the activities undertaken and the present status of the OSP. The annual return for OSP License renewal must be submitted **within 6 months of completion of financial year.**

In addition to the above, OSPs must maintain compliance with the Terms and Conditions prescribed by the Department of Telecommunication for OSPs. The detailed terms and conditions for OSP Registration and OSP Operation to be maintained are available at the website of Department of Telecommunications, Government of India.

Information & Broadcasting

The mass communication media such as radio, television, films, press and print publications, advertising and traditional modes of communication plays an important role in helping people to access free flow of information. In India the mass communication media emphasizes on facilitating entertainment needs of various age groups and focus attention of people on issues of national integrity, environmental protection, health care, family welfare, eradication of illiteracy etc.

The **Ministry of Information and Broadcasting** (Ministry of I&B) is a branch of the Government of India which is **apex body** for formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.

The Ministry is responsible for the administration of **PrasarBharati - the broadcasting arm of the Indian Government.** The **Central Board of Film Certification** is the other important functionary under this ministry being responsible for the regulation of motion pictures broadcast in India.

Mandate of I& B

The mandate of the Ministry of Information & Broadcasting are:

- News Services through All India Radio (AIR) and Doordarshan (DD) for the people
- Development of broadcasting and television.
- Import and export of films.
- Development and promotion of film industry.
- Organisation of film festivals and cultural exchanges for the purpose.
- Directorate of Advertising and visual publicity DAVP.
- Handling of press relations to present the policies of Government of India and to get feed-back on the Government policies.
- Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.
- Dissemination of information about India within and outside the country through publications on matters of national importance.
- Research, Reference and Training to assist the media units of the Ministry to meet their responsibilities.
- Use of interpersonal communication and traditional folk art forms for information/ publicity campaigns on public interest issues.
- International co-operation in the field of information & mass media.

Regulating and Certification Head under I& B

4. Broadcasting

- Conditional Access System (CAS)
- Community Radio Stations
- Prasar Bharati
- Doordarshan
- Akashvani (All India Radio)
- Broadcast Engineering Consultants India Limited
- Uplinking/Downlinking of TV Channels
- Content Regulation on Private TV Channels
- Direct to Home (DTH)
- Internet Protocol Television (IPTV)
- Headend-in-the-Sky (HITS)
- Digital television transition
- Radio And Television License Around The World
- Broadcasting Authority of India 1977

5. Information

- Directorate of Advertising and Visual Publicity (DAVP)
- Directorate of Field Publicity
- Photo Division
- Publications Division
- Research Reference & Training Division
- Song & Drama Division
- Office of the Registrar of Newspapers for India (RNI)
- Press Council of India
- Press Information Bureau (PIB)
- Indian Institute of Mass Communication (IIMC)

6. Films

- Directorate of Film Festivals (DFAI)
- Films Division (FD)
- Central Board of Film Certification
- Children's Film Society, India
- Film and Television Institute of India, Pune (FTII)
- Film Certification Appellate Tribunal
- National Film Archive of India (NFAI)
- Satyajit Ray Film and Television Institute (SRFTI)
- National Film Development Corporation

11. Banking

Licensing of Banking Companies is governed by Banking Regulation Act, 1949.

Section 22 of the Act details on Licensing of Banking Companies which states as below:

No company shall carry on banking business in India unless holds a license issued by RBI.

Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:—

- That the company is or will be in a **position to pay its present or future depositors in full** as their claims accrue.
- 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.
- 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.
- That the **company has adequate capital structure** and earning prospects.
- That the **public interest will be served** by the grant of a license to the company to carry on banking business in India.
- That having regard to the banking facilities available in the proposed principal area of operations of the company, the **potential scope for expansion of banks already in existence in the area** and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the **banking system consistent with monetary stability and economic growth.**
- Any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

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

- If the company ceases to carry on banking business in India; or
- If the company at any time fails to comply with any of the conditions imposed upon.
- If at any time, any of the conditions specified under the act has not been fulfilled.

Quick Recap

Banking License

Governed by Banking Regulation Act, 1949

Section 22

No company shall carry on banking business in India unless holds a license issued by RBI

Foreign Bank holding RBI License

- HSBC
- American Express
- RBS

Section 22

Factors to be considered by RBI while granting banking license

- Company is able to pay **claims** of its depositors
- (+)
- Affairs not detrimental to the **interest** of depositors
- (+)
- General character of proposed management **not prejudicial** to the public interest
- (+)
- Company has adequate capital structure and **earning** prospects
- (+)
- Banking business in **India**
- (+)
- Potential **scope** for banking business in such area
- (+)
- Other conditions as may be prescribed

Factors = Claims (+) Interest (+) Infra (+) Earning (+) Scope (+) India

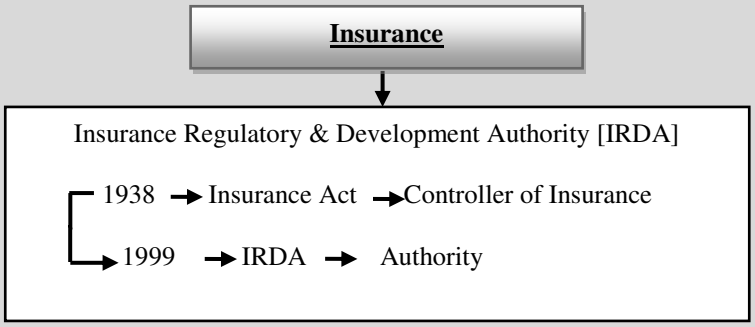
Cancellation of License by RBI

- Company ceases to carry banking business in India
- Failure to comply conditions prescribed by RBI
- Contravention of provisions of BRA, 1949

12. IRDA Introduction

Till 1999 the insurance sector was controlled by Controller of Insurance as per the provisions of Insurance **Act, 1938** but after formation of the **IRDA** it is felt by the Authority that the most of the provisions of this Act were irrelevant in the present scenario of the country. Therefore the Authority issued various regulations, as deemed fit, to develop the insurance sector in the country.

Quick Recap

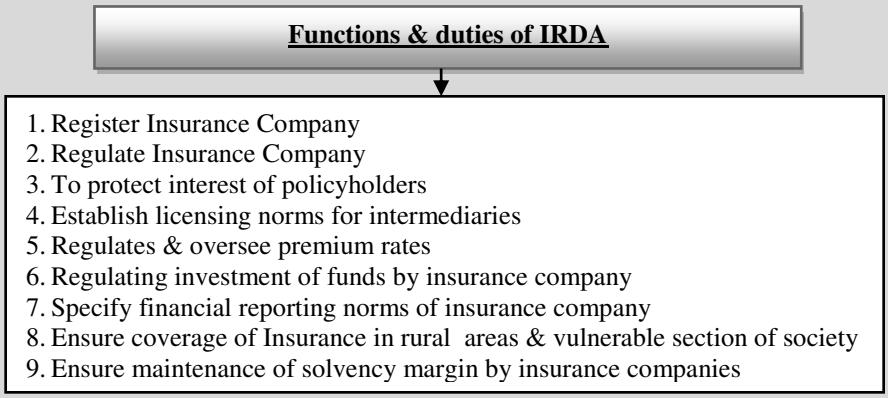


13. Functions and Duties of IRDAI

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

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

Quick Recap



Procedure of Granting of License to Companies to Start Insurance

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

Every application in the **Form (IRDA orR1)** for registration shall be made with the **following enclosures**:

1. A certified copy of **Memorandum and Articles of association**, if the applicant is a company.
2. The name, address & the occupation of the **directors** of the company.
3. A statement of the **class of insurance** business proposed to be carried on.
4. A statement **indicating the sources** that will contribute the **share capital.**

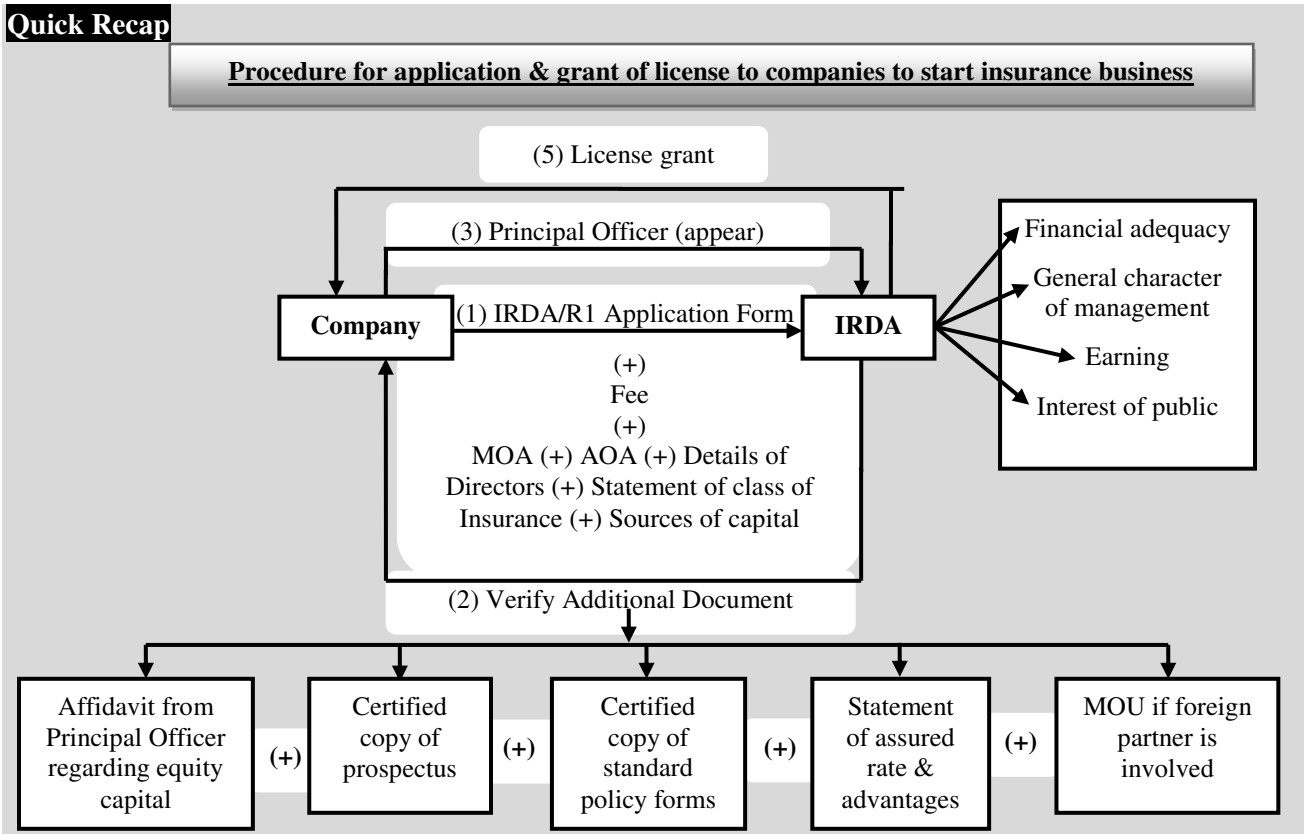
On receiving the above documents IRDA will verify the contents and may ask for additional information if any. The Authority may ask the **Principal Officer to appear** to their office for any information or clarification.

If the Authority is satisfied with the information and documents provide with the application Form (IRDA/R1), the **Authority may ask for an additional application in the form (IRDA/R2)** which should be accompanied with the following documents:—

1. A declaration verified by an **affidavit from the "Principal Officer"** that the equity capital of the company has been complied with. The paid up equity excluding preliminary expenses and registration charges should be `100 crores for life or General Insurance business and ` 200 crores for the Reinsurance business.
2. A **certified copy of the published prospectus** and of the standard policy forms of the insurer.
3. **Statement of assured rate**, advantages, terms & conditions to be offered in connection with Insurance policies.
4. In the case of the business the **certificate from the actuary** that such rates are workable & sound.
5. In the case of marine accident & miscellaneous Insurance business other than workmen's compensation &motor car Insurance the available **forms, prospects and statements to be submitted**.
6. The receipt of deposit of ` 50,000/- for each class of business.
7. If there is any foreign partner, a certified copy of Memorandum of understanding between Indian promoter and foreign promoter including details of support comfort letters exchanged between the parties.
8. If on the receipt of an application for registration and the authority is satisfied that
   - The **financial condition**& the general character of management of the applicant are sound.
   - The **volume of business** likely to be available to & the **capital structure & earning prospects** of the applicant will be **adequate.**
   - The **interest of the general public** will be served

   then the certificate of registration is granted.

Quick Recap



Refusal of Registration

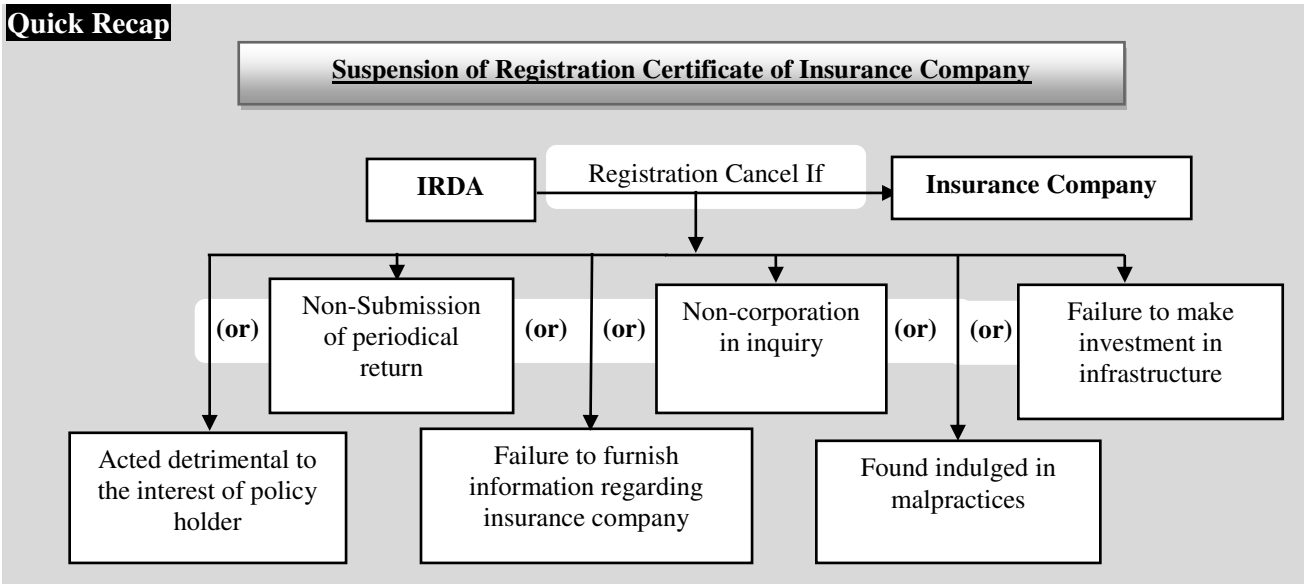
- If the Authority refuses the registration the reason of such decision will be intimated to the applicant.
- The Applicant whose application has been rejected can file an **appeal before the Central Government within 30 days** from the date on which a copy of the decision is received.
- The **decision of the Government shall be final** and shall not be questioned before any court.

Suspension of Registration

The registration of an Indian insurance company or insurer may be suspended in the following cases:

- Conducts its business in a manner **prejudicial to the interests** of the policy-holders.
- **Fails to furnish any information** as required by the Authority relating to its insurance business.
- **Does not submit periodical returns** as required under the Act or by the Authority.
- **Does not co-operate in any inquiry** conducted by the Authority.
- **Indulges in manipulating** the insurance business.
- **Fails to make investment** in the infrastructure or social sector as specified under the Insurance Act.

Quick Recap



Cancellation of Certificate of Registration

The Authority, in case of repeated defaults of the grounds for suspension of a certificate of registration, may impose a penalty in the form of cancellation of the certificate. The Authority is compulsorily required to cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be:

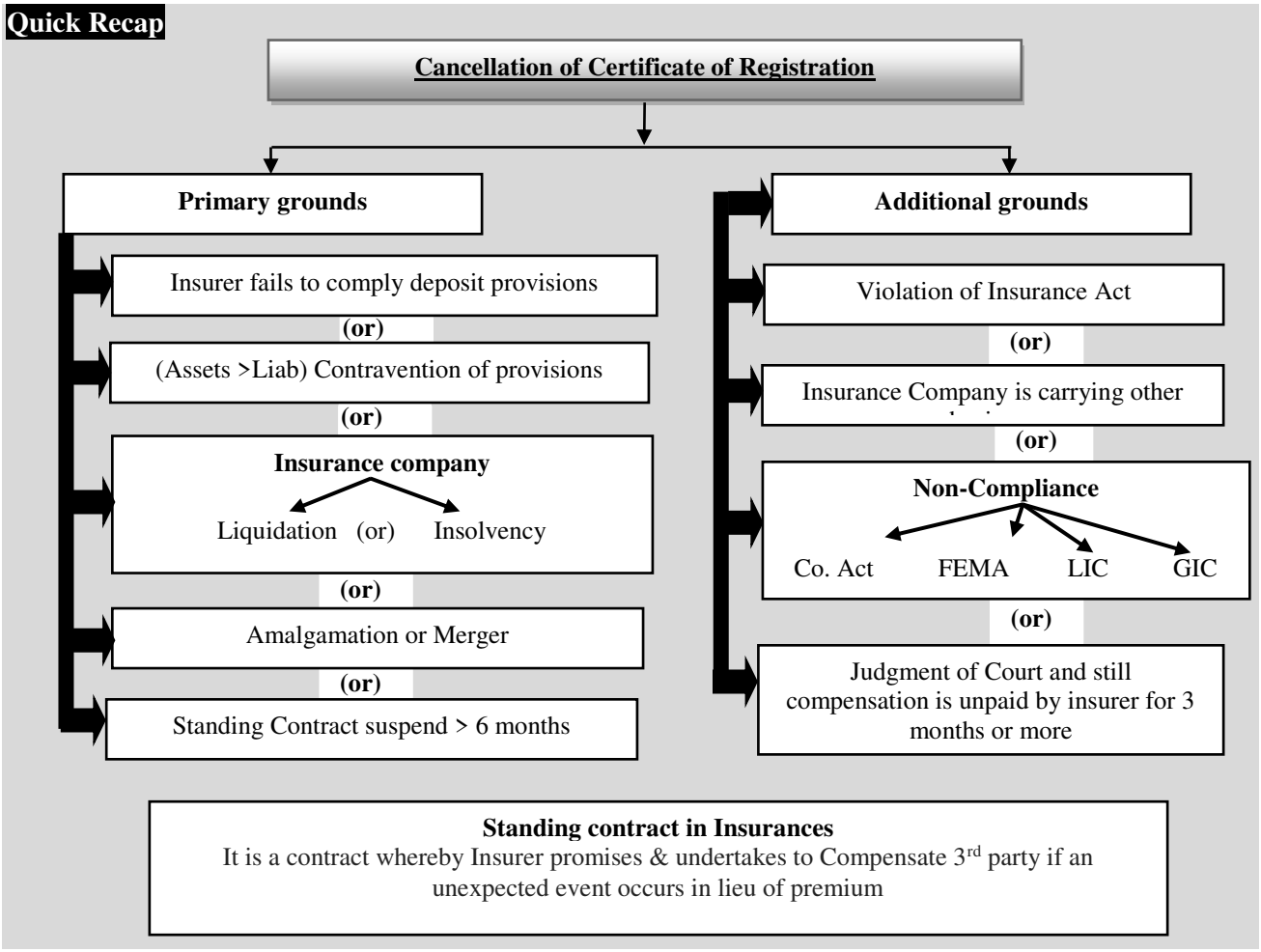
- If the **insurer fails to comply** with the provisions relating to **deposits.**
- If the **insurer fails**, at any time, to comply with the provisions relating to the excess of the value of his **assets over the amount of his liabilities**.
- If the insurer is in **liquidation** or is adjudged an **insolvent.**
- If the business or a class of the business of the insurer has been transferred to any person or has sbeen transferred to or **amalgamated** with the business of any other insurer.
- If the whole of the **deposit** made in respect of the insurance business has been **returned** to the insurer.
- If, in the case of an insurer, **the standing contract is cancelled** or is suspended and continues to be **suspended for a period of six months.**
- If the **Central Government of India** so directs.

In addition to the above, the Authority has the discretion to cancel the registration of an insurer

- If the insurer makes default in complying with, or acts in contravention of, any requirement of the Insurance Act or of any rule or any regulation or order made or, any direction issued there under, or
- If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or
- If the insurer carries on any business other than insurance business or any prescribed business, or
- If the insurer makes a default in complying with any direction issued or order made, as the case maybe, by the Authority under the IRDA Act, 1999.
- If the insurer makes a default in complying with, or acts in contravention of, any requirement of the

Companies Act, or the LIC Act, or the GIC Act or the Foreign Exchange Management Act, 2000.

Quick Recap



Revival of Registration

The Authority has discretion, where the registration of an insurer has been cancelled, to revive the registration, if the insurer within six months from the date on which the cancellation took effect:

- Makes the deposits

  or
- Complies with the provisions as to the excess of the value of his assets over the amount of his liabilities

  or
- Has his standing contract restored

  or

- Has the application accepted

  or

- Satisfies the Authority that no claim upon him remains unpaid

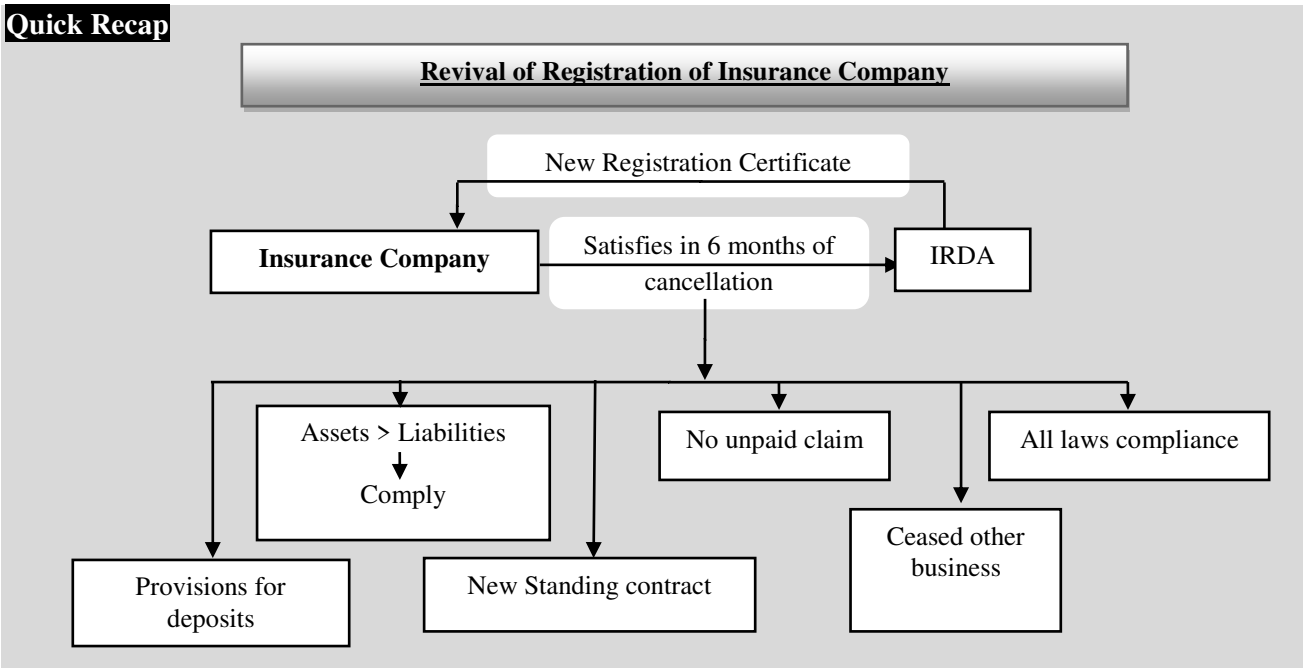
  or

- Has complied with any requirements of the Insurance Act or the IRDA Act, or any rule or regulation, or any order made there under or any direction issued under these Acts

  or

- That he has ceased to carry on any business other than insurance business or any prescribed business.

Quick Recap



14. Industrial Entrepreneurs Memorandum (IEM)

The Government's liberalization and economic reforms program aims at rapid and substantial economic growth which is integrated with global economy in a harmonized manner.

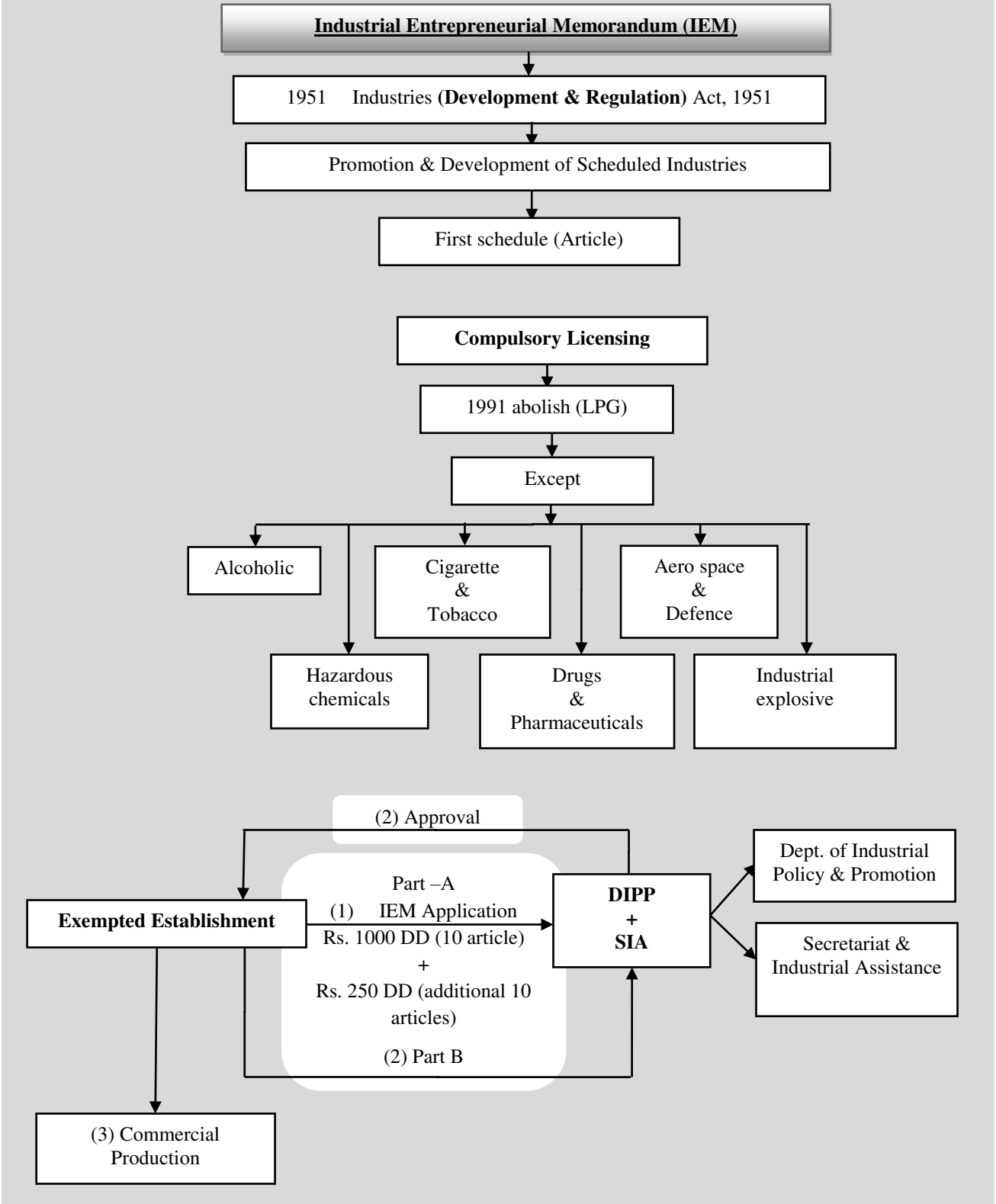
The industrial policy reforms have:

- Reduced the industrial licensing requirements.
- Removed restrictions on investment and expansion.
- Facilitated easy access to foreign technology and foreign direct investment.

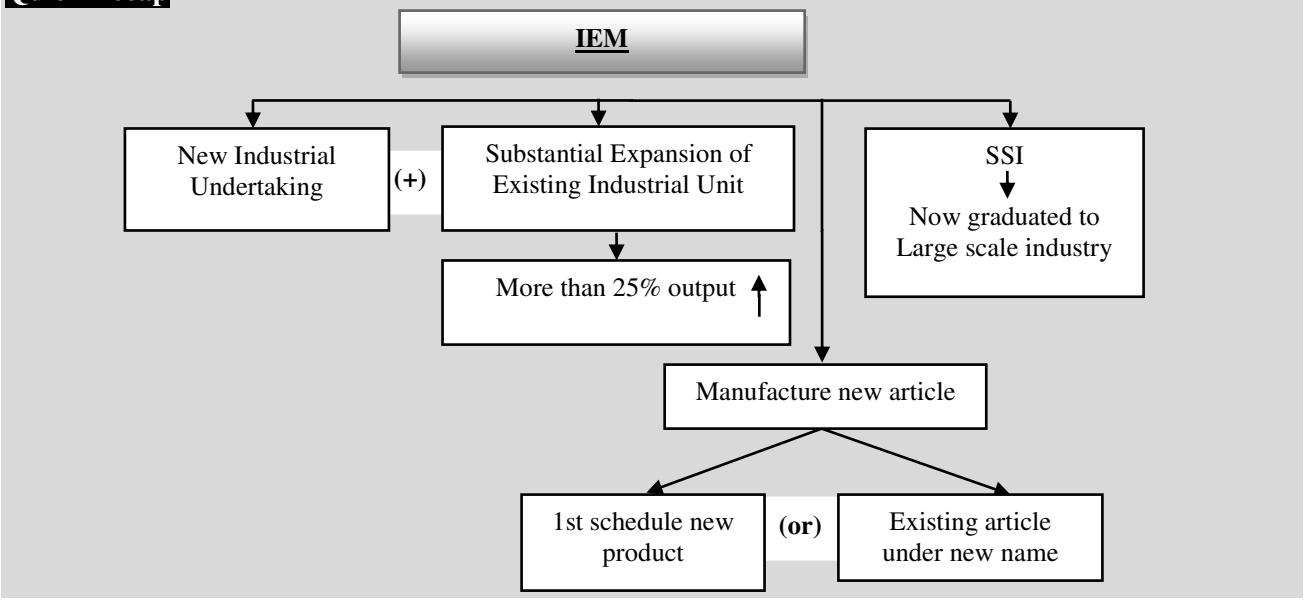
All industrial undertakings exempt from the requirements of industrial licensing, including existing units undertaking substantial expansion, are required to file information in the prescribed form for Industrial Entrepreneurs Memorandum (IEM), i.e. **Part 'A' "Form IEM"**, with the Secretariat of Industrial Assistance (SIA),Department of Industrial Policy and Promotion (DIPP), Government of India, and obtain an acknowledgement. No further approval is required.

All Industrial undertakings also need to file information in **Part 'B'** of the Memorandum at the time of commencement of commercial production.

Quick Recap


Industrial Entrepreneurial Memorandum (IEM)
1951 Industries (Development & Regulation) Act, 1951
Promotion & Development of Scheduled Industries
First schedule (Article)
Compulsory Licensing
1991 abolish (LPG)
Except
Alcoholic
Cigarette & Tobacco
Aero space & Defence
Hazardous chemicals
Drugs & Pharmaceuticals
Industrial explosive
(2) Approval
Exempted Establishment
Part –A
(1) IEM Application
Rs. 1000 DD (10 article)
+
Rs. 250 DD (additional 10 articles)
(2) Part B
DIPP + SIA
Dept. of Industrial Policy & Promotion
Secretariat & Industrial Assistance
(3) Commercial Production

Quick Recap



Eligibility for getting IEM

All industrial undertakings exempted from the **requirements** of **industrial licensing** under THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT I (D&R), 1951 and having an **investment** in **plant and machinery of Rs 50 Crore and above**; and **turnover of ` 250 crore** and above, **including Existing Units**, **New undertaking** (NU) and **New Article** (NA), **may file** an **IEM**, i.e. "**Form IEM**" **in** the prescribed format '**Part A'**. 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' for verification** related to '**Incorporation Certificate'; 'Memorandum of Article'; 'Article of Association', 'Master data', 'PAN' and 'Codes related to NIC & Administrative Ministry/Department etc**. Once the above is **verified** and found **correct**; the **Department electronically issues IEM Ack. to** the **applicant**.
- The Acknowledgement (**Ack**.) of the IEM which is **given on** the **spot on prima facie evidence** of **not attracting** the **provisions of licensing, cannot**, therefore, be **construed as** a **clearance** or **approval to carry on** an **industrial activity contemplated** in the **IEM** unless the provisions of statutes/regulations/notifications etc. issued by the Central or State Governments from time to time or any specific directions or Stay Orders issued by the Court/competent authority relevant to such an activity, are also fully complied with, or in no way contravened, as the case may be.
- **All Industrial undertakings** which had **filed IEM** are **required to report commencement** of **commercial production** and this is also **filed on-line on** the same **portal** by way of **filing information** as per prescribed form '**Part B'** of the **IEM after commencement** of **commercial production** by the establishment; a **copy** of the **related IEM Ack**. is required **to be attached while filing** this **information on** the **portal**.
- Like '**Part A' Ack. of IEM**, the **Department also issues Ack. for 'Part B' through** its **portal**

Upgradation of paperless process for grant of Industrial Entrepreneur Memorandum (IEM) New Delhi, March 30, 2021

- With a view **to enhancing ease of doing business and transparency**, the **DPIIT** has **revamped its** Industrial Entrepreneurs Memorandum **(IEM) portal.** The **upgraded portal offers single IEM for one company to capture details of all** its **locations and sectors**.
- This **Single form will facilitate filling** of **investment intentions** (**IEM-Part A**) and **reporting** of **commencement** of **production** (**IEM-Part B**) in a **seamless manner.**

- **Any amendments** to the IEMs may **also be done easily** with respect to previously filed IEMs. This entire **process avoids duplication in filling information**.
- **All approvals** will be **communicated on emails and SMS** in **purely paperless manner to applicants**. Simultaneous **information** shall **also send to concerned State Governments**.
- The **G2B portal** can be **accessed at http://services.dipp.gov.in for** the purpose of **submitting application and obtaining** the **IEM certificate**. **DPIIT operates** the **G2B Portal for receiving application** of **Industrial Entrepreneurs to file** an Industrial Entrepreneurs Memorandum (**IEM**) under Industries (Development and Regulation) Act, 1951.

15. Pollution Control

The Ministry of Environment carries out this classification, Forest and Climate Change, to differentiate between industries with the highest pollution index and those with the lowest as follows:

(i) **Red category**: These industries has the highest pollution index, such as big manufacturing industries, large hotels, super speciality hospitals, etc.

(ii) **Orange category**: These industries are relatively medium-sized enterprises, which still generates comparatively high levels of pollutants like cashew nut processing, coffee seed processing, pharmaceutical formulation.

(iii) **Green category**: These are the industries with low pollution Index like small bakeries, storage of food grains, leather footwear, and products, cement products

(iv) **White category**: These are the industries with no pollution practically like Biscuit trays, rolled PVC sheet (using automatic vacuum forming machines),

Industries categorized under red, orange and green category are covered under consent management for obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under Water Act, 1974 and Air Act, 1981.

The White Category of industries has to however satisfy these conditions to be eligible for this pollution license exemption:

1. The industry is being established in the locality demarcated for them;
2. Their investment in the industry is not more than ` One Crore on plant and machinery
3. There will not be any discharge of trade effluent from the industry into stream or well or sewer or onto land and/or that industry will not discharge any air pollution including noise into the atmosphere.
4. The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

Procedure for obtaining NOC from Pollution Control Board:

1. The application for consent to establish (CTE) and consent to operate (CTO) can now be made online by logging onto concerned State's pollution control board's website.
2. State pollution control board 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 for NOC, then a certificate is issued to business. However, if application is rejected by pollution control board, then applicant need to be intimate with reason for the same.

Chapter - 14
Constitution and Labour Laws

Regulatory Framework

- Constitution of India

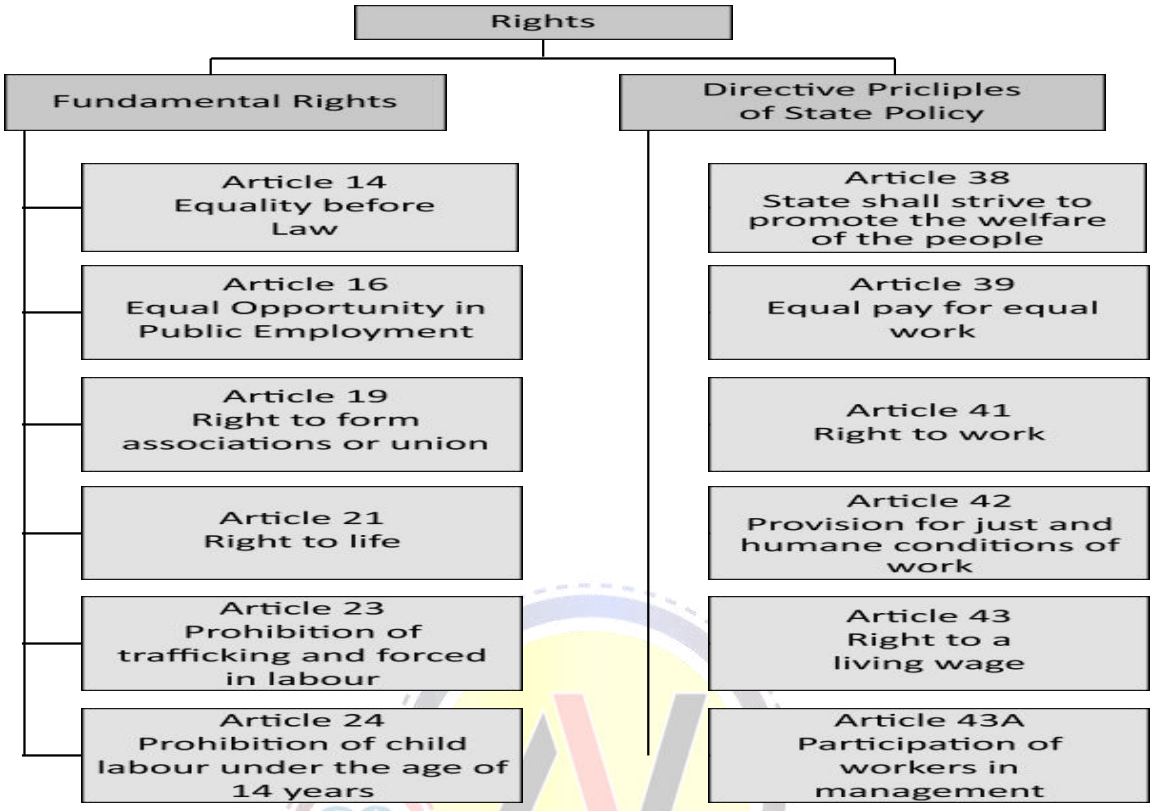
Introduction

- The **Constitution** of a **country** is the **fundamental law** of the **land**. **Every organ** of the **state**, be it the **executive or** the **legislative or** the **judiciary**, **derives** its **authority from** the **Constitution** and there is **no authority**, **no department or branch** of the **State**, which is above the **Constitution** or has been vested with **unfettered and unrestricted powers by** the **Constitution**.
- The **trinity** of **Indian Constitution**, the **Preamble**, the **Fundamental Rights and Directive Principles** of the **State Policy** embody the **fundamental principles** which provide **guide to all legislations including** the **labour legislations**.

Constitutional Bearing on Industrial Laws and Industrial Relations

- **Industrial relations affect** not merely the **interest of labour and management**, but also the **social and economic goals** to which the State is committed to materialise. Therefore, it **develops** within the **province and function** ofthe **State** to **regulate** these **relations in society** desirable channels.
- The extent of **State control or intervention** is **determined** by the **stage** of **economic development**. In **developed economy**, **work stoppages** to **settle claim** may **not** have much **impact**, **unlike** in **developing economy**.
- However, **in developing economy**, the **States rules** cover a **wider area** of **relationship** and there is **equally greater supervision over** the **enforcement** of these **rules**. This is emphatically so in **developing countries with labour surplus**. It is a concern of the **state** to **achieve** a **reasonable growth rate** in the **economy** and to **ensure** the **equitable distribution** thereof.
- **Entries** about **labour relations** are **represented in all** the **three lists in** the **Constitution**. Yet **most important ones come under** the **Concurrent list**.
- These are **industrial and labour disputes**, **trade unions** and many aspect of social securities and welfare like **employer's' liability**, **employees' compensation**, **provident fund**, **old age pensions, maternity benefit,** etc. Thus,the **Industrial Disputes Act**, **1947, the Minimum Wages Act, 1948**, the **Employees' State Insurance Act, 1948**, etc. **come** under the **concurrent list**.
- Some **States** have **enacted separate amendment Acts** to some of the above legislations **to meet local needs**. Such amendments are **recommended either with** the **assent** of the **President of India** or by promulgating rules pursuant to the powers delegated by the Central Act.
- Under the **rule making powers delegated by** the **Centre**, the **States** have often been **able** to **adopt Central Act to local needs without** the **President's assent.** The **Central** acts **often delegate** such **powers**. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective.
- Further, the **goals and values** to be **secured by labour legislation and workmen** have been **made clear in Part IV, Directive Principles** of the **State Policy** of the **Constitution**.
- Thus, the **State shall secure** a **social order for** the **promotion** of **welfare** of the **people** and certain **principles** of **policy** should be followed by the State towards **securing right to adequate means** of **livelihood, distribution** of the material **resources** of the community to sub serve the **common good**, **prevention** of **concentration** of **wealth** via the economic system, **equal pay** for **equal workfor both men and women**, **health** and **strength** of workers including **men**, **women and children** are **not abused**, participation of workers in management of industries, just and humane **conditions** of **work** and that **childhood and youth** are **protected** against **exploitation** against exploitation and **against moral and material abandonment**.

Constitution and Labour



Social Justice and Industrial Laws

- The **Preamble** of the Constitution highlights the **concept** of **socio-economic justice**, being the **main objectives** of the **State** required by the Constitution.
- **Article 38** of the Constitution provides the concept of **social justice** by providing that the State shall strive to **promote** the **welfare** of the **people** by securing and protecting, as effectively as it may, **social order** in which **justice, social, economic and political** shall inform **all institutions** of the **national life**.
- Further, **Article 39** says that it shall be the **duty** of the **state** to **apply** certain **principles** of **socialjustice in making laws**.
- "The **concept social and economic justice** is a living concept of **revolutionary import**, it gives sustenance to the rule of law, meaning and significance to the **ideal** of the **welfare state**." ***(Justice Gajendragadkar in the State ofMysore* v.** ***Workers of Gold Mines, AIR 1958 SC 923).***
- In the **economic sphere**, **social justice** means **opportunities** in greater measure **to** the **poor** and the **needy** for the **betterment** of their **social and economic conditions**. "It does **not mean** making **rich man poor** in order **to make poor men rich**. It does **not mean** that **all wealth** should be **shared equally** provision of basic minimum to all in response to **life and living facilities** for promoting one's own values and manner worth are the essential contents of social justice." ***(K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97).***
- It is the **responsibility** of **both** the **State and** the **citizens** to **work hand in hand** for **achieving social justice**. "The **State** has **constitutional responsibilities** and the **citizens** have **moral responsibility** and the combination of the **two types** of **responsibilities** tend to **create** an **ideal society worthy** to **live in**". ***(Chakradhar Jha, 'Judicial Review of Legislative Acts' (1974), p. 254.)***
- **Industrial laws are socio-economic justice oriented**
  The concept of **social justice** is so **innate and demonstrated** in the **industrial laws** of our country. The laws particularly the **industrial laws** of the country **revolve** on this **basic philosophy** of the **Constitution**.

Its **scope** is **comprehensive** and is founded to the **basic ideals** of **social economic equality** and it **aims** at **assisting** the **removal** of **social economic disparities** and **inequalities of birth** and the **competing claims** especially **between** the **employers and workers** by finding a **just, fair and equitable solution to** their **human relation** problem, so that **peace**, **harmony** and **collection** of the **highest order prevails** among them which may further the **growth and progress of nations.** ***(Mahesh Chandra, 'Industrial Jurisprudence' (1976), p. 47)***

Constitutional Remedies

- The Constitution also envisages **remedies** for **violation of fundamental rights**. **Article 32 and 226** of the Constitution confers **writ jurisdiction on Supreme Court and High Courts respectively** for **enforcement and protection of fundamental rights** of an individual.
- **Article 32** is itself a **fundamental right**. Apart from the **writ jurisdiction** under Article 32, the **Supreme Court** is envisaged with **discretionary jurisdiction** to **entertain appeal by special leave** under **Article 136** from decree, sentence, or order passed by any court or tribunal in India.
- **High Courts** are vested with **writ jurisdiction** under **Article 226** and the **power** of **superintendence over all courts and tribunals** under **Article 227.** A **person aggrieved by** an award of the **High Court** can **appeal to** the **Supreme Court** under **Article 132 if** any **constitutional question** is **involved** or under **Article 133** in **civil appeal**.
- **Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?**

  This issue was discussed by the **Rajasthan High Court** in ***Jaipur Division Irrigation Employees Union* v.** ***State of Rajasthan and others (1994) IILLJ 26 Raj.*** Here a **large number** of the **employees** of the **irrigation department** were **declared surplus**. The **Union challenged** it in this **writ petition**. The **Single Bench** held that the **petition** is **not maintainable** holding that the **fundamental rights** of the **individual** are **not** the **rights** of the **union**. On **appeal**, the **Division Bench reversed it and sent back to** the **Single Bench** for disposal of the writ petition in accordance with the merits of the case.

  The traditional concept of ***locus standi*** underwent sweeping **changes** in the **modern age** of **public action and public interest litigation**. In the famous case of ***S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149)*** the question of locus standi was discussed and it was held that where a **legal wrong or** a **legal injury** is caused to a **person** or to a determinate **class of persons** by **reason** of **violation** of **any constitutional or legal right** or any **burden** is **imposed** in **contravention** of any **constitutional** or legal **provision** or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and **such person** or determinate class of persons is by **reason** of **poverty**, **helplessness or disability** or **socially or economically disadvantageous position**, **unable to approach** the **Court** for relief, any member of the public **can maintain** an **application for** an **appropriate direction**, **order** or **writ** in the **High Court** under **Article 226** of the Constitution of India **or** in the **Supreme Court** under **Article 32** of the Constitution of India seeking **judicial redress** for the **legal wrong** or injury caused to such person or determinate class of persons.

Fundamental Rights and Industrial Relations

- **Articles 12 to 35** of the Constitution pertain to **Fundamental Rights** of the people. The Indian Constitution **guarantees** essential **human rights** in the form of Fundamental Rights under **Part III** and also **Directive Principles** of **State Policy** in **Part IV** which are **fundamental in** the **governance** of the country.
- **Freedom and civil rights** granted **to all** under **Part III** have been **liberally construed** by various **pronouncements** of the **Supreme Court**. The **object** has been to **place citizens at** a **centre stage** and **make** the **State accountable**.
- **Fundamental Rights** must **not** be **read in isolation but together with directive principles and fundamental duties**. The **need** for **protecting and safeguarding** the interest of **labour** as human beings has been enshrined in **Article 14, 16, 19, 21, 23 and 24** giving an idea of the conditions under which labour had to be for work.

Article 14: Equality before law

- **Equality** is one of the **magnificent corner-stones** of **Indian Democracy**. Article 14 of the Constitution of India reads as under:
  "The **State shall not deny** to **any person equality before** the **law or** the **equal protection** of the **laws within** the **territory of India**."
- Article 14 bars **discrimination and prohibits discriminatory laws**. The said Article is clearly in two parts — while it **commands** the **State not to deny** to any person '**equality before law'**, it **also commands** the **State not to deny** the **'equal protection of the laws'**.
- **Equality before law prohibits discrimination**. It is a **negative concept**.
- The concept of '**equal protection of the laws'** requires the **State** to **give special treatment to persons in different situations** in order to **establish equality** amongst all. It is **positive** in character.
- Therefore, the **necessary corollary** to this would be that **equals** would be **treated equally**, whilst **un-equals** would have to be **treated unequally**.
- In the case of the **Air India v. Nargesh Meerza (1981** AIR 1829) Regulation 46 and 47 of Indian Airlines regulations was in question which provides that an **air Hostess will retire** from the service upon **attaining** the **age of 35 years or on marriage within 4 years of Service or on first pregnancy**, whoever found earlier **but** the **managing director** had the **discretion** that he **may extend** the **age** of **retirement one year** at a time **beyond** the **age** of **retirement up to** the age of **45 years at his option if** an **air hostess** was **found medically fit**. It was held by the **court** that the **clauses** regarding **retirement and pregnancy** of the regulation as **unconstitutional** and therefore **struck down**. The **retirement** of air hostess **on** the **ground of pregnancy** was **unreasonable and arbitrary** and it was in **violation** of **Article 14** of the constitution law of India.
- In **D.S Nakara v. Union of India, (1983** AIR 130) the **supreme court** held Rule 34 of the Central Services (Pension) Rules, 1972 as **unconstitutional and** was **struck down** on the **ground** that the **classification** made **by** it **between pensioners retiring before** a **certain date and retiring after** that **date** was **not depend upon** the **any rational principal** and it is **arbitrary and violates Article 14** of Indian constitution.

Article 16: Equality of opportunity in matters of public employment

1. There shall be **equality** of **opportunity for all citizens** in matters relating to **employment** or appointment to any office under the State
2. **No citizen shall**, **on grounds only** of **religion, race, caste, sex, descent, place of birth, residence** or any of them, be **ineligible for**, or **discriminated** against in respect or, any **employment** or **office under** the **State**.
3. **Nothing** in this **article shall prevent Parliament from making** any **law** prescribing, in regard to a **class** or **classes of employment or appointment** to an **office** under the **Government** of, or any **local** or other **authority** within, a State or Union territory, **any requirement** as to **residence within** that **State** or **Union territory prior** to such **employment or appointment**
4. **Nothing** in this article **shall prevent** the **State** from **making** any **provision for** the **reservation of appointments** or posts **in favor** of **any backward class of citizens** which, in the opinion of the State, is not adequately represented in the services under the State
5. **Nothing** in this article **shall affect** the **operation of any law** which **provides** that the **incumbent** of an **office** in connection with the **affairs of any religious or denominational institution or** any **member** of the **governing body** thereof **shall** be a **person professing** a **particular religion or belonging to** a **particular denomination**.

- Article 16 **assures equality** of **opportunity in** matters of **public employment** and **prevents** the **State from** any sort of **discrimination** on the grounds of **religion, race, caste, sex, descent, place of birth, residence** or any of them. This Article also **provides** the **autonomy** to the **State** to **grant special**

provisions for the **backward classes, under-represented States, SC & ST for posts** under the **State**. **Local candidates may also** be **given preference**is certain posts.

- **Equality is for equals**, that is to say, **those** who are **similarly circumstanced** are **entitled to** an **equal treatment but** the **principle** of **equality** under **Articles 14 and 16 cannot** be **carried beyond** a **point**.
- There is **no bar** of **reasonable classification** of various **employees** and there is **no question of equality between separate and independent classes** of **employees**. The **court cannot interfere** with a **promotion policy unless** it is **vitiated by arbitrariness or discrimination;** a court or Tribunal cannot issue directions in this regard.
- In the case of ***Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Ors. (AIR 1989 SC 1256),*** theCourt observed: "The **doctrine** of **'Equal Pay for Equal Work'** is **not** an **abstract** one, it is **open to** the **State** to **prescribe different scales** of **pay for different posts** having regard to **educational qualifications**, **duties and responsibilities** of the post. The **principle** of '**Equal Pay for Equal Work'** is **applicable** when **employees holding** the **same rank perform similar functions** and **discharge similar duties and responsibilities** are treated differently. The application of the doctrine would arise where **employees** are **equal in every respect but** they are **denied equality** in matters relating to the **scale of pay**.
- If the **classification** has **reasonable nexus** with the **objective sought** to be **achieved**, **efficiency** in the **administration**, the **State** would be **justified** in prescribing **different pay scale but if** the **classification** does **not stand** the **test of reasonable nexus** and the **classification** is **rounded on unreal,** and **unreasonable basis** it would be **violative** of **Article 14 and 16** of the Constitution.

Article 19(1)(c) of the Constitution: Right to form Association & Union

- **Article 19(1)(c)** speaks about the **Fundamental right** of **citizen to form** an **associations and unions**. Under **clause (4)** of **Article 19,** however, the **State may** by law **impose reasonable restrictions on this right** in the **interest of publicorder or morality or** the **sovereignty and integrity of India**.
- The **right of association pre-supposes organization** as an organization or permanent **relationship between** its **members** in matters of **common concern**. It thus **includes** the **right to form companies**, **societies, partnership, trade union and political parties**.
- The **right guaranteed** is **not merely** the **right to form association but also** to **continue** with the **association** as such. The **freedom to formassociation implies** also the **freedom to form or not to form**, **to join or not to join**, an **association or union**.
- In the case of ***All India Bank Employees vs. National Industrial Tribunal*** **1962 SCR (3) 269,** the **court** held: "The **object** for which **labour unions** are brought into **being and exist** is to **ensure collective bargaining by labour with** the **employers**. The **necessity** for this has **arisen from** an **incapacity stemming from** the **handicap of poverty and consequent lack** of **bargaining power in workmen** as compared with employers which is the reason for theexistence of labour organizations.
  Collective bargaining in order to be effective must be **enforceable labour withdrawing** its **co-operation from** the **employer** and there is **consequently** a **fundamental right** to **strike a right** which is thus a **natural deduction from** the **right to form unions** guaranteed by **Art. 19(1)(c)** As **strikes**, however, **produce economic dislocation** of varying intensity or magnitude, a system has been devised by which **compulsory industrial adjudication** is substituted for the **right to strike**.
  This is the ratio underlying the **provisions** of the **Industrial Disputes Act 1947** under which **Government** is **empowered** in the event of an **industrial dispute** which may ultimately **lead to a strike or lock-out** or when such strikes or lock-outs occur, to **refer** the **dispute to** an **impartial Tribunal** for adjudication with a provision **banning and making illegal strikes** or**lock-outs** during the pendency of the adjudication proceedings. The provision of an **alternative to** a **strike** in the **shape of industrial adjudication** is a **restriction** on the **fundamental right to strike** and it would be **reasonable** and **valid only if** it were an **effective substitute**."
- In the case of ***Damyanti Naranga v. The Union of India 1971 SCR (3) 840***, the court observed that: "The **right toform association necessarily implies** that the **persons forming** the **society** have also the **right** to **continue** to be **associated with only those** whom they **voluntarily admit** in the association.

The **right guaranteed** by **Article 19(1)(c) cannot** be **confined** to the **initial stage** of **forming** an **association**. If it were to be so confined, the **right** would be **meaningless because** as soon as an **association is formed**, a **law** may be passed **interfering** with its **composition** so that the association formed may **not be able to function at all**.

The **right can** be **effective only if** it is held to **include within**, it the **right to continue** the **association** with its **composition** as **voluntarily agreed** upon **by** the **persons forming** the **association**. And, Article 19(4), on the face of it, **cannot** be **called** in **aid to claimvalidity for** the **Act**."

Article 21 of the Constitution: Right to Life

- Article 21 of the constitution of India reads as:
  "**No person** shall be **deprived** of his **life or personal liberty except** according to a **procedure** established **by law**."
- Article 21 assures **every person right to life and personal liberty**. The term '**life'** has been given a **very expansive meaning**. The term '**personal liberty'** has been given a **very wide amplitude covering** a **variety of rights** which goto constitute personal liberty of a citizen. Its **deprivation shall only** be **as** per the relevant **procedure** prescribed in the relevant **law**, but the procedure has to be fair, **just** and **reasonable**.
- In course of time, Article 21 has come to be regarded as the **heart of Fundamental Rights**. Article 21 has **enough**of **positive content** in it and it is **not merely negative in its reach**. This **liberal interpretation** of Article 21 by judiciary has **led to two very spectacular results within** the **last two decades**, viz.:

(1) **Many Directive Principles** which, as such, are **not enforceable** have been **activated** and have become **enforceable**.
   - **(a) Right to livelihood**
   - **(b) Right to live with human dignity**
   - **(c) Right to medical care**
   - **(d) Health of labour**
   - **(e) Sexual harassment**
   - **(f) Right to health**
   - **(g) Economic Rights.**

(2) The **Supreme Court** has **implied** a **number of Fundamental Rights from Art. 21**.

- In the case of ***Olga Tellis & Ors v. Bombay Municipal Corporation,*** **AIR 1986** SC 180, the Court held: "As we have stated while **summing up** the **petitioners'** case, the **main plank** of their **argument** is that the **right to life** which isguaranteed by Article 21 **includes** the **right to livelihood** and since, they will be **deprived** of their **livelihood** if they are **evicted from** their **slum and pavement dwellings**, their **eviction** is **tantamount to deprivation** of their **life** and ishence **unconstitutional**.

  For purposes of argument, we will assume the factual correctness of the **premise** that **if**the **petitioners** are **evicted from** their **dwellings**, they will be **deprived** of their **livelihood**. An **equally important facet** of that **right** is the **right to livelihood** because, **no person can live without** the **means** of **living**, that is, the means of **livelihood**. If the **right** to **livelihood** is **not treated** as a part of the **constitutional right** to **life**, the **easiest way** of **depriving** a **person** his **right to life** would be to deprive him of his means of livelihood to the point of abrogation.

  Such **deprivation** would **not only denude** the **life** of itseffective content and meaningfulness but it would **make life impossible to live**. That, which alone **makes** it **possible to live**, leave aside what makes life livable, must bedeemed to be an **integral component** of the **right to life**. **Deprive** a **person** of his **right to livelihood** and you **shall**have **deprived** him of his **life**. Indeed, that **explains** the **massive migration** of the **rural population to big cities**.

  They **migrate because** they have **no means** of **livelihood in** the **villages**. The motive force which people their **desertion** of their **hearths and homes in** the **village** is that **struggle for survival**, that is, the **struggle for life**. So unimpeachable is the **evidence** of the **nexus between life and** the means of **livelihood**. They have to **eat to Live**.**Only a handful** can **afford** the **luxury** of **living to eat**. That they can

do, namely, eat, only if they have the meansof livelihood.

That is the context in which it was said by Douglas J. in Baksey that the **right to work** is the **most precious liberty** because, it **sustains and enables** a **man to live** and the **right to life** is a **precious freedom**. "**Life**", as observed by Field, J. in **Munn v. Illinois, (1877)** 94 U.S. 113, means **something more than mere animal existenceand** the **inhibition against** the **deprivation** of **life extends to all** those **limits and faculties** by which **life** is **enjoyed**"

- In the case of ***D.K. Yadav v. J.M.A. Industries Ltd 1993*** *SCR (3) 930,* the court held: "**Article 21** of the Constitution **clubs life with liberty, dignity** of **person** with **means** of **livelihood without** which the **glorious content** of **dignity** ofperson would be **reduced to animal existence**. When it is interpreted that the **colour and content** of **procedure** established by law must be in **conformity with** the minimum **fairness and processual justice**, it would relieve legislative callousness despising **opportunity** of **being heard and fair opportunities** of **defence**. The order of **termination** of the **service** of an **employee/workman** visits with civil consequences of **jeopardising** not only his/ her **livelihood** but also **career and livelihood** of **dependents**. Therefore, **before** taking **any action** putting an **endto** the **tenure** of an **employee/workman**, **fair play requires** that a **reasonable opportunity** to put forth his case is given and **domestic enquiry** conducted complying with the principles of **natural justice**."
- In the case of ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996*** *SC 2426)*, a **mazdoor fell from** a **running train** and was **seriously injured**. He was **sent from one government hospital to another** and **finally**he had to be **admitted in** a **private hospital** where he had to incur an **expenditure** of **Rs. 17,000/-** on his **treatment**. Feeling aggrieved at the **indifferent attitude shown by** the **various government hospitals**, he **filed** a **writ petition**in the **Supreme Court** under **Art. 32.**

  The Court has ruled that: "the **Constitution** envisages **establishment** ofa **welfare state**, and in a welfare state, the **primary duty** of the **government** is to provide **adequate medical facilities** for the people. The **Government discharges** this **obligation by running hospitals and health centres** to provide **medical care** to those who need them. Art. 21 **imposes** an **obligation** on the State to **safeguard** the **rightto life** of **every person**. **Preservation** of **human life** is thus of **paramount importance**."
- In the case of ***Vishakha & Ors.*** **v.** ***State of Rajasthan (1997)*** *6 SCC 241* whereby a **woman** was **assaulted andharassed at** her **workplace**, the **Supreme Court** observed: "Each such **incident results in violation** of the **fundamental rights** of '**Gender Equality' and** the '**Right of Life and Liberty'**. It is clear **violation** of the **rights** under **Articles 14, 15 and 21** of Constitution. One of the logical consequences of such an incident is also the **violation** of the victim's fundamental right under Article 19(1)(g) 'to **practice any profession** or to carry out any **occupation,trade or business'.**"

Article 23 and Article 24: Right Against Explotion

- According to **Article 23(1), traffic** in **human beings**, **begar**, and other similar forms of **forced labour** are **prohibited**and any contravention of this provision shall be an **offence punishable** in accordance with law.
- Article 23(1) proscribes three **unsocial practices**, viz.;

  (1) **Begar:** The term '**begar'** means **compulsory work without any payment**. **Begar** is **labour or service** which a **person** is **forced to give without receiving** any **remuneration** for it.

  Withholding of **pay of** a **government employee** as a **punishment** has been held to be **invalid** in view of **Article 23** which **prohibits begar**. 'To **ask** a **man to work** and then **not to pay him any salary** or wages savours of **begar**. It is a **Fundamental Right** of a citizen of India **not to** be **compelled to work without wages**.' ***(Suraj v. State of MadhyaPradesh, AIR 1960*** *MP 303).*

  (2) **Traffic in human beings:** The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of humanbeings as if they are chattels, and such a practice is constitutionally abolished.

  (3) **Forced labour**; The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted ***ejusdem generis***. The **kind** of '**forced labour'** contemplated by the Article has to be **something** in the **nature** of **either traffic in human beings or begar**. The **prohibition** against **forced labour** is made **subject to one exception.**

- Under **Article 23(2),** the **State** can **impose compulsory service for public purposes**, and in imposing such service the **State shall not make** any **discrimination** on **grounds only of religion, race, caste** or class or any of them. The **State may** thus **exempt women from compulsory service** for that will be **discrimination** on the **ground of sex** and this has **not** been **forbidden** by Article 23(2).
- The **Supreme Court** has given an **expansive significance** to the term "**forced labour**" used in Art. 23(1) in a series of cases beginning with the Asiad case in 1982. (***People's Union for Democratic Rights v. Union of India, AIR 1982*** *SC 1473).* The Court has insisted that Article 23 is intended to **abolish every form of forced labour even if** it has origin **in** a **contract**. Article 23 **strikes** at **forced labour** in whatever form it may manifest itself, because it is **violative** of **human dignity** and is **contrary to** the **basic human values**.
- In ***Sanjit Roy v. State of Rajasthan, 1983****, SCR (2) 271* case, it was held that when a **person provides labour** or service **to another for remuneration** which is **less than** the prescribed **minimum wages**, the labour so provided clearly **falls** within the ambit of the words '**forced labour'** under Article 23. The rationale adopted was that whensomeone works for less than the minimum wages, the **presumption** is that he or she is **working** under some **compulsion**. Hence it was held that such a person would be **entitled** to **approach** the **higher judiciary** under **writjurisdiction** (**Article 226 or Article 32**) for the enforcement of **fundamental rights** which **include** the **payment of minimum wages**.

- **Article 24** of the Constitution of India states that "**no child below** the age of **fourteen years shall** be **employedto work in any factory or mine** or engaged in **any other hazardous employment**".
- This is also in consonance with **Articles 39(e) and (f) in Part IV** of the Constitution which emphasizes the need to **protect** the **health and strengthof workers**, and **also** to **protect children against exploitation**. The **Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits** the **employment** of **children** in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.
- In ***Peoples Union for Democratic Rights v. Union of India: (AIR 1982*** *SC 1473)* also known as the **Asiad Workers case** the **Supreme Court** observed that though the **Employment of Children Act, 1938** did **not include** the **construction work** because the **construction industry** was **not** a **process specified** in the **Schedule** to the Act, **yet**, such **construction** was a **hazardous occupation** and under **Article 24 children under 14 years** could **not** be **employed** in a hazardous occupation. The **right** of a **child against exploitation** under Article 24 is **enforceable even in** the **absence** of **implementing legislation**.
- In ***M.C. Mehta v. State of T.N.: (AIR 1997*** *SC 699)* the **Supreme Court** directed that the **employers of children below 14 years** must **comply** with the **provisions** of the **Child Labour (Prohibition and Regulation) Act** providing for **compensation**, employment of their **parents / guardians** and their **education**.
- **Article 39(f)** of the Constitution of India enumerates the **importance** of **protecting children from exploitation** andto give them proper **opportunities and facilities** to **develop** these **ideas** are in consonance with the **prohibitions against 'forced labour' and employment of children below** the age of **fourteen years**, which have been laid down under Article 23 and 24 respectively.

Labour Laws and Reference to Directive Principles of State Policy

- The makers of the Constitution had realized that in a poor country like India, **political democracy** would be **useless without economic democracy**. Accordingly, they incorporated a few provisions in the Constitutionwith a view to achieve **amelioration** of the **socio-economic condition** of the **masses**.
- Today we are living in an era of **welfare state** which seeks to **promote** the **prosperity and well-being** of the **people**. The **Directive Principles strengthen and promote** this concept by seeking to lay down some **socio-economic goals** whichthe various governments in India have to strive to **achieve**.
- The **Directive Principles** are designed to usher ina **social and economic democracy** in the country. These principles **obligate** the **state to take positive action**in certain directions in order **to promote** the **welfare** of the **people and achieve economic democracy**. These principles give **directions to** the **legislatures and** the **executive** in India as regards the **manner** in which they should **exercise** their **power**.

- The **Courts** however do **not enforce** a **directive principle** enshrined in Part IV of the Constitution **unlike rights** enshrined in Part III. The **reason** behind the **legal non-enforceability and non-justiciability** of these **principles**is that they **impose positive obligations on** the **state**.
- While taking positive action, **government functions** under several **restraints**, the **most crucial** of these being that of **financial resources**. The constitution-makers, therefore, taking a **pragmatic view refrained from giving teeth** to **these principles**.
- The **Constitution declares** that the **Directive Principles**, though **not enforceable by any Court**, are '**fundamental'** in the governance of the country, and the '**state'** has been placed under an **obligation** to **apply** them **in making laws**.
- It has now become a **judicial strategy** to **read Fundamental Rights along with Directive Principles** with a view as the latter **defines** the **scope and ambit** of **former**. Mostly, **Directive Principles** have been used to **broaden**, and **to give depth to** some **Fundamental Rights** and to **imply** some **more rights** therefrom for the people over and above what are expressly stated in the Fundamental Rights.
- **Articles 38, 39, 41, 42 and 43** have a **special relevance** in the field of **industrial legislation** and **adjudication**. In fact, theyare the substratum or rather '**magna carta'** of **industrial jurisprudence**. They **encompass** the **responsibility** of the **Government**, **both Central and State**, **towards** the **labour** to **secure** for them **social order and living wages, keeping** with the **economic and political conditions** of the country.

Social Order Based on Socio-Economic Justice

- **Article 38(1)** directs the state to strive "**to promote** the **welfare of** the **people** by **securing and protecting** as effectively as it may a social order in which **justice, social, economic and political**, **shall inform all** the **institutions**of the **national life**."
- **Article 38(2)** directs the **state** to strive "**to minimise** the **inequalities in income**," **and endeavour** "to **eliminate inequalities in status**, **facilities and opportunities**, not only **amongst individuals** but also **groups** of **people residing** in **different areas** or engaged in different vocations".
- **Article 38** needs to be **read** along **with Article 14**. This directive reaffirms what has been **declared in** the **Preamble**to the Constitution, viz., the **function** of the **Republic** is to **secure**, inter alia, **social, economic and political justice**.
- On the concept of equality envisaged by Article 38, the **Supreme Court** has observed **in the case Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999***:* "**Equality before law** is a **dynamic concept** having **many facets**. One facet--the most commonly acknowledged--is that there **shall** be **no privileged person** or class and that **none shall be above law**. A facet which is of **immediate relevance** herein is the **obligation** upon the **state** to **bring** about, through the **machinery** of **law**, a **more equal society** envisaged **by** the **Preamble and Part IV** of our Constitution [viz. **Directive Principles**]. For, **equality before law** can be **predicated** meaningfully **only** in an **equal society**, i.e., in a society contemplated by Article 38 of the Constitution."
- Reading **Articles 21, 38, 42, 43, 46 and 48A** together, the **Supreme Court** has concluded in **Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923***),* that "**right to health, medical aid to protect** the **health and vigour** of a **worker** while **in service or post retirement** is a **Fundamental Right,** to **make** the **life** of the **workman meaningful and purposeful with dignity** of person." **Health** of the **worker** enables him to **enjoy** the **fruit of his labour**, **keeping** him **physically fit and mentally alert** for leading a **successful life**, **economically**, **socially** and **culturally**. **Medical facilities** to protect the health of the **workers** are, therefore, the **fundamental and human rights** of the workmen.

Equal Pay For Equal Work

- **Article 39** requires the state, in particular, **to direct** its **policy towards securing**:
  (a) That **all citizens**, **irrespective** of **sex, equally** have the **right to** an **adequate means** of **livelihood**;
  (b) That the **ownership and control** of the **material resources** of the **community** are so **distributed** as **best** tosubserve the **common good**;

(c) That the **operation** of the **economic system** does **not result** in the **concentration** of **wealth and means** of **production to** the **common detriment**;
(d) That there is **equal work for both men and women**;
(e) That the **health and strength** of **workers**, **men and women**, and tender **age** of **children are not abused** and that **citizens** are **not forced by economic necessity** to enter **avocations unsuited** to their **age or strength**;
(f) That **children** are given **opportunities and facilities** to **develop** in a **healthy manner** and in conditions of **freedom and dignity** and that **childhood and youth** are **protected against exploitation** and against **moral and material abandonment**

- In the case of **Randhir Singh v. Union of lndia (1982 AIR 879)** the **Supreme Court** has held that the principle of "**Equal pay for equal work though not** a **fundamental right**" is certainly a **constitutional goal**.
  Article 39(d) of the Constitution proclaims "**equal pay for equal work for both men and women**" as a **Directive Principle** of **State Policy**. The doctrine of equal pay for equal work is **equally applicable to persons employed on** a **daily wage basis**. They are also **entitled** to the **same wages** as **other permanent employees** in the department employed to do the **identical work**. However, the **doctrine** of 'equal pay for equal work' **cannot** be **put in** a **strait jacket**. Accordingly, it has been held that **different scales of pay in** the **same** cadre of **persons doing similar work** can be fixed **if** there is **difference** in the **nature of work** done and as regards **reliability and responsibility**.
- In the case of **Dhirendra Chamoli and Anr. v. State of U.P. (AIR 1982 SC 879),** the Court stated: "The fact that these **employees accepted employment** with **full knowledge** that they will be **paid only daily wages** and they **will not get** the **same salary and conditions** of service **as other Class** IV employees, **cannot** provide an **escape to** the **Central Government to avoid** the **mandate** of **equality** enshrined in Article 14 of the Constitution.
  This Article declares that **there shall** be **equality before law and equal protection of** the **law and implicit** in it is the further principle that there must be **equal pay for work of equal value**. These **employees** who are **in** the **service** of the different **Nehru Yuvak Kendras in** the **country and who** are **admittedly performing** the **same duties** as Class IV employees, must therefore **get** the **same salary and conditions** of service as Class IV employees. It makes **no difference** whether they are **appointed** in **sanctioned posts or not**. So long as they are **performing** the **same duties**, they **must receive** the **same salary and conditions** of **service** as Class IV employees."
- **National Campaign Committee** for **Central Legislation** on **Construction Labour** (NCC-CL) **vs. Union of India (UOI) and Ors. (2018)**. In this case, **petition** was **filed** towards the **non-implementation of** the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the **BOCW Act**) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act) According to petitioner, **non- implementation violates** the **provisions** of **Articles 15(3), 39(e) and (f)** and also **Articles 45 and 47** of the Constitution, which **impose** a **primary responsibility** on the **State to ensure** that all the **needs of workers** are **met** and that their **basic rights** are **fully protected**. Supreme Court held that –
  "There can be **no doubt** that the **BOCW Act** and its sister legislation, the **Cess Act** are **social justice legislations**. They were **enacted keeping in mind** the **Directive Principles** of **State Policy**, particularly **Article 39** of the Constitution which **requires** the **State** to **direct** its **policy** to **secure** the **health and strength** of **workers** and **Article 42** of the Constitution concerning **just and humane conditions** of **work**. In addition, **Article 21** of the Constitution **cannot** be **forgotten**. A **life of dignity is** a **fundamental right** given **to all persons** and that includes construction workers. The **Rule of law must** be **respected and** along with it the **human rights and dignity** of **building and construction workers** must also be **respected and acknowledged**, to **avoid** a **complete breakdown** of the **BOCW Act** compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights."
- **Bandhua Mukti Morcha and Ors. vs. Union of India (UOI) and Ors. (1997)**. In this case, **petitioner's main contention** was that **employment** of the **children** in **any industry or** in a **hazardous industry**, is

violative of **Article 24**, **Articles 39(e) and 45** of the Constitution read with the Preamble. Court statedthat-
"Court has considered the **constitutional perspectives** of the **abolition** of the **child labour** and the child **below 14 years** of age **in industries**. We are of the view that a **direction** needs to be **given** that the **Government to evolve** the **principles** of **policies** for **progressive elimination of employment of** the **children below** the age of **14 years in all employments** governed by the respective enactments mentioned in M.C. Mehta's case; to evolve such steps consistent with the scheme laid down in M.C. Mehta's case, to **provide**
(1) **Compulsory education to all children** either **by** the **industries** itself or in co-ordination with it **by** the **State Government** to the **children employed in** the **factories**, **mine** or any **other industry**, **organised or unorganised** labour with such timings as is convenient to **impart** compulsory **education, facilities** for **secondary**, **vocational profession** and **higher education**;
(2) **Apart from education**, **periodical health check-up**;
(3) **Nutrient food** etc.;
(4) **Entrust** the **responsibilities for implementation** of the **principles**.
Periodical reports of the **progress** made in that behalf be **submitted to** the **Registry of this Court**."

Social Security Provisions

- **Article 41** requires the **state**, **within** the **limits** of its **economic capacity and development**, to **make effective provision** for **securing** the **right to work**, to **education** and to **public assistance** in cases of **unemployment, old age, sickness and disablement,** and in other cases of undeserved want.
- **Social security** is **guaranteed** in our **Constitution** under Articles **39, 41 and 43**. The **Employees' State Insurance Act, 1948** is a pioneering piece of legislation in the field of **social insurance**. The Employees' State Insurance Scheme provides for **benefits in cash except** the **medical benefit**, which is **in kind**.
- **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952** and the **Maternity Benefit Act, 1961** are also **social security measures** to **help** fulfill the objectives of **directive principles** of our Constitution. The Provident Fund Scheme aimed at providing **substantial security and timely monetary assistance to** industrial **employees** and their families.
- The **Maternity Benefit Scheme** is primarily designed to **provide maternity leave with full wages and security** of **employment**. The object of the **Payment of Gratuity Act, 1972** is to provide a **scheme for** the **payment** of **gratuity to employees employed** in **factories, mines, oil fields, plantations, ports, railways, shops and establishments**.
- Besides social security benefits, efforts have also been made to provide ample **opportunities** for **employment and** for **workers' education**. **The Apprentices Act, 1961** was enacted to **supplement** the **programme** of **institutional training** by **on-the-job training** and to regulate the **training arrangements** in **industry**.
- **Employment exchanges** play an **important role** for the **job seekers**. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it **obligatory** on the **employers** to **notify vacancies** occurring in their establishments to the prescribed employment exchanges **before** they are **filled**. The **voluntary workers education scheme** was launched in our country in 1958 to **educate** the **workers** in **trade union philosophy and methods,** and to **promote physical awareness** of **problems**, **privileges and obligations** as **workers and citizens**.

Working Conditions

- **Article 42** requires the **state to make provision** for **securing just and humane conditions** of **work** and for **maternity relief**.
- Article 42 provides the basis of the **large body of labour law** that obtains in India. Referring to Arts. 42 and 43, the **Supreme Court** has emphasized that the Constitution expresses a deep concern for the **welfare** of the **workers**. By reading **Article 21** with several **Directive principles including Art 42**, the Supreme Court has given broad connotation to Art 21 so as to include therein "the **right to live with human dignity**".

Living Wage

- **Article 43** requires the state to **endeavour to secure**, by suitable legislation, or economic organisation, or in anyother way, to **all workers**, **agricultural, industrial or otherwise**, **work**, a **living wage**, **conditions** of **work** ensuring a decent **standard of life and full employment** of leisure and **social and cultural opportunities**. In particular, the state is to **promote cottage industries** on an individual or **co-operative basis in rural areas**.
- Article 43 imposes an **obligation** towards **ensuring** the **provision** of a '**living wage'** in **all sectors** as well as **acceptable conditions** of **work**. This provision enunciates the **revolutionary doctrine that** employees are **entitled**as of **right to certain reliefs**.
- A '**living wage'** is such **wage** as **enables** the **male earner** to **provide for himself and his family not merely** the **bare** essentials of **food, clothing and shelter**, **but includes education** for **children**, **protection** against **ill-health**, requirements of **essential social needs**, and a measure of **insurance against** the more **important misfortunes** including old age.
- A '**minimum wage'**, on the other hand, is just sufficient to cover the **bare physical needs** of a **worker and his family**.
- Minimum wage is to be **fixed in** an **industry irrespective of** its **capacity to pay**. Fixation of minimum wage is **in public interest** and does **not impose** an **unreasonable restriction on** the right to carry on a **trade guaranteed by Article 19(1)(g).** ***(Edward Mills Co. v. Ajmer, AIR 1955 SC* 25**).

Workers Participation in Management

- **Article 43-A** which was introduced by the **42nd Amendment in 1976**, has a direct bearing on labour laws, inso far as it provides that the **State shall take steps by suitable legislation** or any other means to **secure** the **participation of workers in** the **management of industrial establishments.**

Case Laws

- **Janapareddy Surya Narayana and Ors. vs. The Muncipal Administration and Urban Development and Ors. Writ Petition No. 25434 of 2020**
- In this case, **petition** was **filed questioning** the **proceedings** RC. No. 16394/P.O. (Balyam) dated 19.06.2017 as **illegal**, **arbitrary and violative** of **Articles 14, 16, 21 & 39(d)** of the Constitution of India and consequently **set- aside** the same **and directed** the **respondents to regularise** the **services** of the **petitioners**. **Andhra Pradesh High Court** stated that –

  "When **part time workers** or NMRs are regularized, they are **entitled to get minimum time scale** of **pay** prescribed **for** the **post** they are **discharging** their **duties** for **limited office hours**, whereas, these **petitioners** are **discharging** their **duties for eight hours** as per the proceedings impugned **in** the **writ petition**. When these **petitioners** are **discharging** their **duties for eight hours**, they are **entitled to** get **equal pay** in terms of Article 39(d) of the Constitution of India, otherwise, it **amounts to discrimination**, which is **prohibited under Article 14** of the Constitution of India.

  When the act of the State is **arbitrary and exploiting** the situation of **unemployment by paying meagre amount** as **salary, engaging** the **services** of these petitioners on **outsourcing basis**, such act can be described as discriminatory and arbitrary. Therefore, **court find** that it is a **fit case to issue** a **direction** to the **respondents** to **extend minimum time scale** of **pay to** the **petitioners** who are **discharging** their **duties for eight hours in a day on par** with **regular employees of** the **same cadre**. Accordingly, the point is **decided partly in favour of** the **petitioners**."

Chapter - 15
Evaluation of Labour Legislation and Need of Labour Code

Regulatory Framework

- Code on Wages 2019
- Code on Social Security, 2020
- Occupational Safety, Health and Working Conditions Code, 2020
- Industrial Relations Code, 2020

Introduction

- The law relating to **labour and employment** in India is primarily known **under** the **broad category** of "**Industrial Law**". **Industrialization** is considered to be one of the **key engines** to support the **economic growth** of any country.
- A plethora of **labour laws** have been established to **ensure** elevated **health, safety, and welfare** of **workers**; to **protect** workers **against oppressive terms** as individual worker is **economically weak** and has **little bargaining power**; to **encourage and facilitate** the **workers** in the organization; to **deal** with **industrial disputes**; to enforce **social insurance** and **labour welfare schemes** and alike.
- **Reforms** in labour laws are an ongoing process to **update** the **legislative system** to **address** the **need** of the **hour** so as to make them more **effective, flexible and in sync with emerging economic** and **industrial scenario**.
- The **Second National Commission on Labour** has recommended that the existing Labour Laws should be broadly **grouped into four or five Labour Codes** on **functional basis**. Accordingly, the **Government** has **taken steps** for **drafting four Labour Codes** on **Wages**, **Industrial Relations**, **Social Security** & **Welfare and Occupation Safety**, **Health and Working Conditions** respectively, by **simplifying**, **amalgamating** and **rationalizing** the relevant **provisions** of the existing Central Labour Laws.

History of Labour Laws

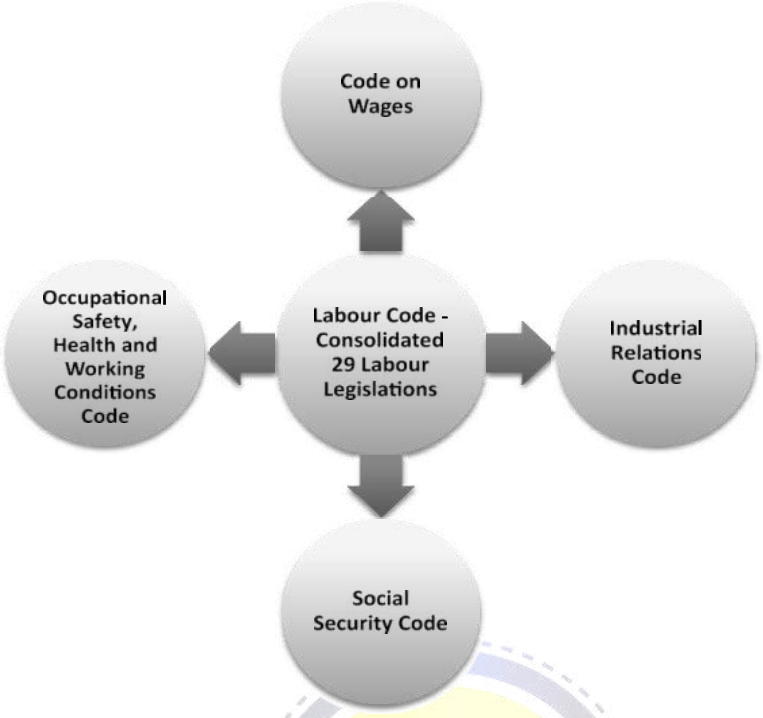
- The **need** for **better working conditions**, the right to organise, and **employer demands** to **limit employee rights** in **numerous groups** and keep **labour costs down led to** the **development** of **labour law**. When **employees band together** to **demand better pay**, or when laws impose expensive requirements like **equal opportunity** or **health** and **safety** standards, employers' costs may rise.
- **Trade unions** and other worker organisations have the **potential** to **become political forces**, which some companies may find objectionable. Therefore, the situation of labour law at any one time is both a result of and a component of **conflicts between various interests in society.**
- The **labour movement** has been **instrumental** in the **enacting** of **laws protecting labour rights** in the **19th and 20th centuries.** Labour rights have been **integral to** the **social and economic development** since the industrial revolution.
- **International Labour Organisation** (ILO) is one of the **first organisations** to **deal** with **labour issues**. The ILO was established as an **agency** of the **League of Nations following** the **Treaty of Versailles**, which **ended World War I**. **Post-war reconstruction** and the **protection** of **labour unions** occupied the attention of many nations during and immediately **after World War I**.
- **India** is the **founder member** of International Labour Organization (**ILO**) and has been **actively contributing** to evolution of **global policy** on **labour welfare**. International Labour Organization which **came** into existence in **1919** and has been a **permanent member** of the ILO Governing Body **since 1922.**
- At present the ILO has **187 Members**. A unique feature of the ILO is its **tripartite character**. At every level in the **organization**, **Governments** are **associated** with the **two other social partners**, namely, the **workers and employers**.
- **Even after 75 years** of **Independence**, **approximately 90% of workers work in** the **unorganized sector** that do **not** have **access to all** the **social securities**. The **total number** of **workers**, comprising of

organized and unorganized sectors, is **more than 50 crores**. The **Central Government** has taken a **revolutionary step** in the **right direction** to provide them **freedom** in true sense. For this, the Central Government has taken historical step of **codifying 29 laws into 4 Codes**, so that workers can get security along with respect, health and other welfare measures with ease.

Need to Bring in New Legislations

- **Labour** is covered under the **Concurrent List** of the Constitution. Therefore, rules **governing labour** can be **passed by both** the **Parliament and state legislatures**. The **resolution** of **labour disputes**, **working conditions**, **social security**, and pay are only a few of the labor-related issues that are **governed by more than 100 state and 40 federal laws**, according to the central government. **Labour Reforms** also remained **untouched** during the**economic reforms** carried out in **1991.**
- The **Second National Commission** of **Labour** had submitted its **report** in **2002** which said that there was **multiplicity of Labour Laws** in India and therefore, recommended that at the **Central level multiple Labour Laws**should be **codified in 4 or 5 Labour Codes** namely
  (a) **Industrial relations**;
  (b) **Wages**;
  (c) **Social security**;
  (d) **Safety**; and
  (e) **Welfare and working conditions**.
- The **brainstorming on Labour Codes** were **fast-tracked** when the **GST**, as **One Nation One Tax**, was made **applicable** in the Country with **consensus and aligned** with **motto "Sabka Sath Sabka Vikas aur Sabka Vishwas**".
- **During 2015 to 2019**, the **Ministry** organized**9 tripartite discussions** in which **all** the **Central Trade Unions, Employers' Associations and representatives** of **State Governments** were invited to give their opinions/suggestions on **Labour reforms**. All the **four Bills** were also **examined** by the **Parliamentary Standing Committee** which gave its recommendations to the Government.
- In order to **codify 29 central legislations**, the **Ministry** of **Labour and Employment submitted four labour code bills in 2019**. While the Code on Wages, 2019, was **approved by Parliament**, the **Standing Committee on Labour** was tasked with **handling** the **three other bills**. On **all three Bills**, the Standing Committee **delivered** its **reports**. In **September 2020**, the **government repealed** these **Bills and enacted new ones**. They broadly **categorized labour codes** into **4 different category-**
  1. Code on Wages
  2. Industrial Relations Code
  3. Social Security Code
  4. Occupational Safety, Health and Working Conditions Code

VOHRA LAW CLASSES



Purpose of Labour Legislation

Labour legislation that is adapted to the **economic and social challenges** of the **modern world** of **work fulfils three crucial roles**:

- It establishes a **legal system** that facilitates **productive individual and collective employment relationships**, and therefore a **productive economy**;
- By providing a **framework** within which **employers**, **workers** and their **representatives** can **interact** with regard to **work-related issues**, it **serves** as an **important vehicle** for achieving **harmonious industrial relations** based on **workplace democracy**;
- It provides a **clear and constant reminder and guarantee** of **fundamental principles and rights** at work which have received **broad social acceptance** and **establishes** the **processes** through which these principles and rights can be **implemented and enforced**.

Classification of Labour Laws In India

Labour Laws may be classified under the following heads:

I. Laws related to Industrial Relations such as:

1. Trade Unions Act, 1926
2. Industrial Employment Standing Order Act, 1946
3. Industrial Disputes Act, 1947

II. Laws related to Wages such as:

4. Payment of Wages Act, 1936
5. Minimum Wages Act, 1948
6. Payment of Bonus Act, 1965

7. Working Journalists (Fixation of Rates of Wages) Act, 1958

III. Laws related to Working Hours, Conditions of Service and Employment such as:

8. Factories Act, 1948
9. Plantation Labour Act, 1951
10. Mines Act, 1952
11. Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955
12. Merchant Shipping Act, 1958
13. Motor Transport Workers Act, 1961
14. Beedi & Cigar Workers (Conditions of Employment) Act, 1966
15. Contract Labour (Regulation & Abolition) Act, 1970
16. Sales Promotion Employees Act, 1976
17. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
18. Dock Workers (Safety, Health & Welfare) Act, 1986
19. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act,1996
20. Building and Other Construction Workers Welfare Cess Act, 1996
21. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
22. Dangerous Machines (Regulation) Act, 1983
23. Dock Workers (Regulation of Employment) Act, 1948
24. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
25. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
26. Industrial Employment (Standing Orders) Act, 1946
27. Mines and Mineral (Development and Regulation) Act, 1957
28. Plantation Labour Act, 1951
29. Private Security Agencies (Regulation) Act, 2005

IV. Laws related to Equality and Empowerment of Women such as:

30. Maternity Benefit Act, 1961
31. Equal Remuneration Act, 1976

V. Laws related to Deprived and Disadvantaged Sections of the Society such as:

32. Bonded Labour System (Abolition) Act, 1976
33. Child and Adolescent Labour (Prohibition & Regulation) Act, 1986
34. Children (Pledging of Labour) Act, 1933.

VI. Laws related to Social Security such as:

35. Employees' Compensation Act, 1923
36. Employees' State Insurance Act, 1948
37. Employees' Provident Fund & Miscellaneous Provisions Act, 1952.
38. Payment of Gratuity Act, 1972
39. Employers' Liability Act, 1938
40. Beedi Workers Welfare Cess Act, 1976
41. Beedi Workers Welfare Fund Act, 1976
42. Cine workers Welfare Cess Act, 1981
43. Cine Workers Welfare Fund Act, 1981
44. Fatal Accidents Act, 1855
45. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
46. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
47. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
48. Mica Mines Labour Welfare Fund Act, 1946
49. Personal Injuries (Compensation Insurance) Act, 1963
50. Personal Injuries (Emergency Provisions) Act, 1962
51. Unorganised Workers' Social Security Act, 2008.

Objective of New Labour Codes

- For the sake of **clarity, standardisation** in **terminology**, and **consistency** in **approach**, the Commission emphasisedthe necessity to **streamline and unify labour legislation**. **Consolidating labour laws** would also enable **more comprehensive labour coverage** because separate labour rules apply to different employment classifications and across different thresholds. The **four Codes** on wages, industrial relations, social security, and occupational safety were introduced in Parliament as a **result of NCL's recommendations**.
- While the **Codes** do a **good job** of **combining and streamlining existing legislation**, there are several areas where they fall short. For instance, even if the **Occupational Safety Code** includes provisions on **leaves for all employees**, **sales promotion staff** continue to be **entitled** to **additional leave entitlements** (such as earned **medical leave for 1/18th** of the **period on duty**).
- Similar to this, even if the **definitions** of **various terms** are largely **rationalised by** the **Codes**, they are **not consistent throughout**.For instance, the definition of "**contractor**" is the **same in** the **Codes** on **Wages**, **Occupational Safety**, and **Social Security** but **not in** the **Code on Industrial Relations**. Finally, after much discussions **only 29 laws** have been **replaced by the four Codes**.
- **Facilitating employment development** while preserving employees' rights is the main problem of labour reforms. The **coverage** of **small businesses**, choosing **cut off points** for **prior approval** of **layoffs**, **bolstering labour enforcement**, enabling **flexible forms** of labour, and supporting **collective bargaining** are important topicsof discussion. In addition, as time goes on, it is necessary to **update and simplify** the **labour laws** in order to include clauses that can accommodate new kinds of employment (e.g., gig work).

Features of New Labour Codes

1. Most labour rules are applicable to **businesses larger than** a **particular size** (typically **10 or above**). Thresholds based on **company size** could ease the **burden of compliance** for businesses. One would counter that **all businesses** should be **subject to fundamental protections** including pay, social security,and working conditions. Such size-based limits are still present in some codes.
2. **Simple and accountable system will simplify** the **processes**. **One Registration one License**, **single return**for all the Codes.
3. **Government approval** is required for **establishments** that **employ 100 or more employees** to **close, lay off, or retrench.** It has been suggested that this has made it harder for businesses to leave andhas interfered with their **capacity** to **change** their **staff to meet production demands**. This **number is increased to 300 by** the **Industrial Relations Code**, and the government is permitted to raise it further bynotification.
4. The **complexity** of **labour laws** has **led to many compliances**, which has **increased** the **burden** of **compliance** on businesses. On the other side, the **labour enforcement** apparatus has been **unsuccessful** due to **weak enforcement**, **insufficient sanctions**, **and inspectors' rent-seeking behaviour**. Some of theseissues are covered by the Codes.
5. **Contract labour** is now used more frequently as a result of **economic factors** and **labour compliance requirements**. However, **fundamental rights** like guaranteed salaries have been denied **to contract workers**. These issues are not entirely addressed by the Codes. Fixed-term employment, however, is anew type of short-term labour that is introduced by the Industrial Relations Code.
6. There are many **registered trade unions**, but there are **no standards** by which to **"recognise" unions** thatcan **formally bargain** with employers. Provisions for **recognition** are created **by** the **Industrial RelationsCode**.
7. The Codes greatly **simplify labour rules**, yet there are several **areas** where they **fall short**. Additionally, the **Code** on **Social Security** has **enabling** measures to **notify programmes for "gig" and "platform" workers**; **nonetheless**, these **classifications lack precision**.
8. The **Codes delegate rule-making authority** over a number of significant issues, including the **applicability** of **social security programmes and health and safety regulations**. The **debate** is on whether the **legislature** or the **executive branch** should **decide these issues**.
9. The **law forbids discrimination** based on **gender** when it comes to **hiring new employees for similar or identical jobs and determining pay**. Work of a similar kind is defined as **work requiring** the **same level of expertise**, **effort, responsibility, and experience**.
10. The **advisory boards** will be made up of the **federal and state governments. Employers, employees** (**equal** in number to employers), **independent individuals**, and **five state government representatives make up** the **Central Advisory Board**.

    State Advisory Boards will be made up of **independent individuals**, **employers, and workers**. **Women** will make up **one-third of both** the **central and state boards' overall membership**. The **Boards will give** their **respective governments advice** on matters such as;

    (i) **Setting minimum wages** and

    (ii) **Expanding possibilities for women in** the **workforce.**
11. The **Code outlines punishments** for **offences** committed **by** an **employer**, such as (i) **Underpaying required wages** or (ii) **Violating any Code requirement**. The **maximum punishment** is **three (3) months inprison and** a **fine** of **up to one (1) lakh rupees**. Penalties **varies** based on the **type of offence**.

Acts Subsumed by The Four Labour Codes

Labour Codes	*Acts being subsumed*
Code on Wages, 2019	▪ Payment of Wages Act, 1936; ▪ Minimum Wages Act, 1948; ▪ Payment of Bonus Act, 1965; and ▪ Equal Remuneration Act, 1976.
Occupational Safety, Health and Working Conditions Code, 2019	▪ Factories Act, 1948; ▪ Mines Act, 1952; ▪ Dock Workers (Safety, Health and Welfare) Act, 1986; ▪ Building and Other Construction Workers (Regulation of Employment andConditions of Service) Act, 1996; ▪ Plantations Labour Act, 1951; ▪ Contract Labour (Regulation and Abolition) Act, 1970; ▪ Inter-State Migrant Workmen (Regulation of Employment and Conditions ofService) Act, 1979; ▪ Working Journalist and other Newspaper Employees (Conditions of Serviceand Miscellaneous Provision) Act, 1955; ▪ Working Journalist (Fixation of Rates of Wages) Act, 1958; ▪ Motor Transport Workers Act, 1961; ▪ Sales Promotion Employees (Condition of Service) Act, 1976; ▪ Beedi and Cigar Workers (Conditions of Employment) Act, 1966; ▪ Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act,1981.
Industrial Relations Code, 2019	▪ Trade Unions Act, 1926; ▪ Industrial Employment (Standing Orders) Act, 1946, and ▪ Industrial Disputes Act, 1947.
Code on Social Security, 2019	▪ Employees' Provident Funds and Miscellaneous Provisions Act, 1952; ▪ Employees' State Insurance Act, 1948; ▪ Employees' Compensation Act, 1923; ▪ Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; ▪ Maternity Benefit Act, 1961;

Labour Codes	*Acts being subsumed*
	▪ Payment of Gratuity Act, 1972; ▪ Cine-workers Welfare Fund Act, 1981; ▪ Building and Other Construction Workers' Welfare Cess Act, 1996; and ▪ Unorganised Workers Social Security Act, 2008.

Reforms Proposed by New Labour Codes

Code on Social Security, 2020

- A Code to **amend and consolidate** the **laws** relating to **social security** with the goal to **extend social security to all employees and workers** either in the **organised or unorganised** or any other sectors or for matters connected therewith or incidental thereto. To **ensure security** for **all workers**, the Central Government has **amalgamated 9 Labour Laws into the Social Security Code** in order to **secure** the

right of workers for insurance, pension, gratuity, maternity benefit etc. The **Government can fund** the **contribution** of **workers from disadvantaged section**.

- The **salient features** of the **Code on Social Security, 2020,** *inter alia*, are–
  - Benefit of **pension scheme** (EPFO) to **all workers** of organized, unorganized and self-employed sectors.
  - **Creation** of **social security fund** for providing **comprehensive social security to** the **unorganized sector**.
  - Through a **small contribution**, **benefit of free treatment** is available under **hospitals and dispensaries ofESIC**.
  - The **doors of ESIC** will now be **opened for** the **workers of all sectors** along with the workers of the unorganized sector.
  - **Expansion** of **ESIC hospitals**, **dispensaries** and **branches upto district level**.
  - To **define** various expressions used in the Code such as, "**career centre**","**aggregator**", "**gig worker**", "**platform worker**", "**wage ceiling**" , etc. Further, the definition of "**employee**" has been comprehensivelyelaborated to **cover maximum number** of **employees and workers**.
  - **Even if** a **single worker** is **engaged in hazardous work**, he would be **given ESIC benefit**.
  - **Opportunity to join ESIC for platform and gig workers** engaged in **new technology**.
  - **Plantation workers** to get **benefit of ESIC**.
  - **Institutions working** in **hazardous area** to be **compulsorily registered with ESIC**.
  - **Constitution** of various **social security organisations** for the **administration** of the **Code**, namely,
    (a) The**Central Board of Trustees of the Employees' Provident Fund** (Central Board),
    (b) The **Employees' StateInsurance Corporation (Corporation),**
    (c) The **National Social Security Board for Unorganised Workers** (National Social Security Board),
    (d) The **State Unorganised Workers' Social Security Board** and
    (e) The**State Building Workers Welfare Boards**.
  - Provisions for **maternity benefits** such as **prohibition** from **work during certain periods**, provision of **nursing breaks**, **crèche facility**, **claim** for **maternity benefits**, etc.
  - To provide for **appeal against** an **order** passed by **any authority** in regard to **determination and assessment** of **dues and levy of damages** relating to Employees' Provident Fund by an employer only **after depositing** with **Social Security Organisation** concerned, **twenty-five per cent** of the **amount due** from him as determined by the authority against whose order the appeal has been preferred.
  - **Requirement** of **minimum service** has been **removed for payment of gratuity** in case of **fixed termemployees**.
  - **Employees** engaged on **fixed term** to **get same social security benefit** as **permanent employees**.
  - **Creating** a **national database of workers** of **unorganized sector** through **registration on Portal**.
  - **Employers employing more than 20 workers to mandatorily report vacancies online**.
  - A **Universal Account Number** (UAN) for **ESIC, EPFO** and **Unorganised Sector Workers**. Along with **Aadhaar based Universal Account Number** (UAN) to ensure **seamless portability**.
  - To **empower** the **Central Government** by order, to **defer** or **reduce employer's contribution**, or **employee'scontribution**, or both.

- To provide for **establishment and maintenance** of **separate accounts** under **social security fund**, **for** the welfare of **unorganised workers**, **gig workers** and **platform workers**; and a **separate account for** the amount received from the **composition of offences** under the Code or under any other central labour laws.

Occupational Safety, Health and Working Conditions Code, 2020

- A Code to **consolidate and amend** the **laws** regulating the **occupational safety, health and working conditions of** the **persons employed** in an establishment and for matters connected therewith or incidental thereto. The **security of interests** of **workers engaged** in factories, mines, plantations, motor transport sector, bidi and cigar workers, contract and migrant workers has been ensured.
- The **salient features** of the **Occupational Safety, Health and Working Conditions Code, 2020** inter alia, are as under:—
  - To impart **flexibility** in **adapting technological changes and dynamic factors**, in the matters relating tohealth, safety, welfare and working conditions of workers.
  - To **apply** the **provisions** of the **Code for all establishments having ten or more workers**, **other than** theestablishments relating to **mines and docks**; more employees.
  - **Various provisions** in the **OSHWC Code will ease** the **lives of** the **Inter-State Migrant Workers**.
  - **Anomalies** of the **Inter-State Migrant Workers Act, 1979** have been comprehensively **addressed** in theOSHWC Code. Earlier only workers appointed by a contractor were recognized as Inter-State MigrantWorkers. By this provision, the **worker** would **get** a **legal identity** which would **enable** them to get **benefits of all social security schemes**.
  - A **provision** has been made for **employers to provide travelling allowance annually to** an **Inter-State Migrant Worker** for undertaking a **to-and-fro journey to his native place**.
  - Providing of **appointment letters to** the **workers** has been made **mandatory**.
  - **Mandatory**, **free annual health check-up** of the workers to be provided by the employers.
  - For a **worker engaged** in **building** and other **construction work** in **one State and moving to another State**,**benefit** from the **Building and other Construction Workers' Cess fund** will be provided.
  - Under the "**One Nation - One Ration Card**", an **Inter-State Migrant Worker** would **get ration facility** in the State he is working in and the remaining members of his family would be able to avail of the rationfacility in the State where they reside.
  - **Mandatory helpline facility** in **every State** for resolution of Inter-State Migrant Workers' **grievances**.
  - **National database** to be created **for** the **Inter State Migrant Workers**.
  - **Instead of 240 days**, **now if** a **worker** has **worked 180 days**, he **shall** be **entitled for one-day leave for every 20 days** of work done.
  - Emphasis on **women empowerment** through the Labour Codes.
  - **Right to women workers** to work in **all types of establishments.**
  - **Women** have been given the **right to work at night with their consent** and it has also been ensured thatthe **employer** would make **adequate arrangements** to **provide safety and facilities to women workersat night.**
  - **Maternity Benefit Act** paid **Maternity leave for women workers to 26 weeks** and ensure **mandatory crèche facility** in **all establishments having 50 or more workers**.

- To provide for **issuing of appointment letter mandatorily** by the employer of an establishment to **promoteformalisation** in employment.
- To **constitute** the **National Occupational Safety and Health Advisory Board** to give **recommendations** to the **Central Government** on policy matters, relating to occupational safety, health and working conditions of workers.
- To **constitute** the **State Occupational Safety and Health Advisory Board** at the **State level** to **advice** the**State Government** on such matters arising out of the administration of the Code.
- To make a provision for the **constitution** of **Safety Committee by** the **appropriate Government** in any establishment or class of establishments.
- To make provision of "**common license**" **for factory, contract labour and beedi and cigar establishments**and to introduce the concept of a **single all India license for** a period of **five years** to engage the contract labour.
- To enable the **courts** to **give** a **portion of monetary penalties up to fifty per cent** (50%) **to** the **worker** who is a**victim** of **accident or to** the **legal heirs** of such victim in the case of his death.
- To provide **overriding powers** to the **Central Government** to **regulate general safety and health** of **persons** residing in whole or part of India **in** the event of **declaration** of **epidemic or pandemic or disaster**.

Code on Wages, 2019

- A Code to **amend and consolidate** the **laws** relating to **wages and bonus** and matters connected therewith or incidental thereto. **Four Labour Laws** have been **amalgamated into the Minimum Wages Code.** Due to this, forthe first time, **all** the **workers have got the Right to Minimum Wages**.
- The **salient features** of the **Code on Wages, 2019,** inter alia, are as follows:—
  - To provide for **all essential elements relating to wages, equal remuneration, its payment and bonus.**
  - To provide **wage security, social security and health security to workers**, **covering organized and unorganized sectors**.
  - The **guarantee** of **minimum wages** is **available** to workers of **organized and unorganized sectors**.
  - **Review** of **minimum wages in every 5 years**.
  - **Guarantee** of **timely payment** of wages to all workers.
  - **Equal remuneration** to **male and female workers**.
  - For the first time workers of **unorganized sector** in the country have **got** this **right**.
  - To **remove regional disparity in minimum wages** the provision of floor wage has been introduced.
  - The **determination** of **minimum wages** has been made **easy**. It will be based on **criteria** such as **skill level and geographical area**.
  - The **appropriate Government may extend** the **coverage** of **wage ceiling** to the Government establishmentsalso.
  - The **minimum wage decided by** the **government** should be **higher than the floor wage**.
  - It provides that the **wages** to employees **may** also be **paid by cheque or through digital or electronic mode** or by **crediting** it **in** the **bank account** of the employee. However, the appropriate Government may specify the industrial or other establishment, where the **wages** are to be **paid only**

by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee.

- In order to **remove** the **arbitrariness and malpractices** in **inspection**, it **empowers** the **appropriate Government** to **appoint Inspectors-cum-Facilitators** in the place of Inspectors, who would **supply information and advice** the **employers and workers**.
- It enables the **appropriate Government** to **establish** an **appellate authority** to **hear appeals** for **speedy**, **cheaper and efficient redressal** of **grievances** and **settlement** of **claims**.
- It provides for **graded penalty** for **different types** of **contraventions** of the provisions of the legislation.
- It provides that the **Inspector-cum-Facilitator** shall give an **opportunity to** the **employer before initiation** of **prosecution** proceedings in cases of contravention, so as to **comply** with the **provisions** of the legislation. However, in case of **repetition** of the **contravention within** a period of **five (5) years** such **opportunity shall not** be **provided**.
- It provides for **compounding** of those **offences** which are **not punishable with imprisonment**.
- The **period** of **limitation** for **filing of claims** by a worker has been **enhanced to three (3) years**, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.
- It provides that where a **claim** has been **filed for non-payment of remuneration or bonus or less payment** of wages or bonus or on account of making deduction not authorised by the legislation, the **burden shall** be **on** the **employer to prove** that the said dues have been paid to the employee.
- It **enables** the **appropriate Government** to **constitute Advisory Boards at Central and State level to advice** the **Central Government and the State Governments**, respectively, on matters relating to wages, women employment, etc.

Industrial Relations Code, 2020

- A code to **consolidate and amend** the **laws** relating to **Trade Unions, conditions** of **employment** in **industrial establishment** or undertaking, **investigation and settlement** of **industrial disputes** and for matters connected therewith or incidental thereto.
- By **amalgamating 3 Labour Laws** into the **Industrial Relations Code** the Central Government has taken steps for **safeguarding** the **interests of Trade Unions** as well as the **workers**. In this Code, all possible steps have been taken for **industrial units and workers** so that **disputes** do **not arise in future**.
- The **salient features** of the **Industrial Relations Code, 2020**, inter alia, are as follows:–
  - To define "**workers**" which **includes** the **persons** in **supervisory capacity getting wages up to eighteen thousand (18,000) rupees per month** or an amount as may be notified by the Central Government from time to time.
  - To provide for **fixed term employment** with the objective that the **employee gets all** the **benefits** like that of a **permanent worker** (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation. The **employer** has been provided with the **flexibility** to **employ workers** on **fixed term basis** on the basis of requirement and without restriction on any sector.
  - To **revise** the **definition** of "**industry**" that **any systematic activity** carried on **by co-operation between** the **employer and workers for** the **production, supply or distribution** of goods or services with a **view to satisfy human wants** or wishes (not being wants or wishes which are merely spiritual or religious in nature) with certain exceptions.
  - To bring **concerted casual leave within** the **ambit of the definition of strike**.

- To provide the **maximum number** of **members in** the **Grievance Redressal Committee up to ten (10)** in an **industrial establishment employing twenty (20) or more workers**. There shall be **adequate representation** of the **women workers** therein in the proportion of the women workers to the total workers employed inthe industrial establishment.
- Under the **Atal Bimit Vyakti Kalyan Yojna,** a **worker** of **organized sector** who **loses** his **job** gets **financialaid from** the **Government**. This is a type of **unemployment allowance,** the benefit of which is admissibleto the workers covered under the ESI Scheme.
- In case of **job loss**, a **worker** will get **benefit** under the **Atal Bimit Vyakti Kalyan Yojna.**
- At the time of **retrenchment** a **worker** would be provided **15 days' wages for re-skilling**. The **wages** would be **credited directly into** the **bank account of** the **worker** so as to enable him **to learn new skills**.
- To provide for **appeal against non-registration or cancellation of registration** of **Trade Union before** the**Industrial Tribunal**.
- To **empower** the **Central Government and** the **State Governments** to **recognise** a **Trade Union** or a **federation** of **Trade Unions** as the **Central Trade Union** or **State Trade Unions**, respectively.
- To provide for **applicability** of **threshold** of **three hundred (300) or more workers for** an **industrial establishment** to obtain **certification** of **standing orders**, if the standing order differ from the model standing order made by the Central Government.
- **Faster justice** to the workers through the Tribunal.
- **Workers disputes** to be **resolved within a year** in the Tribunal.
- To **set up Industrial Tribunal** consisting of a **Judicial Member and** an **Administrative Member**, in place of**only Judicial Member** who **presently presides** the **Tribunal**. For certain specified cases, the **matters** willbe **decided by** the **two-member Tribunal and** the **remaining shall** be **decided by single-member Tribunalas** may be provided for in the rules.
- To **set up Industrial Tribunals in** the **place of existing multiple adjudicating bodies** like the Court of Inquiry, Board of Conciliation and Labour Courts.
- To **remove** the **reference system for adjudication of Industrial Disputes**, except the reference to the National Industrial Tribunal for adjudication.
- To **prohibit strikes and lock-outs in all industrial establishments without** giving **notice** of **fourteen (14) days**.
- To provide for a **new feature** of **recognition** of **negotiating union and negotiating council** in an industrialestablishment by an employer for the purpose of negotiations. The **criterion** for recognition of **negotiating union** has been **fixed at fifty-one per cent (51%) or more workers** on a **muster roll** of that industrial establishment. As regards **negotiating council**, a Trade Union having support of **every twenty per cent (20%) of workers will get one seat** in the **negotiating council** and the **fraction above twenty per cent. shall** be **disregarded.**
- **Trade unions** have been conferred with a **new right**, enabling them to **get statutory recognition**.
- To provide for **penalties for different types** of **violations to rationalise** with such **offences** and commensurate with the gravity of the violations.
- To **empower** the **appropriate Government to exempt** any **industrial establishment** from **any** of the **provisions** of the **Code in** the **public interest** for the specified period.
- To provide for the **obligation** on the part of **industrial establishments pertaining to mine, factories**

and plantation having **three hundred (300) or more workers** to take **prior permission** of the **appropriate Government before lay-off, retrenchment and closure** with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification.

- To provide for **compounding of offences by a Gazetted Officer**, as the appropriate Government may, by notification, specify, **for** a sum of **fifty per cent (50%) of** the **maximum fine** provided for such **offence punishable with fine only and** for a **sum** of **seventy-five per cent (75%) provided** for such **offence punishable with imprisonment** for a **term** which is **not more than one (1) year**, **or with fine**.

- Labour Code will **facilitate** the **implementation** and also **remove** the **multiplicity of definitions and authorities** without compromising on the basic concepts of **welfare and benefits to workers**. The Code would bring the **use** of **technology** in its enforcement. All these **measures** would bring **transparency and accountability** which would lead to more **effective enforcement**. **Widening** the **scope of minimum** wages to all workers would be a big step for equity. The **facilitation** for **ease** of **compliance of labour laws** will **promote** in **setting up** of **more enterprises** thus **catalyzing** the **creation** of **employment opportunities**.

AMIT VOHRA LAW CLASSES

Chapter – 16 Unit - 1
Factories Act, 1948

List of Section

Sections	Particulars of Section
2(a)	Adult
2(b)	Adolescent
2(bb)	Calendar year
2(c)	Child
2(ca)	Competent person
2(cb)	Hazardous process
2(d)	Young person
2(e)	Day
2(f)	Week
2(g)	Power
2(h)	Prime mover
2(i)	Transmission machinery
2(j)	Machinery
2(k)	Manufacturing process
2(l)	Worker
2(m)	Factory
2(n)	Occupier
6	Approval, Licensing and registration of factories
6(2)	Automatic approval
7	Notice by occupier
7A	General duties of the occupier
7B	General duties of manufacturer etc.
9	Powers of Inspector
10	Certifying Surgeons
11	Cleanliness
12	Disposal of waste and effluents
13	Ventilation and temperature
14	Dust and fume
15	Artificial humidification
16	Overcrowding
17	Lighting
18	Drinking water
19	Latrines and urinals
20	Spittoons
21	Fencing of machinery
22	Safety measure in case of work on or near machinery in motion
23	Employment of young persons on dangerous machines
24	Striking gear and devices for cutting off power
25	Self acting machines

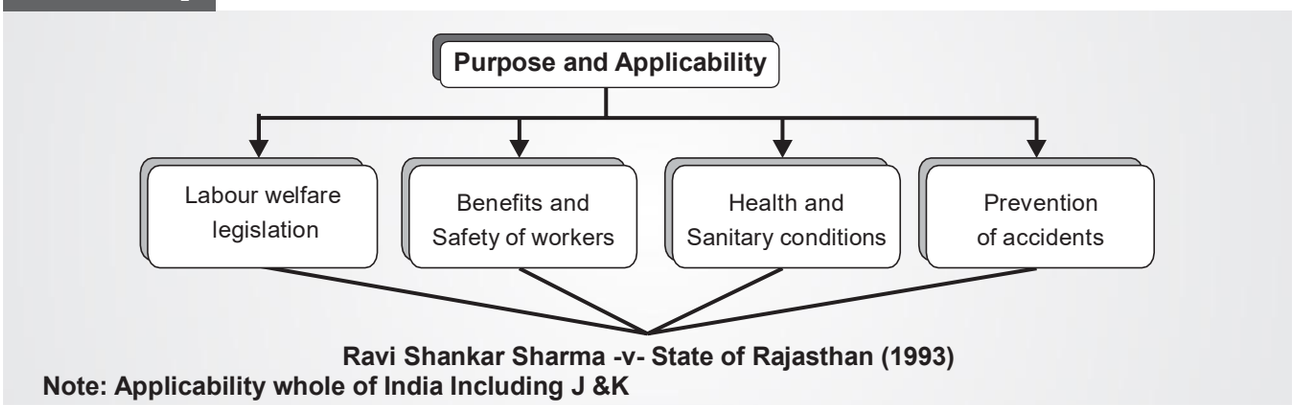
26	Casting of new machinery
27	Prohibition of employment of woman and children near cotton openers
28	Hoists and lifts
29	Lifting machines, Chains, Ropes and lifting tackles
30	Safety measures in case of use of revolving machinery
31	Pressure plants
32	Floor, Stairs and means of access
33	Pits, Sumps, Opening in floors etc
34	Excessive weights
35	Protections of eyes
36	Precaution against dangerous, fumes, gases etc
36A	Precautions regarding the use of portable electric light
37	Explosive or inflammable dust gas etc
38	Precautions in case of fire
39	Power to require specification of defective parts or test to stability
40	Safety of building or machinery
40A	Maintenance of buildings
40B	Safety officers
41	Power to make rules to supplement
41A	Constitution of Site Appraisal Committee
41B	Compulsory disclosure of information by the occupier
41C	Responsibility of occupier in relation to hazardous process
41D	Inquiry Committee
41E	Emergency standards
41F	Permissible limits of exposure of chemical and toxic substances
41G	Workers Participation in safety management
41H	Warning about imminent danger
42	Washing facilities
43	Facilities for storing and drying clothing
44	Facilities for sitting
45	First aid appliances
46	Canteens
47	Shelter, rest rooms and lunch rooms
48	Crèches
49	Welfare officers
50	Power to make rules to supplement
51	Weekly hours
52	Weekly holidays
53	Compensatory holidays
54	Daily hours
55	Intervals for rest
56	Spread over
57	Night shifts
58	Prohibition of overlapping shifts
59	Extra wages for overtime

60	Restriction on double employment
61	Notice of period of work for adults
62	Register of adult workers
63	Presence of worker during rest period
64	Power to make exempting rules
67	General prohibition as to employment of children
68	Conditions foremployment of children and adolescents – conditions
69	What is Certificate of fitness
70	Effect to certificate of fitness granted to adolescents
71	Working hours for children
72	Notice of periods of work for children
73	Register of child workers
75	Power to require medical examination
77	Certain other provisions of law not barred
78	Application of the chapter
79	Annual leave with wages
80	Wages during leave period
81	Payment in advance in certaincases
82	Mode of recovery of unpaid wages
92	General penalties for offences
93	Liabilities of owner of premises in certain circumstances
95	Penalty for obstructing inspector
96	Penalty for wrongfully disclosing of results of analysis under section 91
96A	Penalty for contravention of sections 41B, 41C and 41H
97 & 98	Offences by worker and penalties
99	Penalty for permitting double employment of child by parents or guardians
101	Exemption of occupier or manager from liability in certain
104A	Onus of providing limits of what is practicable etc

Object and Purpose of the Act

- Factories Act is one of the **earliest labour welfare legislations**.
- The object of the act is to secure health, safety, welfare, proper working hours and other **benefits to workers**.
- The Act requires that workers should work in **healthy and sanitary conditions** and for that purpose it provides that precaution should be taken for **safety of workers and prevention of accidents**.

Quick Recap



Ravi Shankar Sharma -v- State of Rajasthan (1993)

Note: Applicability whole of India Including J &K

Definitions

Factory

Factory means any premises, including the precincts thereof, in any part of which manufacturing process is carried on **with or without the aid of power**, provided that atleast **10 or 20 persons** respectively are employed or were employed on any day of the **preceding 12 months**.

Note: The Act is **applicable to all the factories** in India including J and K

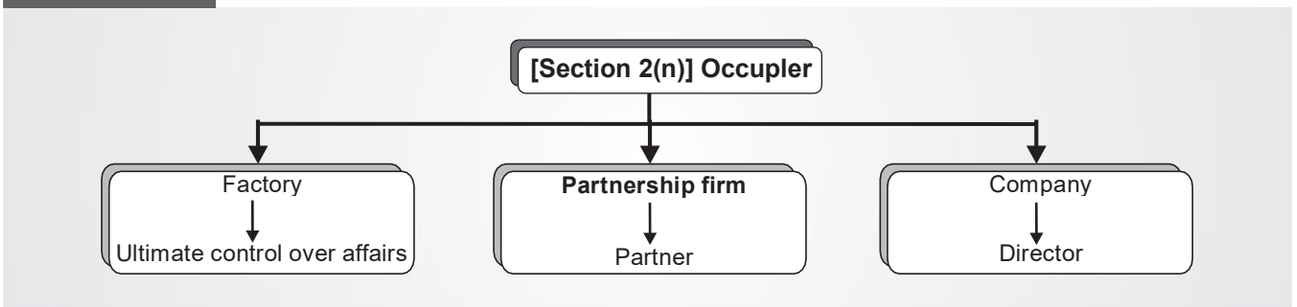
Occupier

- Occupier of factory means a person who has **ultimate control** over affairs of factory.
- It includes a **partner** in case of a firm and director in case of a company.
- It may be noted that if a factory is run by a company, then only the **director** of the company can be treated asoccupier.

CASE LAW	J.K. Industries Vs Chief Inspector of Factories

- The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory.
- The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories.
- The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

Quick Recap



[Section 2(a)] Adult

"Adult" means a person who has completed his eighteenth year of age.

[Section 2(b)] Adolescent

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

[Section 2(bb)] Calendar Year

"Calendar Year" means the period of twelve months beginning with the first day of January in any year.

[Section 2(c)] Child

"Child" means a person who has not completed his fifteenth year of age.

[Section 2(ca)] Competent Person

"Competent Person" in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done ina factory under the provisions of this Act having regard to

(i) the qualifications and experience of the person and facilities available at his disposal; or

(ii) the qualifications and experience of the persons employed in such institution and facilities available therein.

With regard to the conduct of such tests, examinations and inspections and more than one person or institutioncan be recognised as a competent person in relation to a factory.

[Section 2(cb)] Hazardous Process

"Hazardous Process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, byeproducts,wastes or effluents thereof would

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette amend the First Schedule by wayof addition, omission or variation of any industry specified in the said Schedule.

[Section 2(d)] Young Person

"Young Person" means a person who is either a child or an adolescent.

[Section 2(e)] Day

"Day" means under Section 2(e), a period of twenty-four hours beginning at mid-night.

[Section 2(f)] Week

"Week" means a period of seven days beginning at mid-night on Saturday night or such other night as may beapproved in writing for a particular area by the Chief Inspector of Factories.

[Section 2(g)] Power

"Power" means electrical energy or any other form of energy which is mechanically transmitted and is notgeneratedby human or animal agency.

[Section 2(h)] Prime Mover

"Prime" Mover means any engine, motor or other appliance which generates or otherwise provides power.

[Section 2(i)] Transmission Machinery

"Transmission" Machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving beltor other appliance or device by which the motion of a prime-mover is transmitted to or received by any machineryor appliance.

[Section 2(j)] Machinery

The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

[Section 2(k)] Manufacturing Process

It means any process for

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport,delivery or disposal; or

(ii) pumping oil, water or sewage or any other substance; or

(iii) generating, transforming, transmitting power; or

(iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process,orbook-binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

Following processes have been held to be manufacturing processes:

(1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing,with a view to transport to companys main factory for their use in manufacturing cigarette ***(V.P.Gopala Rao* v. *Public Prosecutor,* AIR 1970 S.C. 66)**.

(2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with aview tothe sale or use or disposal of the prawns **(*R.E.DSouza*v. *Krishnan Nair,* 1968 F.J.R. 469)**.

(3) Stitching old gunny bags and making them fit for use.

(4) In paper factory, bank as grass packed into bundles manually and despatched to the factory.

(5) Work of garbling of pepper or curing ginger.

(6) Process carried out in salt works in converting sea water into salt.

(7) Conversion of latex into sheet rubber.

(8) A process employed for the purpose of pumping water.

(9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.

(10) Preparation of soap in soap works.

(11) The making of bidies.

(12) The raw film used in the preparation of movies is an article or a substance and when by the

process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adaptingany article or substance with a view to its use.

(13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing,oiling, washing, cleaning, etc. **(*P.Natrajan* v. *E.S.I. Corporation* (1973) 26 FLR 19)**.

(14) Preparation of food and beverages and its sale to members of a club **(*CCI* v. *ESIC,* 1992 LAB IC 2029 Bom.)**.

(15) Receiving products in bulk, in packing and packing as per clients requirements **(LLJ I 1998 Mad. 406)**.

Following processes are not manufacturing processes:

(1) Exhibition of films process.

(2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale.

(3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturingprocess in as much as news is not the article or substance to which Section 2(k)(i) has referred.

(4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).

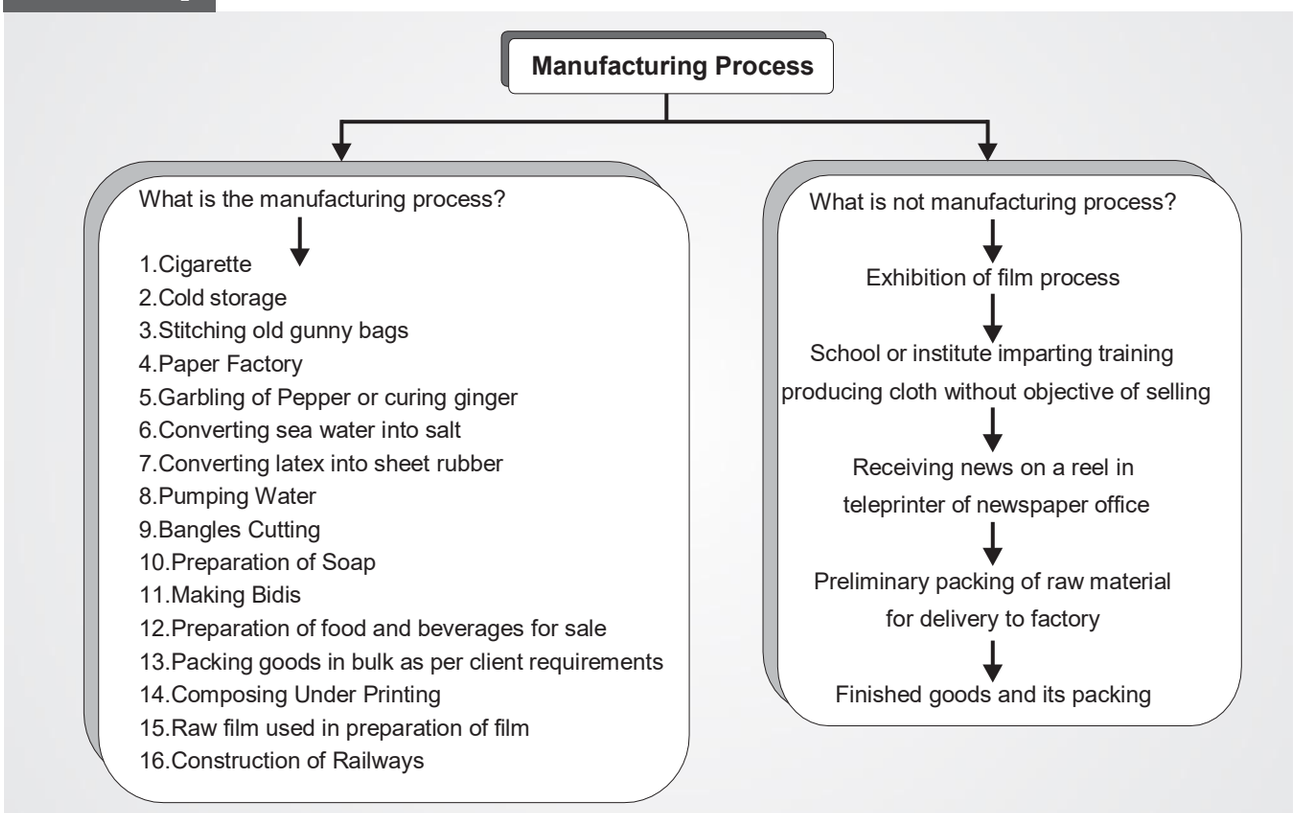
(5) Finished goods and packing thereof: *F. Hare* v. *State* AIR 1955, 2710.

[Section 2(l)] Worker

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

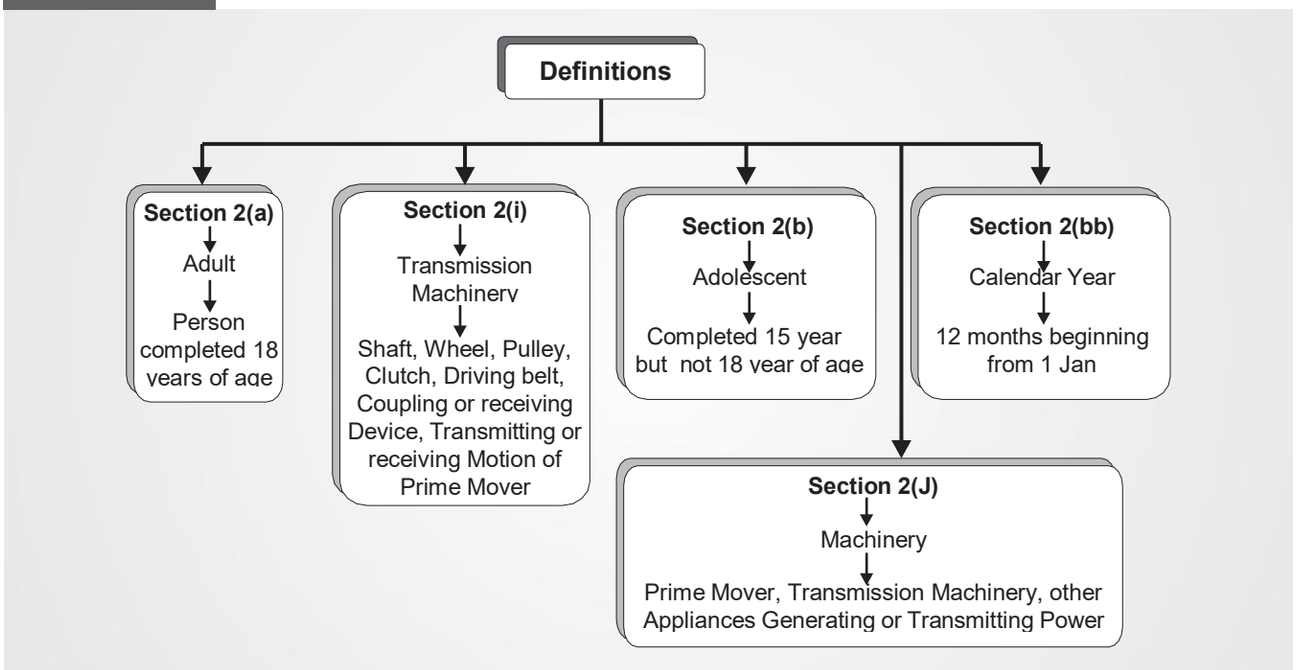
AMIT VOHRA LAW CLASSES

Quick Recap



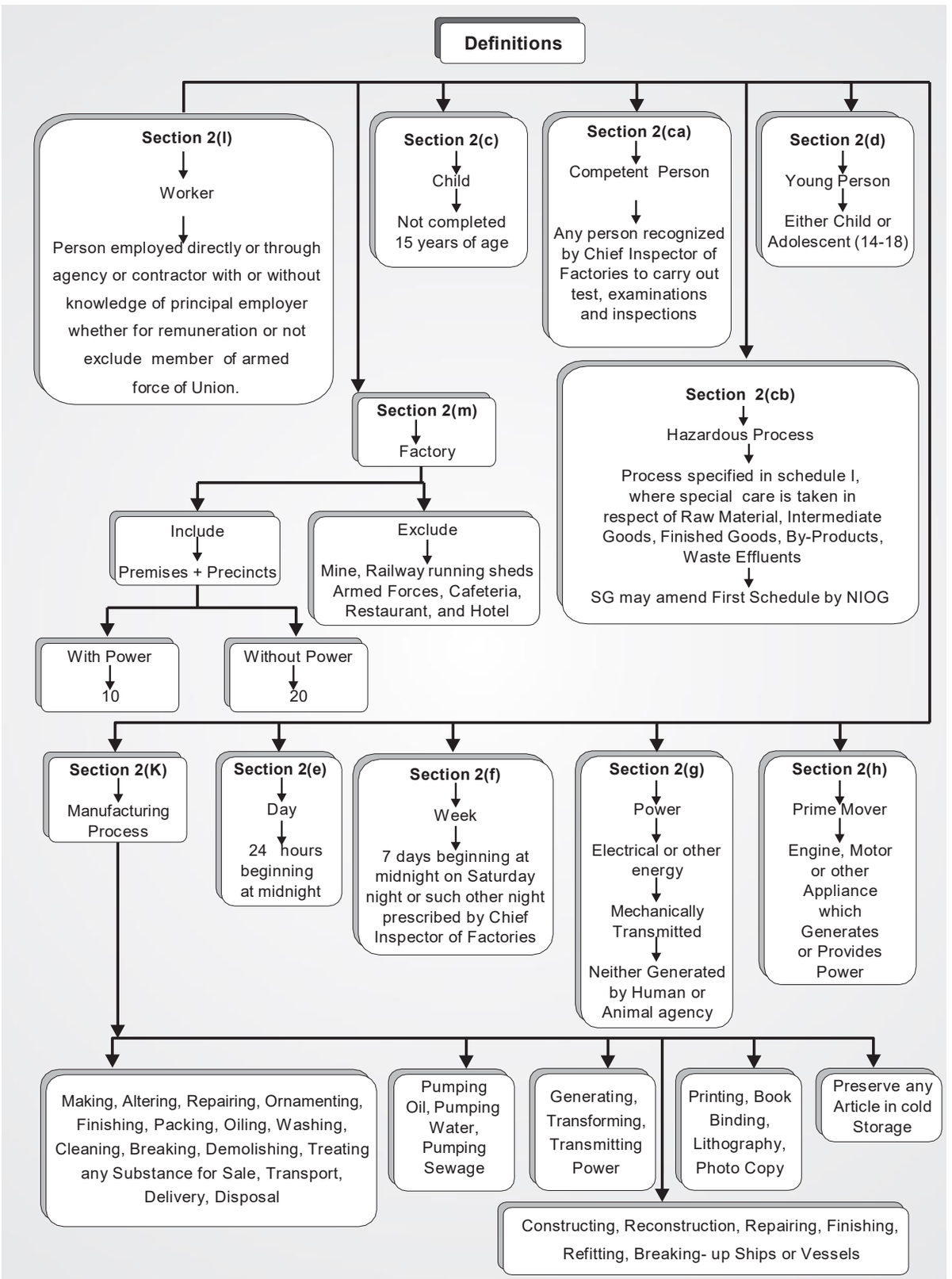
CS AMIT VOHRA LAW CLASSES

Quick Recap



CS AMIT VOHRA LAW CLASSES

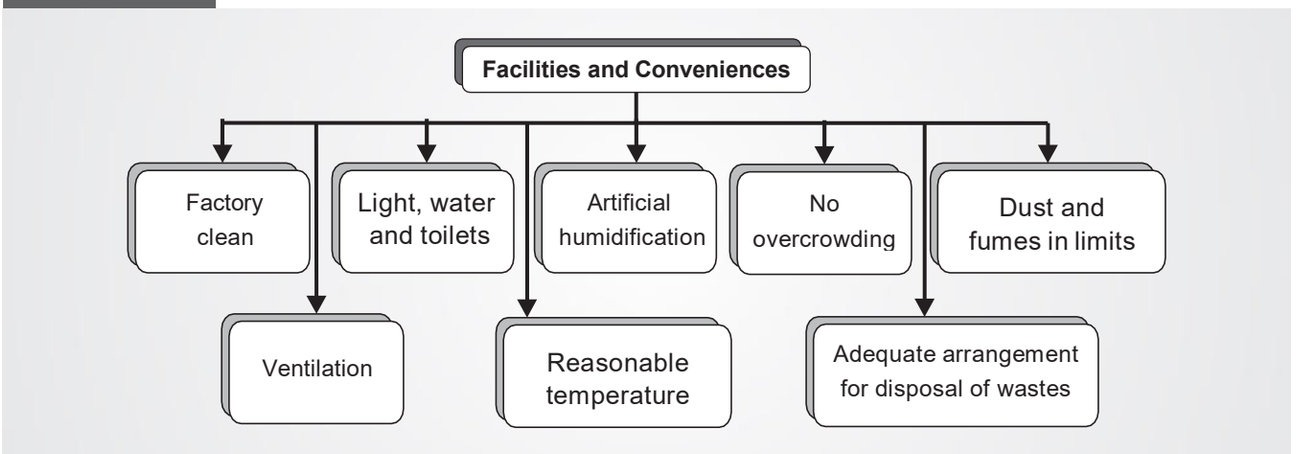
Quick Recap


Definitions
Section 2(l)
Worker
Person employed directly or through agency or contractor with or without knowledge of principal employer whether for remuneration or not exclude member of armed force of Union.
Section 2(c)
Child
Not completed 15 years of age
Section 2(ca)
Competent Person
Any person recognized by Chief Inspector of Factories to carry out test, examinations and inspections
Section 2(d)
Young Person
Either Child or Adolescent (14-18)
Section 2(m)
Factory
Include
Premises + Precincts
With Power
10
Without Power
20
Exclude
Mine, Railway running sheds Armed Forces, Cafeteria, Restaurant, and Hotel
Section 2(cb)
Hazardous Process
Process specified in schedule I, where special care is taken in respect of Raw Material, Intermediate Goods, Finished Goods, By-Products, Waste Effluents
SG may amend First Schedule by NIOG
Section 2(K)
Manufacturing Process
Section 2(e)
Day
24 hours beginning at midnight
Section 2(f)
Week
7 days beginning at midnight on Saturday night or such other night prescribed by Chief Inspector of Factories
Section 2(g)
Power
Electrical or other energy
Mechanically Transmitted
Neither Generated by Human or Animal agency
Section 2(h)
Prime Mover
Engine, Motor or other Appliance which Generates or Provides Power
Making, Altering, Repairing, Ornamenting, Finishing, Packing, Oiling, Washing, Cleaning, Breaking, Demolishing, Treating any Substance for Sale, Transport, Delivery, Disposal
Pumping Oil, Pumping Water, Pumping Sewage
Generating, Transforming, Transmitting Power
Printing, Book Binding, Lithography, Photo Copy
Preserve any Article in cold Storage
Constructing, Reconstruction, Repairing, Finishing, Refitting, Breaking- up Ships or Vessels

Facilities and Conveniences

- Factory should be kept **clean**.
- Adequate **lighting, drinking water, toilets**, and spittoons should be provided.
- Artificial **humidification** should be at prescribed limits.
- Over **crowding** should be **avoided**.
- **Dust** and **fumes** should be controlled below **permissible limits.**
- **Reasonable temperature** for comfort of employees should be maintained
- There should be arrangement to **dispose off wastes** and effluents.
- **Ventilation** should be adequate.

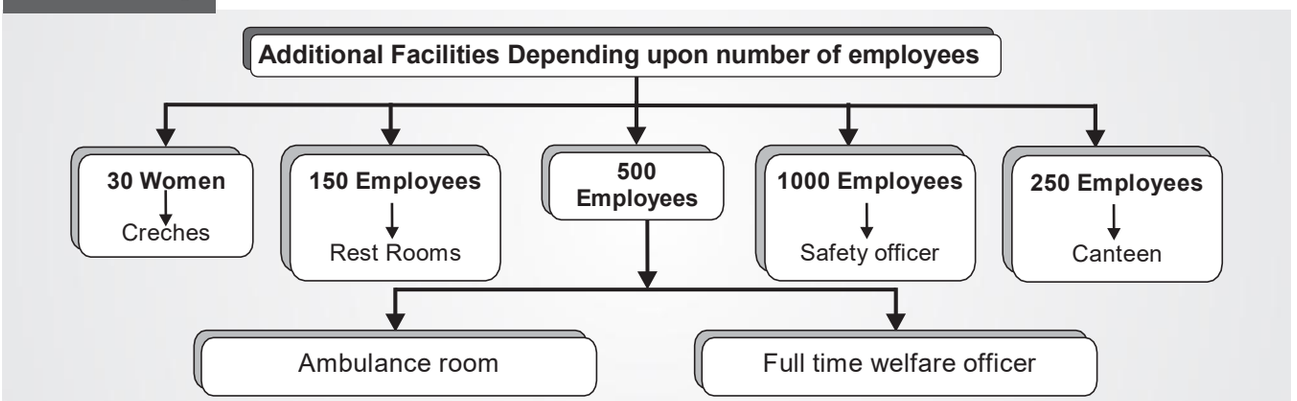
Quick Recap



Additional Facilities in case of Large Factories

- **Crèches**, if **30 or more women** workers are employed.
- **Rest rooms**/Centers with drinking facility, if **150** or more workers are employed.
- **Canteen, if 250** or more workers are employed.
- **Ambulance** room, if **500** or more workers are employed.
- Full time **Welfare Officer**, if **500** or more workers are employed.
- **Safety Officer, if 1000** or more workers are employed.

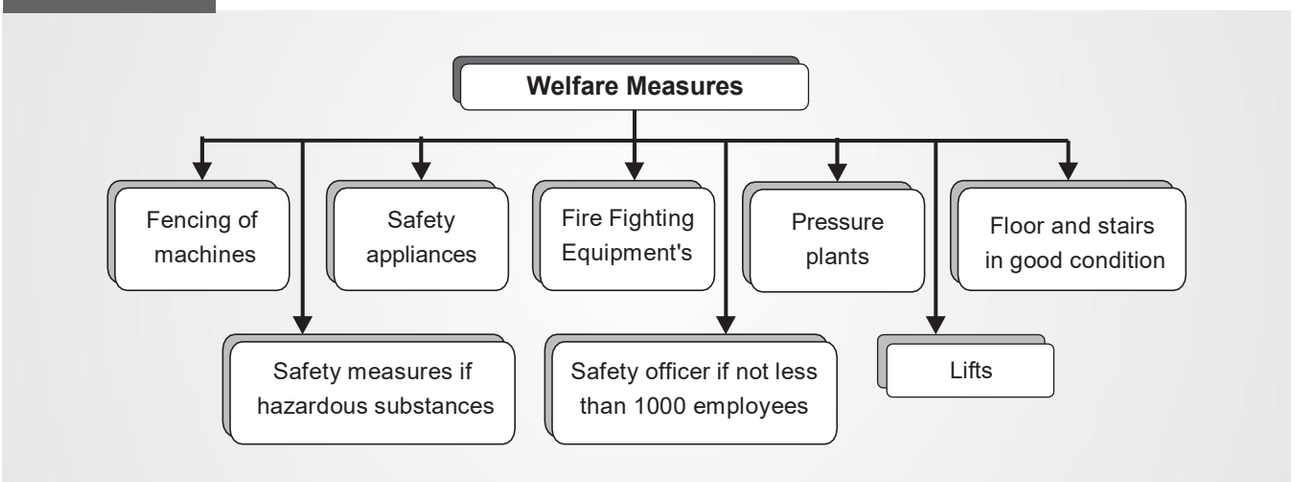
Quick Recap



Welfare Measures

- All **machines** should be properly **fenced** to protect workers when machinery is in motion.
- **Pressure Plant** should be checked as per the rules.
- **Floor, stairs,** and means of access should be of sound construction and free from obstructions.
- Adequate **firefighting equipment** should be available.
- In case of **hazardous substances**, additional **safety measures** have to be taken.
- **Safety appliances** for eyes, dangerous dust, gas, fumes should be provided.
- **Safety Officer** should be appointed if number of workers in factory is 1000 or more.
- **Hoist and lifts** should be in **good condition** and tested periodically.

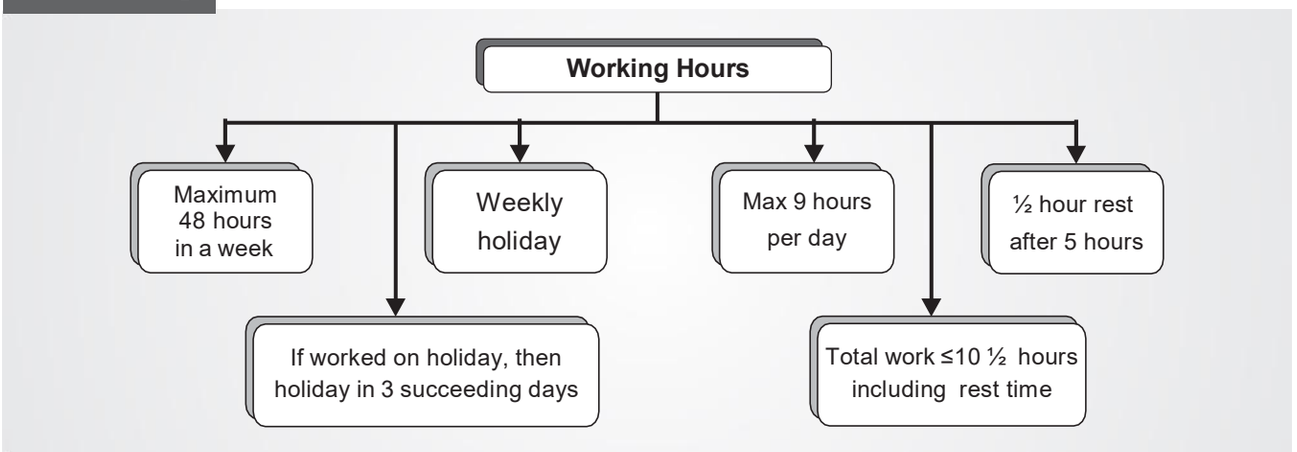
Quick Recap



Working Hours

- A worker cannot be employed for more than **48 hours in a week.**
- **Weekly holiday** is compulsory. If the worker is asked to work on weekly holiday, he should avail the holiday onone of the 3 days immediately after the normal day of holiday.
- A worker cannot be employed for more than **9 hours in a day.**
- At least ½ hour rest should be provided after every 5 hours.
- **Total period of work** including rest interval cannot be more than **10 ½ hours.**

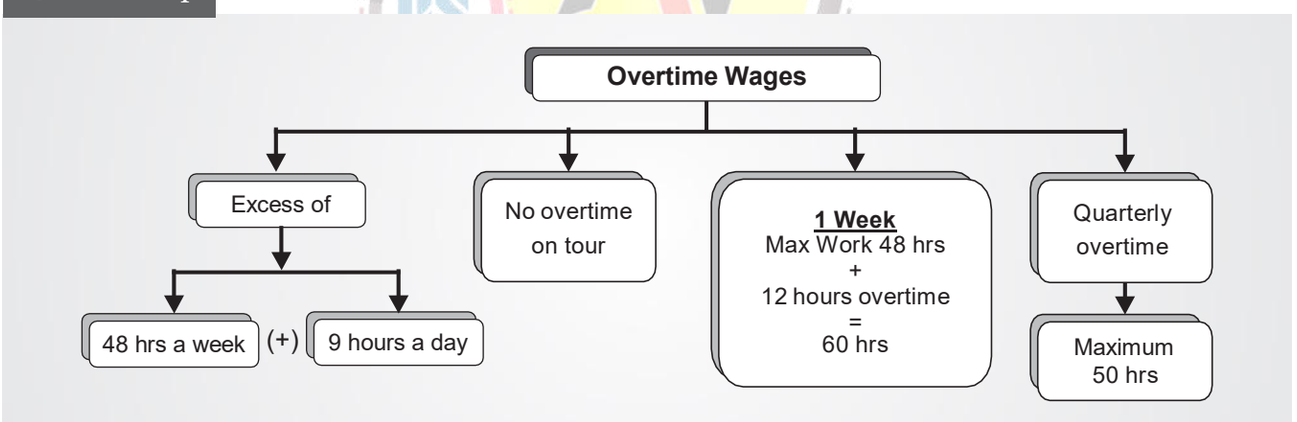
Quick Recap



Overtime Wages

- If a worker works beyond **9 hours a day** and **48 hours a week**, **overtime wages are paid at double the rate ofnormal wages.**
- However, overtime wages are **not payable on tour**.
- Total working hours **including overtime should not exceed 60 hours** in a week and total overtime hours in a **quarter should not exceed 50 hours.**

Quick Recap

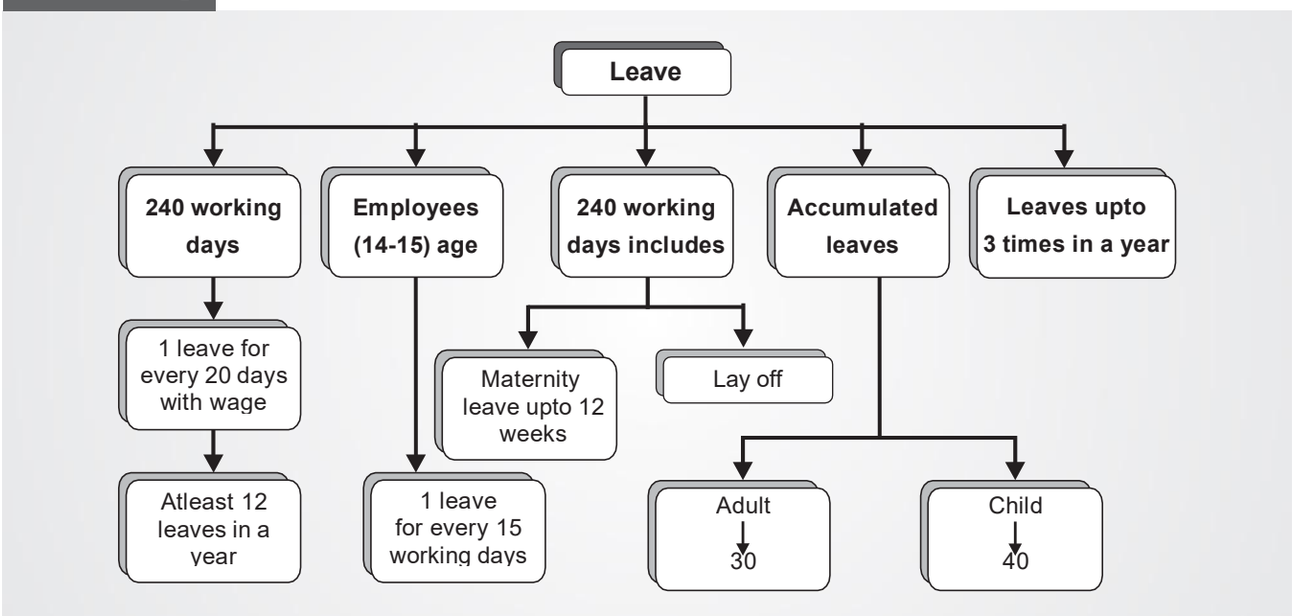


Leave

- Worker is entitled in every calendar year **annual leave** with wages at the rate of **1 day for every 20 days** of work performed in the previous calendar year provided that he had worked **for 240 days** or more in the previouscalendar year.
- Child worker (**who is 14 years and above but less than 15 years**) is entitled to 1 day leave with wages for every15 days.
- While calculating **240 days** earned leave, maternity leave up to **12 weeks** and lay off days will be considered butleave shall not be earned on those days.
- Leave can be accumulated up to **30 days in the case of an adult and 40 days in the case of a child**.
- Leave admissible is **exclusive of holidays** occurring during or at either end of leave period.
- Leave cannot be taken for more than **3 times in a year.**

Note: It may be noted that above-mentioned benefit are the minimum benefits. Employer can of course provideadditional or higher benefits.

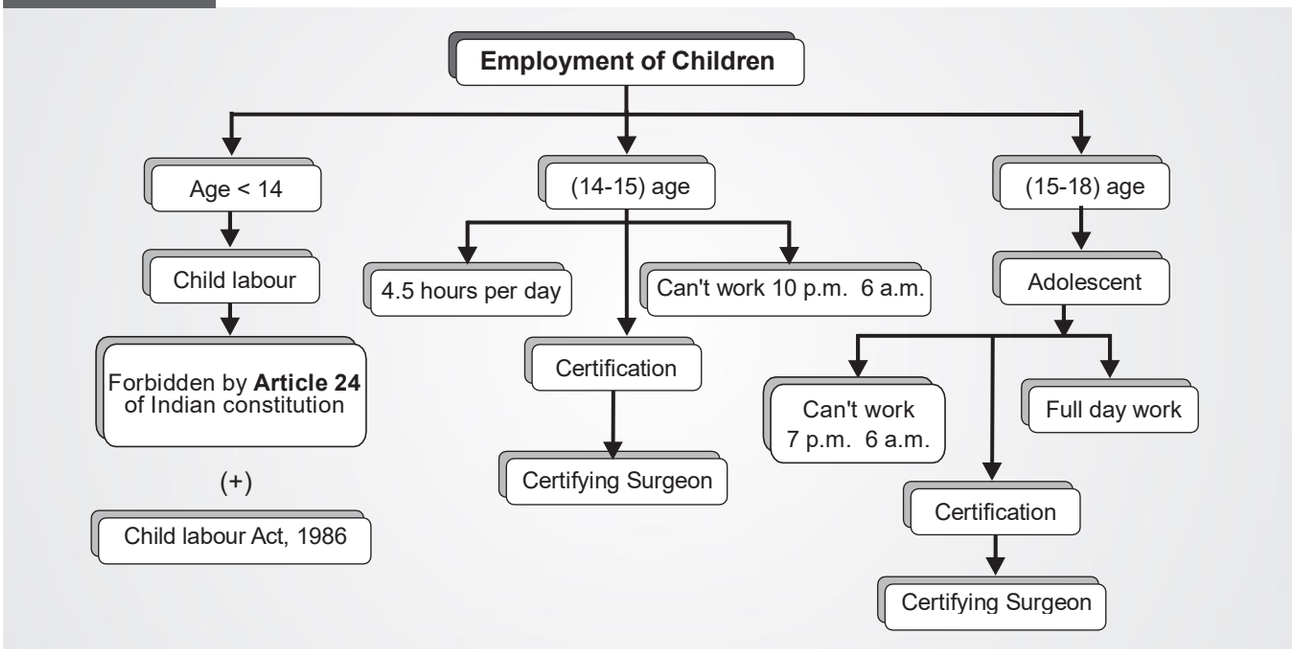
Quick Recap



Employment of Children

- Children **below 14 years** of age **cannot** be **employed**.
- A child of age 14 years but below 15 years can be employed for only **4.5 hours per day.** He should be **certifiedfit by certifying surgeon**. He cannot be employed during night from **10 p.m. to 6 a.m.**
- A person of **15 years of age but below 18 years** of age is termed as **adolescent.** He can be employed as an adultif he has certificate of fitness for a full day work from a **certifying surgeon**. An **adolescent is not permitted** towork between **7 p.m. to 6 a.m**.

Quick Recap



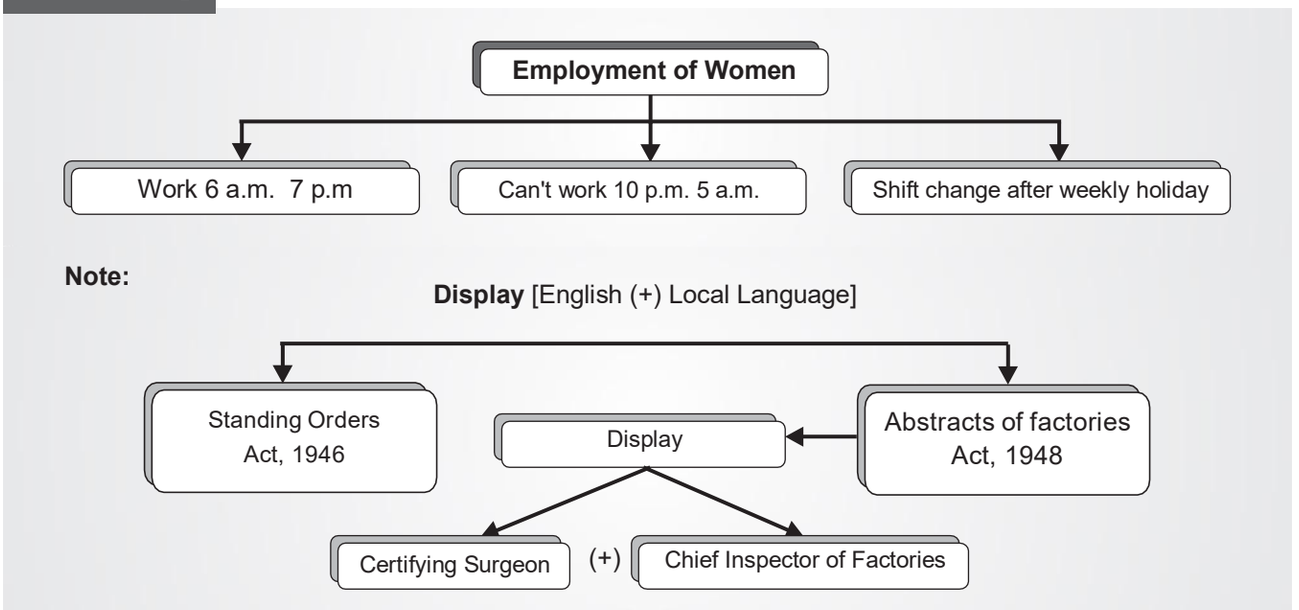
Employment of Women

- A women worker cannot be employed **beyond 6 a.m. to 7 p.m**.
- State Government can grant exemption to any factory from such provisions but in no case a women can be permitted to work during **10 p.m. to 5 a.m**. Shift change can be done only after weekly or other holiday or not in between.

Note: Display on Notice Board

- A Notice containing an **abstract of the Factories Act, 1948** and the rules made there under in **English andlocal language** shall be displayed by employer.
- The name and address of **Inspector of factories** and **Certifying Surgeon** shall also be displayed on the NoticeBoard.

Quick Recap



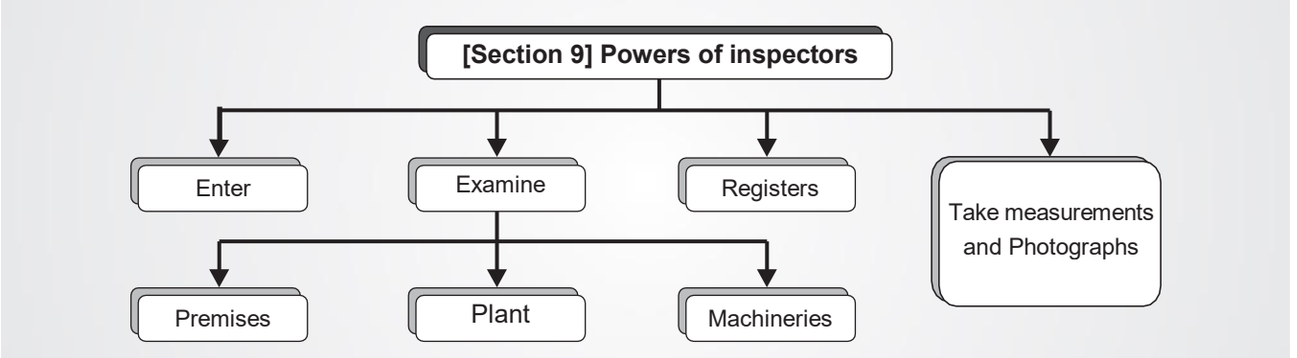
Powers of Inspectors

An inspector may exercise any of the following powers within the local limits for which he is appointed:

- He **can enter any place** which used or which is used or which, he has reasons to believe, is used as factory.
- He can make **examination** of the premises, plant, machinery etc.
- He can require the **production** of any prescribed register or any other document relating to the factory.
- Take **measurement and photographs** and make such recordings as he considers necessary for the purpose ofany examination.

AMIT VOHRA LAW CLASSES

Quick Recap



Special Provisions relating to Hazardous Process

Special provisions relating to hazardous process have been envisaged under Chapter **IV.A of the Factories Act, 1948.** This concept was inserted by the Factories (Amendment) **Act, 1987 and consists of Sections 41 A to 41 H.**These sections are as follows:

(Section 41A) Constitution of Site Appraisal Committees

A Committee under the name Site Appraisal Committee shall be constituted by the State Government to advise the Government in the matter of examination of applications for **establishment of factories involving hazardousprocess.**

The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardousprocess and make its recommendation to the State Government within a period of **ninety days** in the prescribedform.

(Section 41B) Compulsory Disclosure of Information by the Occupier

It is compulsory on the part of **the occupier of every factory involving a hazardous process to disclose all information** regarding dangers, including health hazards to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.

(Section 41C) Specified Responsibility of the Occupier in Relation to Hazardous Process Accurate and up-to-date health records or medical records of the workers of the factory who are exposed toany **chemical** toxic or any other **harmful substances** which are manufactured, stored, handled or transported and such records shall be maintained by the occupier of a factory involving any hazardous process.

(Section 41D) Inquiry Committee

In the event of occurrence of an extraordinary situation, the **Central Government** may appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures prescribed for the **health and safety** of the workersor the general public.

(Section 41E) Emergency Standards

The **Director-General** of **Factory Advice Serviceand Labour Institutes** may be directed by the Central Governmentto lay down emergency standards in respect of hazardous process.

(Section 41F) Permissible Limits of Exposure of Chemical and Toxic Substances

The Second Schedule added to the Act, indicates maximum permissible **limits of exposure of chemical and toxic**
substances in manufacturing processes in any factory.

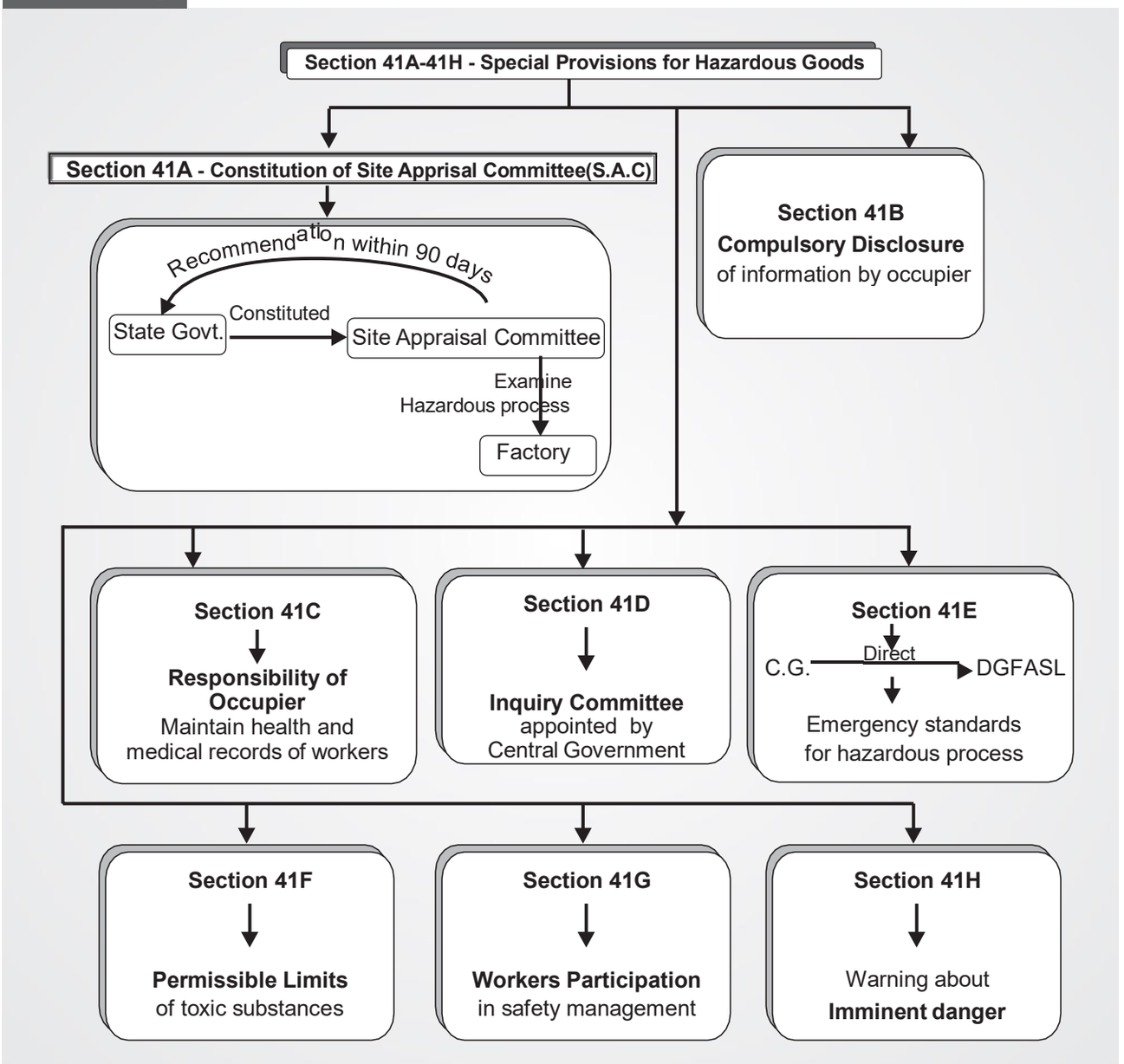
(Section 41G) Workers Participation in Safety Management

The occupier in every factory shall set up a safety committee consisting of equal number of representatives ofworkers and management to promote co-operation between the **workers and the management** in maintainingproper safety and health at work and to review periodically the measures taken in that behalf where hazardousprocess in involved.

(Section 41H) Warning about Imminent Danger

If there is reasonable apprehension regarding likelihood of imminent danger to the **lives or health** of the workers employed in a factory, they may bring the same to the notice of the **occupier, agent, manager, etc.**

Quick Recap



Relevant Judicial Interpretations

CASE LAW	Arun Kumar Bali Vs Government, NCT of Delhi
Punishment to Welfare Officer No punishment can be imposed on welfare officer without prior sanction of Chief Commissioner of Factories. However, simple order of termination as per terms of appointment is not punishment and such termination order is valid.	
CASE LAW	**Ardeshir H. Bhiwandiwala Vs State of Bombay**
The Supreme Court held that salt manufacture from sea water by employing different processes is a manufacturing and the workers engaged in this work are workers within the meaning of factories Act.	

CASE LAW	Shankar Balaji Wale Vs State of Maharashtra

Price-rate workers can be workers within the definition of worker in the Act, but they must be regular workers and not workers whocome and work according to their will.

CASE LAW	V.P. GopalaRao Vs Public Prosecutor

The Supreme Court held that Sun cured tobacco leaves subjected to processes of Company's main Factory for their use in manufacturingCigarette is a manufacturing process under the Factories Act.

CASE LAW	Bharati Udyog Vs Regional Director ESI Corporation

The cutting of the woods or converting the wood into planks is a part of the manufacturing activity.

CASE LAW	Workmen of Delhi Electric Supply Undertaking Vs Management of DESU

The process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricitygenerated at the power station does not fall within the definition of manufacturing process.

CASE LAW	Suraksha Karamchari Union Vs Union of India

Employees working in canteens in industrial establishments run by Managing Committee are not employees of the ManagingCommittee, but are employees of occupier.

CASE LAW	CCI Vs ESIC

Preparation of food and beverages and its sale to members of a club is a manufacturing process.

CASE LAW	Shinde Vs Bombay Telephones

A person is said to be employed in the factory if his duties are connected with the business of the factory, no matter whether he standsoutside the factory premises or inside it. Receiving products in bulk and packing as per client's requirements amounts to manufacture.

CASE LAW	Works Manager, Central Railway Workshop Jhansi Vs Vishwanath and others

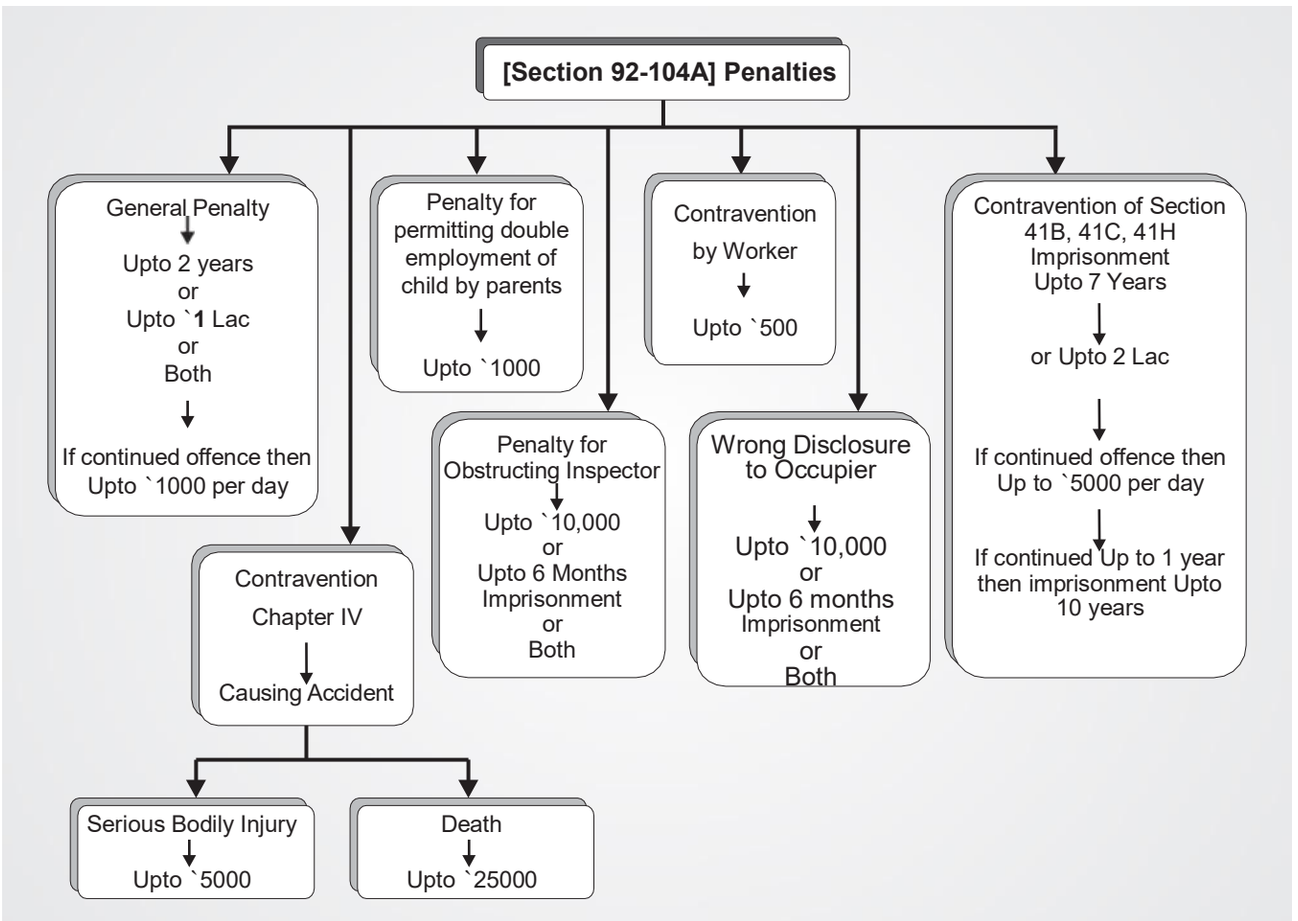
It was held that the definition of worker includes those employees who are entrusted solely with the clerical duties.

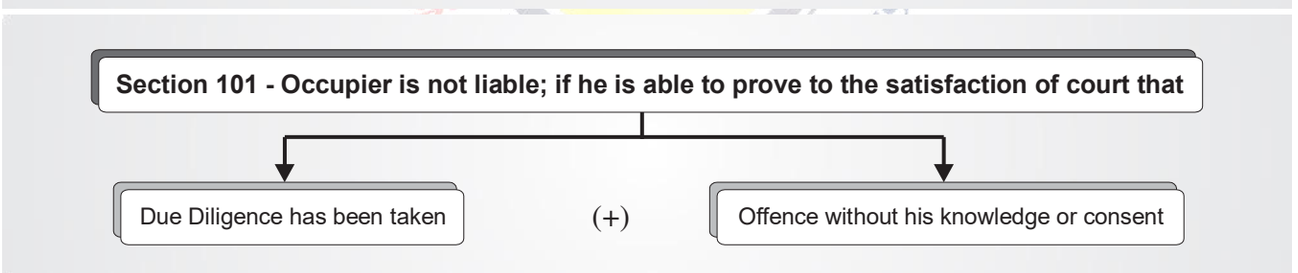
CASE LAW	Lal Mohammad. Vs Indian Railway Construction Co. Ltd

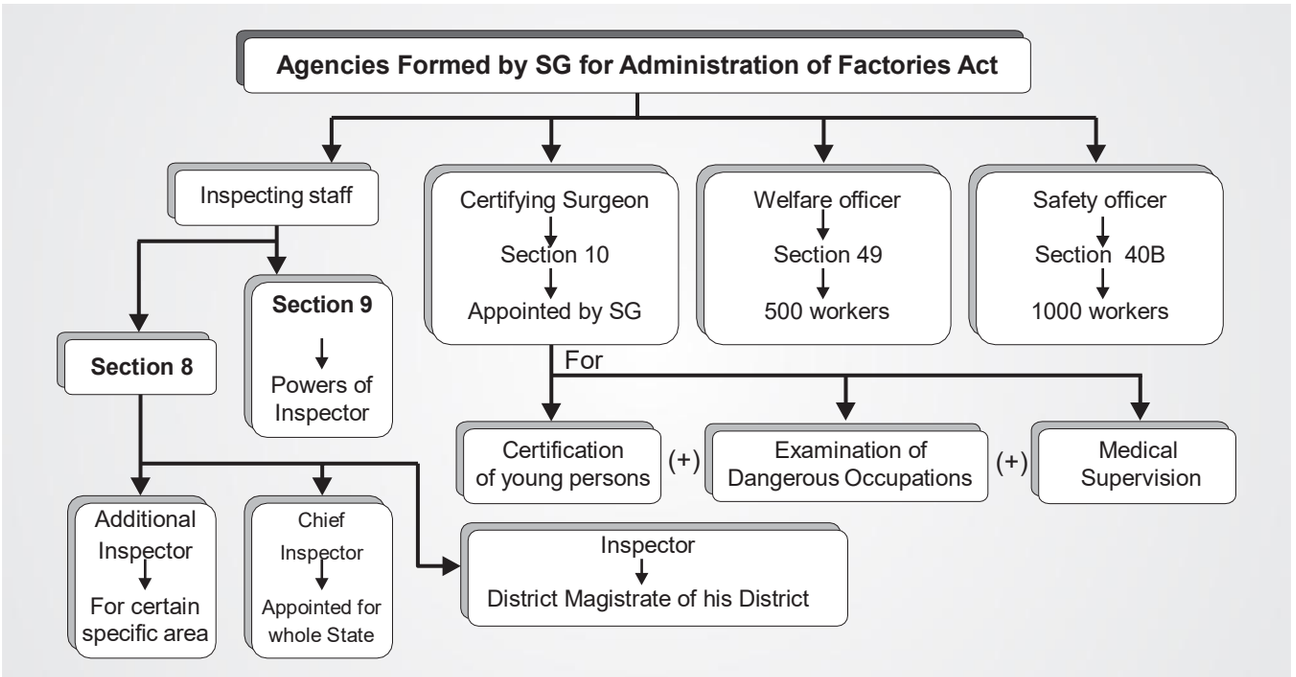
Construction of railway- use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying downrailway line amounts to manufacturing process.

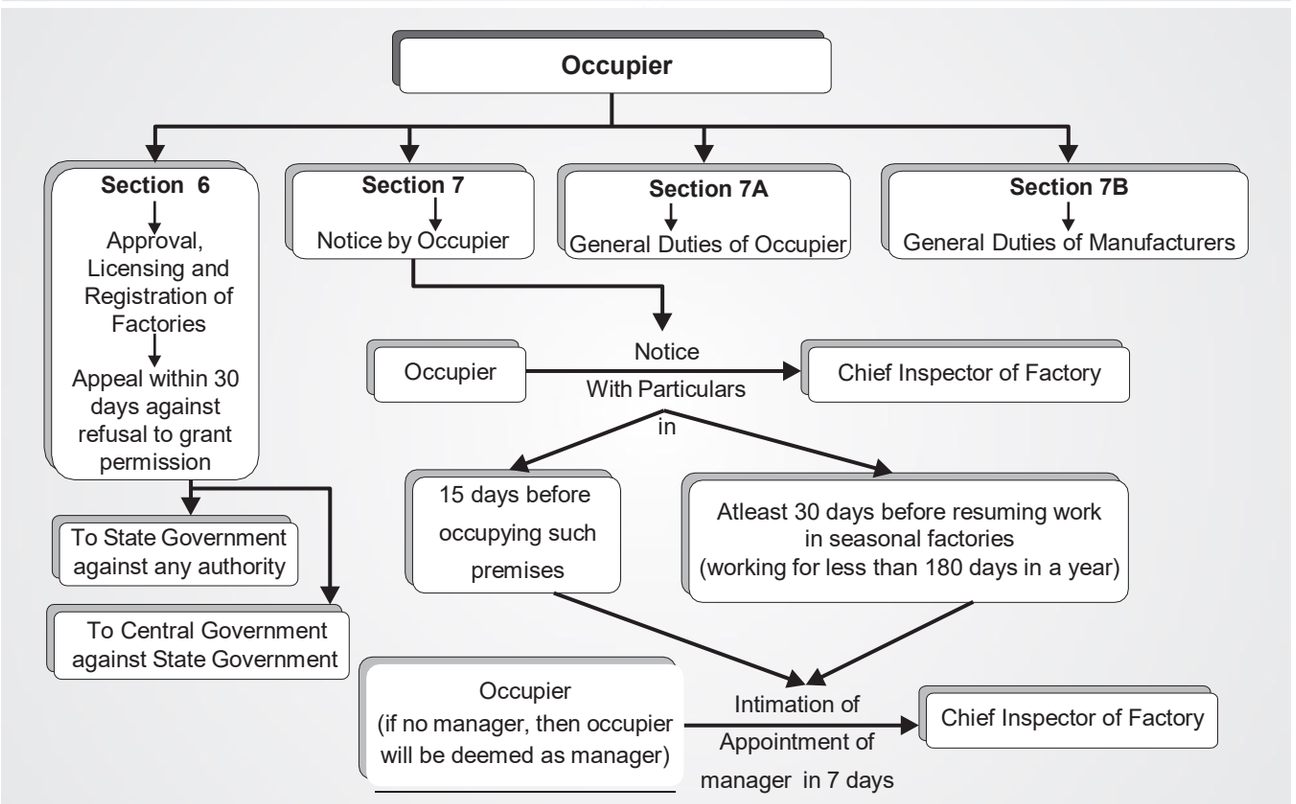
CASE LAW	J.K. Industries Ltd. Vs Chief Inspector of Factories

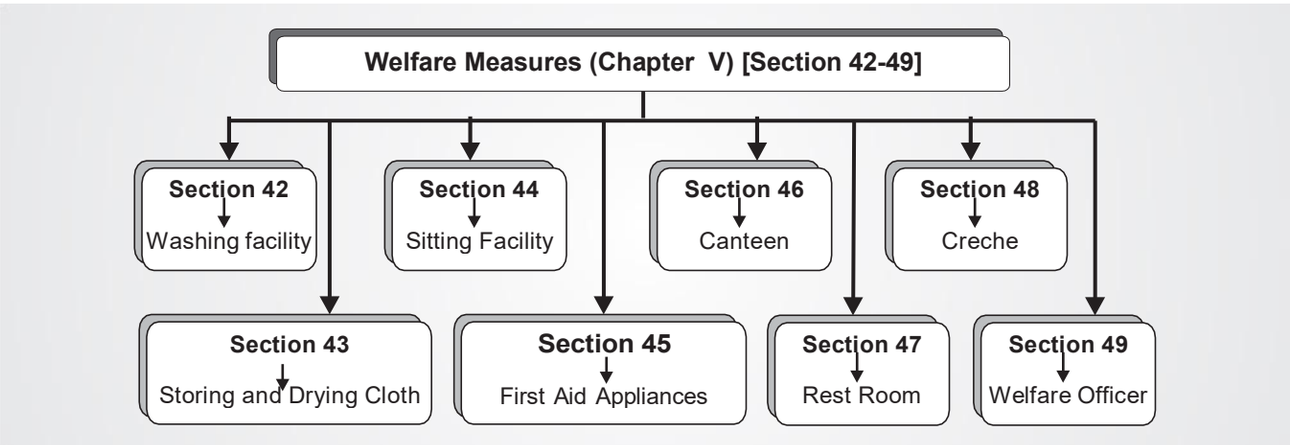
If a factory is being run by a company, then only a director of that Company can be the occupier for the purposes of the Act.

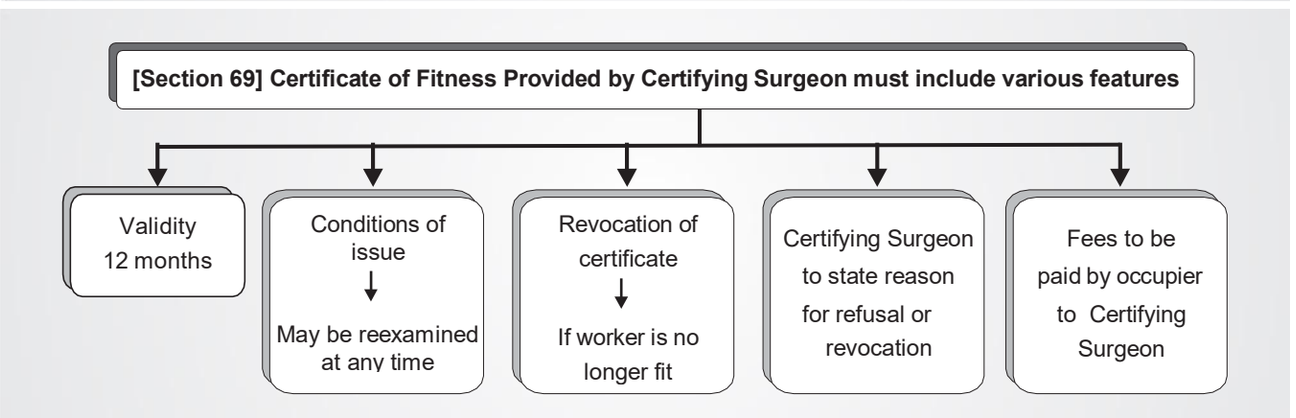

[Section 92-104A] Penalties
General Penalty
Upto 2 years
or
Upto `1 Lac
or
Both
If continued offence then
Upto `1000 per day
Penalty for permitting double employment of child by parents
Upto `1000
Contravention by Worker
Upto `500
Contravention of Section 41B, 41C, 41H
Imprisonment
Upto 7 Years
or Upto 2 Lac
If continued offence then
Up to `5000 per day
If continued Up to 1 year then imprisonment Upto 10 years
Penalty for Obstructing Inspector
Upto `10,000
or
Upto 6 Months
Imprisonment
or
Both
Wrong Disclosure to Occupier
Upto `10,000
or
Upto 6 months
Imprisonment
or
Both
Contravention
Chapter IV
Causing Accident
Serious Bodily Injury
Upto `5000
Death
Upto `25000


Section 101 - Occupier is not liable; if he is able to prove to the satisfaction of court that
Due Diligence has been taken
(+)
Offence without his knowledge or consent


Agencies Formed by SG for Administration of Factories Act
Inspecting staff
Certifying Surgeon
Section 10
Appointed by SG
Welfare officer
Section 49
500 workers
Safety officer
Section 40B
1000 workers
Section 8
Section 9
Powers of Inspector
For
Certification of young persons
(+)
Examination of Dangerous Occupations
(+)
Medical Supervision
Additional Inspector
For certain specific area
Chief Inspector
Appointed for whole State
Inspector
District Magistrate of his District


Occupier
Section 6
Approval, Licensing and Registration of Factories
Appeal within 30 days against refusal to grant permission
Section 7
Notice by Occupier
Section 7A
General Duties of Occupier
Section 7B
General Duties of Manufacturers
Occupier
Notice
With Particulars
Chief Inspector of Factory
in
15 days before occupying such premises
Atleast 30 days before resuming work in seasonal factories (working for less than 180 days in a year)
To State Government against any authority
To Central Government against State Government
Occupier
(if no manager, then occupier will be deemed as manager)
Intimation of
Appointment of
manager in 7 days
Chief Inspector of Factory





CS AMIT VOHRA LAW CLASSES

Chapter - 16 Unit - 2
Contract Labour Act,1970

List of Sections

Sections	Particulars of Sections
1	Scope and Applicability
2	Definitions
2 (1) (a)	Appropriate Government
2 (1) (b)	Contract Labour
2 (1) (c)	Contractor
2 (1) (d)	Control Industry
2 (1) (e)	Establishment
2 (1) (g)	Principal Employer
2 (1) (i)	Workman
3	Central Advisory Board
4	State Advisory Board
5	Power to Constitute Committees
6	Appointment of Registring Officer (R.O)
7	Registration of certain establishment
8	Revocation of registration in certain cases
9	Effect of non – registration
10	After – effect of abolition of Contract Labour
11	Appointment of licensing officer
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13	Grant of licenses
14	Revocation, suspension and amendment of license
15	Appeals
16	Canteen
17	Restroom
18	Other facilities
19	First aid facilities
20	Liability of principal employer in certain cases
21	Responsibility for payment of wages
22	Penalty for obstructing inspector
23	Penalty for contravention of act or rules
24	Other offences or miscellaneous penalty
25	Offences by companies
26	Cognizance of offences
27	Limitation of prosecution
28	Inspecting staff
29	Registers and other records to be maintained

ANIL VOHRA LAW CLASSES

Purpose/Objective of the Act

The purpose of the Act is to **regulate the employment of Contract Labour** and to provide for **abolition and prohibition of contract labour** in certain cases.

Scope and Applicability of the Act

The Act extends to the **whole of India**. According to **Section 1(4)**, it applies:

a. To every **establishment** in which **twenty or more workmen** are employed or were employed on any dayof the **preceding twelve months** as contract labour.

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

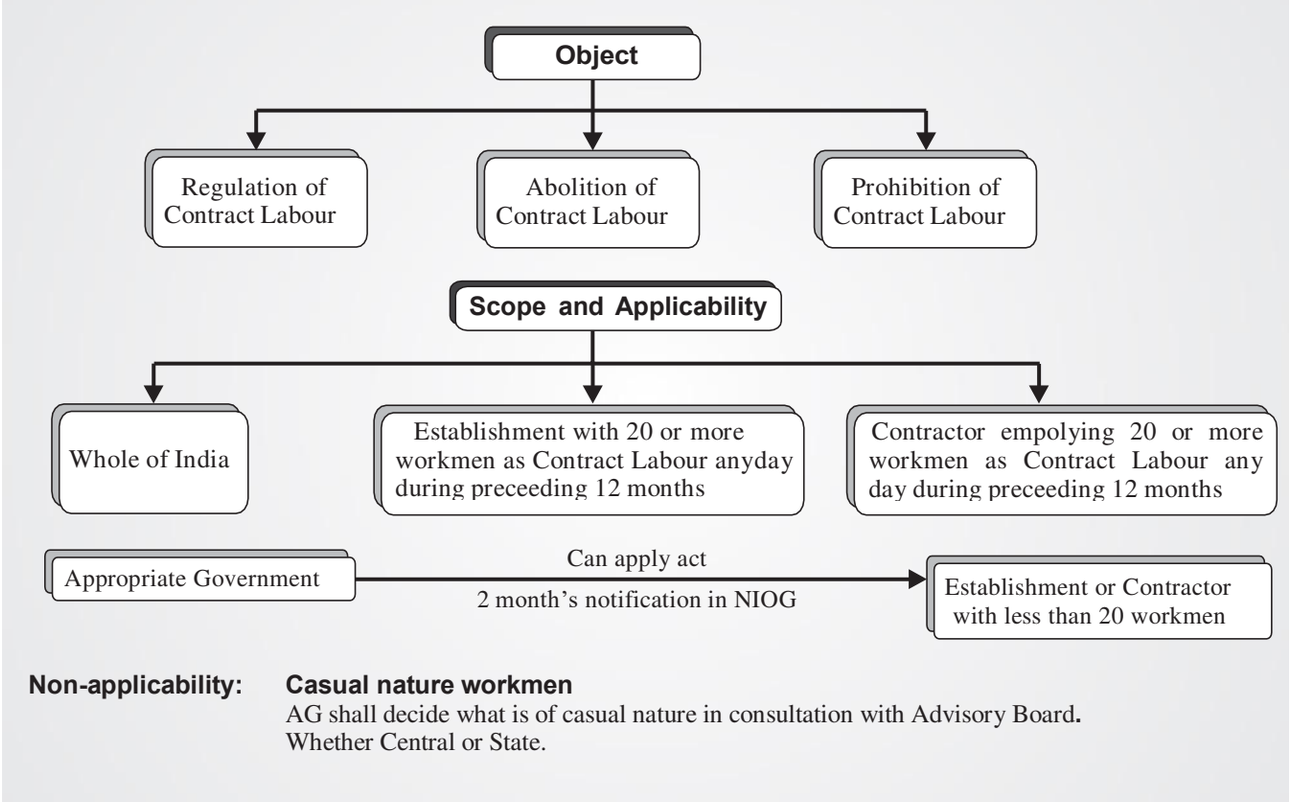
The **Appropriate Government** may, after giving **not less than two months notice** of its intention to do so, **by notification in the Official Gazette, apply the provisions** of this Act to any establishment or contractor employing such number of workmen **less than twenty** as may be specified in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

Act not to apply to certain establishments

According to **Section 1(5)**, the Act shall **not apply** to establishments in which work only of an intermittent or
casual nature is performed.

If a **question** arises whether work performed in an establishment is of an intermittent or **casual nature**, the**Appropriate Government** shall **decide** that question after consultation with the **Central Board** or, as the case may be, with the **State Board**, and its **decision shall be final**.

Quick Recap



Define the Following Terms

- **[Section 2(1)(a)] Appropriate Government**

"Appropriate Government" means

a. In relation to an establishment in respect of which the Appropriate Government under the **IndustrialDisputes Act, 1947** is the **Central Government**, and the State Government.
b. In relation to any **other establishment**, the Government of the **State** in which that other establishment issituated.

- **[Section 2(1)(b)] Contract Labour**

A **workman** is deemed to be employed as contract labour in or in relation to the work of the establishment if he is hired for such work by or through a contractor, with or without the knowledge of the principal employer.

- **[Section 2(1)(c)] Contractor**

"Contractor", in relation to an establishment, means a person **who undertakes to produce** a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who **supplies contract labour** for any work of the establishment and includes a sub-contractor.

- **[Section 2(1)(e)] Establishment**

Establishment means any office or department of Government or a local authority or any place where any industry, trade, business, manufacturing, or occupation is going on. Every such **establishment** is required to get itself **registered under the Act**.

- **[Section 2(1)(g)] Principal Employer**

"Principal Employer" means

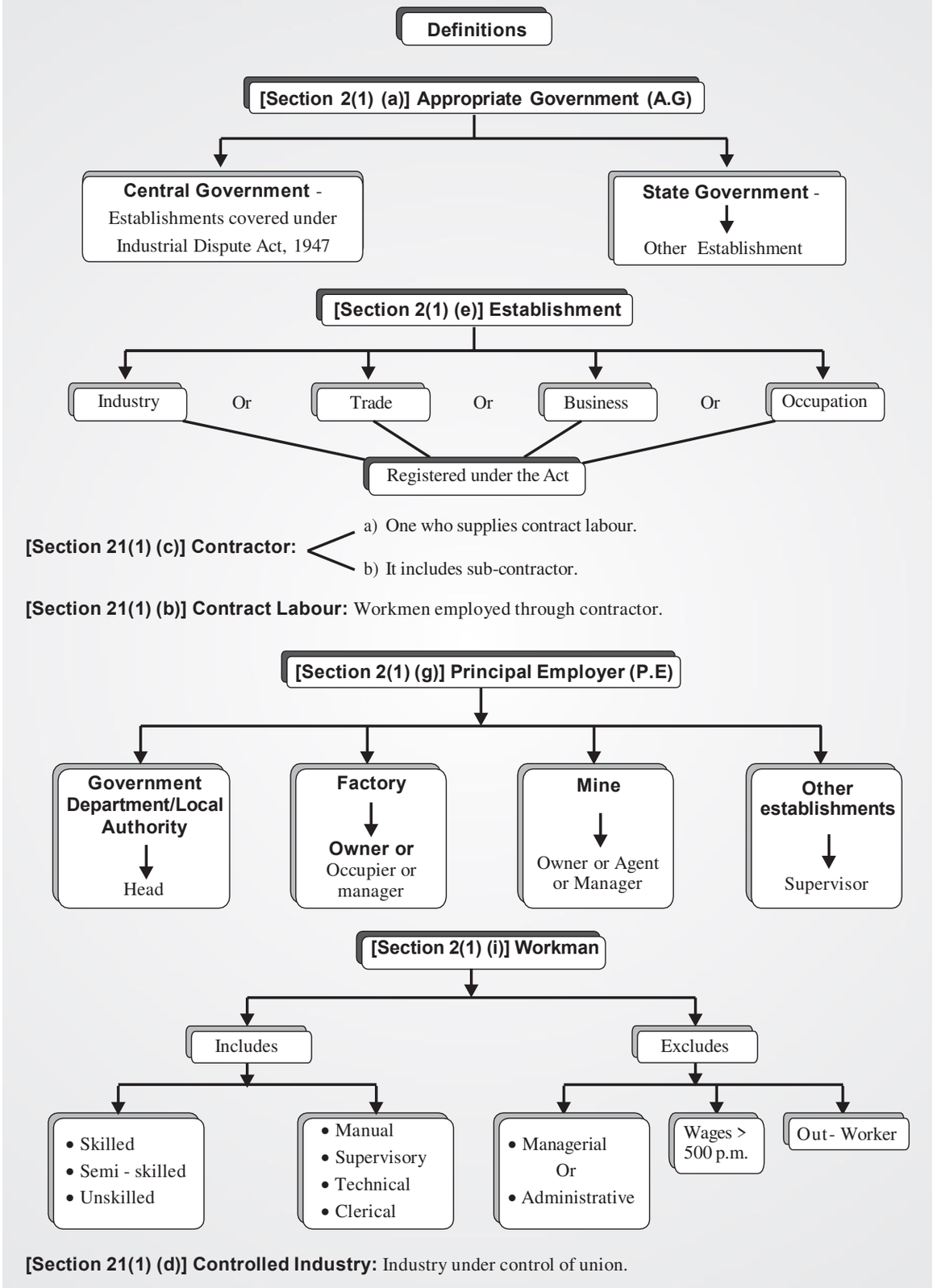
a. In relation to any office or department of the **Government** or a local authority, the **head of** that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
b. In a **factory**, the owner or **occupier** of the factory and where a person has been named as the **manager** of the factory under the Factories Act, 1948, the person so named.
c. In a **mine**, the owner or agent of the mine and where a person has been named as the **manager of themine**, the person so named.
d. In any **other establishment**, any person responsible for the **supervision** and control of the establishment.

- **[Section 2(1)(i)] Workman**

"Workman" means any person employed in or in connection with the work of any establishment to do any **skilled, semi-skilled** or **unskilled**, **manual**, **supervisory**, **technical** or **clerical** work for hire or reward, whether the terms of employment be expressed or implied, but **does not include** any such person:

- Who is employed mainly in a **managerial or administrative capacity**, or
- Who, being employed in a **supervisory capacity** draws wages exceeding **five hundred rupees per mensem** or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him,functions mainly of a managerial nature, or
- Who is an **out-worker**, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of trade or business of the principal employer andthe process is to be carried out either in the home of the out worker or in some other premises not being premises under the control and management of the principal employer.

Quick Recap


Definitions
[Section 2(1) (a)] Appropriate Government (A.G)
Central Government - Establishments covered under Industrial Dispute Act, 1947
State Government - Other Establishment
[Section 2(1) (e)] Establishment
Industry
Or
Trade
Or
Business
Or
Occupation
Registered under the Act
[Section 21(1) (c)] Contractor:
a) One who supplies contract labour.
b) It includes sub-contractor.
[Section 21(1) (b)] Contract Labour: Workmen employed through contractor.
[Section 2(1) (g)] Principal Employer (P.E)
Government Department/Local Authority
Head
Factory
Owner or Occupier or manager
Mine
Owner or Agent or Manager
Other establishments
Supervisor
[Section 2(1) (i)] Workman
Includes
Excludes
• Skilled
• Semi - skilled
• Unskilled
• Manual
• Supervisory
• Technical
• Clerical
• Managerial
Or
• Administrative
Wages > 500 p.m.
Out - Worker
[Section 21(1) (d)] Controlled Industry: Industry under control of union.

The Advisory Boards

Central Advisory Board

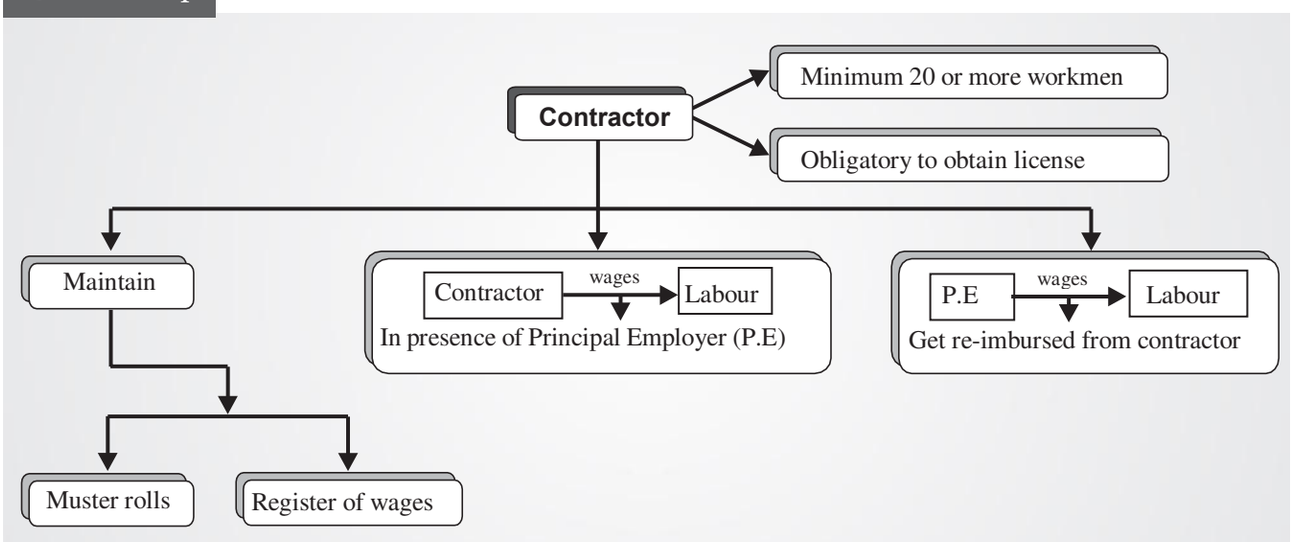
Section 3 requires the Central Government to constitute a Central Advisory Contract Labour Board to **advisethe Central Government** on such matters arising out of the administration of the Act as may be referred to itand to **carry out other functions assigned** to it under the Act.

Contractor

The Act applies to every contractor who **employs 20 or more workmen**. The contractor covered under this Actis required to **obtain a license** under this Act.

- A contractor is required to **maintain Muster Rolls and Register of Wages**.
- He is required to pay wages to workmen in time and in the presence of authorized representative of principalemployer.
- If the **contractor fails to make payment** of wages, **principal employer is liable** to make payment of wagesto contract labour. However, he can recover this amount from the contractor.
- A contractor is also required to provide certain facilities to the contract labour such as canteen facilities, restrooms, first aid, drinking water, toilets, etc.

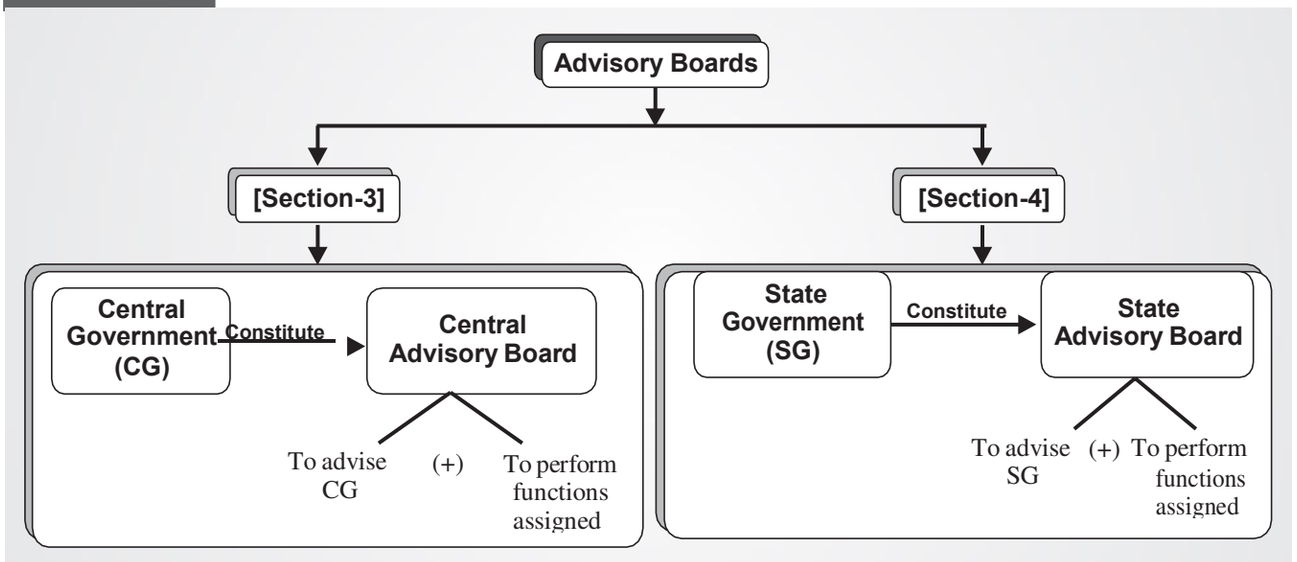
Quick Recap



State Advisory Boards

Section 4 similarly requires the State Government to constitute the State Advisory Contract Labour Board to**advise the State Governments** on such matters arising out of the administration of the Act as may be referredto it and to **carry out other functions assigned** to it under the Act.

Quick Recap



Prohibition on Employment of Contract Labour

Appropriate Government can prohibit employment of contract labour in any process, operation, or work in any establishment, by **issuing a notification**. Before issuing such order in respect of any establishment, appropriateGovernment will consider the following factors:

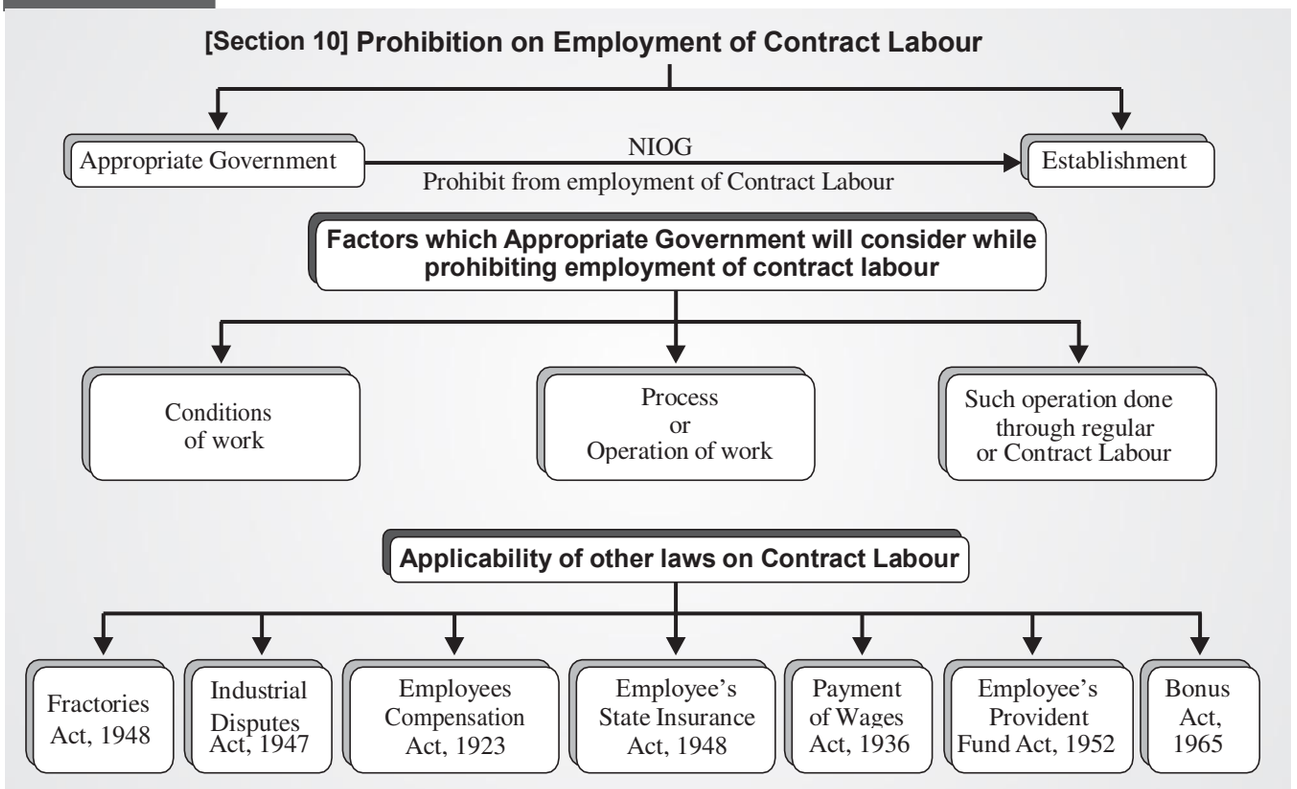
- Conditions of work and benefits provided to contract labour.
- Whether process, operation or work is incidental or necessary for the industry, trade, or business.
- Whether such process, operation, or work is done ordinarily through regular workmen or contract labour inother similar establishments.

Applicability of Other Laws to Contract Labour

Besides Contract Labour (Regulation and Abolition) Act, following Acts are also applicable to contract labour:

1) Factories Act, 1948
2) Industrial Disputes Act, 1947
3) Employees' Compensation Act, 1923
4) Employees' State Insurance Act, 1948
5) Payment of Wages Act, 1936
6) Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Quick Recap



Registration of Establishments Employing Contract Labour

In order to secure its objectives and purposes, the Act contains provisions for registration of establishments employing contract labour.

[Section 6] Appointment of Registering Officer

Section 6 empowers the **Appropriate Government** to appoint by **Notification in the Official Gazette**, persons being **gazette officers** of Government, to be registering officers and define the limits within which a Registering Officer shall exercise the powers conferred on him by or under the Act.

[Section 7] Registration of Certain Establishments

Every **establishment** covered by the Act, if it wants to engage **twenty or more persons** through a contractor has to get **itself registered**.

Section 7 of the Act lays down that every Principal Employer of an **establishment** to which the Act applies shallmake an **application** to the **registering officer** in the prescribed manner for registration of the establishment within the **prescribed time** limit. A **registration fee** varying from **`20 to `500** which is **related** to the **number ofworkmen** employed as contract labour, is payable.

If the application is complete in all respects the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration in the prescribed form.

[Section 8] Revocation of Registration in Certain Cases

The registration can be revoked in the following circumstances:

1. If the registering officer is satisfied, either on a reference made to him in his behalf or otherwise, that the registration has been obtained by **mis-representation or suppression of any material** fact,

Or

2. That the registration has become useless and become **ineffective** for any other reason and, therefore, requires to be revoked.

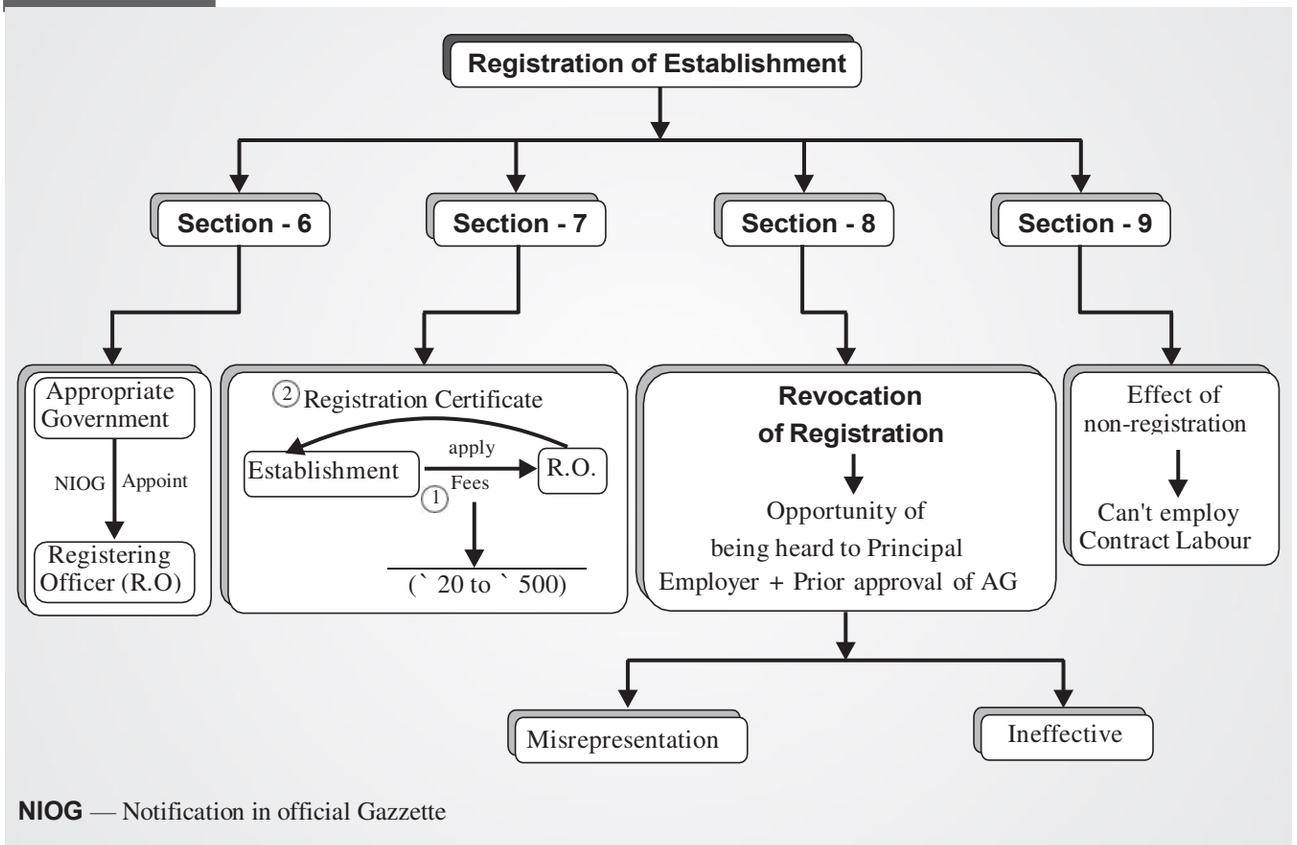
In both the cases, the registering officer shall give an **opportunity to the Principal Employer** of the establishment to be heard. He will also obtain **previous approval of the Appropriate Government** in case the registration is to be revoked.

[Section 9] Effect of Non-Registration

No principal employer of an establishment to which the Act applies can **employ contract labour**, if

- He has **not obtained** the **certification** of registration; or
- A **certificate** has been **revoked** after being issued.

Quick Recap



NIOG — Notification in official Gazzette

[Section 10] After-effect of Abolition of Contract Labour

At present there is **no provision** in the Act for **absorption of contract labour** in the event of prohibition of employment of contract labour in any category of work/jobs under **Section 10** of the Act. There have been **complaints** that **contract workers** are being **thrown out** of employment in the jobs covered by the relevant notification.

CASE LAW	Dena Nath case 1991

It overruled its earlier decision of two member bench of the Court (Dena Nath case 1991). In this case, it was held that High Court in exercise of its power under Article 226 could not drive at the absorption of contract labour (on its abolition) as direct employees of theprincipal employer.

CASE LAW	Gujarat Electricity Board, AIR 1995 SC 2942

The Court also overruled another important case (Gujarat Electricity Board, AIR 1995 SC 2942) wherein it was held that on abolitionof contract labour their employees are free to raise their cause for reference under Section 10 of Industrial Disputes Act, 1947 seeking absorption of contract labour. After abolition of contract labour system, if the principal employer omits to able by the law and fails to absorb the contract labour worked in the establishment on regular basis, the workmen have no option but to seek redress under Article 226 of the Constitution.

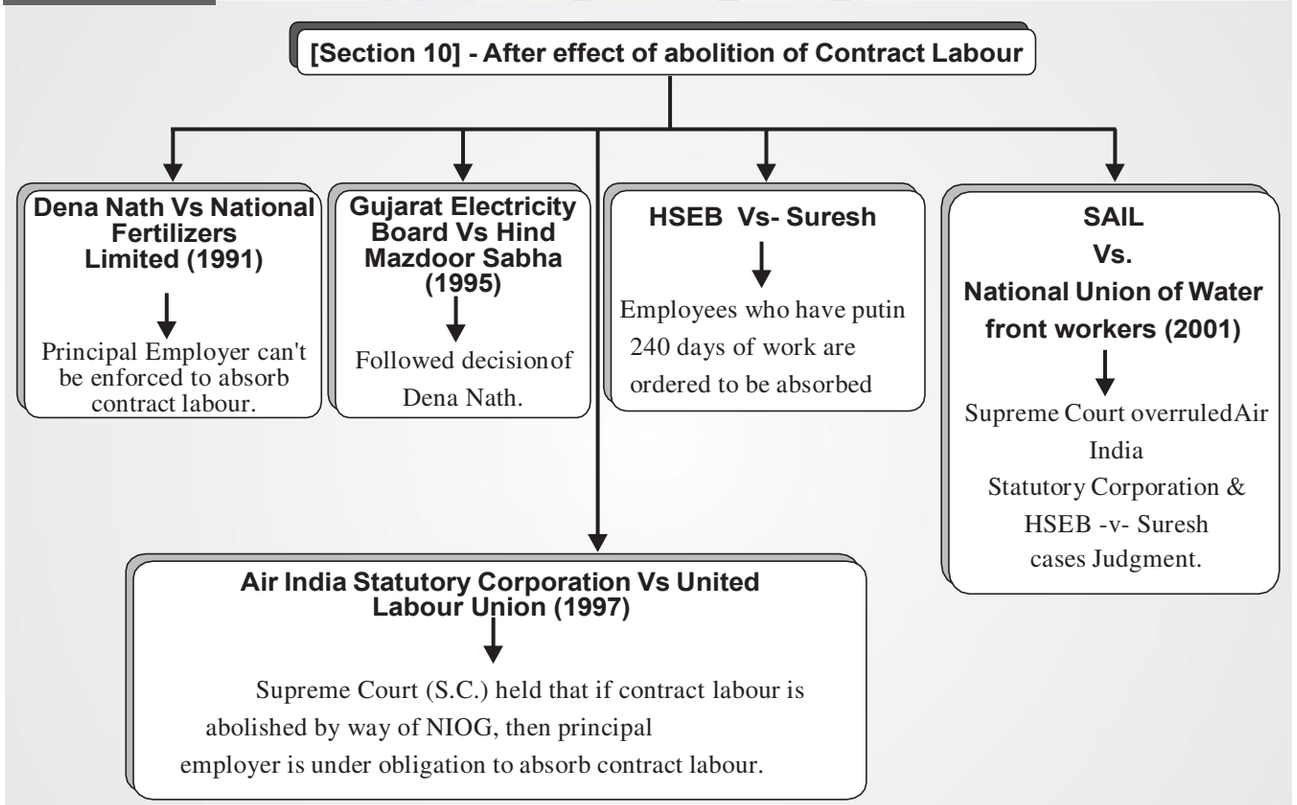
CASE LAW	Air India Statutory Corporation vs. United Labour Union, AIR 1997 SC 645

On the crucial question as to after effect of abolition of contract labour under Section 10 of the Act, the Supreme Court in Air IndiaStatutory Corporation vs. United Labour Union, AIR 1997 SC 645, held that a High Court in exercise of its jurisdiction under Article 226 of the constitution, can direct a principal employer in an appropriate case to absorb the workman concerned after abolition of thecontract labour.

CASE LAW	Steel Authority of India vs. National Union of Water Front Workers and others, AIR 2001 SC 3527

In Steel Authority of India vs. National Union of Water Front Workers and others, AIR 2001 SC 3527, the Supreme Court overruledthe judgement delivered in the Air India Statutory Corporation Case. The Apex court held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under Section 10(1) prohibiting employment of contract labour in any process or operation or other work in any establishment.

Quick Recap



Current Status: Principal employer can't be ordered to absorb contract labour in concerned establishment.

Conclusion

Consequently, the principal employer cannot be required to order absorption of contract labour workingin the concerned establishment.

[Section 11] Appointment of Licensing Officer and Licensing of Contractors

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors.

Section 11 empowers the **Appropriate Government** to **appoint Gazetted Officers** to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing officers and the limits of their jurisdiction are to be notified in the Official Gazette.

[Section 12] Licensing of Contractors

Under **Section 12** of the Act, no contractor to whom the Act applies can undertake or execute any work thoughcontract labour except under and in accordance with the license issued in that behalf by the licensing officer. The **license** may contain such **conditions** including, in particular, conditions as to **hours of work**, **fixation of wages** and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules framed under the Act.

The license shall be issued on the payment of **prescribed** fee and on the **deposit of security**, if any, for thedue performance of the conditions prescribed in the license. The licensee fee ranges from **`5 to `125** depending on the number of workmen employed by the contractor. The license is **not-transferable**.

[Section 13] Grant of License

- An application for the grant of license has to be made in the prescribed form.
- It should contain particulars regarding the location of establishment, nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.
- The license is issued after necessary investigation by the licensing officer. It is valid for the period specifiedtherein (12 months under the Central rules) and may be renewed from time to time for such period and onpayment of such fees and on such conditions as may be prescribed.

[Section 14] Revocation, Suspension and Amendment of License

If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that

(a) the license has been obtained by misrepresentation or suppression of any material fact or

(b) the holder of license has, without reasonable cause, failed to comply with the conditions subject to which the license has granted or has contravened of any of the provisions of the Act or the rules made there under,

The licensing officer may revoke or suspend the license. He has also the powers to forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject the license wasgranted.

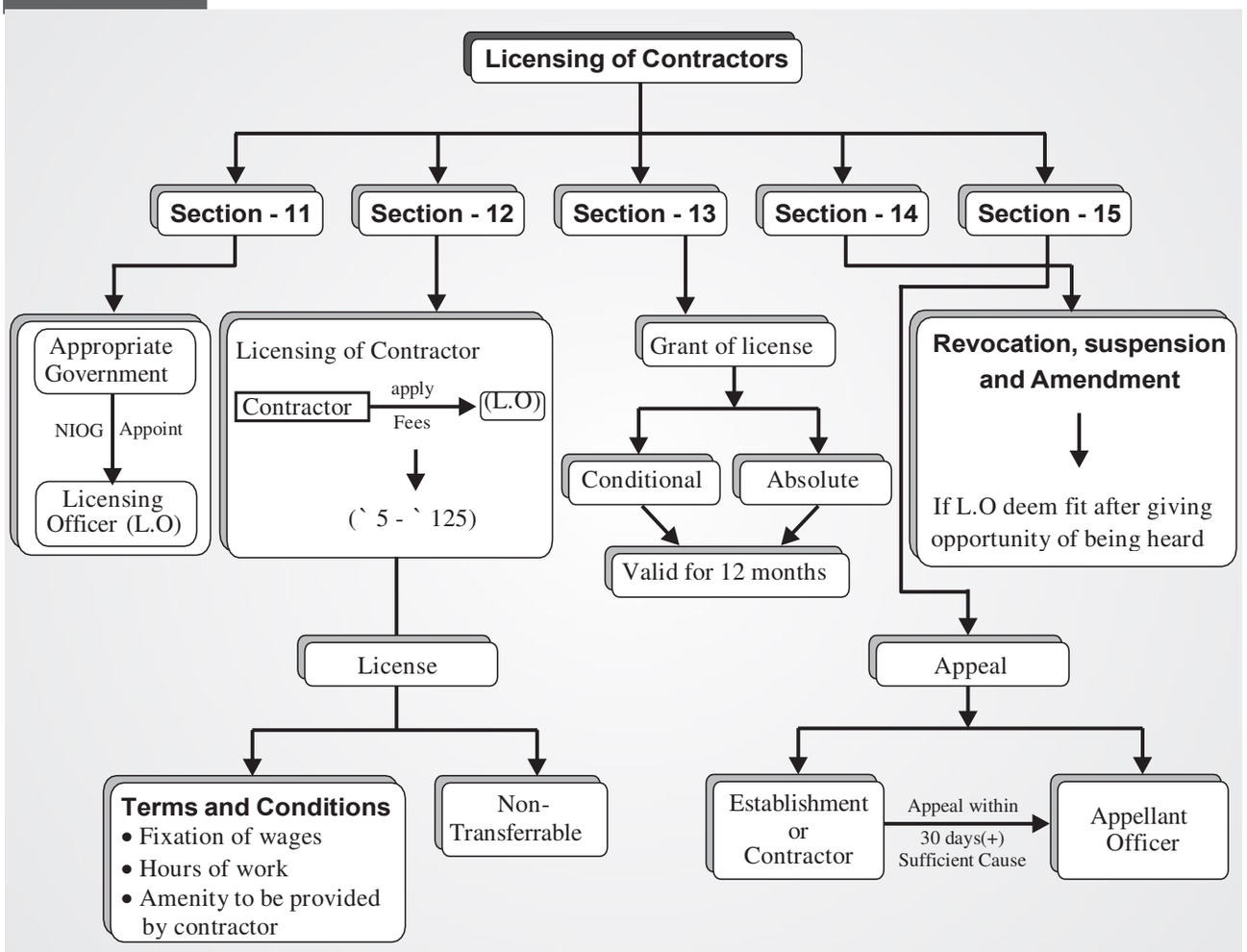
However, before revoking or suspending the license or ordering forfeiture of the security deposit by the contractor, the licensing officer has to give the holder of the license an opportunity of showing cause. The Licensing Officer may vary or amend a license subject to the rules that be made in this behalf.

[Section 15] Appeals

The Act makes provision for appeals against orders relating to grant of registration to establishments, revocation of registration and revocation/suspension of licenses. The aggrieved person may within 30 days from the date on which the order is communicated to him prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the Appropriate Government. The appellant officer may entertain an appeal evenafter the expiry of 30 days, if he is satisfied that

there was sufficient cause for the delay. The appellant officer shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Quick Recap



Welfare and Health of Contract Labour

The contractors are required to take certain specific measures for the welfare and health of contract labour. This, of course, arises in those employments in which the system of contract labour has not been abolished.

The relevant provisions are as follows:

(i) **Canteens:** As per section 16 appropriate Government has powers to make rules requiring that in every establishment to which the Act applies and wherein contract labour numbering 100 or more is ordinarily employed by a contractor and the employment of the contract labour is likely to continue for such period as may be prescribed, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour. The rules may provide for the date by which the canteen shall be provided, the number of the canteens and the standards in respect of constitution, accommodation, furniture and other equipment of the canteens, the food stuffs which may be served therein and the charges which may be made therefor.

(ii) **Rest rooms:** Section 17(1) makes the following provisions. In every place where contract labour is required to halt at night in connection with the work of an establishment to which the Act

applies and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed,there shall be provided and maintained by the contractor for the use of the contract labour such of the suitable alternative accommodation to be provided under Sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

(iii) **Other facilities:** It shall be the duty of every contractor employment contract labour in connection with the work of an establishment to which the Act applies, to provide and maintain:

(a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;

(b) a sufficient number of latrines and urinals of the prescribed types conveniently situated and accessibleto the contract labour; and

(c) washing facilities. (Section 18)

First Aid facilities: The contractor is required to provide and maintain a first aid box equipped with the prescribed contents at every place, where contract labour is employed by him. The first aid box should be readily accessible during working hours. (Section 19)

Liability of the principal employer in certain cases: If the prescribed amenities (canteens, rest rooms and other facilities, first aid box) are not provided by the contractor within the prescribed time, then such amenitiesshall be provided by the principal employer within such time as may be specified. According to Section 20(2),all expenses incurred by the principal employer in providing the amenity may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. (Section 20)

Responsibility for payment of wages: A common complaint against the contractors has been that some of them do not pay proper wages to the contract labourers or that payments are not made in time or that arbitrary deductions are made from wages. To take care of such malpractices, Section 21 of the Contract Labour (Regulationand Abolition) Act, 1970, lays down that the Contractor shall pay wages in the presence of the authorised representative of the Principal employer. An obligation is also cast on the principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages.

The text of Section 21 is reproduced below:

"Section 21. (1) A contractor shall be responsible for payment of wages to each worker employed by him ascontract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amountspaid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorisedrepresentative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

Rules Framed Under the Act by the Central Government on the Question of Wages

Rules 63 to 73 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 are reproduced below:

63. The contractor shall fix wage periods in respect of which wages shall be payable.

64. No wage period shall exceed one month.

65. The wage of every person employed as contract labour in an establishment or by a contractor where lessthan one thousand such persons are employed shall be paid before the expiry of tenth day after the last day of the wage period in respect of which wages are payable.
66. Where the employment of any worker is terminated by or on behalf of the contractor the wages earned byhim shall be paid before the expiry of the second working day from the day on which his employment isterminated.
67. All payments of wages shall be made on a working day at the working premises and during the workingtime and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day.
68. Wages due to every worker shall be paid to him direct or to other authorised by him in his behalf.
69. All wages shall be paid in current coin or currency or in both.
70. Wages shall be paid without any deductions of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the Payment of Wages Act, 1936.
71. A notice showing the wage-period and the place and time of disbursement of wages shall be displayed atthe place or work and a copy sent by the contractor to the Principal Employer under acknowledgement.
72. The Principal Employer shall ensure the presence of his authorised representative at the place and time ofdisbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.
73. The authorised representative of the principal employer shall record under his signature a certificate at theend of the entries in the Register of Wages-cum-Muster Roll, as the case may be in the following form: "Certified that the amount shown in columns No has been paid to the workmen concerned in my presence on.....at ...."

Penalties and Procedure

The Act refers to the following types of offences and provide for penalties as shown against each.

[Section 22]

(a) Obstructing an inspector in the discharge of his duties under the Act or refusal or wilful neglect to afford the inspector reasonable facility for making any inspection, examination, enquiry or investigation authorised by or under the Act in relation to an establishment to which, or a contractor to whom, this Actapplies [Section 22(1)].

(b) Willful refusal to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevention or attempted prevention or doing anything which the inspector has reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting inpursuance of his duties under the Act [Section 22(2)].

[Section 23]

Contravention of any provision of the Act or any rule made thereunder prohibiting or restricting or regulating employment of contract labour or contravention of any condition of a license granted under the Act.

In case of a continuing contravention an additional fine which may extend to `100/- per day during which thecontravention continues after conviction for the first such contraventions, may be imposed.

[Section 24]

Contravention of any of the provisions of the Act or of any rule made thereunder for which no penalty iselsewhere provided.

[Section 25]

Offences by companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing containing in this Sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(Section 25)

Explanation: For the purpose of this Section

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm means a partner in the firm.

[Section 26] Cognizance of offence: Section 26 provides that no Court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

[Section 27] Limitation of prosecutions: Section 27 prescribing limitation of prosecutions stipulates that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made
within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

It has been held by the Patna High Court in Padam Prasad Jain v. State of Bihar and another, (1979) I LLJ p. 111, that executing contract labour without a licensee, constituted a fresh offence every day on which it continued and, therefore, the limitation prescribed under Section 27 for taking cognizance of an offence does not apply.

[Section 28] Inspectors

Under Section 28 of the Act, appropriate Governments have been given powers to appoint inspectors for the purposes of the Act and to define the local limits within which they shall exercise their powers. Sub-section (2) of Section 28 dealing with powers of Inspectors, read as follows:

(2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed:

(a) enter, at all reasonable hours, with such assistance (if any), being in the service of the Government or

any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workmen employed therein;

(c) require any person giving out work and any workmen, to give any information, which is in his powers togive with respect to the names and addresses of the persons to, for an from whom the work is given out orreceived, and with respect to the payments to be made for the work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by theprincipal employer or contractor; and

(e) exercise such other powers as may be prescribed.

Sub-section (3) of Section 28 provides that any person required to produce any document or thing to giveany information required by an inspector under Sub-section (2) shall be deemed to be legally bound to doso within the meaning of Section 175 and Section 176 of the Indian Penal Code.

Sub-section (4) lays down that the provisions of the Code of Criminal Procedure shall, so far as may be,apply to any search or seizure under Sub-section (2) as they apply to any search or seizure under the authority of a warrant issued under the Code.

[Section 29] Maintenance of Records and Registers

Section 29 states that every principal employer and every contractor shall maintain such registers and records in such forms as may be prescribed.

The registers and records to be maintained, the notices to be displayed and the returns to be submitted by thecontractors and the principal employer to the registering officers or/and licensing officer are explained in detailin the rules framed under the Act by the Central Government and the State Government.

The principal employers and the contractors are also required to keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed. Excemption to small and very small establishment.

Labour Laws (Exemption to Small and Very Small Establishments) Act, 1988 provides for exemptions of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws including Contract Labour (Regulation and Abolition) Act, 1970 (as given in Schedule I). The Act has come into effect on 1st May, 1989.

As per this Act “small establishments” (establishments employing not less than 10 persons and not more than 40 persons) are required to furnish a Annual Return in Form I and maintain Registers Form II, Form II, and Form D and “very small establishments” (establishments employing not more than 9 persons) are required to furnish return in Form I and maintain Register in Form III prescribed under this Act. This requirement is in lieu of furnishing of such returns/maintaining of such registers prescribed under various labour laws mentioned inSchedule I to this Act.

Compliances Under the Act

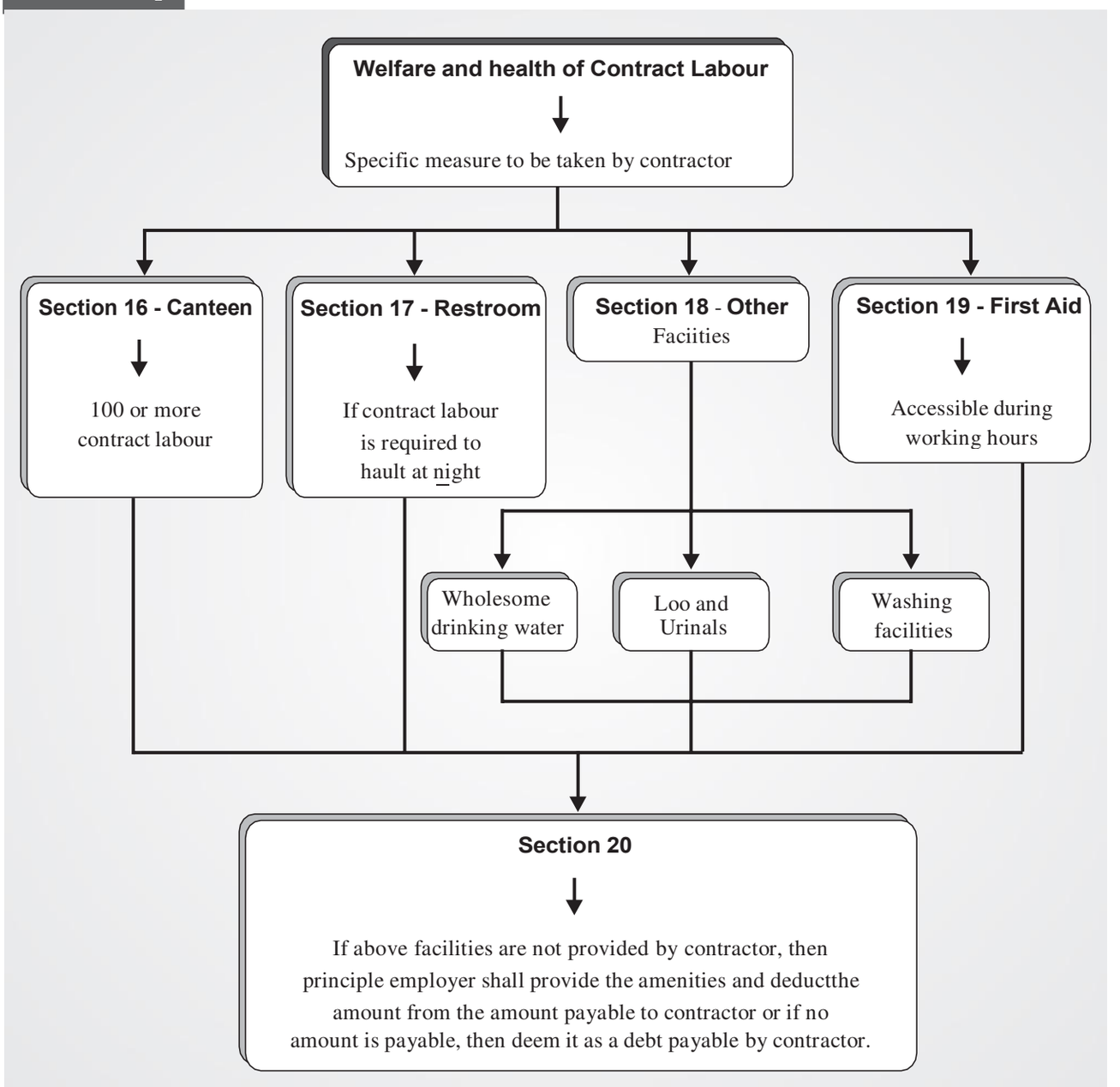
The establishment must ensure following compliances under the Act. These compliances are not exhaustive butillustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from…..Or
   The factory/establishment is covered under the provisions of this Act by a notification dated ..... given by the government in the official gazette.
2. The factory/establishment has number of workmen employed during the said financial year.
3. The factory/establishment has duly submitted all returns to the Commissioner/Regional

Commissioner as per the provisions of the Act, regulations and rules made in this behalf.

4. The establishment has duly applied for and obtained the certificate of registration before the employmentof any contract labour.
5. All the contractors engaged by the establishment to supply workmen do posses valid licence.
6. The establishment has duly complied with the provisions of the Act in respect of welfare and health of contract labour during the financial year.
7. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

Quick Recap



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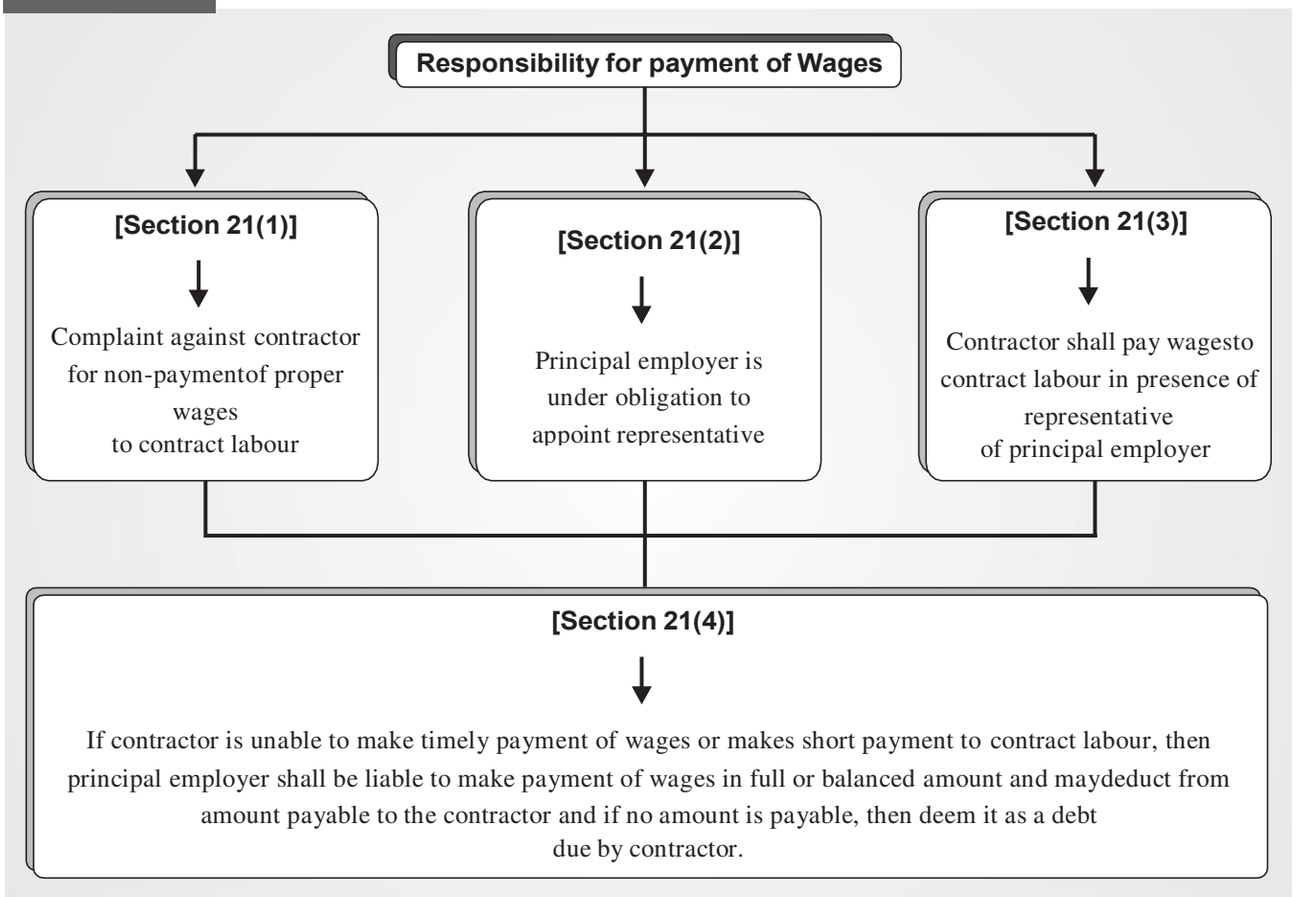
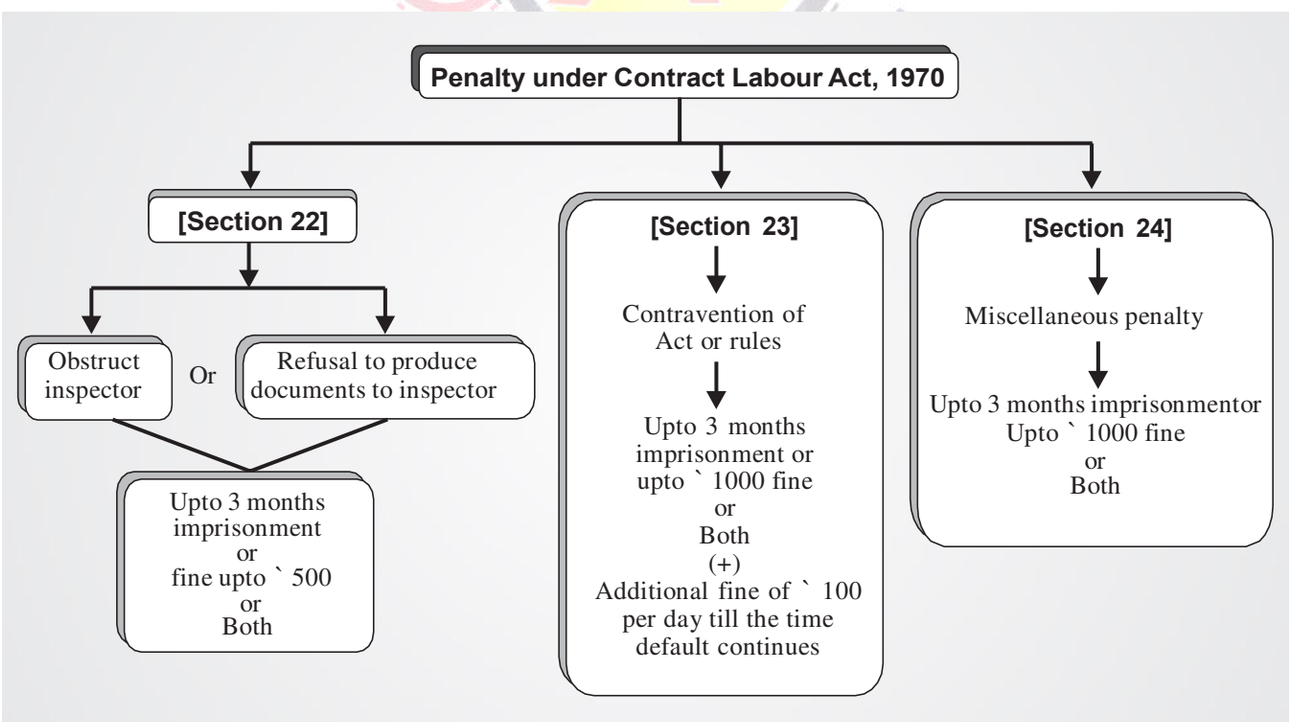
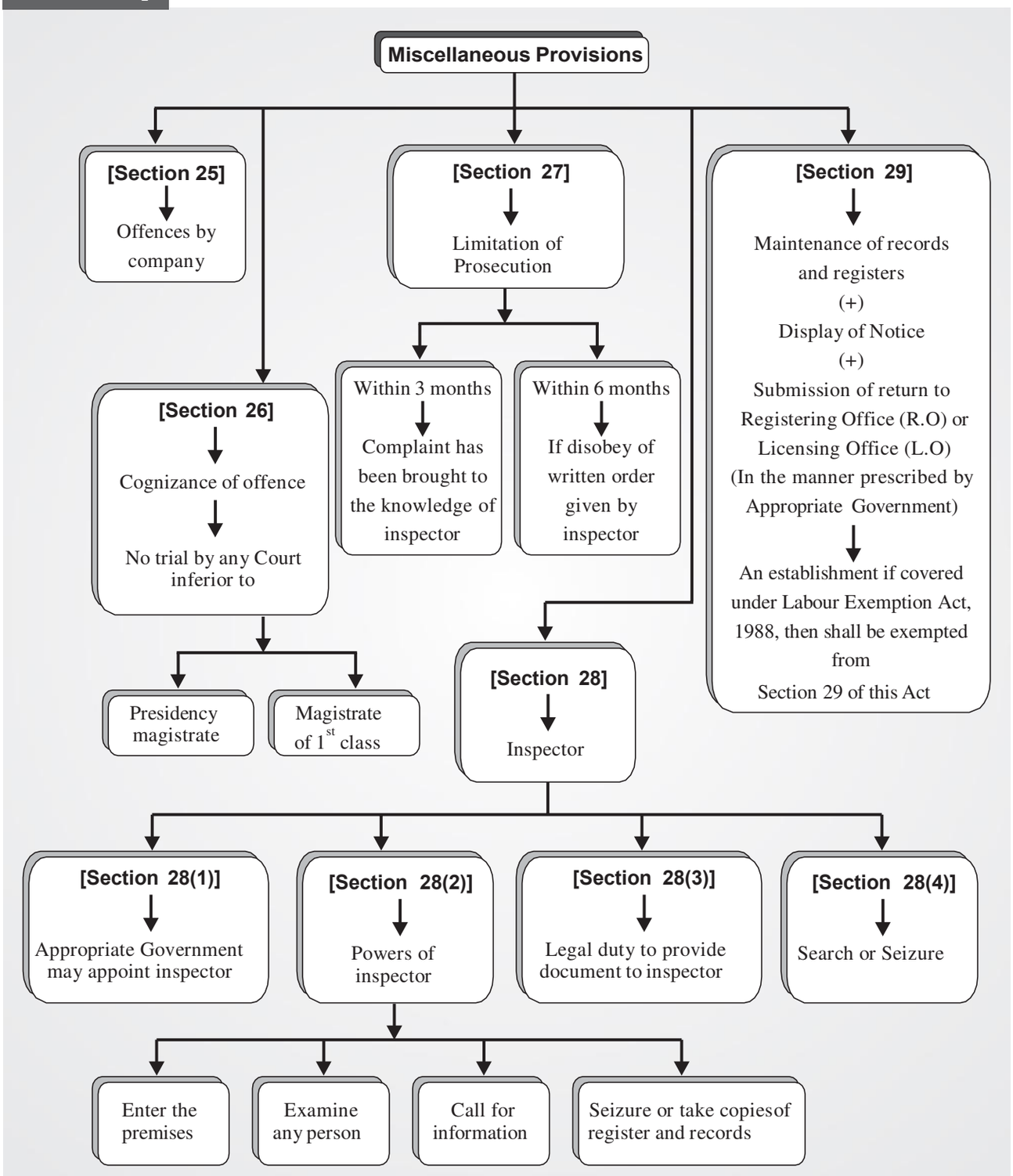
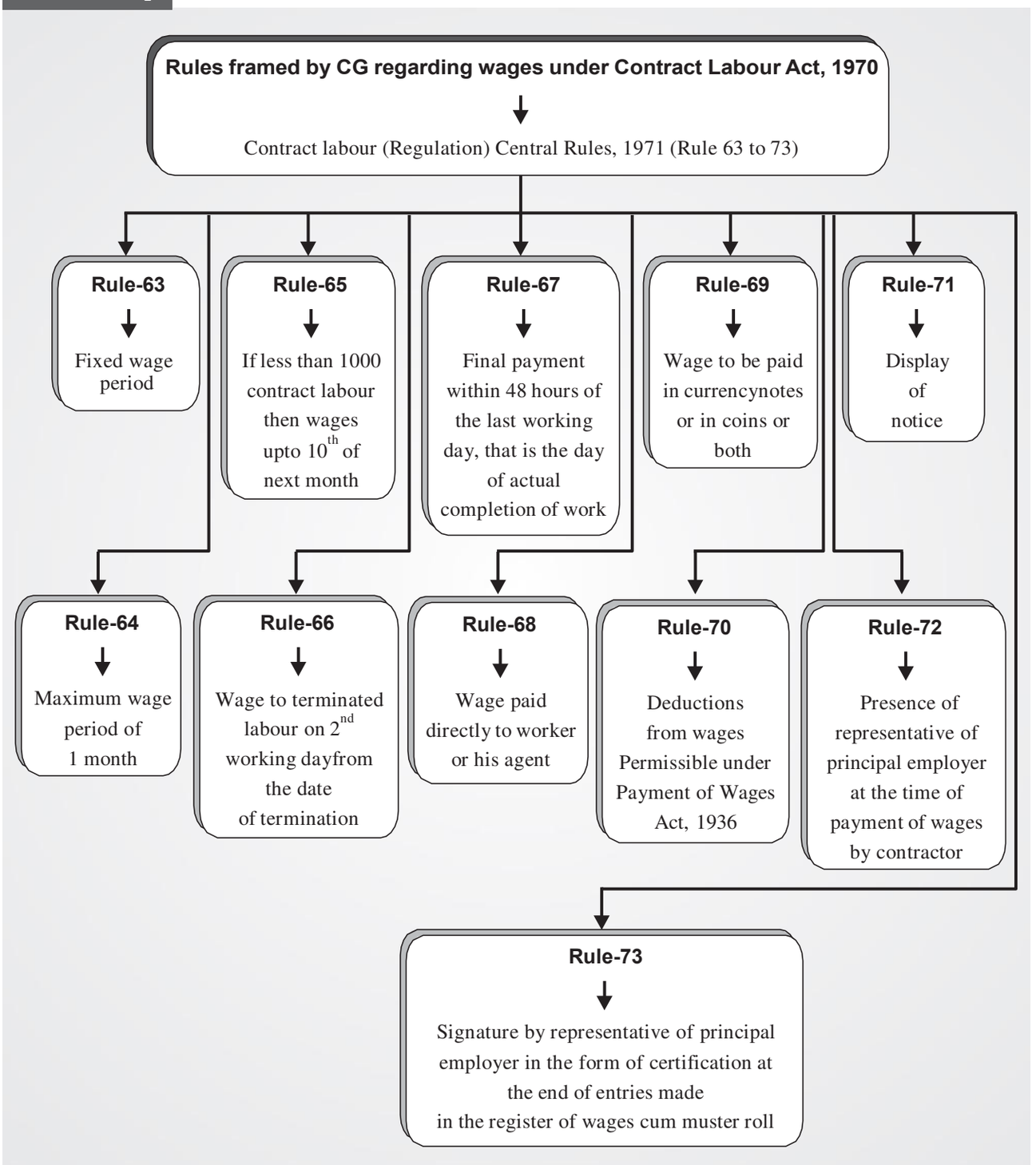

Responsibility for payment of Wages
[Section 21(1)]
Complaint against contractor for non-paymentof proper wages to contract labour
[Section 21(2)]
Principal employer is under obligation to appoint representative
[Section 21(3)]
Contractor shall pay wagesto contract labour in presence of representative of principal employer
[Section 21(4)]
If contractor is unable to make timely payment of wages or makes short payment to contract labour, then principal employer shall be liable to make payment of wages in full or balanced amount and maydeduct from amount payable to the contractor and if no amount is payable, then deem it as a debt due by contractor.


Penalty under Contract Labour Act, 1970
[Section 22]
Obstruct inspector
Or
Refusal to produce documents to inspector
Upto 3 months imprisonment or fine upto ` 500 or Both
[Section 23]
Contravention of Act or rules
Upto 3 months imprisonment or upto ` 1000 fine or Both (+) Additional fine of ` 100 per day till the time default continues
[Section 24]
Miscellaneous penalty
Upto 3 months imprisonmentor Upto ` 1000 fine or Both

Quick Recap


Miscellaneous Provisions
[Section 25]
Offences by company
[Section 27]
Limitation of Prosecution
[Section 29]
Maintenance of records and registers
(+)
Display of Notice
(+)
Submission of return to Registering Office (R.O) or Licensing Office (L.O)
(In the manner prescribed by Appropriate Government)
An establishment if covered under Labour Exemption Act, 1988, then shall be exempted from
Section 29 of this Act
Within 3 months
Complaint has been brought to the knowledge of inspector
Within 6 months
If disobey of written order given by inspector
[Section 26]
Cognizance of offence
No trial by any Court inferior to
Presidency magistrate
Magistrate of 1st class
[Section 28]
Inspector
[Section 28(1)]
Appropriate Government may appoint inspector
[Section 28(2)]
Powers of inspector
[Section 28(3)]
Legal duty to provide document to inspector
[Section 28(4)]
Search or Seizure
Enter the premises
Examine any person
Call for information
Seizure or take copiesof register and records

Quick Recap


Rules framed by CG regarding wages under Contract Labour Act, 1970
Contract labour (Regulation) Central Rules, 1971 (Rule 63 to 73)
Rule-63
Fixed wage period
Rule-65
If less than 1000 contract labour then wages upto 10th of next month
Rule-67
Final payment within 48 hours of the last working day, that is the day of actual completion of work
Rule-69
Wage to be paid in currencynotes or in coins or both
Rule-71
Display of notice
Rule-64
Maximum wage period of 1 month
Rule-66
Wage to terminated labour on 2nd working dayfrom the date of termination
Rule-68
Wage paid directly to worker or his agent
Rule-70
Deductions from wages Permissible under Payment of Wages Act, 1936
Rule-72
Presence of representative of principal employer at the time of payment of wages by contractor
Rule-73
Signature by representative of principal employer in the form of certification at the end of entries made in the register of wages cum muster roll

Chapter - 16 Unit - 3
Child and Adolescent Labour (Prohibition andRegulation) Act, 1986

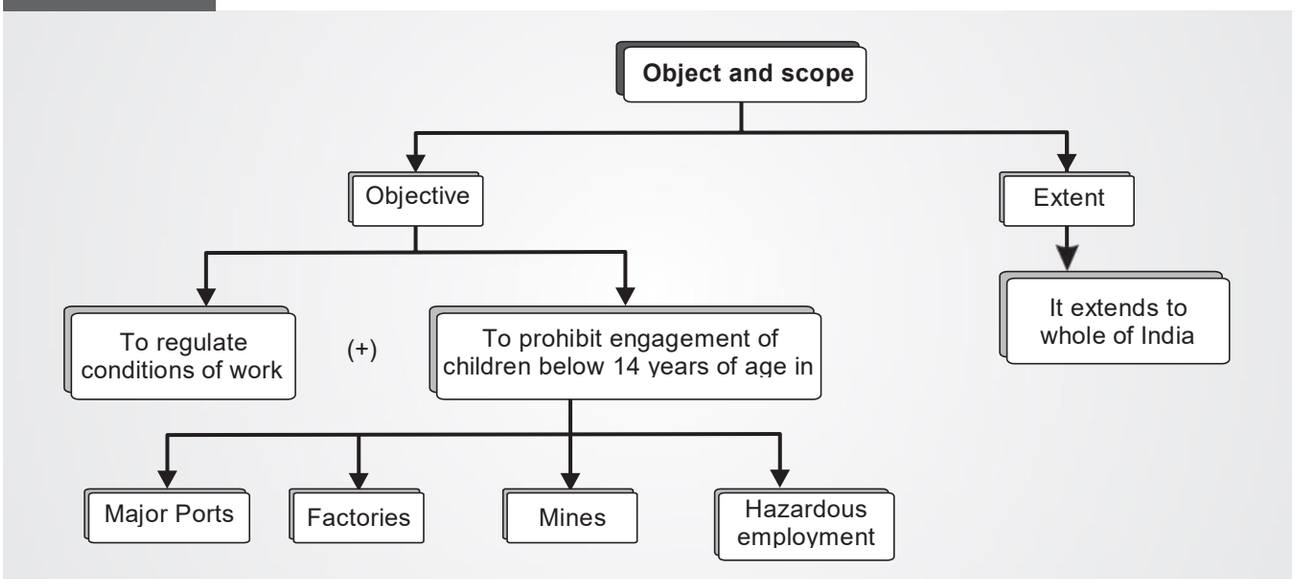
List of Sections

Sections	Particulars of Section
1	Object and Scope
2	Definitions
2(i)	Appropriate Government
2(ii)	Child
2(iii)	Day
2(iv)	Establishment
2(vi)	Occupier
2(x)	Workshop
3	Prohibition of employment of Children in Certain Occupations and Processes
6 to 13	Regulation of Conditions of work of Children
7	Hours and Period of Work
8	Weekly Holiday
9	Notice to Inspector
11	Maintenance of Register
12	Display of Notice Containing abstract of Section 3 and 14
14	Penalties

[Section 1] Object and Purpose of the Act

- The Child and adolescent Labour (Prohibition and Regulation) Act, 1986 enacted to **prohibit the engagementof children below the age of fourteen years** in factories, mines and hazardous employments and to regulate their conditions of work in certain other employments.
- It extends to whole of India.
- Last amended on 1st September, 2016.

Quick Recap



Note: Article 21A of Indian constitution states about Right to education per children of 6-14 years age.

[Section 2] Define of Following Terms

Section 2 of the Act defines various terms used in the act, some of the definitions are given here under:

[Section 2(i)] Appropriate Government

It means, in relation to an establishment under the control of the Central Government or a **railway** administrationor a **major port** or a **mine** or **oilfield,** the **Central Government**

AND

In all **other cases**, the **State Government**.

Adolescent

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

[Section 2(ii)] Child

Child means a person who is less than 14 years of age or age given under Right of Children to Free and Compulsory Education Act, 2009, whichever is more .

[Section (iv)] Establishment

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

[Section 2(vi)] Occupier

Occupier, in relation to an establishment or a workshop, means the person who has the **ultimate control overthe affairs** of the establishment or workshop.

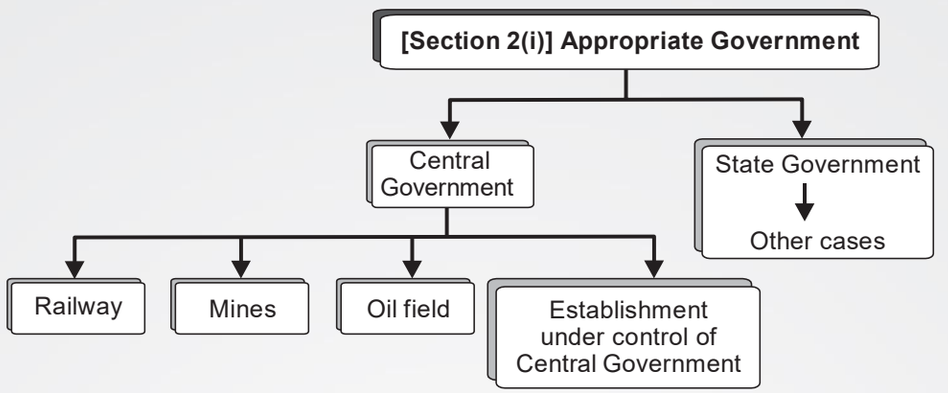
[Section 2(x)] Workshop

Workshop means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948 applies.

Quick Recap

Definitions (Section 2)

1.



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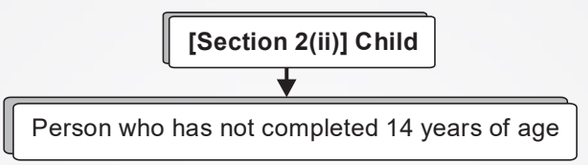

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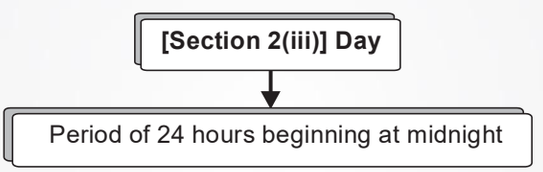

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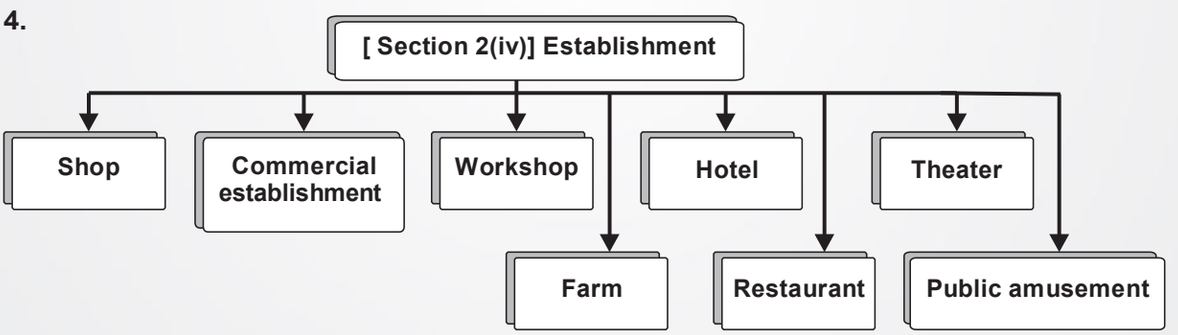

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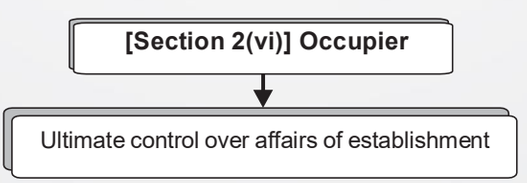

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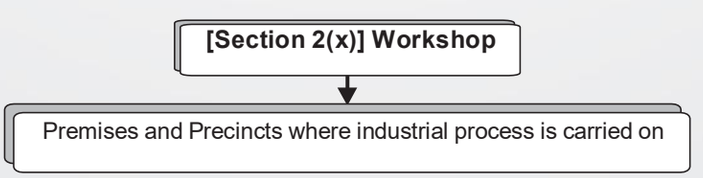


[Section 3] Prohibition of employment of children in any occupations andprocesses

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

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

It may be noted that the expression:

(a) ''family'' in relation to a child, means his mother, father, brother, sister and father's sister and brotherand mother's sister and brother;

(b) ''family enterprise'' means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) ''artist'' means a child who performs or practices any work as a hobby or profession directly involvinghim as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).''

[Section 3A] Prohibition of employment of adolescents in certain hazardous occupations andprocesses

Section 3A provides that no adolescent shall be employed or permitted to work in any ofthe hazardous occupations or processes set forth in the Schedule.

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

(1) Mines.

(2) Inflammable substances or explosives.

(3) Hazardous process.

Explanation: For the purposes of this Schedule, "hazardous process" has the meaning assigned to it in clause(cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the nonhazardous work to whichan adolescent may be permitted to work under the Act

[Section 7] Hours and Period of Work

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess ofsuch number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that **no period shall exceed three hours** and that no adolescent shall work for more than three hours before he has had an interval for rest for **at least one hour.** Theperiod of work of a child shall be so arranged that **inclusive** of his **interval** for **rest,** it shall **not be spread overmore than six hours** including the time spent in waiting for work on any day.

This section also stipulates that:

- **No** adolescent shall be permitted or required to **work between 7 p.m. and 8 a.m.**
- **No** adolescent shall be required or permitted to work **overtime**.
- **No** adolescent shall be required or permitted to **work** in, any establishment on **any day** on which he has **already been working in another establishment.**

[Section 8] Weekly Holidays

As per section 8, every adolescent employed in an establishment is entitled in each week, a **holiday of one whole day**, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the **day** so **specified** shall **not be altered** by the occupier **more than once in three months.**

[Section 9] Notice to Inspector

Section 9 provides that every **occupier** in relation to an establishment who employs, permits to work, any adolescent shall, within a **period of thirty days** from the date of such employment, **send to the inspector** within whose local limits the establishment is situated, a written notice containing the particulars namely:

- The **name and situation** of the establishment.
- The **name** of the **manager** of the establishment.
- The address to which **communication** relating to the establishment should be sent.
- The **nature of the occupations** or processes carried on in the establishment.

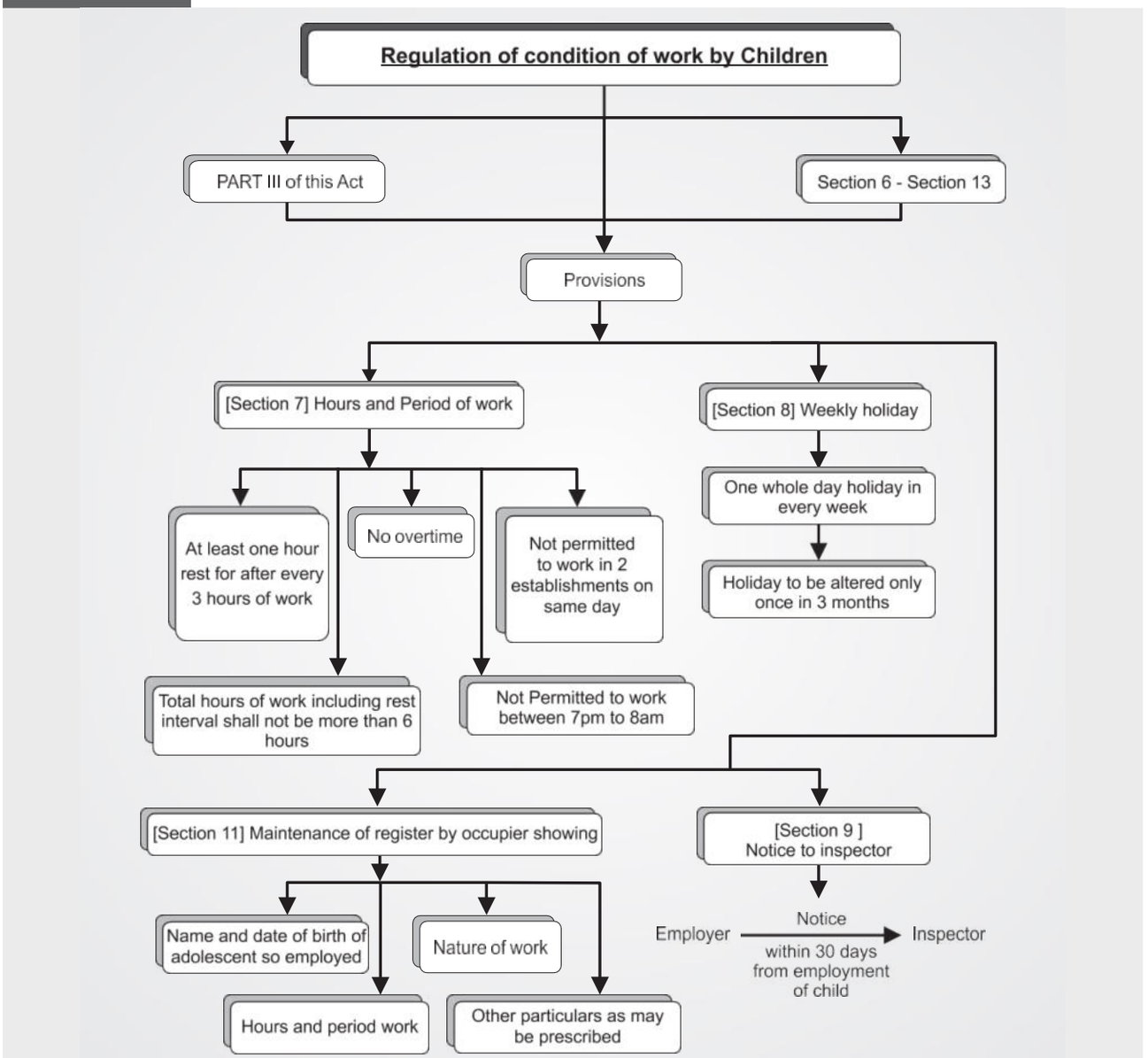
[Section 11] Maintenance of Register

Every occupier in respect of children employed or permitted to work in any establishment, should maintains aregister to be available for inspection by an inspector at all times during working hours or when work is beingcarried on in any such establishment showing:

- The **name and date of birth of every adolescent** so employed or permitted to work.
- **Hours and periods of work** of any such child and the intervals of rest to which he is entitled.
- The **nature of work** of any such child.
- **Such other particulars** as may be prescribed.

AMIT VOHRA LAW CLASSES

Quick Recap



[Section 12] Display of Notice Containing Abstract of Section 3A and 14

Every **occupier** shall cause to be **displayed** in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the **local language** and in the **English language** containing and abstracts.

[Section 14] Penalties

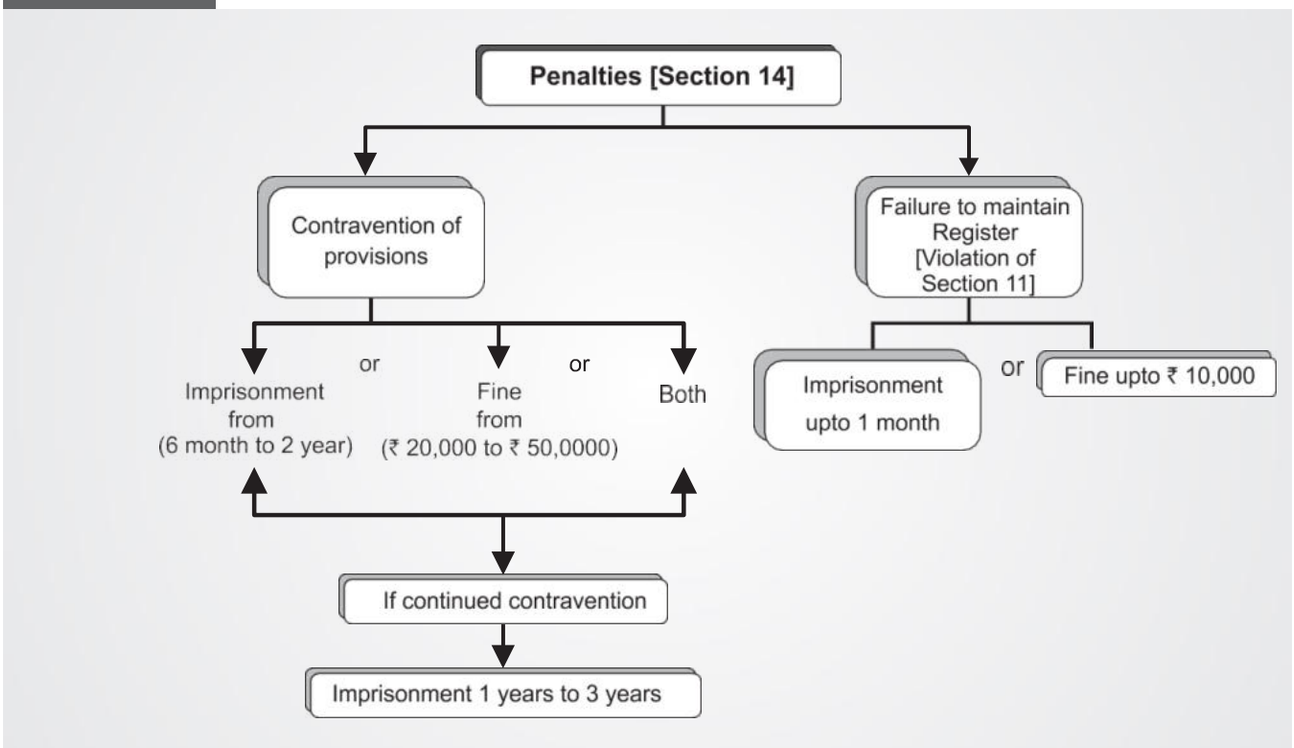
Section 14 provides that whoever employs any child or adolescent or permits any child or adolescent to work in contravention of the provisions of section 3 or Section 3A shall be punishable with imprisonment for a term which shall **not be less than Six months** but which may **extend to two year** or with **fine** which shall **not be less than ten thousand rupees** but which may **extend to fifty thousand rupees** or with **both**.

Whoever, having been **convicted of an offence** under section 3 or 3A, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall **not be less than one year but**

which may extend to three years.

Whoever **fails to give notice or fails to maintain a register** or makes any false entry in any such register;or fails to display a notice containing an abstracts of section 3 or fails to comply with or contravenes any other provisions of the Act or the rules made there under, shall be punishable with **simple imprisonment which may extend to one month or with fine.**

Quick Recap



[Section 17A] District Magistrate to implement the provisions

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of thepowers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

Chapter – 17 Unit - 1
Industrial Disputes Act,1947

List of Sections

Sections	Particulars of Section
2A	Dismissal of individual workman to be deemed to be an industrial dispute
2(a)	Appropriate Government
2(aa)	Arbitrator
2(aaa)	Average pay
2(b)	Award
2(cc)	Closure
2(ee)	Controlled Industry
2(g)	Employer
2(gg)	Executive
2(i)	Independent
2(j)	Industry
2(k)	Industrial dispute
2(kkk)	Lay – off
2(l)	Lockout
2(lll)	Office bearer
2(n)	Public utility service
2(oo)	Retrenchment
2(p)	Settlement
2(q)	Strike
2(qq)	Trade Union
2(ra)	Unfair labour practice
2(rr)	Wages
2(s)	Workman
3	Work Committee
4	Conciliation officer
5	Boards of Conciliation
6	Courts of Inquiry
7	Labour Court
7A	Tribunals
7B	National Tribunals

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7C	Presiding officer should be an independent person
9A	Change in service conditions when no proceedings are pending before labour Court or Tribunal etc.
10	Reference of AG by Tribunal
11	Procedure and Powers of Authorities
11A	Powers to give appropriate relief in case of discharge or dismissal
15	Duties
22	Notice of strike and lockout
23	General prohibitions of strike and lock outs
24	Illegal stikes and lock outs
25	No support of illegal strike
25T	Unfair labour practices
25U	Fines under unfair labour practices
26(1)	Penalty for illegal strike
26(2)	Penalty for lockouts
27	Penalty for instigation
28	Penalty for giving financial aid to illegal striker & lockouts
29	Penalty for breach of settlement or award
30	Penalty for disclosing confidential information
30A	Penalty for closure without notice
31	Penalty for other offences
32	Penalty for offence by Companies
33	Change in conditions of service during pendency of proceedings

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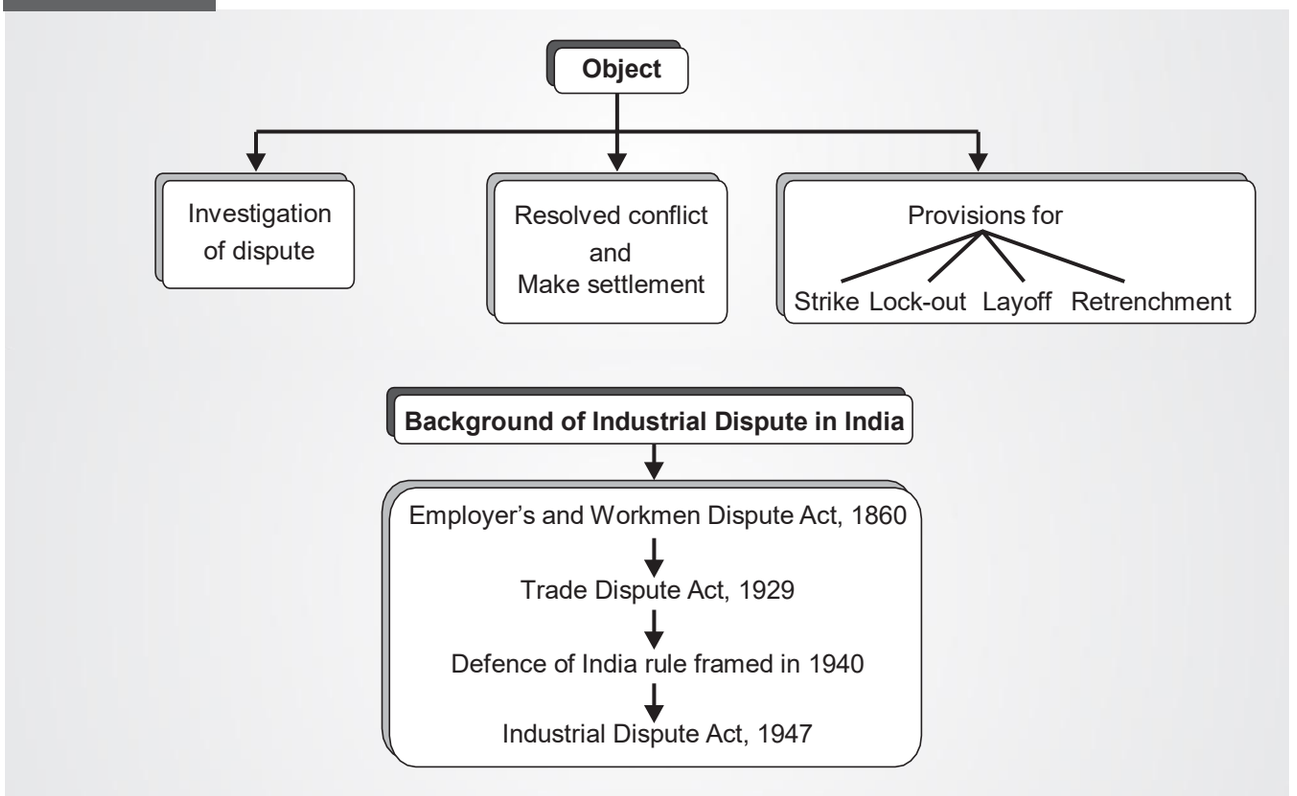
Introduction

- The object of Industrial Disputes Act, 1947 is to make provisions for **investigation and settlement of industrialdisputes**.
- The purpose is to bring the **conflict** between the employer and the employees to an amicable **settlement**.
- The Act also provides **machinery for settlement** of disputes, if dispute cannot be resolved through collectivebargaining.
- In addition to above, the Act also makes other provisions in respect of **strike, lock-out, lay-off, retrenchment,etc**.

Quick Recap



Meaning

[Section 2(j)] Industry

Industry means any **business, trade, undertaking, and manufacture of employers and includes any services,employment, handicraft, or industrial occupation of workmen**.

The meaning and definition of the term industry can be understood in a better manner as decided in **BangaloreWater**

CASE LAW	Supply and Sewage Board Vs A. Rajappa and Others
Supply and Sewage Board Vs A. Rajappa and Others, a very wide interpretation of the term industry was given in the said case. It was held that any systematic activity organized by cooperation between employers and employees for the production or distribution of goods and services constituted to satisfy human wants and wishes is an industry.	

Note: Profit motive or desire to generate income **is not necessary** for any undertaking to be covered under theconcept of **industry**.

It may lead to the conclusion that many **charitable institutions, welfare organizations**, clubs, cooperatives, **hospitals**, educational institutions, universities, etc. are also industries within the meaning of Industrial Disputes Act, 1947.

Quick Recap

[Section 2(j)] Meaning of Industry

Bangalore Water Supply and Sewage Board vs. Rajappa and Others

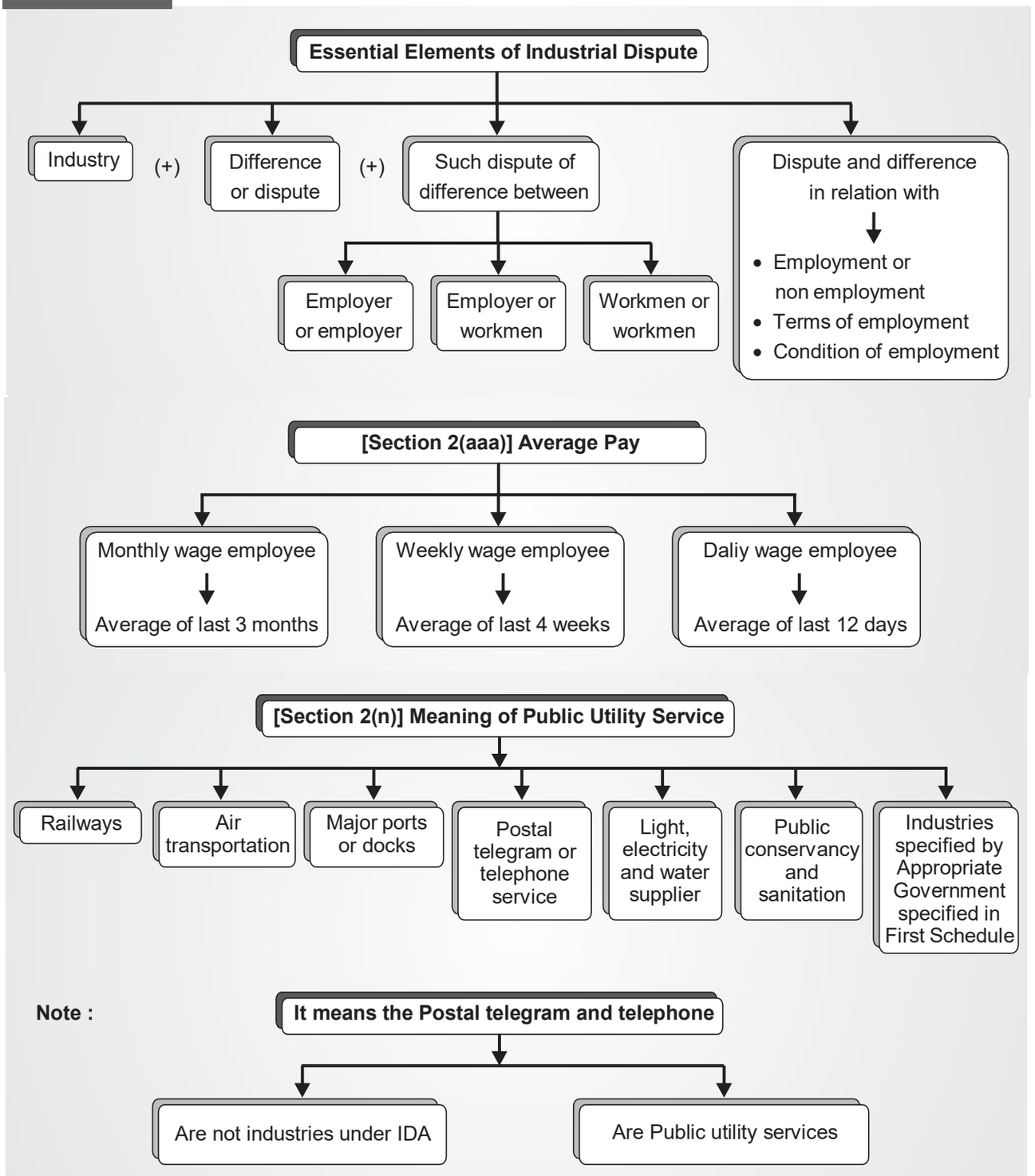
Held - Business, trade, occupation either for **profit or non-profit** motive.

Inclusion and exclusion of industries

1. Municipality
2. tax department
3. Fire bridge
4. Public garden
5. Printing press
6. Larger clubs
7. Hospital and charitable institutions
8. Universities research institutions
9. Sovereign functional department (Passport type)
10. Firms of professionals
11. Voluntary free services of professional
12. Corporative society
13. Federation of Indian chamber of commerce
14. Agriculture operation Co.
15. Indian Navy sailor home
16. Panchat Samiti
17. Trust
18. Khadi and village industrial board
19. Housing board
20. Dock labour board
21. Forest department of Government
22. Zoo
23. Indian institute of petroleum
24. Primary health control
25. Khadi gramodyaya sage
26. Management of Pvt. Educational institutions

1. Post and telegram department
2. Telecom department
3. Central institute of fisheries
4. Trade union
5. Construction and maintenance of National and state highway

Quick Recap


Essential Elements of Industrial Dispute
Industry
(+)
Difference or dispute
(+)
Such dispute of difference between
Employer or employer
Employer or workmen
Workmen or workmen
Dispute and difference in relation with
Employment or non employment
Terms of employment
Condition of employment
[Section 2(aaa)] Average Pay
Monthly wage employee
Average of last 3 months
Weekly wage employee
Average of last 4 weeks
Daliy wage employee
Average of last 12 days
[Section 2(n)] Meaning of Public Utility Service
Railways
Air transportation
Major ports or docks
Postal telegram or telephone service
Light, electricity and water supplier
Public conservancy and sanitation
Industries specified by Appropriate Government specified in First Schedule
Note :
It means the Postal telegram and telephone
Are not industries under IDA
Are Public utility services

[Section 2(k)] Industrial Dispute

Industrial Disputes Act, 1947 provides that a dispute or difference between:-

- employers and employers
- employers and workmen
- workmen and workmen.

Which is connected with employment or non-employment or the terms and conditions of employment or withthe condition of labour of any person.

[Section 2(aa)] Arbitrator

An "Arbitrator" includes an umpire.

[Section 2(aaa)] Average Pay

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

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

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

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

[Section 2(cc)] Closure

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

[Section 2(ee)] Controlled Industry

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

[Section 2(g)] Employer

"Employer" means:

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

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

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

[Section 2(gg)] Executive

"Executive" in relation to a Trade Union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted.

[Section 2(i)] Independent

A person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal, or with any industry directly affected by such dispute.

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of anincorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government, the nature and extent of the shares held by him in suchcompany.

[Section 2(III)] Office Bearer

"Office Bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor.

[Section 2(n)] Public Utility Service

"Public Utility Service" means:

(i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock;

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

(iii) any postal, telegraph or telephone service;

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

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

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

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

[Section 2(qq)] Trade Union

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

[Section 2(ra)] Unfair Labour Practice

It means any of the practices specified in the Fifth Schedule.

[Section 2(rr)] Wages

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms ofexpressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in suchemployment, and includes:

(i) such allowance (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity orof any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession, but does not include:

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit ofthe workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

(d) any commission payable on the promotion of sales or business or both.

Authorities under the Act and their Duties

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

(i) Works Committee.
(ii) Conciliation Officers.
(iii) Boards of Conciliation.
(iv) Court of Inquiry.
(v) Labour Tribunals.
(vi) Industrial Tribunals.
(vii) National Tribunal.

[Section 3(2)] Works Committee

Section 3 of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters

[Section 4] Conciliation Officers

With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit. The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period. The main objective of appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes.

[Section 5] Boards of Conciliation

For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

It shall be the duty of Board to endeavour to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement. The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute. In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes.

Courts of Inquiry

According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one independent person or of such number of independent persons as the appropriate Goverment may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman. It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry. The

period within which the report is to be submitted is not mandatory and the report may be submitted evenbeyond the period of six months without affecting the legality of the inquiry.

Labour Courts

Under Section 7, the appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performingsuch other functions as may be assigned to them under the Act.

A Labour Court shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court unless –

(a) he is, or has been, a judge of a High Court: or

(b) he has, for a period not less than three years, been a district Judge or an Additional District Judge; or

(c) he has held any judicial office in India for not less than seven years; or

(d) he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for notless than five years.

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the LabourCourt to (i) hold its proceedings expeditiously, and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil Court. Labour

Court has no power to permit *suomotu* the management to avail the opportunity of adducing fresh evidence in support of charges (1998 Lab 1C 540 AP).

Provisions of Article 137 of the Limitation Act do not apply to reference of dispute to the Labour Court. In case of delays, Court can mould relief by refusing back wages or directing payment of past wages (1999 LAB 1C SC 1435).

Tribunals

(1) The appropriate Goverment may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:

(a) he is, or has been, a Judge of High Court; or

(b) he has, for a period of not less than three years, been a District Judges or an Additional District Judge.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunalin the proceedings before it.

Further, the person appointed as a Presiding Officer should be an independent person and must not have attained the age of 65 years. (Section 7-A)

The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriateGovernment.

National Tribunals

(1) Under Section 7-B, the Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve

questions of national importance or (b) are of such a nature that industrial establishments situated in more than one State are likely to beinterested in or affected by such disputes.

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

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

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

Section 7-C further provides that such a presiding officer should be an independent person and must not have attained the age of 65 years.

Who can Raise a Dispute?

Industrial Disputes Act, 1947 provides that a **dispute between employer and a single workman can not be**
considered as dispute under definition of Industrial Dispute.

Note: If the **workman** acts as a body or a **representative** of other workmen with a common cause, then such adispute will be an Industrial Dispute.

Thus, an Industrial Dispute is a collective dispute supported by either a trade union or by number of fellowworkers.

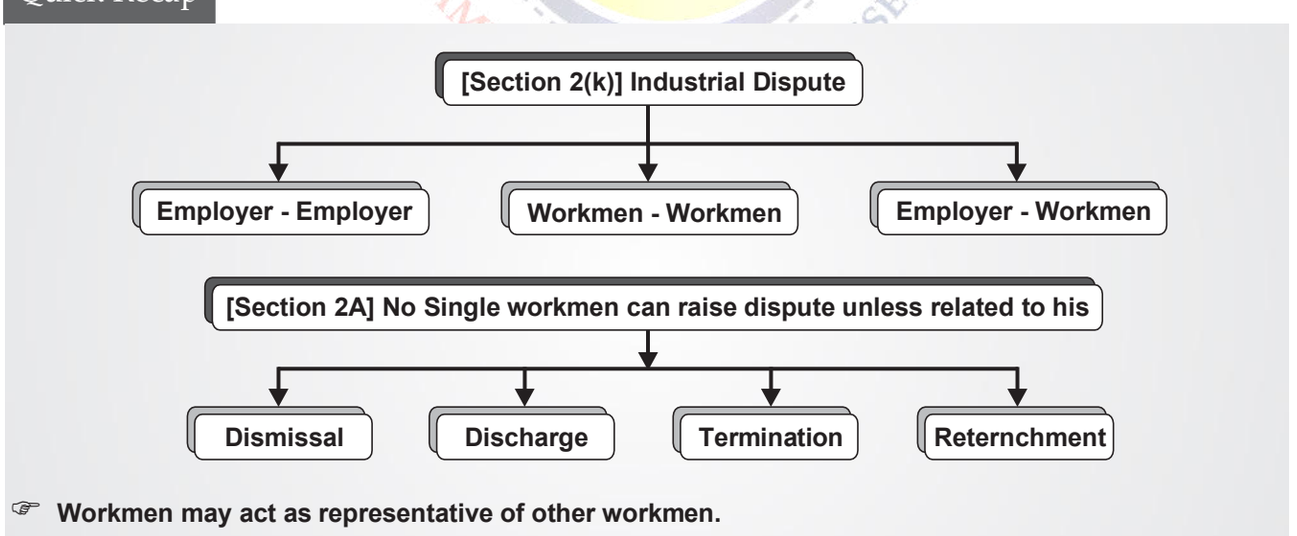
[Section 2A] Exception

In respect of certain disputes relating to:

- dismissal
- discharge
- retrenchment
- termination of services,

Even a single workman can raise a dispute.

Quick Recap



☞ **Workmen may act as representative of other workmen.**

[Section 2(s)] Workmen or Employees Covered under the IndustrialDisputes Act, 1947

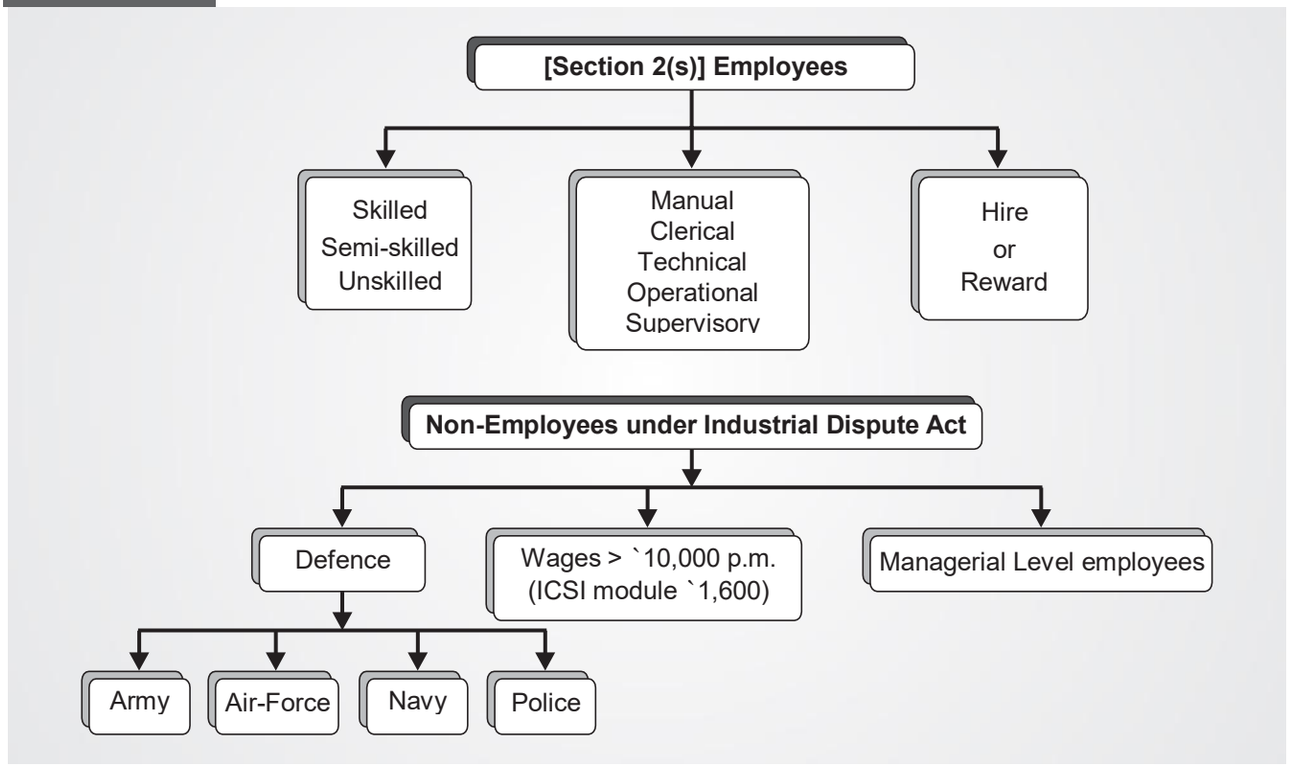
Every person employed in an establishment

- Skilled, semi-skilled or unskilled.
- For hire or reward.
- To do any manual, clerical, technical, operational and supervisory work supervisory is covered

under the Act.However, following are not employees under Industrial Dispute Act, 1947:

- Person employed in managerial or administrative capacity.
- Person employed in a supervisory capacity and drawing wages **exceeding `10,000**/- p.m. (in ICSI module
  `1600).
- Persons subject to defence acts like
  - **Army** Act,
  - **Air force** Act,
  - **Navy** Act
  - employed in the **police** service

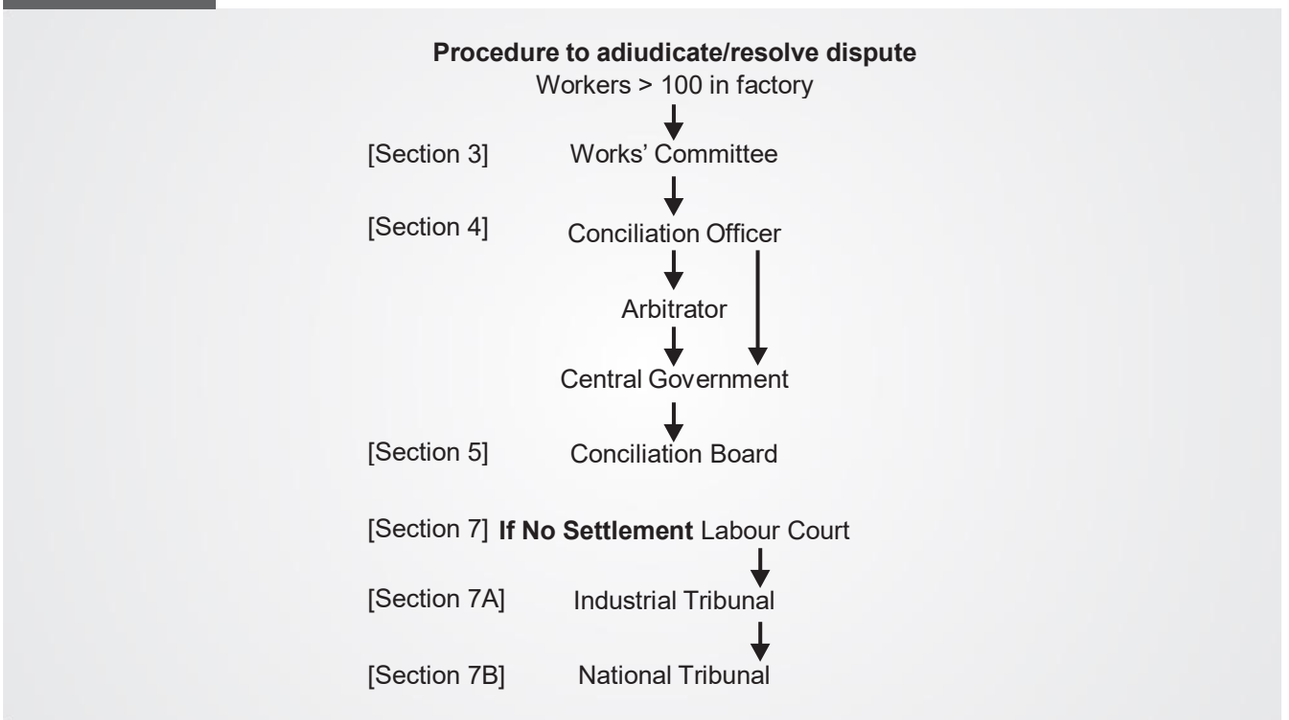
Quick Recap



Procedure to Resolve or Adjudicate Disputes

- The Act provides for constitution of **Works Committee in factories employing 100 or more workers**.
- First of all, the Works Committee will **try to settle** the dispute.
- If the dispute is not settled, it will be **referred to the Conciliation Officer**.
- The Conciliation Officer will try to arrive at fair and **amicable settlement** acceptable to both the parties.
- If he is **unable** to do so, he will send the report to the **Arbitrator or Central Government.**
- The Government may then refer the industrial dispute to the **Board of Conciliation**.
- **If no settlement** is arrived at, then, it is arrived through **three-tier system** of adjudication consisting of **LabourCourt, Industrial Tribunal and National Tribunal**.
- The order made by any of the adjudicating authority is called **Award**.

Quick Recap



[Section 2(b)] Meaning of Award

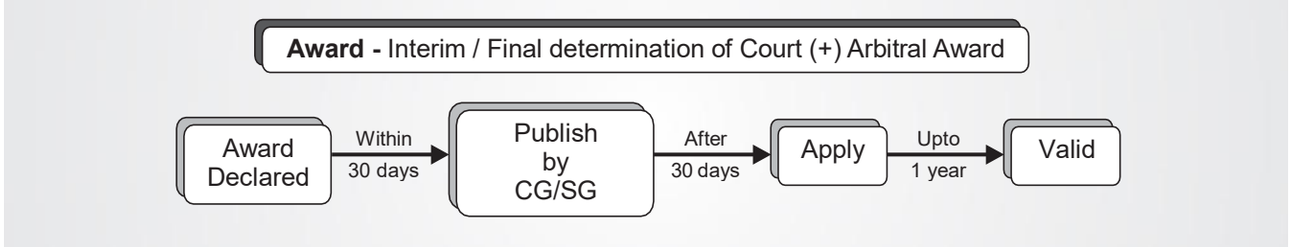
Award means an **interim or final determination of any industrial dispute or of any question relating thereto byany Labor Court, Industrial Tribunal, or National Tribunal**.

The term award also includes arbitral award.

The **award** is required to be **published** by the Central Government or State Government **within 30 days** from thedate it is made.

The award becomes effective only after 30 days of its publication. Generally the validity period of an award is1 year.

Quick Recap



[Section 2(p)] Meaning of Settlement

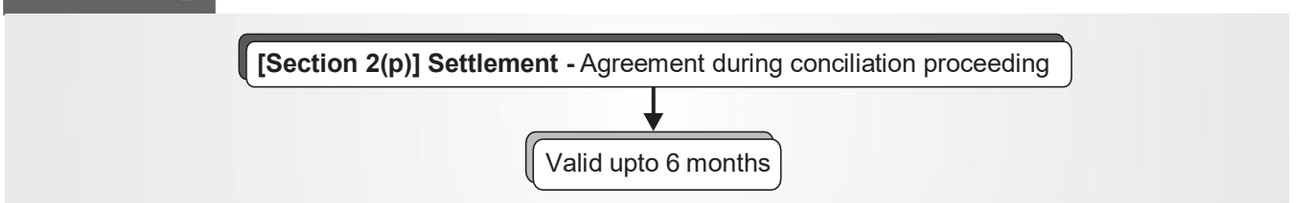
Settlement means a **settlement** arrived at in the course of **conciliation proceedings** and also includes a **written agreement between the employer and workman,** arrived in the course of conciliation proceedings.

The **settlement arrived** in the course of conciliation and arbitration award and Labour Court award of the Industrial or National Tribunal Award **binds all parties to industrial dispute**, **including present and future workmen** and all parties who are summoned to appear in the proceedings.

If settlement is arrived at otherwise, in the course of conciliation proceedings, it binds only those who are actually parties to the agreement.

Generally, the **settlement is valid for 6 months**.

Quick Recap



[Section 2(kkk)] Meaning of Lay-off

Lay off means failure, refusal or inability of the employer to give employment to a workman because of any of thefollowing reasons:

- Shortage of coal, power or raw material.
- Accumulation of stock.
- Breakdown of machinery.
- Natural calamity.
- Any other just and equitable ground.

Lay-off means not giving employment within 2 hours after reporting to work.

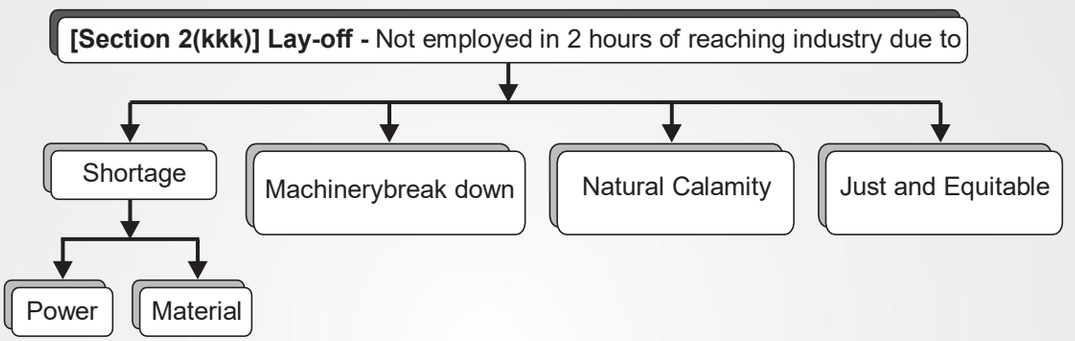
Lay off can be for half day also wherein the worker shall be asked to come in the second half of the shift.

A factory employing **50 or more but less than 100 employees** can lay-off its workmen who have completed 1 year of service by paying compensation equal to **50% of the salary/wages**.

A factory employing **more than 100 employees** can **lay-off** its workmen with the **previous approval of CentralGovt**. However the approval of Central Government is not required in case lay-off is done on account of shortage of power or due to natural calamity.

Employer can offer him alternate employment if alternate employment does not call for any special skill or previous experience. In such a case lay-off compensation will not be payable if the employee refuses to accept thealternate employment.

Quick Recap



(50–100) employees - Lay off with 50% salary
Employees > 100 - Lay off - Prior approval - Central Government.
If employee rejected alternate employment, no compensation will be paid.

Case Study

Rahul was an employee of ABC Ltd. ABC Ltd. laid off Rahul and offered alternate employment. Rahul rejected the same and claimed compensation.

Employer is not bound to give compensation.

[Section 2(oo)] Meaning of Retrenchment

Retrenchment means the **termination of service** of a workman by the employer for any reason **other than as apunishment** inflicted by a disciplinary action.

In addition, retrenchment **does not cover:**

- Voluntary retirement.
- Retirement on reaching the age of superannuation.
- Termination on account of non-renewal of contract.
- Termination of contract itself.
- Termination due to continued ill-health of workman.

Retrenchment means **discharge of surplus labour** or staff of the employer. It is not by way of punishment.

Note: The retrenchment shall be done on Last in First Out (LIFO) basis in respect of each category.

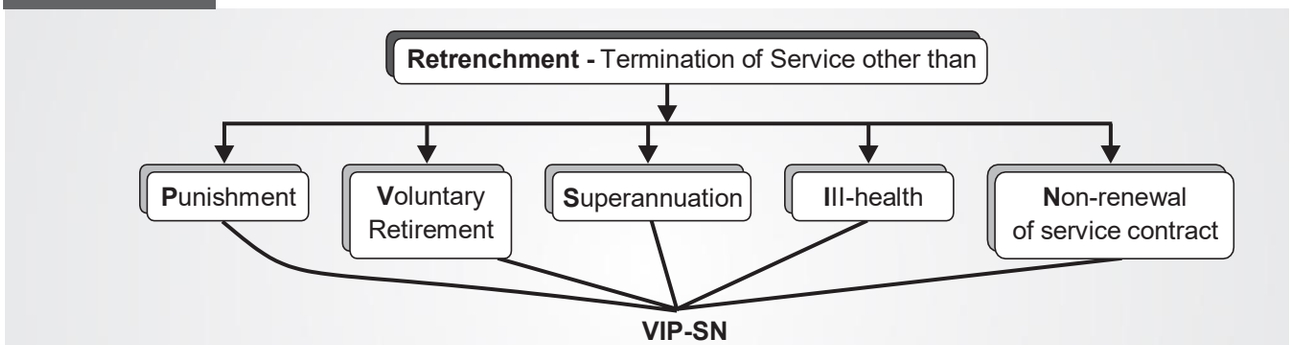
A workman who has **completed one year of service can be retrenched by giving one month's notice or onemonth's salary and retrenchment compensation**.

Retrenchment compensation is calculated at the rate of 15 days' average wages for every completed year ofservice or any part thereof in excess of 6 months.

Average Wages means average of the wages payable for the preceding 3 complete calendar months.

Explanation: For the purpose of retrenchment compensation, one-day wage shall be calculated by dividingmonthly wages by 30.

Quick Recap



Retrenchment means **discharge of surplus labour**

LIFO - retrenchment of any person by giving 1 month's notice or salary

$$\left(\frac{\text{Average Pay}}{30 \text{ days}} \times 15\right) \times \text{Completed years of service} = \text{Retrenchment Compensation}$$

[Section 2(q)] Meaning of Strike

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

No strike can be constituted by the workmen under the following cases:

- During **pendency of conciliation proceedings** and 7 days thereafter.
- During **pendency of proceedings before Labour Court** or Industrial Tribunal or National Tribunal.
- During **period of arbitration proceedings**.
- During period **when settlement or award is in operation** in respect of the matters covered by the award orsettlement.

In case of public utility services (**hospitals, railways, ports, docks, telephone, transport etc**.), **employees have to give at least 14 days' notice for strike**. The notice is valid only if strike commences within 6 weeks otherwise fresh notice is required. If such notice is received by any employer, Government authorities should be informedwithin 5 days of the receipt of notice.

CASE LAW	Syndicate Bank Vs Umesh Naik
Wages during strike period are payable only if strike is legal as well as justified.	

Illegal Strike and its consequences

Strike in violation of above provisions is illegal.

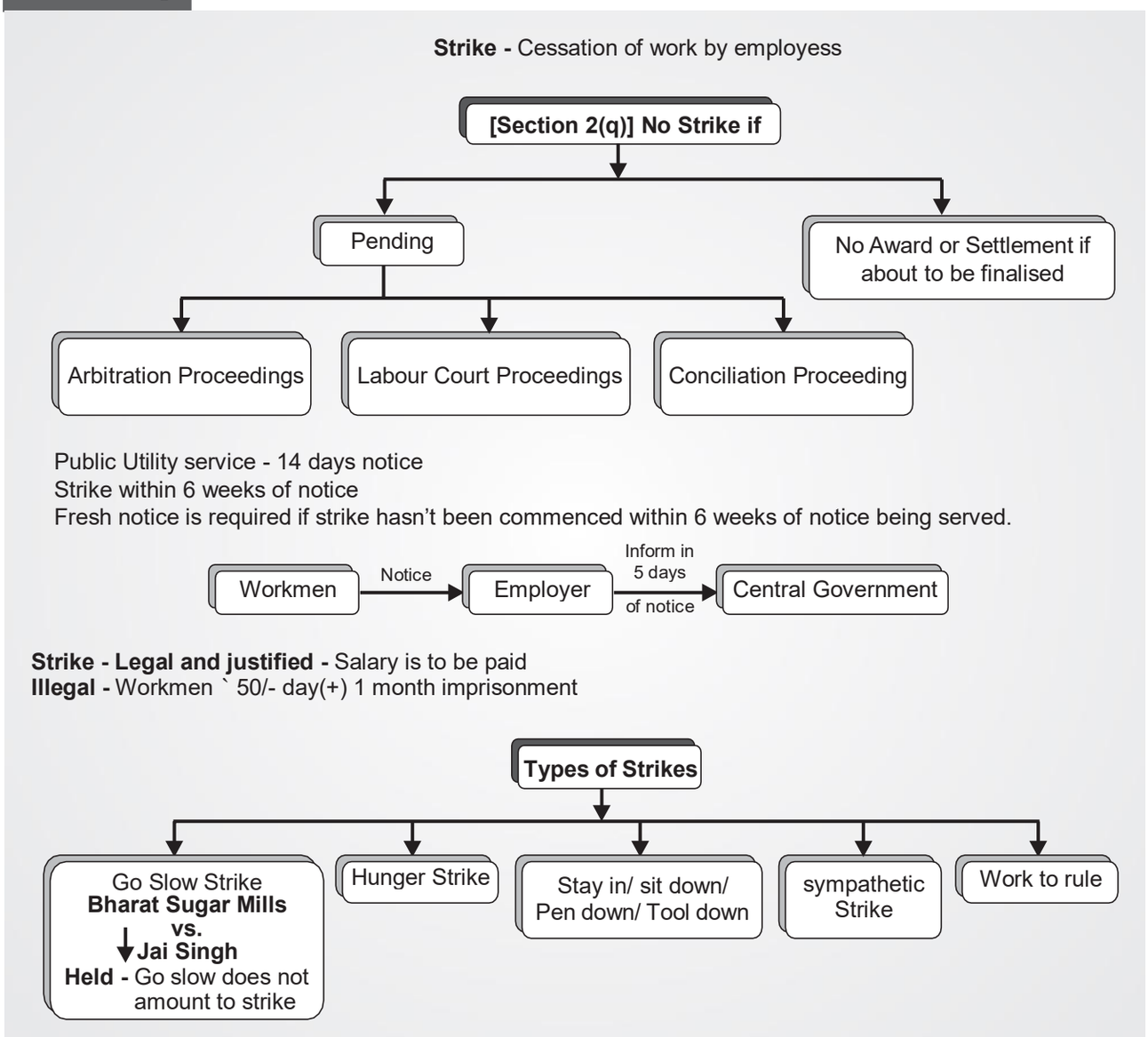
In such a case, the workman shall be punishable with fine, which may extend to `50/- per day and withimprisonment, which may extend to 1 month.

Types of Strike

- **Stay-in, sit down, pen down or tool-down strike**
  - In all such cases, the workmen after taking their seats, refuse to do work.
- **Go slow**
  - Go slow does not amount to strike, but it is a serious case of misconduct.

- **Sympathetic strike**
  - Cessation of work in the support of the demands of workmen belonging to other employer.
- **Hunger strike**
  - Some workers may resort to fast on or near the place of work or residence of the employer.
- **Work-to-rule**
  - Since there is no cessation of work, it does not constitute a strike.

Quick Recap



[Section 2(l)] Meaning of Lock-Out

Lock-out means temporary closing of a place of employment or the suspension of work or the refusal by theemployer to continue to employ any number of persons employed by him.

Employer cannot go for lock-out in the following cases:

- During **pendency of conciliation proceedings** and 7 days thereafter.
- During **pendency of proceedings before Labour Court** or Industrial Tribunal or National Tribunal.
- During **period of arbitration proceedings**.
- During period **when settlement or award is in operation** in respect of the matters covered by the award orsettlement.

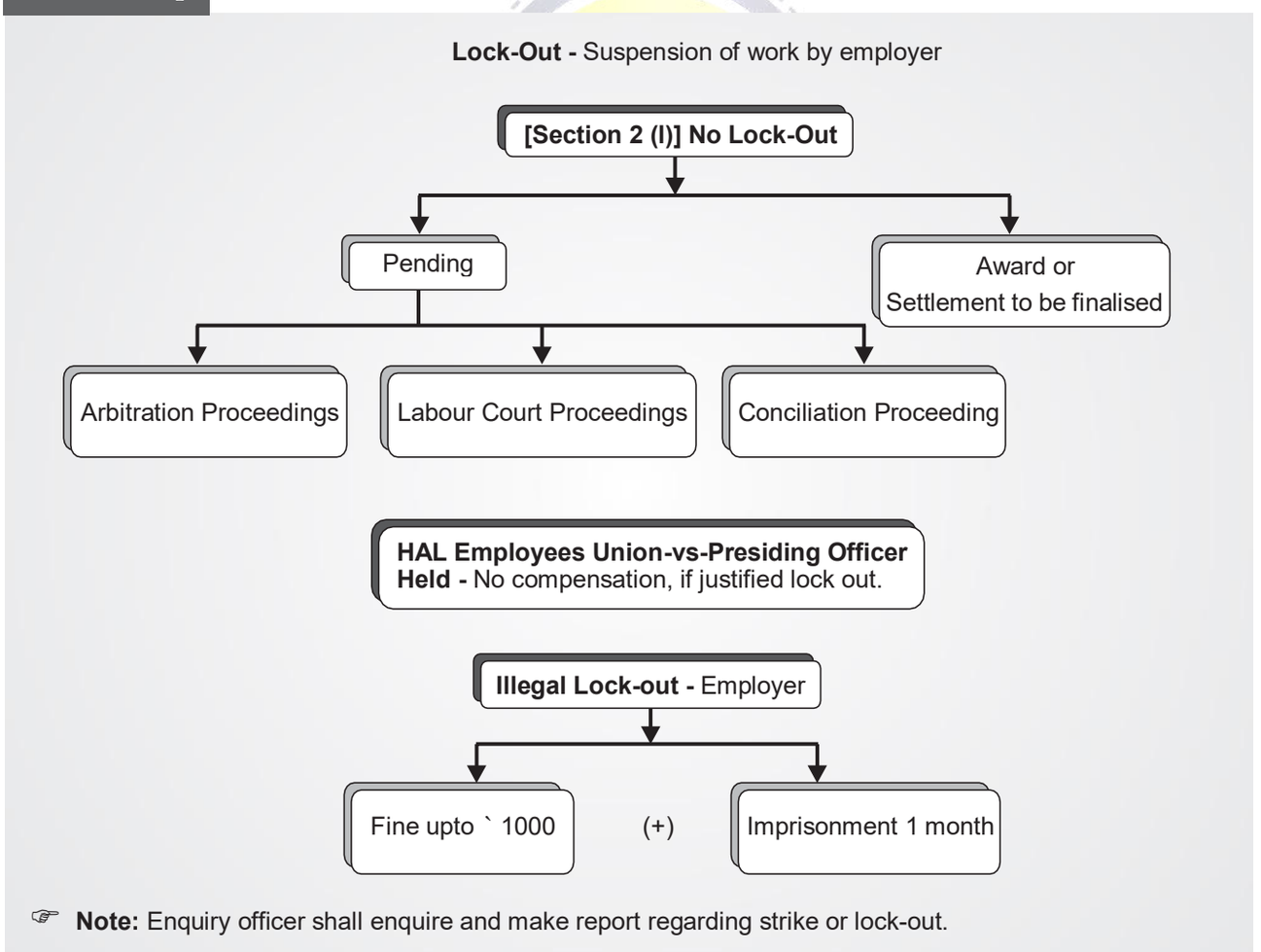
CASE LAW	HAL Employees' Union vs. Presiding Officer

In HAL Employees' Union vs. Presiding Officer, it was held that when lock-out by employer is legal and justified, workmen are notentitled to compensation and wages for the period during which lock-out continues.

Illegal Lock-out and its Consequences

In case of illegal lock-out, the employer can be punished with fine may extend to ` **1,000/- and with imprisonment,which may extend to 1 month.**

Quick Recap



☞ **Note:** Enquiry officer shall enquire and make report regarding strike or lock-out.

Important Note

1) **Principles of government Domestic Enquiry**
   - The enquiry should be conducted by an unbiased person.
   - The enquiry officer should conduct the enquiry in an objective and fair manner.
   - The employee should be given a fair opportunity to defend himself.
   - Proper procedure, rules, regulations etc. should be followed while conducting enquiry.
   - The enquiry officer should report whether charges are proved or not.

Relevant Judicial Interpretations

a. CASE LAW	National Textiles Workers Union vs. Meenakshi Mills
It has been held that if on the death of a fellow worker, the workmen acting in combination refuse to resume work, it amountsto strike.	
b. CASE LAW	**Northbrook Jute Co. Ltd. vs. Their Workmen**
Refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike.	
c. CASE LAW	**Punjab National Bank Ltd. vs. All India Punjab National Bank Employees' Federation**
Where in pursuance of a common understanding, the employees entered the premises of the Bank and refused to take their pensin their hands, it was held to be a strike.	
d. CASE LAW	**Tapan Kumar Jana vs. The General Manager, Calcutta Telephones**
Termination of service of casual workers after their work is over, is not a retrenchment.	
e. CASE LAW	**Bharat Sugar Mills Ltd. vs. Jai Singh**
Go-slow does not amount to strike.	
f. CASE LAW	**Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes MajdoorSabha**
Where the strike was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be illegal.	
g. CASE LAW	**India Marine Service Pvt. Ltd. vs. Their Workmen**
When the workmen and the management are equally to be blamed for the strike, the Court normally awards half of the wages.	
h. CASE LAW	**U.P. –vs.-Labour Court, Haldwani**
Retrenchment does not include disengagement from service of persons employed for working on daily wages.	
i. CASE LAW	**SBI –vs.- Employees of SBI**
If the termination of an employee's service is a punishment inflicted by way of disciplinary action, such termination would notamount to retrenchment.	
j. CASE LAW	**J.K. Cotton Spinning vs. Weaving Mills Co. Ltd.**
Certain gardeners were appointed to look after the bung low provided to the MD of the Company. The gardeners were supposedto mark their attendance in the Company Register and their salaries were being paid directly by the company. It was held that since the gardeners are working directly under the control of the company, they are workmen under the Industrial Disputes Act.	

k. CASE LAW	**Sunderambal vs. Government of Goa**
The Supreme Court held that the teachers employed by the Educational Institutions cannot be considered as workmen within the Industrial Disputes Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical or clerical work.	

l. CASE LAW	**AnandBihari vs. Rajasthan State Road Transport**
Unfair Labour Practices means any of the practices specified in the Vth Schedule to the Industrial Disputes Act. This Schedule declares certain labour practices as unfair on the part of the employers and their trade unions and on the part of the workmen and their trade unions. Industrial Disputes Act prohibits commission of any unfair labour practice by Employers and Workmen.The Supreme Court held that termination of services of a bus driver on the ground of weak eyesight does not amount to retrenchment under the Industrial Disputes Act because here the employee is being terminated on the ground of continued ill health and not because of surplus labour.	

m. CASE LAW	**PNB vs. GhulamDastagi**
It was held that a car driver engaged by area manager of a bank for which allowance was given to him was not a workman of the bank under Industrial Disputes Act, even though the car was maintained at the bank's expenses, as the control of the driver was not into the hands of the bank.	

n. CASE LAW	**Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal**
An Industrial Dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate government without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.	

o. CASE LAW	**Newspaper Ltd., Allahabad vs. Industrial Tribunal**
A Workmen's case sponsored by a body of workmen either acting through their union or otherwise, would amount to an Industrial Dispute.	

p. CASE LAW	**Western India Automobile Association vs. Industrial Tribunal**
The term 'employment or non-employment' is concerned with the employers; failure or refusal to employ a workman.	

q. CASE LAW	**CaronaSahu Co. Ltd. vs. Labour Court**
A Salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman.	

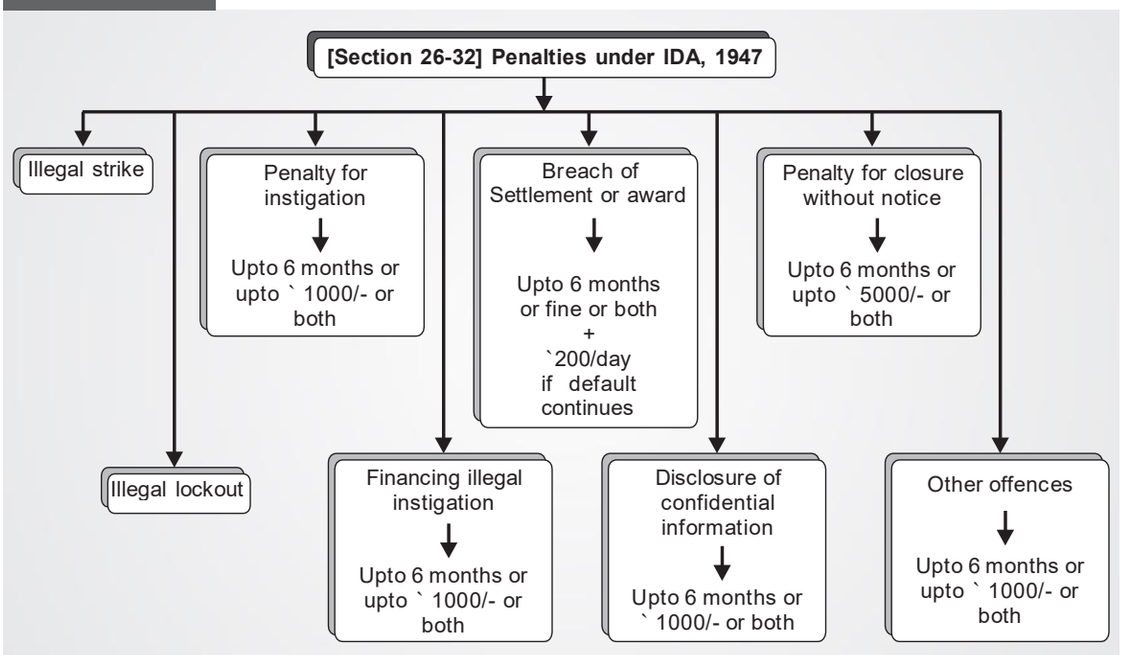
r. CASE LAW	**Prabhudayal Jat vs. Alwar Sehkari Bhumi Vikas Bank Ltd.**
Where the services of an employee irregularly appointed were terminated, it was held to be a case of retrenchment.	

s. CASE LAW	**Crompton Greaves Ltd. VsWorkmen, Syndicate Bank vs. UmeshNaik**
The use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.	

t. CASE LAW	**T.K. Rangarajan vs. Govt. of Tamil Nadu and Others**
The Government employees have no fundamental right to resort to strike and they cannot take the society at ransom by going on strike, even if there is injustice to some extent.	

u. CASE LAW	**Lord Krishna Sugar Mills Ltd. vs. State of U.P.**
A closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen was held to be a lockout.	

Quick Recap



CS AMIT VOHRA LAW CLASSES

Chapter – 17 Unit - 2
The Industrial Employment(Standing Orders) Act, 1946

List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(a)	Appellate authority
2(b)	Appropriate Government
2(c)	Certification officer
2(d)	Employer
2(e)	Industrial establishment
2(g)	Standing orders
2(i)	wages & workman
3	Submission of draft Standing order
4	Conditions for certification of S.O & Fairness or reasonableness of S.O.
5	Certification of standing order
6	Appeals
7	Date of operation of standing order
8	Register of standing order
9	Posting (Display) of standing order
10	Duration and modification of standing order
10A	Subsistence allowance
12A	Temporary application of model standing orders
13A	Interpretation of standing order
13B	Act not to apply to certain industrial establishments
14	Power to exempt

Introduction

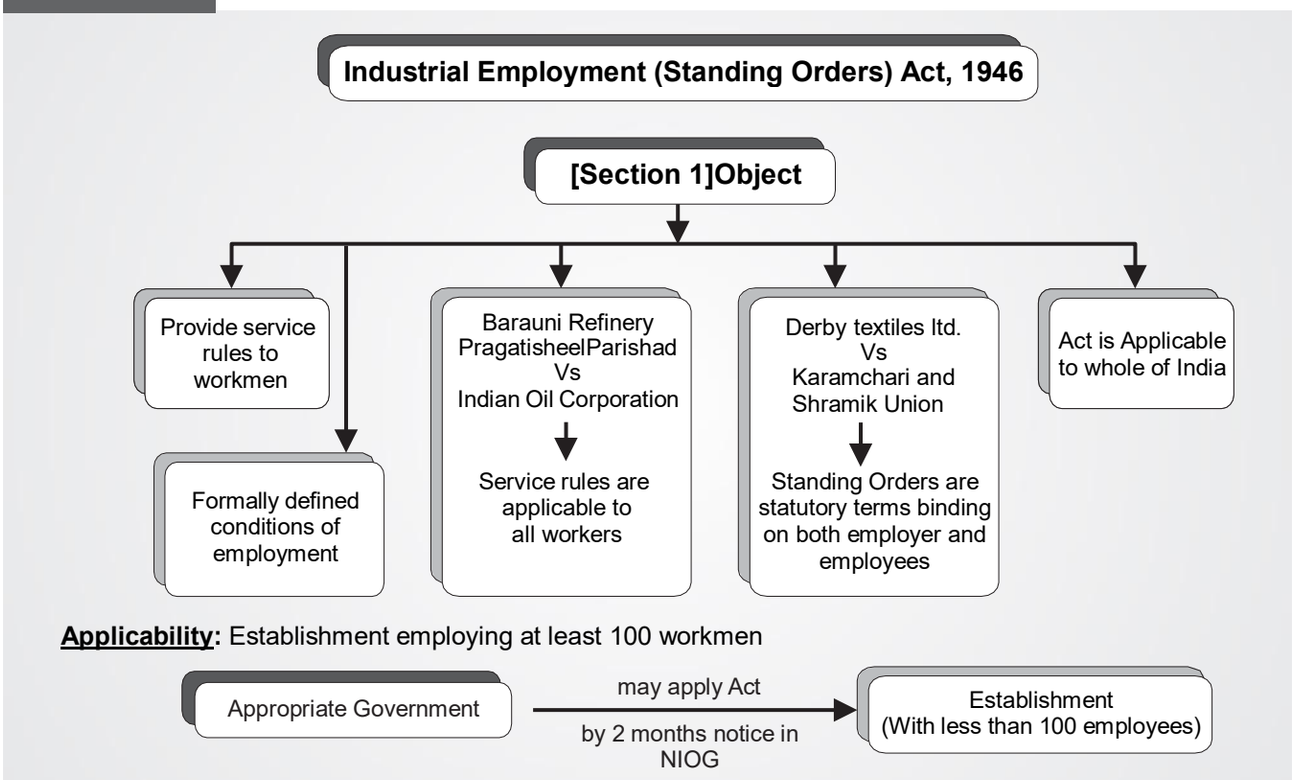
The Industrial Employment (Standing Orders) Act, 1946 is designed to provide service rules to workmen. The object of the Act is to require employers in industrial establishments to formally define conditions of employment under them.

CASE LAW	Barauni Refinery Pragati Sheel Parishad vs. Indian Oil Corporation Ltd. (1991)
The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment **(Barauni Refinery Pragati Sheel Parishad vs. Indian Oil Corporation Ltd. (1991))**	

CASE LAW	Derby Textiles Ltd. vs. Karamchari and Shramik union (1991)

Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees **(Derby Textiles Ltd. vs. Karamchari and Shramik union (1991))**

Quick Recap



Definitions

[Section 2(a)] Appellate Authority

It means an authority **appointed by the Appropriate Government** by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act.

[Section 2(b)] Appropriate Government

"Appropriate Government" means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a **major port, mine or oilfield**, the **Central Government**, and in all**other cases** the **State Government**.

[Section 2(c)] Certifying Officer

"Certifying Officer" means a Labour Commissioner or a **Regional Labour Commissioner**, and includes any other**officer appointed by the Appropriate Government** by notification in the Official Gazette, to perform all or any ofthe functions of a Certifying Officer under this Act.

[Section 2(d)] Employer

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

i. A **manager so** named under [Section 7(1) (f)] of the **Factories Act, 1948**.

ii. The **head of the department** or any authority appointed by the Government in any **industrial establishment**
under its control.

iii. Any person responsible to the owner for the **supervision and control** of any other industrial establishmentwhich is not under the control of Government. [(Section 2(d)].

[(Section 2(e)] Industrial Establishment

It means:

i. An **industrial establishment** defined by [Section 2(ii)] of the **Payment of Wages Act, 1936**, or
ii. A **factory** as defined by [Section 2(m)] of the **Factories Act, 1948**, or
iii. A **railway** as defined by [Section 2(4)] of the **Indian Railways Act, 1890**, or
iv. The **establishment** of a person who, for the purpose of fulfilling a contract with the owner of any industrialestablishment, employs workmen.

[(Section 2(g)] Standing Orders

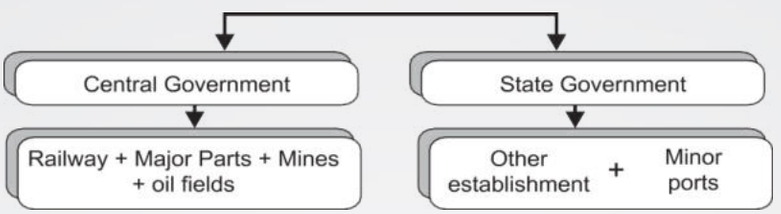
"Standing orders" means rules relating to matters set out in the schedule to the Act.

[(Section 2(f)] Wages & workman:

Have the meaning respective, assigned to them in clause (rr) & (s) of section 2 of Industrial Disputes Act, 1947.

Quick Recap

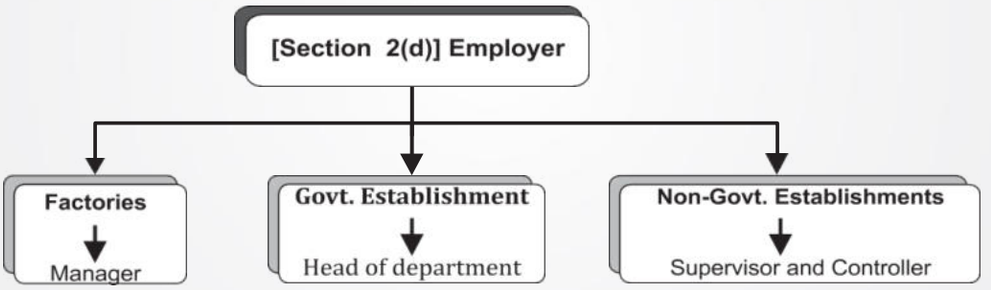
1. **[Section 2(b)]- Appropriate Government (A.G)**



2. **[Section 2(a)]- Appellate Authority**

3. **[Section 2(c)]- Certification Officer**

4. **[Section 2(d)] Employer**



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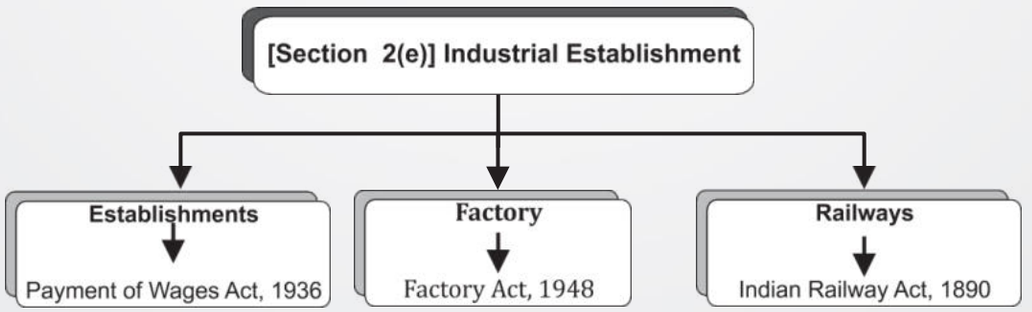


6. [Section 2(g)] - Standing Orders → Rules under schedule

7. [Section 2(i)] - Wages & workmen → U/S 2(rr) and 2(s) of Industrial Disputes Act, 1947 respectively.

Meaning of Standing Orders

Standing Orders mean rules of conduct for workmen employed in an industrial establishment. As per the Act, thestanding orders must specify for the following:

1) Classification of workmen i.e., temporary, casual, skilled, etc.
2) Manner of intimating working hours, shift change, transfers, etc. to workmen
3) Holidays
4) Attendance and late coming rules
5) Leave rules
6) Termination of employment, suspension, dismissal, etc. for misconduct
7) Retirement age
8) Means of redressal of workmen against unfair treatment
9) Any other matter as may be prescribed.

Applicability of the Act

The Act is applicable to all industrial establishments employing 100 or more workmen. The term industrial establishment includes factory, transport service, construction work, mines, plantation, workshop, building activity, transmission of power, etc.

[Section 3] Approval of Standing Orders

Every employer covered under the Act has to prepare standing orders covering the matters required under the Act. Five copies of the standing orders shall be sent to Certifying Officer (Labour Commissioner) for approval within sixmonths of Act becoming applicable

[Section 4] Fairness or reasonableness of Standing Orders

The Act, has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the StandingOrders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction.

[Section 5] Certification of Standing Order

The Certifying Officer will inform the workman and shall hear their objections within 15 days of receipt of notice.After that, he will certify the standing orders for industrial establishment. Until the standing orders are certified, Model Standing Orders prepared by the Government shall automatically apply.

A copy of the certified Standing Orders will be sent by him to both the employer and the employees associationwithin seven days of the certification.

CASE LAW	Eicher Good earth Ltd. vs. R.K. Soni
Once the standing orders are specified, they supersede any terms and conditions of employment contained in the employment letter.If there is any inconsistency between standing orders and appointment letter, provisions of standing orders shall prevail.	

[Section 6] Appeals

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workman, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives. The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amends them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

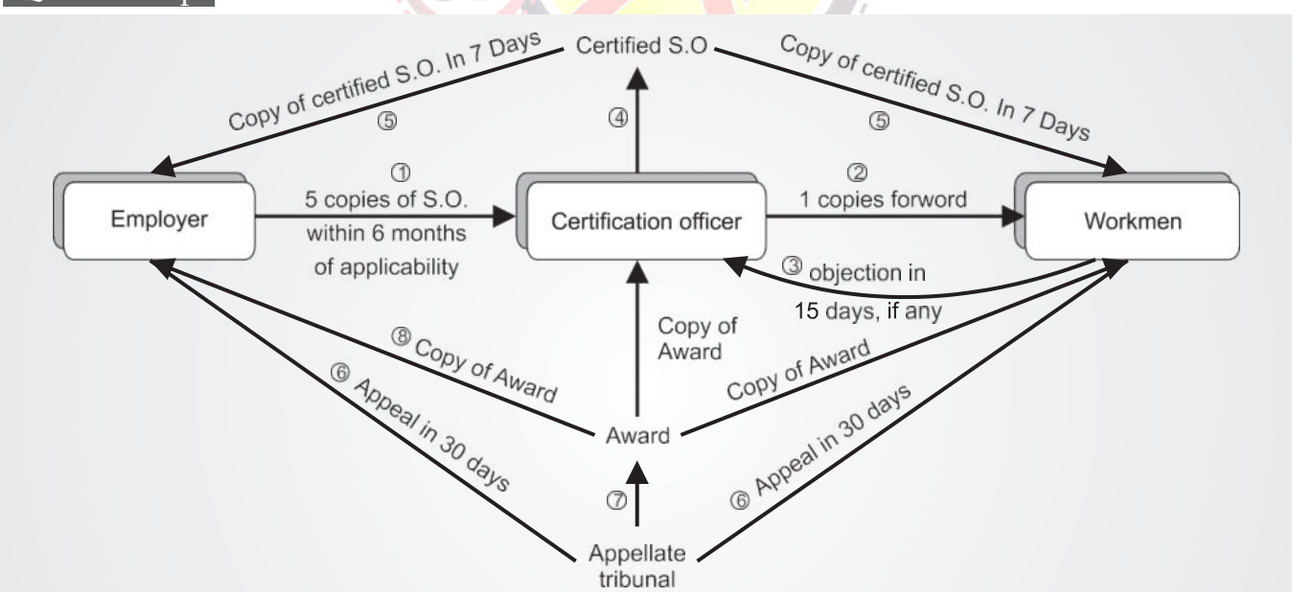
CASE LAW	Khadi Gram Udyog Sangh Vs Jeet Ram
The appellate authority has no power to set aside the order of certifying officer. It can confirm or amend standing orders.	

CASE LAW	Re - Kerala Agro Machinery Corporation (1998)
The appelate authority cannot remand the matter for fresh consideration. (Only Disputed matter).	

[Section 7] Date of Operation of Standing Orders

Standing Orders shall come into operation on the expiry of 30 days from the date of which the authenticated copies are sent to employer and workers, representatives or where an appeal has been performed, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent toemployer and workers representatives.

Quick Recap



Section 3 — Submission of draft S.O to certification officer
Section 4 — Fairness of S.O
Section 5 — Certification of S.O
Section 6 — Appeal
Section 7 — Date of operation of S.O — Certified S.O — After 30 days of sending; Awarded S.O — After 7 days of sending

[Section 8] Maintaining of Register

Empowers Certifying Officer to file a copy of Standing Orders as Certified by him in a Register maintained for this purpose. He shall furnish a copy to anyone applying thereof on payment of prescribed fees.

[Section 10] Application for Modification

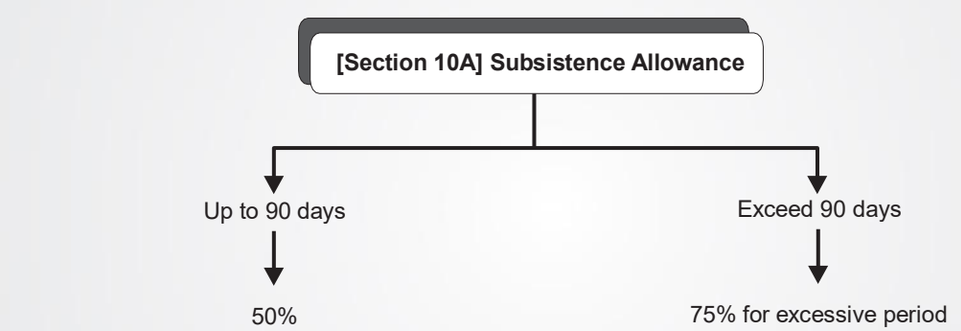
An application for modification of standing order can be made only after expiry of 6 months from the date of applicability or last modification.

[Section 10A] Subsistence Allowance

Where workman is suspended by employer pending investigation or enquiry into complaints or charge ofmisconduct against him, the workman shall be paid subsistence allowance equal to **50% of wages for the first90 days of suspension and 75% for the remaining period until completion of disciplinary proceedings.**

Here 'Wages' has the same meaning as given under the Industrial Disputes Act, 1947.

Quick Recap

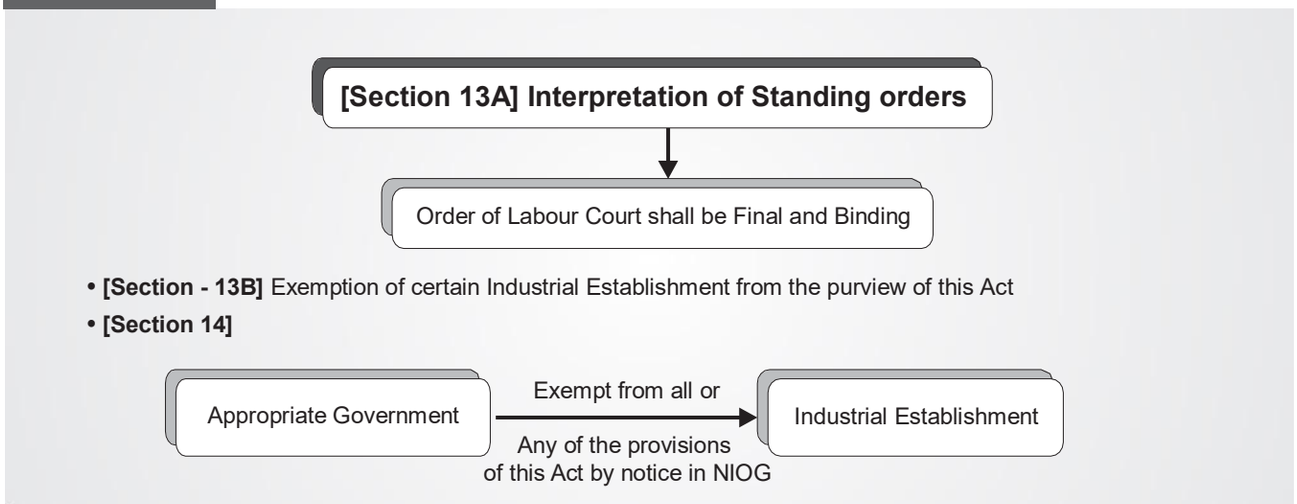


- **BPCL Vs Petroleum Employees Union**
- **Held-** Right to subsistence allowance is unconditional right.

[Section 13A] Interpretation of Standing Orders

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any **Labour Court** constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour Court, to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

Quick Recap



[Section 13B]

Exempt Certain Industrial establishment from the purview of this Act where Fundamental and Supplementary Rules, Civil Services Rules, Civil Services Regulations, Civil in Defence Services Rules or Indian Railway Establishment Code or any other rules or regulations that may be notified by Appropriate Government in NIOG applies.

[Section 14]

Appropriate Government may exempt any Industrial establishment from all or any of the provisions of this Act bygiving notification in NIOG.

Relevant Judgements

CASE LAW	Indian Iron and Steel Co. Ltd. vs. Ninth Industrial Tribunal
1. Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of dailyrated workmen only, the Model Standing Orders can be applied to monthly rated workmen.	
CASE LAW	**Derby Textiles Ltd. vs. Karamchari and Shramik Union**
2. Certified Standing Orders are a part of the statutory and not contractual terms and conditions of service and are binding on boththe employer and the employees. In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model StandingOrders shall be deemed to be adopted and applicable.	
CASE LAW	**Indian Express Employees Union vs. Indian Express (Madurai) Ltd.**
3. Workmen are entitled to apply for modification of the Standing Orders. Modification Application can be made at any time but notwithin 6 months of certification or last amendments.	
CASE LAW	**BPCL vs. Petroleum Employees Union**
4. It was held that right to get the subsistence allowance during the period of suspension is an unconditional right and it cannot beaffected by requiring the suspended workman to mark his attendance to get the subsistence allowance.	

Chapter – 18 Unit - 1
Minimum Wages Act,1948

List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(b)	Appropriate Government
2(e)	Employer
2(i)	Employee
2(h)	Wages
2(g)	Scheduled employment
3	Fixation of minimum rates of wages and its revision
4	Minimum rates of wages
5	Procedure for fixing and Revising Minimum Wages
7	Advisory Board
8	Central Advisory Board
11	Wages in cash or kind
12	Payment of minimum rates of wages is obligatory on employer otherwise is an offence
13	Fixing hours for normal working day
14	Overtime payment
15	Wages of workers who works for less than normal working day
17	Minimum time rate wages for piece work
18	Maintenance of Register and Records
20-21	Authorities and claims
22	Penalties for certain offences
22A	Penalties for other offences

ADITYA VOHRA LAW CLASSES

Introduction

The main objective of the Minimum Wages Act is to **prevent exploitation of labour by prescribing minimum wage rates** and for that purpose, it has empowered the Appropriate Government to take steps to prescribe minimum rates of wages in certain employments, as specified in the Schedule to this Act.

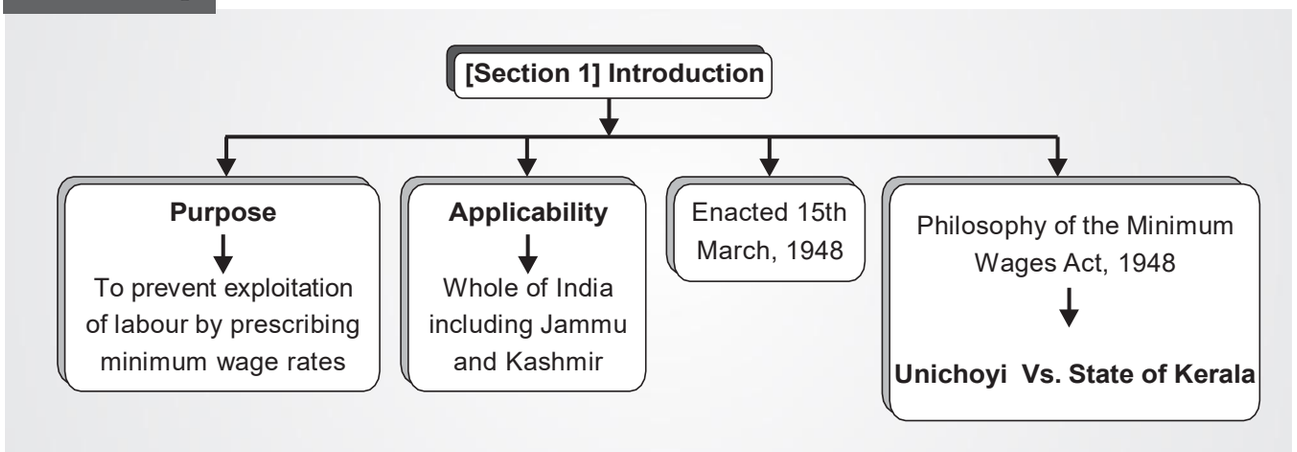
The act **extends to whole of India**.

Philosophy Behind the Enactment of the Minimum Wages Act, 1948

CASE LAW	**Unichoyi vs. State of Kerala**
The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by theSupreme Court in Unichoyi vs. State of Kerala	

- The purpose of Minimum Wages Act, 1948 is to prevent exploitation of labour and for that purpose empowers the Appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.
- In an underdeveloped country which faces the problem of **unemployment** on a very large scale, it is notunlikely that labour may offer to work even on **starvation wages**.
- The policy of the Act is to prevent the employment of such sweated labour in the interest of general public andso prescribed in minimum rates, the **capacity of the employer need not to be considered**.
- What is being prescribed is **minimum wages** rates which a welfare state assumes **every employer must pay** tohis labour employed.

Quick Recap



Important Definitions

[Section 2(e)] Employer

"Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

Person who engages workers through another like a contractor would also be an employer.

It was held in **Nathu Ram Shukla vs. State of Madhya Pradesh** that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not anemployer within the meaning of the Act.

[Section 2(h)] Wages

"Wages" means all remunerations capable of being expressed in terms of money and includes house rent allowancebut does not include:

(i) The value of any house accommodation, supply of light, water, medical or any other amenity or any serviceexcluded by general or social order of the Appropriate Government.

(ii) Contribution by the employer to any Pension Fund or under any scheme of social insurance.

(iii) Any travelling allowance.

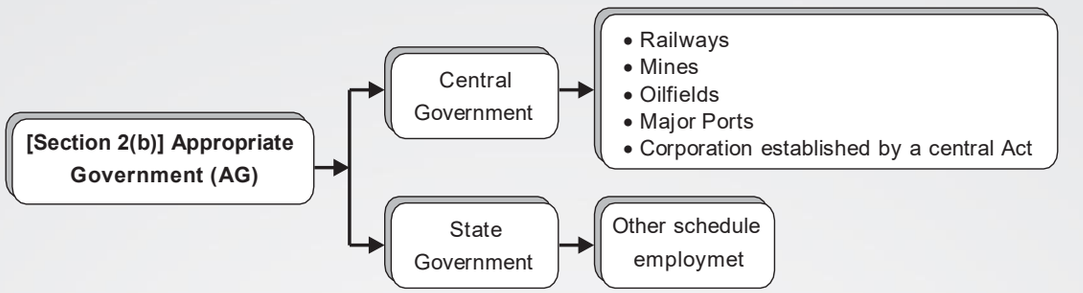
(iv) Any sum paid to the person employed to defray special expenses entitled on him by the nature of hisemployment.

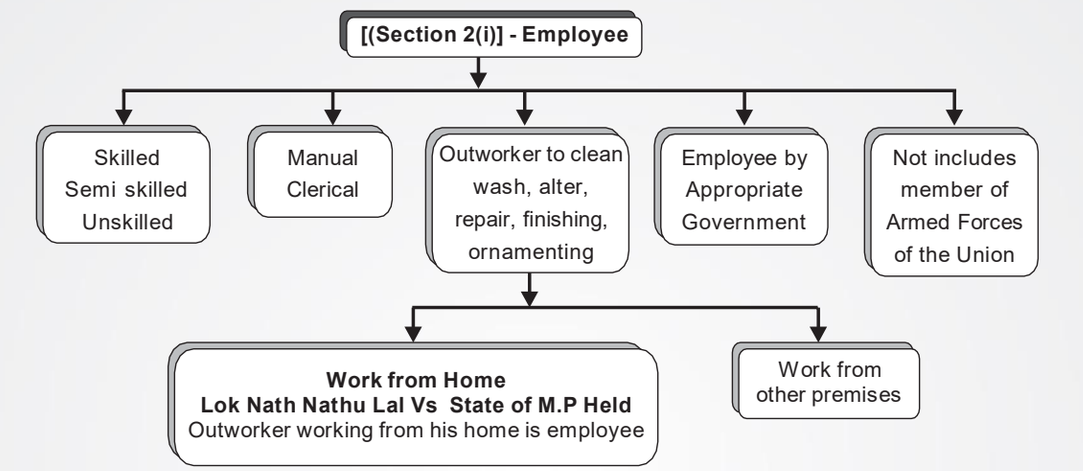
(v) Any gratuity payable on discharge.

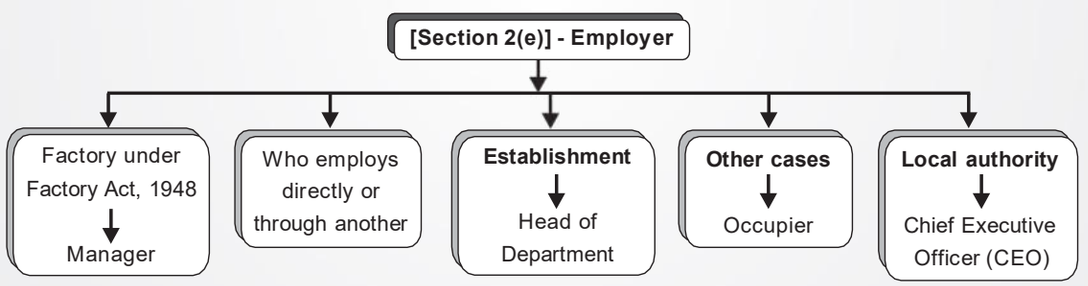
[Section 2(i)] Employee

"Employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual orclerical in a scheduled employment in respect of which minimum rates of wages have been fixed, and includes an outworker, but does not include any member of Armed Force of the Union.

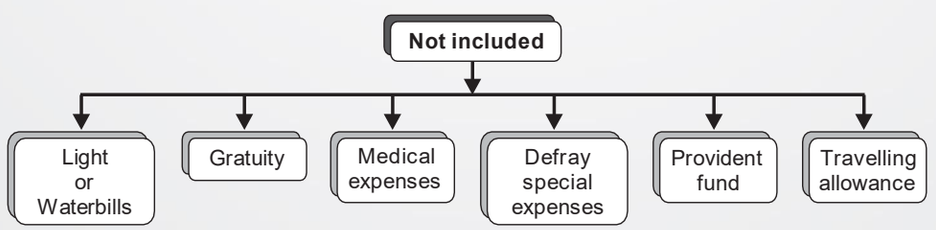
Quick Recap



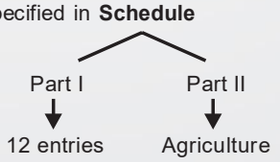




Wages [Section 2(h)] All remuneration in money (+) HRA.



[Section 2(g)] Scheduled employment — Employment specified in **Schedule**



Fixation of Minimum Rates of Wages

- **Section 3** provides that the 'Appropriate Government [Central Government/State Government]' shall fix theminimum rates of wages, payable to employees in an employment specified in Schedule to this Act.

CASE LAW	Basti Ram vs. State of A.P.
In the case of an employment specified in Part I of the Schedule, the minimum rates of wages must be fixed for the entire State, noparts of the State being omitted. Different rates can be fixed for different zones or localities.	

- In case of the employments specified in Part II of the Schedule i.e. agriculture, the minimum rates of wagesmay not be fixed for the entire State. Parts of the State may be left out altogether.

CASE LAW	Bijoy Cotton Mills vs. State of Ajmer
In the case of Bijoy Cotton Mills vs. State of Ajmer, the Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view of carrying out one of the Directive Principles of the State Policy.	

[Section 3(1)(b)] Revision of Minimum Wages

- The 'Appropriate Government' may review and revise the minimum rate of wages, if necessary, at **intervals notexceeding five years**.
- This means that minimum wages can be revised earlier than five years also.

[Section 3(2)] Manner of fixation or revision of minimum wages

According to section 3(2), the 'appropriate government' may fix minimum rate of wages for:

(a) Time work, known as a Minimum Time Rate;

(b) Piece work, known as a Minimum Piece Rate;

(c) A "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate government may result in a worker earning less than the minimum wage), and

(d) A "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Minimum Rate of Wages

According to **Section 4** of Act, any minimum rate of wages fixed or revised by the Appropriate Government underSection 3 may consists of:

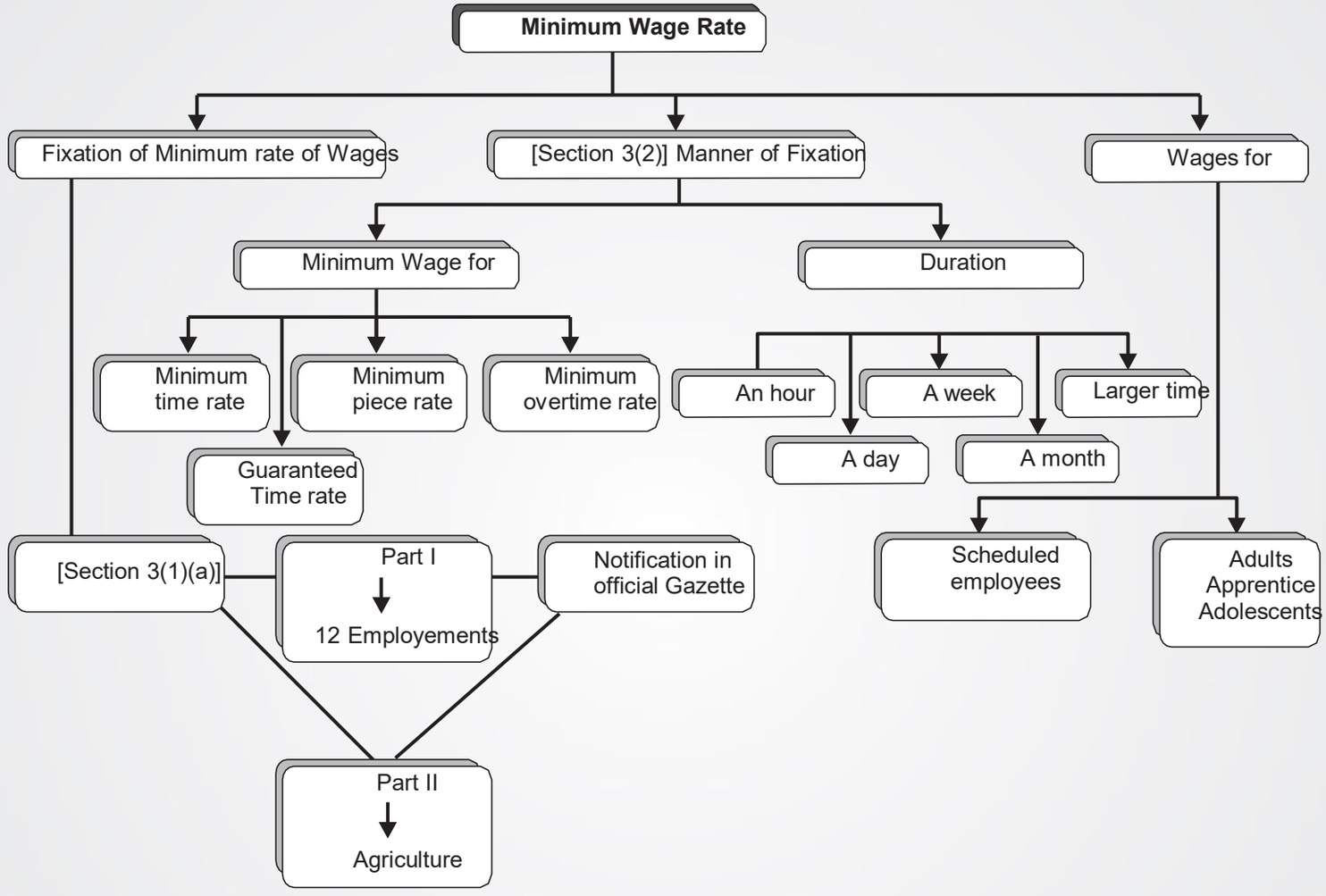
(i) A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the Appropriate Government may direct to accord as nearly as practicable with the variation in the costof living allowance;

Or

(ii) A basic rate of wages or without the cost of living allowance and the cash value of the concession in respectof supplies of essential commodities at concessional rates where so authorized;

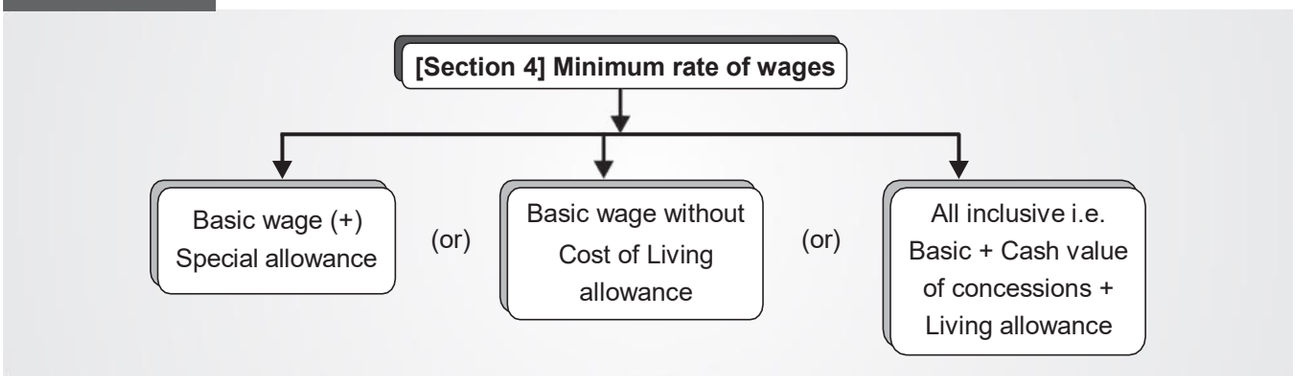
Or

(iii) An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.



- **Basti Ram Vs State of A.P.** Different rates for different localities.
- **Bijoy Cotton Mills Vs State of Ajmer** Section 3 is reasonable and valid.
- Government may fix minimum rates if employees in state are not less than 1000 workers.
- **Revision [Section 3(1) (b)]** Intervals not exceeding 5 years.
  Wages can be revised earlier also.

Quick Recap



[Section 5] Procedure for Fixing and Revising Minimum Wages

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimumrates of wages, the appropriate Government can follow either of the **two methods** described below.

- **Committee Method**

The appropriate Government may appoint as many **committees** and **sub-committees** as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or sub-committees, the **Appropriate Government** shall, by **notification** in the Official Gazette, fix or revise the minimum rates of wages. The wage rates shall come into **force** from such **date as may be specified** in the notification. If **no date is specified**, wages rates shall come into force **on the expiry of three months from the date of the issue** of the notification.

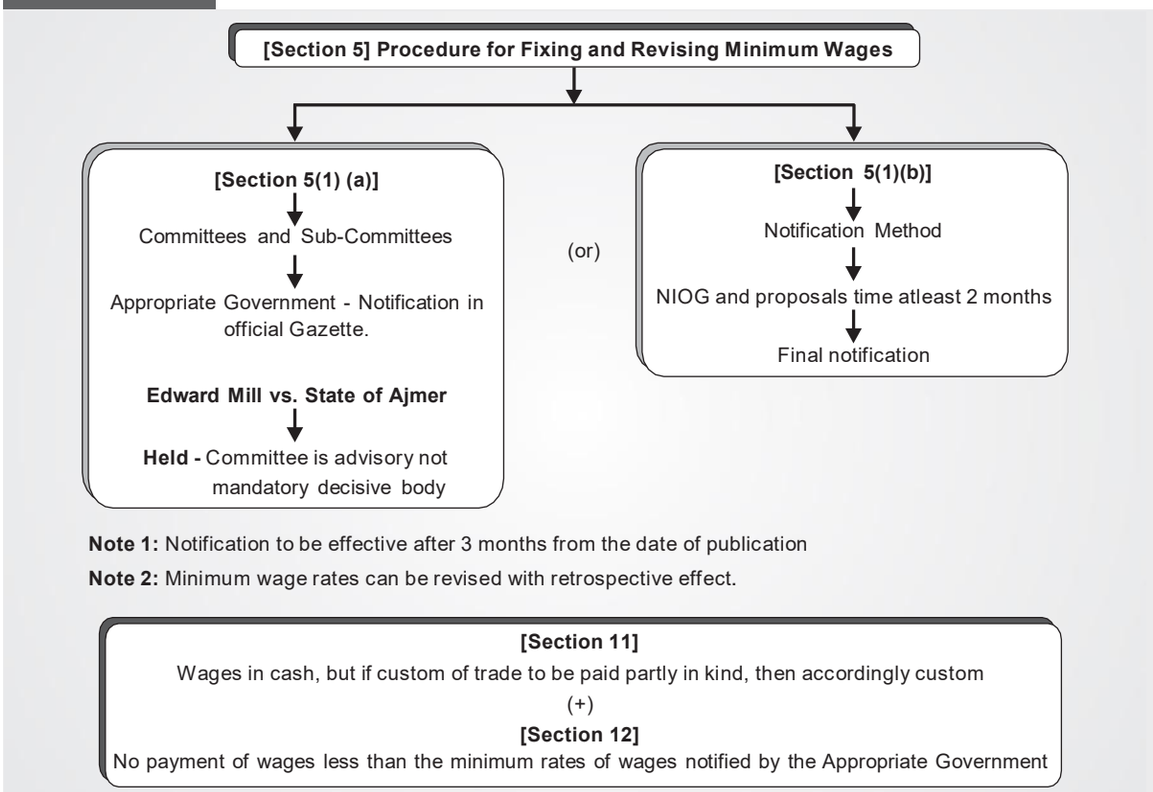
- **Notification Method**

When fixing minimum wages, the Appropriate Government shall by notification, in the **Official Gazette publish its proposals** for the information of persons likely to the affected thereby and specify a date not less **than 2 months** from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the Appropriate Government. It will also **consult the Advisory Board** constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such **date as** may be **specified** in the notification. However, if no date is specified, the notification shall come into force on **expiry of three months from the date of its issue.**

Note: Minimum wage rates can be revised with retrospective effect.

Quick Recap



Advisory Boards

State Advisory Board

The advisory board is constituted, under **Section 7** of the Act, by the State Government for the purpose of co-ordinating the work of committees and subcommittees appointed under Section 5 of the Act and advising the Appropriate Government generally in the matter of fixing and revising of minimum rates of wages.

The advisory board shall consist of persons to be nominated by the State Government representing **employers and employees** in the scheduled employment who shall be **equal in number**, and **independent persons not exceeding 1/3rd of its total number of members**, one of such **independent persons** shall be appointed as the **Chairman** by the State Government.

An **independent person means** a person who is **neither an employer nor an employee** in the employment for which the minimum wages are to be fixed.

CASE LAW	State of Rajastan vs. Hari Ram Nathwani
In the case of State of Rajastan vs. Hari Ram Nathwani, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.	

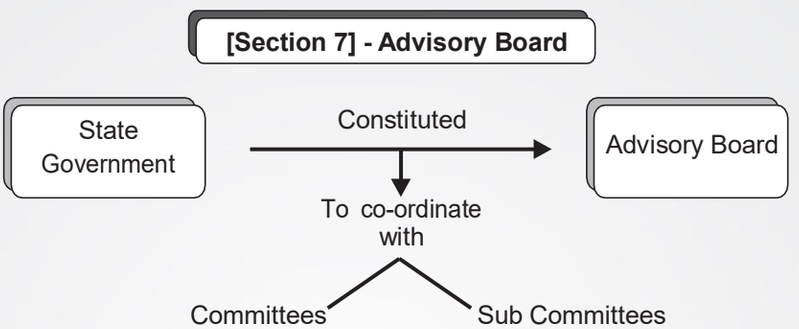
CASE LAW	B. Y. Kshtriya vs. Bidi Kamgar Union
It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment.	

Central Advisory Board

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards.

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number; and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

Quick Recap



- Equal number of employees representatives and employer representative (+) 1/3rd independent persons (+)1 independent person appointed as chairman by State Government.

(+)

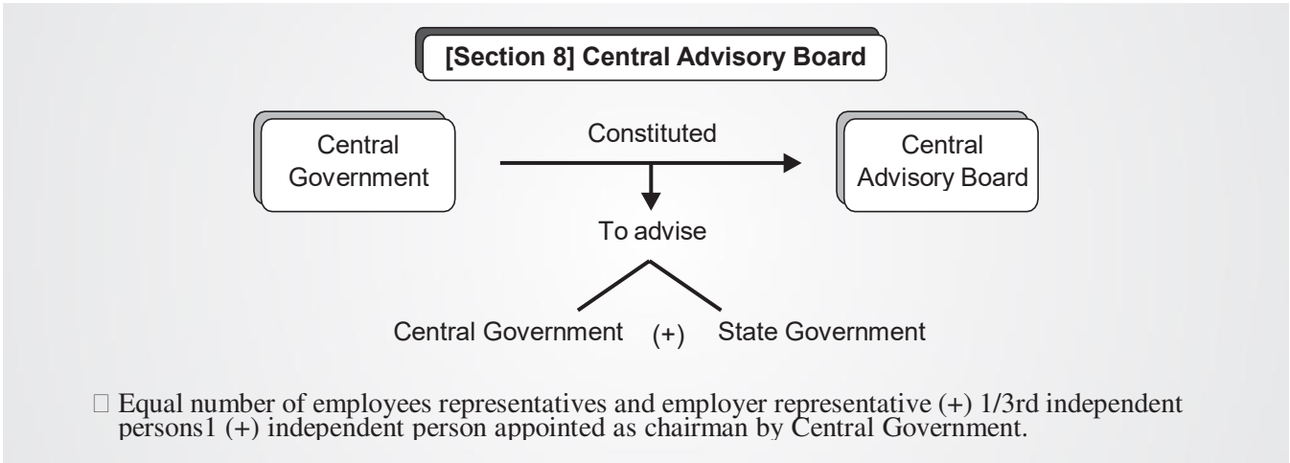
State of Rajasthan Vs. Hari Ram Nathwani

Held: - Government servant can be an independent chairman

B.Y. Kshatriya Vs. S.A.T. Bidi Kamgar Union

Held:

- Neither employer nor employee can act as Chairman.
- Not necessary to constitute member from each industry.



 Equal number of employees representatives and employer representative (+) 1/3rd independent persons1 (+) independent person appointed as chairman by Central Government.

[Section 11] Minimum Wage – Whether to be Paid in Cash or Kind

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages in kind, the Appropriate Government, on being satisfied, may approve and authorize such payments.

Note: Such Government can also authorize for supply of essential commodities at concessional rates.

[Section 12] Payment of Minimum Wages is Obligatory on Employer

Payment of less than the minimum rates of wages notified by the appropriate Government is **an offence**.

[Section 14] Payment for Overtime

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him, for every hour or part of an hour so worked in excess, at the overtime rate fixed under this Act or under any other law; whichever is higher.

Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages

[Section 15] Wages of a Worker Who Works Less than Normal Working Day

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he is employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day, subject to the condition that failure to work is not caused by employee's unwillingness to work.

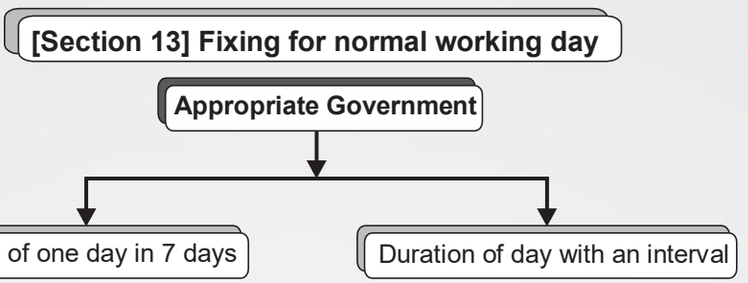
[Section 17] Minimum Time – Rate Wages for Piece Work

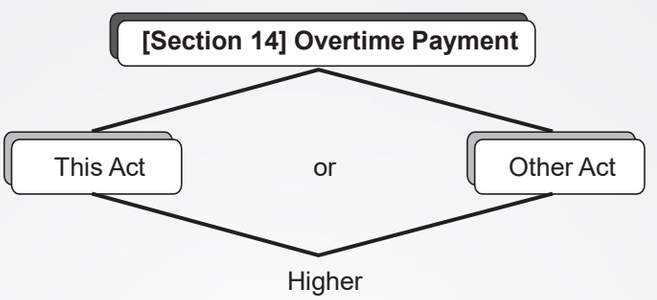
Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid at minimum time rate.

[Section 18] Maintenance of Register and Records

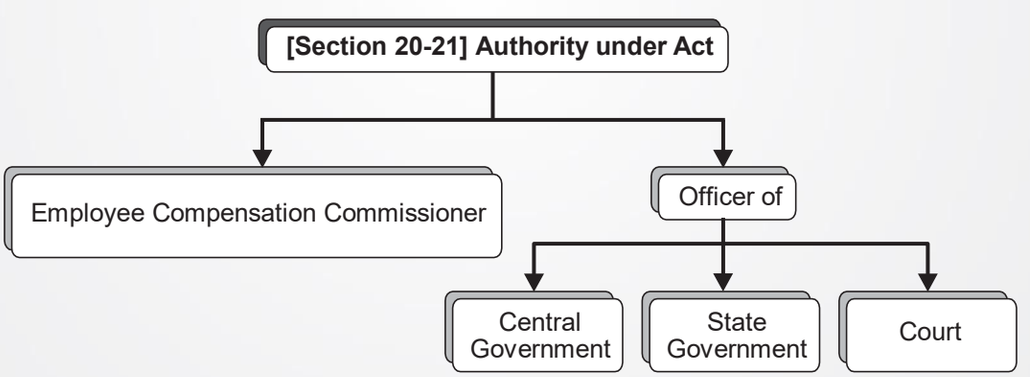
Every employer is required to maintain registers and records as prescribed under the rules by the Appropriate Government.

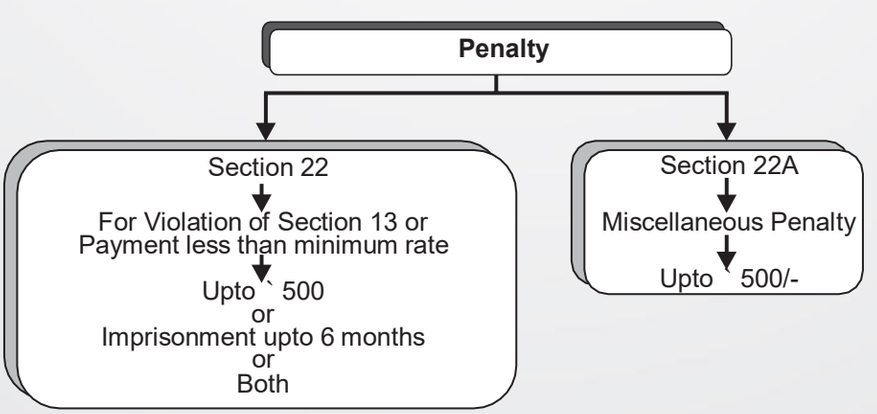
Quick Recap





- **[Section 15]: - Full wages if, work is less than a day**
  But no pay if employee is unwilling to work.
- **(Section 18): - Maintenance of registers and records**
  Manner prescribed by Appropriate Government





CS
AMIT VOHRA LAW CLASSES

Chapter – 18 Unit - 2
Payment of Wages Act1936

List of Sections

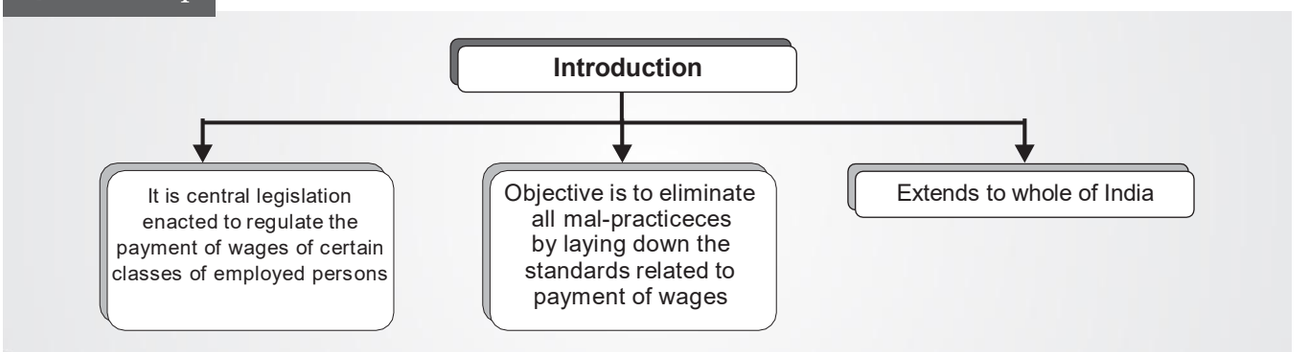
Sections	Particulars of Section
1	Extent & applicability
2 (ia)	Employed Person
2 (ib)	Employer
2 (ic)	Factory
2 (ii)	Industrial or other establishment
2 (iia)	Mine
2 (iii)	Plantation
2(iv)	Railway administration
2(vi)	Wages
3	Responsibility for payment of wages
4	Fixation of wage periods
5	Times of payments of wages
6	Medium of payment of wages
7	Deduction which may be made from wages
8	Deduction for fines
13 (A)	Maintenance of registers and records
14	Inspectors
15	Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatiousclaims

ANUJ VOHRA LAW CLASSES

Introduction

- The Payment of Wages Act, 1936 is a **central legislation** which has been enacted to:-
  - **Regulate the payment of wages** to workers employed in certain specified industries And
  - To ensure a **speedy and effective remedy** to them against unauthorized deductions or unjustified delay caused in paying wages to them.
- It **applies to the persons employed** in a factory, industrial or other establishment or in a railway, **whether directly or indirectly** or **through a sub-contractor.**
- In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act was **last amended in 2005**.
- The **Central Government** is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the **State Governments** are responsible for it in factories and other industrial establishments.

Quick Recap



Object and Scope

- The main object of the Act is to **eliminate all malpractices** by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorized deductions.
- The Act **extends to the whole of India**.

Definitions

1. **[Section 2(ia)]"Employed person**" includes the legal representative of a deceased employed person.
2. **[Section 2(ib)] "Employer"** includes the legal representative of a deceased employer.
3. **[Section 2(ic)] "Factory"** means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof.
4. **[Section 2(ii)] "Industrial or other establishment"** means any –
   a) **Tramway service or motor transport service** engaged in carrying passengers or goods or both by road for hire or reward;
   (aa) **Air transport service** other than such service belonging to or exclusively employed in the military naval or air forces of the **Union or the Civil Aviation Department of the Government** of India;
   b) Dock wharf or jetty;
   c) **Inland vessel mechanically** propelled;
   d) Mine quarry or oil-field;
   e) Plantation;

f)) **Workshop or other establishment** in which articles are produced adapted or manufactured with a view to their use transport or sale;

g) Establishment in which any work relating to the **construction development** or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of Water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

h) Any other establishment or class of establishments which the **Appropriate Government may having regard** to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by **notification in the Official Gazette**.

5. [Section 2(vi)] "Wages" means all **remuneration** (whether by way of salary allowances or otherwise) **expressed in terms of money** or **capable of being so expressed** which would if the terms of **employment express** or **implied** were fulfilled by **payable to a person employed** in respect of his employment or of **work done in such employment** and includes –

(a) Any remuneration payable under any **award or settlement** between the parties or order of a court;

(b) Any remuneration to which the person employed is entitled in **respect of overtime** work or holidays or any leave period;

(c) Any additional remuneration payable under the terms of employment (whether called a bonus or by another name) any sum which by reason of the **termination of employment of the person** employed is payable under any **law contract** or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

(d) Any sum to which the person employed is **entitled under any scheme** framed under any law for the time being in force, but does not include –

(1) **Any bonus** (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) The value of any **house-accommodation or of the supply of light water medical attendance or other amenity** or of any service excluded from the computation of wages by a general or special order of Appropriate Government;

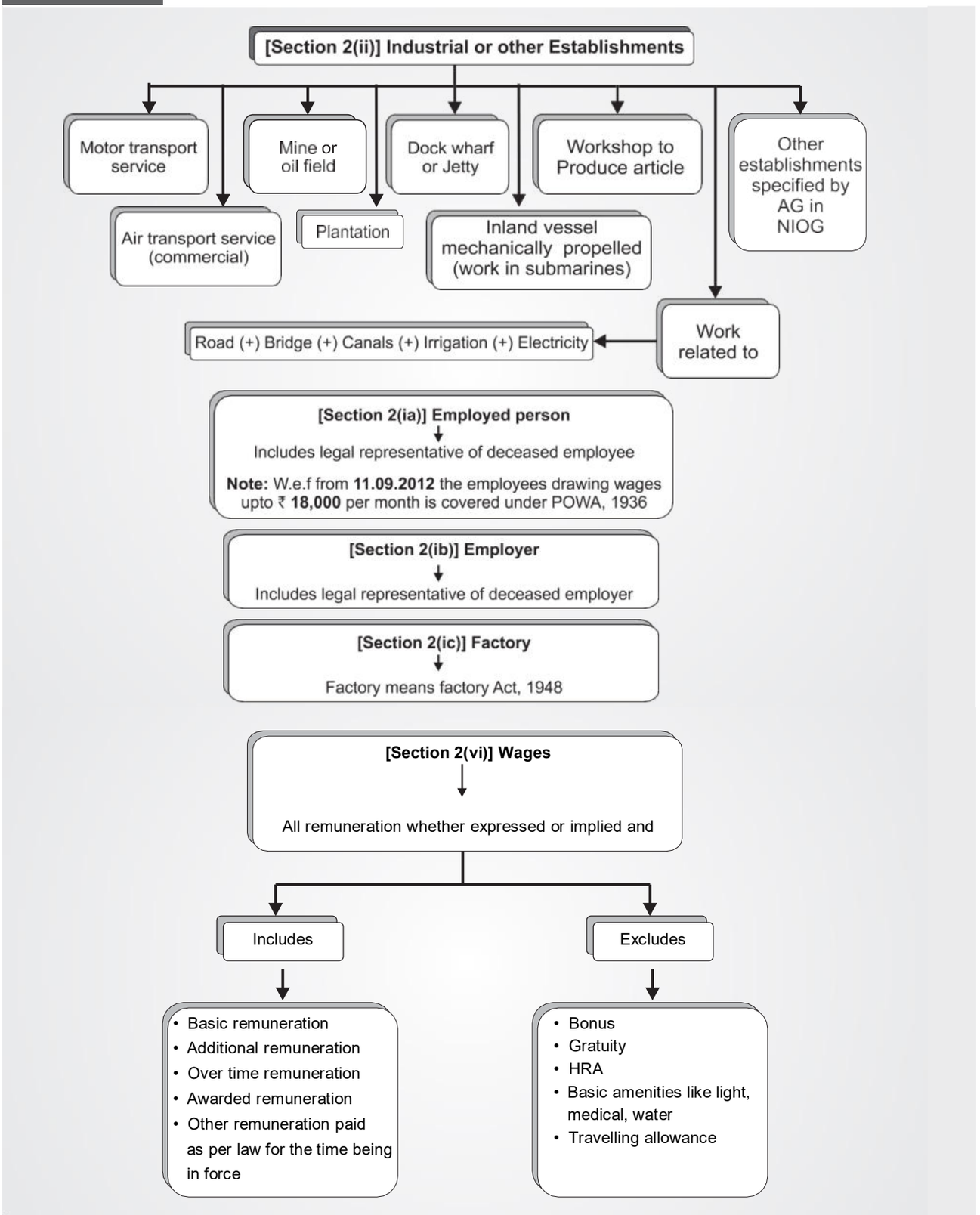
(3) Any **contribution paid by the employer** to any **pension or provident fund** and the interest which may have accrued thereon;

(4) Any **travelling allowance** or the value of any travelling concession;

(5) Any sum paid to the **employed person to defray special expenses** entailed on him by the nature of his employment; or

(6) Any gratuity payable on the termination of employment in cases other than those specified **in sub-clause (d).**

Quick Recap


[Section 2(ii)] Industrial or other Establishments
Motor transport service
Mine or oil field
Dock wharf or Jetty
Workshop to Produce article
Other establishments specified by AG in NIOG
Air transport service (commercial)
Plantation
Inland vessel mechanically propelled (work in submarines)
Work related to
Road (+) Bridge (+) Canals (+) Irrigation (+) Electricity
[Section 2(ia)] Employed person
Includes legal representative of deceased employee
Note: W.e.f from 11.09.2012 the employees drawing wages upto ₹ 18,000 per month is covered under POWA, 1936
[Section 2(ib)] Employer
Includes legal representative of deceased employer
[Section 2(ic)] Factory
Factory means factory Act, 1948
[Section 2(vi)] Wages
All remuneration whether expressed or implied and
Includes
Excludes
• Basic remuneration
• Additional remuneration
• Over time remuneration
• Awarded remuneration
• Other remuneration paid as per law for the time being in force
• Bonus
• Gratuity
• HRA
• Basic amenities like light, medical, water
• Travelling allowance

Responsibility for Payment of Wages

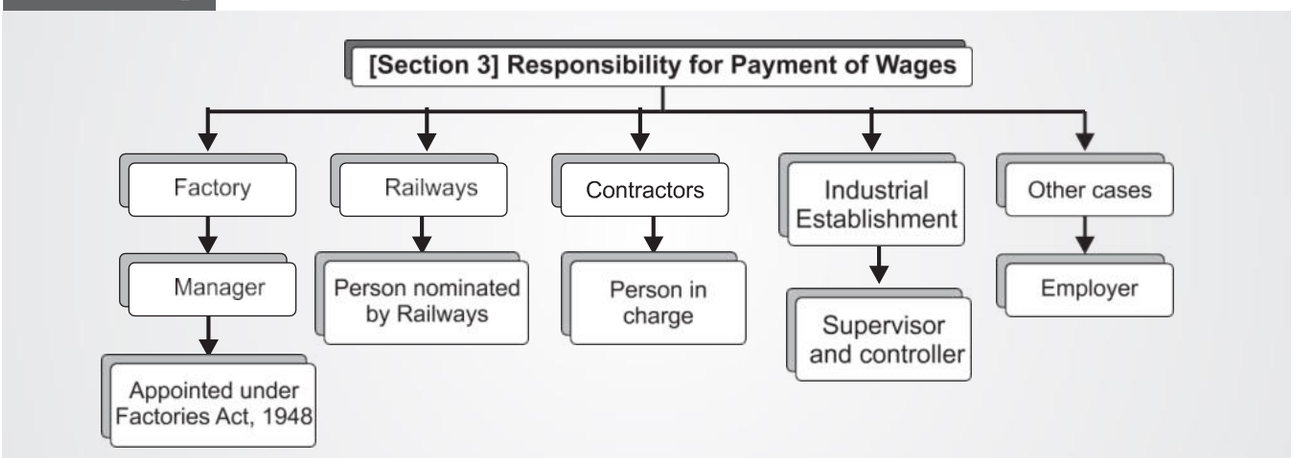
Section 3 provides that every employer shall be responsible for the payment to persons employed by him of allwages required to be paid under the Act.

However, in the case of persons employed in:

a. **Factories** if a person has been named as the **manager of the factory**;
b. **Industrial or other establishments** if there is a person responsible to the employer for the **supervision andcontrol** of the industrial or other establishments;
c. **Upon railways** if the employer is the railway administration and the railway administration has **nominateda person** in this behalf for the local area concerned;
d. **The work of contractor**, a person designated by such contractor who is directly under his charge; and in anyother case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or theperson so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per **section 2(ia) "employer"** includes the **legal representative of a deceased employer.**

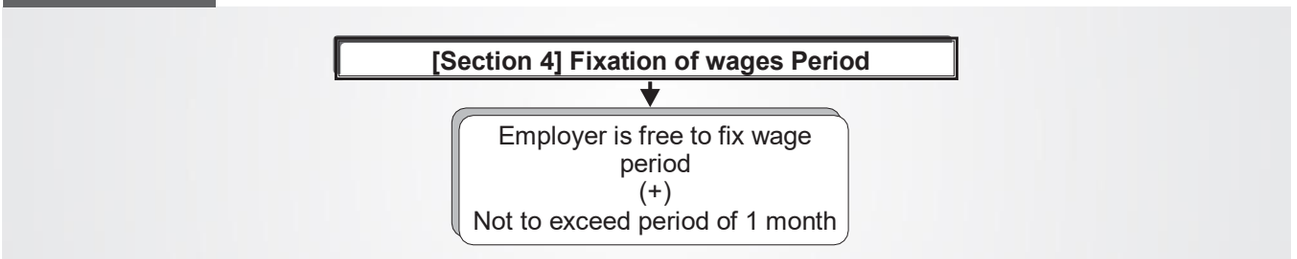
Quick Recap



Fixation of Wage Period

As per **Section 4** of the Act every **person responsible for the payment of wages** shall fix wage-periods in respectof which such wages shall be payable. No wage-period shall exceed **one month**.

Quick Recap



Time of Payment of Wages

Section 5 specifies the time payment of wages.

a) The wages of every person employed upon or in any **railway factory or industrial or other establishment**

- Upon or in which **less than one thousand persons are employed**, shall be paid **before the expiry of theseventh day.**
- If persons employed are 1000 or more shall be paid before the **expiry of the tenth day**, after the last dayof the wage-period in respect of which the wages are payable.

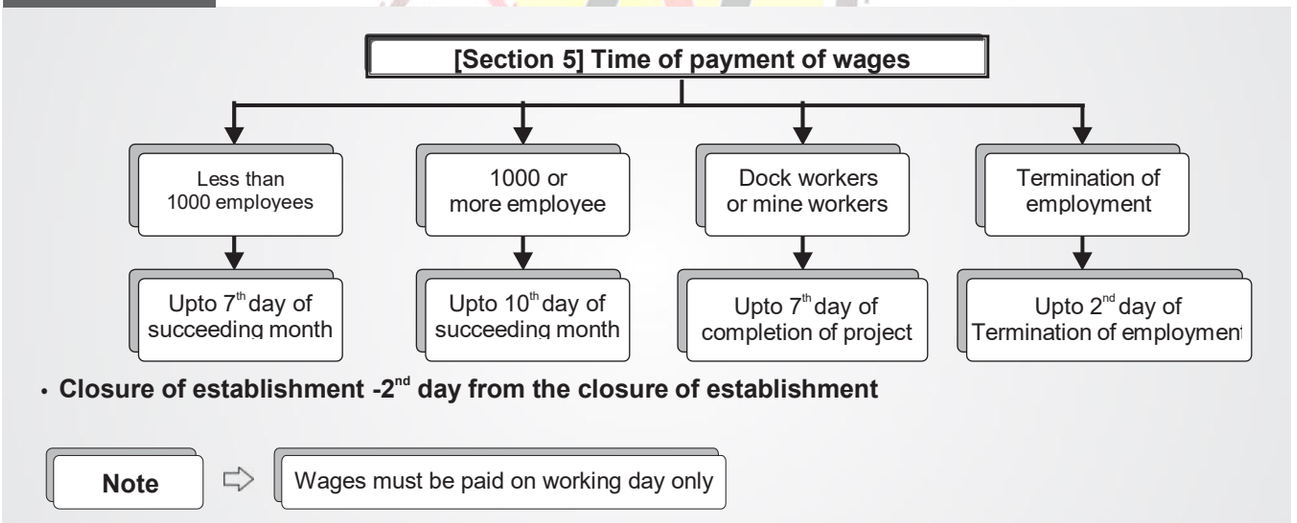
b) However, in the case of persons employed on a **dock wharf or jetty or in a mine** the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case maybe shall be paid before the **expiry of the seventh day** from the day of such completion.

c) Where the employment of any person is terminated by or on behalf of the employer the wages earned byhim, shall be paid before **the expiry of the second working day** from the day on which his employment is terminated.

d) However, the employment of any **person in an establishment is terminated** due to the closure of the establishment for any reason **other than a weekly or other recognised holiday** the wages earned by him shall be paid before **the expiry of the second day** from the day on which his employment is so terminated.

e) The **Appropriate Government** may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any **railway or to persons employed as daily-rated workers in the Public Works Department** of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons. All **payments of wages shall be made on a working day.**

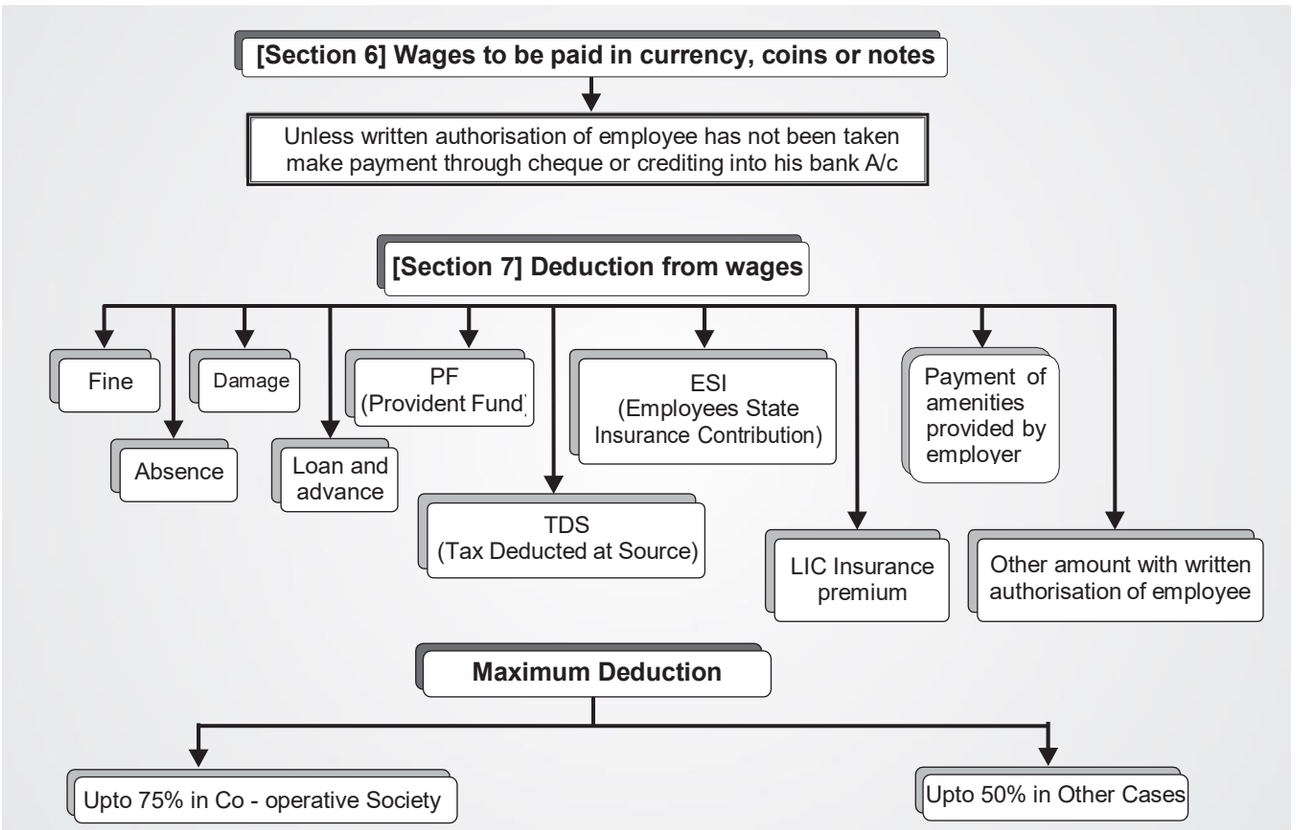
Quick Recap



Wages to be Paid in Current Coins or Currency Notes

As per **Section 6** of the Act, all wages shall be **paid in current coin or currency notes or in both**. However, the employer may, obtaining without the **written authorisation** of the employed person, pay him the wages either **bycheque or by crediting the wages** in his bank account.

Note: The Appropriate Government may notify establishments directing employers to pay wages, not in cash.



Deductions from the Wages of an Employee

Section 7 of the Act allows deductions from the wages of an employee on the account of the following:-

(i) fines;
(ii) absence from duty;
(iii) **damage to or loss of goods** expressly entrusted to the employee;
(iv) **housing accommodation** and amenities provided by the employer;
(v) **recovery of advances** or adjustment of overpayments of wages;
(vi) **recovery of loans** made from any fund constituted for the welfare of labour in accordance with the **rulesapproved by the State Government**, and the interest due in respect thereof;
(vii) subscriptions to and for **repayment of advances** from any provident fund;
(viii) income-tax;
(ix) **payments to co-operative societies** approved by the State Government or to a scheme of insurancemaintained by the **Indian Post Office**;
(x) deductions made with the **written authorisation of the employee** for payment of any premium on his lifeinsurance policy or purchase of securities.

Fines

Section 8 deals with fines. It provides that:

(1) **No fine shall be imposed** on any employed person save in respect of such acts and omissions on his part as the employer with the **previous approval of the State Government** or of the prescribed authority may havespecified by notice under sub-section (2).

(2) A **notice specifying such acts and omissions shall** be exhibited in the **prescribed manner** on the **premises** in which the employment carried on or in the case of persons employed upon a railway (otherwise than in afactory) at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given **an opportunity of showing cause against the fine** or otherwise than in accordance with such procedure as may be

prescribed for theimposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to **three per cent** of the wages payable to him in respect of that wage period.

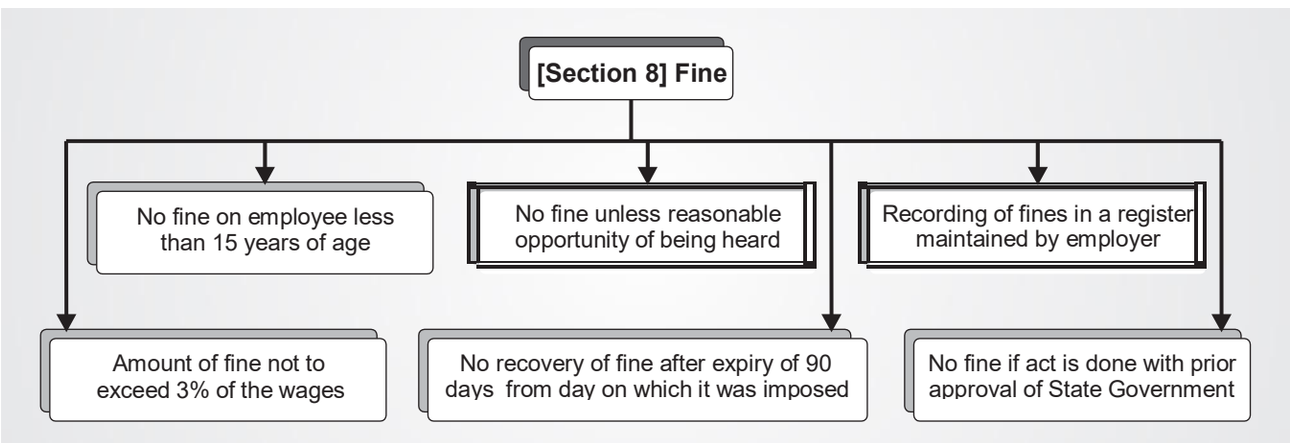
(5) No fine shall be imposed on any employed person who is **under the age of fifteen years**.

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

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it wasimposed.

(8) All **fines and all realizations thereof shall be recorded in a register** to be kept by the person responsible for the payment of wages under **section 3 in** such form as may be prescribed; and all such realizations shallbe applied only to such purposes beneficial to the persons employed in the factory or establishment as areapproved by the prescribed authority.

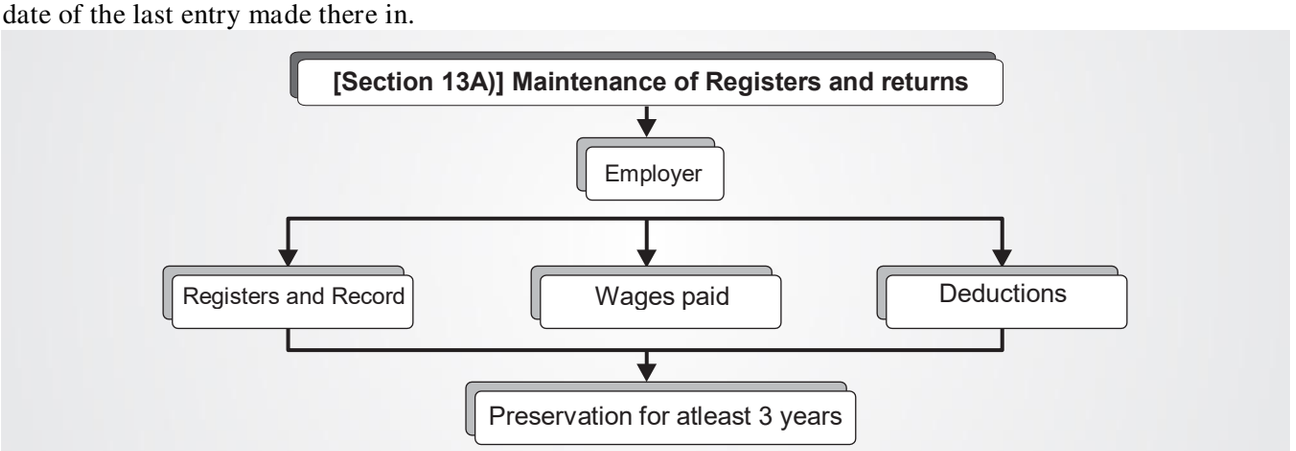
It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realizations may becredited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.



VOHRA LAW CL

Maintenance of Registers and Records

Section 13A provides that every **employer** shall **maintain such registers and records** giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a **period of three years** after the date of the last entry made there in.



Claims Arising Out of Deductions from Wages or Delay in Payment ofWages and Penalty for Malicious or Vexatious Claims

Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the **appropriate Government** may, by **notification in the OfficialGazette, appoint-**

a) Any **Commissioner for Workmen's Compensation;** or

b) Any **officer of the Central Government** exercising functions as,-

(i) Regional Labour Commissioner; or

(ii) Assistant Labour Commissioner with at least two years' experience; or

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

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

e) any other officer with **experience as a Judge of a Civil Court or a Judicial Magistrate**, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to suchclaims.

f)) Provided that where the appropriate Government considers it necessary so to do, it **may appoint more than one authority** for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act. **Sub-section (2) of section 15** provides that where **contrary to the provisions of the Act** any deduction has been made from the wages ofan employed person or any payment of wages has been delayed such person himself or any **legal practitioner or any official of a registered trade union** authorised in writing to act on his behalf or any **Inspector** under this Act or any other person acting with the **permission of the authority a**ppointed **under subsection (1)** may apply to such authority for a direction under **sub-section (3):**

g) However, every such application shall be presented within **twelve months** from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to bemade as the case may be. Any application may be admitted after the said period of **twelve months** when the applicant satisfies the authority that he had sufficient cause for not making the application within suchperiod.

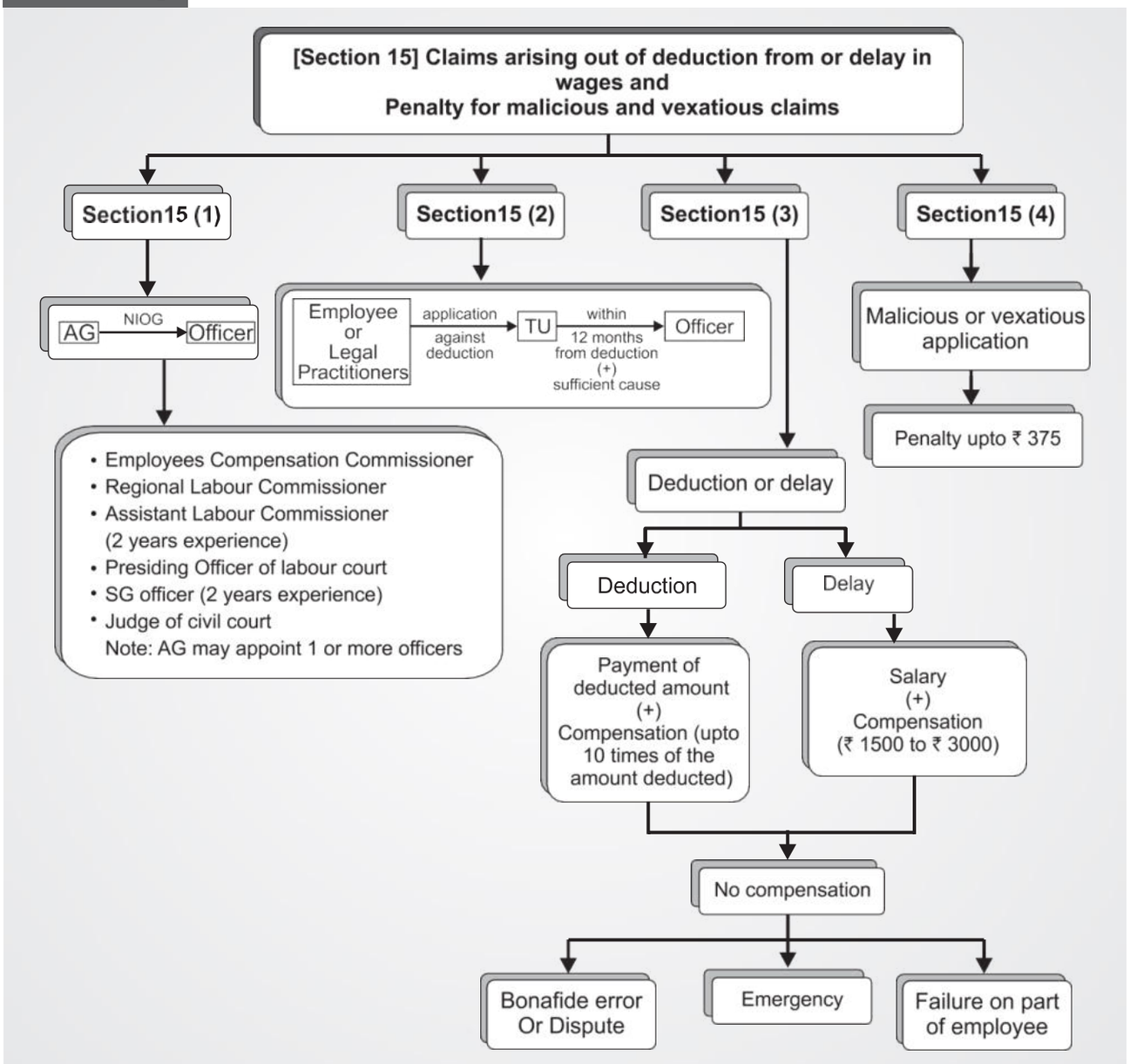
h) As per **sub-section (3) when any application under sub-section (2)** is entertained, the authority shall **hear the applicant and the employer or** other **person responsible** for the payment of wages under **section3,** or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the **refund to the employed person** of the amount deducted, or the payment of the delayed wages, together with the payment of such **compensation** as the authority may think fit, not exceeding ten times the amount deducted in the former case and not **exceeding three thousand rupees but not less than one thousand five hundred rupees** in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, **not exceeding two thousand rupees.**

i) A claim under the Act shall be disposed of as far as practicable within a period of **three months** from the date of registration of the claim by the authority. It may be noted that the period of **three months** may beextended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be **extended to such period as may be necessary** to **dispose of the application** in a just manner. No direction for the payment of compensation shall be made in the case ofdelayed wages if the authority is satisfied that the delay was due to-

- **A bona fide error or bona fide dispute** as to the amount payable to the employed person; or
- **The occurrence of an emergency**, or the existence of exceptional circumstances, the person responsiblefor the payment of the wages was unable, in spite of exercising reasonable diligence; or
- **The failure of the employed person** to apply for or accept payment.

j) As per **sub-section (4)** if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a **penalty not exceeding three hundred seventy five Rupees** be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding **three hundred seventy five Rupees be** paid to the **State Government by the employer or other person responsible for the payment of wages.**

Quick Recap



Note: Claim under this act shall be disposed off within 3 months from date of registration.

Chapter – 18 Unit - 3
The Payment of BonusAct, 1965

List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(1)	Accounting Year
2(4)	Allocable Surplus
2(5)	Appropriate Government
2(6)	Available Surplus
2(7)	Award
2(11)	Corporation
2(13)	Employee
2 (14)	Employer
2 (15)	Establishment in Private Sector
2 (16)	Establishment in Public Sector
2 (21)	Salary or Wage
3	Establishment
4	Gross Profit
5	Available surplus
6	Deductions from gross profit
7	Computation of Tax
8	Eligibility to Receive Bonus
9	Disqualification from Receiving Bonus
10	Minimum bonus
11	Maximum bonus
12	Calculation of salary for making Bonus
13	Proportionate reduction in Bonus in Certain Cases
14	Computation of number of working days or Inclusion in working days
15	Set on & Set off of allocable surplus
17	Adjustment of customary / interim Bonus
18	Deductions of Certain amounts from Bonus
19	Time limit for recovery of bonus

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20	Applicability of Bonus Act on Public Sector
21	Recovery of bonus
28	Penalty for Contravention
31A	Productivity linked Bonus
32	Non Applicability of Bonus Act or Employees not covered under
36	Power of Exemption of C.G

Discuss the Extent and Applicability of Payment of Bonus Act, 1965

Bonus is a reward for good work, behavior or share in the profits of an organization where the employee is working.Often there were disputes between employer and employee about bonus to be paid. Therefore legislation by the way of Bonus Act was passed to solve the problem of employer-employee conflict.

CASE LAW	Hutti Gold Mines Kamgar Sangh vs.. Government of India and Jalan Trading Co. (Pvt.) Ltd. vs.. Mill Mazdor Sabha

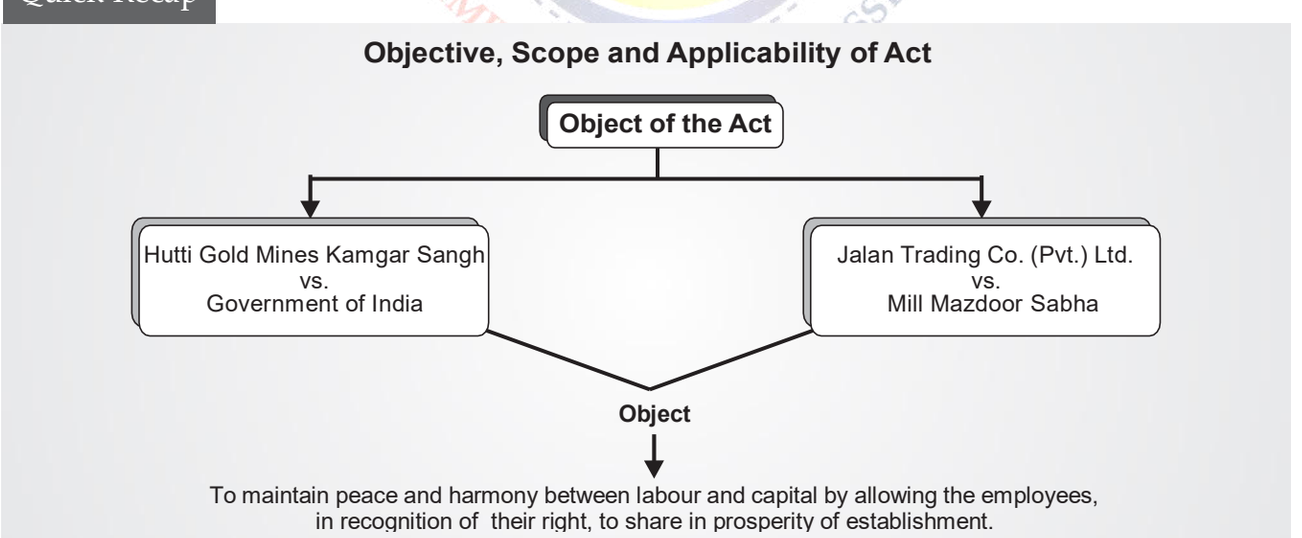
The Supreme Court has explained the object of the Payment of Bonus Act, 1965 HGM and Jalan Trading to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment, and prescribing the maximum and minimum rates of bonus together with the scheme of "set off" and "set on" not only secure the right of labour to share in the profits but also ensure a reasonable degree of uniformity".

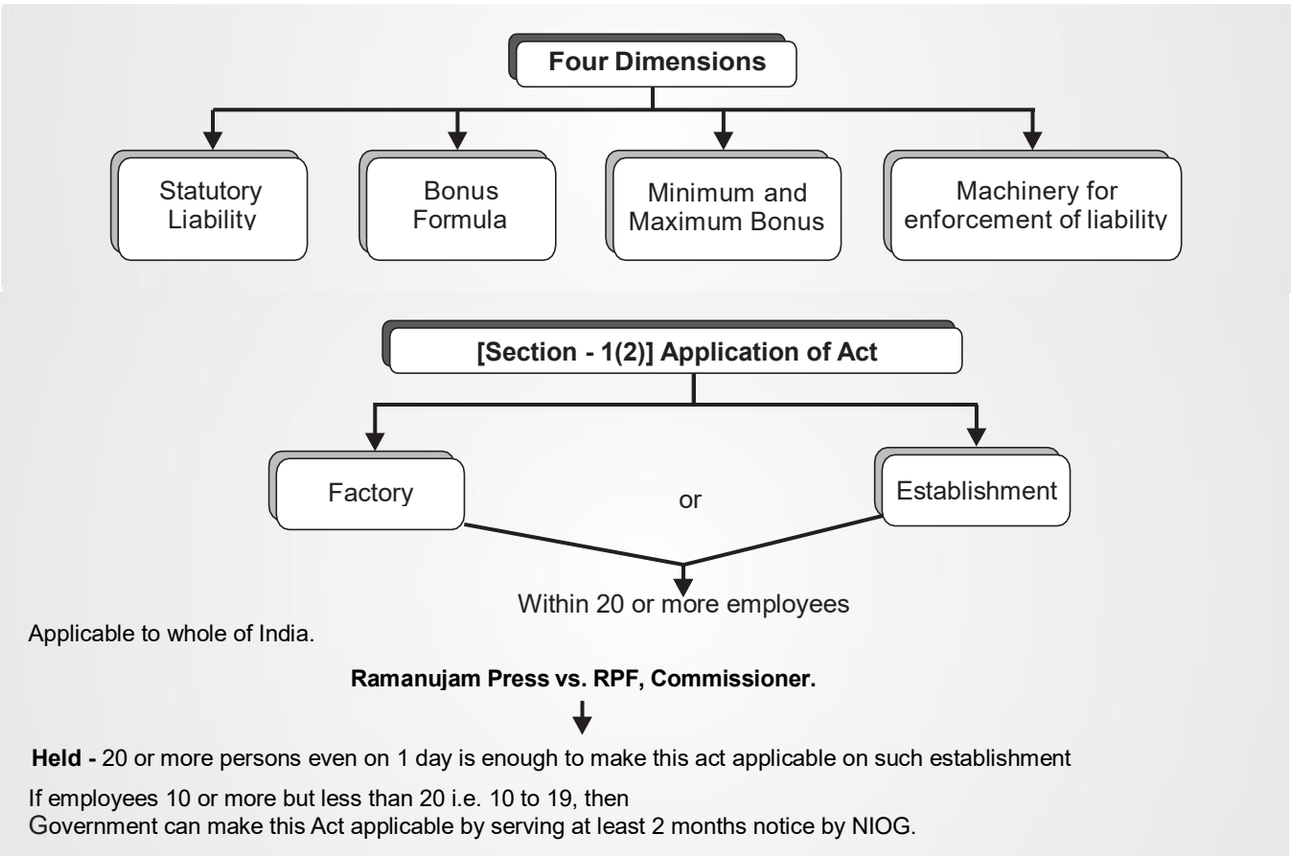
Extent and Application

Bonus Act, 1965 is applicable to every factory or other establishment in which 20 or more persons were employedon any day during the preceding accounting year.

It may be noted that once the act is applicable, it continues to apply even if number of employee's **falls below 20.**

Quick Recap





Define the Following Terms, Under the Payment of Bonus Act, 1965

[Section 2(4)] Allocable Surplus

It means:

(a) In relation to an employer, being a **company** (other than a banking company) which has not made the arrangement prescribed under the Income Tax Act, 1961 for the declaration and payment within India of the dividends payable out of its profits in accordance with the provision of Section 194 of the Income tax Act, 1961, **67 percent** of the available surplus in an accounting year.

(b) Any **other case**, **60 percent** of the available surplus. The allocable surplus is the workers' share towards the bonus to be distributed among them.

[Section 2 (6)] Available Surplus

It means the available surplus computed under Section 5.

According to Section 5, the available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be aggregate of :

(a) The gross profits for that accounting year after deduction there from the sums referred in Section 6, and.

(b) The amount equal to the difference between:

i. the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year, and

ii. the indirect tax, calculated in accordance with the provisions of Section 7, in respect of an amount equalto the gross profits of the employer for such preceding accounting year after deducting there from theamount of bonus which the employer has paid or is liable to pay to his employees in accordance withthe provisions of this Act for that year.

[Section 2(5)] Appropriate Government

It means:

(a) In relation to an establishment, in respect of which the Appropriate Government under the IndustrialDisputes Act, 1947 is the Central Government.

(b) In relation to any other establishment, the Government of the State in which the establishment is situated.

[Section 2 (14)] Employer

'Employer' includes:

(a) in relation to an establishment which is a factory, the owner of occupier of the factory, including the agent of such owner or occupier, the legal representative of deceased owner or occupier and the manager of thefactory.

(b) In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment. Where the said affairs are entrusted to a manager or managing director,such manager or managing director is the employer.

[Section 2 (13)] Employee

"Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding `21,000 per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire of reward, whether the terms of employment are express or, implied.

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

(i) employees employed by any insurer carrying on general insurance business and the employees employed bythe Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation ofEmployment) Act, 1948 and employed by registered or listed employers;

(iv) employees employed by an establishment engaged in any industry called on by or under the authority of anydepartment of Central Government or a State Government or a local authority;

(v) employees employed by

(a) the Indian Red Cross Society or any other institution of a like nature including its branches; (b)universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions)established not for the purpose of profit;

(vi) & (vii) .....(omitted).

(viii) employees employed by the Reserve Bank of India;

(ix) employees employed by

(a) the Industrial Finance Corporation of India;

(b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;

(c) the Deposit Insurance Corporation;

(d) the National Bank for Agriculture and Rural Development; (e) the Unit Trust of India;(f) the Industrial Development Bank of India;

(i) the Small Industries Development Bank of India established under Section 3 of the Small IndustriesDevelopment Bank of India Act, 1989;

(ii) the National Housing Bank;

(g) any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure;
(ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or anyconcession given to it by the Government; and (iv) any other relevant factor;

(x) (omitted).

(xi) employees employed by inland water transport establishments operating on routes passing throughany other country.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

Problem 1: CS-2A: A workshop is employing 50 workmen. A shop-supervisor is drawing monthly `9,000. Human Resourses Department (HRD) paid bonus to all employees except the supervisor. The Supervisor contends that he is also entitled to bonus. Referring to the provisions of the Payment of Bonus Act, 1965 decide whether the HRD's action is correct.

Answer: Shop supervisor is entitled to bonus

- Since he is an 'employee'.
- Since he is employed on a salary or wage not exceeding `10,000 per month (Section 2(13).

Problem 2: CS-2B: Decide whether the following persons are entitled to get bonus under the Payment of BonusAct, 1965:

- An apprentice.
- A retrenched employee
- A dismissed employee
- Piece-rated worker.
- A University teacher.
- An employee of the 'NABARD'.
- A reinstated employee without wages for the period of dismissal.
- J, who is working in a social welfare organization.
- D, an employee employed by an establishment engaged in an industry carried on by a department of the Central government.

Answer:

- An apprentice is not eligible
  - Since he is expressly excluded from the definition of employee (Section 2(13).
- A retrenched employee is eligible
  - Provided he has worked for a minimum period of 30days in the Accounting Year (AY) (Section 8).
- A dismissed employee is eligible
  - Provided he has worked for a minimum period of 30 days in the Accounting year (AY) (Section 8), and
  - Provided he is not disqualified as per Section 9.

- A piece-rated worker is eligible
  - Provided he has worked for a minimum period of 30 days in the Accounting Year (AY) (Section 8).
- A University teacher is not eligible
  - Since the Act does not apply to Universities or other educational institutions. Institutions established not for purposes of profit (Section 32).
- An employee of the 'NABARD' is not eligible
  - Since the Act does not apply to NABARD (Section 32).
- A reinstated employee without wages for the period of dismissal is eligible
  - Provided he has worked for a minimum period of 30 days in the AY (Section 8).
  - Since it is immaterial as to whether the employee was reinstated with or without wages for the period of dismissal.
- The Act is not applicable to J
  - Since the Act does not apply to a social welfare organization.
- The Act is not applicable to D
  - Since the Act does not apply to employees engaged by a Department of CG.

[Section 3] Establishment

The term 'establishment' is not defined in the act. It is a wider term than 'Factory', Section 3, however, provides that where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in difference places, all such departments or undertaking or branches shall be treated as part of the same establishment for the purpose of computation of bonus under the act.

Where, for any accounting year a separate balance sheet and profit and loss account are prepared and maintainedin respect of any such department or undertaking or branch, then, such department or undertaking branch shallbe treated as a separate establishment for the purpose of computation of bonus under this act for that year, unless such department of undertaking or branch was immediately before the commencement of that accounting year,treated as part of establishment for the purpose of computation of bonus.

[Section 2 (15)] Establishment in Private Sector

It means any establishment other than an establishment in public sector.

[Section 2(16)] Establishment in Public Sector

It means any establishment owned, controlled or managed by:

(a) A Government Company as defined in Section 2(45) of the Companies Act, 2013.

(b) A Corporation in which not less than forty percent of its capital is held (Whether singly or taken together)by:

(i) The Government; or

(ii) The Reserve Bank of India; or

(iii) A Corporation owned by the Government or the Reserve Bank of India. [Section 2(16)]

[Section 2 (21)] Salary or Wages

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

'Salary or wages' does not include:

(i) Any other allowance which the employee is for the time being entitled to,

(ii) The value of any house-accommodation or of supply of light, water, medical attendance or other amenity orof any service or of any concessional supply of good grains or other articles.

(iii) Any traveling concession.

(iv) Any bonus (including incentive, production and attendance bonus)

(v) Any contribution paid or payable by the employer to any pension fund for the benefit of the employee underany law for time being in force.

(vi) Any retrenchment compensation or any gratuity or any other retirement benefit payable to the employee or any extra payment made to him.

(vii) Any commission payable to the employee. Where an employee is given in lieu of the whole or part of thesalary or wages payable to him, free food allowance or free food by his employer, such food allowance or thevalue of such food shall, for the purpose of Section 2(21), be deemed to form part of the salary or wage ofsuch employee.

Problem 3: CS-2C. Prakash Chandra is working as a salesman in a company on salary basis. The following paymentswere made to him by the company during the previous financial year–

- Overtime allowance,
- Dearness allowance,
- Commission on sales,
- Employer's contribution towards pension fund
- Value of free food.

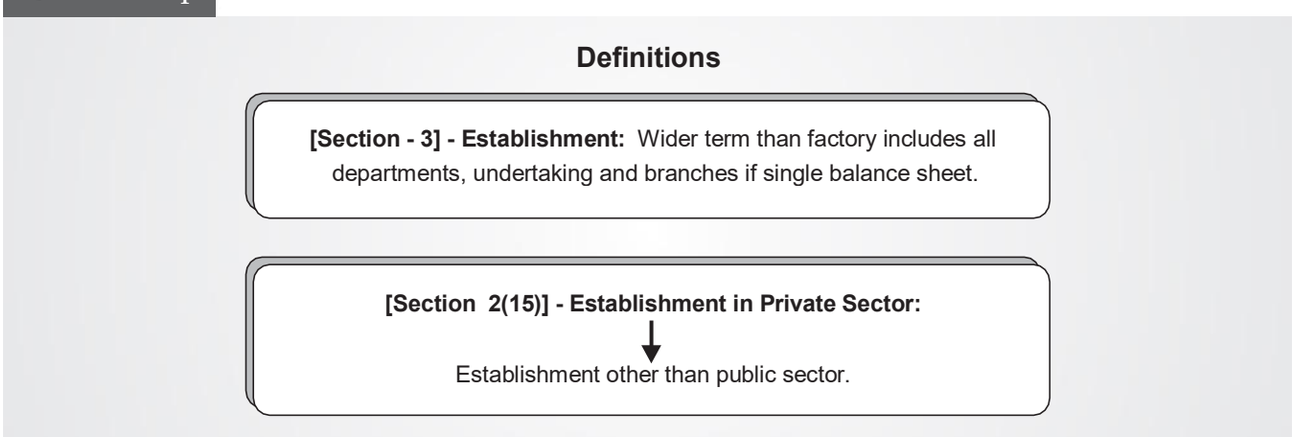
Examine as to which of the above payments from part of 'salary' of Prakash Chandra under the provisions of thePayment of Bonus Act, 1965.

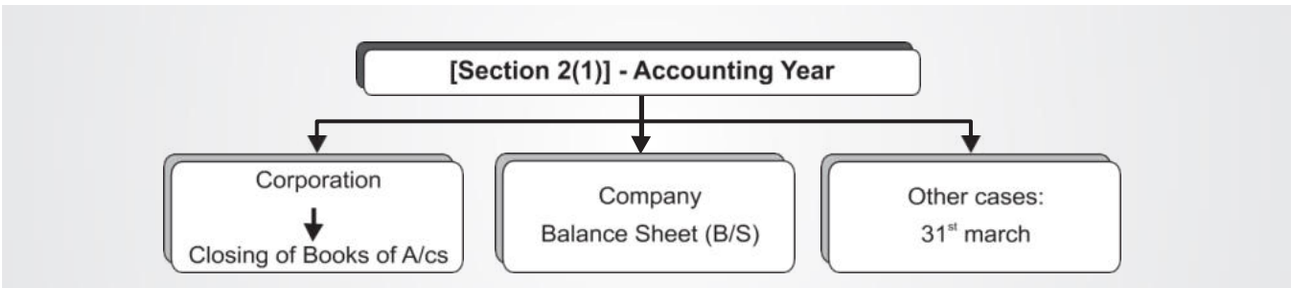
Answer:

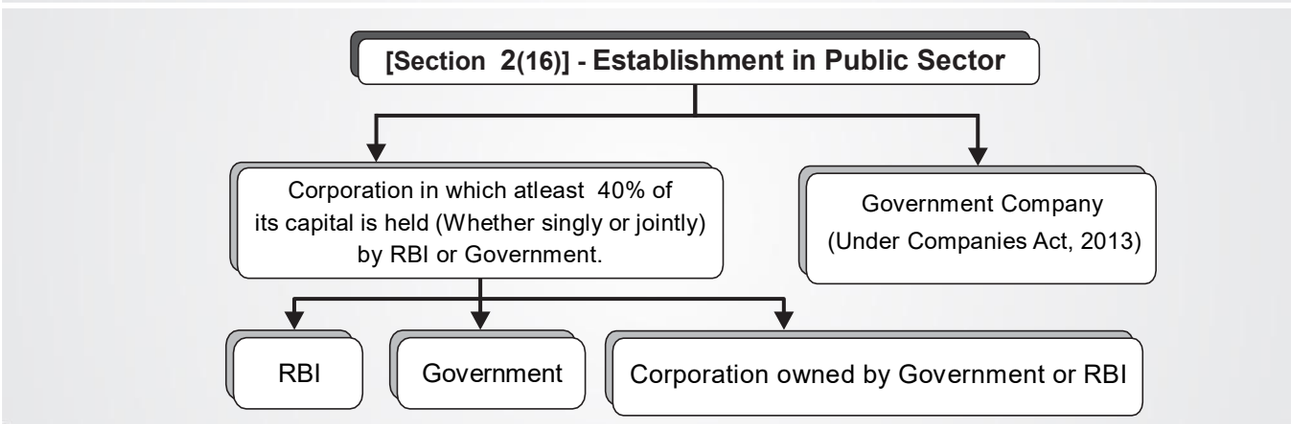
- Items to be included in 'salary or wage'
  - Dearness allowance
  - Values of free food (provided it is given in lieu of salary)
- Items not to be include in 'salary or wage'
  - Overtime allowance
  - Commission on sales
  - Employer's contribution towards pension fund

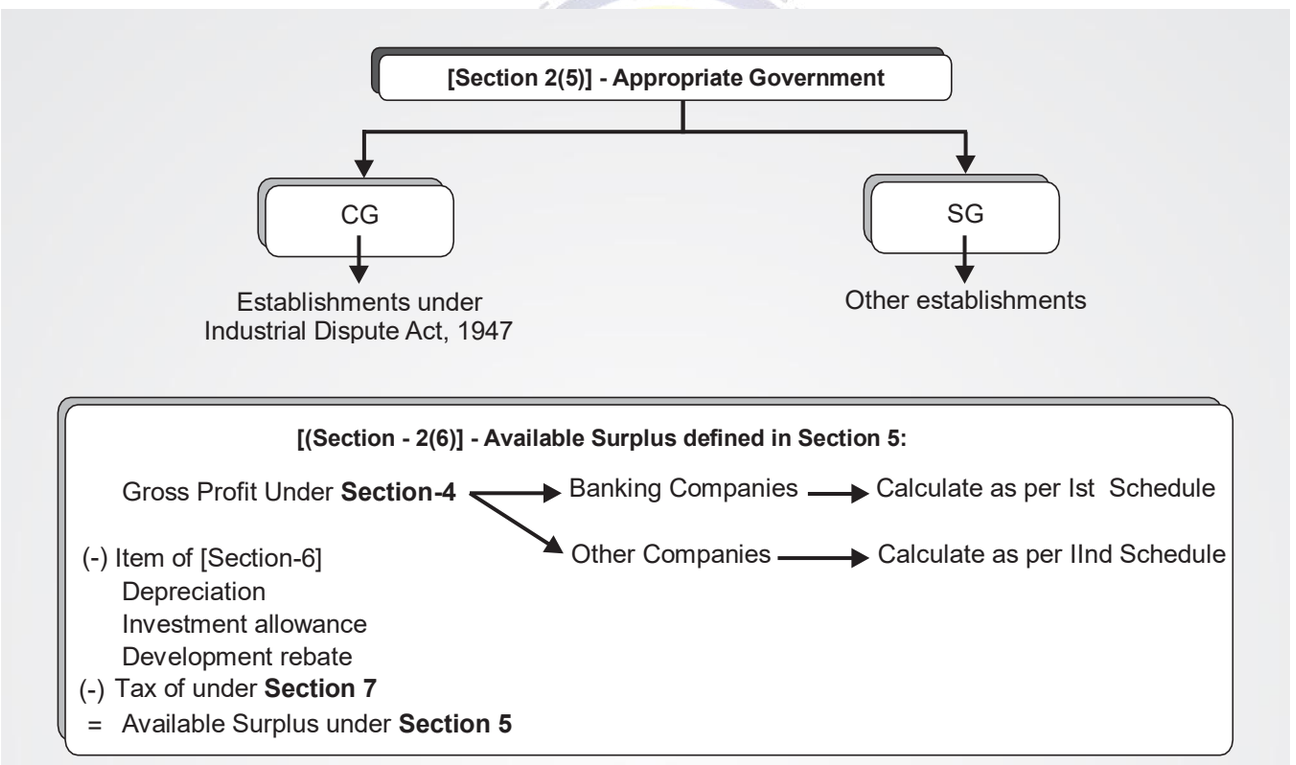
AMIT VOHRA LAW CLASSES

Quick Recap



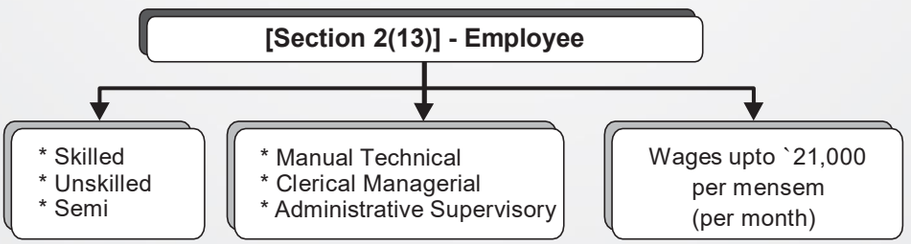

[Section 2(1)] - Accounting Year
Corporation
Closing of Books of A/cs
Company
Balance Sheet (B/S)
Other cases:
31st march


[Section 2(16)] - Establishment in Public Sector
Corporation in which atleast 40% of its capital is held (Whether singly or jointly) by RBI or Government.
Government Company (Under Companies Act, 2013)
RBI
Government
Corporation owned by Government or RBI

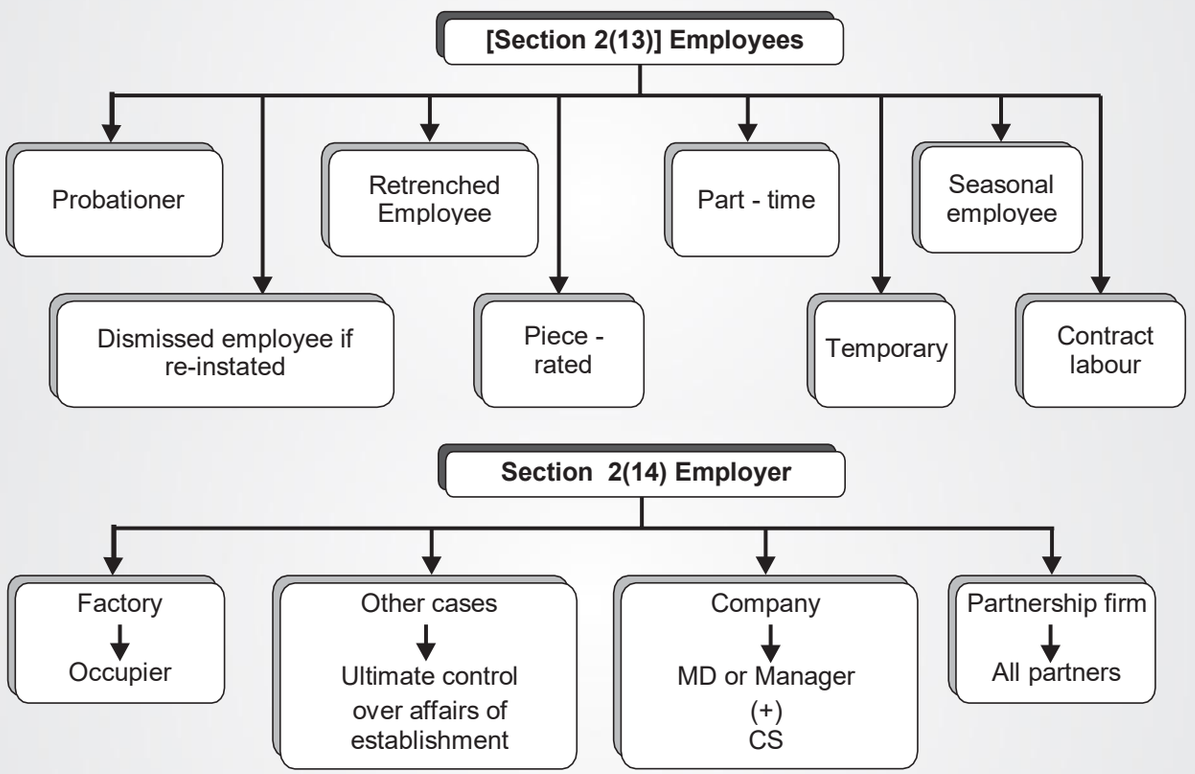

[Section 2(5)] - Appropriate Government
CG
Establishments under Industrial Dispute Act, 1947
SG
Other establishments
[(Section - 2(6)] - Available Surplus defined in Section 5:
Gross Profit Under Section-4
Banking Companies
Calculate as per Ist Schedule
Other Companies
Calculate as per IInd Schedule
(-) Item of [Section-6]
Depreciation
Investment allowance
Development rebate
(-) Tax of under Section 7
= Available Surplus under Section 5

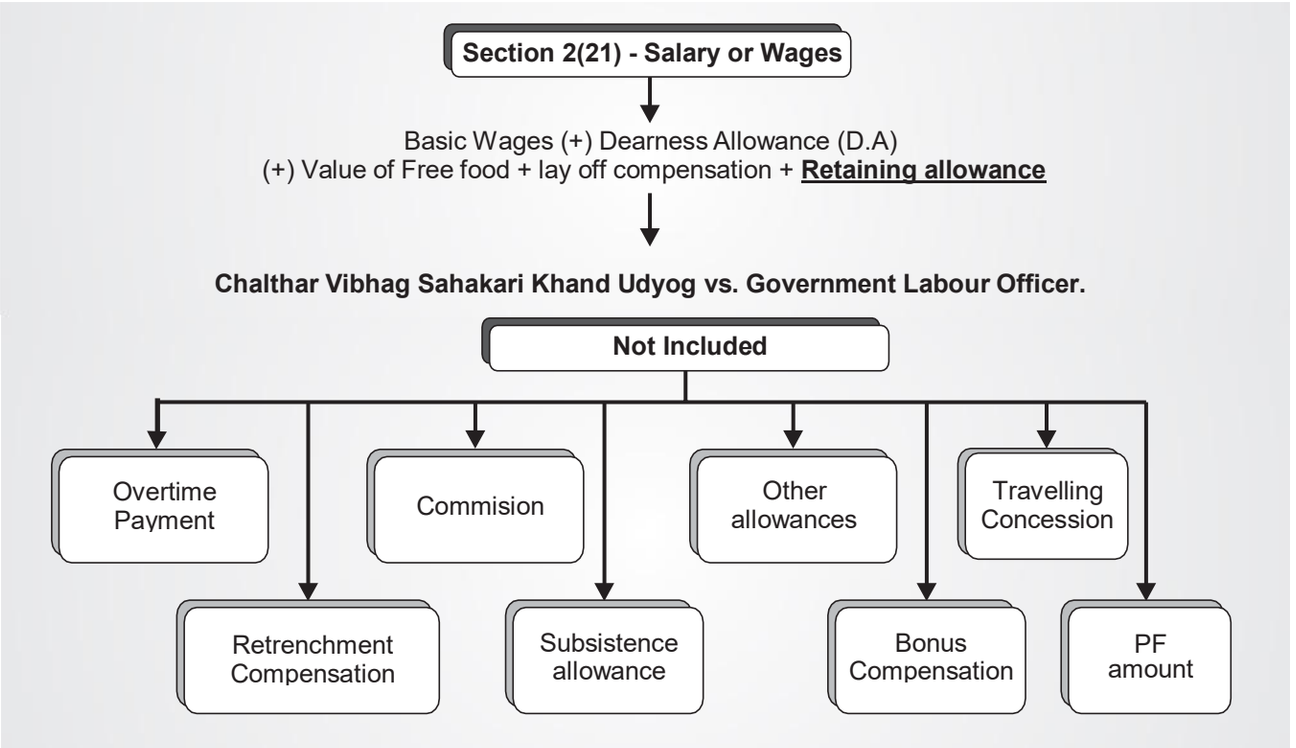
[Section 2(7)] - Award: Interim or final determination of any industrial dispute by any court.

[Section 2(11)] - Corporation: Body Corporate by Central Government or State Government but does not includes Company or a Co-operative Society



Note - Apprentices are not employees under Bonus Act, 1965.





[Section 8] Eligibility for Receiving Bonus under the Payment of BonusAct, 1965

Accounting to **Section 8** of the Payment of Bonus Act, 1965, every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided that he has workedin the establishment for not less than **thirty working days** in that year.

Some Important Case Law

CASE LAW	Project Manager ONGC vs.. Shyam Kr Sehgal
An employee suspended but subsequently reinstated with full back wages is eligible for the bonus for the period of suspension.	

Whether a supervisor who joins on 01.02.09 and then resigns on 28.02.09 is entitled to [(Section 2(13)] and (8) bonus of 20% declared by the employer?

Problem 4: CS-3A. Mr. "E" joined as supervisor on monthly salary of `20,900 on 01.02.2009 and resigned from his job on 28.2.2009. The company declared a bonus of 20% to all Human Resourse Department eligible employeesand paid it on item. Mr. "E" knowing the facts made a claim to (HRD), which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

Answer:

- The claim of Mr. E is not valid
  - Since he has not worked for at least 30 working days in the Accounting Year (AY) 2008-2009 (Section 8).
  - Although he is covered in the definition of 'employee', i.e. he is employed on a salary or wage not exceeding `21,000 per month (Section 2(13).

Whether an employee earning `3,400 per month is eligible for bonus if he resigned from job [(Section 2(13) and 8) after 28 days]?

Problem 5: CS-3B. Mr. 'E' joined as supervisor on monthly salary of `3,400 on 1.02.2007 and resigned from his job on 28.02.2007. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. 'E' knowing the

facts made a claim to Human Resource Department, which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

Answer:

- **Mr. E is an 'employee'**
- **Since he is employed on a salary or wage not exceeding `21,000 (Section 2(13).**
- **Mr. E is not eligible for bonus**
- **Since he has not worked for 30 days or more (Section 8).**

Problem 6: CS-3C. ABC Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salaryof less than `10, 000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisionsof the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees, will get relief.

Answer:

- **The Act is applicable to the establishment**
  - Since the establishment has employed 20 or more persons during any day of the Account year (AY).
  - Since if the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of persons employed (Section 11).
- **20 full-time and 5 part-time employee**
  - Are employees' within the definition of 'employee' (Section 2(13)?
- **The 10 full-time employees who resigned are not eligible for bonus**
  - Since they have not worked for 30 days (Section 8).
- **The remaining 10 full-time employees and all the 5 part time employees are eligible for bonus**
  - Since they have worked for 30 days or more during the Accounting Year (Section 8).
  - Since even a part-time employee is entitled to bonus **(Automobile KarmchariSangh -v- Industrial Tribunal).**

[Section 9] Disqualification of an Employee from Receiving Bonus underthe Payment of Bonus Act, 1965

According to Section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus,if he is dismissed from the service for:

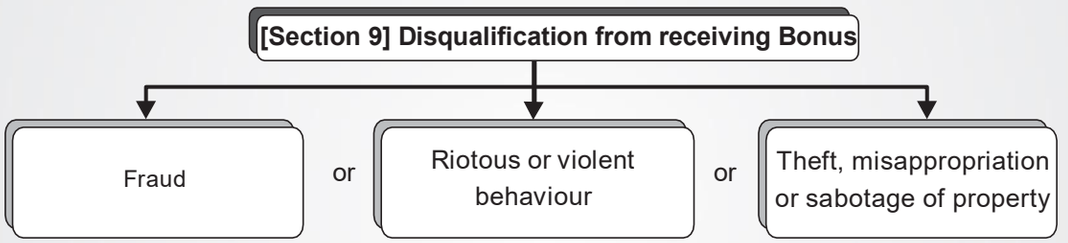
(a) **Fraud**; or

(b) **Riotous or violent behaviour** while on the premises of the establishment; or

(c) **Theft, misappropriation or sabotage** of any property of the establishment.

Quick Recap

B.



Pandian Roadways Corporation Ltd. vs Presiding Officer, Principal Labour Court.

Held:

- Disqualified if dismissed only.
- Disqualified means disqualified from receiving any kind of bonus whether interim etc.

Problem 7: CS-4A. X, a temporary employee drawing a salary of Rs. 13,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2021-2022, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X'.

Answer:

- X is an employee
  - Since his salary or wage is not more than Rs. 21,000 (it is immaterial that he is a temporary employee) (Section 2(13)
- X is eligible to receive bonus
  - Since he has worked for 10 months (i.e., 30 days or more during the AY) (Section 8).
  - Since it is immaterial that the employment of X was of temporary nature or permanent nature.
- X is not disqualified u/s 9
  - Since he has not been dismissed from service (section 9).
- Conclusion
  - Employer's refusal to pay bonus to X is not valid.
  - X is entitled to bonus for the entire period of 12 months since absence for a period of 2 months due to suspension was not due to any fault of X **(Project Manager, Ahmedabad Project, ONGC vs. Shyam Kumar Sehgal)**

[Section 10] Discuss the Provisions Relating to Payment of Minimum and Maximum Bonus under the Payment of Bonus Act, 1965

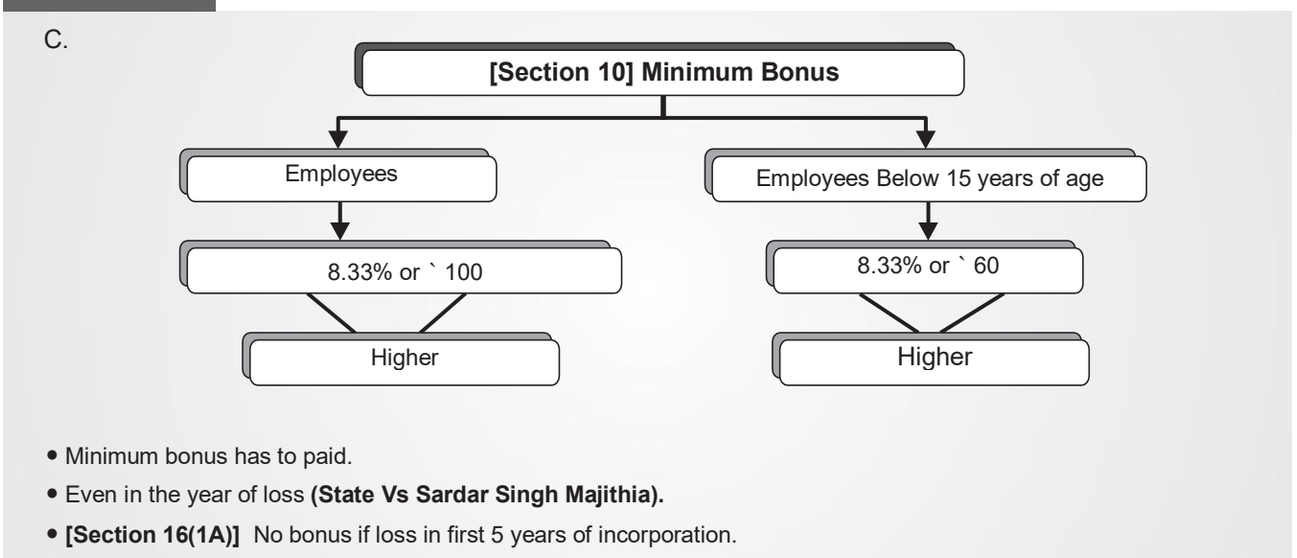
Payment of Minimum and Maximum Bonus: Every employer shall be bound to pay to every employee in respectof an accounting year a minimum bonus, which shall be **8.33% of salary** or wage earned by the employee during an accounting year **or `100/-** whichever is **higher**.

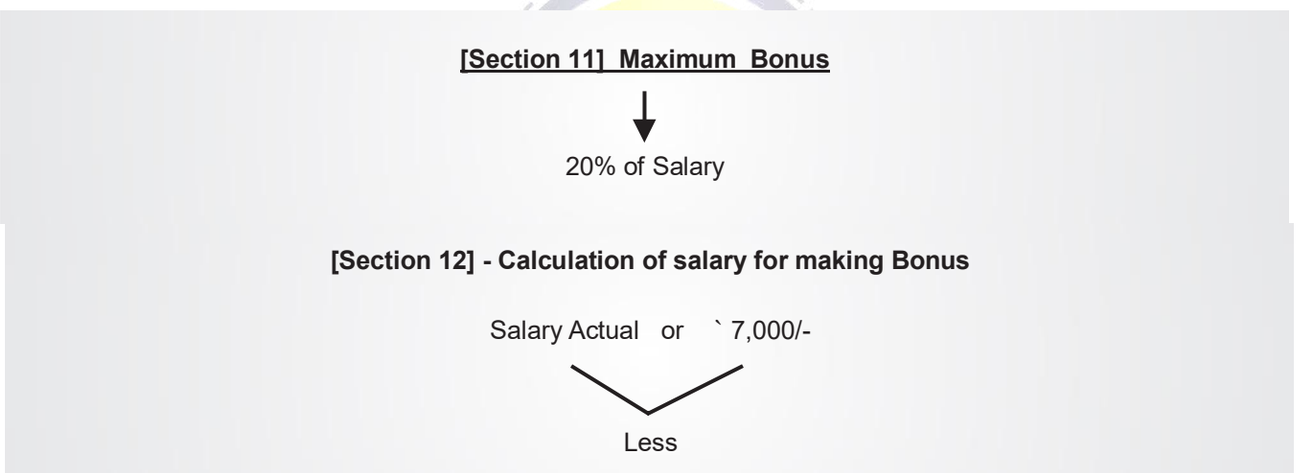
Whereas employee has **not completed 15 years of age** at the beginning of accounting year, the minimum bonuspayable is **8.33%** or **`60**, whichever is **higher**.

Maximum bonus payable to employees is **20% of the salary** or wage earned by the employee in the accountingyear.

Quick Recap

C.





[Section 13]

If an employee has contributed his service for less than 1 year, then an employer is empowered to reduce the Bonusproportionately.

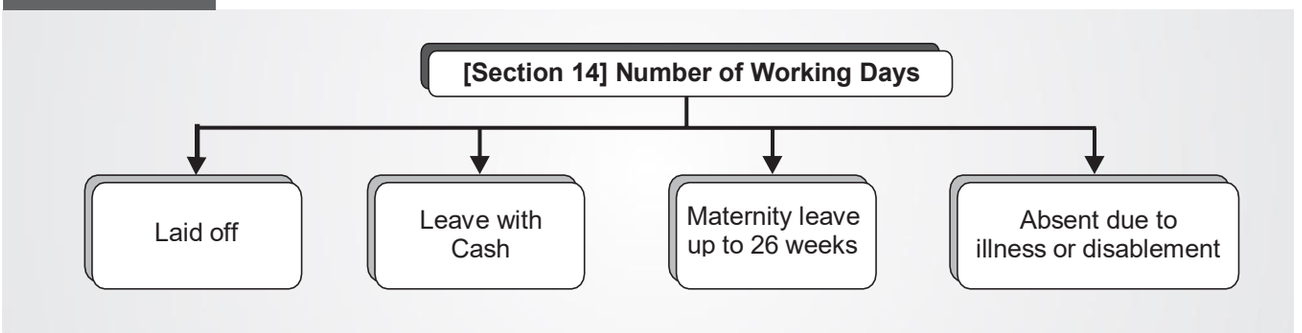
[Section 14] Calculation of Number of Working Days for the Purpose ofPayment of Bonus Act, 1965

Calculation of Number of Working Days: An employee shall be deemed to have worked, in an establishment inany accounting year, also on the days on which:

(a) He has been laid off under an agreement or as permitted by standing order under the Industrial Employment (Standing orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable tothe establishment.

(b) He has been on leave with salary or wage.
(c) He has been absent due to temporary disablement caused by accident arising out of and in the course of hisemployment, and
(d) The employee has been on maternity leave with salary or wage during the accounting year.

Quick Recap



Problem 8: CS-6A. What are the days on which an employee shall be deemed to have worked for the of computation of Bonus payable to him? State with reasons whether such computation of number of working days on which an employee has worked is required in an establishment paying minimum bonus to its employees where none of the employees earned less than `2,400 in an accounting year.

Answer:

- **Days that are deemed to be 'working days' are:**
  - Mentioned Above
- **The minimum bonus is:**
  - 8.33% of salary or wage earned by the employee during the AY or `100. Whichever is higher (Section 10).
- **Proportionate reduction in minimum bonus of `100 shall be made**
  - Where an employee has not worked for all the working days during on Accounting Year (Section 13).
- **An employee whose salary or wage earned is `2,400 in the AY**
  - Shall be entitled to `199.92 (`2,400 x 8.33%) as minimum bonus, which is more than minimum bonus of `100 specified u/s 10.
- **Computation of number of working days is not required**
  - In as establishment where none of the employees earned less than `2,400 in an AY, since the minimum bonus of `199.92 shall always be more than minimum bonus of `100, and so the limit of `100 becomes irrelevant in such an establishment.

(Section 2(13), 10, 11 and 14) Whether an employee is entitled for bonus for the period of paidmaternity leave?

Problem 9: CS-6B. The amount of bonus payable to N, a probationer chemist in Global Limited, is `12,000, during the accounting year 2007-2008. A sum of `10,000 was paid to her and `2,000 was deducted by the company underthe pretext of proportionate deduction in bonus for two months maternity leave on full pay availed by her duringthe year. N files a suit against the company for recovery of the deducted amount. Examine the validity of N's claim under the provisions of the Payment of Bonus Act, 1965.

Answer:

- **N's claim is valid**
  - Since the period for which a female employee has been on maternity leave with salary or wages shall be deemed to be the 'working days'.

[Section 17] Adjustment of the Customer or Interim Bonus be Adjusted Against Bonus Payable under the Payment of Bonus Act, 1965

Adjustment of customary or interim bonus against bonus payable under the Act,Where in any accounting year:

(a) An employer has paid any **Puja bonus** or other **Customary bonus** to an employee;
Or

(b) An employer has paid a part of the bonus payable under this Act to an employee before the date on whichsuch bonus becomes payable, then the employer shall be entitled to deduct the amount of bonus so paidfrom the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

Sometimes, the employer has a **tradition or custom to pay bonus** at some special occasion like **Diwali or New Year**. It is just a voluntary payment. The employer is not bound by any law to pay the same.

However, if the **employer** has paid any such bonus, he **has a right** under the Bonus Act **to adjust the same fromthe bonus due under this Act**.

Quick Recap

[Section 17] Adjustment of Customary / Interim Bonus

- Puja or Diwali or New year Bonus
- Voluntary Payments ⟶ Employer may adjust from final bonus.

[Section 18] Deduction of Certain Amounts from Bonus Payable under the

Deduction of certain amounts from bonus payable under the Act: Where in any accounting year, an **employeeis found guilty of misconduct causing financial loss to the employer**, then, it shall be lawful for the employer todeduct the amount of bonus payable by him to the employee under this act in respect of that accounting year only and employee shall be entitled to receive the balance, if any

Quick Recap

[Section 18] Amount deducted from Bonus

- Guilty of misconduct financial loss.
- Deducted from bonus of said year only and not from previous year.

Whether an employer can deduct the amount of loss suffered by him due to misconduct of employee. (Section 18) from the bonus payable to the employee

Problem 10: CS-8A. A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is `10,000, but the company paid him `7,000 only and a sum of `3,000 was deducted from bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against thecompany for recovery of the deducted amount. Decide whether A would be given any relief by the court under theprovisions of the Payment of Bonus Act, 1965? What will be your answer, if the losses are related to the accountingyear 2005-06?

Answer:

- **A shall not be given any relief by the court:**
  - Since the company is entitled to deduct from the amount of bonus payable, the financial loss suffered byit due to the misconduct of the employee
- **If the company suffered loss during the AY 2005-06:**
  - Then, the company shall not be entitled to deduct from the amount of bonus payable, the financial loss suffered by it in AY 2005-06, since the right to make deduction is available only in respect of bonus for the same accounting year.

[Section 19] The Time Limit of Payment of Bonus

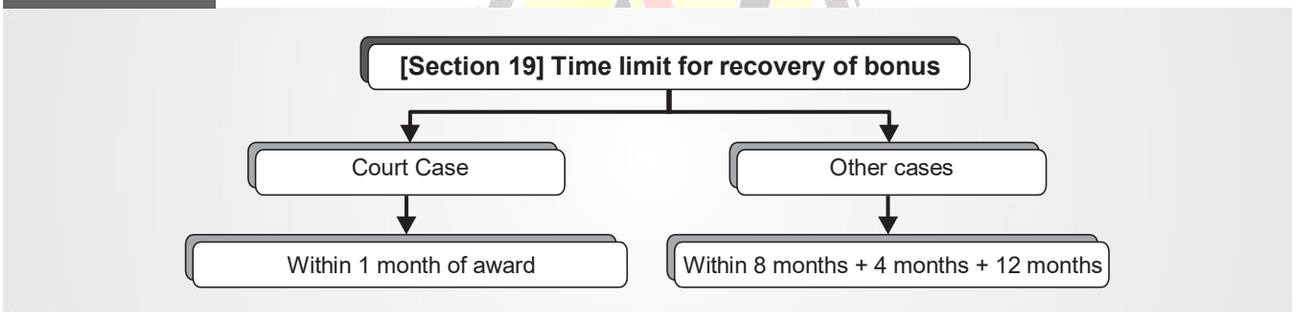
Time limit for payment of Bonus (Section 19): All the amounts payable to an employee by way of bonus under this act shall be paid in cash by his employer:

(a) Where there is a dispute regarding payment of bonus pending before any authority under section 22 **within a month from the date on which the award becomes enforceable** or the settlement comes into operation,in respect of such dispute.

(b) In any **other case**, within a period of **eight months from the close of the accounting year**.

Provided that the Appropriate Government or such authority as the Appropriate Government may specify inhis behalf may, upon an application made to it by the employer and for the sufficient reasons, by order extend the said period by eight months to such further period or periods as it thinks fit, so, however, that the total period soextended shall **not in any case exceed two years**.

Quick Recap



Problem 10: CS-9A. Skypark Wooden Toys Limited was established in Kolkata in the year 2005 employing 100 workmen. Since then the company suffered the losses, but minimum bonus was paid in the accounting years of 2006 and 2007. In the accounting year 2008 the company earned huge profits. After mitigating the previous losses the company is having surplus profits and wants to pay the bonus to its workmen Skypark Wooden Toys Limited wants the legal advice on the following issues:

- How much minimum and maximum bonus may be paid to the workmen?
- Whether the company adjusts the Puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen of that accounting year.
- Company wants to give wooden toys as bonus instead in cash. Whether the Company can do so?

Advise the Skypark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.

Answer:

- The minimum bonus shall be
  - 8.33% of salary or wage earned by the employee during the accounting year or `100, whichever is higher (Section 10).
- The maximum bonus shall be
  - 20% of salary or wage earned by the employee during the AY (Section 11).

- Adjustment of Puja bonus already paid is possible
  - Since any interim, customary or Puja bonus paid by the employer may be deducted from bonus payable during that accounting year (Section 17).
- Giving toys as bonus instead of cash is not possible
  - Since the bonus shall always be paid in cash, i.e. money only (Section 19).

[Section 20] Applicability of Act

General Rule

The Act does not apply to an establishment in public sector.

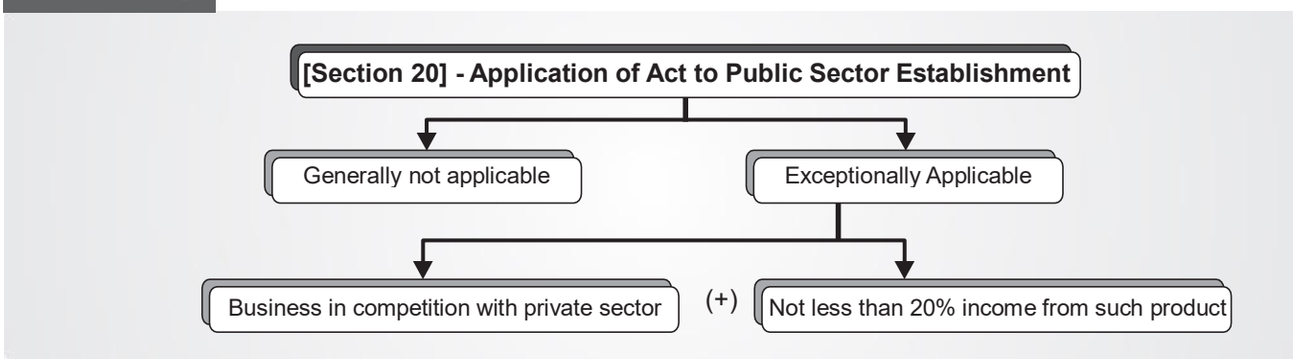
Exception

The Act shall apply if the following 2 conditions are satisfied:

(i) In an accounting year it sells any goods or renders any services, in competition with an establishment inprivate sector.

(ii) The income from such sale or services or both is 20% or more of its gross total income.

Quick Recap



Whether employees of a Public Sector Undertaking are entitled to bonus?

Problem 11: CS-10A. In 2009, the Electronics Corporation, a public Sector establishment under the Departmentof Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to T.V sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the corporation. The employees of the Corporation went to strike for demand of Bonus. Decide whether the demand of the employees is tenable under the provisions of the paymentof bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation?

Answer: The employees are entitled to bonus

- Since the Act applies to Electronics Corporation.
- Since the income of Electronics Corporation from sale of mobile sets (by competing with the private sector) is 20% or more of its gross total income.

If the income from sale of mobile sets is only 10%

- Then, the Act shall not apply to Electronics Corporation, and so the employees shall not have any right to demand bonus.

[Section 21] Recovery of Bonus by the Employees under the Payment ofBonus Act, 1965

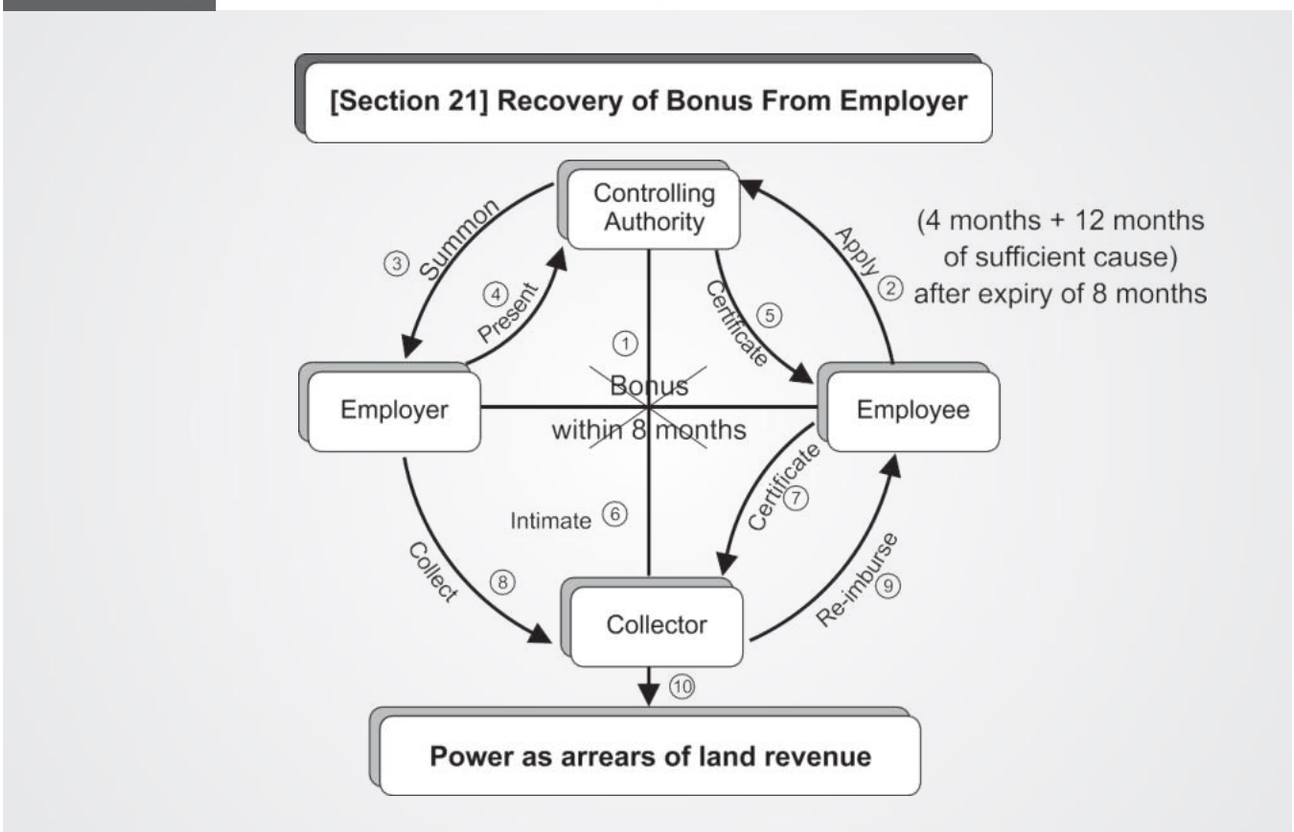
Recovery of Bonus due from an employer: Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized byhim in writing in this behalf, or in case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Appropriate Government of the recovery of the money due to him, and if the Appropriate Government or such authority as the Appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an area of land revenue.

Provided that every such **application** shall be **made** within **one year** from the date on which the money becamedue to the employee from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the application had sufficient cause for not making the applicationwithin the said period.

Here, "employee" includes a person who is entitled to the payment of bonus under this act but who is no longerin employment.

Quick Recap



[Section 15 and 16] Provisions Regarding Set on and Set off under BonusAct, 1965

It may happen that in a particular year the allocable surplus is more than the maximum 20% bonus to be paid to the employees. Such excess allocable surplus is carried forward to next year and is called **Carry Forward of Bonusfor Being Set on in Succeeding Years**. The amount set on is carried forward only upto and inclusive of fourth accounting year. If the amount carried forward is not utilized in that period it lapses.

Similarly, in a particular year there may be lower allocable surplus or no allocable surplus even for the paymentof minimum 8.33% bonus. Such shortfall is carried forward to next year. The amount set off is carried forward only upto and inclusive of fourth accounting year. If the amount carried forward is not utilized in that period it alsolapses.

Thus, in every year first of all allocable surplus is calculated. To this amount, set on from the previous yearsis added, if any. Similarly, set off if any from the previous years is deducted. This gives us the amount which isavailable for distribution as bonus.

Quick Recap

Set on and Set off of Allocable Surplus

If Allocable Surplus > Maximum Bonus, then **Bonus 20%**

If still surplus then set on to next year.

If allocable Surplus minimum bonus, **Bonus 8.33%**

Deficit - Set off and carried forward to next year.

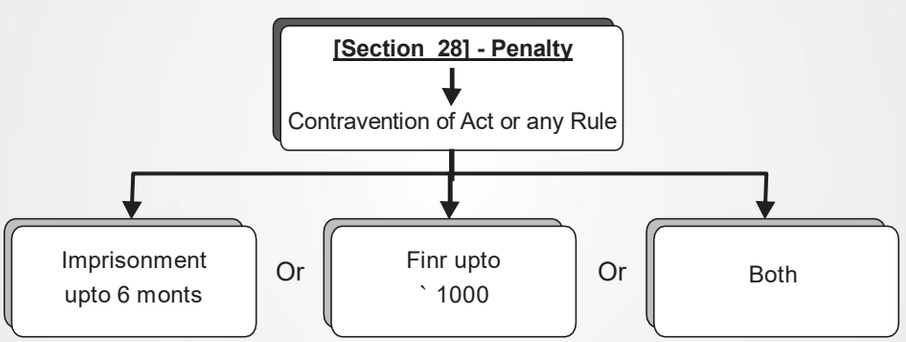
[Section 28] Penalty

If any person:

(A) contravenes any of the provisions of this act or any other rule made there under: or

(B) to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or withfine which may **extend to one thousand rupees**, or **with both**.

Quick Recap



[Section 29] Offences by Company's Penalties for the Contravention of Various Provisions of the Payment of Bonus Act, 1965

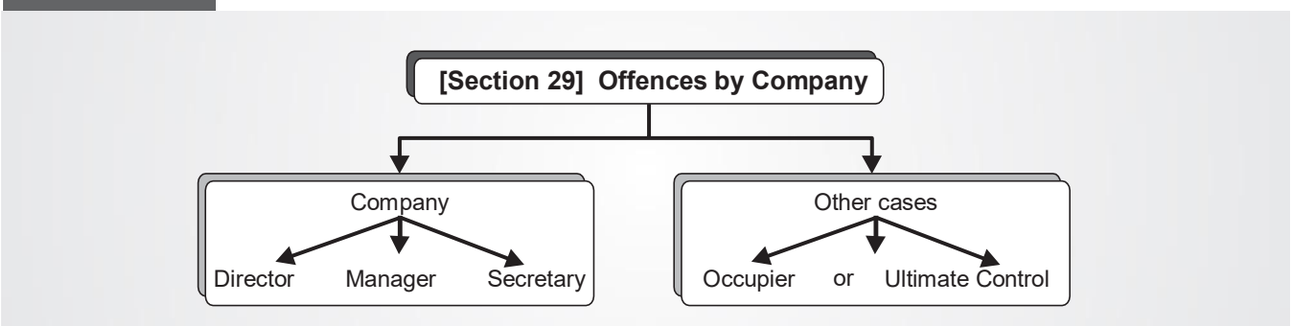
Offences by Companies:

If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against andpunished accordingly.

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceededagainst and punished accordingly. (Section 29)

For the purpose of Section 29, 'company' means any body corporate and includes a firm or other association ofindividuals, and 'director', in relation to a firm, means a partner in the firm.

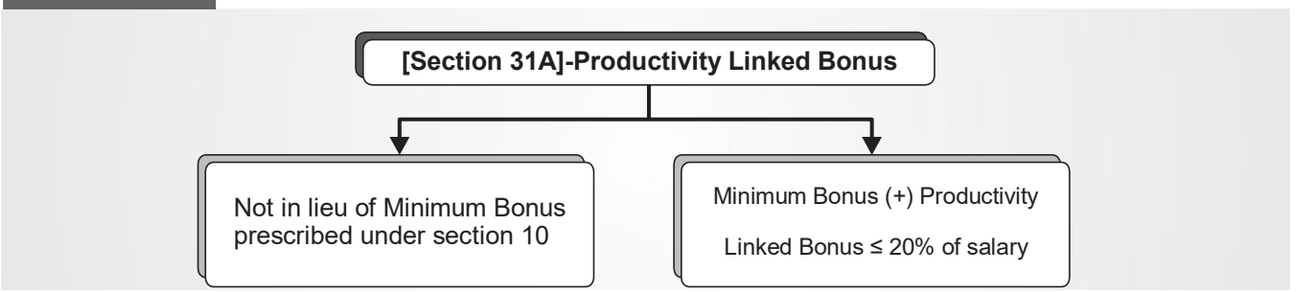
Quick Recap



[Section 31A] Payment of Bonus Linked with Production or Productivity

- **Applicability of Section 31A**
  - Section 31A applies only if there is an agreement or settlement between the employer and employees to payannual bonus linked with production or productivity.
  - Section 31A overrides the entire Act.
- **Terms of the agreement**
  The agreement or settlement may provide that:
  - The bonus shall be **paid annually** to employees.
  - Such bonus shall be **linked with production** or productivity.
  - Such bonus shall not be **paid in lieu of bonus** based on profits.
- **Agreement to be void**
  The agreement or settlement shall be null and void in so far as it purports to deprive an employee of his right to minimum bonus. In other words, every employee shall have a right to receive the minimum bonus even though bonus calculated as per the provisions of the agreement or settlement is less than the amount of minimum bonus.
- **Ceiling on bonus**
  The bonus linked with production or productivity calculated as per the agreement or settlement shall not
  exceed 20% of salary or wages earned in the relevant accounting year.

Quick Recap



Whether employees are entitled to minimum bonus if it exceeds the bonus linked with production or(Section 31A) productivity?

Problem 12: CS-15A. On 1st January, 2002, Aryan Textiles Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary/wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965.

As per the agreement, the employees of Aryan Textiles Ltd. claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company the employees of the company moved to the court for relief. Decide with reference to the provisions of the payment of Bonus Act, 1965 whether the employees will get the relief? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.

Answer:

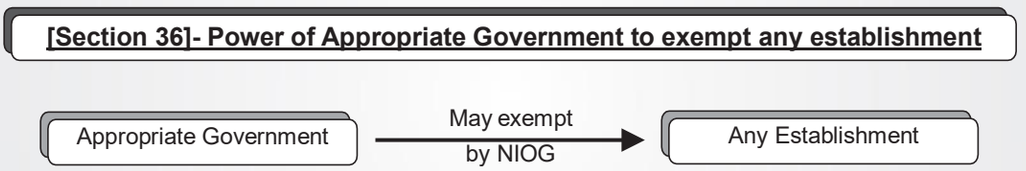
- **The agreement of Aryan Textiles Ltd. with its employees is void**
  - In so far as it purports to deprive the employee of their right to minimum bonus.
  - In so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.
- **The employees are entitled to receive minimum bonus**
  - Since the agreement is null and void to such extent as explained above.

Problem 13: CS-15B. The management of Shakthi Mills Ltd. entered into an agreement with their employees to pay them bonus based on production in lieu of Bonus based on profits, from the accounting year 2007. The employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/ wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment of Bonus Act, 1965.

Answer:

- The agreement of Shakti Mills Ltd. with its employees is void
  - In so far as it purports to deprive the employee of their right to minimum bonus.
  - In so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.
- The employees are entitled to receive minimum bonus
  - Since the agreement is null and void to such extent as explained above.

Quick Recap



Case Studies for Self Practice

Question 1: A newly set up establishment, in its first five accounting years could not earn any profit. Is it liable topay bonus under Bonus Act, 1965?

Answer: No, as per section 16(1A), a company or any other establishment will pay bonus during first five years ofits set up in the year of profits only.

Question 2: During the Accounting year 2003-04, Memorize Ltd. to which Bonus act applies, suffered heavy losses. The Board of Directors decided not to pay any bonus to its employees. The employers moved the court for relief. Will they succeed?

Answer: **Section 10:** Decision of company is not valid.

State vs. Sardar Singh Majithia. Every employer is under obligation to pay bonus. Employee may apply to Appropriate Government for recovery of bonus **u/s 21.**

Question 3: Arun, an employee was suspended for an alleged misconduct.

On inquiring was conducted and the charges against him couldn't be proved. A result he **was re-instated with fullback wages.** Arun wasn't paid bonus for period of suspension. Can he challenge the employer's action?

Answer: Section 8, Yes

Project Manger Ahmedabad Project, ONGC vs. Sham Kumar Sehgal.

Question 4: Decide who amongst following are eligible for Bonus under Bonus Act 1965.

Answer:

(i) Apprentice – Not eligible expressly excluded u/s 2(13).

(ii) **Piece – rated worker** – eligible if worked > 30 days or **temporary work man** or **retrenched employee.**

(iii) **Employee dismissed for misconduct**
Disqualified **u/s 9.**

(iv) **Peons of University** or **teachers of Schools**
Not eligible as per **Section 32.**

(v) **Pilots of Indian Air force or Cattle Catchers of MCD.** Employees employed by RBI, CG, SG or localauthority aren't eligible **u/s 32.**

(vi) **A probationer** is eligible

Question 5:

(a) Varun joined an establishment on monthly salary of `2400 on 1.4.2009 and resigned on 28.4.2009. The establishment declared bonus of 20% to all eligible employees and paid it. Varun claimed his bonus butwas rejected. Advice varun?

Answer: Varun is employee **u/s 2(13)** but isn't eligible for bonus as he has not worked for atleast 30 days in anaccounting years as **per section 8.**

Sec 2(13) – Employee if salary upto Rs. 21,000/- month.

(b) Are employees employed through contractors on building operations are eligible for Bonus.

Answer: Yes, since exemption given u/s 32 has been withdrawn vide payment of Bonus (Amendment), ordinance2007, w.e.f 1.4.06.

(c) Sewak, a worker in Social welfare institution is **not eligible** for bonus u/s 32 (v) (c).

(d) Arpit was dismissed from service by the company. He was alleged for misconduct and wasn't paidbonus. Arpit contented that he was eligible for payment of bonus for accounting year in which dismissaltook place. Will he succeed?

Answer: **Pandian Roadways Corporation Ltd.**

Presiding Officer, Principal Labour Court. Section 9, States employee dismissed for misconduct is disqualified from receiving bonus, from all bonuses.

The action of the company is justified.

Chapter – 18 Unit - 4
Equal Remuneration Act,1976

List of Sections

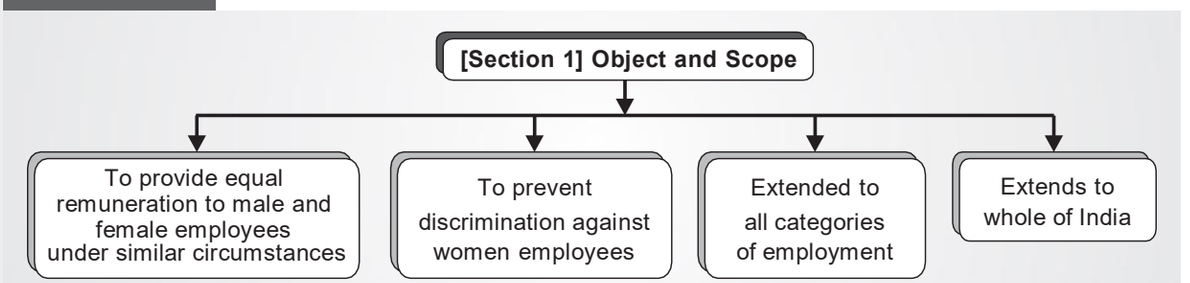
Sections	Particulars of Section
1	Object and scope
2	Definitions
2(a)	Appropriate Government
2(d)	Men and Women
2(g)	Remuneration
2(h)	Same work or work of similar nature
3	Act to have overriding effect
4	Duty of employer to pay equal remuneration
5	No discrimination to be made while recruitment
6	Advisory committee
7	Power of Appropriate Government to appoint officer to hear complaints
8	Duty of employer to maintain register
9	Inspector
10	Penalty

[Section 1] Object and Purpose of the Act

- The Equal Remuneration Act, 1976 provides for payment of **equal remuneration to men and women workers** for same work or work of similar nature **without any discrimination. (Section 4)**
- **It** also **prevents discrimination** against women employees while making **recruitment**. **(Section 5)**
- The **provisions** of the Act are **applicable** to **all** categories of **employment.**
- The Act extends to **whole of India**.

GS SUMIT VOHRA LAW CLASSES

Quick Recap



Note: Article 39 of Indian Constitution states about equal Remuneration Act, 1976 before commencement of this act.

[Section 2] Define the Following Terms

[Section 2(a)] "Appropriate Government" means:

- In relation to any employment carried on by or under the **authority of the Central Government** or a **railway** administration, or in relation to a **banking company, a mine, oilfield or major port** or any corporation established by or under a central Act, the **Central government, and**
- In relation to any **other employment**, the **State Government**.

[Section 2(d)] "Men" and "Women"

It means **male and female** i.e. human beings, respectively, **of any age**.

[Section 2(g)] Remuneration

Remuneration means the **basic** wage or salary, **and** any **additional emoluments** whatsoever payable, **either in cash or in kind**, to a person employed in respect of employment or work done in such employment, if the termsof the contract of employment, express or implied, were fulfilled.

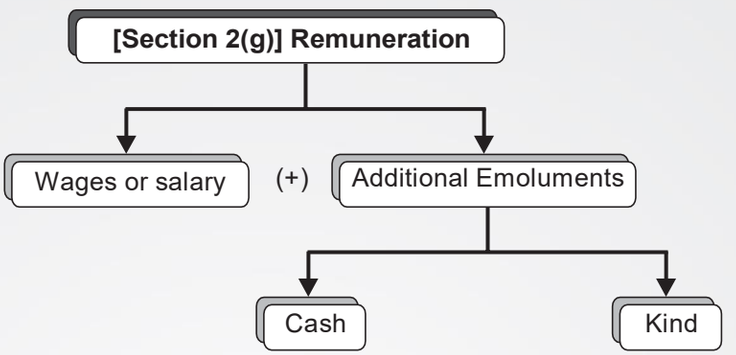
[Section 2(h)] Same Work or Work of a Similar Nature

It means work in respect of which the **skill, effort and responsibility required are the same**, when performed under similar working conditions, by a man or a woman **and the differences, if any,** between the skill, effort and responsibility required of a man and those required of a woman **are not of practical importance** in relationto the terms and conditions of employment.

Quick Recap

1. **[Section 2(a)] Appropriate Government**
   - **(Central Government)** → Railway + Mine + Oilfield + Port + Bank + Corporation established by or under Central Act
   - **(State Government)** → Other Establishments
2. **[Section 2(d)] Men and Women** → Male and Female of any age

3.



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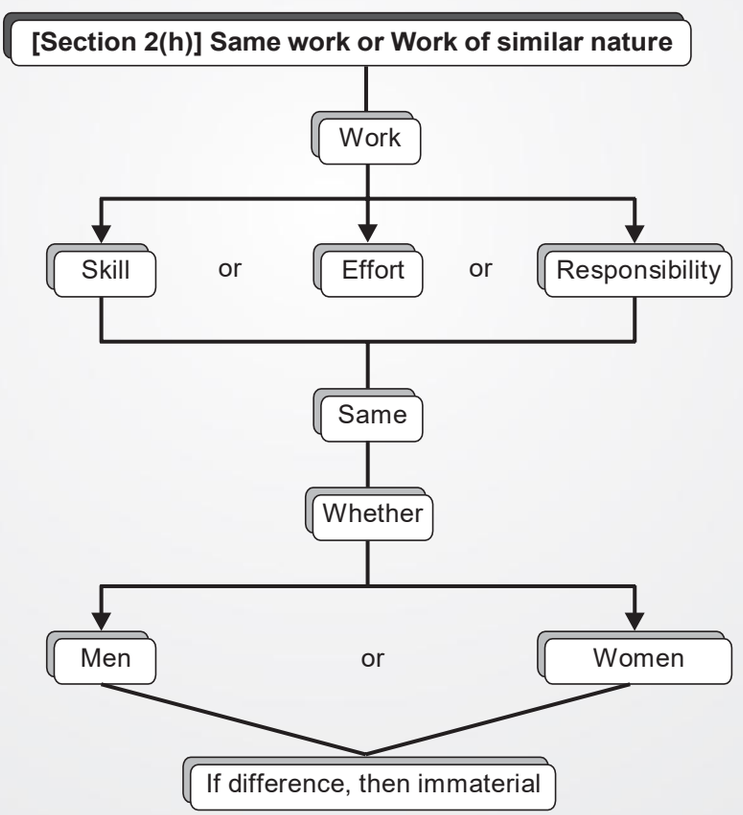


[Section 3] Act to have Overriding Effect

The Act provides that the provisions of the Act shall have effect **notwithstanding anything inconsistent** therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made beforeor after the commencement of the Act.

[Section 4] Duty of Employer to Pay Equal Remuneration to Men andWomen Workers for Same Work or Work of a Similar Nature

The Act provides that **no employer shall pay** to any worker, employed by him in an establishment or employment, **remuneration,** whether payable in cash or in kind, **at rates less favourable than** those at which remuneration is paid by him to the **workers of the opposite sex** in such establishment or employment for performing the same work or work of a similar nature and **employer shall not reduce the rate of remuneration of any worker.**

[Section 5] Discrimination not to be made while Recruiting Menand Women

As per Section 5, **employer while making recruitment** for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, **shall not make any discrimination against women.**

Except

where the employment of women in such work is prohibited or restricted under any law for the time being in force.

However, above mentioned section shall not affect any priority or **reservation for Scheduled Castes or Scheduled Tribes**, **Ex-servicemen, Retrenched employees** or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

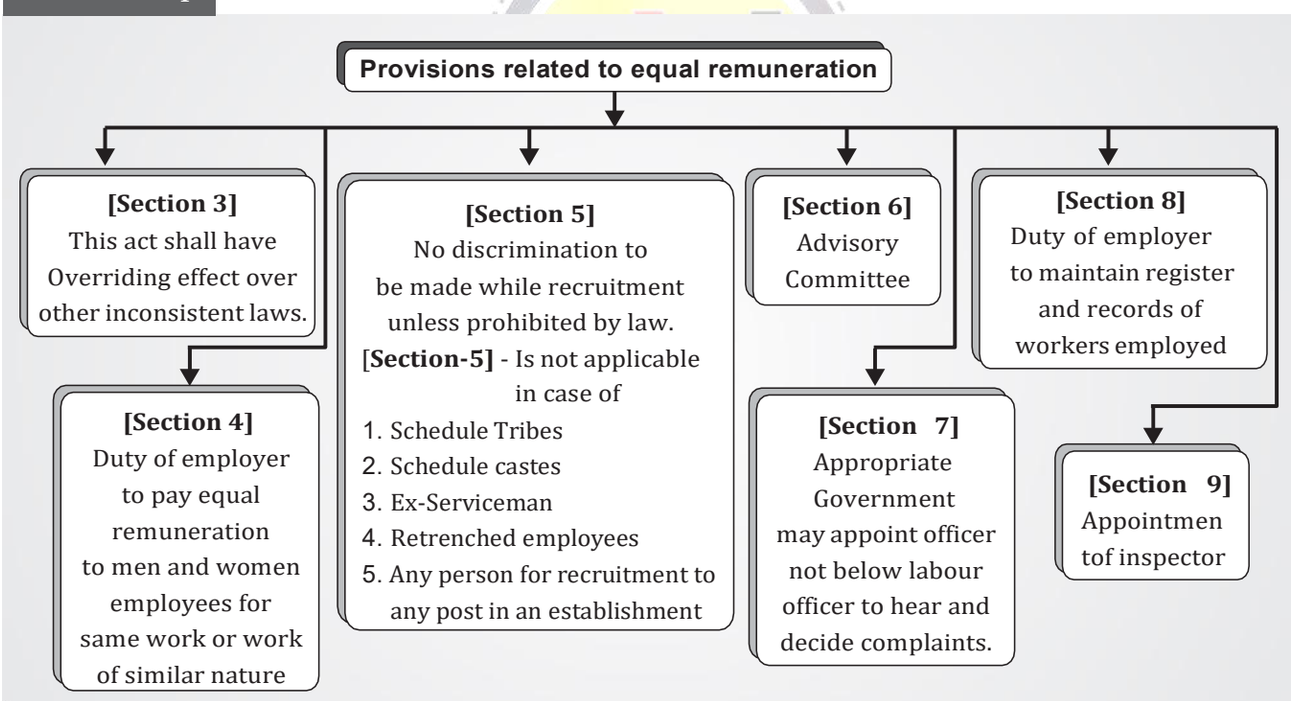
[Section 7] Authorities for Hearing and Deciding Claims and Complaints

Section 7 of the Act empower the **Appropriate Government to appoint** officers, **not below the rank of a Labour officer** as the authorities for the purpose of hearing and deciding complaints and define the **local limits** with which each such authority shall exercise its **jurisdiction.**

[Section 8] Maintenance of Resisters

As per Section 8 it is the duty of every employer, to maintain registers and other documents in relation to workersemployed by him **in the prescribed manner**.

Quick Recap



[Section 10] Penalty

If any employer:

(a) Makes any **recruitment in contravention** of the provisions of this Act, **Or**

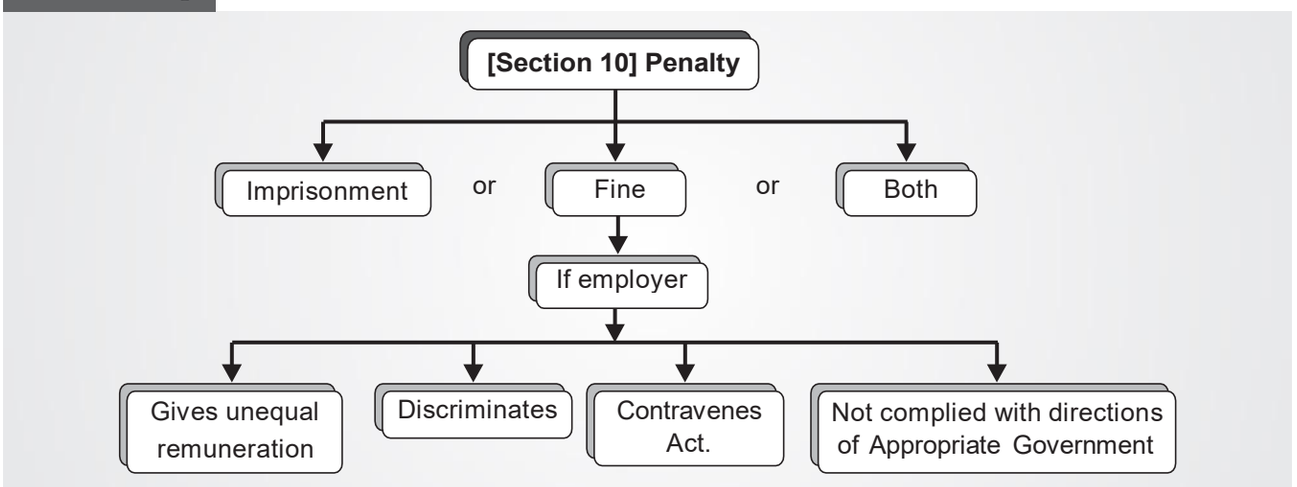
(b) Makes any payment of remuneration at **unequal rates** to men and women workers for the same work orwork of a similar nature, **Or**

(c) **Makes any discrimination** between men and women workers in contravention or the provisions of thisact, **Or**

(d) Omits or fails to carry out any direction made by the appropriate government,

then he/she shall be punishable with fine or with imprisonment or with both.

Quick Recap



AMIT VOHRA LAW CLASSES

Chapter – 19 Unit - 1
Employees' State Insurance Act, 1948

List ofSections

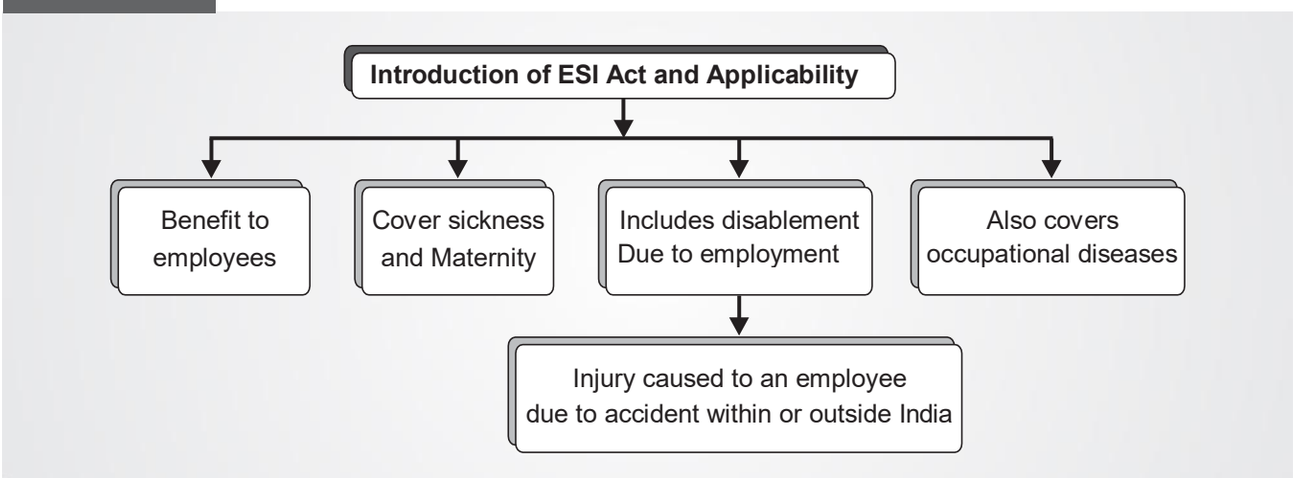
Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(9)	Employee
2(1)	Appropriate Government
2(3)	Confinement
2(4)	Contribution
2(10)	Exempted employee
2(13A)	Immediate employer
2(14)	Insured person
2(15A)	Permanent Partial Disablement
2(15B)	Permanent Total Disablement
2(17)	Principal Employer
2(19A)	Seasonal factory
2(21)	Temporary Disablement
2(22)	Wages
2A	Registration of Factories and Establishments
3	Establishment of Employees' State Insurance Corporation
4	Constitution of Corporation
19	Corporation's Power to Promote Measures for Health of Insured Persons
25	Regional Boards, Local Committees, Regional and Local Medical Benefit Councils
26	Employees' State Insurance Fund
28	Purposes for which the Fund may be Expended
29	Holding of Property, etc.
38	All Employees to be Insured
39	Contribution of ESIC Fund
40	Principal Employer to Pay Contribution in the First Instance
41	Recovery of Contributions from Immediate Employer
43	Method of Payment of Contribution
46	Benefits of ESIC
65	Benefits not to be Combined
6	Corporation's Rights where a Principal Employer Fails to Pay
73	Employer not to Dismiss or Punish Employee during Period of Sickness, etc.
74	Constitution of Employees' Insurance Court
75	Matters to be decided by Employees' Insurance Court
87	Exemption of a Factory or Establishment or Class of Factories Establishments
88	Exemption of Persons or Class of Persons

Introduction

ESI Act has been passed to provides for certain benefits to employees in case of **sickness, maternity** and **employment injury** and to make provisions for matters related thereto. It is basically an insurance scheme i.e., employees get benefits if they are sick or disabled. An organization called ESI Corporation has been formed under the Act to supervise the scheme.

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

Quick RECAP



Note: Extends to whole of India.

Applicability of the Act

APPLICABILITY

The ESI Act is applicable to all non-seasonal factories employing 10 or more persons [Section-1(2) read with Section 2(12) and Section 2(19A)]. The State Governments have extended the coverage under Section 1(5) of the Act to 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/Municipal Bodies employing 10 or more persons in the certain States/UTs, where State Govt. is the appropriate Govt.

The Central Govt. has extended the coverage under Section 1(5) to Shops, Hotels, Restaurants, Road Motor Transport establishments, Cinema including preview theatres, Newspaper establishments, establishment engaged in Insurance Business, Non-Banking Financial Companies, Port Trust, Airport Authorities, Warehousing establishments employing 20 or more Persons, where Central Govt. is the appropriate Govt.

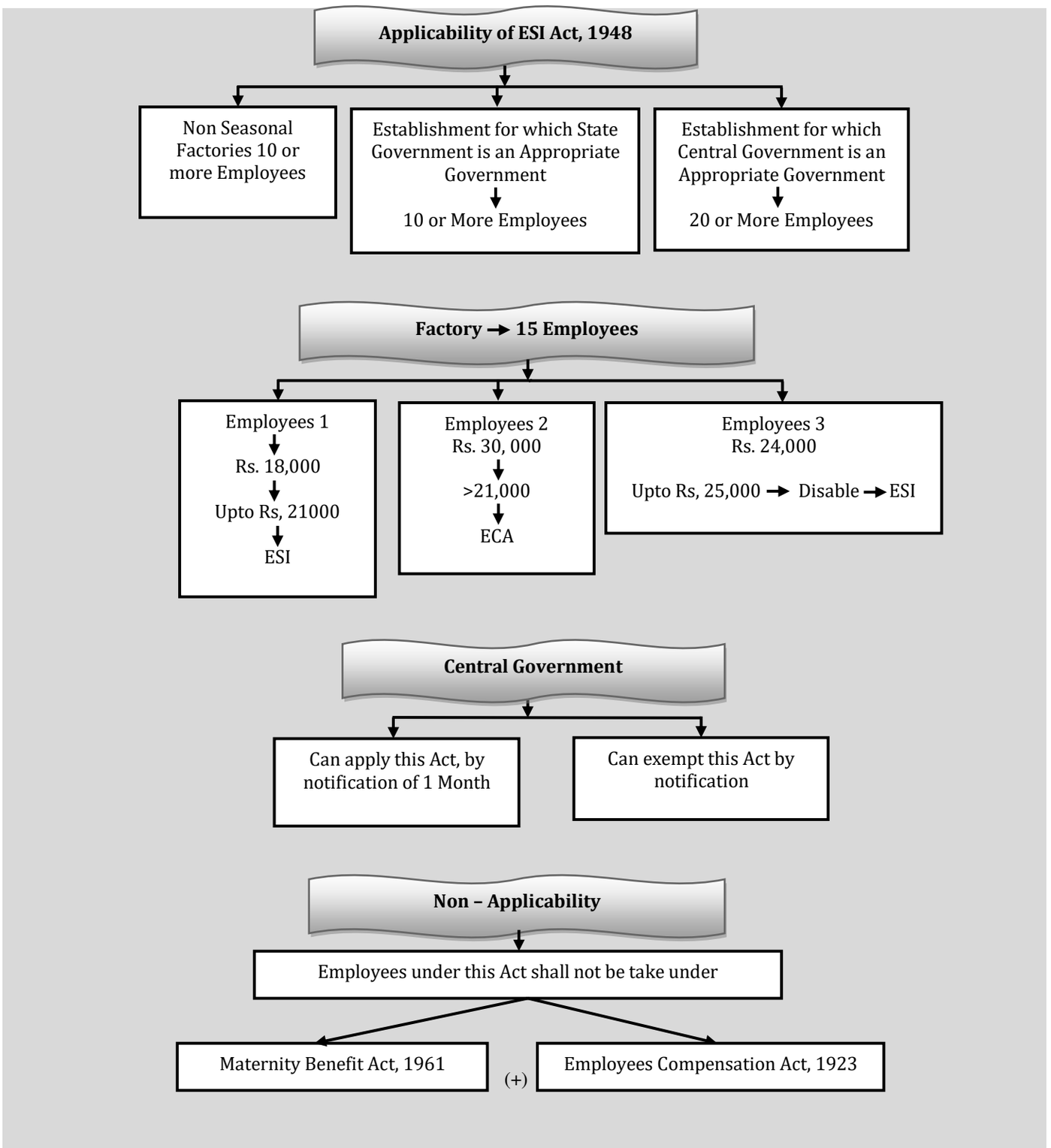
The existing wage limit for coverage under the Act, effective from 01.01.2017, is Rs.21,000/- per month (Rs.25,000/- per month in the case of Persons with Disability).

It may be further noted that an employer/establishment covered under the ESI Act is exempt from the provisions of Maternity Benefit Act, 1961 and Workman's Compensation Act, 1923.

The **Appropriate Government** may, in consultation with the ESI Corporation and where the appropriate government is a State Government, with the approval of the Central Government, after giving **one months' notice** of its intention, of so doing by Notification in the Official Gazette, **extend the provisions of this Act**, to any other establishment or class of establishments industrial, commercial,

agricultural or otherwise.

A factory or an establishment to which this Act applies **shall continue to be governed** by this Act **notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act** or manufacturing process therein ceases to be carried on with the aid of power.



[Section 2] Definitions

1. Employer

   Employer means the following:

   i. **Owner** of the factory;
   ii. Head of the department in case of Government departments;
   iii. Person responsible for **supervision and control** in the case of any other establishment.

   In case of contracted labour, primary liability of ESI contribution is that of principal employer. However, he can recover the contribution paid by him from the contractor.

2. **[Section 2(9)] Employee**

   Employee means any **person employed for wages** in or in connection with work of factory or establishment to which the ESI Act is applicable. The term employee further includes the following:

   i. Person employed **through contractor;**
   ii. **Apprentices** other than those covered under the Apprentices Act.

   It may be noted that only those employees who are drawing wages **up to T25,000/- per month** are covered under this Act.

3. **[Section2(22)]Wages**

   Wages means all remuneration **paid or payable in cash to** employees according to the terms of contract of employment and includes any **payment** made to an employee in respect of period of **authorized** leave, **lock out, lay off, strike,** which is not illegal, and other **additional remuneration** paid at an interval not exceeding 2 months. However, it does **not include** the following:

   i. Contribution made by the employer to any **Pension fund** or any **ProvidentFund;**
   ii. Travelling allowance;
   iii. **Reimbursement of the** expenses incurred by the employee;
   iv. Gratuity.

4. **[Section 2(I)] Appropriate government** means, in respect of establishments under the control of the Central Government or a railway administration or **a ma]or port or a mine or oilfield, the Central Government,** and in all **other cases, the State Government.**
5. **[Section 2(4)] Contribution** means the sum of money **payable to the Corporation by the principal** employer in respect of employee **and includes** any amount payable by or on behalf of the employee in accordance with the provisions of this Act.
6. **[Section 2(3)] Confinement** means the resulting in the **issue of a living child** or **Labour after twenty** - six weeks of pregnancy resulting in the issue of a child whether alive or dead.
7. **Corporation** means the Employees' State Insurance Corporation set up under this Act.
8. **[Section 2(10)] Exempted employee** means an employee who is not liable under this Act to pay the employee's contribution.
9. **[Section 2(14)] Insured person** means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.
10. **[Section 2(ISA)] Permanent partial disablement** means such disablement of a permanent nature, as **reduces the earning capacity** of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.
11. **[Section 2(ISB)] Permanent total disablement** means such disablement of a permanent nature as **incapacitates** an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.
12. **[Section 2(21)] Temporary disablement** means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, **temporarily incapable of doing the work which he was doing prior to or at the time of the injury.**

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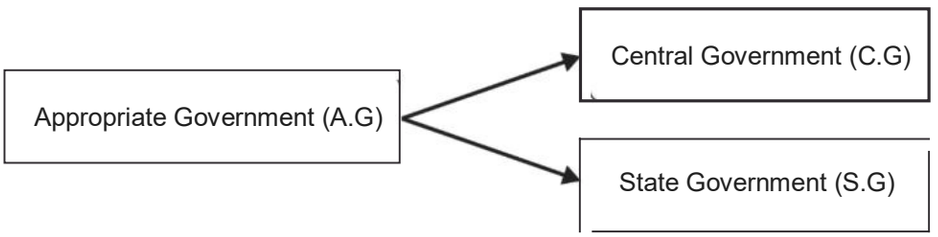
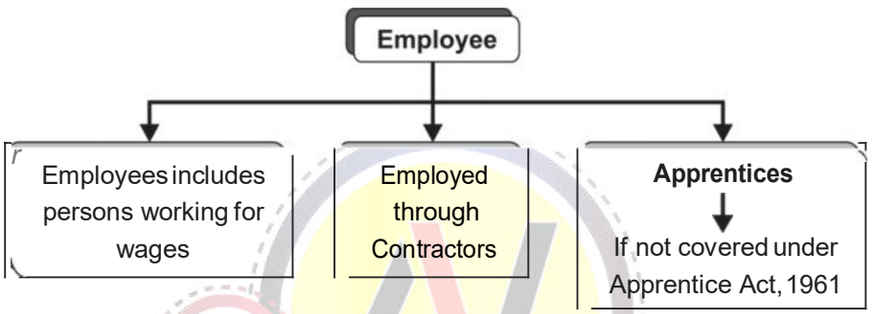
1.



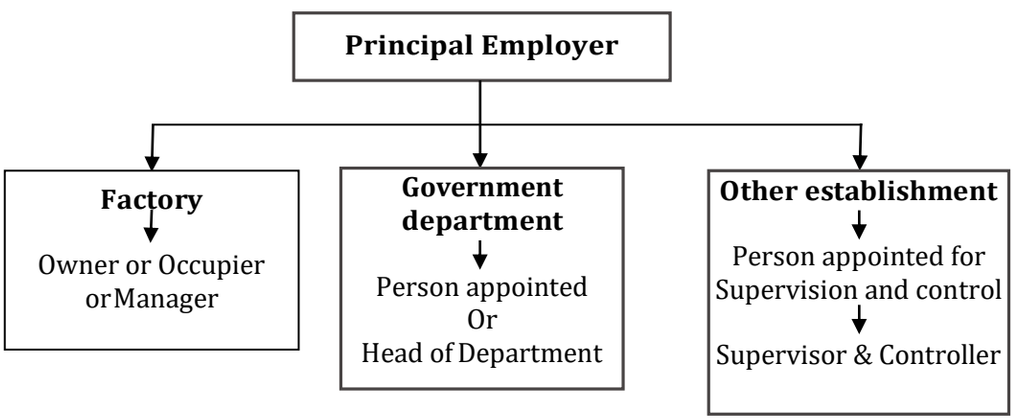
2. Contribution → Amount Paid by employer as well as employee
3. **Corporation** → Employee State Insurance Corporation (ESIC)
4.



Excludes = Army (+) Navy (+) Air Force

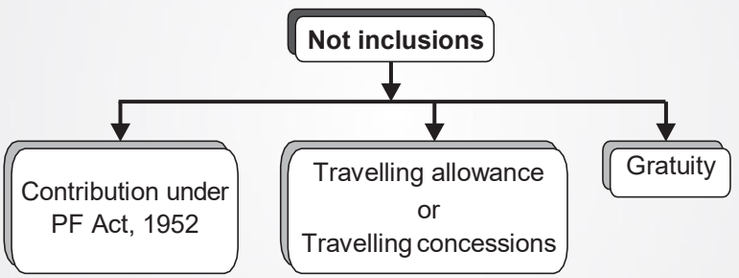
Note: Employees earning Salary of more than 21,000 are not covered under this Act.

5. Exempted employee → An employee exempted from making contribution under Section 39.
6. Insured Person → An employee in respect of whom contribution is made. Employees + Dependents
7. Permanent Partial Disablement → Permanent reduction in earning capacity of employee.
8. Permanent Total Disablement → Permanent total reduction in earning capacity of and employee.
9.



10. **Seasonal Factory** → Factory engaged for period not exceeding7 months in year.

11. **Wages** → All remuneration+ leave with salary+ amount given by employer in case of legal strike+ lay off.



12. **Confinement** → Issue of living child or labour after 26 weeks of pregnancy.

13. **[Section 2(17)] Principal employer** means:
    i. **In a factory:** the owner or occupier of the factory, and includes the **agent** of such owner or occupier, the **legal representative** of a **deceased** owner or occupier, and where a person has been named as the **manager of the factory** under the Factories Act, 1948 the person so named;
    ii. **In any establishment under the control of any department of any government** in India, **the authority** appointed by such government in this behalf OR where no authority is so appointed, the **head of the department**;
    iii. **In any other establishment:** any person responsible **for the supervision and control of the establishment**.
14. **[Section 2(13A)] Immediate employer,** in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which this Act applies or under the supervision of the principal employer or his agent of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer **and includes a contractor.**
15. **[Section 2(19A)] Seasonal factory** means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including Gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes **and includes** a factory which is engaged for a period **not exceeding seven months in a year**:
    - In any process of blending, packing or repacking of tea or coffee; or
    - In such other manufacturing process as the Central Government may, by Notification in the Official Gazette, specify.
16. **[Section 2(6A)]Dependent**
    "Dependent" under Section 2(6A) of the Act (as amended by the Employees' State Insurance (Amendment) Act, 2010) means any of the following relatives of a deceased insured person namely:
    (i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter,(ia) a widowed mother,
    (ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
    (iii) if wholly or in part dependent on the earnings of the insured person at the time his death: (a) a parent other than a widowed mother,
    (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
    (c) a minor brother or an unmarried sister or a widowed sister if a minor,

(d) a widoweddaughter-in-law,
(e) a minor child of a pre-deceased son,
(f) a minor child of a pre-deceased daughter where no parent of the child is alive or,
(g) a paternal grand parent if no parent of the insured person is alive.

17. [Section 2(11)] Family

"Family" under Section 2(11) as amended by the Employees' State Insurance (Amendment) Act, 2010 means all or any of the following relatives of an insured person, namely:

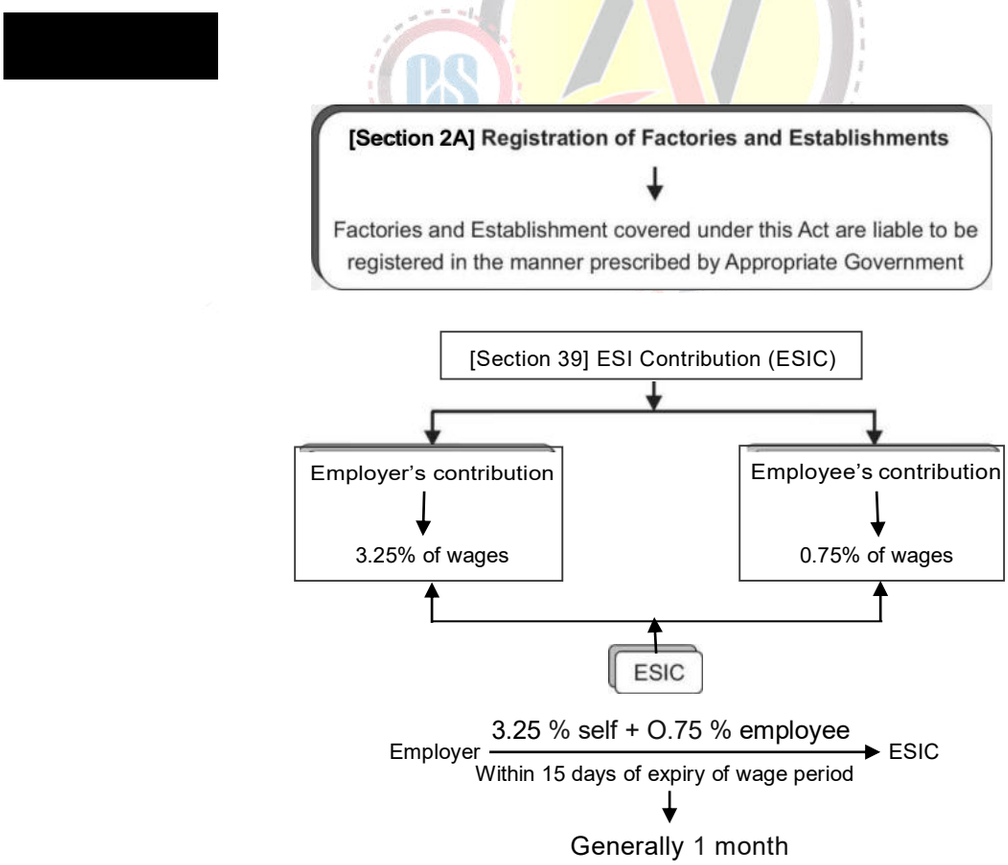
(i) a spouse;
(ii) a minor legitimate or adopted child dependent upon the insured person;
(iii) a child who is wholly dependent on the earnings of the insured person and who is:
(a) receiving education, till he or she attains the age of twenty-oneyears,
(b) an unmarried daughter;
(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues.
(v) dependent parents whose income from all sources does not exceed such income as may be prescribed by the Central Government.
(vi) In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person.

18. [Section 2(20)] Sickness

It means a condition which requires medical treatment and attendance and necessitates, abstention from work on medical grounds. [Section 2(20)]

[Section 2A] Registration of Factories and Establishments

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



[Section 3] Establishment of Employees' State Insurance Corporation

There **shall be** established for the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, a Corporation to be known as the Employees' State Insurance Corporation.

The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall be the said name sue and be sued.

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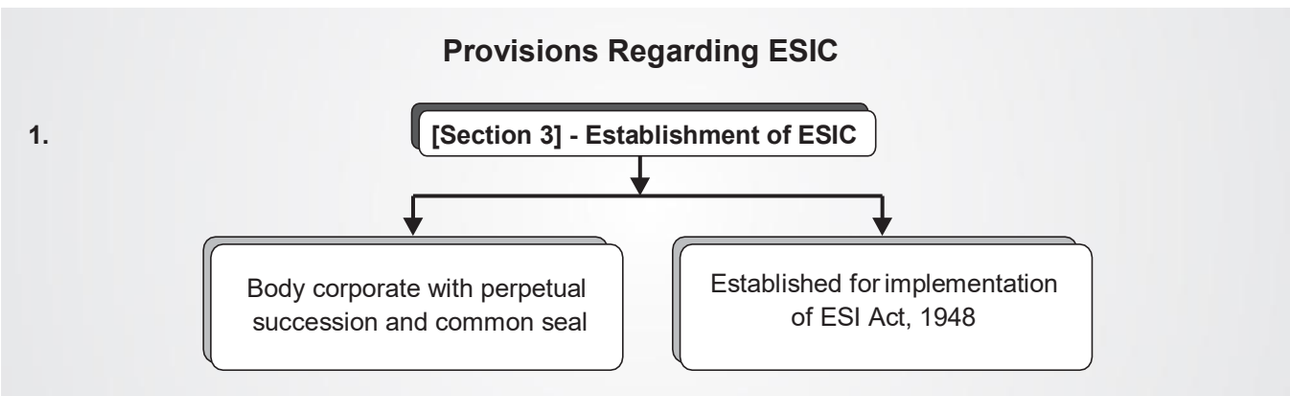


[Section 4] Constitution of Corporation

The Corporation shall consist of the following members, namely:

(a) A **chairman** to be appointed by the Central Government;

(b) A **Vice-Chairman** to be appointed by the Central Government;

(c) **Not more than five persons** to be appointed by the Central Government;

(d) **One person each representing each of the States** in which this Act is in force to be appointed by the State Government concerned;

(e) **One person** to be appointed by the Central Government **to represent the Union Territories;**

(f) **Ten persons representing employers** to be appointed by the Central Government in Consultation with such organisations of employers as may be recognized for the purpose by the Central Government;

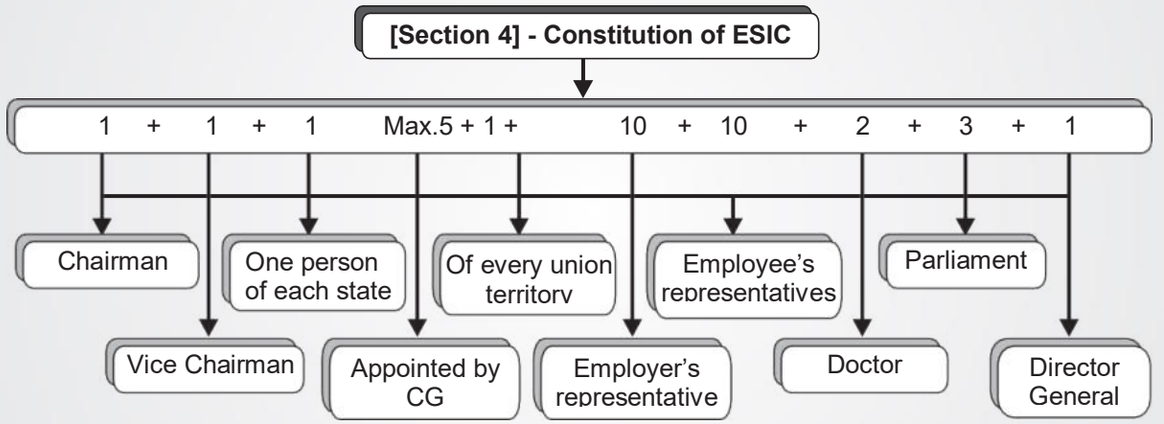
(g) **Ten persons representing employees** to be appointed by the Central Government in consultation with such organisations of employees as may be reorganized for the purpose by the Central Government;

(h) **Two persons representing the medical profession** to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government;

(i) Three members of parliament; and

(j) **The Director-General** of the Corporation.

2.



[Section 19] Corporation's Power to Promote Measures for Health of Insured Persons

The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation **within such limits as may be prescribed by the Central Government.**

3.

[Section 19] - Power of Corporation to promote measures for health of Insured Person

Additional measures for the improvement of health and welfare of insured person

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[Section 25] Regional Boards, Local Committees, Regional and Local Medical Benefit Councils

The corporation may appoint regional boards, local committees and regional and local Medical Benefit Councils in such areas and in such manner, and **delegate to them such powers and functions**, as may be provided by the regulations.

4.

[Section 25] - Corporation may appoint local bodies to delegate work, power and functions to be exercised by such bodies.

[Section 26] Employees' State Insurance Fund

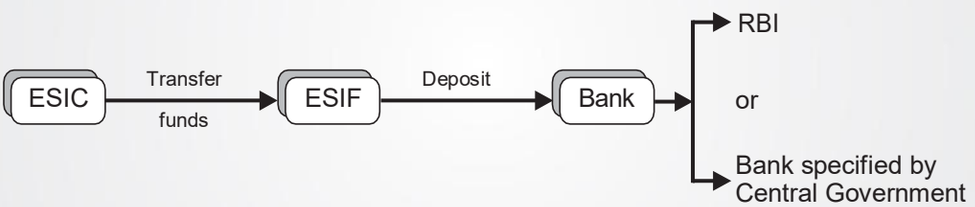
All Contributions paid under this Act and all other money received on behalf of the Corporation **shall be paid into a fund called the Employees' State Insurance fund** which shall be held and administered by the Corporation for the purposes of this Act.

The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

All money accruing or payable to the said fund shall be **paid into the Reserve Bank of India or such other bank as may be approved by the Central Government** to the credit on an account styled the Employees' State Insurance Fund.

Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

6. **[Section 26] -** Employee State Insurance Fund (ESIF)



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[Section 28] Purposes for which the Fund may be Expended

Employees' State Insurance fund shall be expended **only for the following purposes:**

i. **Payment of benefits and provision of medical treatment** and attendance to insured persons sand, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith.

ii. **Payment of fees and allowances to members** of the Corporation, the Standing Committee and the Medical Benefit Council, the regional boards, local committees and regional and local Medical Benefits Councils.

iii. **Payment of salaries,** leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of **officers and servants** of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act.

iv. **Establishment and maintenance of hospitals dispensaries** and other institutions and the provisions of medical and other ancilliary services for the benefit of insured persons and, where the medical benefit is extended to their families.

v. **Payment of Contributions to any State Government**, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured person and, where the medical benefit is extended to their families, including the cost of any building and equipment in accordance with any agreement entered into by the Corporation.

vi. **Defraying the cost (including all expenses) of auditing the accounts of the Corporation** and of the valuation of its assets and liabilities.

vii. Defraying the cost (including all **expenses**) of the **Employees' State Insurance Courts** set up under this Act.

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

ix. **Payment of sums under any decree, order or award of any Court** or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation.

x. Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act.

xi. Defraying expenditure within the limits prescribed, on measures for the improvement of the health and welfare of insured person and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

xii. Such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

7. **[Section 28] - Purposes for which ESIF can be used**

- Payment of benefits to employees and their families.
- Payment of fees to the local bodies i.e., members of medical benefit council and standing committee.
- Payment of Salaries to the employees of ESIC.
- Establishment and maintenances of hospital and dispensaries
- Payment of contribution to Government.
- Expenditure of audit of accounts of ESIC.
- Expenses of Employees' Insurance Court
- Amount to be paid under any award or decree by Court.
- Any other purpose authorized by corporation with prior approval of Central Government.

[Section 29] Holding of Property, etc.

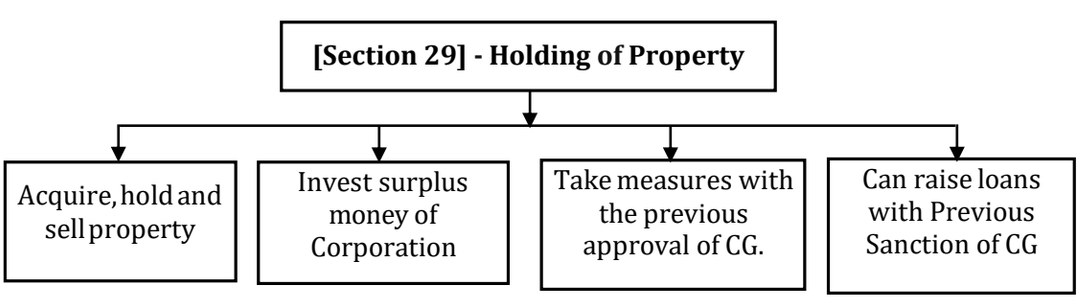
i. The Corporation may acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and **do all things necessary for the purposes for which the Corporation is established**.

ii. The **Corporation may**, from time to time, **invest any money which is not immediately required for expenses** properly defrayable under this Act and may, subject as aforesaid, from time to time re-invest or realize such investments.

iii. The Corporation may, with the **previous sanction of the Central Government** and on such terms as may be prescribed by it, **raise loans and take measure for discharging such loans.**

iv. The Corporation may constitute for the **benefit of its staff** or any class of them, such provident or other benefit fund as it may think fit.

5.



[Section 38] All Employees to be Insured

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

[Section 39] Contribution of ESIC Fund

Both employer and employee have to make contribution to ESIC Fund. Employer has to deduct contribution from wages of employees and pay to ESIC Fund both the employer as well as the employees' contribution. The contribution is payable for wage period and it has to be paid within 15 days from the close of the wage period. The employee's contribution is 0.75% of the wages whereas the employer's contribution is 3.25% of the total wage bill of all the employees in respect of every wage period.

It may be noted that the employees earning less than and up to 137/- per day are exempt from the payment of contribution.

If any **contribution** payable under this Act is **not paid by** the **principal** employer on the date on which such contribution has become due, **he shall** be **liable to pay** simple interest at the rate of twelve per cent **per annum** or at higher rate as may be specified in the regulations till the date of it actual payment.

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charge any scheduled bank.

Scheduled bank means a bank for the time being included in the Second Schedule to the Reserve Bank of India
Act, 1934.

Note: Within first 24 months of applicability of ESI Act to an establishment, Employer and employee shall make the
contribution of 3% and 1% of the wages respectively.

[Section 40 and 41] Principal Employer to Pay Contribution in the First Instance and Subsequently to be reimbursed from immediate employer (Contractor)

i. The **principal employer shall pay** in respect of every employee, whether **directly** employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
ii. The principal employer shall, in the case of an employee **directly** employed by him (not being an exempted employee,) be **entitled to** recover from the employee the employee's contribution by deduction from his wages and not otherwise:

    Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.
iii. Notwithstanding any contract to the contrary, **neither** the **principal employer nor** the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or other wise to recover it from him.
iv. **Any sum deducted by the principal employer from wages** under this Act shall be **deemed to have been entrusted to him** by the employee for the purpose of paying the contribution in respect of which it was deducted.
v. The principal employer shall bear the expenses of remitting the contribution to the Corporation.

[Section 46] Benefits of ESIC

1. The **insured persons, their dependents** or the persons here in after mentioned, as the case may be, shall be entitled to the following benefits, namely:
    a. **Periodical payments to any insured person in case of his sickness** certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the

Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit).

b. **Periodical payments** to an insured woman in case of **confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child** or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit).

c. **Periodical payments** to an insured person suffering from **disablements** as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit).

d. **Periodical payments to such dependents of an insured person who dies as a result of an employment injury** sustained as an employee under this Act, as are entitled to compensation under this Act, (hereinafter referred to as dependents' benefit).

e. Medical treatment for and attendance on insured persons (i.e. medical benefit).

f. Payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses).

Provided that the amount of such payment shall not exceed such amount as may be prescribed by the C.G. and the **Claim for such payment shall be made within three months** of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

The Corporation may, at the request of the Appropriate Government, extend the medical benefit to the family of an insured person.

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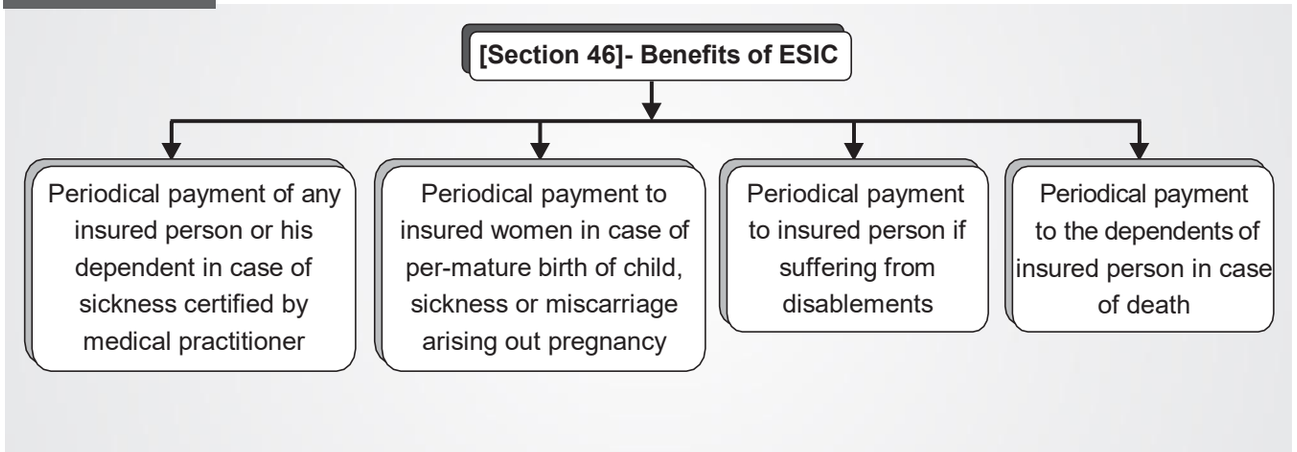
Quick Recap



Note: [Section 73] - Employer shall not dismiss or punish employee during period of sickness or maternity, if done so, then such order shall to be invalid or inoperative.

[Section 65] Benefits not to be Combined [MSD]

1. An insured person **shall not be entitled** to receive for the same period:
   a. Both sickness benefit **and** maternity benefit; or
   b. Both sickness benefit and disablement benefit for temporary disablement; or
   c. Both maternity benefit and disablement benefit for temporary disablement.
2. Where a person is entitled to more than one of the benefits mentioned in sub-section (1), he/she shall be entitled to choose which benefit he shall receive.

[Section 73] Employer not to Dismiss or Punish Employee during Period of Sickness, etc.

No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit nor shall he, except as provided under the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

No notice of dismissal or discharge or reduction given to an employee during the period specified above shall be valid or operative.

[Section 74] Constitution of Employees' Insurance Court

1. The **State Government** shall, by notification in the **Official Gazette**, constitute an Employees' Insurance Court for such local area as may be specified in the notification.
2. The Court shall consist of such **number of Judges as the State Government may think fit**.
3. Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a judge of the Employees' Insurance Court.
4. The State Government may appoint the same court for two or more local areas or two or more courts for the same local area.
5. Where more than one court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

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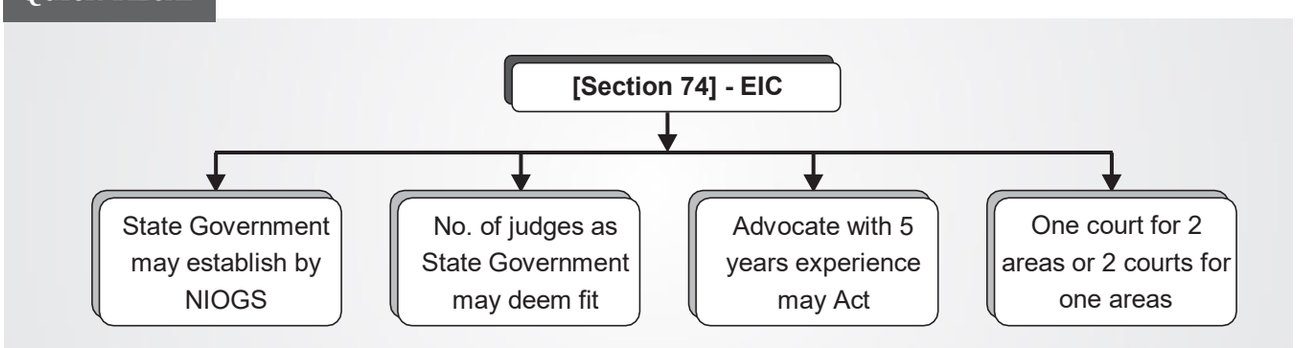

Case Laws – 1

CASE LAW 1	Royal Talkies, Hyderabad vs. ESI Corporation
It was held that employees of the cycle stand and the canteen run in a cinema theatre by contractors to whom the cycle stand and canteen have been leased are employees within the meaning of ESI Act.	

CASE LAW 2	ESIC vs. MM Suri and Associates Pvt. Ltd.
It is not sufficient that 20 persons are employed in the shop. They should also be covered under the meaning of 'employee' as per the Act.	

CASE LAW 3	Regional Director, ESI vs. Francis de Costa
The Supreme Court held that mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory. Thus the injury cannot be said to be caused by an accident arising out of and in the course of employment.	

CASE LAW 4	ESIC vs. Babulal
It was held that injury arose out of employment where a workman attending duty in spite of threats by person giving call for strike and was assaulted by them while returning after his duty was over.	

CASE LAW 5	Jayanthilal Dhanji Co. vs. ESIC
An injury caused to a worker while knocking the belt of the moving pulley was held to be an employment injury.	

CASE LAW 6	Shyam Devi vs. ESIC
The word injury does not mean only visible injury but also includes sickness, maternity and employment injury.	

CASE LAW 7	Hyderabad Asbestos Cement Products vs. ESIC
The word employee would include not only persons employed in a factory but also persons connected with the work of the factory.	

CASE LAW 8	ESIC vs. Apex Engineering Pvt. Ltd.
It was held that Managing director could also be an employee of the company and hence covered under the Act.	

CASE LAW 9	RD, ESI vs. L. Ranga Rao
Time & place of accident shouldn't be totally unrelated to employment.	

Chapter – 19 Unit - 2
The Employees' ProvidentFunds and Miscellaneous Provisions Act, 1952

List of Sections

Sections	Particulars of Section
1	Applicability
2	Definition
5A	Central Board
5AA	Executive Committee
6	Employee provident fund scheme
6A	Employee pension scheme
7A	Money due from employer
7B	Review of order
7C	Escaped Amount
(7I, 7L and7O)	Appeal against order of officer
8B	Recovery
10	Protection Against Attachment
12	Not to reduce salary for the purpose of reduction in contribution towards PF
13	Inspector & Power
16	Non applicability
16A	Authorizing employer to maintain PF A/c
17	Exempted establishment
17A	Transfer of Account
17B	Liability of employee

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[Section 1] Applicability of PF Act

Factories

The Act applies to every establishment fulfilling the following conditions:

(a) The establishment is a factory.
(b) The establishment is engaged in any industry specified in Schedule I.
(c) The establishment employs 20 or more persons.

Any other establishment

The Act applies to every establishment fulfilling the following conditions:

(a) The establishment employs 20 or more persons.
(b) The Act has been made applicable to such establishment (or to the class of establishments in which such establishment falls) by the Central Government by notification in the Official Gazette

The Act applies to every establishment employing less than 20 personThan 20 persons if the following conditions are satisfied:

(a) The Act has been made applicable to such establishment by Central Government by notification in theOfficial Gazette.

(b) Before issue of such notification, the Central Government shall give 2 months, notice to establishment.

Applicability on request

An establishment to which the provisions of the Act do not apply, shall also be covered under the Act if thefollowing conditions are satisfied:

(a) An application for this purpose is made to the Central Provident Fund Commissioner.
(b) The application is made by the employer and majority of employees of the establishment.
(c) The Central Provident Fund Commissioner issues a notification in the Official Gazette making theprovisions of the Act applicable to such establishment.

Applicability to departments and branches [Section 2A]

If the provisions of the Act become applicable to all establishment, and to all the branches of the establishment(wherever they are situated) shall also be covered under the Act.

Continued applicability of the Act

If the provision of the Act become applicable to an establishment once, then Act shall continue to apply to suchestablishment even if the number of Employees falls below 20.

Definitions [Section 2]

Factory [Section 2(g)]

Factory means –

- Any premises, including the precincts thereof
- In any part of which a manufacturing process is being carried on or is ordinarily so carried on,
- Whether with the aid of power or without the aid of power.

Manufacture or Manufacturing Process [Section 2(ic)]

Manufacture or manufacturing process means any process for making, altering, repairing, ornamenting,finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Employer [Section 2(e)]

- In relation to an establishment which is a factory, employer means-
  (a) The owner or occupier of the factory (Occupier means the person who has ultimate control over theaffairs of the factory).
  (b) The agent of such owner or occupier.
  (c) The legal representative of a deceased owner or occupier.
  (d) Person named as a manager of the factory under the Factories Act.
- In relation to any other establishment, employer means –
  (a) The person having the ultimate control over the affairs of the establishment;
  (b) The manager or the managing director to whom the affairs of the establishment are entrusted.

Employee [Section 2(f)]

- Employee means any person –
  (a) Who is employed for wages
  (b) In any kind of work, whether manual or otherwise,
  (c) In or in connection with the work of an establishment,
  (d) Who gets his wages directly or indirectly from the employer.
- Employee includes any person –
  i. Employed by or through a contractor in or in connection with the work of the establishment

ii. Engaged as an apprentice (not being an apprentice engaged under the Apprentices Act, 1961 or underthe standing orders of the establishment).

Basic Wages [Section 2(b)]

- 'Basic wages' means –
  - (a) All emoluments
  - (b) Which are earned by an employee
  - (c) In accordance with the terms of the contract of employment
  - (d) Which are paid or payable in cash to him
  - (e) While
    - (a) on duty; or
    - (b) while on leave with wages; or
    - (c) while on holidays with wages.
- 'Basic wages' does not include –
  - i. The cash value of any food concession
  - ii. Any dearness allowance (i.e, all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living)
  - iii. House-rent allowance, overtime allowance
  - iv. Bonus, commission or any other similar allowance payable to the employee in respect of hisemployment or of work done in such employment
  - v. Any present made by the employer.

Authorized Officer [Section 2(aa)]

- Authorized officer means –
  - A. Central Provident Fund Commissioner
  - B. Additional Provident Fund Commissioner
  - C. Deputy Provident Fund Commissioner
  - D. Regional Provident Fund Commissioner
  - E. Such other officer as may be authorized by Central Government, by notification in Official Gazette.

Appropriate Government [Section 2(a)]

- AG means Central Government in the following cases:
  - i. In relation to an establishment belonging to, or under the control of Central Government (CentralGovernment).
  - ii. In relation to an establishment connected with a railway company, a major port, a mine or an oil fieldor a controlled industry.
  - iii. In relation to an establishment having departments or branches in more than one State.

In relation to any other establishment, AG means SG.

- Exempted employees [Section 2(ff)] Exempted employee means an employee in respect to which the Scheme does not apply

  By reason of an exemption granted under Section 17.
- Exempted establishment [Section 2(fff)] Exempted establishment means an establishment. In respect ofwhich an exemption has been granted under Section 17 from the operation of all or any of the provisions ofthe Scheme.

Non-Applicability of PF Act [Section 16]

Co-operative Society

- An establishment fulfilling the following conditions:
  - (a) The establishment has been registered under the Co-operative Societies Act.

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(b) It employs less than 50 persons.
(c) It is working without the aid of power.

Government Undertaking

- Any establishment fulfilling the following conditions:
  (a) It belongs to the Central Government or State Government is under the control of Central Governmentor SG.
  (b) The employees of the establishment are entitled to benefit of contributory provident fund or old agepension.

Undertaking Constituted under an Act

- Any establishment fulfilling the following conditions:
  (a) It has been set up under any Central or State Act.
  (b) The employees of the establishment are entitled to benefit of contributory provident fund or old agepension.

Exemption by Notification

- Any class of establishments may be given exemption from the provisions of the Act, if the following conditionsare satisfied.

(a) The exemption can be given by the Central Government only by way of issue of a notification in the OfficerGazette.
(b) The exemption shall be given for such period and on such terms and conditions as may be specified in thenotification. The exemption may be prospectively or retrospectively.
(c) Central Government shall consider the financial position of such class of establishments and other relevantcircumstances before granting the exemption.

Authorising Certain Employers to Maintain Provident Fund Accounts[Section 16A]

1. Conditions for Authorization

- Generally, the account of every employee is maintained in the provident fund office. However, an establishment may be printed to maintain the PF accounts of its employees, if the following conditions are satisfied:
  (a) An application is made to Central Government for seeking permission to maintain the PF accounts.
  (b) The application must be made by the employer and the majority of employees.
  (c) The establishment employs 100 or more persons.
  (d) The establishment has not committed any default in the payment of provident fund contribution or any other offence under this Act during 3 years immediately preceding the date of application.
  (e) The Central Government has authorized the employer, by an order in writing, to maintain theprovident fund accounts.

2. Terms and Conditions of Authorization

- The authorization may contain the following terms and conditions to be complied with by the employer:
  (a) Manner of maintenance of provident fund accounts
  (b) Submission of returns
  (c) Manner of depositing the contribution (i.e., the PF money shall be deposited with the PF Authorities)
  (d) Facilities to be provided for inspection
  (e) Payment of administrative

chargesOther terms and conditions.

3. Cancellation of Authorization

- Grounds of cancellation
- The authorization given by

Authorization may be cancelled by Central Government.If the employer –

I. Fails to comply with any of the terms and conditions of the authorization; or

II. Commits any offence under any provisions of the Act.

4. Conditions for Cancellation

(i) Before cancelling the authorization, Central Government shall give the employer a reasonable opportunityof being heard.

(ii) The order of cancellation shall be in writing.

Exempted Establishment [Section 17]

A. Exemption from Provident Fund Scheme

(a) Exemption by whom? The exemption may be given by Appropriate Government.

(b) Manner of giving exemption. The exemption can be given only by way of a notification in the Official Gazette.

(c) Terms of exemption such

I. The exemption shall be subject to conditions as may be specified in the notification.

II. The exemption may be given prospectively or retrospectively.

III. The exemption may be given from the operation of all or any of the provisions of any Scheme.

(d) Conditions for giving exemption

(a) Appropriate Government must from an opinion that –

The rules of provident fund with respect to the rates of contribution are not less favorable than thosespecified in the Scheme; and

The employees are also in enjoyment of other provident fund benefits which on the whole are not lessfavorable to the employees than the benefits provided under this Act or Scheme.

(b) Before giving the exemption, AG shall consult the Central Board. The Central Board shall forward itsview within such time limit as may be specified in the Scheme.

1. Applicability of Provisions on Exempted Establishment

(a) The terms and conditions as may be specified in the notification granting exemption shall apply to the exempted establishment.

(b) If the employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act., he shall be punishable under Section 14 as if the said establishment had not been exempted.

2. Duties of Employer

The employer shall establish a Board of Trustees for the administration of the Provident Fund.

3. Duties of Board of Trustees

(a) The Board of trustees shall –

(i) Maintain detailed accounts to show the contributions credited, withdrawals made and interestaccrued in respect of each employee.

(ii) Submit such returns as may be directed from time to time.

(iii) Invest the PF money in accordance with the directions issued by Central Government.

(iv) Transfer, where necessary, the Provident Found Account of any employee, and

(v) Perform such other duties as many be specified in the Scheme.

(b) If the trustees contravene, or make default in complying with, any of the duties entrusted to them, they shall be deemed to have committed an offence under Section 14 and shall be punishable accordingly.

B. Exemption from Pension Scheme

1. Exemption by whom?

The exemption may be given by the Appropriate Government.

2. Manner of giving exemption

The exemption can be given by way of a notification in the Official Gazette.

3. Terms of exemption

The exemption shall be subject to such conditions as may be specified in the notification.

The exemption may be given prospectively or retrospectively.

The exemption may be given from the operation of all or any of the provisions of any Scheme.

4. Conditions for giving exemption

Appropriate Government must form an opinion that the pensionary benefits available to the employees of theestablishment are at par or more favourable than the Pension Scheme framed under this Act..

C. Exemption from Insurance Scheme

1. Exemption by whom?

The exemption may be given by the Central Provident Fund Commissioner.

2. Manner of giving exemption

The exemption can be given by way of a notification in the Official Gazette.

3. Terms of exemption

The exemption shall be subject to such conditions as may be specified in the notification.

The exemption may be given prospectively or retrospectively.

The exemption may be given from the operation of all or any of the provision of any Scheme.

4. *Conditions for giving exemption*

The Central Provident Fund Commissioner must be satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, and such benefits are more favourable to such employees than the benefits admissible under theInsurance Scheme.

The Central Board [Section 5A]

Meaning of 'Fund'

The contributions to Provident Fund Scheme, Employees Pension Scheme and Employees Deposit Linked Insurance scheme are credited to a fund.

Administration of Fund

The fund vests in and is administered by Central board of Trustees, i.e., Board of Trustees or simply the Board.

The Central Board is formed by Central Government by notification in the Official Gazette.In other words, Central Board shall administer the following funds:

(a) The Employees Provident Fund

(b) The Employees Pension Fund

(c) The Employees Deposit Linked Insurance Fund.

Board is a Body Corporate

The Board of Trustees is a body corporate having perpetual succession and common seal.

Composition of Board

I	Chairman	Appointed by Central Govt.(Central Gov-ernment)
I	Vice Chairman	
I	Central Provident Fund Commissioner	
Maximum 5 Officials	Representing Central Government	
Maximum 15 Officials	Representing State Government	
10 persons	Representing employers	Appointed by Central Government in con- sultation with association of employers
10 persons	Representing employees	Appointed by Central Government in con- sultation with organization of employees

Functions of Central Board

The Central Board shall administer the Provident Fund Scheme, Employees Pension Scheme and Employee Deposit Linked Insurance Scheme in such manner as provided in the respective Schemes.

The Central Board shall take policy decisions.

Accounts, audit and annual report

Accounts: The Central Board shall maintain the accounts relating to income and expenditure.

The accounts shall be maintained in such form and such manner as specified by Central Government inconsultation with Comptroller and Audit General of India (CAGI).

Audit: The accounts of the Central Board shall be audited annually.

The audit shall be conducted by CAGI.

Annual: The audited accounts and annual

Report: Report on the working of the Central Board shall be forwarded to Central Government.

Delegation of Power by Central Board

(a) The Central Board may delegate authority subject to such conditions and limitations as it may deemed fit.

(b) The powers may be delegated

to –Executive Committee, or

State Board, or

Chairman or any other officer of the Board.

Executive Committee [Section 5AA]

Composition of the Committee

Executive Committee is constituted by Central Government by Notification in the Official Gazette.

Executive committee shall consist of 13 members.

The members of the Executive Committee are Selected out of the members of the Central

Board.The Executive Committee consists of the following members:

Chairman	From amongst the members of the Central Board	Appointed by Central Gov-ernment
2 persons	From amongst the representatives of Central Government elected to the CentralBoard	
3 persons	From amongst the representatives of State Government elected to the CentralBoard	
3 persons	From amongst the representatives of employers elected to the Central Board	Elected by the Central Board
3 persons	From amongst the representatives of employees elected to the Central Board	
1 person	Central Provident Fund Commissioner	

Purpose of constitution of Executive Committee

The purpose of executive committee is to assist the Central Board in its functions.

The Scheme shall provide for –

(a) Terms and conditions subject to which a member of the Central Board may be appointed or elected to theExecutive Committee;

(b) The time, place and procedure of the meetings of the Executive Commit

Determination of Application of the Act and Moneys Due From theEmployer [Section 7A]

Nature of Disputes

(a) Dispute regarding applicability of the Act to an establishment

(b) Amount due from any employer under any provision of the Act and the Scheme. The amount due may bein respect of –

a. Contribution
b. Administration charges
c. Damages payable by employer for delayed payment
d. Any other amount payable by employer.

Who is empowered to determine dispute?

a. Central Provident Fund Commissioner
b. Additional Provident Fund Commissioner
c. Deputy Provident Fund Commissioner
d. Regional Provident Fund Commissioner

Powers of Officers

a. He may make such enquiry as deemed fit. The enquiry Shall be judicial proceeding.
b. He shall follow the principle of natural justice. He may pass an order, in accordance with the provisions ofthe Act and the scheme, as he deems fit.
c. He shall have same powers as are vested in Civil Court for
   (a) Enforcing attendance
   (b) Requesting discovery and production of documents
   (c) Receiving evidence on affidavit
   (d) Issuing commissions for examination of witnesses

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Power to order ex parte

If employer does not attend hearing or does not produce any record, order can be passed ex parte, based onavailable evidence.

If ex parte order is passed, employer can request for setting aside the order and give fresh hearing, if thefollowing conditions are satisfied:

(a) The employer has to satisfy the officer that he could not attend or reply due to sufficient reasons.
(b) The employer has not filed any appeal against the ex parte order.
(c) Before setting aside the ex parte order, notice shall be given to the opposite party.

Review of Order [Section 7B]

Rights Given under Section 7B

Section 7B confers a right to make an application for review of an order made under Section 7A.Review at whose instance?

a. Any person aggrieved by an order under Section 7A can make an application for review.
b. The officer can himself review the order on his own motion.

No review if appeal is filed:- No application for review can be made if an appeal Is filed against the order made under Section 7A.

Time limit: The application for review can be made within 45 days of order made under Section 7A.

Cases in which application can be made

(a) If new and important evidence is discovered which could not be produced earlier as it was not within theemployer's knowledge even after due diligence; or
(b) There is some mistake or error apparent from the records; or
(c) Any other sufficient reason.

Action by the Officer

The officer may –

(a) Reject the application for review if there are not sufficient grounds for review; or
(b) Grant the review.

Appeal Against the Order of Officer

a. Appeal cannot be filed against order rejecting the application for review.
b. If fresh order is passed after the review, appeal can be filed against such order.

Escaped Amount [Section 7C]

Rights Given under Section 7C

1. The officer is empowered to re-determine the amount due from employer if such amount has escapedfrom determination.
2. The re-determination can be made –
   (a) If the employer had not disclosed all material facts for determining the correct amount payable; or
   (b) Even if there was no omission or failure on the part of the employer in disclosing all the material facts.

Conditions for Exercising Right under Section 7C

(a) Re-determination can be made only when determination was made under Section 7A or 7B.
(b) The re-determination can be made at any time within 5 years from the date of communication of order under Section 7A or 7B.
(c) Before re-determination of the amount due from employer, the employer shall be given reasonable opportunity of representing his case.

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Appeal Against Order of Officer [Section 7I, 7L and 7O]

Appeal to whom?

Appeal against various orders passed under the Act can be made to Employees 'Provident Funds appellate Tribunal' ('Tribunal').

Conditions for Filing Appeal

(a) Appeal can be entertained only after depositing 75% of the amount demanded.
(b) However, Tribunal can waive or reduce the deposit, for reasons to be recorded in writing.

Procedure Adopted by Tribunal

Tribunal will give opportunity of being heard to the parties before passing any order.

Order of Tribunal

Tribunal may pass any of the following orders:

(a) Confirm, modify or set aside the order appealed against
(b) Remand the matter back to the authority for fresh decision, with such directions as Tribunal may deem fit.

Effect of Order of Tribunal

(a) Copies of the order of Tribunal shall be sent to the parties to appeal.
(b) The order passed by Tribunal is final. No appeal can be filed in any court against such order.

Rectification of Order Passed

The Tribunal has the power to rectify its own order.

The rectification can be made –

(a) If the mistakes is apparent from the records.
(b) Within 5 years from date of order.
(c) Only after giving notice and opportunity of being heard to the employer before passing the order, if theorder has the effect of increasing the liability of the employer.

Recovery of Money From Employer [Section 8 to 8E]

Issue of certificate to recovery officer:- The authorized officer is required to issue a Certificate to Recovery Officerspecifying the amount due from the employer.

Which recovery officer?

The recovery certificate shall be sent to the Recovery Officer within whose jurisdiction-

(a) The business or profession is situated, or
(b) Employer resides, or
(c) Any immovable or movable property of establishment or employer is situated.

Mode of Recovery

(a) Attachment and sale of the movable or immovable property of the establishment. if amount so recovered is insufficient for recovering the whole of the amount of arrears specified in the certificate, the movable and immovable property of the employer may also be attached and sold.
(b) Arrest of the employer and his detention in prison.
(c) Appointing a receiver for the management of the movable or immovable properties of the establishmentor the employer.

Stay of Proceedings

(a) The authorized officer may grant time for the payment of the amount, and thereupon the

Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(b) The stay of proceedings may be granted notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount.

Transfer of Accounts [Section 17A]

If the New Establishment is Covered under Provident Found (PF) Act

If an employee, who is a member of Provident Fund, leaves an establishment he obtains re-employment in another establishment the new establishment is also covered under PF Act

Then - the amount standing to his credit will be transferred to his account in the new establishment (i.e. , theestablishment where he is re-employed).

If the New Establishment is not Covered under PF Act

If an employee who is a member of PF, leaves an establishment he obtains re-employment in another establishment the new establishment is not covered under Provident Fund Act the new establishment has a Provident Fund of its own the rules of such provident fund permit such transfer.

Then at the request of employee within such time as may be specified by Central Government the amount standing to his credit will be transferred to his account in the new establishment.

If the Old Establishment was Not Covered under PF Act

If an employee is employed in an establishment to which the provisions of the PF Act do not apply such establishment has its own Provident fund the rules of such provident fund permit such transfer the employee leaves such establishment he obtains re-employment in another establishment the new establishment is coveredunder PF Act.

Then at the request of employee the amount standing to his credit will be transferred to his account in the new establishment.

Protection Against Attachment [Section 10]

Nature of protections: The amount standing to the credit of any member in the fund –

(a) Shall not in any way be capable of being assigned or charged.

(b) Shall not be liable to attachment under any decree or order of any court in respect of any debt or liability.

(c) Shall not be capable of being claimed by the official assignee or the official receiver.

(d) Shall be free from any debt or other liability (in the hands of the nominee) incurred by the deceasedmember.

No protection: The employee cannot claim any protection in respect of the money which has been withdrawnby him from the PF Account.

Liability of Employer in Case of Transfer of Establishment [Section 17B]

Contribution due upto the date of transfer: - If an employer transfer (whether by way of gift, sale, lease or any other mode) an establishment, he as well as transferee of the establishment shall be jointly and severally responsible for contributions and other sums due upto the date of transfer of establishment.

Limitation on liability: Liability of transferor:- The liability of transferor shall be limited with respect to theperiod upto the date of transfer

Liability of transferee: The liability of transferee shall be limited to the assets obtained by him by way of transfer of establishment.

Inspectors [Section 13]

Appointment

(a) Appropiate Government empowered to appoint the inspectors for the Purposes of

Employee Provident found Act, EPF Scheme, Pension Scheme, and Insurance Scheme. The appointment of inspector shall bemade by issue of a notification in the Official Gazette.

(b) The respective jurisdiction of the inspectors shall be specified by the Appropriate Government.

(c) The inspector is a 'public servant' within the meaning of Section 21 of Indian Penal Code.

Powers of Inspector

(a) To call such information from the employer or contractor as he considers necessary.

(b) To enter into any establishment and require production of any books, registers and documents.

(c) To examine the employer, his agent or servants.

(d) To make copies and take extracts of any book, register or other document.

(e) To seize the books, registers or other documents as he considers necessary if he has reason to believe thatany offence under this Act has been committed by an employer.

(f) To exercise such other powers as may be provided in Provident Found Scheme, Pension Scheme orInsurance Scheme.

[Section 6] Employees Provident Fund Scheme (1952)

Quantum of Contribution

Employer's contribution	10% of pay (i.e., basic wages plus dearness allowance plus retaining allowance).
Employer's contribution	10% of pay. Employee may voluntarily contribute a higher amount.
Rounding off	The contribution has to be round off to nearest rupee.
'Dearness allowance'	Dearness allowance includes cash value of any food concession allowed to the employee.
'Retaining allowance'	Retaining allowance means an allowance payable to an employee during any period during which theestablishment is not working for retaining his services.

Increase in Rate of Contribution

(a) Central Government is empowered to increase the rate of contribution to 12%.

(b) The power shall be exercised by way of a notification in the Official Gazette.

**Employee earning more than `15,000:** If the pay of an employee exceeds `15,000, the employer's contributionshall be 10%/12% of `15,000.

Diversion to Employees' Pension Scheme: Out of employer's contribution of 10% / 12%, the Employer'scontribution of 8.33% shall be diverted to Employees' Pension Scheme.

[Section 6A] Employees Pension Scheme (1995)

Quantum of Contribution

(a) Employer's contribution of 8.33% shall be diverted to Employees' Pension Scheme.

(b) Central Government can contribute @ 1.16% of pay to maximum. of `15000/- month.

Benefits Under the Scheme

(a) Members will get pension –

i. on superannuation; or

ii. on retirement from service; or

iii. upon permanent total disablement during employment.

(b) Pension will be available to widow/ widower for life or till he/she remarries.

(c) Children will be entitled to pension, upto 25 years of their age. Benefit of pension to children is restrictedonly for 2 orphans.

(d) Orphans will be entitled to pension at enhanced rate

- Benefits of pension to orphans is restricted only for 2 orphans

(e) If the person is unmarried or has no family, pension is available to nominee for a specified period.

Employee's Deposit Linked Insurance Scheme (1976)

Employer	The employer is required to pay contribution which cannot be more than 1% of pay of employee.Presently, the rate of contribution is 1%.
Employee	The employees do not contribute any amount to the scheme.
Central Government contribution	Central Government also contributes to the Insurance Fund at the rate of 0.25% of pay of every employee.

Section 12 – Employer not to reduce wages in order to reduce contribution of Provident Fund.

Practical Questions

2008 – Dec (8): Attempt the following in stating relevant legal provisions and case law, if any:

(i) An establishment discontinued deduction towards contribution to provident fund from its employees' salary and stopped remitting contribution of its share of provident fund when the number of its employees on rolls fell to fifteen. Do the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 cease to be applicable to the establishment under such circumstances? (4 marks)

Ans. No, the provisions of the Employer's Provident Fund Miscellaneous Provisions Act, 1952 will not cease to be applicable to the establishment merely on the ground that the number of employees has rolled down to fifteen. Though the applicability of the Act takes place on 20 employees yet if the number fall below, even then the Act remains applicable.

2009 – Dec (8): Attempt the following in stating relevant legal provisions and decided case law, if any :

(ii) Raju has been employed by Fancy Bazar as a part-time sweeper to clean the floor twice during the day.The provident fund inspector visited the establishment and raised objections for non-inclusion of his name in the muster roll and not paying provident fund contributions. Is the view held by the inspector valid? (4 marks)

Ans. The contention of the inspector is legally tenable.

As per Section 2(f) of the Employees provident Funds Act, 1952 the term 'employee' includes a part timeemployee. Thus Raju who has been employed by fancy Bazar as part time sweeper shall be covered within the ambit of employee by virtue of Section 2(f) of the Act.

2002 – Dec (7) (C) (b): Calculate the pension of an employee who has rendered 33 years of services and his salary at the time of retirement is `5,000 per month. (3 marks)

Ans. Pension amount as per the provisions of the Employees provident Fund & Miscellaneous Provisions Act, 1952 is calculated as follows

$$\text{Monthly pension} = \frac{\text{Pension salary} \times (\text{Pensionable Service}) + 2}{70}$$

In the above case, monthly pension is

$$\text{Monthly pension} = \frac{5000 \times (33 + 2)}{70}$$

Monthly Pension = `2500 per month.

2003 – Dec (7) (C) (b): Attempt the following stating the relevant legal provisions and case law :

(iii) Two partners of a partnership firm are taking salaries from the firm. Will they be treated as 'employees' under the Employees Provident Funds and Miscellaneous provisions Act, 1952? (3 marks)

Ans. According to Employee Provident Funds& Miscellaneous provisions Act, 1952, working partners drawing salary or other allowances are not employees Hence, the two partners of a partnership firm taking salaries from the firm will not be treated as employees under the act.

(iv) A company recruits trainees who will not be paid anything in cash. However, the company will provide for their board and lodging. Will they cover under the Employees's State Insurance Act, 1948? (3 marks)

Ans. Employees under the Employee's State Insurance Act, 1948 means any person employed for wages in connection with the work in an establishment.

2007 – June (7) (C) (b): Attempt the following stating the relevant legal provisions and case law:-

(iv) Jay-Kay Ltd. employed casual workmen for a short duration of two months to execute a contingency plan of its operations. Are the casual workmen entitled for provident fund contribution from the employer? (3marks)

Ans. In a case of **Bikaner cold Storage Co. Ltd. -v- Regional P.F. Commissioner**, Rajasthan states that a personemployed for a short duration or on account or some urgent necessity or abnormal contingency should not be considered as an employee as it is not a regular feature of the Business of the establishment. Hencecasual workers are not entitled for P.F. contribution from the employers.

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Chapter – 19 Unit - 3
Maternity Benefit Act, 1961

List of Sections

Sections	Particulars of Section
1	Extent
2	Applicability
3	Definitions
3(a)	Appropriate Government
3(b)	Child
3(d)	Employer
3(e)	Establishment
3(h)	Maternity benefit
3(n)	Wages
4	Employment by women prohibited during certain period
5	Right to receive payment of maternity benefits
6	Notice of claim for maternity benefit and payment thereof
11	Nursing break
19	Display of rules and abstract of Act regarding maternity benefits
20	Obligation of employer to maintain register
21	Penalty for contravention of Act by employer

[Section 1] Introduction and Objective of Maternity Benefit Act, 1961

- The Maternity Benefit Act, 1961 **regulates employment** of women in certain establishments for a certain period **before and after birth of child** and provides for maternity and other benefits.
- It extends to the whole of India.
- The Maternity Benefit Act is applicable to women employees employed in establishments which are not covered by ESI Act, 1948 or such women employees whose establishments are covered but such women employees are out of its coverage due to their wage limit. i.e. Rs. 25,000 per month.

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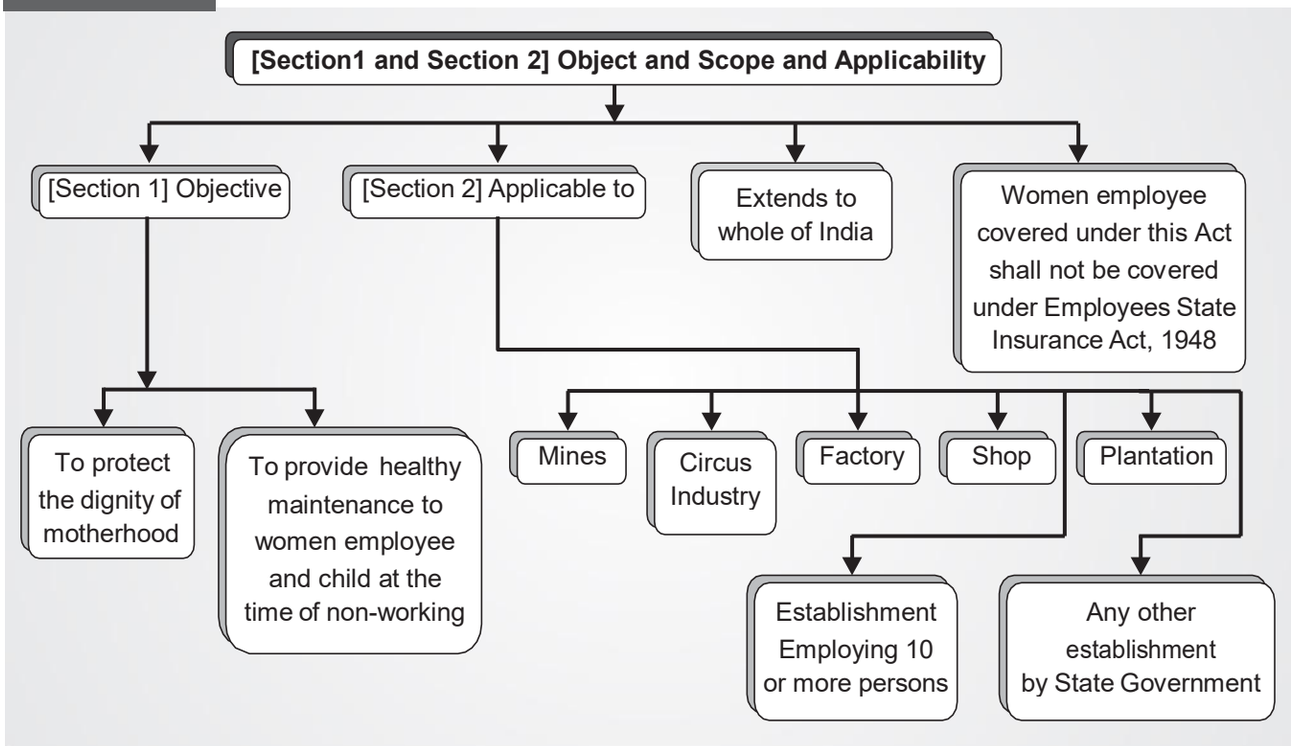
Quick Recap



Note: Section 2(1)(b) - State Government can make this Act applicable by giving 2 months notification with priorapproval of Central Government.

[Section 3] Define the Following Term

1. **[Section 3(a)]Appropriate government**
   - Means in relation to an establishment being a mine or an establishment wherein persons are employed for the exhibition of equestrian (something related to jumping and horse riding) acrobatic and other performances the Central Government

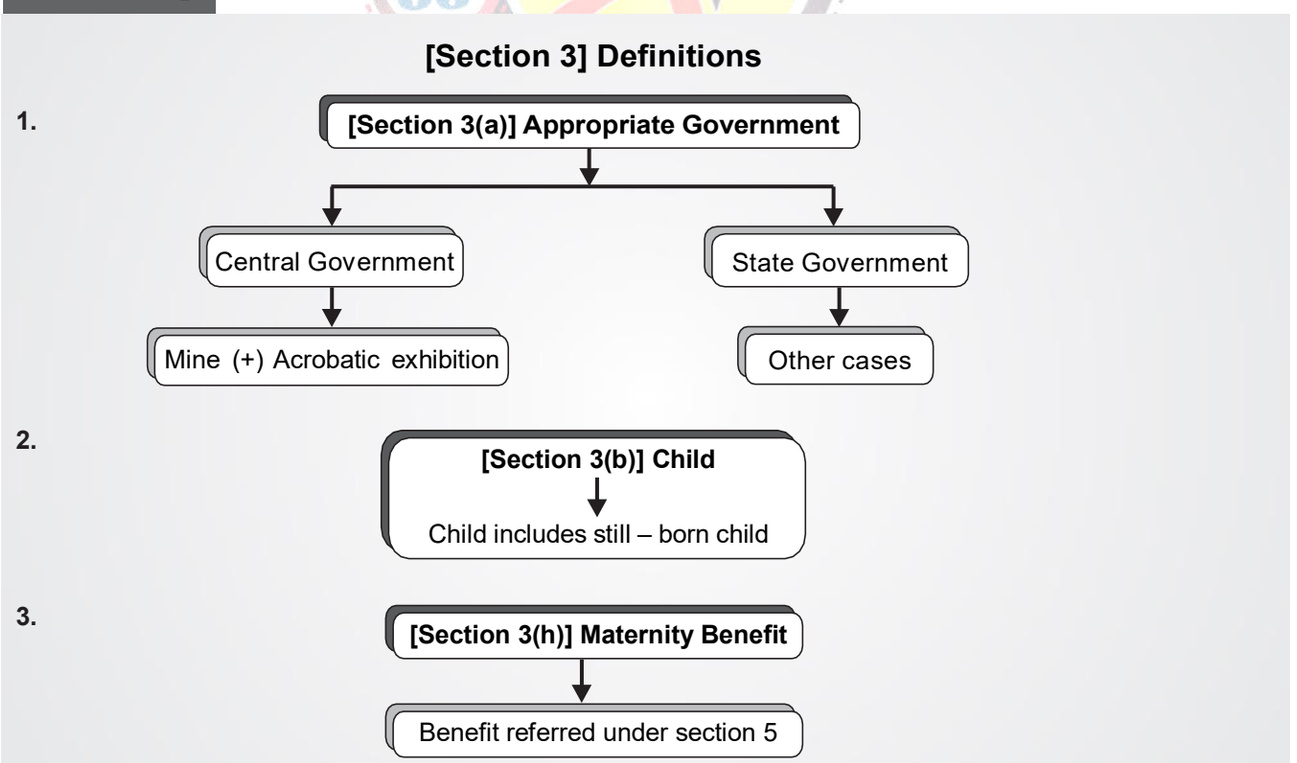
     AND
   - in relation to any other establishment, the **State Government**.
2. **[Section 3(b)]Child** includes a **still – born child**.

3. **[Section 3(ba)] "Commissioning Mother"** means a biological mother who uses her egg to create an embryo implanted in any other woman.

4. **[Section 3(d)] Employer** means:
   - In relation to an establishment which is under the **control of the government** a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed the **head of the department**.
   - In relation to an establishment under any **local authority** the person appointed by such authority forthe supervision and control of employees or where no person is so appointed the **Chief Executive Officer** of the local authority.
   - In case the person who or the authority which has the **ultimate control over the affairs of the establishment** and where the said affairs are entrusted to any other person whether called a Manager,Managing Director, Managing Agent or by any other name such person.

5. **[Section 3(e)] "Establishment"** means:
   - A factory
   - A mine
   - A plantation
   - An establishment wherein persons are employed for the exhibition of equestrian acrobatic and otherperformance
   - A shop or establishment
   - An establishment to which the provision of this act have been declared under Section 2(1) to beapplicable.
6. **[Section 3(h)] Maternity benefit**
   Maternity benefit means the payment referred to in sub-section(1) of Section 5.
7. **[Section 3(n)] Wages**
   "Wages" means all remuneration paid or payable in cash to a woman if the terms of the contract ofemployment expressed or implied were fulfilled and **includes**:
   1. Such **cash allowances** (including dearness allowances and house rent allowances) as a woman is forthe time being entitled to,
   2. Incentive bonus and
   3. The money value of the concessional supply of food grains and other articles but does **not include:**
      (a) Any **bonus** other than incentive bonus.
      (b) **Overtime earnings** and any deduction or payment made on account of fines.
      (c) Any contribution paid or payable by the employer to any **pension fund** or **provident fund** or forthe benefit of the woman under any law for the time being in force.
      (d) Any **gratuity payable** on the termination of service.

Quick Recap



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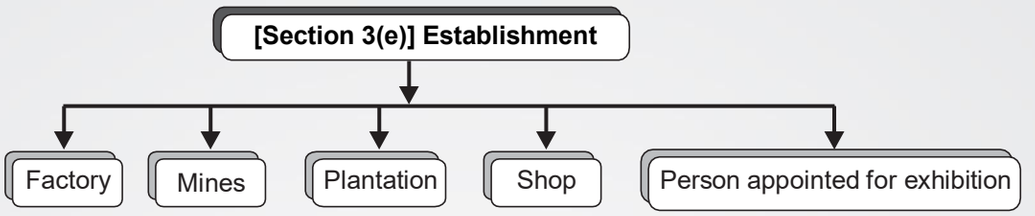

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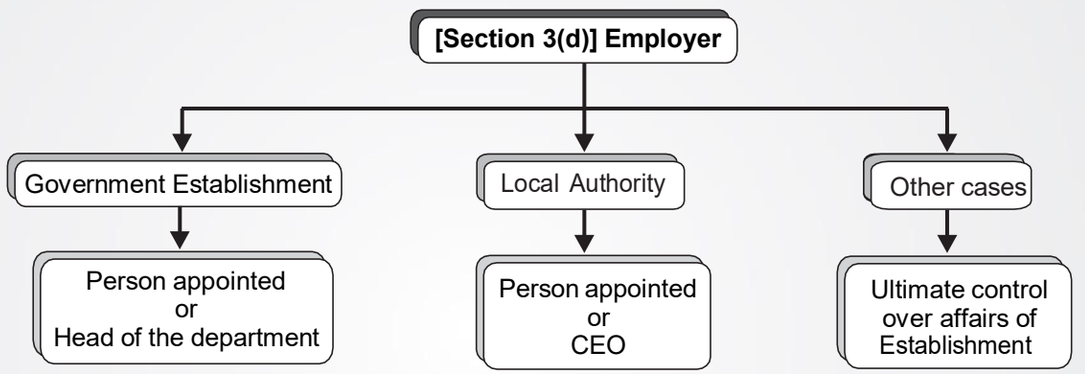

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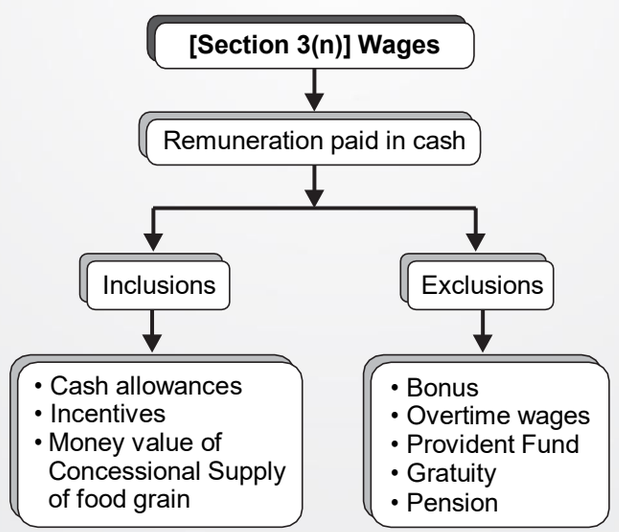


[Section 4] Employment of or Work by Women Prohibited during CertainPeriods

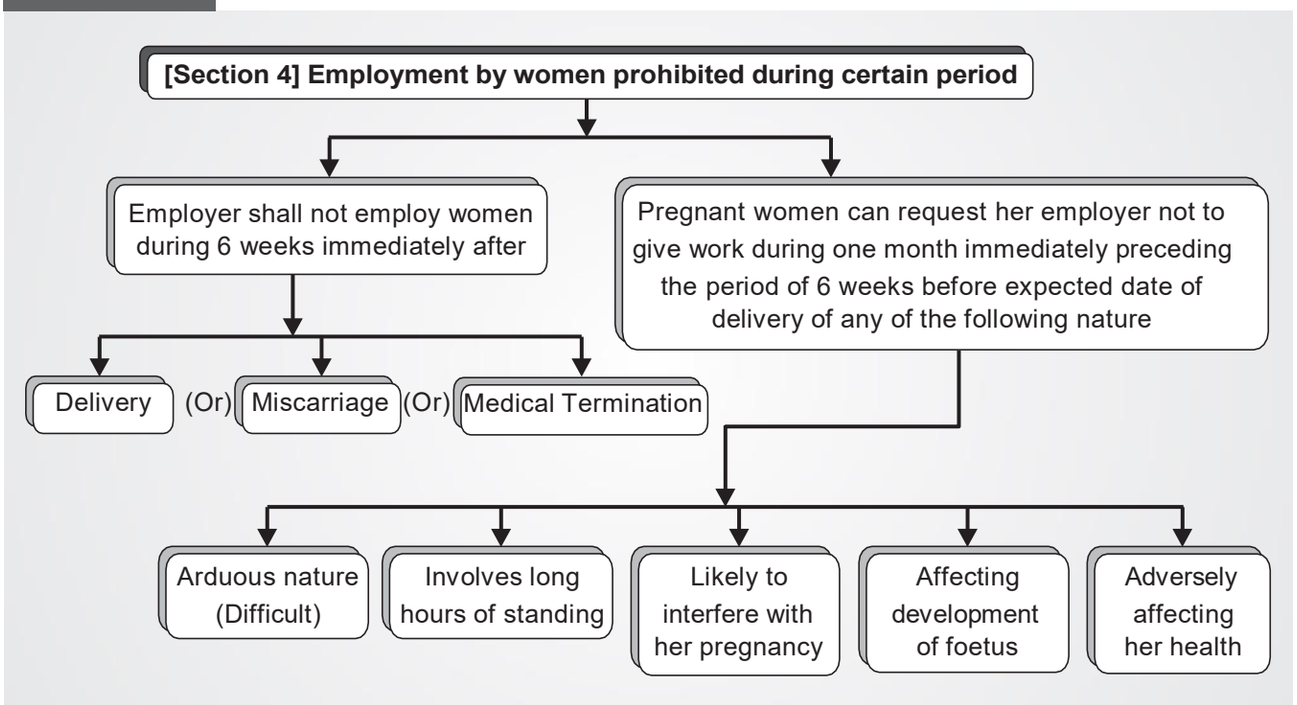
The Act provides that **no employer** **shall** knowingly **employ a woman** in any establishment during the **six weeksimmediately following** the day of the **delivery, miscarriage** or **medical termination** of pregnancy.

It may be noted that if a **pregnant women** makes request to her employer, she shall **not be given any work** ofany of the following nature:

- Arduous (laborious) nature of standing,
- Which in any way is likely to interfere with her pregnancy or the normal development of the foetus,
- Is likely to cause her miscarriage or otherwise to adversely affect her health,

to do during the period of **one month immediately preceding the period of six weeks, before the date ofher expected delivery.**

Quick Recap

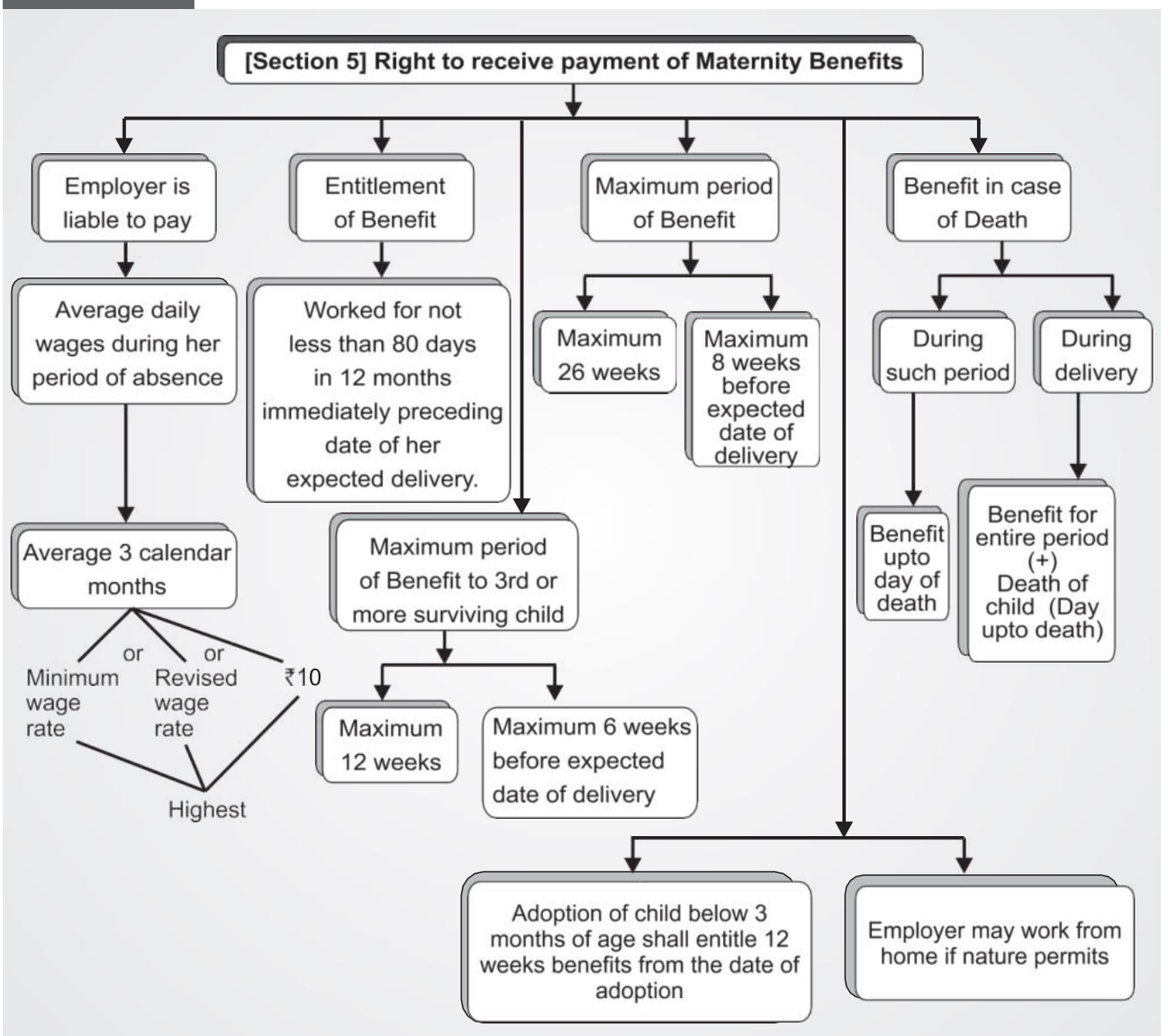


[Section 5] Right to Payment of Maternity Benefits

1. **Entitlement**
   Every woman shall be entitled to receive payment of maternity benefits and her employer shall be liable for, the payment of benefit at the **rate of the average daily wage** for the period of her actual absence.
2. **Average Daily Wage**
   It means the average of the woman's wages payable to her for the days on which she has worked during the period of **three calendar months immediately preceding the date from which she absents herself** on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.
3. **Eligibility**
   A **woman shall be entitled** to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of **not less than eighty days in the twelve months immediately preceding the date of her expected delivery**.
4. **Period of Benefit**
   The **maximum period** for which any woman shall be entitled to maternity benefit shall be **twenty six weeks** of which **not more than eight weeks shall preceed the date of her expected delivery**.
5. **Benefit in case of death**
   - If a woman **dies during this period,** the maternity **benefit** shall be payable only for the **days up to** and including the **day of her death.**
   - Where a woman, having been delivered a child, **dies during her delivery** or during the period **immediately following the date of her delivery** for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for thatentire period.

- If the child also dies during the said period, then, for the days up to and including the date of the deathof the child.
- A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over tothe adopting mother or the commissioning mother, as the case may be.
- In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

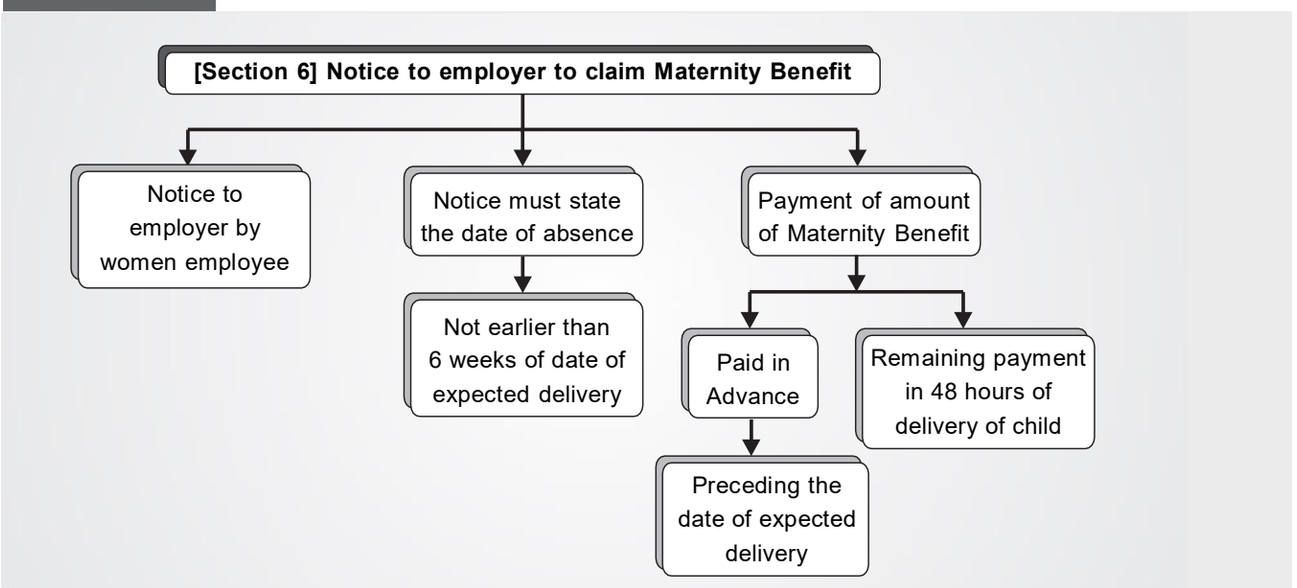
Quick Recap



[Section 6] Notice of Claim for Maternity Benefit

- As per Section 6, any women entitled to maternity benefit may give **notice in writing to her employer,** stating that her maternity benefit and other entitled benefits may be paid to her or her nominee for the period of her absence, not being a date earlier than six weeks from the date of her expected delivery for which she receives maternity benefit.
- Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
- On receipt of the notice, the employer shall permit such woman to absent herself from the establishment and the benefit **shall be paid to her in advance** by the employer and the **amount due for the subsequent period** shall be paid by the employer **within 48 hours of delivering a child.**

Quick Recap



AMIT VOHRA LAW CLASSES

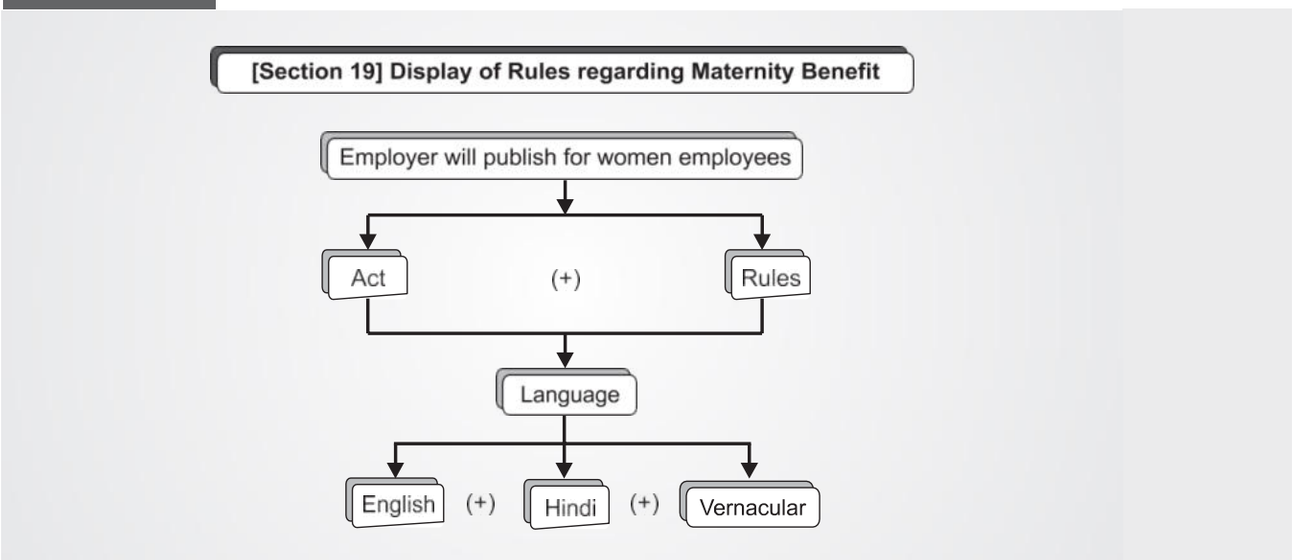
[Section 11] Nursing Breaks

Every woman who resumed her employment after delivery shall be provided with **two breaks** of the prescribed duration for nursing the child **until the child attains the age of fifteen months.**

[Section 19] Abstract of Act and Rules there under to be Exhibited

An abstract of the provisions and the rules made under the Act shall be **exhibited in a conspicuous (visible) place** by the employer in every part of the establishment in which women are employed, in the language or languages of the locality.

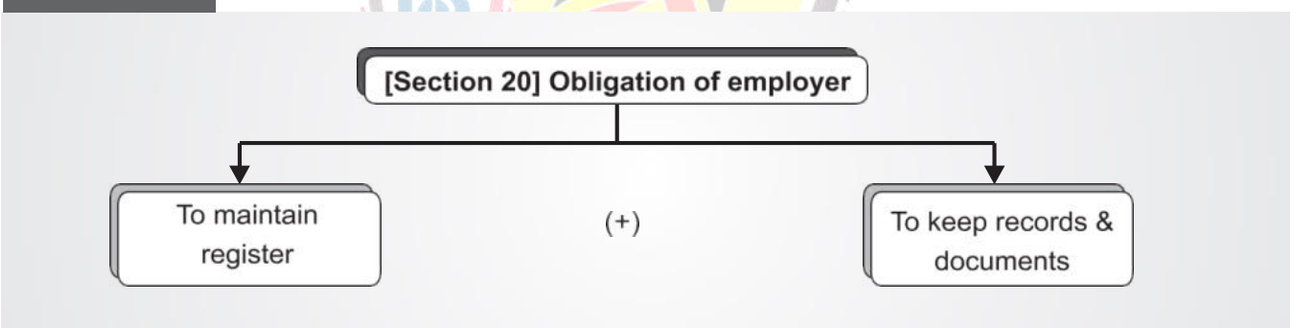
Quick Recap



[Section 20] Registers

Every employer shall prepare and maintain such **registers, records and muster – rolls** and in prescribedmanner under section 20 of the Act.

Quick Recap

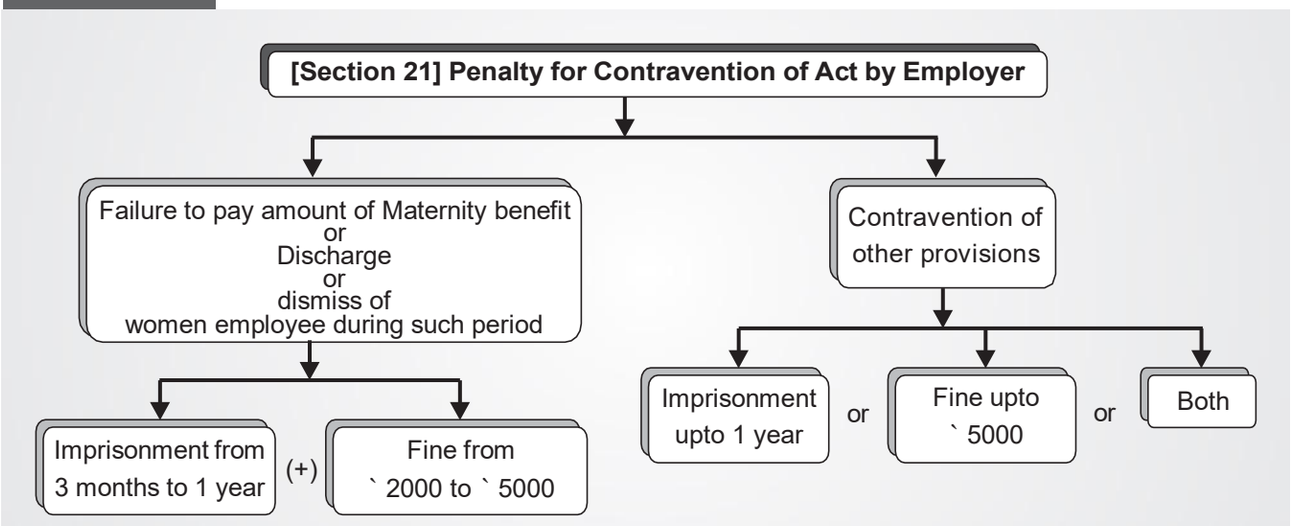


[Section 21] Penalty for Contravention of Act by Employer

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with **imprisonment** which shall **not be less than three months but which may extend to one year** and with **fine** which shall **not be less than two thousand rupeesbut which may extend to five thousand rupees.**

Miscellaneous Penalty: If any employer contravenes the provisions of the Act, he shall, if no other penalty is elsewhere provided, be punishable with imprisonment which may **extend to one year**, or with fine which may **extend to five thousand rupees**, or with **both**.

Quick Recap



AMIT VOHRA LAW CLASSES

Chapter – 19 Unit – 4
Payment of Gratuity Act, 1972

List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(a)	Appropriate Government
2(d)	Controlling Authority
2(e)	Employee
2(f)	Employer
2(h)	Family
2(q)	Retirement
2(r)	Superannuation
2(s)	Wages
2A	Continuous Service
3	Controlling Authority
4	Payment of Gratuity
4A	Compulsory Insurance
5	Power to exempt
6	Nomination
7	Determination of the amount of Gratuity
7A	Inspector
7 B	Powers of Inspector
8	Recovery of Gratuity
9	Penalties
13	Protection of Gratuity

AMIT VOHRA LAW CLASSES

[Section 1] Extent and Applicability of Payment of Gratuity Act, 1972

When services of an employee are terminated due to retirement or otherwise, a lump sum amount is paid byemployer to his employee like leave encashment, provident fund etc.

Gratuity is also one of the amounts paid by employer to his employee at that time of termination of service. It isbasically a retirement benefit to employees so that they can live comfortably after retirement.

It is a lump sum payment made by an employer to an employee in consideration of his past service when theemployment is terminated.

Extent and Application (Section 1)

It extends to the whole of India:

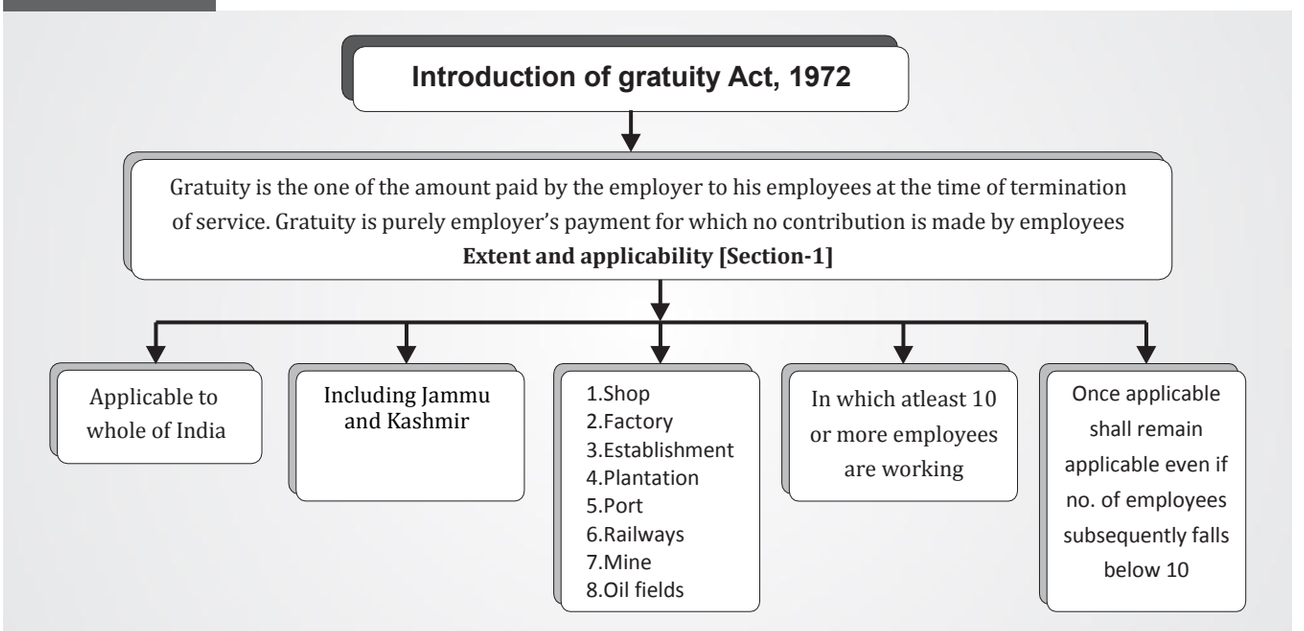
It shall apply to:

- Every factory, mine, oil field, plantation, port and Railway Company.
- Every shop or establishment, with the meaning of any law for the time being in force in relation to shopsand establishment in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

- Such other establishments or class of establishment, in which **ten or more employees** are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification,specify in this behalf.

A shop or establishment to which this act **has become applicable shall continue** to be governed by this actnotwithstanding that the number of persons employed therein at any time **after it has become so applicable falls below ten**.

Quick Recap



Note: Before 24th May, 1994, there was a wage ceiling of Rs. 3,500 pm. for the employees in order to be eligible toreceive gratuity

AMIT VOHRA LAW CLASSES

Case Study 1B

In the year 2009-10, there are 8 employees in an establishment, whereas during next year number of employees increased to 12 and in next financial year it has been reduced to six employees Comment on the applicability of Gratuity Act, 1972

According to Section

As per Sec 1 of gratuity Act, 1972 this act is applicable to the establishment in which there are atleast 10 more employees and once applicable shall remain applicable even if number of employees subsequently fall below 10

Facts of the problem

In the first financial year i.e. 2009-10 there were 8 employees in an establishment and subsequently increased to 12 employees in year 2010-11, and in the exceeding year i.e. 2011-12, number of employees reduced to 6 employees

Conclusion

During 2009-10, there are only 8 employees and hence gratuity act is not applicable. But in the year 2010-11, Gratuity Act shall be applicable as number of employees is 12. In the year 11-12, tough there are 6 employees but Gratuity Act, will continue to apply because subsequent reduction in number of employees shall not affect the applicability of gratuity act one applicable

Definitions under Payment of Gratuity Act, 1972

[Section 2(e)] Employee

Employee means any person (**other than an apprentice**) employed on wages, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity. The definition of "employee" under section 2(e) of the Act has been emended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in institutions retrospectively with effect from 3rd April, 1997.

[Section 2(f)] Employer

Employer means in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or
shop:

- Belonging to, or under the **control** of the Central **Government** or a State Government, a person or authority appointed by the Appropriate Government for the supervision and control of employees or where no person a authority has been so appointed, the head of the Ministry or the Department concerned.
- Belonging to, or under the control of, any **local authority**, the person appointed by such authority for supervision and control of employees or where no person has been so appointed, the **Chief Executive Officer** of the local authority.

- In any **other case**, the person, who or the authority which, has the **ultimate control over the affairs of the establishment**, factory, mine, oilfield, plantation, port, railway or shop and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

[Section 2(a)] Appropriate Government

For the following establishment the Appropriate Government mean the Central Government:

(a) An establishment belonging to, or under the control of the Central Government mean the Central
Government.

(b) An establishment having branches in more than one state.

(c) An establishment of a factory belonging to, or under the control of Central Government.

(d) An establishment of a major port mine, oilfield or Railway Company.

In any **other case** 'Appropriate Government' means the **State Government**.

[Section 2(d)] Controlling Authority

Controlling Authority' means an authority appointed by the Appropriate Government under section, the Appropriate Government may, by **notification published in the Official Gazette** appoint any officer as controlling authority, who shall be responsible for the administration of the Act. Different controlling authorities may beappointed for different areas.

[Section 2(q)] Retirement

It means **termination** of the service of an employee **otherwise than superannuation**. Termination of service
would amount to retirement for the purpose of this Act. Retirement is a termination of service.

[Section 2(r)] Superannuation

Superannuation in relation to a employee means the **attainment** by the employee **of** such **age** as is **fixed** in the
contract or conditions of service at the age on the attainment of which the employee shall vacate the employment.

[Section 2(A)] Continuous Service

Continuous service means continuous service as defined in Section 2A.

For the purpose of this act:

1. An employee shall be said to be in continuous service for a period if he has, for that period, been in **uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave**, lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this act.

2. Where an employees (not being an employee employed in a seasonal establishment) is not in continuousservice within the meaning of clause (1), for any period of one year or six months, he shall be deemed to bein continuous service under the employer.

   (a) for the said period of one year, if the employee during the period of twelve calendar months, precedingthe date with reference to which calculation is to be made, has actually worked under the employer for not less than:

      (i) **One hundred and ninety days**, in case of an employee employed below the ground in a mine or in
      an establishment which works for less than six days in week; and

      (ii) **Two hundred and forty days**, in any other case.

(b) for the said **period of six months**, if the employee during the periods of six calendar months precedingthe date with reference to which the calculation is to be made has actually worked under the employer for not less than;

(i) **Ninety-five days** in the case of an employee employed below the ground in a mine or in an establishmentwhich works for less than six days in a week;

(ii) **One hundred and twenty days** in any other case.

Explanation: For the purpose of clause (2) the number of days in which an employee has actually worked under an employer shall include the days in which;

(i) He was been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (standing order) Act, 1946, or under the Industrial Dispute Act, 1947, or under any other law applicable to the establishment.

(ii) He has been on leave with full wages, earned in the previous year;

(iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment;

(iv) In the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed **twenty six weeks.**

3. Where an employee employed in a **seasonal establishment,** is not in continuous service, within the meaning of clause (1) for any period of any year or six months, he shall deemed to be in continuous service under employer for such period if has actually **worked for not less than seventy five percent of the number of days** in which the establishment was in operation.

Family

Family, in relation to an employee, shall be deemed to consist of:

(i) In case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,

(ii) In the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. **[Section 2(h)]**

Explanation: Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

Wages

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. **[Section 2(s)]**

Definitions [Section 2]

(1) Retirement [Section 2(q)]
Termination of service other than superannuation

(2) Superannuation [Section 2(r)]
Termination of service due to attainment of age fixed by contract

(3) **Controlling Authority [Section 2(d)]**

Appropriate Government → Appoint NIOG → Controlling authority (Dispute resolution body)

NIOG - I → CG

NIOG - S → SG

(4) **Appropriate Government [Section 2(a)]**

Central Government
Establishment under control of CG
+
Mines
+
Major Ports

State Government

Establishment under control of State Government

Other Establishment

Note:- If an Establishment with two or more branches is operating in different states, then Central Government will be deemed as Appropriate Government.

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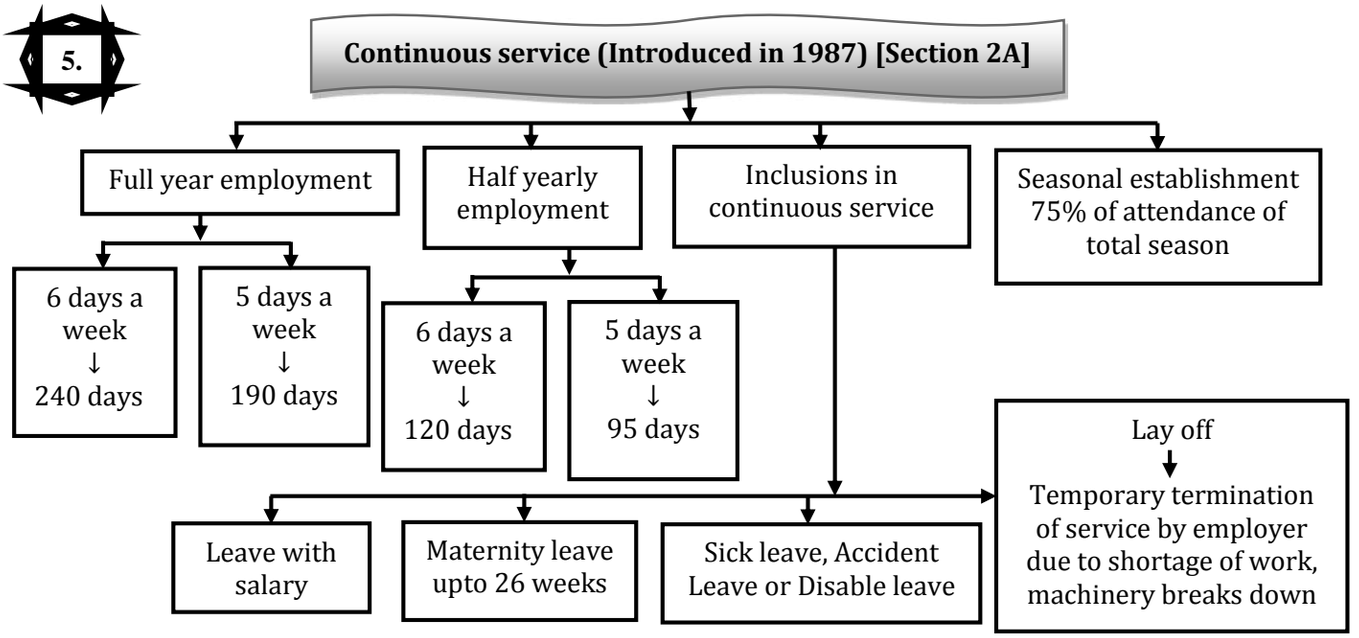


Case Study

Mrs. X works in a shop which is seasonal in nature, total season is of 180 days and worked for 120 days and was on 2 weeks maternity leave. Has she complied with section 2A of gratuity act, 1972. Will it make any difference to your answer if the maternity leave is for 3 weeks?

According to the Section

↓

Sec 2A of Gratuity Act, 1972 states that an employee shall be said to be in continuous service in seasonal establishment if having 75% attendance of total season and maternity leave upto 12 weeks is included in working days

Facts of the problem

↓

Mrs. X work in seasonal establishment of 180 days and has worked for 120 days and was on 2 weeks maternity leave

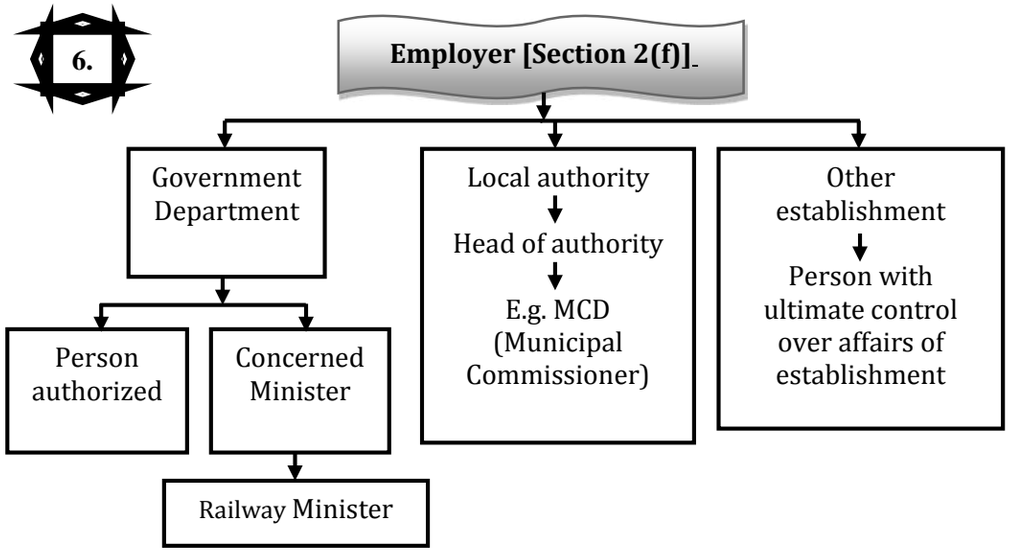
Conclusion

↓

Mrs. X needs to work for 75% days i.e. 135 days But, number of working days = Actual days 120 + Demed working 14 = 134 days. Mrs. X has not complied with Section2A

Note: If maternity leave is for 3 weeks then number of working days = 120+21 = 141 days yes Section 2A has been followed

6.



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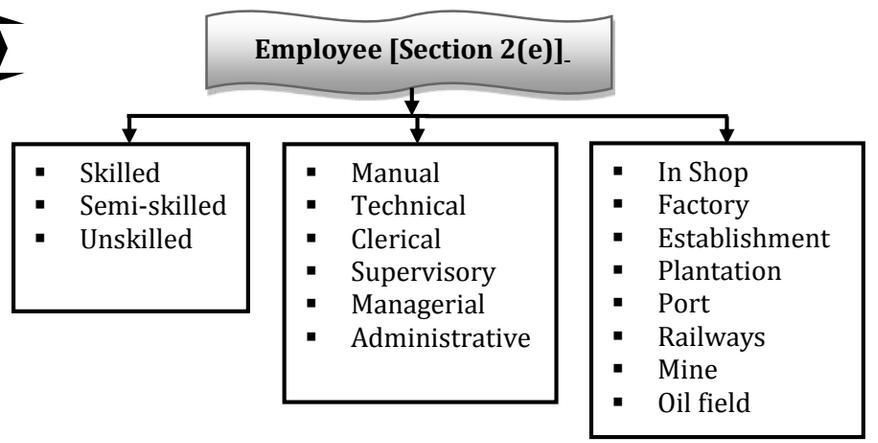
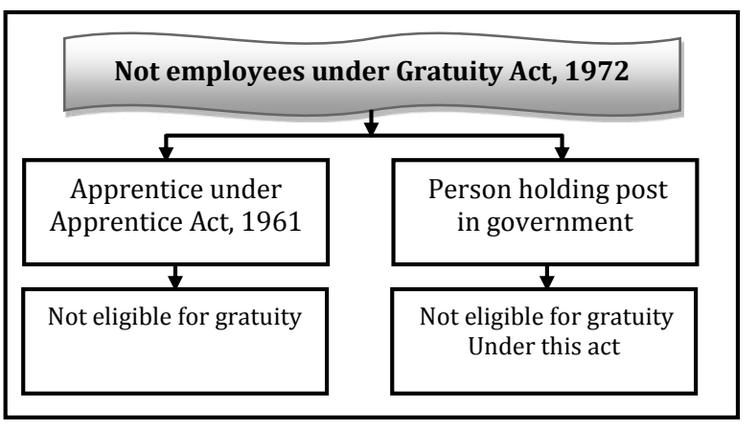


Note: Teachers are employee under gratuity act with effect from 2010, Payment of Gratuity Act has been amended by Amendment Act, 2009 to cover teacher in educational institutions retrospectively with effect from 3rd April, 1997,



Case Study

Mr. X works in an establishment covered under Gratuity Act, 1972. Upto 20 march, 2013, his total working days were 237. He took leave without salary for 7 days but resumed job on 5 April, 2013. Can employer consider it violation of continuous service?

Lallappa Lingappa vs Laxmi Vishnu Mills (1981)

↓

It was held by the court of law that there is scope of sick or accident leave available to employee and therefore, employer without providing reasonable opportunity of being heard to employee cannot consider it violation of Sec 2A.

Provisions Relating to Payment of Gratuity

Payment of Gratuity (Section 4)

- Gratuity shall be payable to an employee on the termination of his employment after he has renderedcontinuous service for not less than **five years**:-
  - (a) On his **superannuation**; or
  - (b) On his **retirement** or resignation, or
  - (c) On his **death or disablement** due to accident or disease.

  Provided that the completion of continuous service of **five years** shall **not** be necessary where the

  termination of the employment of any employee is due to **death** or disablement.

  Provided further that in the case of **death** of the employee, **gratuity payable** to him shall be paid to his **nominee** or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minorattains majority.

  Explanation: For the purposes of this section, disablement means such disablement as incapacitates anemployee for the work which he has capable of performing before the accident or disease resulting in such disablement.
- For every completed year of service or part there if **in excess of six months**, the employer shall pay gratuityto an employee at the **rate of fifteen days wages** based on the rate of wages last drawn by the employeeconcerned.

  Provided that in the case of a **piece rated employee**, daily wages shall be computed on the **average** of the total wages received by him for a period of **three months immediately** preceding the termination of his employment, and for this purpose, the wages paid for any overtime works shall not be taken into account.

  Provided further that in the case of an **employee** who is employed **in a seasonal establishment** and who is not so employed throughout the year, the employer shall pay the gratuity at the **rate of seven days wages** foreach reason.

  Explanation: In the case of a monthly rated employee the fifteen days wages shall be calculate by **dividingthe monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen**.
- The amount of gratuity payable to an employee shall **not exceed twenty lakh rupees**.
- For the purposes of computing the gratuity payable to an **employee** who is **employed after** his **disablement**,on reduced wages, his **wages for the period preceding his disablement** shall

be taken to be the wages received by him during that period, and his **wages for the period subsequent to his disablement** shall be taken to be the wages as so reduced.

Who will Determine the Amount of Gratuity and Payment of Gratuity Underthis Act?

Employer's Duty to Determine and Pay Gratuity

Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised,in writing, to act on his behalf shall send a written application to the employer.

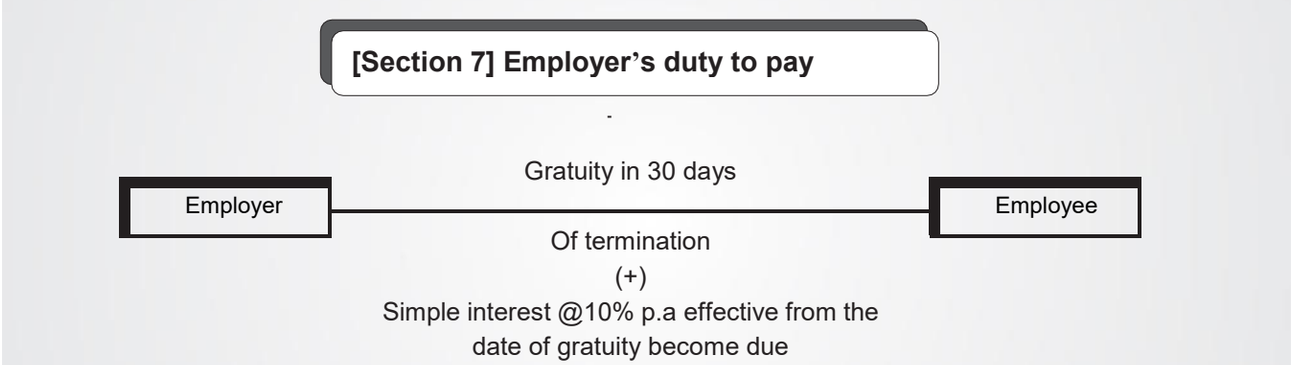
Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the **employer** shall **arrange** to pay the amount of **gratuity within thirty days** from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, **simple interest at the rate of 10 percent** per annum.

Provided that **no** such **interest** shall be payable if the delay in the payment is due to the **fault of the employee** and the employer has obtained permission in writing form the Controlling Authority of the delayed payment on this ground.

Quick Recap



Note: No interest if delay on part of employees if permission has been taken by employer from controlling authority.

[Section 7A] Inspectors

(1) The **appropriate Government** may, by notification, **appoint** as many inspectors, as it deems fit, for the purposes of this Act.

(2) The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where **two or more inspectors** are appointed for the same area,also provide, by such order, for the distribution or allocation of work to be performed by them under thisAct.

(3) Every inspector shall be deemed to be a **public servant** within the meaning of Section 21 of the IndianPenal Code, 1860 (45 of 1860).

[Section 7B] Powers of Inspectors

(1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for

the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted there under, have been complied with, exercise all or any of the following powers, namely:

(a) Require an **employer to furnish such information** as he may consider necessary;

(b) **Enter and inspect**, at all reasonable hours, premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, for the purpose of **examining any register, record or notice**.

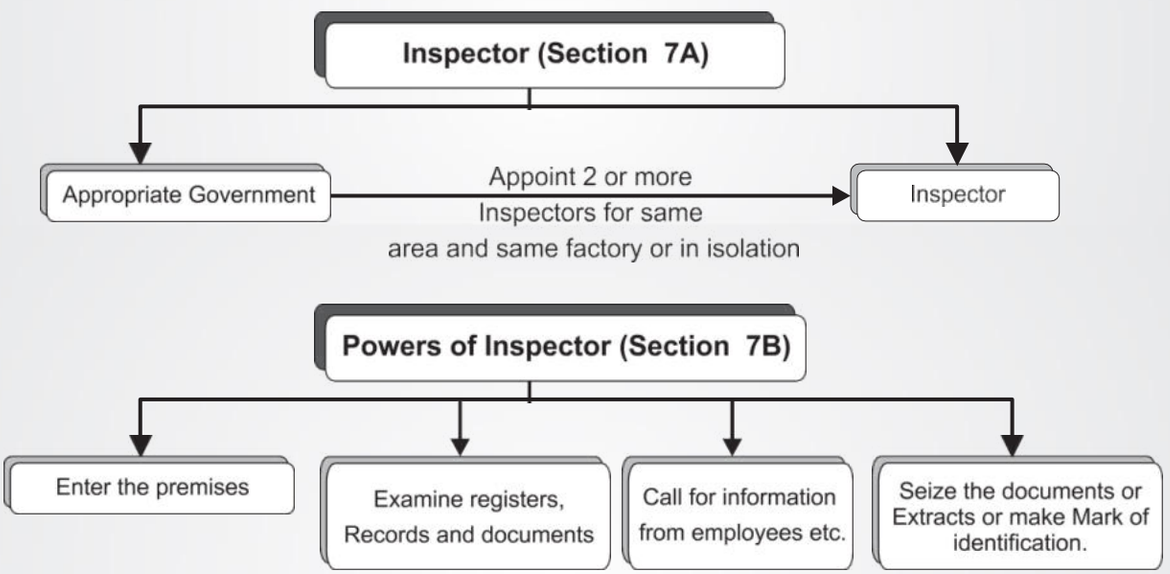
(c) **Examine the employer or any person** whom he finds in such premises or place and whom, he has reasonable cause to believe, is an employee employed therein.

(d) **Make copies of, or take extracts** from, any register, record, notice as he may consider relevant, and search and seize such register, record, notice or other document as he may consider relevant in respect of that offence.

(e) Exercise such **other powers** as may be **prescribed**.

(2) Any person required to produce any register, record, notice or other document or to give any information by an inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code 1860 (45 of 1860).

Quick Recap



Note: It is the duty of every employer to give reasonable assistance to inspector.

- If an employer resists inspector from entrance and/or inspection, then it shall be considered as Contempt of Court.

Powers to Inspector under Civil Procedure Code, 1908

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DAPIS

D – Discovery & Production of document
A – Oath on Affidavit
P – Access to Public Records
I – Issue Inquiry Commission
S – Summonsing & Enforcing Attendance

How can Gratuity be Recovered by the Employees?

[Section 8] Recovery of Gratuity

If the amount of gratuity payable under this act is not paid by the employer, within the prescribed time, to the person entitled there to, the Controlling Authority shall, on an application made to it in this behalf by the aggrievedperson, **issue a certificate** for that amount **to the collector**, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of theprescribed time, as **arrears of land revenue** and lay the same to the person entitled there to.

Provided that the **Controlling authority** shall, before issuing a certificate under this section, give the **employer** a **reasonable opportunity** of showing cause against the issue of such certificate.

Provided further that the amount of **interest payable** under this section shall, in **no case exceed the amount ofgratuity payable** under this Act.

[Section 4(6)] Circumstances under which Gratuity is Liable to be Forfeited

Forfeiture of Gratuity

The act deals with the issue in two parts.

Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act ofwhich omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer,gratuity shall be forfeited to the extent of the damage or loss caused.

The right of forfeiture is **limited** to the **extent of damage**.

In **absence of proof** of the extent of damage, the right of **forfeiture is not available**. **Section 4(6)(b)** deals with a case where service of an employee have been terminated:-

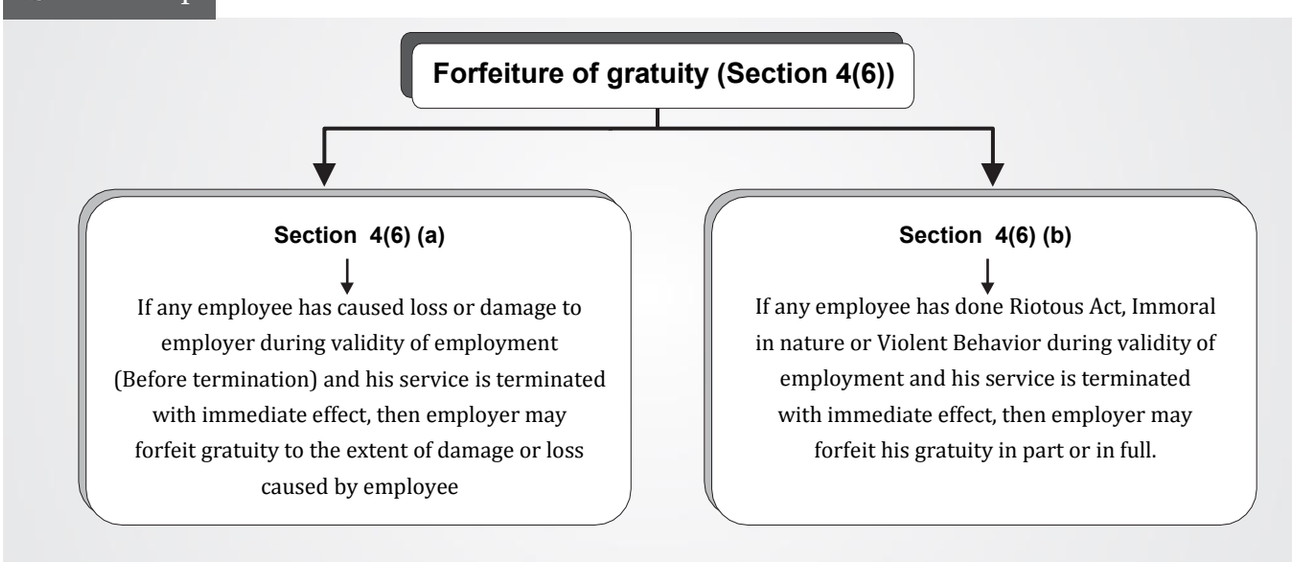
(a) For **riotous** and **disorderly conduct** or any other act of violence on his part, or;

(b) For any act which constitutes an **offence involving moral turpitude** provided that such offence iscommitted by him in the course of his employment.

In such cases, the gratuity payable to the employee may be **wholly or partially forfeited**.

Note: Where the service has not been terminated on any of the above grounds, the employer cannot withholdgratuity due to the employee.

Quick Recap



Relevant Judicial Interpretations

Case Law	Bharat Gold Mines -V- Regional Labour Commissioner (1986)
It has been held that any decision to forfeit the gratuity can be taken only after giving an opportunity of being heard to the concerned employee.	

Case Law	Travancore Plywood Ind. -V-. Regional JLC, Kerala, (1996) Ker
Where the land of the employer is not vacated by the employee, gratuity cannot be withheld.	

Case Law	Wazir Chand -V- Union Of India
Company can't deduct rent due for 6 months from the amount of gratuity paid to employee on the ground of non- vacation ofcompany's quarter for 6 months.	

Case Law	Jeevan Lal Limited -V- Controlling Authority (1982)
An employee who is re-employed without any break in service will be eligible for gratuity and he cannot be denied from receiving thegratuity simply on the ground of the change in employment contract.	

Case Law	Lallapa Lingappa -V- Laxmi Vishnu Mills (1981)
Interrupted service due to sickness, accident or disablement shall not be deemed as breaking or violation of continuous service andemployee shall be provided with reasonable opportunity of being heard.	

Protection of Gratuity

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory,mine, oilfield, plantation, port, Railway Company or shop exempted under section 5 shall be liable to attachmentin execution of any decree or order of any civil, revenue or criminal court.

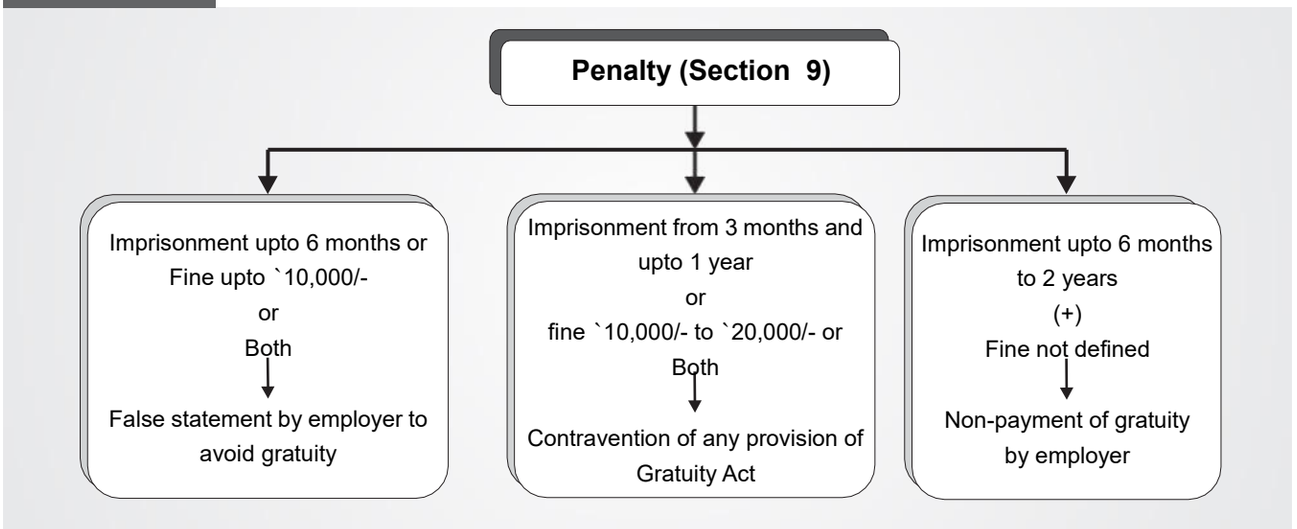
Penalties for the Contravention of Various Provisions of Payment ofGratuity Act, 1972

(Section 9) Penalty

- Wherever, for the **purpose of avoiding any payment** to be made by himself under this act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any **false statement** or false representations shall be punishable with the imprisonment for a term which may **extend to six months**, orwith fine which may **extend to ten thousand rupees** or both.
- An **employer who contravenes**, or makes default in complying with, any of the provision of this act or any rule or order made the under shall be punishable with the imprisonment for a term which shall not be less thanthree months but which may **extend to one year**, or with fine which shall not be less than ten thousand rupees but which may extend to **twenty thousand rupees** or **with both**.

Provided that where the offence relates to **non-payment of any gratuity payable** under this Act, the employer shall be punishable with imprisonment for a term which shall **not be less than six months** but which may **extend to two years** unless the court tying the offence, for reasons to be recorded by it in writing is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Quick Recap



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[Section 4A] Provisions Relating to Compulsory Insurance

The amendments act of 1987 has made provision for **compulsory insurance of employer's liability** to pay gratuity under the Act or in the alternative for the setting up of gratuity fund in relation to **establishments employing 500 or more employees**. This has been done by introducing a new Section 4A in the act

According to **Section 4A,** every employer shall obtain insurance for his liability for payment towards the gratuityunder the act from the **Life Insurance Corporation** of any other prescribed insurer with effect from such date as may be notified by the Appropriate Government in this behalf. Section 4A(1) does not apply to an employer or an establishment belonging to, or under the control of the Central Government.

Exemption: The Appropriate Government may exempt:-

(a) Every employer who had already established an **approved gratuity fund** in respect of his employees and
who desires to continue such arrangement, and

(b) Every employer employing 500 or more person who establishes an approved gratuity fund under the
provision of the act.

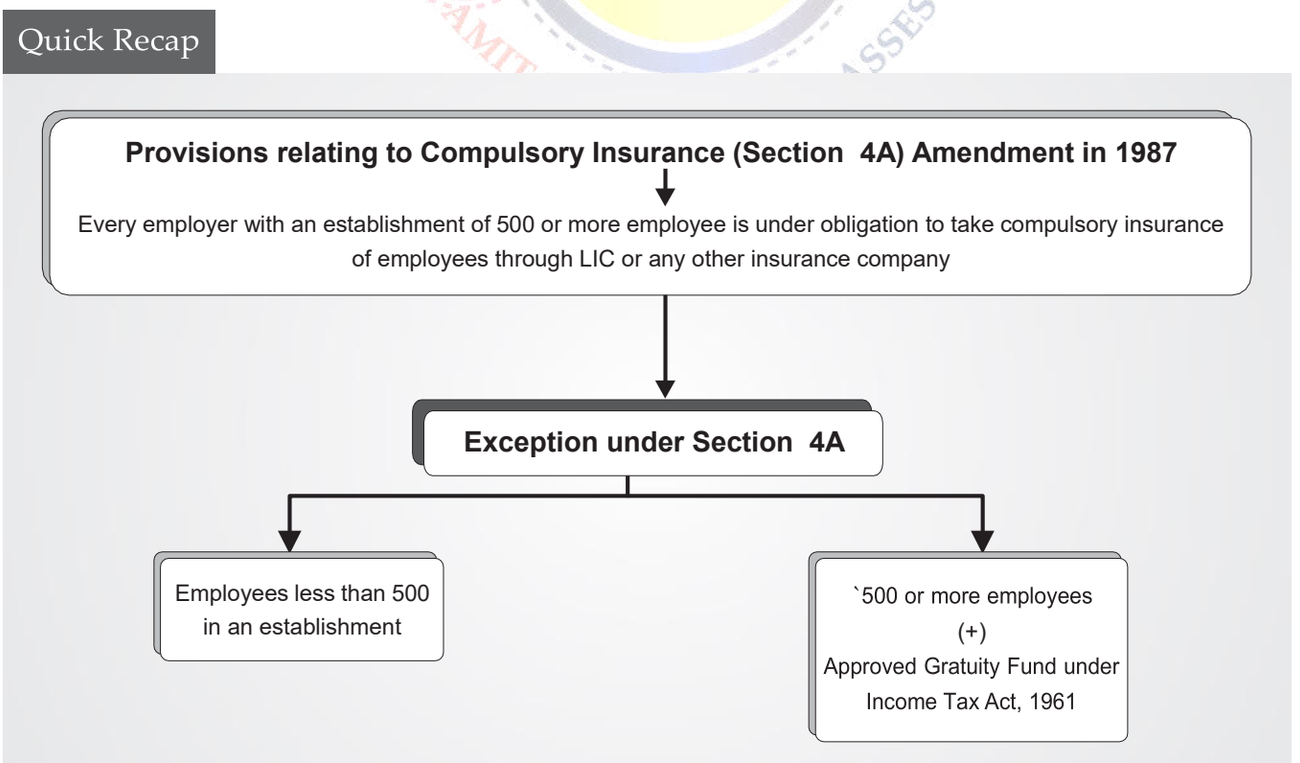
"**Approved Gratuity Fund**" shall have the same meaning as in **Section 5** of the **Income Tax Act 1961**.

Failure to Pay Insurance Premium or Contribution

Where an employer fails to pay Insurance premium (under section 4-A(1)] or any contribution to an approvedgratuity fund [under section 4-A (2)], he shall be liable to pay the amount of gratuity due under the act (including interest if any, for delayed payments) forthwith to the controlling authority.

Whoever contravenes this provision **shall be punishable** with fine which may **extend to `10,000** and in the case of a **continuing offence** with a further fine which may extend to **`1,000 for each day** during which the offencecontinues [Section 4-A (6)].

Quick Recap



Provisions Relation to Nomination

[Section 6] Nomination by Employee under Gratuity Act, 1972

1. Each **employee**, who has **completed one year of service**, shall make, within such time, in such form and in such manner, as may be prescribed nomination for the purpose of the second proviso to sub-section (1) ofsection 4.
2. An employee may, in his nomination, distribute the amount of gratuity payable to him under this act amongst **more than one nominee**.
3. If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family.

   To protect the interest of the family, it has been specifically provided that any **nomination** made by such employee **in favour of a person** who is **not a member of his family shall be void** [Section 6(3)].
4. If at the time of nomination the **employee has no family**, the nomination may be made in favour of any other person but if the employee **subsequently acquires a family**, such nomination shall forthwith become invalid and the employee **shall make within 90 days a fresh nomination** in favour of one or more membersof his family.
7. The **nomination may be modified** at any time after giving a written notice to his employer in a prescribed
   form.
8. If a **nominee predeceases the employee**, the interest of the nominee shall revert to the employee who shallmake a **fresh nomination**, in the prescribed form, in respect of such interest.
9. Every nomination fresh **nomination** or modified nomination as the case may be, shall be sent by the employee to his **employer**, who shall keep the same in this **safe custody**. [Section 6(7)]

Quick Recap

Nomination under gratuity (Section 6)

Every employee is under obligation to fill nomination form with his employer after 1 year of service.

Employee may appoint or fill nomination form in favour of more than 1 nominees .

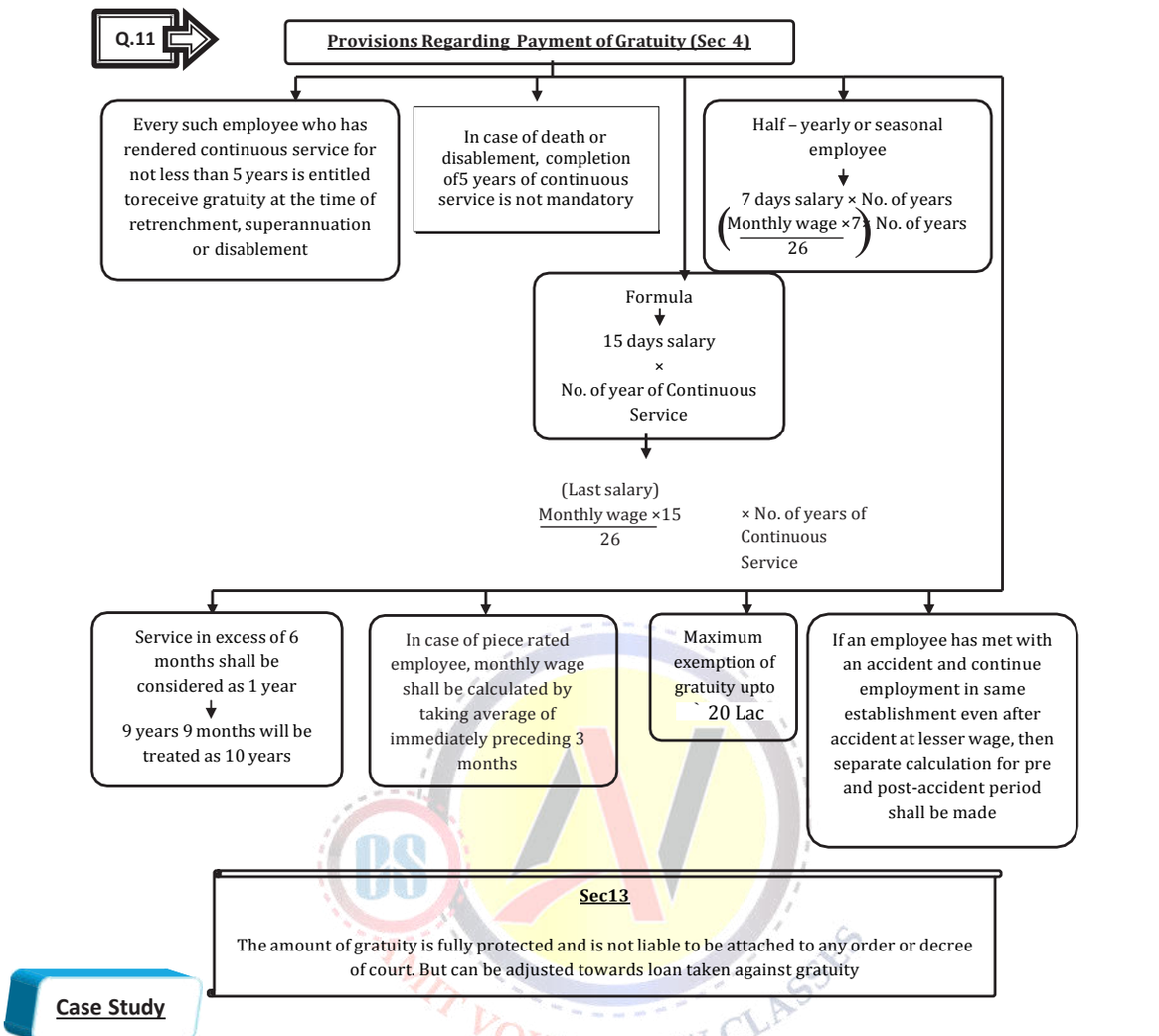
Nomination other than family member is void .

If employee is without family, then he may appoint any person as his nominee.

If nominee predeceases an employee, then new nominee shall be appointed.

If employee without family subsequently acquired family then new nomination form will be filled within 90 days.

Quick Recap



Case Study

AV (employer) — Appointed for 4 year → K (employee)

After completion of the contract

AV renewed contract for 4 years. Can employee claim gratuity after 8 years of service ?

Jeevanlal

-v-

Controlling Authority, 1982

It was held by the Court of law that there is malafide intention of employer to escape liability of gratuity hence. He is bound to pay gratuity

Case Study

MR. X joined the establishment at the age of 20. His salary was Rs. 10,000. At the age of 40 he met an accident and at such time he was drawing salary of Rs. 30,000 per/month. After accident he continued employment at the salary of Rs. 29,500 per month for next 20 years and retired at the age of 60 and the time of retirement his salary was Rs. 1, 00,000 per month. Calculate gratuity

(A) Will it make any difference to your answer if even after accident his salary would be same

Separate calculation

Pre-accident period

$$\left(\frac{MW}{26} \times 15\right) \times \text{No. of years}$$

$$\left(\frac{30,000}{26} \times 15\right) \times 20 = ` 3,46,154$$

Post-accident period

$$\left(\frac{MW}{26} \times 15\right) \times \text{No. of years}$$

$$\left(\frac{1,00,000}{26} \times 15\right) \times 20 = ` 11,53,846$$

` 3,46,154 + ` 11,53,846 = ` 15,00,000

(B) $\left(\frac{1,00,000}{26} \times 15\right) \times 40 = 23,07,692.30$

Case Study

Mr. X joined an establishment for 10 years but died after 2 years. His widow claimed gratuity from employer but employer refused her contention on the ground of non-compliance of 5 years continuous service. It refusal by employee justify ?

According to Section

↓

Account to Sec 4, in case of death and disablement of the employee 5 years' fulfillment is notmandatory.

Facts of the problem

↓

Mr. X joined an establishment for 10 years but died after 2 years. Employer rejected the contention of widow on the ground of non-compliance of 5 years continuous service

Conclusion

↓

In case of death and disability of the employee, 5 year completion of continuous service is not required. Therefore, rejection by employer is unjustified and widow may knock at the door of judiciary.

Chapter – 19 Unit – 5
Apprentices Act, 1961

List of Sections

Sections	Particulars of Section
1	Extent and applicability
2	Definitions
2(aa)	Apprentice
2(aaa)	Apprenticeship training
2(e)	Designated trade
2(f)	Employer
2(g)	Establishment
2(j)	Graduate apprentice
2(k)	Industry
2(pp)	Vocational apprentice or Technician Apprentice
2(q)	Trade apprentice
2(r)	Worker
3	Qualification for being engaged as an apprentice
4	Contract of apprenticeship
4A	Objection on Contract of Apprenticeship by Apprentice Advisor
4B	Registration of Contract of Apprenticeship by Apprentice Advisor
11	Obligations of employer
12	Obligations of Apprentices
13	Payment to apprentices
15	Hours of work, overtime, leave and holidays
17	Conduct and discipline
18	Apprentices are trainees and not workers
19	Records and Returns
20	Settlement of disputes
23	Authorities under the Act
30	Offences and penalties

VOHRA LAW CLASSES

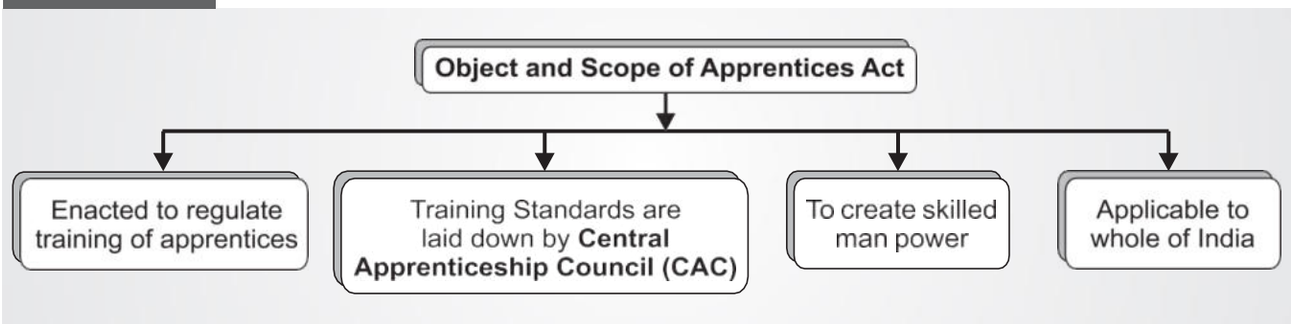
Object and Scope of the Act

Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices andfor matters connected therewith.

Objective

- To confirm to the prescribed training standards as laid down by the **Central Apprenticeship Council**.
- To utilize fully the facilities available in industry for imparting **practical training** with a view to meet the requirements of **skilled manpower** for industry.
- It extends to **whole of India**.
- Last Amendment 22nd December, 2014.

Quick Recap



[Section 2] Define of Following Terms

[Section 2(aa)] Apprentice

Apprentice means a **person** who is undergoing **apprenticeship training** in pursuance of a **Contract of Apprenticeship**.

[Section 2(aaa)] Apprenticeship Training

Apprenticeship training means a **course of training** in any industry or establishment undergone in **pursuance of a contract** of apprenticeship and under prescribed terms and conditions which may be different **for different categories of apprentices**.

Appropriate Government

Appropriate Government means:

(1) in relation to:

(a) the Central Apprenticeship Council, or

(b) (aa) the Regional Boards, or

(aaa) the practical training of graduate or technician apprentices or of technician(vocational) apprentices,or;

(c) any establishment of any railway, major port, mine or oilfield, or

(bb) any establishment which is operating business or trade from different locations situated in four ormore States, or

(d) any establishment owned, controlled or managed by:

(i) the Central Government or a department of Central Government,

(ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government on partly by that Government and partly by one or more State Governments,

(iii) a corporation (including a co-operative society) established by or under a Central Act which is owned,controlled or managed by the Central Govt; the Central Government

(2) in relation to:

(a) a State Apprenticeship Council, or

(b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt.; [Section 2(d)].

[Section 2 (e)] Designated Trade

Designated trade means any **trade or occupation** or any subject field in engineering or non-engineering technology or any **vocational course** which the central govt. after consultation with the central apprenticeshipcouncil, may by NIOG, Special by as designated trade for the proposal of this Act,

[Section 2(f)] Employer

Employer means any **person who employs** one or more **other** persons to do any **work** in an establishment for **remuneration** and **includes** any person entrusted with the **supervision** and **control** of employees in suchestablishment.

[Section 2(g)] Establishment

Establishment includes **any place**

- Where any industry is carried on

  AND

- Where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment

[Section 2(j)] Graduate or Technician Apprentice

- Graduate or technician apprentice means an apprentice **who holds**,Or
- Is undergoing training in order that he **may hold**
- a **degree or diploma** in engineering or non-engineering technology or equivalents qualification granted byany institution recognized by the Government,

  AND

- undergoes apprenticeship training in any designated trade.

[Section 2(k)] Industry

Industry means any **industry or business** in which any trade, occupation or subject field in engineering non- engineering or technology or any vocational course may be specified as a designated trade or optional trade orboth.

Optional Trade

Optional trade means any trade or occupation or any subject field in engineering or non engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act[Section 2(ll)].

Portal-site

Portal-site means a website of the Central Government for exchange of information under this Act {Section 2(lll)}.

[Section 2(pp)] Vocational Apprentice

Vocational apprentice means an apprentice **who holds or is undergoing training** in order that he may hold a certificate in vocational course **involving two years of study** after the completion of the secondary stage of school education recognized by the All – India Council and **undergoes apprenticeship** training in any such subject field in any vocational course as may be prescribed.

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[Section 2 (q)] Trade Apprentice

Trade apprentice means an **apprentice** who **undergoes** apprenticeship **training** in any designated trade.

[Section 2(r)] Worker

Means any person working in the premises of the employer who is **employed for wages** in any kind of workeither directly or through any find of agency including a contractor and who gets his wages directly or indirectly from the employer but shall **not include** an **apprentice**.

[Section 3] Qualification for Being Engaged as an Apprentice

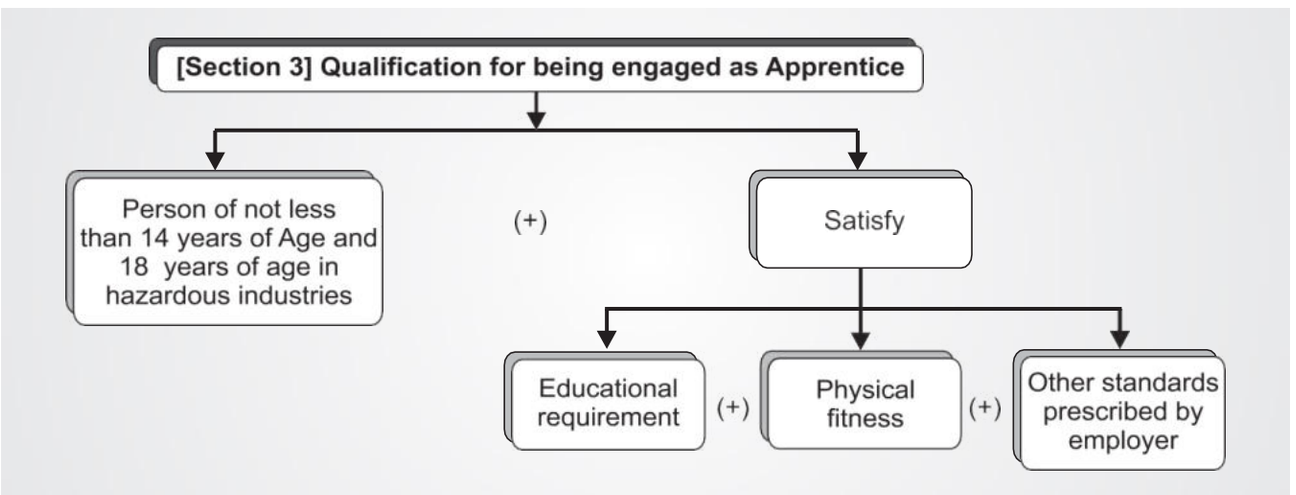
A person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person

- Is **not less than fourteen years** of age and for designated trade related to hazardous industries not less than18 years of age.

  AND

- Satisfies such standards or education and prescribed **physical fitness**. However, different standards may beprescribed in relation to apprenticeship training in different designated trades.

Quick Recap



[Section 4] Contract of Apprenticeship

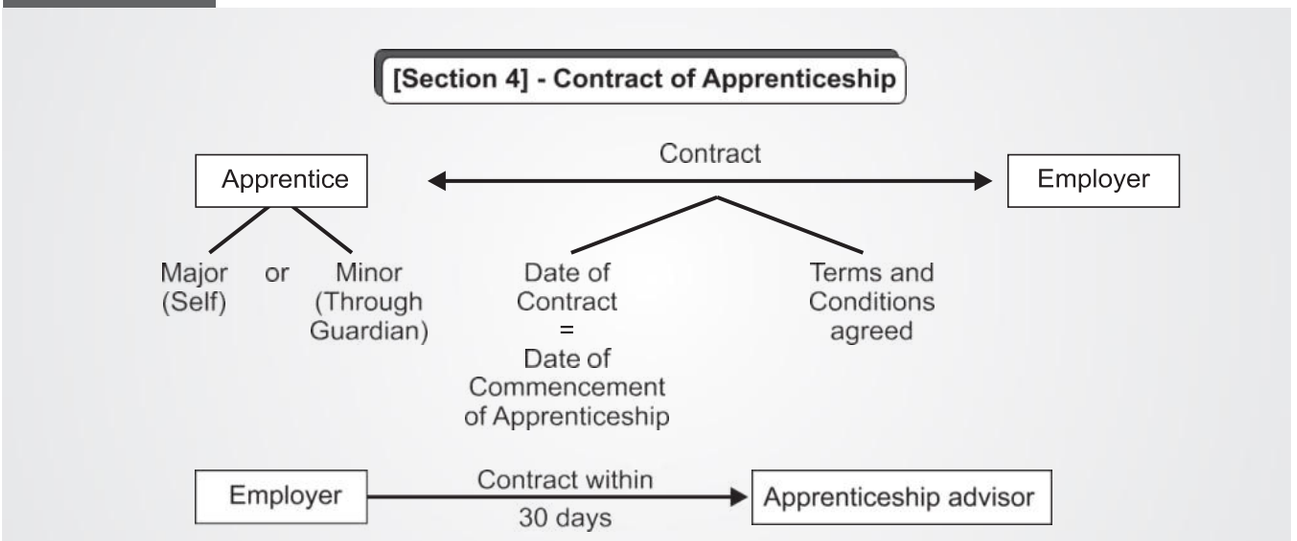
No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade **unless**

such person or, if he is a minor, his guardian has **entered into a contract** of apprenticeship **with** the **employer**.

The apprenticeship **training** shall be deemed to have **commenced** on the **date** of the **contract** of apprenticeship and it may contain such **terms and conditions** as may be **agreed by the parties** to the contract.

Every contract of apprenticeship shall be sent by the employer within 30 days to the Apprenticeship advisor until a portal site is developed by CG and thereafter the details of contract of apprenticeship shall be entered tothe portal site within 7 days for verification and registration.

Quick Recap



[Section 4A]
In case of objection in the contract of apprenticeship, the apprenticeship adviser shall convey the objection tothe employer within 15 days from the date of its receipt.

[Section 4B]
The apprenticeship advisor shall register the contract of apprenticeship within 30 days from the date of its receipt.

[Section 4(6)] As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relatingto that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

[Section 5A] Regulation of optional trade
Section 5A provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

[Section 5B] Engagement of apprentices from other States
Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

[Section 6] Period of apprenticeship training
As per section 6 the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows:

(a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council , the period of apprenticeship training shallbe such as may be prescribed.

(aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;

(b) in the case of other trade apprentices , the period of apprenticeship training shall be such as may be prescribed;

(c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

[Section 8] Number of apprentices for a designated trade and optional trade

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

[Section 9] Practical and basic training of apprentices

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.
- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or anyother authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices inany institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with theCentral Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne-
  - (i) If such employer employs two hundred and fifty workers or more, by the employer;
  - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, bythe employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in no engineering.

Obligations on Employers and Apprentices

[Section 11] Obligations on Employers

Every employer shall have the following obligation in relation to an apprentice, namely:

- To **provide** the apprentice with the **training** in his trade in accordance with the **provisions** of the act and therules made thereunder.
- **Appointment of qualified person** in charge, if employer himself does not possess requisite qualification.
- To provide adequate instructional **staff** possessing qualifications for imparting **practical and theoretical training**.
- To carry out his **other obligations** under the contract of apprenticeship.

NOTE: [Section 19] Records and Returns are to be maintained by every employer

Every employer is required to maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed and also furnish such information and returns in such prescribed from to such authorities and at such intervals.

[Section 12] Obligations on Apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely:

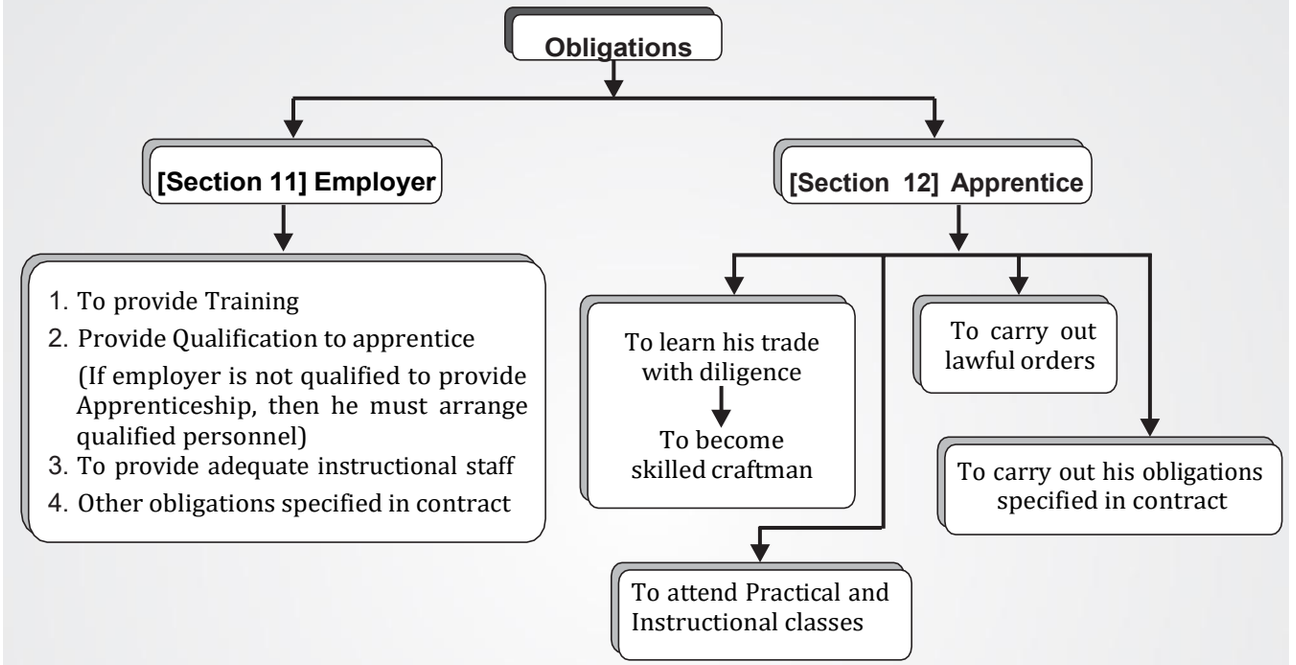
- To **learn his trade conscientiously** and diligently and endeavor to qualify himself as a skilled craftsmanbefore the expiry of the period of training.
- To **attend** practical and instructional **classes** regularly.
- To **carry out** all lawful **orders** of his employer and superiors in the establishment.
- To **carry out** his other obligations under the contract of apprenticeship.

NOTE: [Section 18] Apprentices are trainees and not workers

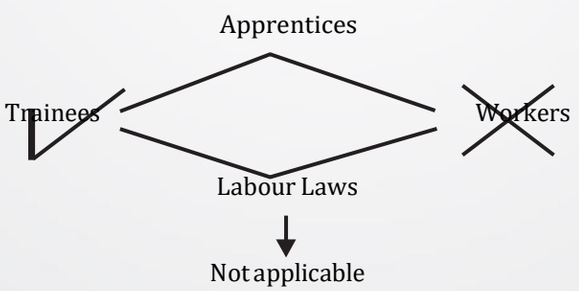
Every apprentice undergoing apprenticeship training in a designated trade in a establishment shall be a traineeand not a worker and the labour laws shall not apply to such apprentice.

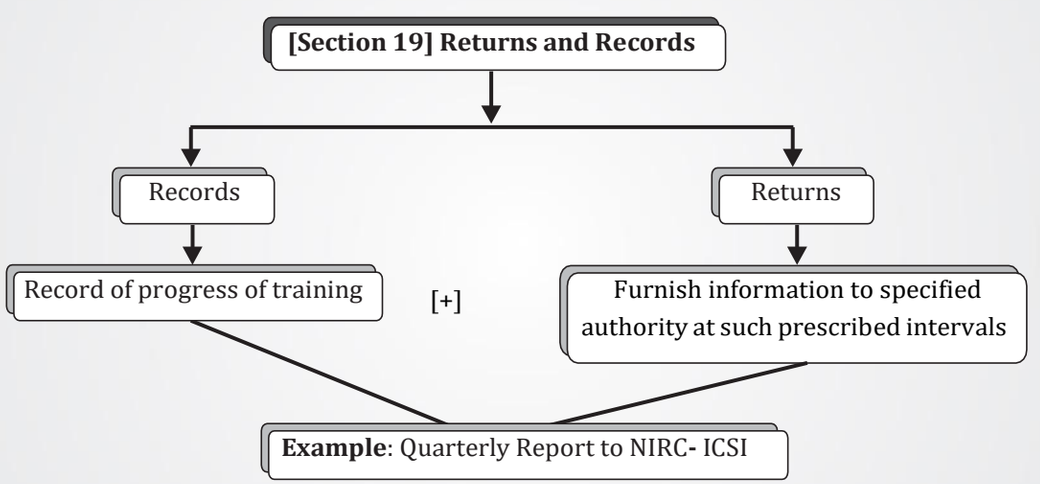
AMIT VOHRA LAW CLASSES

Quick Recap



☞ **Note: [Section 18] -**



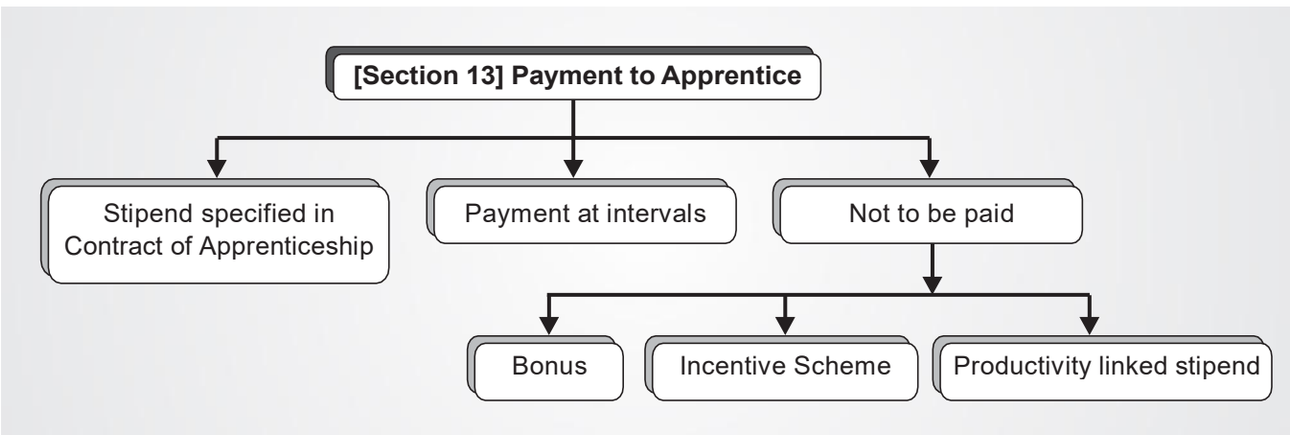


[Section 13] Payment to Apprentices

Section 13 provides that the employer shall pay to every apprentice during the period of apprenticeship training such **stipend**, at a rate **specified in the contract** of apprenticeship, and the stipend so specified shall be paid at such intervals.

An apprentice shall **NEITHER** be paid by his employer on the basis of **piece work NOR** shall he be required to take part in any **output bonus** or other **incentive scheme**.

Quick Recap

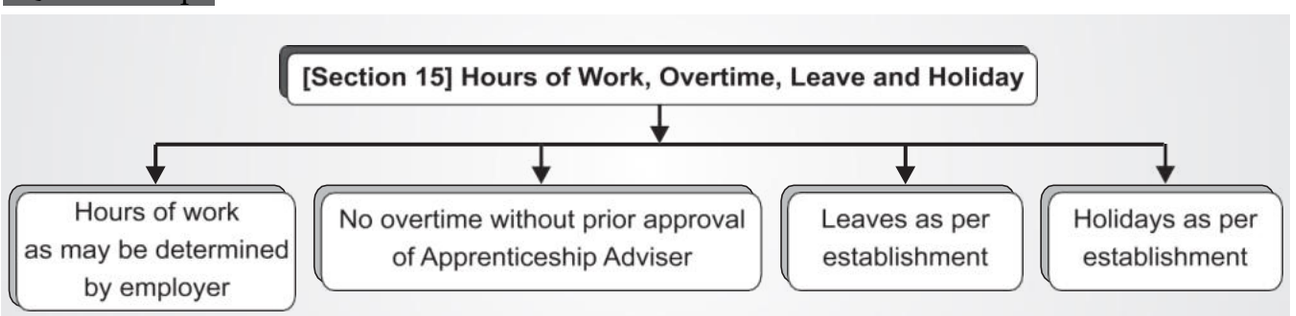


[Section 15] Hours of Work, Overtime, Leave and Holidays

As per section 15

- The weekly and daily **hours of work** of an apprentice while undergoing practical training in a workshop shall be as determined by the employer subject to the compliance within training duration, if prescribed.
- **Overtime** by apprentice only if such overtime is in his interest or public interest **with prior approval of Apprenticeship adviser.**
- An apprentice shall be entitled to such **leaves** and to such **holidays** as are **observed in the establishment** in which he is undergoing training.

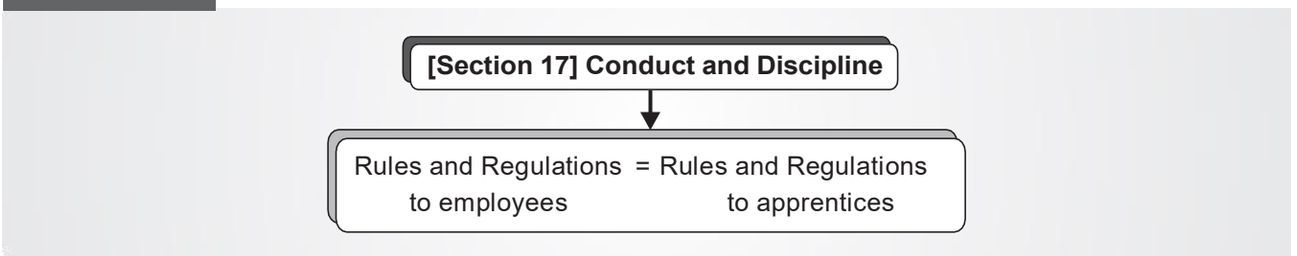
Quick Recap



[Section 17] Conduct and Discipline

Section 17 states the apprentice shall be **governed by the rules and regulations applicable to employees of thecorresponding category** in the establishment in which the apprentice is undergoing training.

Quick Recap



[Section 19] Records and returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of eachapprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish

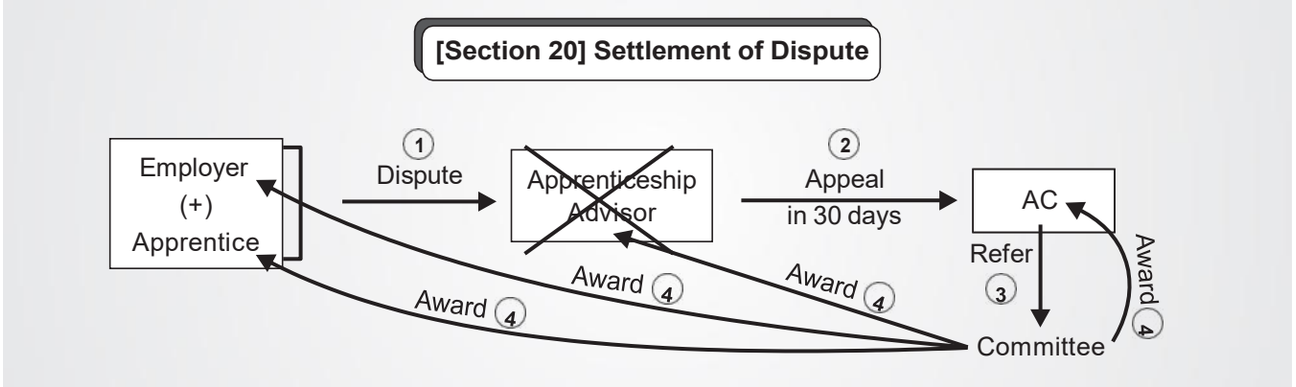
such information and return in such form as may be prescribed, to such authorities at such intervals as may beprescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeshiptraining on portal-site developed by the Central Government in this regard.

[Section 20] Settlement of Disputes

- As per section 20, any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be **referred** to the **Apprenticeship Adviser** for decision.
- Any person aggrieved by the decision of the Apprenticeship adviser may, within **thirty days** from the date of communication to him of such decision, prefer an **appeal** against the decision to the Apprenticeship council and such appeal shall be heard and determined by a **Committee of Council** appointed for the purpose.
- The **decision of the Committee shall be final.**

Quick Recap



states the apprentice shall be **governed by the rules and regulations applicable to employees of the corresponding category** in the establishment in which the apprentice is undergoing training.

Holding of test and grant of certificate and conclusion of training

[Section 21] Holding of Test and Grant of Certificate and Conclusion of Training

Section 21(1) provides that every trade apprentice who has completed the period of training may appear fora test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall

be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shallbe granted a certificate of proficiency

by that Board.

[Section 22] Offer and acceptance of employment

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice whohas completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve theemployer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable,and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

[Section 23] Authorities under the Act

There are the following authorities under the Act, namely:

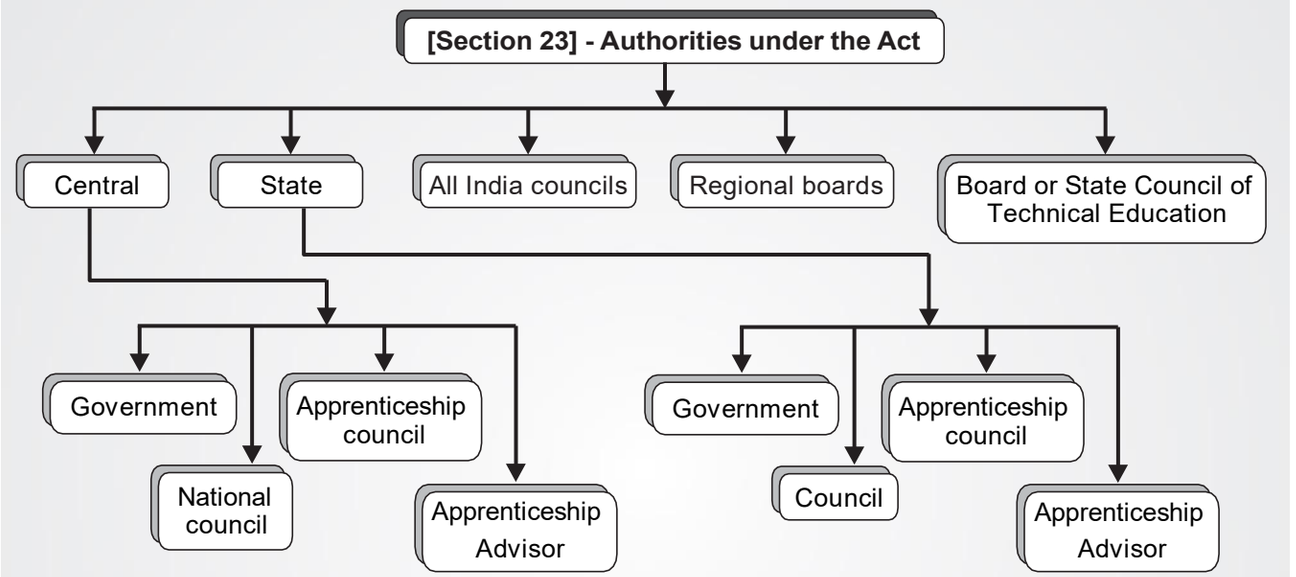
- The National Council
- The Central Apprenticeship Council
- The Central Apprenticeship Adviser
- The State Council
- The State Apprenticeship Council
- The State Apprenticeship Adviser
- The All India Council
- The Regional Boards
- The Boards or State councils of Technical Education

NOTE:

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall beaffiliated to the Central Apprenticeship Council.

Every Board or State Council of Technical Education and every Regional Board shall be affiliated to the Central Apprenticeship council.

Quick Recap



☞ **Note:**

Affiliation of Councils

Council	Affiliated by
State Council	National Council
State Apprenticeship Council	Central Apprenticeship Council
State Council of Technical Education	Central Apprenticeship Council
Regional Board	Central Apprenticeship Council

[Section 30] Offences and Penalties

Section 30 deals with offences and penalties. Section 30 provides that-

(1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he isrequired to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under subsection (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats arefilled up.

(2) If any employer or any other person-

(a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and whichis either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any

information required to be furnished by him, or

(b) refuses or wilfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(a) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(b) employs an apprentice on any work which is not connected with his training, or

(c) makes payment to an apprentice on the basis of piece-work, or

(d) requires an apprentice to take part in any output bonus or incentive scheme.

(e) engages as an apprentice a person who is not qualified for being so engaged, or

(f) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.

AMIT VOHRA LAW CLASSES

Chapter – 19 Unit - 6
The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by Certain Establishments) Act, 1988
or
Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

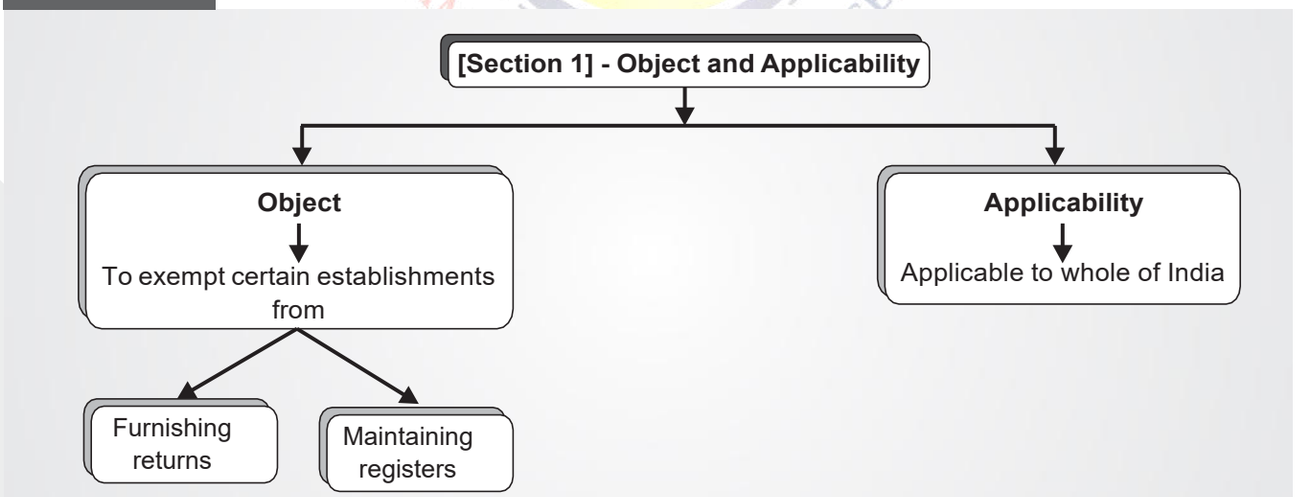
List of Sections

Section	Particulars of Section
1	Extent and Applicability
2	Definitions
2(d)	Scheduled Act
2(e)	Small establishments
2(f)	Very small establishments
6	Penalty

[Section 1] Introduction and Objective

- The act provides for the exemption of employers in relation to establishments enjoying a smaller number ofpersons from furnishing returns and maintaining registers under certain labour laws.
- It extends to **whole of India**.

Quick Recap



[Section 2] Define the Following Terms

[Section 2(d)] Scheduled Act

Scheduled Act means the acts specified in the **first Schedule**:

- The Payment of Wages Act, 1936
- The Weekly Holidays Act, 1942
- The Factories Act, 1948
- The minimum wages Act, 1948
- The motor transport workers Act, 1961
- The Plantation Labour Act, 1951
- The Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous provisions Act, 1955
- The Contract Labour (regulation and Abolition) Act, 1970
- The Sales Promotion Employees (Conditions of service) Act, 1976
- The Equal Remuneration Act, 1976
- The Payment of Bonus Act, 1965
- The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- The Dock Workers (safety, health and welfare) Act, 1986.
- The Child Labour (Prohibition and regulation) Act, 1986.
- The Building and other Construction Workers (regulation, employment and conditions of service) Act, 1996.
- The Beedi and Cigarette Workers (Conditions of Employment) Act, 1966.

[Section 2(e)] Small Establishment

Small establishment means an establishment in which **not less than ten and not more than forty persons areemployed** or were employed on any day of the preceding twelve months.

[Section 2(f)] Very Small Establishment

Very small establishment means an establishment in which **not more than nine persons are employed** or wereemployed on any day of the preceding twelve months.

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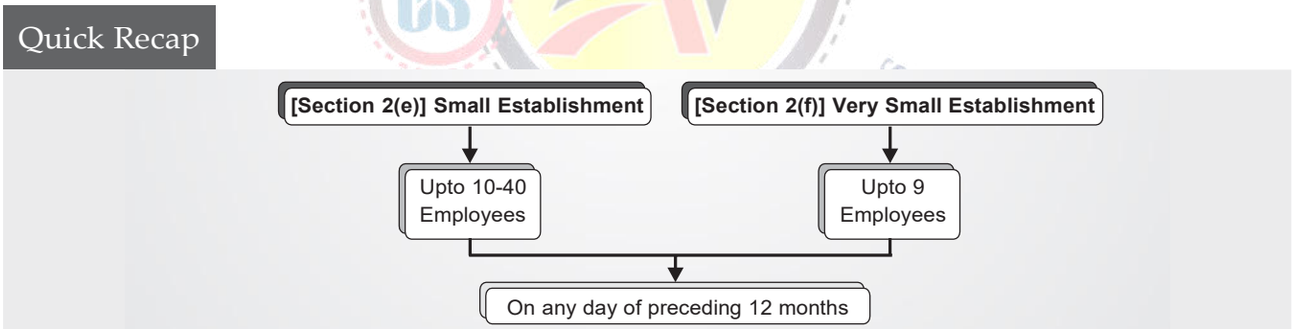

Exemption from Furnishing or Maintaining of Returns and Registers Required under Certain Labour Laws

It shall **not** be **necessary** for an employer in relation to **any small establishment or very small establishment** to which a scheduled act applies to furnish the **returns** or to maintain the **registers** required to be furnished ormaintained under that scheduled act.

However, such employers are required to:

- Furnish a **Annual return in Form I**.
- Maintain registers

In **Form II, and Form III** in the case of small establishments **and**

In **Form III** in the case of very small establishments.

It may be noted that as per section 2(d) "Scheduled Act" means the acts specified in the first schedule andincludes the rules made there under.

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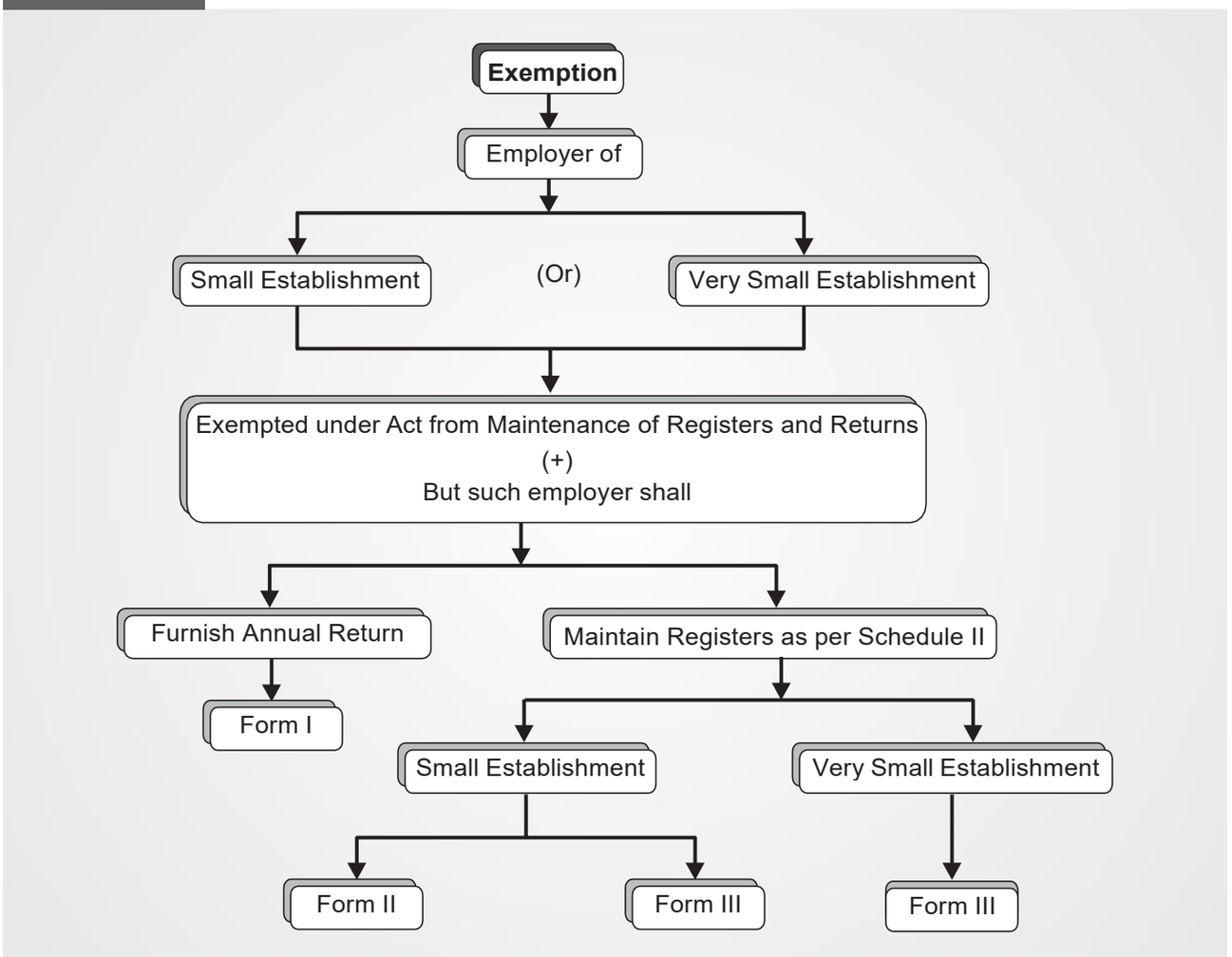


[Section 6] Penalty

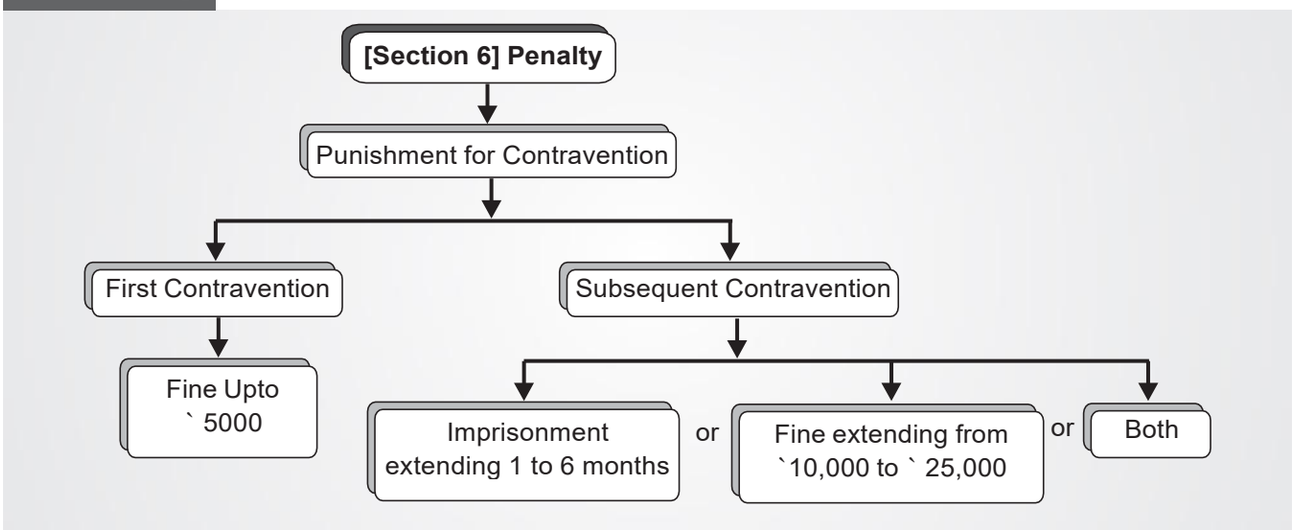
Any employer who fails to comply with the provisions of this Act, shall, on conviction, be punishable in the caseof the

- **First conviction**, with fine which may **extend to rupees five thousand**

AND

- **Subsequent conviction**, with imprisonment for a period of atleast **one month but which may extend to six months** or with fine of **atleast rupees ten thousand but may extend to rupees twenty – five thousand,** or with **both**.

Quick Recap



Furnishing or Maintaining of Returns and Registers in Electronic Form

As per section 4 (2) of the act, the annual return in Form I and the registers in the Form II and III and wage slips,wage books and other records, may be maintained by an employer either in physical form or on a computer, floppy, diskette or other electronic mode.

It may be noted that in case records are maintained electronically, a print out of such return, registers, books and records or portion thereof is made available to the inspector on demand.

CS AMIT VOHRA LAW CLASSES

Chapter - 20
Sexual Harassment of Women at Workplace (Prevention, Prohibitionand Redressal) Act, 2013

Regulatory Framework

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

History of the Legislation

- **Sexual harassment** of a **woman in workplace** is of serious concern to **humanity** on the whole. It **cannot** be construed to be **in** a **narrow sense**, as it may **include sexual advances** and **other verbal or physical harassment** of a **sexual nature**. The **victims** of sexual harassment **face psychological and health effects** like stress, depression,anxiety, shame, guilt and so on.
- "...the time has come when **women must** be able to **feel liberated and emancipated** from what could be **fundamentally oppressive** conditions **against** which an **autonomous choice of freedom** can be exercised and made **available by women**. This is **sexual autonomy** in the **fullest degree**" **Late Chief Justice J.S. Verma, JusticeVerma Committee Report, 2013**.
- Sexual harassment results in **violation** of the **fundamental rights** of a **woman to equality** under **Articles 14 and 15** of the Constitution of India and her **right to life** and to **live with dignity** under **Article 21** of the Constitution and **right to practice any profession** or to **carry** on **any occupation**, **trade or business** which **includes** a **right** to a **safeenvironment free from sexual harassment**.
- However, **workplace sexual harassment in India**, was for the **very first time recognized by the Supreme Court** of India in its landmark judgment of ***Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011*** ("**Vishaka Judgment**"), wherein the **Supreme Court framed** certain **guidelines** and **issued directions to** the **Union of India** to **enact** an appropriate **law** for **combating workplace sexual harassment.** In the **absence** of a **specific law** in India, the **Supreme Court**, in the Vishaka Judgment, **laid down** certain **guidelines** making it **mandatory for every employer to provide** a **mechanism** to **redress grievances pertaining to workplace sexual harassment** ("Vishaka Guidelines") which were being followed by employers until the enactment of the Act.
- The Vishaka Judgement: **In 1992**, **Bhanwari Devi**, a **dalit woman employed** with the **rural development programme** of the **Government** of **Rajasthan**, was **brutally gang raped** on account of her **efforts** to **curb** the then prevalent **practice of child marriage**. This incident revealed the **hazards** that **working women** were **exposed** to on a **day to day basis** and highlighted the **urgency** for **safeguards** to be implemented in this regard. Championing the cause of working women in the country, **women's rights activists and lawyers filed** a **public interest litigationin** the **Supreme Court** of India under the banner of Vishaka. The **Supreme Court** of India, for the **first time**, **acknowledged** the glaring **legislative inadequacy** and acknowledged workplace sexual harassment as a**human rights violation**. In framing the Vishaka Guidelines, the Supreme Court of India placed **reliance** on the **Convention on Elimination** of **All Forms of Discrimination against Women**, **adopted by** the **General Assembly** of the **United Nations**, in 1979, which **India has both signed and ratified**.
- As per the Vishaka Judgment, the **Vishaka Guidelines issued** under **Article 32** of the Constitution, until such timea legislative framework on the subject has been drawn-up and enacted, would have the effect of law and wouldhave to be **mandatorily followed by organizations**, **both in the private and government sector**.
- As per the **Vishaka judgment**,

'**Sexual Harassment' includes** such **unwelcome sexually determined behavior** (whether **directly or by implication**)as:

(a) **Physical contact and advances**;
(b) A **demand or request for sexual favours**;
(c) **Sexually coloured remarks**;
(d) **Showing pornography**;
(e) Any **other unwelcome physical**, **verbal or nonverbal conduct of sexual nature**.

- The Vishaka judgment initiated a **nationwide discourse** on **workplace sexual harassment** and threw out **wide open** an **issue** that was swept under the carpet for the longest time. The **first case before** the **Supreme Court after Vishaka** in this respect was the case of ***Apparel Export Promotion Council v. A.K Chopra, (1999)***.In this case, the **Supreme Court reiterated** the **law** laid down **in** the **Vishaka Judgment** and upheld the **dismissal**of a **superior officer** of the **Delhi based Apparel Export Promotion Council** who was **found guilty** of **sexually harassing** a **subordinate female employee** at the workplace.

- In this judgment, the **Supreme Court enlarged** the **definition** of **sexual harassment** by ruling that **physical contact** was **not essential** for it to amount to an act of sexual harassment. The Supreme Court explained that "**sexual harassment** is a **form of sex discrimination** projected **through unwelcome sexual advances**, **request for sexual favours** and other **verbal or physical conduct** with **sexual overtones**, whether directly or by implication, particularly when submission to or **rejection** of such conduct **by** the **female employee** was **capable of** being used for **affecting** the **employment** of the **female employee and unreasonably interfering with her work performance** and had the effect of **creating** an **intimidating or hostile work environment for her**."

- In light of the above judgment, the very **first efforts**, towards implementing a **law** for protection of womenfrom sexual harassment at workplace, were taken **in 2007** when the **Protection of Women against Sexual Harassment at Workplace Bill, 2007**, was introduced in the Parliament. However, this Bill never saw the light ofthe day. **On December 7, 2010**, the **Protection of Women against Sexual Harassment at Work Place Bill, 2010** (the "Original Bill") was introduced in **Lok Sabha** and was **referred to** a **Parliamentary Standing Committee** on **Human Resource Development**, led by **Shri Oscar Fernandes** ("Standing Committee"), on December 30, 2010for examination, and the **Standing Committee** came out with its **report in December, 2011**.

- Further to the report, **subsequent changes** were made **to** the **Original Bill**, including to the **title** of the **Bill**, whichwas **changed to Sexual Harassment of Women at Workplace** (**Prevention, Prohibition and Redressal**) **Bill**, **2013**(the "Bill").

- **India's first legislation** specifically **addressing** the **issue** of **workplace sexual harassment**; the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act**") was enacted by the **Ministry of Women and Child Development**, India **in 2013 — after 16 years** of the **Supreme Court judgment** in the case of **Vishaka & Ors. vs. State of Rajasthan & Ors.** (**1997** (7) SCC 323).

- The Act **came into force w.e.f. 9thDecember, 2013**. The Government also subsequently notified the **rules** under the **POSH Act** titled the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("POSH Rules").** The year 2013 also witnessed the **promulgation** of the **Criminal Law (Amendment) Act, 2013** ("Criminal Law Amendment Act") which has **criminalized offences** such as **sexual harassment, stalking and voyeurism**.

Object of the Act

- The Act has been enacted with the objective of **preventing and protecting women against workplace sexual harassment** and to **ensure** effective **redressal of complaints** of sexual harassment.

- The **Preamble of** the **Act** reads as under:
  "An Act to provide **protection against sexual harassment** of **women at workplace** and for the **prevention and redressal of complaints** of **sexual harassment and for matters connected** therewith or incidental thereto.
  WHEREAS **sexual harassment results** in **violation** of the **fundamental rights** of a **woman to equality** under **Articles 14 and 15** of the Constitution of India and her **right to life** and to **live with dignity** under **Article 21** of theConstitution and **right to practice any profession** or to carry on **any occupation**, **trade or business** which **includes**a **right to a safe environment** free from sexual harassment;
  AND WHEREAS the **protection against sexual harassment** and the right to **work with dignity** are **universally recognised human rights** by **international conventions** and **instruments** such as **Convention** on the **Elimination ofall Forms of Discrimination against Women**, which has been **ratified on** the **25th June, 1993 by** the **Governmentof India**;
  AND WHEREAS it is expedient to **make provisions** for **giving effect** to the **said Convention** for protection of women against sexual harassment at workplace."

- **What is Workplace Sexual Harassment?**
  Workplace sexual harassment is **sexual, unwelcome and** the **experience** is **subjective**. It is the **impact and not intent** that **matters** and it almost always occurs in a matrix of power. The **impact** of sexual harassment at workplace is far reaching and is an **injury to equal right of women**. Workplace sexual harassment not only **creates** an **insecure and hostile working environment for women** but also **impedes** their **ability to deliver** in **today's competing world**. Apart from interfering with their performance at work, it also **adversely affects** their **social and economic growth** and puts them through **physical and emotional suffering**.

Forms of Workplace Sexual Harassment

Generally workplace sexual harassment refers to **Mo common forms** of **inappropriate behaviour:**

- **Quid Pro Quo** (literally '**this for that**') - **Implied or explicit promise** of **preferential/detrimental treatment** in employment - Implied or express **threat** about her **present or future employment status**.
- **Hostile Work Environment** - **Creating** a **hostile, intimidating** or an **offensive work environment** - **Humiliatingtreatment** likely to **affect her health or safety**.

Applicability

The Act **applies** to **both** the **organized and unorganized sectors** (**self-employed or** having **less than 10 workers**)in India. It inter alia, applies to **government bodies**, **private and public sector** organizations, **non-governmental organizations**, organizations carrying out **commercial**, **vocational**, **educational**, **entertainment**, **industrial**, **financial activities**, **hospitals** and **nursing homes**, **educational institutes**, **sports institutions** and **stadiums** used for **training individuals and** also **applies** to a **dwelling place or** a **house**.

[Section 2] Definitions

1. **[Section 2(a)] "Aggrieved woman"** means—
   i. in relation to a workplace, a **woman**, of **any age** whether **employed or not**, who **alleges** to have been subjected to **any act** of **sexual harassment by** the **respondent**;
   ii. in relation to a **dwelling place or house**, a **woman** of **any age** who is **employed in** such a **dwelling placeor house**.

2. **[Section 2(b)] "Appropriate Government"** means —
   i. in relation to a **workplace** which is **established**, **owned, controlled** or **wholly or substantially financedby funds** provided **directly or indirectly** —
      a. **by** the **Central Government or** the **Union territory administration**, the Central Government;
      b. **by** the **State Government,** the State Government
   ii. in relation to any **workplace not covered** under sub-clause **(i) and falling within** its **territory**, the

State Government; i.e. for the **private sector, appropriate Government** is the **concerned State Government**.

3. [Section 2(e)] "Domestic worker" means

- A **woman** who is **employed to do** the **household work in any household for remuneration** whether in **cash or kind**, either **directly or through any agency** on a **temporary, permanent, part time or full time basis**;
- But does **not include any member** of the **family of** the **employer**.

4. [Section 2(f)] "Employee" means

- A **person employed at** a **workplace for** any **work on regular**, **temporary**, **ad hoc or daily wage** basis, either **directly or through** an **agent**, **including** a **contractor**, **with or**, **without** the **knowledge** of the **principalemployer**, whether **for remuneration or not**, or **working on** a **voluntary basis** or otherwise, whether the **terms of employment** are **express or implied** and
- Includes a **co-worker**, a **contract worker**, **probationer, trainee, apprentice** or called by any other such name.

5. [Section 2(g)] "Employer" means:' —

i. in relation to any **department**, **organisation**, **undertaking**, **establishment**, **enterprise**, **institution**, **office**, **branch or unit** of the **appropriate Government or** a **local authority**, the **head** of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or **such other officer** as the **appropriate Government or** the **local authority**, as the case may be, may by an order **specify** in this behalf;

ii. in any **workplace not covered** under sub-clause **(i), any person responsible for** the **management**, **supervision and control** of the workplace.
Explanation. — For the purposes of this sub-clause "**management**" **includes** the **person or board or committee responsible** for **formulation and administration** of **polices** for such organisation;

iii. in relation to **workplace covered** under sub-clauses **(i) and (ii),** the **person discharging contractual obligations** with respect to his or her employees;

iv. in relation to a **dwelling place or house**, a **person or** a **household** who **employs or benefits from**the **employment** of **domestic worker**, **irrespective** of the **number**, **time period** or **type** of such worker employed, or the **nature** of the employment or **activities performed** by the domestic worker.

6. [Section 2(m)] "Respondent" means a **person against whom** the **aggrieved woman** has **made** a **complaint under section 9**.

7. [Section 2(n)] "Sexual harassment" includes **any one or more** of the **following unwelcome acts or behaviour** (whether **directlyor by implication**) namely: –

i. **Physical contact and advances**; or
ii. A **demand or request** for **sexual favours**; or
iii. **Making sexually coloured remarks**; or
iv. **Showing pornography**; or
v. Any **other unwelcome physical**, **verbal or non-verbal conduct** of **sexual nature**.

The **definition** is **very wide**, as it provides for **direct or implied sexual conduct**, which may **mean** that what is "**implied**" **sexual behaviour** for **one person**, **may not** be the **same for another person**. Hence, the **implied behaviour** will **depend** only **upon** the **interpretation** of a **person**. The definition also provides that **harassment may** be a **verbal or non-verbal conduct**. Hence, a **mere statement** in a case where the **plaintiff requested defendant No. 1 to instruct** the **attendants to switch off** the **A. C. Machine**, but **in reply defendant No. 1** said"... **come close to me**, **you will start feeling hot**", **can** also be **construed to be sexual harassment** [***Albert Davit Limited vs. Anuradha Chowdhury and Ors., (2004)*** *2 CALLT 421 (HC)*].

8. [Section 2(o)] "workplace" includes –

(a) Any **department**, **organisation**, **undertaking**, **establishment**, **enterprise**, **institution**, **office**, **branch** or unitwhich is established, **owned**, **controlled** or **wholly or substantially financed by** funds provided **directly or indirectly by** the **appropriate Government or** the **local authority** or a **Government company** or a **corporation** or a **co-operative society**;

(b) Any **private sector organisation** or a **private venture**, **undertaking**, **enterprise**, **institution**, **establishment**, **society**, **trust**, **non-governmental organisation**, **unit** or **service provider carrying** on **commercial**, **professional**, **vocational**, **educational**, **entertainmental**, **industrial, health services** or **financial activities** including **production, supply**, **sale, distribution or service**;

(c) **Hospitals or nursing homes**;

(d) Any **sports institute**, **stadium, sports complex** or **competition or games venue**, whether **residential or notused for training**, sports or other activities relating thereto;

(e) Any **place visited by** the **employee** arising **out of or during** the course of **employment includingtransportation provided by** the **employer for** undertaking **such journey**;

(f) A **dwelling place or a house**;

In the case of ***Saurabh Kumar Mallick* v.** ***Comptroller & Auditor General of lndia,*** WP(C) No. 8649/2007, the **respondent** who was **facing departmental inquiry for** allegedly indulging in **sexual harassment** of **his senior woman officer contended** that **he could not** be **accused** of **sexual harassment at workplace** as the alleged **misconduct took place not at** the **workplace but at** an **official mess** where the **woman officer** was **residing**.

It was also argued that the **complainant** was **even senior to** the **respondent** and therefore **no 'favour' could**be **extracted by** the **respondent from** the **complainant** and thus the **alleged** act would **not constitute 'sexual harassment'.**

The **Delhi Court** while considering this matter held this as **'clearly misconceived'**. The Delhi Courtobserved that 'the **aim and objective** of formulating the **Vishaka Guidelines** was **obvious** in order to **ensure**that **sexual harassment** of **working women** is **prevented** and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a **narrow and pedantic approach cannot** be **taken in defining** the term '**workplace'** by confining the meaning to the commonly understood expression "office". It is imperative to take into **consideration** the **recent trend** which has emerged with the **advent of computerand internet technology and advancement** of **information technology**. A **person can interact or do business conference** with another person while **sitting in some other country by** way of **videoconferencing.**

It has also become a **trend** that the **office is being run by CEOs from** their **residence**. In a case like this, **if such** an **officer indulges in** an act of **sexual harassment with** an **employee**, **say**, **his private secretary**, it would **not be openfor him to say** that **he had not committed** the **act at 'workplace' but at his 'residence'** and get away with the same. Noting the above, the **High Court** observed that the **following factors** would have bearing on **determining**whether the **act** has **occurred in** the '**workplace'**:

- **Proximity from** the **place of work**;
- **Control of** the **management over such** a **place/residence** where the **working woman** is **residing**; and
- Such a **residence has to be** an **extension or contiguous part of** the **working place**.

In **conclusion**, the **Delhi High Court held** that the **official mess** where the employee was alleged to have been sexually harassed definitely **falls under 'workplace'.**

9. [Section 2(p)] "Unorganised sector" in relation to a **workplace means** an **enterprise owned by individuals or self-employed workers** and **engaged** in the **production or sale** of **goods** or **providing service** of **any kind** whatsoever, and **where**the **enterprise employs workers**, the number of **such workers is less than ten**.

Complaints Committee

The Act provides for **two kinds of complaints mechanisms**:

(i) **Internal Complaints Committee (ICC);** and

(ii) Local Complaints Committee (LCC).

[Section 4] Constitution Internal Complaints Committee

According to section 4 the Act requires an **employer** to **set up** an '**Internal Complaints Committee'** ("ICC") at **each office or branch**, of an organization **employing 10 or more employees**, to **hear and redress grievances** pertaining to **sexual harassment**. The section provides for the following regarding the ICC:

1. **Mandatory constitution of Internal Complaints Committee by order in writing:**
   Every employer of a workplace **shall**, by an **order in writing**, **constitute** a **Committee** to be known as the"**Internal Complaints Committee**":
   Provided that where the **offices** or **administrative units** of the workplace are **located at different places or divisional or sub-divisional level**, the **Internal Committee shall** be **constituted at all** administrative **units or offices**.

2. **Composition of the ICC:** The Internal Committee shall **consist** of the **following members** to be **nominated by** the **employer**, namely: —
   (a) **Presiding Officer:** a Presiding Officer who **shall be a woman employed at a senior level** at workplace from amongst the employees. However, **in case** a senior level woman employee is **not available**, the Presiding Officer **shall be nominated from other offices or administrative units** of theworkplace referred to in sub-section.
   Provided further that **in case the other offices** or **administrative units** of the **workplace** do **not have a senior level woman employee**, the **Presiding Officer shall** be **nominated from any other workplace** of the **same employer or other department or organisation**;
   (b) **Members**: **not less than two Members from** amongst **employees** preferably **committed to** the **cause of women or** who have **had experience in social work** or have **legal knowledge**;
   (c) **External member: one member from** amongst **non-governmental organisations** or **associations committed to** the **cause of women or** a **person familiar with** the **issues** relating to **sexual harassment**:
   Provided that **at least one-half of** the **total Members** so **nominated shall be women**.

3. **Tenure of office:**
   The **Presiding Officer and every Member of** the **Internal Committee shall hold office** for such period, **notexceeding three (3) years**, **from** the date of their **nomination** as may be specified by the employer.

4. **Fees of external members:**
   The **Member appointed from** amongst the **non-governmental organisations** or associations **shall** be **paid** such **fees or allowances** for **holding** the **proceedings** of the **Internal Committee**, **by** the **employer**, as may be prescribed.

5. **Casual vacancy in the office of Presiding Officer or any member of Internal Committee:** Where the **Presiding Officer or any Member** of the Internal Committee-
   (a) **Contravenes** the **provisions** of **section 16**; or
   (b) Has been **convicted** for an **offence or** an **inquiry** into an **offence** under **any law** for the time beingin force is **pending against him**; or
   (c) He has been **found guilty in** any **disciplinary proceedings or** a **disciplinary proceeding** is **pendingagainst him**; or
   (d) Has so **abused his position** as to render his continuance in office **prejudicial to** the **public interest**,

Such Presiding Officer or Member, as the case may be, **shall** be **removed from** the **Committee and** the **vacancy** so created **or any casual vacancy shall** be **filled by fresh nomination** in accordance with the provisions of this section.

In ***Vidya Akhave ("Petitioner")* v. *Union of India and Ors,* Writ Petition** 796 of **2015**, The **Bombay High Court** ("Court") ruled that **it would not interfere with** an order of **punishment passed by** the **Internal Complaints Committee** ("ICC") in relation to a **sexual harassment complaint**, **unless** the **order** is **shockingly disproportionate**.

Constitution of Local Complaints Committee

At the **district level**, the **Government** is required to **set up** a '**Local Complaints Committee**' ("LCC") to **investigate and redress complaints** of sexual harassment **from** the **unorganized sector or** from **establishments where** the **ICC** has **not been constituted** on account of the **establishment having less than 10 employees or if** the **complaint** is **against** the **employer**. The **LCC** has **special relevance** in cases of **sexual harassment** of **domestic workers or** where the **complaint** is **against** the **employer himself or** a **third party** who is **not** an **employee**. The provisions of the Act w.r.t. LCC are as follows:

(i) [Section-5] Notification of District Officer.
The **Appropriate Government may notify** a **District Magistrate or Additional District Magistrate or** the **Collector or Deputy Collector as** a **District Officer** for every District to exercise powers or discharge functions under this Act.

(ii) [Section-6] Constitution and jurisdiction of Local Committee
Every District Officer shall constitute in the district concerned, a **committee** to be known as the "**Local Committee**" **to receive complaints** of **sexual harassment from establishments where** the **Internal Committee** has **not** been **constituted** due to **having less than ten workers or if** the **complaint** is **against** the **employer himself**. The **District Officer shall designate one nodal officer in every block**, **taluka and tehsil in rural or tribal area** and **ward** or **municipality in** the **urban area**, to **receive complaints** and **forward** the same **to** the concerned **Local Committee within** a period of **seven (7) days**. The **jurisdiction** of the **Local Committee shall extend to** the **areas** of the **district where** it is **constituted**.

(iii) [Section-7] Composition, tenure and other terms and conditions of Local Committee
[Section 7(1)] The **Local Committee shall consist** of the **following members** to be **nominated by** the **District Officer**, namely:- —

(a) A **Chairperson** to be **nominated from** amongst the **eminent women in** the field of **social work and committed to** the **cause of women**;
(b) **One Member** to be **nominated from** amongst the **women working in block**, **taluka** or **tehsil** or **ward** or **municipality** in the district;
(c) **Two Members**, of whom **at least one shall** be a **woman**, to be **nominated from** amongst such **non- governmental organisations** or associations **committed to** the **cause of women or** a **person familiar** with the **issues** relating to **sexual harassment**, which may be prescribed:
Provided that **at least one** of the **nominees should**, **preferably**, have a **background in law or legal knowledge**. It is provided further that **at least one** of the nominees **shall be** a **woman belonging to** the **Scheduled Castes or** the **Scheduled Tribes or** the **Other Backward Classes or minority community** notified by the Central Government, from time to time;
(d) The **concerned officer dealing** with the **social welfare or women and child development** in the district, **shall** be a **member ex officio.**

[Section 7(2)] The **Chairperson and every Member** of the Local Committee **shall hold office** for such period, **not exceeding three (3) years**, **from** the date of their **appointment** as may be specified by the District Officer.

[Section 7(3)] Where the **Chairperson or any Member** of the Local Committee **commits any** of the **following acts,** he **shall be removed** from the Committee **and** the **vacancy** so created **or any casual vacancy shall** be **filled by fresh nomination** in accordance with the provisions of this section:

(a) **Contravenes** the provisions of **section 16**; or

(b) Has been **convicted** for an **offence or** an **inquiry into** an **offence** under **any law** for the time being in forceis **pending against him**; or

(c) Has been **found guilty** in **any disciplinary proceedings or** a **disciplinary proceeding** is **pending againsthim**; or

(d) Has so **abused his position** as to render his continuance in office **prejudicial to** the **public interest**, suchChairperson or Member, as the case may be.

[Section 7(4)] The **Chairperson and Members** of the Local Committee **other than** the **Members nominated** under clauses **(b) and (d) of sub-section (1) shall** be **entitled** to such **fees or allowances for holding** the **proceedings** of the Local Committee as may be prescribed.

[Section 8] Grants and Audit

- In accordance with section 8, the **Central Government may**, **after due appropriation** made **by Parliament** by lawin this behalf, **make to** the **State Government grants** of such **sums of money** as the Central Government may think fit, for **being utilised for** the **payment of fees or allowances** referred to **in section 7**.
- The **State Government may set up** an **agency and transfer** the **grants** so made **to** that **agency**. The **agency shall pay to** the **District Officer**, such **sums** as may be **required for** the **payment of fees or allowances** referred to **section 7**.
- The **accounts** of such **agency shall** be **maintained and audited** in such manner as may, in **consultation with** the **Accountant General** of the **State**, be prescribed and the **person holding** the **custody** of the **accounts** of the **agency shall furnish**, **to** the **State Government**, **before such date**, as may be **prescribed**, its **audited copy** of **accounts together with auditors' report thereon**.

Complaint

[Section 9] Complaint of Sexual harassment

Section 9 of the Act provides for the **procedure** for **filing and hearing** of **complaints** under the Act as follows:

1. **Any aggrieved woman may make**, **in writing**, a **complaint** of **sexual harassment at work place to** the **Internal Committee** if so constituted, **or** the **Local Committee**, in case it is **not** so **constituted**, **within** a period of **three (3) months from** the date of **incident** and in case of a **series of incidents**, **within** a period of**three (3) months from** the date of **last incident**:

   Provided that where such **complaint cannot** be **made in writing**, the **Presiding Officer or** any **Member** ofthe **Internal Committee or** the **Chairperson or** any **Member** of the **Local Committee**, as the case may be,**shall render** all reasonable **assistance to** the **woman for making** the **complaint in writing**:

   Provided further that the **Internal Committee or**, as the case may be, the **Local Committee may**, **for** the**reasons to be recorded in writing**, **extend** the **time limit not exceeding three (3) months**, **if** it is **satisfied** that the circumstances were such which **prevented** the **woman from filing** a **complaint** within the said period.

2. Where the **aggrieved woman** is **unable to make** a **complaint** on account of her **physical or mental incapacity or death** or otherwise, **her legal heir** or such other person as may be prescribed **may make** a **complaint** under this section.

   Prompt reporting of an act **of sexual harassment** is probably as **important as swift action** to be **taken by** the **authorities** on receiving a complaint. In fact the **more prompt** the **complaint is**, the

more authentic can it be treated.

In ***Manjeet Singh vs. lndraprastha Gas Limited*** *236 (**2017**) DLT 396,* the **Delhi High Court** observed that**anonymous complaints** under the Act are **bound to be rejected**.

The **written complaint should contain** a **description** of **each incident**(s). It should include **relevant dates, timings and locations; name** of the **respondent**(s); **and** the **working relationship between** the **parties**. A **person designated to manage** the **workplace sexual harassment complaint** is required to **provide assistance in writing**of the **complaint** if the complainant seeks it for any reason.

[Section 10] Conciliation

- According to section 10, the **Internal Committee or**, as the case may be, the **Local Committee**, **may**, **before initiating** an **inquiry** under section 11 **and at** the **request** of the **aggrieved woman**, **take steps to settle** the **matterbetween her and** the **respondent through conciliation**. It is provided that **no monetary settlement shall** be **made**as a basis of conciliation.
- Where a **settlement** has been so **arrived**, the **Internal Committee or** the **Local Committee**, as the case may be, **shall record** the **settlement** so arrived **and forward** the same **to** the **employer or** the **District Officer to take action** as specified in the recommendation.
- The **Internal Committee or** the **Local Committee**, as the case may be, **shall provide** the **copies of** the **settlement** so recorded **to** the **aggrieved woman and** the **respondent**. **No further inquiry shall** be **conducted by** the **Internal Committee or** the **Local Committee**, as the case may be in case where such settlement is arrived.

[Section 11] Inquiry into Complaint

- Section 11 of the Act states the **procedure** for conducting **inquiry** into the complaint made under the Act. Subject to the provisions of section 10, the **Internal Committee or** the **Local Committee**, as the case may be, **shall**, where the **respondent** is an **employee**, **proceed** to make **inquiry into** the **complaint** in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or **in case of** a **domestic worker**, the **Local Committee shall**, if prima facie case exist, **forward** the **complaint to** the **police**, **within** a period of **seven (7) days for registering** the **case under section 509** of the **Indian Penal Code,** and any other relevant provisions of the said Code where applicable.
- It is provided that where the **aggrieved woman informs** the **Internal Committee or** the **Local Committee**, as the case may be, that **any term or condition** of the **settlement arrived** at under section 10(2) has **not**been **complied with by** the **respondent**, the **Internal Committee or** the **Local Committee shall proceed** to make an **inquiry** into the complaint or, as the case may be, **forward** the **complaint to** the **police**.
- It is provided further that where **both** the **parties are employees**, the **parties shall**, **during** the course of **inquiry**, be **given an opportunity of being heard and** a **copy** of the **findings shall** be **made available to both** the **parties enabling them to make representation against** the **findings before** the **Committee**.
- Notwithstanding anything contained in **section 509** of the **Indian Penal Code**, the **court may**, when the **respondent** is **convicted of** the **offence**, **order payment** of such sums as it **may consider appropriate**, to the **aggrieved womanby** the **respondent**, having regard to the provisions of section 15.
- The **POSH Act** stipulates that the **ICC and LCC shall**, while **inquiring into** a **complaint** of workplace sexual harassment, **have** the **same powers** as **vested in** a **civil court** under the **Code of Civil Procedure, 1908** when **trying** a **suit** in respect of:-
  (a) **Summoning** and **enforcing** the **attendance** of any **person** and **examining him on oath**;
  (b) Requiring the **discovery and production of documents**; and
  (c) Any **other matter** which may be prescribed.

  Such an **inquiry shall** be **completed within** a period of **ninety (90) days**.

[Section 12] Action during pendency of inquiry.

- Section 12 provides for the **relief** that **can be given by IC to** the **aggrieved woman during pendency** of **inquiry**. **During** the **pendency** of an **inquiry**, on a **written request** made **by** the **aggrieved woman**, the **Internal Committeeor** the **Local Committee**, as the case may be, **may recommend to** the **employer to;**
  (a) **Transfer** the **aggrieved woman or** the **respondent to** any **other workplace**; or
  (b) **Grant leave to** the **aggrieved woman up to** a **period** of **three (3) months**; or
  (c) **Grant** such **other relief to** the **aggrieved woman** as may be prescribed.
- The **leave granted to** the **aggrieved woman** under this section **shall** be **in addition to** the **leave** she would be **otherwise entitled**.
- On such **recommendation** of the **Internal Committee or** the **Local Committee**, as the case may be, the **employershall implement** the **recommendations** so made **and send** the **report of** such **implementation to** the **Internal Committee or** the **Local Committee**, as the case may be.

[Section 13] Inquiry Report

- Section 13 of the Act provides for the **action report to** be **submitted by IC or LC after** conducting **inquiry** under the Act. **On** the **completion** of an **inquiry** under this Act, the **Internal Committee or** the **Local Committee**, as thecase may be, **shall provide** a **report** of its **findings to** the **employer**, **or** as the case may be, the **District Officer within** a period of ten **(10) days from** the date of **completion of** the **inquiry and** such **report** be made **available to** the **concerned parties**.
- Where the **Internal Committee or** the **Local Committee**, as the case may be, **arrives at** the **conclusion** that the **allegation against** the **respondent** has **not** been **proved**, it **shall recommend to** the **employer and** the **District Officer** that **no action is required** to be taken in the matter.
- Where the **Internal Committee or** the **Local Committee**, as the case may be, **arrives at** the **conclusion** that the **allegation** against the respondent has been **proved**, it **shall recommend to** the **employer or** the **District Officer**, as the case may be –
  i. To **take action** for sexual harassment as a misconduct **in accordance with** the provisions of the **servicerules applicable to** the **respondent or** where **no such service rules** have been made, in such **manner** as**may** be **prescribed**;
  ii. To **deduct**, notwithstanding anything in the service rules applicable to the respondent, **from** the **salary** orwages **of** the **respondent** such **sum** as it **may consider appropriate to** be **paid to** the **aggrieved womanor** to **her legal heirs**, as it may determine, in accordance with the provisions of section 15.
- It is provided that in case the **employer** is **unable to make** such **deduction from** the **salary** of the respondent **due to** his being **absent from duty or cessation** of **employment** it **may direct to** the **respondent to pay** such **sum to** the **aggrieved woman**.
- It is provided further that in case the **respondent fails to pay** the **sum** referred to in clause(ii), the **Internal Committee or**, as the case may be, the **Local Committee may forward** the **order for recovery** ofthe **sum as** an **arrear of land revenue to** the concerned **District Officer**.
- The **employer or** the **District Officer shall act upon** the **recommendation within sixty (60) days** of its **receipt by him**.

[Section 14] Punishment for false or malicious complaint and false evidence

- There are **strict provisions** under section 14 of the Act **for false or malicious complaint and false evidence** underthe Act. Where the **Internal Committee or** the **Local Committee**, as the case may be, **arrives** at a **conclusion** that the **allegation** against the respondent is **malicious or** the **aggrieved woman or** any **other person** making the **complaint** has **made** the **complaint knowing it to be false or** the **aggrieved woman** or any other person making the complaint **has produced any forged or misleading document**, it **may recommend to** the **employer or** the **District Officer**, as the case may be, **to take action against** the **woman** or the person who has made the complaint under section 9, as the case may be, **in accordance** with the **provisions** of the **service rules** applicableto her or him or where no such service

rules exist, in such manner as may be prescribed.

- It is provided that a **mere inability to substantiate** a **complaint or provide adequate proof need not attractaction against** the **complainant** under this section.
- It is provided further that the **malicious intent on part of** the **complainant shall** be **established after** an **inquiry** in accordance with the procedure prescribed, **before any action is recommended**.

- Where the **Internal Committee or** the **Local Committee**, as the case may be, **arrives at** a **conclusion** that **during** the **inquiry any witness** has **given false evidence or produced any forged or misleading document**, it **may recommend to** the **employer of** the **witness or** the **District Officer**, as the case may be, to **take action** in accordance with the provisions of the service rules applicable to the said witness or where no such service rulesexist, in such manner as may be prescribed.

[Section 15] Determining of Compensation

Section 15 provides that for the purpose of **determining** the **sums to be paid to** the **aggrieved woman** section 13,the **Internal Committee or** the **Local Committee,** as the case may be, **shall have regard to;**

(a) The **mental trauma,pain, suffering and emotional distress** caused to the aggrieved woman;
(b) The **loss in** the **career opportunity due to** the **incident** of sexual harassment;
(c) **Medical expenses incurred by** the **victim for physical or psychiatrictreatment**;
(d) The **income and financial status** of the **respondent**;
(e) **Feasibility** of **such payment in lump sum orin installments**.

[Section 16] Prohibition of publication or making known contents of complaint and inquiry proceedings

- According to section 16, **Notwithstanding anything** contained **in** the **Right to Information Act, 2005**, the **contents** of the **complaint** made under section 9, the **identity and addresses of** the **aggrieved woman**, **respondent and witnesses**, **any information** relating to **conciliation and inquiry proceedings**, **recommendations of** the **Internal Committee or** the **Local Committee**, as the case may be, **and** the **action taken by** the **employer or** the **District Officer** under the provisions of this Act **shall not be published**, **communicated or made known to** the **public**, **press and media** in any manner.
- It is provided that **information may** be **disseminated regarding** the **justice secured to any victim** of sexual harassment under this Act **without disclosing** the **name**, **address**, **identity** or any other particulars calculated tolead to the identification of the aggrieved woman and witnesses.

[Section 17] Penalty for publication or making known contents of complaint and inquiry proceedings

According to section 17, where **any person entrusted with** the **duty to handle or deal** with the **complaint**, **inquiry or** any **recommendations or action** to be taken under the provisions of this Act, **contravenes** the provisions of **section 16**, he **shall** be **liable for penalty** in accordance with the provisions of the service rules applicable to thesaid person or where no such service rules exist, in such manner as may be prescribed.

[Section 18] Appeal

Any person aggrieved from the **recommendations** made under section 13(2) or under section 13(1) (i) or (ii) or section 14 (2) (i) or section 17 **or non-implementation** of such **recommendations may prefer** an **appeal to** the **court or tribunal** in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. Such **appeal shall** be **preferred within** a period of **ninety (90) days of the recommendations**.

[Section 19] Duties of Employer

Such **duties begin at**the **time when** an **employer** has to **set up** an **internal complaints committee to ensure** that **aggrieved can file** their **complaints and seek redressal** to such complaints **and end at** the **time** when the **employer has provided certain data**, in accordance with the provisions of the law, in relation to sexual

harassment in its annual report.According to the section, **every employer shall** —

(a) **Provide** a **safe working environment at** the **workplace** which shall **include safety from** the **persons coming into contact at** the **workplace**;

(b) **Display at any conspicuous place in** the **workplace**, the **penal consequences** of **sexual harassments**; and the order constituting, the Internal Committee under sub-section (I) of section 4;

(c) **Organise workshops and awareness programmes at regular intervals for sensitising** the **employees** with the **provisions** of the Act **and orientation programmes for** the **members of** the **Internal Committee** in themanner as may be prescribed;

(d) **Provide necessary facilities to** the **Internal Committee or** the **Local Committee**, as the case may be, **fordealing with** the **complaint and conducting** an **inquiry**;

(e) **Assist in securing** the **attendance of respondent and witnesses before** the **Internal Committee or** the **Local Committee**, as the case may be;

(f) **Make available** such **information to** the **Internal Committee or** the **Local Committee**, as the case may be,as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) **Provide assistance to** the **woman if she so chooses to file** a **complaint** in relation **to** the **offence under** the **Indian Penal Code 1860** or any other law for the time being. in force;

(h) **Cause to initiate action**, **under** the **Indian Penal Code 1860** or any other law for the time being in force,**against** the **perpetrator**, **or if** the **aggrieved woman so desires**, **where** the **perpetrator is not** an **employee**,**in** the **workplace at** which the **incident of sexual harassment took place**;

(i) **Treat sexual harassment as** a **misconduct under** the **service rules and initiate action** for such misconduct;

(j) **Monitor** the **timely submission of reports by** the **Internal Committee**.

[Section 20] Duties and Powers of Districts Officer

Section 20 cast upon the following **mandatory duties on the District Officer who shall**, —

(a) **Monitor** the **timely submission** of **reports furnished by** the **Local Committee**;

(b) **Take** such **measures** as may be **necessary for engaging non-governmental organisations for creation** of**awareness on sexual harassment and** the **rights of** the **women**.

Miscellaneous

[Section 21] Committee to submit annual report

According to section 21, the **Internal Committee or** the **Local Committee**, as the case may be, **shall in each calendar year prepare**, in such form and at such time as may be prescribed, an **annual report and submit** the same **to** the **employer and** the **District Officer**.

The **District Officer shall forward a brief report on** the **annual reports** so received **to** the **State Government**.

[Section 22] Employer to include information in annual report

According to section 22, the **employer shall include in** its **report** the **number of cases filed**, if any, **and their disposal** under this Act **in** the **annual report** of his organisation **or** where **no such report is required to be prepared**, **intimate** such **number of cases**, if any, **to** the **District Officer**.

[Section 23] Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 23, the **appropriate Government shall monitor** the **implementation of this Act and maintain data on** the **number of cases filed and disposed of** in respect of **all cases of sexual harassmentat workplace**.

[Section 24] Appropriate Government to take measures to publicise the Act

In accordance with section 24, the **appropriate Government may**, **subject to** the **availability of financial**

and other resources, —

(a) **Develop relevant information**, **education**, **communication and training materials**, and organise **awareness programmes**, to **advance** the **understanding** of the **public of** the **provisions** of **this Act** providing for protection against sexual harassment of woman at workplace,

(b) **Formulate orientation and training programmes for** the **members** of the **Local Committee**.

[Section 25] Power to call for information and inspection of records

The **appropriate Government**, on being **satisfied** that it is **necessary in** the **public interest or** in the **interest of women employees at** a **workplace to do so**, **by order in writing**, —

(a) **Call upon** any **employer or District Officer** to **furnish in writing** such **information** relating to **sexual harassment** as it may require;

(b) **Authorize any officer** to **make inspection** of the **records and workplace** in relation to sexual harassment, who **shall submit** a **report** of such **inspection to it** within such period as may be specified in theorder.

Every employer and District Officer shall produce on **demand before** the **officer making** the **inspection all information**, **records** and other documents **in his custody** having a **bearing on** the **subject matter** of such **inspection**.

[Section 26] Penalty for non-compliance with provisions of Act

- Section 26 provides for a **penalty with a fine up to rupees fifty thousand (50,000) where** the **employer fails to**-
  (a) **Constitute** an **Internal Committee** under sub-section (1) of section 4;
  (b) **Take action** under sections 13, 14 and 22; and
  (c) **Contravenes or attempts to contravene or abets contravention** of other **provisions** of **this Act** or any rules made there under.
- If any **employer**, **after** having been **previously convicted of** an **offence punishable** under this Act **subsequently commits and** is **convicted of** the **same offence**, he **shall** be **liable to twice** the **punishment**, which might have been **imposed on** a **first conviction**, **subject to** the **punishment being** maximum provided **for** the **same offence**.
- Provided that in case a **higher punishment** is **prescribed under any other law** for the time being in force, forthe **offence** for which the **accused** is **being prosecuted**, the **court shall take due cognizance** of the **same while awarding** the **punishment**.
- In addition to above, **he shall** be **liable for cancellation**, of his **licence or withdrawal**, **or non-renewal**, **or approval**, **or cancellation** of the **registration**, **by** the **Government or local authority**, as the case may be, **for carrying on hisbusiness** or activity.

[Section 27] Cognizance of offence by courts

- According to section 27, **every offence** under this Act are **non-cognizable** which **means one cannot be arrestedwithout a warrant**. **No court shall take cognizance** of any **offence punishable under this Act** or any rules made there under, **save on** a **complaint made by** the **aggrieved woman or** any **person authorised by** the **Internal Committee or** Local **Committee** in this behalf.
- **No court inferior to** that of a **Metropolitan Magistrate or a JudicialMagistrate of** the **first class shall try any offence punishable under this Act**.

[Section 28] Act not in derogation of any other law

Section 28 states that the **purpose** of the Act is **to provide additional safeguard to women at work**. According tothe section, the **provisions** of **this Act shall be** in **addition to and not in derogation of** the **provisions** of **any otherlaw** for the time being in force.

[Section 29] Power of appropriate Government to make rules

Section 29 states that the **Central Government may**, **by notification** in the **Official Gazette**, **make rules** for carrying out the provisions of this Act. In **particular and without prejudice to** the **generality** of the

foregoing power, such rules **may provide for all or any of** the **following matters**, namely:-

(a) The **fees or allowances to** be **paid to** the **Members** under sub-section (4) of section 4;
(b) **Nomination of members** under clause (c) of sub-section (I) of section 7;
(c) The **fees or allowances to** be **paid to** the **Chairperson**, **and Members** under sub-section (4) of section 7;
(d) The **person who may make complaint** under sub-section (2) of section 9;
(e) The **manner of inquiry** under sub-section (I) of section 11;
(f) The **powers for making an inquiry** under clause (c) of sub-section (2) of section I I;
(g) The **relief to be recommended** under clause (c) of sub-section (I) of section 12;
(h) The **manner of action** to be **taken** under clause (i) of sub-section (3) of **section 13**;
(i) The **manner of action** to be **taken** under sub-sections (1) and (2) of **section 14**;
(j) The **manner of action** to be **taken** under **section 17**;
(k) The **manner of appeal** under sub-section (1) of section 18;
(l) The **manner of organising workshops**, **awareness programmes** for sensitising the employees **andorientation programmes** for the **members** of the **Internal Committee** under clause (c) of section 19; and
(m) The **form and time for preparation of annual report by Internal Committee and** the **Local Committee**under sub-section (I) of section 21.

- In **2019**, **POSH saw** an **amendment**. In general **notification** issued **by Women Development and Child Welfare Department** it stated that **all businesses in Telangana with ten or more employees** are **required to register** their **IC with** the **State Shebox portal** by **no later than July 15, 2019**. This was done in an effort **to help officialsbetter monitor local firms' compliance levels**, this is being done.
- **Maharashtra government also mandated all companies** to **complete and submit to** the **Sub-Divisional Magistrate by July 20, 2019,** a **form explaining** their **compliance status and internal committee**.
- In exercise of the **powers** conferred **by section 29** of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the **Central Government made** the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.**

Case Laws

- **Binoy Jacob vs. State of Kerala and Ors. (01.11.2022 - KERHC): Crl.MC No. 847 of 2022**
  In this case, **petition** has been **filed to quash** the **proceedings on** the **ground** that since the **very same complaint raised by** the **2nd respondent considered by** the **Internal Complaints Committee and found to** be **not proved**, the **criminal prosecution** on **same set of facts before** a **court will not stand**. Court held that
  "**Section 28** of the Act of 2013 stipulates that **provisions** of the **Act shall** be **in addition to and not in derogation** of the **provisions** of **any other law** for the time being in force. Thus, it is **clear** that the **action** under the Act of 2013 **by** the **employer and** a **complaint registered at** the **instance** of the **employee for** the **offence under** the **Indian Penal Code** is **independent to each other**. **Two fold actions** are **permissible** for the sexual harassment complaint. Hence, **both actions are independent and permissible** under law. There is **absolutely no bar in proceeding with** the **criminal prosecution** initiated against the petitioner."

- **Rayala Satyanarayana vs. SBI Funds Management Pvt. Ltd. and Ors. (19.10.2022 - APHC) : Writ Petition No. 8042 of 2019**
  In this case, **Andhra Pradesh High Court** decided on whether the **termination** of **services** is, in fact, a **major punishment**, which **cannot** be **imposed without conducting** a **separate departmental enquiry or without** affording an **opportunity** of **hearing or issuing** a **separate charge memo**. **Court held that Conclusions by Committee cannot** be the **basis for imposing** a **major penalty of removal from service**, **because** it is a **finding/ report in** an **enquiry into** the **misconduct** of the **delinquent and cannot**

be **treated as** a **mere preliminary investigation or inquiry leading to** a **disciplinary action**. Court stated

"the **conclusions** arrived at **by** the **Committee cannot be** the **basis for imposing** a **major penalty** of **removal from service**, **mainly on** the **ground** that the **conclusions** arrived at **by** the **Committee shall not** be **treated** as a **mere preliminary investigation or inquiry leading to** a **disciplinary action**, **but shall** be **treated** as a **finding/ report in** an **enquiry into** the **misconduct** of the delinquent. The **impugned proceedings further suffer from severe illegality as** the said **proceedings** were **issued without** there being any **regular departmental enquiry** and **without giving** any **opportunity** as per the Service Rules, which **mandate** that **initiation** of **disciplinary proceedings** is a **mandatory requirement and without conducting** any **enquiry, no employee can** be **imposed any major penalties**."

CS EXECUTIVE

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