










SETTING UP OF BUSINESS ENTITIES AND CLOSURE

PANKAJ KUMAR

FCS, CHARTERED SI (CISI LONDON), MBA (FINANCE)

Every effort has been made to avoid errors or omissions in this book. In spite of this errors may creep in, any mistake, error or discrepancy noted may be brought to our notice which shall be taken care in the next edition.

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VARIOUS INITIAL REGISTRATIONS AND LICENSES

INTRODUCTION

A business entity is required to secure various registrations and licenses in order to set up its businesses in India. This chapter deals with the list of Mandatory as well as Additional Registration requirements and the Licenses.

Mandatory Registration

1. PAN
2. TAN
3. GST REGISTRATION
4. SHOPS & ESTABLISHMENTS
5. SSI/MSME

Additional registration/license

1. ESI/PF
2. FCRA
3. POLLUTION
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18. UDYOGAADHAR MEMORANDUM
19. INDUSTRIAL LICENSE
20. INDUSTRIAL ENTREPRENEURS MEMORANDUM (IEM)

PERMANENT ACCOUNT NUMBER (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. It also serves as an identity proof from a large number of purposes.

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

Significance of PAN for Setting up of 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.
- Even if one is not required to pay income tax, it is mandatory for him to hold a PAN if he is earning money.
- 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.

Application and Registration of PAN

The PAN (Permanent Account Number) card is an important document for conducting even the most simplest of financial transactions like opening a savings bank account or applying for a debit/credit card. It is a 10-digit alphanumeric identity allotted by the income tax department to an individual, company or Hindu Undivided Family (HUF).

The application for allotment/correction of PAN can be made through internet.

Online application can be made either through the portal of NSDL (<https://tin.tin.nsdl.com/pan/index.html>) With effect from July 1, 2017, fees for PAN application (including Goods and Services Tax) for dispatch outside India has changed to 1020/- INR. However, PAN application fees for dispatch within India is 110/- INR.

Indian citizens will have to submit their 'Application for allotment of new PAN' in revised Form 49A only. Foreign citizens will have to submit their 'Application for allotment of new PAN' in newly notified Form 49AA only.

TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER (TAN)

TAN or Tax Deduction and Collection Account Number is again 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 (TAN) allotted by the Income Tax Department (ITD) on all TDS returns.

Types of TAN Applications

There are two types of TAN applications:

- Application for issuance of new TAN (Form 49B)☐
- Application for Change or Correction in TAN data for TAN Allotted.

Procedure to Apply

- (i) A deductor may either make an online application through this website or submit physical TAN Application to any TIN-Facilitation Center (TIN-FC) of NSDL.
- (ii) Applicant can also apply physically through (TIN-FC) of NSDL and then NSDL, shall digitize application and forward to ITD.
- (iii) Status track- The applicants may track the status of their TAN application using 14 digit unique Acknowledgment Number after three days of application using the status track facility.
- (iv) Fee- The processing fee for both the applications (new TAN and change request) is 65/- INR

GOODS AND SERVICES TAX (GST)

- (i) Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail Input Tax Credit for the taxes on his inward supplies. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 20 Lakhs in the relevant financial year, is liable to be registered under the Act. It must be noted though that for the state of Jammu & Kashmir and North-Eastern states, the threshold is Rs 10 Lakhs.
- (ii) North-eastern states would include Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura along with hilly areas of Himachal Pradesh and Uttarakhand. If a person has his place of business in different states, and one of the branches is in any of the states mentioned above (Jammu & Kashmir/ North Eastern), then the threshold limit for GST registration would be reduced to Rs 10 Lakhs.
- (iii) 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

(iv) Registration under GST is not tax specific, which means that there is a single registration for all the taxes viz., CGST, SGST/UTGST, IGST and cases.

(v) Compulsory Registration

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

(vi) 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 / services / both which are not liable to tax
- Engaged exclusively in the supply of goods / services / both which are wholly exempt from tax
- Agriculturist to the extent of supply of produce from land cultivation
- Specified categories as may be notified by the Government

(vii) Procedure for Registration

Every person who is liable to register themselves under the CGST Act, 2017 must do so within thirty days from the date when he becomes first liable.

If the proper officer doesn't take any action within three days of submission of application along with necessary details and documents, or within seven days of receiving the clarifications so solicited, the application for grant of registration is deemed to be approved.

The effective date of registration is:

- In case the application is submitted within 30 days of the person becoming liable to register, it shall be the date on which the person becomes liable.
- And if the application is submitted after 30 days of the person becoming liable to register, it shall be the date on which the registration is granted.

“casual taxable person” as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. Thus, a casual taxable person is someone who has a business in a different state, but comes to a different state for a business purpose temporarily. For example, a footwear dealer registered in Agra comes for an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a casual taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

(viii) Cancellation of Registration

GST office can some cancel the registration as deem fit and such cancellation would in no way interfere the liability of said person

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.

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, factories are not covered by the shops & establishments act and are regulated by the Factories Act, 1948.

Meaning of an Establishment for the Purpose of the Act

Establishments included in this Act are commercial establishments, residential hotels, restaurants, eating houses, theaters, or other places of public amusement or entertainment.

Meaning of a Shop for the Purpose of the Act

Shop means any premises:

- Where goods are sold, either by retail, wholesale, or
- Where services are rendered to customers.
- It includes an office a store-room, godown, warehouse or work place, whether in the same premises

A shop does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theater or other place of public amusement or entertainment;

Shop and Establishment Act License

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act License within the prescribed time. The application for license in the prescribed form must contain the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested. On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier.

Registration of Shops & Establishments

You are compulsorily required to get the same registered under the Shops and Establishment Act. Here are the specific rules:

1. Submit an application in the prescribed form to the Inspector of the area within 30 days of starting any work in your shop/establishment. The application is to be submitted along with the prescribed fees and should contain the following information:
 - a. Your name as the employer and the name of a manager, if any;
 - b. The postal address of your establishment;
 - c. The name of your establishment;
 - d. Such other particulars as may be prescribed.
2. The Inspector shall verify the accuracy and correctness of the application and issue certificate to you. This certificate will be valid for 5 years and has to be renewed thereafter.

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.

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 fifteen 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.

SSI/MSME

Small Scale and ancillary units should seek registration with the Director of Industries of the concerned State Government.

All classes of enterprises, whether Proprietorship, Hindu undivided family, Association of persons, Cooperative society, Partnership firm, Company or Undertaking, by whatever name called can apply for the registration and get qualified for the benefits provided under the Act.

The main purpose of Registration is to maintain statistics and maintain a roll of such units for the purposes of providing incentives and support services. It is possible that some states may have a 'SIDO registration scheme' and a 'State registration scheme'.

Objectives of the Registration Scheme

1. To enumerate and maintain a roll of small industries to which the package of incentives and support are targeted.
2. To provide a certificate enabling the units to avail statutory benefits mainly in terms of protection.
3. To serve the purpose of collection of statistics.
4. To create nodal centres at the Centre, State and District levels to promote SSI.

Benefits of SSI/MSME Registration

Under this registration scheme, the units normally get registered to avail some benefits, incentives or support given either by the Central or State Govt. Benefits available under the MSMED Act Registration of Micro, Small and Medium (MSM) Enterprises under MSMED Act is a very powerful medium to enjoy the regime of incentives offered by the Centre generally contains the following:

Micro and Small Enterprises:

1. Easy finance availability from Banks, without collateral requirement
2. Preference in procuring Government tenders,
3. Stamp duty and Octroi benefits,
4. Concession in electricity bills
5. Time-bound resolution of disputes with Buyers through conciliation and arbitration
6. Excise Exemption Scheme

7. Exemption under Direct Tax Laws.
8. Subsidy on ISO Certifications
9. Subsidy on NSIC Performance and Credit ratings
10. Stamp duty and Octroi benefits,
11. 15% weightage in price Preference.

Medium Enterprises:

1. Easy finance availability from Banks, without collateral requirement
2. Preference in procuring Government tenders
3. Reservation policies to manufacturing / production sector enterprises
4. Time-bound resolution of disputes with Buyers through conciliation and arbitration

The Buyers have to ensure whether those suppliers of goods and services are under the purview of MSMED Act i.e. the Buyers have to confirm the registration of the suppliers under the MSMED ACT.

The Buyer should ensure the payment before the end of credit period decided else the interest would be payable.

In case of disputes, application to Micro and Small Enterprises Facilitation Council (MSEFC) would trigger the conciliation and arbitration process.

The Buyers need to ensure that he does not owe any outstanding amount including interest due to MSME Enterprises for more than 15 days.

Registration Process

- Micro & Small Enterprises shall have to apply either online at the website of NSIC www.nsicspronline.com
- Duplicate copy of the G.P. Registration Application Form submitted by the Micro & Small Enterprise will be forwarded to the concerned Inspecting agency along with copies of required documents and requisite Proofs/Draft/Pay Order of inspection charges in favor of concerned Inspection Agency requesting for carrying out the Technical Inspection of Micro & Small Enterprise and forward their recommendations in this regard.
- After receiving Inspection Report, NSIC will issue the GP Registration Certificate to Micro & Small Enterprise for items/stores as recommended.

Procedure for calculation & fixation of Monetary Limits of Micro & Small Enterprises.

Monetary limit of the company is fixed on the basis of the unit's net sales turnover during the last three years reflected in the Audited Balance Sheets.

Monetary limit will be fixed on the basis of highest turnover during the last three year which may or may not be of last year provided the units installed and operating capacity has not been reduced.

- In case there is no decrease in plant and machinery, than 50% of highest turnover during the last 3 years reflected in audited balance sheet will be the basis for fixation of monetary limit.
- In case there is decrease in plant and machinery for more than 10%, the following will be considered:
 - i. Where the turnover of the Enterprise has steadily increased over the last three years and the unit is in profit continuously, the Monetary Limit may be fixed at 50% of net sales turnover achieved in the last year.

- ii. In case the Company/Partnership concern/Proprietorship unit is in loss for one year out of past three years, their monetary limit will be fixed at 40% of their average net sales turnover.
- iii. Similarly, when the Micro & Small Enterprise is in loss for two years out of the past three years, the monetary limit will be accordingly fixed at 30% of their average net sales turnover of the past three years.
- iv. In the event of Micro & Small Enterprise being in loss throughout past three years, the monetary limit of the Unit will be fixed at 20% of the average net sales turnover of the Unit during the past three years.

Validity Period of G. P. Registration

The G. P. Registration Certificate granted to the Micro & Small Enterprise under Single Point Registration Scheme (Revised), 2003 is valid for Two Years and will be reviewed and renewed after every two years by verifying continuous Commercial and Technical Competence of the registered Micro & Small Enterprise in manufacturing / producing the stores for which it has been registered by NSIC.

Documents to be submitted by the Micro & Small Enterprises at the Time of Fresh Registration

1. A copy of Acknowledgement of Entrepreneurs Memorandum Part-II;/UAM
2. Performance Statement as per format/Performa G of the application form.
3. Self-attested copy of ownership documents of the premises or copy of lease deed.
4. List of raw materials and finished goods in stock.
5. Copy of BIS license, if applicable.
6. Copy of ISO 9000 (Optional).
7. Copy of Registration Certificate if registered with DGS&D or other Govt. Organizations.
8. Latest Electricity Bill Copy.
9. 17. Audited Balance Sheet, Trading Account and Profit & Loss
10. Account for the last 3 years duly signed by the authorized person under his seal.
11. Copy of Permanent Account No. (PAN)

❖ Documentary proof of the status of the firm

1. Additional documents to be submitted in case of Partnership Concern
 - General Power of Attorney in favor of one of the Partners.
 - Partnership Deed.
 - Form A from Registrar of Firms showing the names of the partners.
2. Additional documents to be submitted in case of Pvt./ Limited Companies
 - Certificate of Incorporation duly authenticated.
 - Memorandum and Articles of Association duly authenticated
 - Names of sitting Directors, their addresses and their shareholdings.
 - Board Resolution in favor of the Signatory of the application and documents.
3. Additional documents to be submitted in case of Cooperative Societies.
 - Certificate of Registration of Societies.
 - Society's Bye-Laws/Regulations etc.

- Names of Members, their addresses and shareholding.
- Details of authorized share capital and subscribed share Capital.
- Resolution of Society for seeking registration under Government Purchase Program

Documents Required for Renewal of the Registration

1. Original GP Registration Certificate.
2. copy of Acknowledgement of Entrepreneurs Memorandum Part-II/UAM;
3. List of major Govt. Orders executed during last 2 (two) years on letter head as per format of Annexure 'G'.
4. Copies of Audited Balance sheet for last 3 years duly signed by the authorized person under his seal.
5. Annexure 'C' of GP Application form duly signed by Chartered Accountant (same as in fresh case).
6. Annexure 'D' and 'E' duly signed by MSE.

S. NO.	Category	Fees
1	For micro enterprises	Rs.6000/- inclusive of GST and travel expenses
2	For small enterprises	Rs.8000/- inclusive of GST and travel expenses

NSIC Registration

The Government is the single largest buyer of a variety of goods. With a view to increase the share of purchases from the small-scale sector, the Government Stores Purchase Programme was launched in 1955- 56.

- NSIC Registration is required to be renewed on every two years

The registered units are extended various facilities so as to promote their participation, and consequently enhance the share in Government purchases.

The rationale of this Scheme is to avoid multiplicity of registration with various Government agencies and to ensure that the units registered with NSIC are considered at par with those registered directly with the purchasing agency.

Bona-fide Directorate of Industries / District Industries Centres are enlisted under this Scheme. Their technical and commercial competence is verified in advance and this makes their registration with NSIC more meaningful in relation to purchasing agencies.

Though, initially the Scheme was aimed at securing larger share of orders from DGS&D, effective recognition is given to the units registered with NSIC by the Railways, Defence, P&T, and several Public Sector Enterprises. Automatic registration is given to units which are enlisted with NSIC.

Benefits of NSIC Registration

- Issue of the Tender Sets free of cost;

- Exemption from payment of Earnest Money Deposit (EMD),
- In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 20% of requirement by bringing down their price to L1 Price where L1 is non MSEs.
- Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 20 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 20% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste /Schedule Tribes
- In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

Eligibility

- All Micro & Small Enterprises which are registered with the Director of Industries (DI)/District Industries Centre (DIC) as manufacturing/service enterprises are eligible for registration with NSIC under its Single Point Registration Scheme (SPRS).
- Micro & Small Enterprises who have already commenced their commercial production but not completed one year of existence. The Provisional Registration Certificate can be issued to such Micro & Small Enterprises under Single Point Registration scheme with monetary limit of Rs. 5.00 Lacs which shall be valid for the period of one year only from the date of issue after levying the registration fee and obtaining the requisite documents.

Application

Micro & Small Enterprises shall have to apply either online on our website www.nsicspronline.com. The application form containing Terms & conditions are available free of cost from all offices of the NSIC.

Registration Fee

The Fee structure is indicated in the table as below:

S.NO	Category (net sales turnover based)	Fee
I	<ul style="list-style-type: none"> • Fee for Fresh Registration of Micro & Small Enterprises: Turnover up-to Rs. 100 lakh • Turnover exceeding Rs. 100 lakh 	<ul style="list-style-type: none"> • Turnover up-to Rs. 100 lakh: For Micro Enterprises: Rs.3000/- For Small Enterprises : Rs.5000/- • Turnover exceeding Rs. 100 lakh For Micro Enterprises: Rs.3000/- plus Rs. 1500/- for every additional turnover of Rs. 100 Lakh For Small Enterprises : Rs. 5000/- plus Rs. 2000/- for every additional turnover of Rs. 100 Lakh With cap of Rs. 1 lac for all categories.
II	<ul style="list-style-type: none"> a. Fee for issuance of amendments in stores (Qualitative & Quantity); Fee for issuance of change in monetary limit or any other amendment in the certificate, 	<ul style="list-style-type: none"> a. 50% of the charges proposed at I Enterprises respectively with a cap of Rs. 50,000/-

	and b. b) Fee for issuance of Renewal of G.P. Registration (Every Two Years)	
III	<p>Concessions</p> <p>a) Micro & Small Enterprises owned by the SC/ST (Definition of SC/ST MSE and eligibility for benefits under NSSH has been explained in Circular No. SIC/HO/NSSH/Scheme/2016-17 dated 09.09.2016)</p> <p>b) MSEs other than SC/ST located in the entire North Eastern Region</p>	<p>a) As per approved scheme of National SC/ST Hub (Circular no. SIC/HO/NSSH/Schemes/2016-17 dated 09.09.2016) in NSIC, the SC/ST units shall be eligible for upfront 100% subsidy on the fee of NSIC for fresh registration / renewal / amendments / competency certificate and also the inspection fees of the empanelled Inspection Agencies/NSIC including Service Tax applicable. The SSPRS shall be run as a pilot project charging nominal fee of Rs. 100 per unit during this F.Y. 2016-17 and further continuation of the same shall be subject to review.</p> <p>b) The units located in North Eastern Region other than SC/ST will be given 20% concession in fee (no change in the fee being collected by BOs for Technical Inspections of MSEs)</p>

The Registration Fee as mentioned in the table above is exclusive of the Inspection charges as levied by the inspecting agency. Such charges as decided by the Inspecting Agency are borne by the unit. Till such time the Inspecting Agency makes any amendments in their charges, the present Inspection fee of Inspecting Agencies is as under :-

A. Inspection Fees for MSME-DI

- Class of Enterprise- inspection fees for MSME-DI
- Micro enterprises- rs. 2000/-
- Small enterprises- rs 3000/-

B. The Professional fee payable by MSEs to M/s RITES Ltd., and M/s Consultancy Development Centre for undertaking physical inspection will be as under:-

By RITES and CDC:- (a) rs. 6000/- (Inclusive of Taxes and Travel Expense) for Micro Enterprises, and
(b) rs. 8000/- (Inclusive of Taxes and Travel Expense) for Small Enterprises.

Other Compliances

Other Compliances include:

- Factory Licences;
- Pollution Clearance Certificate
- Additional Registration/License
- ESI/PF

ESI Registration with Procedure & Benefits

Employee's State Insurance (ESI) is a self-financing scheme for Indian workers which covers health insurance and social security. ESI functions as an independent corporation and comes under Ministry of Labor and Employment in India. The ESI Corporation thus manages the funds which regulated by the guidelines and regulations of the ESI Act. 1948. This act monitors the provision of cash and medical benefits to employees and their families through their comprehensive network of hospitals and dispensaries throughout India.

Benefits of ESI Registration for both Employer & Employee

Employees and their families can avail medical treatment and attendance including not only medical but surgical and obstetric treatment as well. Supply of medicines, super specialty consultations, etc. can also be availed. Sick pay benefits also included. Thus, it advised for employees to register under ESI scheme.

ESI Registration Procedure for both Employer & Employee

Registration of Employer:

Any employer having more than 10 employees is mandatorily require to take up the ESI Registration.

Within 15 days of submission of Employer's registration form (Form-01), the company or firm is expected to obtain an Identification number or Code Number from the Regional office. This figure will be used in correspondence related to the scheme. Form3 accompanies Form 1.

Documents required:

- Documents about the establishment of the company.
- Evidence supporting date of commencement of production/business.
- List of partners, stakeholders, directors along with necessary information and proof of address.
- Copy of PAN
- Identity proof like voter id/passport
- List of employees

Registration of Employee:

At joining the Private Limited Company, an employee required to fill the Declaration form i.e. Form-1 along with a copy of the family photo which the employer will be submitting at the ESI branch office.

Within 3 months a permanent photo ID is provided to the employee and will be provided an insurance number for identification purpose under the scheme.

Once registered, the registration can transfer if the employee switches company.

Wage Limit under ESI Registration:

Employees earning 21,000 INR per month or less are applicable for ESI contribution. Employees with higher wages are exempt.

Wage limit for Employees with 'Disability' is 25000INR per month.

Employee contribution: 1.75% of total salaries.

Employer Contribution: 4.75% of total wages.

Provident Fund Meaning and Registration Procedure

To provide financial stability and security to employees when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS) 1952. The central government trust manages these funds, and employees are required to contribute a part of their salary to it every month during their employment tenure.

Eligibility

An establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits. However, Companies with more than 20 employees compulsorily have to register under EPFS.

PF Registration Process

- (i) A detailed application form called 'Performa of coverage' and form 5A with Annexure-1 has to be filed while registering the company online.
- (ii) Employer shall submit all concern documents online.
- (iii) Authorities can inspect the documents and grant registration certificate.

Documents required to be submitted

Essential Document(s) to be submitted (For other than a proprietary concern)

1. A copy of Memorandum and Articles of Association and the certificate of incorporation issued by the Registrar of Companies, in the case of Public and Private Ltd. Companies.
2. A copy of partnership deed in the case of partnerships.
3. A copy of Registration certificate issued by the Registrar of Co-operative societies.
4. Partition deeds creating HUF.
5. Any agreement or other legal documents in the case of Association of persons as defined in the Income Tax Act.

A list of documents which can be submitted as a proof of date of set up :- (Any one of these documents has to be submitted)

1. First Sales Invoice.
2. Any proof regarding date of trial production.
3. Certificate of Registration issued by the Registrar of Co-operative Societies.
4. Certificate of Registration issued under Societies Registration Act.
5. Certificate issued by Reserve Bank of India registering newly set up and non-banking financial companies.
6. License issued by the Health Authorities.
7. License/permission issued by the Municipal/Corporation Authorities.
8. Permission/approval granted by the appropriate State Govt. Authorities in the case of Educational Institutions.
9. Certificate issued by the Fire Authorities in the case of establishments coming under Explosives Act.
10. First assessment order issued by the Sales Tax Authorities.

11. First assessment order issued by the Income Tax Authorities.
12. Such other documents.

FCRA Registration

Charitable Trusts, Societies, Section 8 Company that receive foreign contribution or donation from foreign sources are required to obtain registration under Section 6(1) of Foreign Contribution Regulation Act, 2010. Such a registration under the Foreign Contribution Regulation Act, 2010 is called a FCRA registration.

Eligibility for obtaining 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 Rs.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.

Criteria for grant of FCRA Registration

- (a) The ‘person’ or ‘entity’ making an application for registration or grant of prior permission-
 - Is not fictitious or benami;
 - Has not been found guilty of diversion or mis-utilisation of its funds
 - Has not contravened any of the provisions of this Act;
 - Has not been prohibited from accepting foreign contribution;
 - Such other conditions for registration.
- (b) The acceptance of foreign contribution by the entity / person is not likely to affect prejudicially
 - The sovereignty and integrity of India;
 - The public interest;
 - Friendly relation with any foreign State
- (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.

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
- Activity Report indicating details of activities during the last three years

- audited statement of accounts for the past three years

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.

Pollution

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for 30 types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.

However, if investment is less than Rs. 1000 million, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries and electroplating industries.

Further, any item reserved for the small scale sector with investment of less than Rs 10 million is also exempt from obtaining environmental clearance from the Central Government under the Notification.

Other Registration as per requirement of sector

IE Code

IEC registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). IEC code has lifetime validity.

Requirement of IE Code

Now the first thing one requires 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. As a Passport is mandatory for traveling abroad, similarly an IEC Code is mandatory to Export or Import anything from/into India. It has a total of 36 branches across India.

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/region where the individual/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 and fees.

- First of all we have to prepare an application form in the prescribed format i.e. AayaatNiryaat form 2A format and filed with the proper DGFT Regional office.
- 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 of ANF2A.
- 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.

- Once application has been approved then you will get the IEC Code in the soft copy from the government department.

Documents Required for Import Export Code (IEC) Registration

- ❖ IEC Code Registration required following things:
 - Individual Person
 - Personal or Company or Firm Pan Card Copy.
 - Personal aadhar card or voter id or passport copy.
 - Personal or company or firm current bank account cancel cheque copy.
 - Electricity Bill Copy or Rent Agreement or Sale deed of the premise copy.

Features of the Import Export Code (IEC) Registration

- ❖ International Exposure
- ❖ Government Benefits
- ❖ No Renewals
- ❖ No Annual Compliance
- ❖ Individual person

Drug License

To start a pharmacy business, a drug license is required. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license in India.

List of State Drugs Control Organization

Normally, the Drug Control Organization issues two types of licences for operating a pharmacy business. One is the Retail Drug License (RDL) issued to run a general chemist shop. The other is the Wholesale Drug License (WDL) issued to persons or agencies engaged in wholesale of drugs and medicines..

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.
- **Technical Staff:**
 - (a) **Wholesale** – The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4years experience in dealing in drugs, specially approved by the department of drug control for the purpose.
 - (b) **Retail** – The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours.

Documents required for obtaining Drug License

- a. Application form in the prescribed format
- b. Covering Letter with the intent of the application signed with name and designation of the applicant
- c. Challan of fee deposited for obtaining drug license
- d. Declaration form in the format prescribed
- e. Key plan(Blue print) for the premises
- f. Site plan (Blue print) for the premises
- g. Basis of possession of the premises
- h. Proof of ownership of the premises, if rented
- i. Proof of constitution of the business (Incorporation Certificate / MOA / AOA / Partnership Deed)
- j. Affidavit of non-conviction of proprietor / partners/ directors

FSSAI

FSSAI is an abbreviation used for Food Safety and Standards Authority of India. FSSAI license is mandatory before starting any food business must obtain a 14-digit registration or a license number which must be printed on food packages.

FSSAI Online Registration is done through office website of FSSAI for basic and central level. 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. they are involved in the manufacturing, storage, transportation or distribution of food products.

FSSAI Registration

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

- a. Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- b. Distributes foods including in any religious or social gathering except a caterer; or
- c. Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and whose:
 - Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - Procurement or handling and collection of milk is up to 500 litres of milk per day or
 - Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

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 License

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

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.

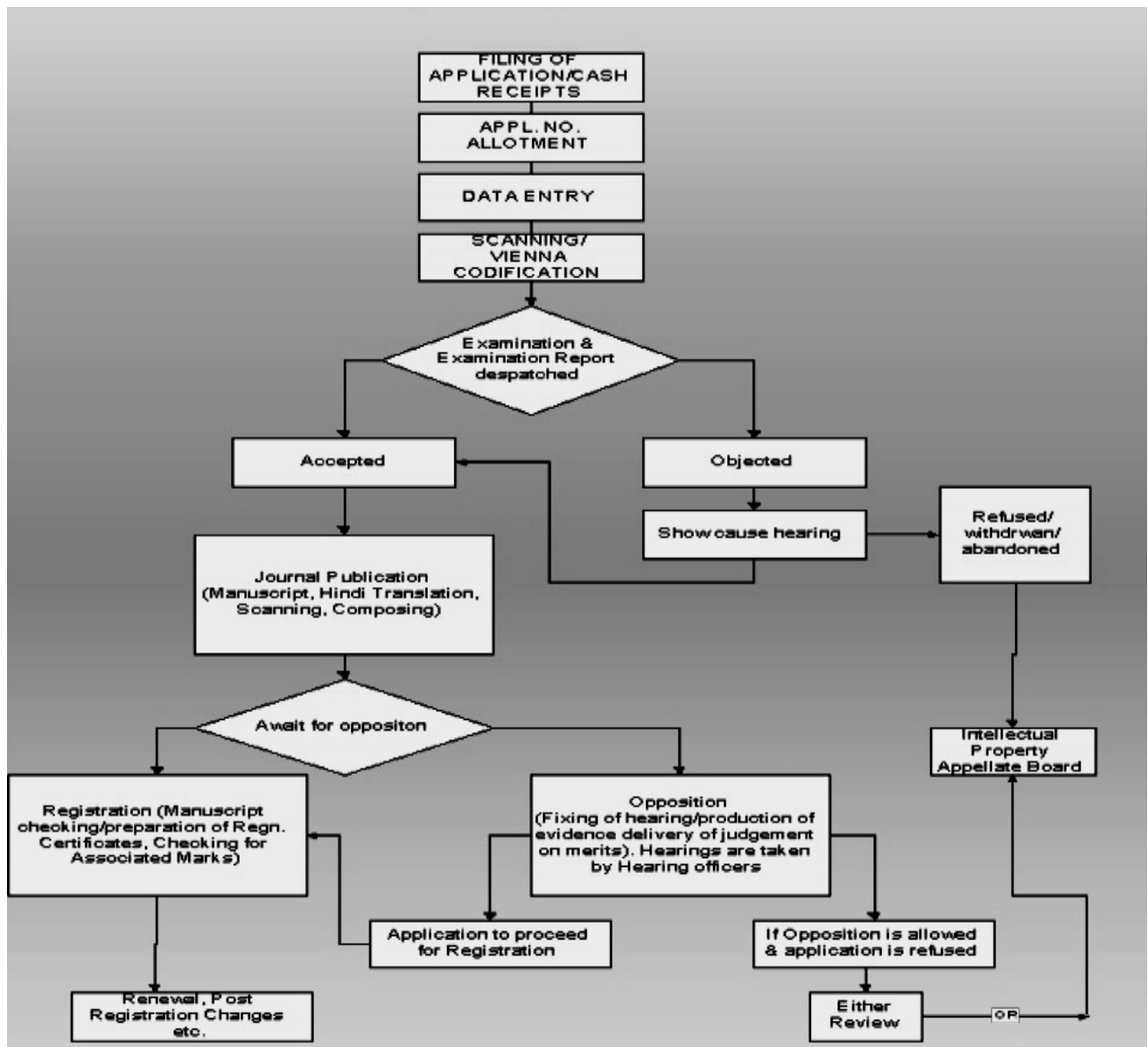
Fee Structure				
<i>Please Note:</i> License/Certificate can be applied for a maximum period of 5 Years.				
	Central (1 Year)	State (1 Year)	Registration (1 Year)	Konkan/Indian Railway (1 Year)
New Application	Rs. 7500	View	Rs. 100	Rs. 2000
Renewal Application	Rs. 7500	View	Rs. 100	Rs. 2000
License/Certificate Modification	Rs. 7500	View	Rs. 100	Rs. 2000
Duplicate License/Certificate	10% of the Applicable License Fee	View	10% of the Applicable Certificate Fee	10% of the Applicable Certificate Fee

FSSAI license is granted for a period of 1 to 5 years. If registration is obtained for one or two years, then the license can be renewed by making an application, no later than 30 days prior to the expiry date of the FSSAI license.

Trademark

The Trade Marks Registry was established in India in, 1940 and presently, it administers the Trade Marks Act, 1999 and the rules framed thereunder. The objective of the Trade Marks Act, 1999 is to register trademarks applied for in the country and to provide for better protection of trade mark for goods and services and also to prevent fraudulent use of the mark.

Steps of Registration



Source: Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, GOI

Copyright

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WCT and WPPT; to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; Incidental changes; to remove operational facilities; and enforcement of rights.

Prior to the Act of 1957, the Law of Copyrights in the country was governed by the Copyright Act of 1914.

The Indian Copyright Act today is compliant with most international conventions and treaties in the field of copyrights. Though India is not a member of the Rome Convention of 1961, the Copyright Act, 1957 is fully compliant with the Rome Convention provisions.

The two Internet Treaties were negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO). These treaties are called the 'WIPO Copyrights Treaty (WCT)' and the 'WIPO Performances and Phonograms Treaty (WPPT)'. India is not a member of these treaties; amendments are being mooted to make Act in compliant with the above treaties in order to provide protection to copyright in the digital era.

The Copyright Rules, 2013 was notified on 14 March, 2013 replacing the old Copyright Rules, 1958.

Copyright Registration Procedure

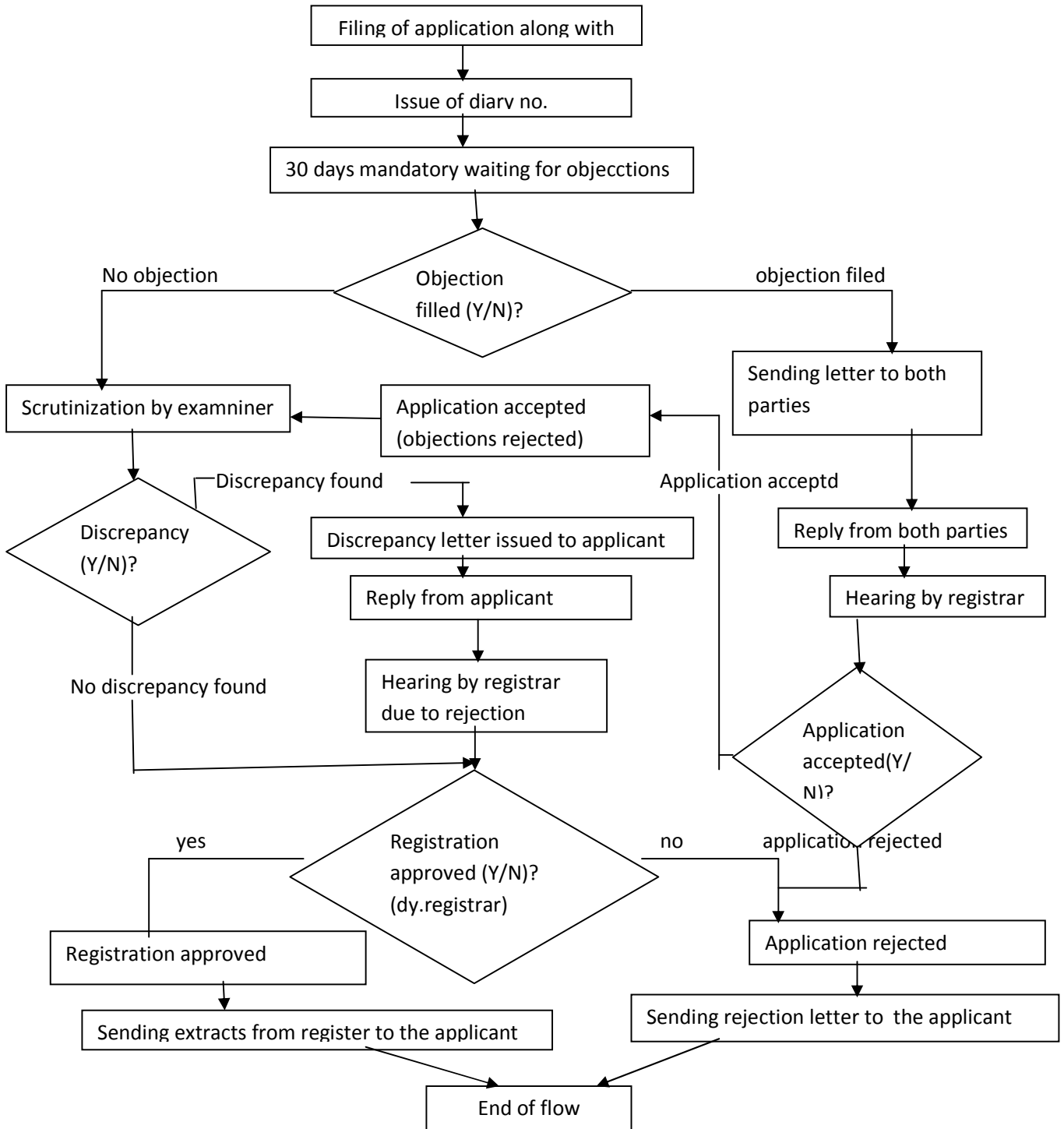
The procedure for registration is as follows:

- Application for registration is to be made on as prescribed in the first schedule to the Rules;
- Separate applications should be made for registration of each work;
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ; and
- The applications should be signed by the applicant or the advocate in whose favor a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.

Time for Processing Application

After one files the application and receives diary number, one has to wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against the claim that particular work is created by applicant.

Copyright registration workflow



Scope and Extent of Copyright Registration

Both published and unpublished works can be registered. Copyright in works published before January 21, 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Three copies of published work may be sent along with the application.

If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee.

All kinds of literary and artistic works can be copyrighted; one can also file a copyright application for the website or other computer program. Computer Software or programme can be registered as a 'literary work'. As per Section 2 (o) of the Copyright Act, 1957 "literary work" includes computer programmes, tables and compilations, including computer databases.

s. no.	For an application for compulsory licence:	fee
1	For a license to republish a Literary, Dramatic, Musical or Artistic work, (Sections 31, 31A, 31B* and 32A)	`5,000/- per work
2	For a license to communicate an any work to the public by Broadcast (Section 31(1)(b))	`40,000/- per applicant/per sataton
3	For license to republish a Cinematograph Film (Section 31)	`15,000/- per work
4	For a license to republish a sound recording (Section 31)	`10,000/- per work
5	For a license to perform any work in public (Section 31)	`5,000/- per work
6	For a license to publish or communicate to the public the work or translation (Section 31A)	`5,000/- per work
7	For a license to publish any work in any format useful for person with disability (Section 31 B)	`2,000/- per work
8	For an application for a license to produce and publish a translation of a Literary or Dramatic work in any Language (Section 32 & 32-A)	` 5,000/- per work
9	For an application for change in particulars of copyright entered in the Register of Copyrights in respect of a: (a) Literary, Dramatic, Musical or Artistic work (b) Provided that in respect of a literary or Artistic work capable of being used in relation to any goods (Section 45)	(a) `200/- per work (b) `1,000/- per work
10.	For an application for registration of Copyright in a Cinematograph Film (Section 45)	` 5,000/- per work

PATENT

Patent filing has become increasingly popular in India due to the rising intellectual property rights awareness and Startup India Action Plan. In the Startup India Action Plan, eligible startups would receive an 80% rebate in patent filing fee to provide a boost to patent registered by Indian companies.

Filing Patent Application

The following is a list containing all documents that must be filed for obtaining patent registration:

- Patent application in Form-1.
- Complete specification in Form-2 within 12 months of filing of provisional specification.
- Declaration as to inventorship in Form 5 for applications with complete specification or a convention application or a PCT application designating India. Form-5 or Declaration as to inventorship can be filed within one month from the date of filing of application, if a request is made to the Controller in Form-4.
- All patent applications must bear the signature of the applicant or authorized person or Patent Attorney along with name and date. Power of authority in Form-26, if patent application is being filed by a Patent Agent.
- Such other.

DESIGN

The objective of The Designs Rules, 2001 is to enable protection of newly created designs applying to particular articles manufactured by the industrial process. It refers in legal definition to:

- Any mode or principle of construction or anything which is in substance merely mechanical device;
- Any trademark which is a registered trade mark indicating connection in course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark;
- Any trademark which denotes the ownership of moveable property belonging to particular person; and
- Any trademark which is a painting, sculpture, drawing, an engraving or photograph or any work of architecture or any other work of artistic craftsmanship.

Design Registration

An application for the registration of design should be submitted along with four specimen copies of the design.

The particulars of the application and the representation of the article may be published in the Official Gazette.

Documents Required for Design Registration

- A certified copy of the original or certified copies of extracts from disclaimers
- Affidavits
- Declarations and
- Other public documents can be made available on payment of a fee.

The affidavits should be in paragraph form and should contain a declaration of truth and verifiability.

The costs involved in the design registration process may be regulated by the Controller according to the Fourth Schedule.

General Guidelines

The design should be registered with all essential documents including reciprocity date and maintained on diskette and floppy or any other master folder. Any request for alteration of address should be made in Form 22. Under the Rule 33, details of the name, address and nationality of the person entitled should be recorded.

RBI

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act that is engaged in the business of loans and advances, receiving deposits (some NBFC's only), acquisition of stocks or shares, leasing, hire-purchase, insurance business, chit business. Therefore, NBFCs lend and take deposits similar to banks; however there are a few differences a) NBFC cannot accept demand deposits, NBFCs cannot issue cheques drawn on itself and NBFC depositors are not covered by the Deposit Insurance and Credit Guarantee Corporation.

Requirement of NBFC License with RBI

Principal business of financial activity 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 percent of the gross income. A company which fulfills both these criteria must have NBFC license.

Exception

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

Financial Companies exempt NBFC License

The following types of entities that are involved in the principal business of financial activity do not require

NBFC License:

- Housing Finance Companies
- Insurance Companies
- Stock Broking
- Merchant Banking Companies
- Venture Capital Companies
- Companies that run Collective Investment Schemes
- Mutual Funds
- Nidhi Companies
- Chit Fund Companies

Requirement for Obtaining NBFC License

To apply and obtain NBFC License, the following are the basic requirements:

- A Company Registered in India (Private Limited Company or Limited Company);

- The company must have minimum Net Owned Fund of Rs.200 lakhs.

Calculating Net Owned Funds as per RBI Definition
Net Owned Funds Formula

Net owned Fund will consist of paid up equity capital, free reserves, balance in share premium account and capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets. From the aggregate of items will be deducted accumulated loss balance and book value of intangible assets, if any, to arrive at owned funds.

Further, investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above will be deducted to arrive at the Net Owned Fund.

Types of NBFC License

Asset Finance Company(AFC)- its principal business the financing of physical assets such as automobiles, tractors, lathe machines

Investment Company: its principal business the acquisition of securities (shares / stocks / bonds /other financial securities).

Loan Company: its principal business the providing of finance whether by making loans or advances

Infrastructure Finance Company: Infrastructure Finance Company is a non-banking finance company that deploys at least 75 per cent of its total assets in infrastructure loans, has a minimum Net Owned Funds of Rs. 300 crore, maintains a minimum credit rating of 'A 'or equivalent with a Capital to Risk Assets Ratio of 15%.

Systemically Important Core Investment Company: an NBFC with an asset size of over Rs.100 crores and accepts deposits, involved in the business of acquisition of shares and securities which satisfies certain conditions.

Infrastructure Debt Fund: Infrastructure Debt Fund is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects with minimum 5 year maturity.

Non-Banking Financial Company:

NBFC Factor:

Applying for NBFC License

The application for NBFC License must be submitted online and offline with the necessary documents to the Regional Office of the Reserve Bank of India. The following are the documents that need to be submitted for NBFC License:

- Information about the management
- Certified copies of Certificate of Incorporation
- Certified copies of up-to-date Memorandum and Articles of Association
- Copy of PAN/CIN allotted to the company.

- Directors' profile, separately filled up and signed by each director.
- Certificate from the respective NBFC/s where the Directors have gained NBFC experience.
- CIBIL Data pertaining to Directors of the company
- Certified copy of Board resolution for formulation of "Fair Practices Code".
- Statutory Auditors Certificate certifying that the company is not carrying on any NBFC activity.
- Statutory Auditors Certificate certifying net owned fund as on date of the application.
- Such other

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:

1. Save as hereinafter provided, no company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank
2. Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business 11 [in India], shall apply in writing to the Reserve Bank for a license under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a license in pursuance of 55[this section] or is by notice in writing informed by the Reserve Bank that a license cannot be granted to it.

3. Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:-
 - 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 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;
 - Such other

3A. Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company and comply all the provisions of this Act applicable to banking companies incorporated outside India.]

4. The Reserve Bank may cancel a license granted to a banking company under this section:
 - I. if the company ceases to carry on banking business in India; or
 - II. if the company at any time fails to comply with any of the conditions imposed upon it under subsection (1); or
 - III. if at any time, any of the conditions referred to in sub-section (3) 15 [and sub-section (3A)] is not fulfilled:

5. Any banking company aggrieved by the decision of the Reserve Bank canceling a license under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.
6. The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.

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.

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
- 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

To facilitate the regulatory regime of insurance business in India, IRDA is authorized to grant some licenses and issue registration for setting up insurance business in India. This procedure of grant of licenses and registrations is listed in following functionalities of IRDA

1. Granting of license to companies to start insurance business.
2. Approval of insurance product.
3. Appointment of different insurance intermediary.
4. Investing the insurance premium.
5. Accounting & audit.
6. Miscellaneous important provisions of Insurance Act.

These regulations were not issued in the above sequence but a logic has to be followed that-

- firstly the insurance company will come into existence,
- secondly the insurance product will be design and developed,
- thirdly the manpower is required to sell the product,
- fourthly the premium received by the insurance companies is to be invested,
- fifthly the accounts are to be maintained and lastly, various provisions.

Procedure of Granting of License to Companies to Start Insurance Business (Read with Amendments of 2015 placed below)

No person can carry on Insurance business unless & until he has obtained a certificate from the Authority for a particular class of Insurance business and obtain a fresh certificate within 3 months from the date of commencement of this Act or before such date as fixed by the Govt.

Even those insurers for whom the registration was not necessary before the commencement of this Act will require the registration certificate.

To get the registration certificate the following procedure is to be followed:

Every application in the prescribed form (IRDA/R1) 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.

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 prescribed form (IRDA/R2) which should be accompanied with then following documents:—

1. Every Insurance shall deposit in cash or in approved securities or partially in cash or partially in approved securities as per details given below: -
 - (i) In case of Life Insurance business, a sum equivalent to 1% of his total gross premium written in India in any financial year commencing after the 31st day of March 2000 not exceeding rupees ten crores (Rs.10 crores).
 - (ii) In the case of General Insurance business a sum equivalent to 3% of his total gross premium written in India in any financial year commencing after 31/3/ 2000 not exceeding rupees ten crores (Rs.10 crores).
 - (iii) In case of reinsurance business, a sum of rupees twenty crores (Rs.20 crores).
 - (iv) If the business is to be done in marine Insurance only & relates exclusively to country craft or its cargo or both the amount to be deposited Rs.1,00,000/- (Rs.1 lakh) only.
 - (v) A certificate from the Reserve Bank of India showing the amount deposited.
2. A declaration verified by an affidavit from the “Principal Officer” that the equity capital of the company has been complied with.
3. A certified copy of the published prospects and of the standard policy forms of the insurer.
4. Statement of assured rate, advantages, terms & conditions to be offered in connection with Insurance policies.
5. In the case of the business the certificate from the actuary that such rates are workable & sound.
6. The receipt of deposit of Rs. 50,000/- for each class of business.
7. If there is any foreign partner, a certified copy of Memorandum of understanding
8. Any other document as desired by the Authority after scrutiny the application.
 - 2A) If on the receipt of an application for registration and the authority is satisfied that
 - (a) The financial condition & the general character of management of the applicant are sound.
 - (b) The volume of business likely to be available to & the capital structure & earning prospects of the applicant will be adequate.
 - (c) The interest of the general public will be served if the certificate of registration is granted to the applicant then the certificate of registration is granted.

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.

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; or
- 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; or
- If the insurer is in liquidation or is adjudged an insolvent; or
- If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer; or
- 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 acts
- 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
- If the insurer carries on any business other than insurance business
- If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority
- If the insurer makes a default in complying with Companies Act, or the LIC Act, or the GIC Act or the Foreign Exchange Management Act, 2000.

The Authority may, after the expiry of six months from the date on which the cancellation order takes effect, apply to the Court for an order to wind up the insurance company.

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
- That he has ceased to carry on any business other than insurance business

In India, the telecom market and business thereunder 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.

OBJECTIVE OF TELECOM

- TRAI's mission is 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.
- One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

The directions, orders and regulations issued cover a wide range of subjects including tariff, interconnection and quality of service as well as governance of the Authority.

The TRAI Act was amended by an ordinance, effective from 24th January 2000, establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI.

TRAI Scope and Functions

This Act, along with the notification of the Government dated 9th January 2004, empowers TRAI to recommend conditions for entry of new telecom service providers as well as terms and conditions of license and ensure compliance of the terms and conditions of the license.

The Act also empowers TRAI to lay down the standards of quality of service and ensure compliance, specify the tariff policy and make recommendations regarding terms and conditions.

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.

OSP 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 and 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). Here we are looking at the process and procedure for obtaining OSP Registration in India.

OSP Registration Applicability

Service providers in India involved in providing services like tele-banking, tele-medicine, tele-education, teletrading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are required to obtain OSP Registration.

OSP Registration Requirement

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

OSP Registration Compliance

Once an OSP Registration is approved, the license is valid for a period of 20 years – unless otherwise expressly mentioned. The annual return for OSP License renewal must be submitted with 6 months of completion of financial year.

I & B

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.

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
- Administration of the Press and Registration of Books Act, 1867 in respect of newspapers.

Regulatory Regime of I & B

1. The Criminal Law Amendment Act, 1961 - Penal Provisions for publishing wrong Map of India
2. Penal Provision for Publishing Wrong Map of India
3. Press Council Act, 1978
4. Registration of Newspapers (Central) Rules 1956

5. Press & Registration of Books Act 1867
6. The Parliamentary Proceedings (Protection of Publication) Act, 1977

Regulating and Certification Head under I & B

1. 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 Licence Around The World
- Broadcasting Authority of India 1977

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)

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

Eligibility apply for Udyog Aadhar/MSME registration

MSME registration or Udyog Aadhaar can be obtained by any type of business entity. 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 can obtain MSME registration in India. Small businesses having MSME registration enjoy various benefits under the Micro, Small and Medium Enterprises Development Act, 2006. Hence, it is recommended that all small businesses obtain MSME registration or Udyog Aadhaar after starting up.

Criteria for applying for Udyog Aadhar/MSME Registration

The following criteria as per the MSMED Act, 2006 is eligible to obtain MSME registration or Udyog Aadhaar:

In case of entities engaged in manufacturing or production of goods:

- Micro enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees twenty five lakhs.
- Small enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees five crores but also more than rupees twenty five lakhs.
- Medium enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees ten crores but also more than rupees five crores.

In case of entities engaged in providing or rendering of services:

- Micro enterprise: Any entity wherein the investment in equipment does not exceed rupees ten lakhs.
- Small enterprise: Any entity wherein the investment in equipment does not exceed rupees two crores but also more than rupees ten lakhs.
- Medium enterprise: Any entity wherein the investment in equipment does not exceed rupees five crores but also more than rupees two crores.

Stage to apply for MSME registration

Obtaining MSME registration or Udyog Aadhaar is not mandatory and is at the sole discretion of the Entrepreneur. However, it is recommended that most businesses obtain MSME registration right after registration to enjoy various benefits like protection against delayed payments under the MSMED Act.

Udyog Aadhar Memorandum

This is a registration available for entrepreneurs who want to start and operate a small business – micro, small and medium enterprises. The eligibility criteria for obtaining Udyog Aadhaar registration is based on the investment in plant & machinery made by a manufacturing concern or investment in equipment made by a service provider

Industrial License

The Industrial (Development and Regulations) Act 1951, popularly called as the IDRA, entitles the manufacturing sectors to observe certain formalities.

At present, most of the industries are exempted from having a licence; instead, they are only required to file an Industrial Entrepreneur Memorandum.

There are a few sectors which ought to have a license before commencing operations or before starting productions as such.

Industrial licenses are regulated under the Industries (Development and Regulation) Act 1951 made by the Central Government. At present, industrial license is required only for the following:

1. Industries retained under compulsory licensing
2. Manufacture of items reserved for small scale sector by larger units
3. When the proposed location attracts locational restriction

Compulsory Licensing

Industrial Licensing was also abolished for all except short list of 18 industries in New Industrial Policy 1991. This number was further pruned to six industries. As in 2015, only five industries were under compulsory licensing mainly on account of environmental, safety and strategic considerations. They are:

1. Distillation and brewing of alcoholic drinks
2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
3. Electronic Aerospace and defense equipment: all types.
4. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.
5. Specified Hazardous chemicals i.e. (i) Hydrocyanic acid and its derivatives, (ii) Phosgene and its derivatives and (iii) Isocyanates & diisocyanates of hydrocarbon, not elsewhere specified (example Methyl isocyanate)

Small Scale Sector

Setting up a manufacturing industry in certain sectors is reserved for micro or small enterprises (as defined under the Micro, Small and Medium Enterprises Act, 2006). If any other entity intends to set up a manufacturing unit in such a sector, it will be required to obtain an industrial license.

Policy Relating to Small Scale Undertakings

- An industrial undertaking is defined as a small scale unit if the investment in fixed assets in plant and machinery does not exceed Rs 10 million. Small scale units are also free from locational restrictions. However, a small scale unit is not permitted more than 24 per cent equity in its paid up capital from any industrial undertaking either foreign or domestic.
- It is mandatory for the non-small scale unit to undertake minimum export obligation of 50 per cent.
- A small scale unit manufacturing small scale reserved item(s), on exceeding the small scale investment ceiling in plant and machinery by virtue of natural growth, needs to apply for and obtain a Carry-on-Business (COB) License.
- It is possible that a chemical or a by-product recoverable through pollution control measures is reserved for the small scale sector.

Recent amendment to Industrial Licensing Rule

Earlier, large industries that manufactured items that were exclusively reserved for Micro, Small, and Medium Enterprises (MSME) also needed to obtain an industrial license. MSMEs were previously known

as Small Scale Industry (SSI). The provision was aimed at protecting indigenous manufacturers from unequal competition with large scale industries.

Large industries are now permitted to manufacture items such as – bread, wood, firework, pickles and chutneys, mustard oil, groundnut oil, steel chairs and tables, padlocks, stainless steel and aluminum utensils, without obtaining an industrial license.

Locational Restrictions

Setting up any industry within 25 kilometers of a city which has a population of 10 lakhs requires an industrial license, unless:

- (a) If the unit is located in an area specifically designated as an “industrial area”,
- (b) Or in the case of industries in the electronics sector, computer software, printing or any other Industry which is notified as a “non-polluting industry” by the government.

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.

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. “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.

Meaning of IEM

Industrial Entrepreneurs Memorandum (IEM) is an application for acknowledgment of unit.

Eligibility for getting IEM

The large scale industry having investment of more than Rs. 10 crore in manufacturing sector and more than Rs. 5 crore in service sector

Cases requiring IEM/ LOI

The promoter can file IEM in following categories:

- To set up a new industrial undertaking,
- To effect substantial expansion of the industrial undertaking,
- To manufacture a new article
- To carry on business of existing SSI units after graduating into large scale industry.

Procedure for filling of IEM

The promoter has to make an application to Government. of India in prescribed format along with Demand Draft of Rs. 1000/- in the name of Secretariat for Industrial Assistance (SIA), New Delhi with six copies.

Steps Post-Filling IEM

After filling IEM to Govt. of India, Govt. of India gives acknowledgment receipt to the applicant and informs the Directorate of Industries. After receipt of acknowledgment, applicant can take further initiatives step to set up the unit.

Role of Directorate of Industries

Secretariat for Industrial Assistance (SIA), New Delhi circulates office memorandum enclosing one copy of application for the necessary comments from Directorate of Industries. The Directorate of Industries offers the comments to the GOI in respect of location after getting appropriate documents/ certificate from the promoters.

State Level Approval from the respective State Industrial Department

Apart from the registration and licences listed above, one has to seek state level approval(s) whatever is applicable on one's business from the respective State Industrial Department.

As per WBPCB guidelines, industrial units are classified under 5 categories, viz. special red, red, orange, green and exempted category.

For Exempted Category - no pollution clearance certificate is needed.

For other categories - details are given below –

CATEGORY CERTIFICATE ISSUING AUTHORITY

Category	Certificate	Issuing authority
Special red	CEO AND COO	WBPCB
Red	CEO	WBPCB
Red	COO	WBPCB
Orange	CEO	DICs/Sub DICs
Orange	COO	DICs/Sub DICs/ WBPCB
Green	COE AND COO	DICs/Sub DICs

Green category of polluting industries

The industries can be permitted in any area with adequate pollution control measures subject to site clearance by local body authority.

Orange category of polluting industries

The industries can be permitted in all municipal areas other than CMC or HMC but within Industrial Estates in CMC or HMC area with adequate pollution control measures subject to condition that the site clearance should be obtained from Municipal authorities for setting up of new units.

Ordinary Red category of polluting industries

The industries can be permitted in Municipal areas falling under Calcutta Metropolitan area(CMA) These can however be set up beyond CMA with adequate pollution abatement system subject to site clearance by local bodies.

Special Red category of polluting industries

The industries can be permitted in Municipal areas falling under Calcutta Metropolitan Area (CMA). These are however be set up beyond CMA with adequate pollution abatement system subject to site clearance by local bodies.

The application forms of 'Consent to Establish' and 'Consent to Operate' for Micro & Small Scale Green Category industries will be available from District Industries Centres and file to DIC along with specific payment.

MAINTENANCE OF REGISTERS AND RECORDS

Register and Records required to be maintained by an enterprise

Introduction

The Companies Act, 2013 (the Act) and the rules framed there under (“the Rules”) lays down that every Company incorporated under the Act has to maintain Statutory Registers (“the Registers”).

Some important terms of maintaining registers and keeping records are as below:

- The Registers should be kept at the Registered Office of the Company.
- The Registers are inspection by Directors, Members, Creditors and by other persons.
- A Company is also required to provide the extracts from the Registers, if demanded by Directors, Members, Creditors and by other persons on payment of specified fees.
- Failure of the company to maintain statutory register could result in a fine of not less than Rs.1 lakh, which may extend to Rs.10 lakh. Further, the Officers of the company may also be punishable with imprisonment for a term which may extend to six months or with a fine not less than Rs.25 thousand which may extend to Rs.1 lakh.
- Hence, it is important for all the companies including private limited company or limited company or one person company incorporated in India to maintain statutory register.

List of Register and Records required to be maintained by an enterprise

- ❖ Statutory Registers to be maintained under Companies Act, 2013

S.no.	Form	Name of the register	Relevant section and rule
1	MGT-1	Register of Members	Section 88 (1) and Rule 3(1) of the Companies (Management and Administration) Rules, 2014
2	MGT-2	Register of Debenture Holders/ Other Securities Holders	Section 88 (1) and Rule 4 of the Companies (Management and Administration) Rules, 2014
3	MGT-3	Foreign Register of Members, Debenture holders, other security holders or beneficial owners residing outside India	Section 88(4) and Rule 7 of the Companies (Management and Administration) Rules, 2014
4	SH-2	Register of Renewed and Duplicate Share Certificate	Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014
5	SH-3	Register of Sweat Equity Shares	Section 54 and Rule 8(14) of the Companies (Share Capital and Debentures) Rules, 2014
6	SH-10	Register of Shares/Other Securities Bought Back	Section 68 and Rule 17 (12) of the Companies (Share Capital and Debentures) Rules, 2014
7	SH-6	Register of Employee Stock Option	Section 62 and Rule 12 (10)
8	CHG-7	Register of Charges	Section 85 and Rule 7 of the Companies

			(Registration of Charges) Rules, 2014
9	MBP-2	Register of Loans, Guarantee, Security And Acquisition Made By Company	Section 186 and Rule 12 of the Companies (Meeting of Board and its Powers) Rules, 2014

❖ Other Important Books and Registers

<ol style="list-style-type: none"> 1. Minutes Book <ul style="list-style-type: none"> • Board Meeting Minutes Book • General Meeting Minutes Book (i.e. AGM, EGM, Postal Ballot, Creditors Meetings, Debenture holders Meetings) 2. Books of Accounts/Financial Statements 3. Register of Directors Attendance at Board/Committee Meetings
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Financial Records required to be maintained by Enterprises

Records to be maintained by businesses can be broken up into four broad heads :

- Income Records
- Purchase Records
- Cash Records Banking Records

Income Records

To be able to accurately state income is important due to several reasons.

Ordinarily invoices must contain the following information heads :

- Name of issuing business
- Address of business
- Date of issue
- Serial No
- CIN (company identification no) if business is being run by a company
- Service tax, VAT registration numbers (if applicable)
- Description of goods, services as well as prices
- Details of taxes levied, if any
- Total invoice Value

Expenses and Purchase Records

To be able to determine your business's profitability it is important that you should record and retain details of expenses and purchases made by your business.

Details include:

- Invoices received
- Credit card statements
- Receipts/ counterfoils
- Cheque book counterfoils
- Cash vouchers

- Salary information
- Credit Documents

Banking Records

Bank records offer great insight into the transaction undertaken by a business. To accomplish this a business must maintain up to date records of:

- Bank account statements along with reconciliations
- Cheque books, with completed counterfoils
- Cheque/ Cash Deposit Counterfoils

Cash Records

Despite all advances in banking technology and facilities, businesses must still undertake a large number of transactions in cash.

To be able to actively ascertain the exact amount of cash available, a business must maintain two principle documents:

- Cash collection register, to record and reconcile all collections made by the business in cash, and;
- Day books / Cash book to map the inward and outward movement of cash from the business

Place of Keeping the Records and Registers

Register shall be records at registered office and available for inspection at every working day between working hours.

Suggested Method of Keeping Statutory Registers

The companies have an option to keep all of their statutory registers together in a bound or loose-leaf folder or book.

Identifying laws applicable to various Industries and their initial compliances

Government initiated various flagship programs to boost the entrepreneurship environment in the country through various flagships including-

- Make in India
- Ease of Doing Business in India
- Skill India
- Digital India

to build the interest and ease among various domestic and overseas stake holders to set up and advance the entrepreneurship in India.

Business Structure

Business can be started in any of the following manner:-

- Proprietorship
- Partnership
- Limited Liability Company (LLP)
- Private/Public Limited Company

Legal implications for business types

Proprietorship

- No formal registration required
- Not recognised as a separate entity and promoter is personally responsible for all liabilities.
- Unlimited liability
- Can only have one Person
- Not transferable
- Taxed as individual, based on total income of proprietor
- No requirement for annual statutory meetings
- No requirement to file annual report with the Registrar of Companies.
- Income tax to be filed on the income of the proprietorship.
- Proprietorship's existence is dependent on proprietor.
- Foreigners are not allowed to be sole proprietors.

Partnership

- Registration is optional
- Not recognised as a separate entity and promoters are personally responsible for all liabilities.
- Unlimited liability
- Minimum of two persons required to start a Partnership
- Not transferable Partnership profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable
- No requirement for annual statutory meetings
- No requirement to file annual report with the Registrar of Companies.
- Income tax to be filed for the partnership.
- Partnership existence is dependent on partners. Can be dissolved at will or upon on the death of partner.

- Foreigners are not allowed to be part of a partnership.

Limited Liability Company (LLP)

- Has to be registered with the Ministry of Corporate Affairs under the LLP Act, 2008.
- Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP.
- Limited liability to the extent of contribution towards to the LLP.
- Minimum of two persons required to start a LLP.
- Ownership can be transferred.
- LLP profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable.
- No requirement for annual statutory meetings.
- Must file Annual Statement of Returns and Solvency and Annual Return with the Registrar every year.
- Tax returns must also be filed annually
- Existence not dependent on partners. Can be dissolved voluntarily or by order of the Regulatory Authorities.
- 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.

Private Limited Company

- Has to be registered with the Ministry of Corporate Affairs under the Companies Act, 2013.
- Is a separate legal entity. The promoters of the company are not personally liable towards the company.
- Limited Liability to the extent of share capital.
- Minimum of one person required to start a Private Limited Company.
- Ownership can be transferred by means of share transfer.
- Private Limited Company profits are taxed as per the slabs provided under Income Tax Act, 1961 plus surcharge and cess as applicable.
- Board and General Meetings should be conducted periodically.
- Must file Annual Statement of Returns and Solvency and Annual Return with the Registrar every year.
- Tax returns must also be filed annually.
- Existence not dependent on directors or shareholders.
- Can be dissolved voluntarily or by Regulatory Authorities.
- 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.

Various aspect in Setting up A Company

Incorporation

Formation of companies in India is governed by the Indian Companies Act, 2013.

Form of a Company

The entrepreneur should consider the form, and the liability pattern, before starting the registration pattern of the Companies in India.

An incorporated company may take one of the following three forms:-

- Private Company
 - A private company must have a minimum of two directors and two members.
 - A private company may be converted into a public company for raising capital from the public by completing certain legal formalities.
 - Restrictions on transfer of shares.
 - Limited number of members upto 200.
 - A private limited company enjoys greater flexibility, less legal formalities
 - The small shareholders body facilitates prompt decisions.

- Public Company
 - Public companies are subject to stricter legal formalities.
 - Free transferability of the shares.
 - Unlimited membership.
 - A public company must have a minimum of 7 members and 3 directors.
 - Shares of a listed public company can be traded on stock exchange.
 - Certain classes of public limited companies must have at least one third of the total number of directors as independent directors out of which one director has to be a woman director.

- One Person Company
 - One Person Company is in the nature of a private company which has only one person as its member/director.
 - The minimum number of directors for an OPC is also one.
 - OPC provides the option of limited personal liability of proprietors (as opposed to unlimited liability in sole proprietorship).
 - OPC is suitable for Small entrepreneurs with low risk taking capacity.
 - Businesses which currently run under the proprietorship model could get converted into OPC.

- Charter Documents of a Company
 - Memorandum of Association
 - Articles of Association

- Memorandum of Association
 - The MOA binds the area of operation of the company in respect to the objects mentioned therein.
 - 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 contains in following manner:-
 - The name of the proposed company suffixed with the words limited or private limited, as the case may be.
 - The State where the registered office of the company shall be situated.
 - The main objects for which the company is going to be incorporated.
 - The Authorised Capital etc.

- The MOA of a company can be modified post incorporation in accordance with the applicable provisions of the Companies Act.

Articles of Association

- The Articles of Association of a company contains regulations for the management of the company.
- This document is confined to the applicability of the provisions of the Companies Act, on private or public limited company, as the case may be.
- The AOA of a company can be modified post incorporation in accordance with the applicable provisions of the Companies Act.

Legal Formalities for Incorporation of a Company

- Pre-incorporation formalities
- Post incorporation formalities

Pre-incorporation formalities

- Obtaining Director's Identification Number ("DIN") and Digital Signature Certificates ("DSC") for the proposed directors of the company. by
- Filing of online application for the approval of name of the company.
- Drafting of the charter documents of the company i.e. Memorandum of Association (MOA) and Articles of Association (AOA).
- All the incorporation forms, shall be prepared and filed with the ROC for registration of company for the final step of the incorporation process and obtaining a certificate of incorporation of the company.

Post incorporation formalities

- Once the certificate of incorporation has been issued by ROC, the company becomes a separate legal entity in the eyes of laws.
- Requires certain basic registrations to initiate the business which includes:-
 - filing of application for obtaining a permanent account number;
 - tax deduction account number on the name of the company and
 - any other business specific registrations from the relevant government authorities i.e. Import –Export Code Number in case of company carrying out the business of import or export.
- Every company shall be required to carry out certain compliances, for their day to day activities which includes;
 - holding of first board meeting immediately after incorporation,
 - carrying out the annual general meetings every year,
 - maintaining all the secretarial records at the registered office of the company, maintaining of statutory registers, minutes books etc.

Procedure for Registration of a Company under Companies Act, 2013

These are four major steps:

- Acquiring Digital Signature Certificate (DSC)
- Acquiring Director Identification Number (DIN)
- Filing an e-form or New user registration

- Incorporate the company

Acquire Digital Signature Certificate (DSC)

- In order to ensure the security or authenticity of documents filed electronically the Information Technology Act 2000 demands a valid digital signature on the documents submitted electronically.
- This is the only and safest way that one can submit their documents electronically.
- The digital signature certificate should be acquired by only those agencies which are appointed by the controller of certification agencies (CCA).
- like TCS, IDBRT, MTNL, SAFESCRYPT, NIC, n-CODE Solutions etc.

Acquiring Director Identification Number (DIN)

- Each director of the company should obtain their identification number. Acquiring a DIN is compulsory for every director.
- To get DIN one needs to file an e-Form DIN-1.
- The director can intimate their company about DIN by using DIN-2 Form.
- The company should intimate the ROC about all director's DIN through DIN-3 Form.
- If there is any change in DIN then director should intimate this change by submitting the e-Form DIN-4 Form.

New user registration

- Have a registered user account on MCA Portal for filing an e-Form, for online fee payment, for different transactions as registered and business user.
- Creating an account is totally free of cost.

Incorporate the company

This is the final major step in a registration of a company, which includes:-

- incorporating company name
- Registering the office address
- notice of situation of office
- notice for appointment of company directors, manager and secretary.
- regarding the take and pay for their qualification shares.

Procedure for approval of the proposed company name

- An application in Form-1A needs to be filed with the Registrar of Companies (ROC) of the state in which the Registered Office of the proposed Company is to be situated.
- In around 10 days, the ROC will inform about approval or objections.
- If there are any objections then ROC will suggest with some available names and let the company choose among them.
- If the company name is approved then one will receive a formal letter regarding the confirmation of the same.

Check-List of Document before Submission

- DIN of all those directors of a proposed company.
- DSC – Digital Signature Certificate

- Original copy of the formal letter issued by ROC regarding availability of Company name.
- Form-1 for incorporation of a company.
- Form-18 for situation or address of the proposed company.
- Form-32 for particulars of proposed directors, managers and secretary.

Check list for incorporation as One Person Company/ Small Company/ Private Limited Company/ Public Limited Company

- Obtain Digital Signature Certificate [DSC] for the proposed Director(s)
- Obtain Director Identification Number [DIN] for the proposed director(s).
- Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name.
- Draft MOA & AOA
- Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.
- Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.
- Receipt of Certificate of Registration/Incorporation from ROC.

Check list for incorporation as Limited Liability Partnership

- Deciding the Partners and Designated Partners
- To obtain Director Identification Number (DIN) & Digital Signature Certificate
- To Apply for Name of LLP (LLP-1)
- After Name Approval file form 2 and Form 18 to the ROC
- After that File LLP agreement (i.e. Form-3) and Partners' details (i.e. Form-4)

Check list for Register as Partnership Firm

File Form A along with following documents for Registration of Firm:-

- Duly filled specimen of affidavit
- Certified true copy of the partnership deed
- Ownership proof of the principal place of business or rental/lease agreement.

Check list for Register as Sole Proprietorship

- Decide on a Business Name
- Search Availability of Name(s)
- Register Name
- Obtain Business Licenses and Permits from:-
 - The Federal/Central Government
 - The State Government
 - The Local Government

Check List of Annual Compliances for One Person Company/ Small Company

- Receipt of MBP-1
- Receipt of DIR-8
- Board Meeting:-OPC shall hold a minimum number of Two Meetings of its Board of Directors every year in such a manner that Minimum gap between both the Meetings, should be not less than 90 (Ninety) days.
- Appointment of auditor

- File form ADT-1 of Auditor appointment
- Annual Filing

Check List of Annual Compliances for Private Company other than Small Company

- Receipt of MBP-1
- Receipt of DIR-8
- Board Meeting:-
 - Every Company shall hold a minimum number of 4 Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 days.
 - Company should hold at least 1 Board Meeting every quarter of calendar year.
- Holding AGM every year
- Adoption of Financial Account & Board Report
- Appointment of Auditor
- File form ADT-1 of Auditor appointment
- Maintenance of Statutory Registers
- Annual Filing

Check List of Annual Compliances for Unlisted Public Company

- Receipt of MBP-1
- Receipt of DIR-8
- Board Meeting:-
 - Every Company shall hold a minimum number of 4 Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 days.
 - Company should hold at least 1 Board Meeting every quarter of calendar year.
- Holding AGM every year
- Adoption of Financial Account & Board Report
- Filing of Adoption of Financial Account & Board Report in Form MGT-14
- Appointment of Auditor
- File form ADT-1 of Auditor appointment
- Maintenance of Statutory Registers
- Annual Filing
- Certification of Annual Return by PCS if paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more.
- E-Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor.
- Following Companies are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3):-
 - All Listed Companies
 - Every Public Company having;
 - Paid-Up Share Capital of Rs. 50 Crore or more; or
 - Every Public Company having a Turnover of Rs. 250 Crore or more
- Constitution of Audit Committee if applicable
- Constitution of Nomination Committee

Check List of Annual Compliances for Listed Public Company

- Receipt of MBP-1

- Receipt of DIR-8
- Board Meeting:-
 - Every Company shall hold a minimum number of 4 Meetings of its Board of Directors every year in such a manner that maximum gap between two Meetings should not be more than 120 days.
 - Company should hold at least 1 Board Meeting every quarter of calendar year.
- Providing E-Voting Facilities to shareholders
- Holding AGM every year
- Filing Report of AGM
- Adoption of Financial Account & Board Report
- Filing of Adoption of Financial Account & Board Report in Form MGT-14
- Appointment of Auditor
- File form ADT-1 of Auditor appointment
- Filing return for change in Stake of Promoters
- Maintenance of Statutory Registers
- Filing of Annual accounts in XBRL Form
- Certification of Annual Return by PCS if paid up share capital of 10 Crore or more or turnover of Rs. 50 crore or more.
- E-Form filing for Acceptance of Deposit, Appointment of KMP, Appointment of independent director, Appointment of Women director, Appointment of internal auditor, Appointment of Cost Auditor, Appointment of Secretarial auditor
- Following Companies are required to get Secretarial Audit of the Company from the Practicing Company Secretary and report of PCS will be part of Directors' Report (MR-3).
 - All Listed Companies
 - Every Public Company having;
 - Paid-Up Share Capital of Rs. 50 Crore or more; or
 - Every Public Company having a Turnover of Rs. 250 Crore or more
- Constitution of Audit Committee if applicable.
- Constitution of Nomination Committee
- Compliances prescribed in SEBI (LODR) Regulation, 2015 are also required to be complied by the listed companies.

Check List of Annual Compliances for LLP

- Maintenance of Minute Book
- File E-Form 4 for any change of Partner and designated Partner
- Supplementary LLP agreement require to file in E-form 3
- Holding General Meeting every year
- Statement of Account and solvency is required to be filed annually in E-form 8
- Annual return should be filed with ROC in E-form 11
- File Income tax Return:
 - LLP whose accounts are not required to be audited under any Law:- 31st July of every year
 - LLP whose accounts are subject to Audit under any Law: - 30th September of every year or such other date as may be notified by the Income Tax authorities.

Check List of Annual Compliances for Sole Proprietorship

- Proprietorship will have to file their annual tax return with the Income Tax Department.

- Other tax filings like GST filing may be necessary from time to time, based on the business activity performed.
- Annual report or accounts need not be filed with the Ministry of Corporate Affairs, which is required for Limited Liability Partnerships and Companies.

Check List of Annual Compliances for Partnership

- Intimation of Change in Principal Place/ nature of business /firm name in Form B.
- Intimation of Change in the name (person/limited company and address of the partner) in Form D.
- Intimation of Change in Constitution-Admission/Retirement/Dissolution/ Death of Partner/minor partner in Form E.

Applying for Business Licenses

- 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 registrar.
- 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. 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, Prevention of Food Adulteration Act, Health Trade License etc.

Taxation and Accounting Laws

- It is good hygiene to maintain proper books of accounts and audit them from time to time in order to ensure that relevant accounting and taxation rules are adhered to.
- Taxes are part and parcel of every business.
- A start-up can avail income tax exemption for a period of 3 years as well as tax exemptions from capital gains and investments above Fair Market Value.
- The conditions that start-ups need to qualify in order to avail these exemptions are:
 - The start-up should not be more than 7 years old (or 10 years for biotech) from the date of incorporation.
 - Is incorporated as a Registered Partnership, Limited Liability Company or Private Limited Company.
 - Turnover in any year should not have exceeded 25 crores.
 - The start-up should not have been formed by splitting or reconstructing an existing business.

Adhering to Labour Laws

Some major labour laws applicable on organisation as per its structure 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
- The Plantation Labour Act, 1951
- The Mines Act, 1952
- The Shops and Establishments Act, 1953
- The Motor Transport Workers Act, 1961
- Labour Welfare Funds for Social Assistance to Workers
 - The Mica Mines Labour Welfare Fund Act, 1946
 - The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
 - The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976
 - The Beedi Workers Welfare Fund Act, 1976
 - The Cine Workers Welfare Fund Act, 1981

Adherence to Laws relating to Intellectual Property

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.

Ensuring Effective Contract Management

- 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.
- In the early stage of operations and post operation too, there are various contracts that a company has to abode, therefore, the adherence to contract law is one of the most important requirement for a business.

Winding up the business

- Closing a company is a difficult call to make for any entrepreneur.
- When a company decides to shut down, all the stakeholders from vendors to employees to customers and investors need to be informed in advance and the whole process must be properly planned and executed in order to make the easy exit to everyone.
- It is the last stage of company in which its existence for past several years is dissolved and all its assets are used to pay off the creditors, shareholders and other liabilities.

As per Section 270 of the Companies Act, 2013, the procedure for winding up of a company can be initiated:-

- By the Tribunal (Compulsory winding up)
- By the Company itself (Voluntary winding up)

Winding Up of a Company by a Tribunal

A company can be wound up by a tribunal in the below mentioned circumstances:

- When the company is unable to pay its debts
- If the company has by special resolution resolved that the company be wound up by the tribunal.

- If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighbouring countries.
- If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.
- If the tribunal by any means finds that it is just & equitable that the company should be wound up.
- If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.

Filing of Winding up Petition

- As per Section 272 of Companies Act, 2013, a winding up petition is to be submitted in 3 sets by the following persons:-
 - The company
 - The creditors
 - Any contributory or contributories
 - By the CG/SG
 - By the registrar of any person authorized by CG for that purpose
- At the time of filing petition, it shall be accompanied with the statement of Affairs in form no 4.
- That petition shall state the facts up to a specific date which shall not more than 15 days prior to the date of making the statement.
- After preparing the statement it shall be certified by a Practicing Professional. This petition shall be advertised not less than 14 days before the date fixed for hearing in both of the newspapers English and regional language, where registered office is located.

Final Order and its Content

- The tribunal after hearing the petition has the power
 - to dismiss it or
 - to make an interim order as it think appropriate or
 - it can appoint the provisional liquidator of the company till the passing of winding up order.
- An order for winding up is given in form 11.

Voluntary Winding Up of a Company

The company can be wound up voluntarily by the mutual decision of members of the company, if:

- The Company passes a Special Resolution stating about the winding up of the company.
- The Company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

Procedure for Voluntary Winding Up

Step 1 - Conduct a board meeting and pass a resolution with a declaration that company has no debt or it will be able to pay its debt after utilizing all the proceeds from sale of its assets.

Step 2 - Issues notices in writing for calling of a General Meeting proposing the resolution along with the explanatory statement.

- Step 3 -In General Meeting pass the ordinary resolution for the purpose of winding up by ordinary majority or special resolution by 3/4th majority. The winding up shall be started from the date of passing the resolution.
- Step 4 - Conduct a meeting of creditors after passing the resolution, if majority creditors are of the opinion that winding up of the company is beneficial for all parties then company can be wound up voluntarily.
- Step 5 - Within 10 days of passing the resolution, file a notice with the registrar for appointment of liquidator.
- Step 6 -Within 14 days of passing such resolution, give a notice of the resolution in the official gazette and also advertise in a newspaper.
- Step 7 - Within 30 days of General meeting, file certified copies of ordinary or special resolution passed in general meeting.
- Step 8 -Wind up the affairs of the company and prepare the liquidators account and get the same audited.
- Step 9 - Conduct a General Meeting of the company.
- Step 10 -In that General Meeting pass a special resolution for disposal of books and all necessary documents of the company, when the affairs of the company are totally wound up and it is about to dissolve.
- Step 11 - Within 15 days of final General Meeting of the company, submit a copy of accounts and file an application to the tribunal for passing an order for dissolution.
- Step 12 - If the tribunal is of the opinion that the accounts are in order and all the necessary compliances have been fulfilled, the tribunal shall pass an order for dissolving the company within 60 days of receiving such application.
- Step 13 - The appointed liquidator would then file a copy of order with the registrar.
- Step 14 - After receiving the order passed by tribunal, the registrar then publish a notice in the official Gazette declaring that the company is dissolved.

INTELLECTUAL PROPERTY LAWS

(PROVISIONS APPLICABLE FOR SETTING UP OF BUSSINESS)

INTRODUCTION

Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic work, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories: industrial property, which include inventions (patents), trademarks, industrial designs, and geographic indications of source; and copyright, which includes literary and artistic works such as novels, poems and plays etc.

The most noticeable difference between intellectual property and other forms of property, however, is that intellectual property is intangible.

INTELLECTUAL PROPERTY *Vis-à-vis* BUSINESS: A RATIONALE OF RALATIVITY

Every business strives to create new and improved products (goods and services) that will deliver greater value to users and customers than the products offered by competitions.

All businesses, especially those which are already successful, nowadays have to rely on the effective use of one or more types of intellectual property to gain and maintain a substantial competitive edge in the marketplace.

IP Protection for Businesses: A Snapshot

Trademarks

A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors.

Points To Consider While Adopting A Trademark

Any startup needs to be cautious in selecting its trade name, brands, logos. You must do a proper due diligence before adopting a trademark. The trademarks can be broadly classified into following five categories:

- Generic
 - Descriptive
 - Suggestive
 - Arbitrary
 - Invented/Coined
1. Generic marks means using the name of the product for the product, like "Salt" for salt.
 2. Descriptive marks mean the mark describing the characteristic of the products, like using the mark "Fair" for the fairness creams.

3. Suggestive marks mean the mark suggesting the characteristic of the products, like "Habitat" for home furnishings products.
4. Arbitrary marks means mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like "Blackberry" for phones.
5. The invented/ coined marks means coining a new word which has no dictionary meaning, like "Adidas".

India follows the NICE Classification of Goods and Services for the purpose of registration of trademarks. The NICE Classification groups products into 45 classes (classes 1-34 include goods and classes 35-45 include services).

While adopting any mark, It is important to recognizes the concept of the "Well-known Trademark" and the principle of "Trans-border Reputation".

Examples of well-known trademarks are Google, Tata, Yahoo, Pepsi, Reliance, etc. Further, under the principle of "Trans-border Reputation", India has afforded protection to trademarks like Apple, Gillette, Whirlpool, Volvo, which despite having no physical presence in India, are protected on the basis of their trans-border reputation in India.

Enforcement of Trademark Rights

Trademarks can be protected under the statutory law, i.e., under the TM Act and the common law, i.e., under the remedy of passing off. If a person is using a similar mark for similar or related goods or services or is using a well-known mark, the other person can file a suit against that person for violation of the IP rights irrespective of the fact that the trademark is registered or not.

Registration of a trademark is not a pre-requisite in order to sustain a civil or criminal action against violation of trademarks in India.

The relief which a court may usually grant in a suit for infringement or passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings. It is pertinent to note that infringement of a trademark is also a cognizable offence and criminal proceedings can also be initiated against the infringers.

Geographical indication of Goods (Registration and Protection) Act; 1999

Introduction	The act seeks to provide for the registration and better protection of geographical indications relating to goods in India. Example of India Geographical indication are Darjeeling Tea, Kanchipuram Silk Saree, Alphonso Mango, Nagpur Orange etc
Geographical Indication	Geographical Indication means an indication which identifies such goods as agriculture goods, natural goods or manufacture goods as originating or manufacture in the territory of a country, or a region or locality in that territory where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origion
Goods	Goods means any agriculture, natural or manufactured goods of handicraft or of industry includes foodstuff.

Indication	It includes name, geographical or figurative representative or any combination of them conveying or suggesting the geographical origin of goods to which it applies.
Classification of Goods for the Purpose of Registration of GI	<ul style="list-style-type: none"> ➤ Goods under in accordance with the International Classification of goods may be classify for the purpose of registration of GI. ➤ All goods comprised in such class of goods as may be classified by a region or locality in that territory as the case may be the Registrar and in respect of a definite territory of a country.
Duration of registration of GI	The registration of a geographical indication shall be for a period of ten years but may be renewed from time to time in accordance with the provision of the Act.

The salient features of this legislation are as under:

- (a) Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
- (b) Registration of geographical indications of goods in specified classes.
- (c) Prohibition of registration of certain geographical indications.
- (d) Prohibition of assignment etc. of a geographical indication as it is public property.
- (e) Prohibition of registration of geographical indication as a trademark.

Designs Act; 2000


Definition of Design	Design means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or in both forms, by any industrial process or means, whether manual , mechanical or chemical , separate or combined , which in the finished article appeal to and are judged solely by the eye , but does not include any mode or principle or construction or any thing which is substance a mere mechanical device and does not include any trade mark.
Purpose	<ul style="list-style-type: none"> • Is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by industrial Process.
Application of Registration of Design	<ul style="list-style-type: none"> • The proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality can apply for registration of design to the Collector. • The design when registered shall be registered as of the date of the application of registration. • After the registration of design the collector shall publish the particular of design in prescribed manner and open for public inspection. • Hence grant the certificate of registration when it is registered.
Prohibited of registration	<ul style="list-style-type: none"> • Which is not new or original. • Which is not distinguishable from known designs or combination of known

of certain design	<p>design.</p> <ul style="list-style-type: none"> • Contains scandalous or obscene matter. •
Duration of Registration	<ul style="list-style-type: none"> • Registration of a design is initially ten years from the date of registration and where the claim to priority is allowed the duration is ten years from the priority date. • The initial period of registration may be extended by further period of 5 years on an application to the Controller before the expiry of the said initial period.
Copyright in Design	<ul style="list-style-type: none"> • Copyright means the exclusive right to apply a design to the article belonging to the class in which it is registered. The registration of a design confers upon the registered proprietor.
Piracy of Design	<ul style="list-style-type: none"> • It means the application of design or its imitation to any article belonging to class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. • Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of design.

The salient features of the Design Act, 2000 are as under:

- (a) Amplifying the scope of "prior publication".
- (b) Provision of identification of non-registrable designs.
- (c) Provision for substitution of applicant before registration of a design.
- (d) Substitution of Indian classification by internationally followed system of classification.
- (e) Provision for inclusion of a register to be maintained on computer as a Register of Designs.
- (f) Provision for restoration of lapsed design

Copyrights

Meaning of Copyright	<p>Copyright is an exclusive right to reproduce or authorize another to reproduce artistic, dramatic, literary, or musical words. It also extends to sound broadcasting and cinematographic films. Copyright protection is limited to author's particular expression of idea, process, and concept in a tangible medium. However, law permits fair use.</p> <p>To be copyright, a work must show certain minimum levels of creativity and originality. Copyright protection is not granted for an abstract idea nor can facts be copyrighted. Only author's manner of expressing the idea or compiling the facts can be copyrighted</p>
Symbol of Copyright	

Definition of Copyright .Sec. 14.

Section 14 of the Act defines the term “Copyright” as to mean the exclusive right to do or authorize the doing of the following acts in respect of a work or any ‘substantial part thereof , namely -	
In the case of literary, dramatic, or musical work:	<p>a. Reproducing the work in any material form which includes storing of it in any medium by electronic means:</p> <p>b. Issuing copies of the work to the public which are not already in circulation.</p> <p>c. Performing the work in public or communicating it to the public.</p> <p>d. Making any cinematographic film or sound recording in respect of the work.</p> <p>e. Making any translation or adaptation of the work. Further, any of the above-mentioned acts in relation to work can be done in the case of translation or adaptation of the work.</p>
In the case of a computer programme :	<p>a. To do any of the acts specified in respect of a literary, dramatic or musical work; and</p> <p>b. To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.</p>
In the case of an artistic work :	<p>a. Reproducing the work in any material including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;</p> <p>b. Communicating the work to the public;</p> <p>c. Issuing the copies of work to the public which are not already in existence;</p> <p>d. Including work in any cinematographic film;</p> <p>e. Making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.</p>
In the case of Cinematographic film and sound recording :	<p>a. Making a copy of the film including a photograph of any image or making any other sound recording embodying it;</p> <p>b. Selling or giving on hire or offer for sale’ or hirer any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasion; and</p> <p>c. Communicating the film/sound recording to the public.</p>

Classes of work for which Copyright protection is applicable

Copyright subsists throughout India in the following classes of works:

- Original literary,
- dramatic,
- musical work
- artistic works
- Cinematograph films

- Sound recordings

Protection to Authors

Copyright protects the rights of authors.

The following rights are protected:

- reproduce the work
- issue copies of the work to the public
- perform the work in public
- Communicate the work to the public.
- make cinematograph film or sound recording in respect of the work
- make any translation of the work
- make any adaptation of the work

Owners of copyrights

The following are the owners of the copyrights:

- In musical sound recordings: lyricist, composer, singer, musician and the person or company who produced the sound recording
- In works by journalists during their employment: in the absence of any agreement to the contrary, the proprietor
- In works produced for valuable consideration at the instance of another person: in the absence of any agreement to the contrary, the person at whose instance the work is produced

Assignment of Copyright

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially. The assignment must mention the rights, duration, the territorial limits of the assignment and the royalty payable.

If the assignment of Copyright does not contain any provision mentioned below	Then the following provisions prescribed by the Act will prevail
Where the assignee does not exercise the rights assigned to him within a period of one year from the date of assignment	Shall lapse after the expiry of the said period unless otherwise specified in the assignment
If the period of assignment is not stated	it shall be deemed to be five years from the date of assignment.
If the territorial extent of assignment of the rights is not specified	it shall be presumed to extend within the whole of India.

Term of the protection of Copyright

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

Exceptions to the use Copyright

In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work:

- for the purpose of research or private study,
- for criticism or review,
- for reporting current events,
- in connection with judicial proceeding,
- for the purpose of education and religious ceremonies

Application for registration of copyright

The procedure for registration is as follows:

- Application for registration is to be made in Form IV
- Separate applications should be made for registration of each work;
- The applications should be signed by the applicant

Administration of the Copyright Law

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding fourteen, other members for adjudicating certain kinds of copyright cases.

The Chairman of the Board is of the level of a judge of a High Court. The Board has the power to:

- hear appeals against the orders of the Registrar of Copyright;
- hear applications for rectification of entries in the Register of Copyrights;
- adjudicate upon disputes on assignment of copyright;

Rights of the Registrar of Copyrights

The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavit;
- any other matters which may be prescribed.

Infringement of Copyright

Copyright in a work is considered as infringed only if a substantial part is made use of unauthorized. What is 'substantial' varies from case to case. More often than not, it is a matter of quality rather than quantity.

For example, if a lyricist copy a very catching phrase from another lyricist’s song, there is likely to be infringement even if that phrase is very short.

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire;
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright ;
- Public exhibition of infringing copies by way of trade; and
- Importation of infringing copies into India.

A copyright owner can take legal action against any person who infringes the copyright and is entitled to remedies by way of injunctions, damages and accounts.

Penalty for infringement and the status of the infringing copies

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of `50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

PATENTS

Object	<ul style="list-style-type: none"> ▪ The objective and purpose of patent law is to encourage scientific research, new technology and industrial projects Grant to exclusive rights to own, use or sell the method or the product patented for a limited period stimulates new invention of commercial utility. ▪ The fundamental principle of Patents Act, 1970 is that the patent is granted for that invention which is new and useful, it must have the novelty and utility. It is essential for the validity of the patent that it must be the inventor’s own discovery as opposed to mere verification o what was already known before the date of patent. Patents Act, 1970 was made to protect Indian drugs, pharmaceuticals, chemical industries and Indian agriculture from foreign competition. ▪ In some cases only process can be patented but product cannot be patented i.e., in cases where only process is patentable, manufacture of that product by different process by another person is not an offence under the Patents Act, 1970.
Concept of Patent	<ul style="list-style-type: none"> ▪ Patent means a patent granted under the Patents Act, 1970. ▪ Patents, generally speaking, is a grant from Government which congers on the grantee, for limited period to time, the exclusive privileges of making, selling and using the invention for which patent has been granted and also of authorizing others to do so. ▪ A patent is a contract between the society as a whole and individual inventor. The inventor gets the exclusive rights to prevent others from making, using, selling a patented invention for a fixed period of time, in return for the inventors disclosing the details of invention to the public ;; in this way inventor is rewarded for his endeavors and he is encouraged to

	disclose the benefits arising out of his invention. Patent rights are granted only to new inventions capable of industrial application. The document in the prescribed form duly signed by the concerned authorities and seal is called the patent. A patent right is a property which can be bought, sold, hired or licensed.
What can be patented	<ul style="list-style-type: none"> ▪ Any 'invention' may be patented. ▪ 'Invention' means new product or process involving an 'inventing step' and capable of industrial application'. ▪ 'Inventing Step' means a feature that makes the invention not obvious to a person skilled in that art. ▪ 'Capable of Industrial Application' in relation to invention means that the invention is capable of being made or used in the industry. ▪ 'Patentable Invention' is an invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However it must not fall in to then categories of inventions that are non-patentable under section 3 and 4 of the Patents Act, 1970.
What cannot be patented	<p>Things, which are not an invention, cannot be patented. Patents Act, 1970 provides that the following shall not be covered under the concept of invention:</p> <ol style="list-style-type: none"> (a) If its use is contrary to law or morality (b) Mere discovery (c) Aggregation of properties by mere mixture of 2 or more things (d) Re-arrangement or duplication (e) A method of agriculture or horticulture (f) Any process for the medical, surgical, diagnostic or other treatment of human beings or animals (g) Plants and animals other than micro-organisms but including seeds, spices, and other biological processes (h) Literary, dramatic, musical or artistic work or cinematographic films or any other aesthetic creation (i) A mathematical or business method or computer programs (j) Method of performing any mental act or method or playing any game (k) A presentation of information (l) Topography of integrated circuits (m) Inventions relating to atomic energy (n) Mere new form or new property or new use of an existing drugs, chemicals or other substances, until and unless it results in enhancement in quality or efficacy.

Enforcement of Patent Rights

Under the (Indian) Patents Act, 1970 only a civil action can be initiated in a Court of Law.

Compliances under Labour Laws (Provisions applicable for Setting up of Business)

Factories Act; 1948

Applicability of the Act

Any premises wherein 10 or more persons with the aid of power or 20 or more workers are/were without aid of power are working on any day in the preceding 12 months, wherein Manufacturing process is being carried on.

Employer to ensure health of workers pertaining to – (Section 11 to 20)

- Cleanliness Disposal of wastes and effluents
- Ventilation and temperature dust and fume
- Overcrowding Artificial humidification Lighting
- Drinking water Spittons.

Registration & Renewal of Factories (Section 6)

To be granted by Chief Inspector of Factories on

Safety Measures

Facing of machinery

- Work on near machinery in motion.
- Employment prohibition of young persons on dangerous machines.
- Striking gear and devices for cutting off power.
- Self-acting machines.
- Casing of new machinery.
- Prohibition of employment of women and children near cotton-openers.
- Hoists and lifts.

Working Hours, Spread Over & Overtime of Adults (Section 51, 54 to 56, 59 & 60)

- Weekly hours not more than 48.
- Daily hours, not more than 9 hours.
- Intervals for rest at least ½ hour on working for 5 hours.
- Spread over not more than 10½ hours.
- Overlapping shifts prohibited.
- Extra wages for overtime double than normal rate of wages.
- ☒Restrictions on employment of women before 6 AM and beyond 7 PM.

Welfare Measures

- Washing facilities
- Facilities for storing and drying clothing
- Facilities for sitting
- First-aid appliances – one first aid box not less than one for every 150 workers.

- Canteens when there are 250 or more workers.
- Shelters, rest rooms and lunch rooms when there are 150 or more workers.
- Creches when there are 30 or more women workers.
- Welfare office when there are 500 or more workers.

Employment of Young Persons (Section 51, 54 to 56, 59 & 60)

- Prohibition of employment of young children e.g. 14 years.
- Non-adult workers to carry tokens e.g. certificate of fitness.
- Working hours for children not more than 4 ½ hrs. And not permitted to work during night shift.

Annual Leave with Wages (Section 79)

- A worker having worked for 240 days @ one day for every 20 days and for a child one day for working of 15 days.
- Accumulation of leave for 30 days.

Offence	Penalties
For contravention of the Provisions of the Act or Rules	Imprisonment upto 2 years or fine upto Rs.1,00,000 or both
On Continuation of contravention	Rs.1000 per day
On contravention of Chapter IV pertaining to safety or dangerous operations.	Not less than `25000 in case of death. Not less than `5000 in case of serious injuries.
Subsequent contravention of some provisions	Imprisonment upto 3 years or fine not less than `10, 000 which may extend to `2, 00,000.
Obstructing Inspectors	Imprisonment upto 6 months or fine upto `10, 000 or both.
Wrongful disclosing result pertaining to results of analysis.	Imprisonment upto 6 months or fine upto `10, 000 or both.
For contravention of the provisions of Sec.41B, 41C and 41H pertaining to compulsory disclosure of information by occupier, specific responsibility of occupier or right of workers to work imminent danger.	Imprisonment upto 7 years with fine upto `2,00,000 and on continuation fine @ `5, 000 per day. Imprisonment of 10 years when contravention continues for one year.

Minimum Wages Act; 1948

Object of the Act

- To provide for fixing minimum rates of wages in certain employments
- To make review at such intervals not exceeding five years the minimum rates or so fixed and revised the minimum rates.

Government can also fix Minimum Wages for

- Time work
- Piece work at piece rate

- Overtime work done by employees for piece work or time rate workers.

Overtime (Section 5)

- To be fixed by the hour, by the day or by such a longer wage-period works on any day in excess of the number of hours constituting normal working day.
- Payment for every hour or for part of an hour so worked in excess at the overtime rate double of the ordinary rate of (1½ times or for agriculture labour)

Composition of Committee (Section 9)

For fixing and revising minimum rate.

Fixing Hours for Normal Working (Section 13)

- Shall constitute a normal working day inclusive of one or more specified intervals.
- To provide for a day of rest in every period of seven days with remuneration.
- To provide for payment for work on a day of rest at a rate not less than the overtime rate.

Wages of workers who works for less than normal working days (Section 15)

Save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

Wages for two class of work (Section 16)

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, wages at not less than the minimum rate in respect of each such class.

Minimum time rate wages for piece work (Section 17)

Not less than minimum rates wages as fixed.

Claims by employees (Section 16)

- To be filed by before authority constituted under the Act within 6 months.
- Compensation upto 10 times on under or non-payment of wages

Offence	Punishment
For paying less than minimum rates of wages	Imprisonment upto 6 months or with fine upto `500/-
For contravention of any provisions pertaining to fixing hours for normal working day etc.	Imprisonment upto 6 months or with fine upto `500/-

Payment of Wages Act; 1936

Object of the Act

To regulate the payment of wages of certain classes of employed persons

Applicability of Act

- It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor

- The State Government may make it applicable after giving three months' notice in the Official Gazette
- Nothing in this Act shall apply to wages payable in respect of a wage-period which over such wage-period average one thousand six hundred rupees a month or more.

Time of payment of wages (Section 5)

- When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month.
- When more than 1000 workers, before the expiry of the 10th day of the following month.

Wages to be paid in current coins or currency notes (Section 6) (As Amended in 2017)

- All wages shall be paid in current coin or currency notes or
- By cheque or by crediting the wages in the bank account of the employee.

Deduction made from wages (Sec. 7)

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house-building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, ESI contributions etc.

Fines as prescribed by Competent Authority (Section 8)

- Not to imposed unless the employer is given an opportunity to show cause
- To record in the register

Deduction for absence from duties for unauthorized absence

- Absence for whole or any part of the day
- If ten or more persons absent without reasonable cause, deduction of wages up to 8 days.

Deduction for damage or loss

- For default or negligence of an employee resulting into loss. Show cause notice has to be given to the employee.

Deductions for service rendered

- When accommodation amenity or service has been accepted by the employee.

Offence	Penalty
For failing to maintain registers or records; or Willfully refusing or without lawful excuse neglecting to furnish information or return; or Willfully furnishing or causing to be furnished any information or return which he knows to be false or Refusing to answer or willfully giving a false answer to any question necessary for obtaining any information required to be furnished under this Act.	Fine which shall not be less than Rs.1000 but may extend to Rs.5000 – On record conviction fine not less than Rs.5000, may extend to Rs.10, 000. For second or subsequent conviction, fine not less than Rs.5000 but may extend to Rs.10,000
Willfully obstructing an Inspector in the discharge of his duties under this Act; or Refusing or willfully neglecting to afford an	Fine not less than Rs.1000 extendable Up to Rs.5000 – On subsequent conviction fine not less than Rs.5000 – may extent to Rs.10,000

Inspector any reasonable facility for making any entry, inspection etc. Willfully refusing to produce on the demand of an inspector any register or other document kept in pursuance of this Act; or preventing any person for appearance etc.	
On conviction for any offence and again guilty of Contravention of same provision. Failing or neglecting to pay wages to any employee	Imprisonment not less than one month extendable up to six months and fine not less than Rs.2000 extendable up to `15000. Additional fine up to `100 for each day.

Employees' State Insurance Act; 1948

Applicability of the Act

Non seasonal factories using power and employing 10 or more persons and to non-power using manufacturing units and establishments employing 20 or more person up to Rs.10000/- per month. It has also been extended upon shops, hotels, restaurants, roads motor transport undertakings, equipment maintenance staff in the hospitals, commercial establishments, cinema, theatres, club.

Registration of Employers

Section 2A of the ESI Act states as under:

Every factory or establishment to which this Act applies shall be registered.

highlights of regulation 10B:-

- The employer in respect of a factory or establishment to which the Act applies for the first time and the employer in respect of a factory or an establishment to which the Act previously applied but has ceased to apply for the time being, shall furnish to the appropriate Regional Officer not later than 15 days after the Act becomes applicable, a declaration of registration in writing in form 01.
- The employer shall be responsible for the correctness of all the particulars and information required to be furnished on the employer's registration form.
- The appropriate Regional Office may direct the employer who fails to comply with the requirements of his act.
- Upon receipt of the completed employer's registration form, the appropriate Regional Office shall, if satisfied, allot to it an employer's code number
- The employer shall enter the employer's code number on all documents prepared or completed by him/her in connection with the Act the rules and these regulations and in all correspondence with the appropriate office.

Advantages for employers

- Employers are absolved of all their liabilities of providing medical benefits to their employees and their family members or dependants
- Employers are granted exemption pertaining to the applicability of Maternity Benefit Act, Workmens' Compensation Act etc. in respect of employees covered under the ESIC Scheme.
- This results in employers possessing a productive and well-secured workforce, at their disposal which is an essential ingredient for better productivity of an organization.
- Employers are absolved of any responsibility in times of physical distress of their employees or workers such as employment injury, sickness or physical disablement thereby resulting in loss of

wages since the responsibility of paying cash benefits shifts from the employer to the ESIC Corporation in respect of insured employees.

- Any amount or sum paid by way of contribution under the ESIC Act is deducted in computing 'Income' under the Income Tax Act.

Exemptions

ESIC Act are not applicable to factories or establishments under the control of Central Government / State Governments because such employees working with PSUs are in receipt of social security benefits that are substantially similar or superior to the benefits provided under the ESIC Act.

Contributions

It is obligatory on the part of the employer to calculate and remit ESIC contribution that comprises of employers' share 4.75% plus employees' share of 1.75% that needs to be paid on or before 21st of the following month to the month to which the salary is related.

Contribution period

1st April to 30th September.

1st October to 31st March

Recovery of contribution

In the first instance the Principal Employer is required to pay employers' share of contribution in respect of every employee whether employed directly or through immediate employer. The employees' share may

thereafter, be recovered by making deduction from their wages for the wage period for which their contribution is made, however is payable. No such deduction may be made from any wages to their employees other than those relating to the period in respect in which contribution is payable.

Medical Benefit

The Medical benefit package covers all aspects of healthcare ranging from primary to super-specialty facilities.

Sickness Benefit

The maximum duration of Sickness Benefit is 91 days in two consecutive benefit periods. However, there is a waiting period of 2 days which is waived if the insured person is certified sick within 15 days of the spell for which sickness benefit was last paid. The sickness benefit rate is approximately equivalent to 50% of the average daily wages of the insured person.

Extended Sickness Benefit

After exhausting the Sickness Benefit payable up to 91 days, an insured person if suffering from Cancer, Tuberculosis, Leprosy, Mental or malignant diseases or any other specified long-term ailment, then such an employee is entitled to Extended Sickness Benefit at a higher cash benefit rate of about 70% of average daily wage for a period of two years.

Enhanced Sickness Benefit

Maternity Benefit (Section 50 of ESI Act)

Disablement Benefit

Disablement benefit is admissible for disablement that is caused by employment injury. Temporary Disablement Benefit (TDB) is payable as long as the temporary disability lasts. Permanent Disablement Benefit (PDB) is payable till the death of the insured individual.

Dependent Benefit Funeral Expenses

Penalties

Different punishment have been prescribed for different types of offences in terms of Section 85: (i) (six months imprisonment and fine `5000), (ii) (one year imprisonment and fine), and 85-A: (five years imprisonment and not less to 2 years).

Employees' Provident Funds and Miscellaneous Provisions Act; 1952

Applicability

- Applies to entire India (except Jammu & Kashmir)
- Applies to every establishment which is a factory engaged in any industry specified in Schedule 1 & in which 20 or more persons are employed
- Any other establishment employing 20 or more persons which Central Government may, by notification, specify in this behalf.
- Any establishment employing even less than 20 persons can be covered voluntarily u/s 1(4) of the Act

Eligibility

Any person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment.

Rates of Contribution

Equal contribution of 12% (10% in certain cases) of Wages (Basic wages, dearness allowance and retaining allowance, if any) is required to be paid by employer and employee (Whether employed directly or through contractor).

Employees can opt to contribute more than 12 % of their wages (Voluntary contribution)

Option of Voluntary Provident Fund(VPF) to be provided to employees/workers – in writing (although Employer not obliged to contribute equal amount)

Rate of 10 % is applicable for following industries

- For establishments having less than 20 employees, or
- Sick Industrial Company declared by Board for Industrial and Financial Reconstruction, or – Establishment which has at the end of any financial year, accumulated losses equal to or exceeding its entire net worth or
- Any establishment in following industries:- (a) Jute (b) Beedi (c) Brick (d) Coir and (e) Guar gum Factories

Threshold and Procedures

- Contribution by employer is subject to present threshold of Rs. 15,000/- per month, beyond which there is no obligation by employer to contribute.
- Employer needs to deposit its statutory contribution by 15th of every month.

Penalty

In case the employer has made default in transferring of the accumulated amount, he is required to pay damages as follows:

- If period of default is less than 2 months- 5 % of arrears per annum
- If period of default is 2 -4 months- 10 % of arrears per annum
- If period of default is 4 -6 months- 15 % of arrears per annum
- If period of default is more than 6 months- 25 % of arrears per annum.

Other Requirements

- Once a PF Member in any organization, cannot be left out of coverage, merely because he draws remuneration above the prescribed wage/salary ceiling (presently Rs. 15,000/- per month).

Payment of Bonus Act; 1965

Applicability

- Every factory (as defined under Factories Act, 1948)
- Establishment in which 20 or more persons are employed on any day during an accounting year. (CG may specify lesser no. of employees)

Eligibility of Bonus

- Employees/workers who have worked for more than 30 days in a month and drawing salary/remuneration upto Rs. 21,000/- per month.

Responsibility and Amount of Bonus

- Mandatory for employer to pay Minimum Bonus of 8.33% of Salary & Maximum Bonus of 20% of Salary from the accounting year in which establishment has profits (excluding First 5 years of existence)
- Payment of statutory bonus- within statutory time limit of 8 months of close of financial year
- Company is entitled to adjust any customary or interim bonus/puja bonus, against bonus payable under this Act.

Statutory Registers and Records

- Form A-Showing the computation of the allocable surplus.
- Form B-Showing the set-on and set-off of the allocable surplus.
- Form C -Showing the amount of bonus due to each of the employees and the amount actually disbursed.
- Form D- Annual Return.

Payment of Gratuity Act; 1972 (Payment of Gratuity in Consonance with State Rules)

Applicability

It is applicable to

- Factories (as registered under Factories Act, 1948)
- Company (As registered under Companies Act, 1956/2013),
- Shop & Establishment (As registered under State Shops & Establishment Act),
- Education institution, employing 10 or more employees

- Registration of establishment

Wages for Calculation

- Payment of Gratuity (15 days salary for every completed year of service) to be payable to an employee after rendering services of 5 years on his:
 - Superannuation
 - Retirement or resignation
 - Death or disablement due to accident or disease.

Nomination

Employee to submit his nomination in Form F - within 30 days of appointment.

Recovery of Gratuity

To apply within 30 days in Form I when not paid within 30 days.

Forfeiture of Gratuity

- On termination of an employee for moral turpitude or riotous or disorderly behavior.
- Wholly or partially for willfully causing loss, destruction of property etc.

Protection of Gratuity

It can't be attached in execution of any decree.

Penalties

Imprisonment for 6 months or fine up to Rs.10, 000 for avoiding to make payment by making false statement or representation.

Imprisonment not less than 3 months and up to one year with fine on default in complying with the provisions of Act or Rules.

Employees Compensation Act; 1923

Applicability (Section 1)

It is applicable all over India.

Coverage of Workmen

All workers irrespective of their status or salaries either directly or through contractor or a person recruited to work abroad.

Employer's liability to pay compensation to a workman

On death or personal injury resulting into total or partial disablement or occupational disease caused to a workman arising out of and during the course of employment.

Amount of compensation

- Where death of a workman results from the injury
 - i. An amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor on an amount of eighty thousand rupees, whichever is more.
- Where permanent total disablement results from the injury.

ii. An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees, whichever is more

Procedure for calculation

Higher the age – Lower the compensation

- Relevant factor specified in second column of Schedule IV giving slabs depending upon the age of the concerned workman.

When an employee is not liable for compensation

- In respect of any injury which does result in the total or partial disablement of the workman for a period exceeding three days.
- In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-
- The workman having been at the time thereof under the influence of drink or drugs, or
- Willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- Willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

Report of accident (Rule 11 Form EE)

- Report of fatal Accident and Serious Injury within 7 days to the Commissioner (not application when ESI Act applies).

Offences	Penalty
In case of default by employer	50% of the compensation amount + interest to be paid to the workman or his dependents as the case may be.
Deposit of compensation	Within one month with the Compensation Commissioner

Contract Labour (Regulation and Abolition) Act; 1970

Applicability

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Object of the Act

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

Registration of Establishment

Principal employer employing 20 or more workers through the contractor or the contractor(s) on deposit of required fee in Form 1.

Licensing of Contractor

- Engaging 20 or more than 20 workers and on deposit of required fee in Form IV.

- Valid for specified period.

Welfare measures to be taken by the Contractor

- Contract labor either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.
- First Aid facilities.
- Number of rest-rooms as required under the Act.
- Drinking water, latrines and washing facilities.

Liability of Principal Employer

- To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.
- Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.

Registers of Contractors

Principal employer

- To maintain a register of contractor in respect of every establishment in Form XII.

Contractor

- To maintain register of workers for each registered establishment in Form XIII.
- To issue an employment card to each worker in Form XIV.
- To issue service certificate to every workman on his termination in Form XV.

Offence	Punishment
Obstructions: For obstructing the inspector or failing to produce registers etc.	3 months' imprisonment or fine up to `500, or both.
Violation - For violation of the provisions of Act or the Rules	Imprisonment of 3 Months or fine up to `1000. On continuing contravention, additional fine up to `100 per day

Industrial Disputes Act; 1947

Meaning of Industrial Dispute

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

Important Definitions

Industry – has attained wider meaning than defined except for domestic employment, covers from barber shops to big steel companies.

Works Committee – Joint Committee with equal number of employers and employees’ representatives for discussion of certain common problems.

Conciliation – is an attempt by a third party in helping to settle the disputes Adjudication – Labor Court, Industrial Tribunal or National Tribunal to hear and decide the dispute.

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

Settlement – means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between an employer and a workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised by the Appropriate Government and the Conciliation Officer.

Wages – mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied were fulfilled, be payable to a workman in respect of his employment or of the work done in such an employment and includes:

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession. But the following are excluded:
 - (a) Any bonus.
 - (b) Any contribution paid or payable to any pension fund or provident fund, or for the benefit of the workman under any law for the time being in force.
 - (c) Any gratuity payable on the termination of his service.

Public utility service means-

- (i) any railway service or any transport service for the carriage of passengers or goods by air;
- (ii) any service in, or in connection with the working of, any major port or dock;
- (iii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iv) any postal, telegraph or telephone service;
- (v) any industry which supplies power, light or water to the public;
- (vi) any system of public conservancy or sanitation;
- (vii) 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.

Dispute Settlement Authorities under the Act

- Works Committee;
- Conciliation Officer;
- Conciliation Board;
- Court of Enquiry;
- Labour Court;

- Industrial Tribunal;
- National Tribunal;
- Arbitrators;
- Grievances Settlement Authority.

Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. (Sec 2A)

Difference in between the workman and his employer connected arising out of following activities shall be

deemed to the industrial dispute.

- Dismissal of workman
- Discharge of workman
- Retrenchment of the workman
- Termination of workman from his services

step 1

Sec 2A (2)

Workman having the disputes can make an application to the conciliation officer to settle the dispute. After the expiry of 3 months of time conciliation officer fails to settle the dispute, workman can make a direct application to labour courts or tribunals for adjudication.

step 2

Sec 2A (3)

Workman should make an application to labour courts or tribunals for adjudication before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service of workman,

step 3

Works Committee (Sec. 3)

In the case of an industrial establishment in which 100 or more workmen are employed, the appropriate Government may require the employer to constitute a 'Work Committee'. It consists of equal number of representatives of employers and workmen engaged in the establishment. The representatives of the workmen shall be chosen from amongst the workmen engaged in the establishment and in consultation with the registered trade union, if any. Works committee deals with the workers problem arising day to day in the industrial establishment.

Conciliation Officer (Sec. 4)

The appropriate Government is empowered to appoint any number of persons, as it thinks fit, to be conciliation officers.

Duties of conciliation officers. (Sec 12)

- Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- Investigate the matters of the disputes.
- Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.

- In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at,
- Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding or within such shorter period as may be fixed by the appropriate Government.

Conciliation Board (Sec. 5)

As occasion arises appropriate Government is also authorized to constitute a Board of conciliation for promoting the settlement of an industrial dispute. It consists of a chairman who shall be an independent person, and two or four other members.

Duties of Board (Sec 13)

- It shall be the duty of the Board to endeavor to bring about a settlement of dispute.
- Investigate the matters relating to the dispute between parties and inducing the parties to come to a fair and amicable settlement of the dispute.
- The Board shall submit its report within 2 months of the date on which the dispute was referred to it.

Court of Enquiry (Sec. 6)

Government can initiate a Court of Inquiry.

Adjudication

1. Labour Court - The appropriate Government is empowered to constitute one or more Labour Courts. Its function is the adjudication of industrial disputes relating to any matter specified in the Second Schedule.
2. Industrial Tribunal -The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

No Labor Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

3. National Tribunal - The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals. Its main function is the adjudication of industrial disputes which involve questions of national importance or affecting the interest of two or more States.

Arbitration

An arbitrator is appointed by the Government. Whether the dispute is before Labour Court, or Industrial Tribunal or National Tribunal, the parties can go to arbitration by written agreement.

Grievance Settlement Authority

The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievances Settlement Authority.

Every industrial establishment employing 20 or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

- The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
- The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

Awards (Decree) (Sections 16, 17, 17A)

- The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer. [Sec 16(2)].
- Every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. [Sec 17(1)].
- Any award as rejected or modified laid before legislature of state or parliament, shall become enforceable on the expiry of 15 days from the date on which is so laid. [Sec 17A (3)].

Period of Operation of Settlements and Awards

An award shall remain in operation for a period of one year from the date on which the award becomes enforceable.

Strikes and Lockouts

Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his points of view and to accept his demands.

Procedure of Strikes

According to Sec. 22(1) No person employed in a public utility service shall go on strike in breach of contract-

- a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Procedure of Lockouts

According to Sec. 22(2) - No person employed in a public utility service shall go on Lockout in breach of contract-

- a) Without giving to the employer notice of Lockout, as hereinafter provided, within six weeks before lockout; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of lockout specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

General Prohibition of Strikes and Lock-Outs

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

- a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- b) During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;
- (bb) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub- section (3A) of\ section 10A; or] [10A. Voluntary reference of disputes to arbitration]
- (c) During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

No notice of strike and lockout is necessary in industrial establishments except in public utility services.

Penalty for illegal strikes and lock-outs

As per Section-26 of the Industrial Dispute Act 1947, the Penalty for illegal strikes and lock-outs is as below-

- 1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.
- 2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Lay-Offs

Certain establishments do not have any provisions relating to layoff of the employees by the employer. In such circumstances, layoff would be considered without any authority of law.

Such establishments are:

- Industrial establishments in which less than 50 workmen are employed, on an average per working day.
- Industrial establishments which are of a seasonal character and in which work is performed only intermittently.

Right of Compensation by workmen laid-off

Workman has right to lay-off compensation subject to the following conditions, they are:

- Workman name should be borne on muster rolls of the establishment and he/she is not a badli workman or a casual workman; and
- The workman should have completed not less than one year continuous service as defined under Section 25-B; and
- The workman should have laid-off, continuously or intermittently;
- Then the workman shall be entitled to lay-off compensation for all days during which he was so laidoff;
- However, the workman shall not be paid lay-off compensation for such weekly holidays as may intervene the period of lay-off.
- The lay-off compensation is equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, if he had not been so laid off.

Explanation: "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall

cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

Maximum days allowed to Layoff of employee by employer

Maximum days allowed to Layoff of employee by employer is 45 days, for those days, employee who is laid-off is entitled for compensation equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid off.

Therefore the parties can enter into an agreement not to continue lay-off after a period of 45 days in a year.

Workmen not entitled to compensation in certain cases (Section 25E)

- If he refuses to accept any alternative employment in the same establishment from which he has been laid off.
- If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- If such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

Retrenchment

"retrenchments" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- a) Voluntary retirement of the workman; or
- b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- c) Termination of the service of a workman on the ground of continued ill-health;]

Procedure for Retrenchment (Section 25G)

The principle of 'Last come; First go'

Re-employment of Retrenched Workmen (Section 25H)

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he

shall, in such manner as may be prescribed, give an opportunity who offer themselves for reemployment

shall have preference over other persons.

Retrenchment Conditions

To an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [50 but not more than 100] workmen were employed on an, average per working day for the preceding twelve months.

Conditions Precedent to Retrenchment of Workmen

According to the Section 25N:

- a) Employee should have continuous service for not less than one year under an employer
- b) Three months' notice in writing indicating the reasons for retrenchment or payment for the period of the notice

- c) Compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months.
- d) Compulsory permission from competent authority by employer retrenchment of workmen
- e) For Industrial establishments in which not less than 100 workmen are employed, on an average per working day and are of not being seasonal character and in which work is performed only intermittently, have to seek prior permission from competent authority by the employer to layoff workman.

Penalty for Lay-Off and Retrenchment without Previous Permission [Section5Q]

Any employer who contravenes shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Offence	Penalty
Illegal strike and lock-outs	Imprisonment up to one month or with fine up to `50 (`1000 for lock-out) or with both.
Breach of settlement or award	Imprisonment up to 6 months or with fine. On continuity of offence fine uptoRs.200 per day

Trade Unions Act; 1926

Object of the Act

To provide for the registration of Trade Union and in certain respects

To define the law relating to registered Trade Unions

Registration of Trade Union

- Any 7 or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least 10%, or 100 of the work-men, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has on the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Minimum Requirements for Membership of Trade Union

- Not less than 10%, or 100 of the workmen, whichever is less,
- Subject to a minimum of 7,
- engaged or employed in an
- Establishments etc.

Disqualification of Office Bearers of Trade Union

- If one has not attained the age of 18 years.
- Conviction for an offence involving moral turpitude.
- Not applicable when 5 years have elapsed.

Offence	Punishment
For making false entry in or any omission in general statement required for sending returns.	Fine up to `500. On continuing default, additional fault, `5 for each week (not exceeding `50).

For making false entry in the form.	Fine up to `500.
Supplying false information regarding Trade Union	Fine up to `200.

Maternity Relief Act; 1961 along with Maternity Benefit (Amendment) Act, 2017

Object of the Act

To protect the dignity of motherhood and the dignity of a new person's birth by providing for the full and healthy maintenance of the woman and her child at this important time when she is not working.

Cash Benefits

- Leave with average pay for six weeks before the delivery.
- Leave with average pay for six weeks after the delivery.
- A medical bonus of Rs.25 if the employer does not provide free medical care to the woman.
- An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage, or premature birth.
- In case of miscarriage, six weeks leave with average pay from the date of miscarriage.

Non Cash Benefits/Privilege

- Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it.
- Two nursing breaks in the course of her daily work until the child is 15 months old.
- No discharge or dismissal while she is on maternity leave.
- No change to her disadvantage in any of the conditions of her employment while on maternity leave.
- Pregnant women discharged or dismissed may still claim maternity benefit from the employer.

Exception: Women dismissed for gross misconduct lose their right under the Act for Maternity Benefit

Maternity Benefit (Amendment) Act, 2017

Eligibility:

A woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months. Payment during the leave period is based on the average daily wage for the period of actual absence.

Paid Maternity leave increased to 26 weeks.

Leave prior to expected delivery date - 8 weeks

Key highlights of the Amendment

- Increase in Maternity Benefit: The period of paid maternity leave ("Maternity Benefit") that a woman employee is entitled to has been increased to 26 (twenty six) weeks. Further, the Act previously allowed pregnant women to avail Maternity Benefit for only 6 (six) weeks prior to the date of expected delivery. Now, this period is increased to 8 (eight) weeks. Maternity benefit of 26 weeks can be extended to women who are already under maternity leave at the time of enforcement of this Amendment.

- No increased benefit for Third Child: The increased Maternity Benefit is only available for the first two children. The Amendment provides that a woman having two or more surviving children shall only be entitled to 12 (twelve) weeks of Maternity Benefit of which not more than 6 (six) shall be taken prior to the date of the expected delivery.
- Adoption/Surrogacy: A woman who adopts a child below the age of 3 (three) months, or a commissioning mother (means a biological mother, who uses her egg to create an embryo implanted in any other woman), will be entitled to Maternity Benefit for a period of 12 (twelve) weeks from the date the child is handed over to the adopting mother or the commissioning mother.
- Crèche Facility: Every establishment having 50 (fifty) or more employees are required to have a mandatory crèche facility (within the prescribed distance from the establishment), either separately or along with other common facilities. The woman is also to be allowed 4 (four) visits a day to the crèche, which will include the interval for rest allowed to her.
- Work from home: If the nature of work assigned to a woman is such that she can work from home, an employer may allow her to work from home post the period of Maternity Benefit. The conditions for working from home may be mutually agreed between the employer and the woman.
- Prior Intimation: Every establishment will be required to provide woman at the time of her initial appointment, information about every benefit available under the Act.

Leave for Miscarriage & Tubectomy Operation

- Leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or her medical termination of pregnancy.
- Entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

Prohibition of dismissal during absence of Pregnancy

- At the time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus, etc.
- Not barred in case of dismissal for cross misconduct

Forfeiture of maternity benefit

- For discharging or dismissing such a woman during or on account of her absence from work, the employer shall be punishable with imprisonment which shall not be less than 3 months, but it will extend to one year and will find, but not exceeding `5, 000.

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

Definitions

- 1) "Appropriate Government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;
- 2) "Child" means a person who has not completed his fourteenth year of age;
- 3) "Day" means a period of twenty-four hours beginning at midnight;
- 4) "Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector ;

Part II- Prohibition of Employment of Children in Certain occupations And Processes

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on,

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Power to amend the Schedule

The Central Government, after giving by notification in the Official Gazette, not less than three months' notice.

Child Labour Technical Advisory Committee

A Chairman and such other members not exceeding ten.

Part III- Regulation of Conditions of Work of Children

Hours and Period of Work

- 1) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- 2) The period of work of a child shall be so arranged that inclusive of his interval for rest, under subsection (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- 3) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- 4) No child shall be required or permitted to work overtime.
- 5) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Weekly holidays

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall not be altered by the occupier more than once in three months.

Notice to Inspector

Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:

- (a) The name and situation of the establishment;
- (b) The name of the person in actual management of the establishment;
- (c) The address to which communications relating to the establishment should be sent; and
- (d) The nature of the occupation or process carried on in the establishment.

Maintenance of register about child worker

- (a) The name and date of birth of every child so employed or permitted to work ;
- (b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) The nature of work of any such child; and
- (d) Such other particulars as may be prescribed.

Display of notice containing abstract of Sections 3 and 14

A notice in the local language and in the English language containing an abstract

Part IV- Miscellaneous

Penalties

- 1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three 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.
- 2) Commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

Education

Ensuring that every child with disabilities have access to free education in an appropriate environment till 18 years of age.

Prevention of Sexual Harassment of Women at Workplace (Prevention; Prohibition and Redressal) Act; 2013

In 2013, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act') for prevention of sexual harassment against women at the workplaces. The Central Government vide notification SO 3606 (E) appointed 9 December 2013 as the date on which the provisions of the Act came into force and on the same day, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("Rules").

Objectives of the Act

The Act is enacted by the Indian Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right to life and to live with dignity under Article 21 of the Constitution of India.

Definitions

Sexual Harassment

The Act has adopted the definition of 'sexual harassment' from Vishaka Judgment and the term sexual harassment includes any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Complaints Committee & Complaint Procedure

Internal Complaints Committee

It mandatory for every employer to constitute an internal complaints committee ("ICC") and ICC should consist of

- A Presiding Officer;
- Not less than two members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge and;

- One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least onehalf of the members of ICC nominated by employer are women.

Local Complaints Committee

Provisions are provided under the Act to form Local Complaints Committee (LCC) for every district for receiving complaints of sexual harassment from establishments where the ICC has not been formed due to having less than 10 workers or if the complaint is against the employer himself.

Complaint procedure

The Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the ICC or to the LCC (in case a complaint is against the employer), within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

Compliances relating to Environmental Laws (Provisions applicable for setting up of Business)

India has framed number of laws relating to environmental protection. Some of the major laws relating to environmental protection are as follow:-

- Water (Prevention and Control of Pollution) Act, 1974;
- Water (Prevention and Control of Pollution) Cess Act, 1977;
- Air (Prevention and Control of Pollution) Act, 1981;
- Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biodiversity Act, 2002;
- The National Green Tribunal Act, 2010;
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.

Water (Prevention and Control of Pollution) Act, 1974

- The Water Prevention and Control of Pollution Act, 1974 has been enacted to provide for the prevention and control of water pollution and to maintain or restore wholesomeness of water in the country.
- It provides for the establishment of Boards for the prevention and control of water pollution .
- The Water Act prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance.
- At the Centre, the Water Act has set up the CPCB which lays down standards for the prevention and control of water pollution.
- At the State level, SPCBs function under the direction of the CPCB and the State Government.

Under this Act the Industrial undertaking need to comply following aspects:-

- Provide information to the SPCB
- Provide access to the SPCB for taking samples
- Allow entry to the SPCB to ascertain that the provisions of the Act are being complied with.
- Obtain “Consent to Establish”
- Obtain “Consent to Operate”
- Apply for renewal of the “Consent to Operate” before the expiry of validity period
- Consent to be deemed as granted automatically and unconditionally after four months from the date of application already given or refused before this period
- Refusal of “Consent” to be recorded in writing
- Pay Water Cess as indicated in the assessment order
- Affix water meters of the prescribed standards

- Provide access to SPCB
- Pay interest in case of delay in paying the Water Cess
- Pay penalty for non-payment of Cess
- Industry is entitled to 25% rebate if meeting certain conditions.

Checklist under Water (Prevention and Control of Pollution) Act, 1974 and the Rules therein

- Whether the company complied with the direction of State Board or any other officer empowered.
- The State Board or any officer authorized in this behalf have taken
 - Samples of water from any stream or well.
 - Samples of any sewage or trade effluent passing from any plant.
- Bring into use any new or altered outlets for the discharge of sewage;
- Begin to make any new discharge of sewage.
- Any Notice has been received by the company from state board for not taking prior consent required.
- The company has received order from State Board to remove the matter, which is, or may cause pollution; or remedy or mitigate the pollution, or issue prohibition orders to the concerned persons from discharging any poisonous or noxious or polluting matter.
- The company has received any directions in writing for the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, or water or any other service.

Air (Prevention and Control of Pollution) Act, 1981

- The Air (Prevention and Control of Pollution) Act, 1981 is an act to provide for the prevention, control and abatement of air pollution and for the establishment of Boards at the Central and State levels.
- The Air Act empowers the State Government, after consultation with the SPCBs, to declare any area or areas within the State as air pollution control area or areas.

Under this Act the Industrial undertaking need to comply following aspects:-

- Comply with the conditions in the “Consent to Establish” or “Consent to Operate”
- Not to discharge air pollutant(s) in excess of the prescribed standards
- Furnish information to the SPCB of any accident or unforeseen event
- Allow entry to the SPCB to ascertain that provisions of the Act are being complied with.
- Provide information to enable SPCB to implement the Act
- Provide access to the SPCB for taking samples
- Comply with the directions issued in writing by the SPCB

- Obtain "Consent to Establish"
- Obtain "Consent to Operate"
- Apply for the renewal of "Consent to Operate" before expiry of the validity period.
- Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received
- A prior "Notice of Inspection" to be served by the SPCB
- Industry to ensure that specified emission sampling procedure is being followed by the SPCB
- Opportunity to file objections with the SPCB within 15 days from the date of service of notice
- PCB to record reasons in writing in case it does not provide an opportunity to the industry to file objections.

Checklist under Air (Prevention and Control of Pollution) Act, 1981 and Rules there under

- The Company has established any industrial plant in an air pollution control area. If yes, whether the company has taken previous consent of the State Pollution Control Board.
- The company has got consent in writing from the State Board. Whether the consent given to company has been cancelled by State Board before the expiry of the period for which it is granted for non-fulfilment of conditions.
- The Company has complied with the following conditions as laid in the consent by the State Board :-
 - Installation and operation of the control equipment of such specification as the State Board may approve.
 - Alteration or replacement of the existing control equipment if any, in accordance with the directions of the State Board;
 - Keeping the control equipment in good running condition;
 - Erection or re-erection of Chimney,
 - Such other conditions as the State Board may specify in this behalf.
- The Company has got any order from court restraining the company discharging or causing or permitting to be discharged the emission of any air pollutants.
- The Company has received any direction from the State Board for supply of any information.
- A State Board or any officer empowered by it in this behalf has taken any samples of air or emission from any chimney, flue or duct or any other outlet for the purpose of analysis.

Environment Protection Act, 1986

- The term "environment" is understood in a very wide term under the Environment Act.
- It includes water, air and land as well as the interrelationship which exists between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.
- Under the Environment Act, the Central Government is empowered to take measures necessary to protect and improve the quality of environment by setting standards for emissions and discharges of pollution in the atmosphere by any person carrying on an industry or activity;

regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

- Penalty for non-compliance or contravention
 - Imprisonment – Maximum 5 years or/and
 - Fine - Maximum Rs 1,00,000.
 - In case of continuation of such violation, an additional fine of up to Rs 5,000 for every day till contravention continues.
 - If the violation continues beyond a period of one year the offender shall be punishable with imprisonment for a term which may extend to 7 years.

Under this Act the Industrial undertaking need to comply following aspects:-

- Comply with the directions issued by the Central Government. The direction may include:
 - closure, prohibition or regulation of any industry, or
 - stoppage or regulation of the supply of electricity, water or any other service.
- Prevent discharges or emissions excess of the prescribed standards
- Furnish information of any accidental or unforeseen event
- Allow entry and inspection to ascertain compliance
- Allow samples to be taken
- Submit an “Environmental Statement” every year to the SPCB
- Obtain prior “Environmental Clearances” from MoEF, in case of a new project or for modernization/expansion of the existing project.

Checklist under Environment Protection Act, 1986 and Rules there under

- The Company has received any direction from the Central Government in writing for the closure of any industry, operation; or stoppage of the supply of electricity or water or any other service.
- The company complied with the directions received from CG.
- The Company does not discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as specified.
- The Central Government or any officer empowered by it have taken samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed for the purpose of analysis.
- The company complied with the safeguard measure as prescribed for handling any hazardous substance.
- The Company has submitted an environmental audit report for the financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the 30th Day of September.

Public Liability Insurance Act 1991

- Public Liability Insurance Act, 1991 is to provide the compensation for damages to victims of an accident of handling any hazardous substance or it is also called, to save the owner of production/storage of hazardous substance from hefty penalties.

- This is done by proving compulsory insurance for third party liability on “no fault” basis.
- Actually the owner shall buy one or more insurance policies before he starts handling any hazardous substance. When any accidents come in knowledge of Collector, then he verifies the occurrence of accident and order for relief as he deems fit.

The salient features of compliance under this Act are as below:-

- Owner to provide relief in case of death or injury or damage to property from an accident on the principle of no fault.
- Owner to draw insurance policies more than the paid-up capital but less than Rs. 50 Crores.
- ‘Paid-up Capital’ is the market value of all assets and stocks on the date of insurance.
- Owner to pay additional amounts as contribution to the ‘Environmental Relief Fund’.
- Owner to provide any information required for ascertaining compliance with the provisions of the Act.
- Owner to allow entry and inspection to ascertain compliance with the provisions of the Act.
- Owner to pay the amount of an award as specified by the Collector.
- Comply with the directions issued in writing by the CG for;
 - Prohibition or regulations of handling of any hazardous substances, or
 - Stoppage or regulation of the supply of electricity, water or any other service.

National Green Tribunal Act, 2010

- The National Green Tribunal (NGT), 2010 was established keeping in mind The Rio Conference of 1992 and based on the international environment principles of ‘polluter pays principle’ and ‘Sustainable Development’.
- This was established to deal with environment related disputes, a speedy disposal of these cases and giving relief and compensation for damages to persons and property and for matters connected or incidental thereto.
- It comprises of a chairman, who could be a sitting or a retired judge of the Supreme Court, and various other members and experts provided under the provisions of the tribunal.
- It would mainly deal with civil cases and is not bound to follow the procedural law under Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.
- It proposed to have five places of sitting with Delhi as its headquarters and others being Bhopal, Pune, Kolkata and Chennai.

Objectives of National Green Tribunal

- The effective and speedy disposal of the cases relating to environment protection and conservation of
- Forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
 - It aims at enforcing all the legal rights relating to the environment
 - It also accounts for providing compensation and relief to effected people for damage of property.

Power of National Green Tribunal

The NGT has a power to hear all civil matters which are related to environment and questions regarding the enforcement and implementation of laws which fall under the seven categories of laws namely (in order of their enactment)

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002

Penalty

- The major benefit with NGT is that it has a strong order enforcing mechanism. If the orders of NGT are not complied with than it has the power to impose both punishment as well as fine.
- The punishment is up to 3 years and the penalty is up to 10 crore and for firms in can extend up to 25 crores.
- Also the director or manager of the firm can be punished or penalized if it is found by the tribunal that the offence has been committed on the orders or with the consent of such officer of the firm.

Relief NGT Act

- Any person who has sustained the injury can file a suit in the National Green Tribunal.
- The suit can also be filed by a person who is the owner of the property to which the loss is caused.
- In case there is a death as a consequence of damage then the legal representative of such a person can file a case.
- The government or the government agencies related to environment can file a suit in place of that person.
- The period for filing a suit with NGT is up to 5 years from the date on which the cause for compensation arose.
- However if the tribunal has sufficient grounds for believing that the person has reasonable cause that prevented him from filing a suit in NGT than it can extend the period for a maximum of 60 days.
- A person can argue his own matter before the tribunal and he does not need to be an advocate to do so. There is just a single requirement that the person should be in a formal dress while addressing the court.
- The medium of communication in the NGT is English and the arguments
- should be presented in the same.

- All possible efforts will be made to dispose of the case under NGT Act within 6 months from the date of filing the suit.
- If a person is not satisfied with the orders of the tribunal he can seek the review of the decision of NGT.
- And even then if he is not satisfied with the decision of the tribunal he can file an appeal to the Supreme Court within 90 days of the orders passed by NGT.

Checklist of Compliances under Other Environmental Law

WASTE MANAGEMENT

- Are appropriate Waste Management practises being followed?
- Is the full Duty of Care being completed?
- Has the legal compliance of waste carriers been checked?
- Are waste transfer notes being retained?
- Is hazardous waste being disposed of according to legislative rule?
- Are all waste streams being segregated effectively?
- Does the organization need to register as a producer of hazardous waste?
- Are good housekeeping and recycling measures being followed to prevent waste being needlessly sent to landfill?

WATER

- Are only authorised discharges to surface water or controlled waters being made?
- Are good housekeeping procedures being followed to avoid unnecessary consumption of water?

AIR EMISSIONS

- Is there any waste being burnt on site?
- Has all equipment been checked to ensure there are no unnecessary emissions to air?

CONTAMINATION

- Are all chemical substances and fuel being stored appropriately?
- Is all pollution control equipment working effectively? e.g. Bunding
- Are spill kits present and accessible?
- Are all hazardous or contaminated materials being disposed of correctly?
- Is there any evidence of past unreported spills?
- Are all necessary employees aware and Knowledgeable of spill procedures?
- Are all chemicals being stored and handled in accordance with the product data sheets and/or guidance information?

NOISE

- Have noise mitigation measures been followed?

- Are there ear plugs available in workshops?

ASBESTOS

- Is Asbestos Register up-to date?
- Are legislative procedures relating to asbestos being followed?

TRANSPORT

- Do all vehicles have up to date MOTs?

ENERGY CONSUMPTION

- Are good housekeeping procedures being followed to avoid unnecessary consumption of electricity and gas?

Dormant Company

Provisions applicable for “Dormant Company”

- Section 455 of the Companies Act 2013 and
- Companies (Miscellaneous) Rules, 2014

Inactive Company / Dormant Company means

A company which:

- is not carrying on any business or operations; or
- has not made any significant accounting transaction during last two financial years,
- has not filed financial statements and annual returns during the last two financial years.

Significant Accounting Transaction means

Any transaction made by the company except following transaction:

- payment of fees by a company to the Registrar;
- payments made by company to fulfil the requirements of any Act or any other law;
- allotment of shares to fulfil the requirements of this Act; and
- payments for maintenance of its office and records.

Note:- If a company has made above mention transactions in last two year then also that company will fall under definition of Inactive Company.

Non Significant Accounting Transactions means

All the transactions apart from the Significant Accounting Transactions.

Reasons for changing the status of a company from “active “to “dormant”

- Major reason for such a change is when a company is to start its business activities after few years owing to a variety of reasons; it may make application to the Registrar of Companies to change the status of the company.
- A company can become dormant immediately after its registration or after a few years of its incorporation.
- Dormant companies are also known as inactive companies

- A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage.

Dormant Status

A Company can obtain status as Dormant Company by-

- **Suo-Moto application**

A company which meets the criteria of Dormant Company can apply suo-moto to Registrar of Companies (ROC) for the status of a “Dormant company” in **Form MSC-1** along with fee.

Or

- **ROC can declare a company as Dormant**

In case of a company which has not filed financial statements or annual returns two financial years consecutively, the Registrar may issue a notice to such company and enter the name of such company in the register maintained for dormant companies.

Dormant Status to Activation or Strike Off

- Maximum period for which the company can be in the dormant status is 5 consecutive years.
- Before completion of 5 years as dormant Company, such company have to apply for activation or strike off.
- The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

Procedure for obtaining the status of a Dormant Company

Step 1:- The Company shall call a board meeting to fix day, date, time and venue for General Meeting of the members of the company to pass resolution for making application to the ROC to obtain status of a dormant company.

Step 2:- The Company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position of the company at the time of passing resolution in the shareholders meeting.

Step 3:- The Company shall hold the General Meeting and shall pass a special resolution for obtaining the status of a dormant company and authorizing the director(s) to make application to ROC.

Step 4:- The Company shall file **e-form MGT-14** with ROC for filing SR.

Step 5:- The Company shall file **Form MCS-1** with the ROC along with the copy of the special resolution, copy of statement of affairs, declarations by the directors etc.

Step 6:- On being satisfied with the following aspects, the ROC shall issue certificate in **Form MSC -2** on confirming the application.

The Registrar shall not grant the status of a dormant company if:

- any inspection, inquiry or investigation has been ordered against the company
- any prosecution has been initiated and pending against the company under any law
- there are public deposits which are outstanding or the company is in default in payment of interest;
- there are outstanding loans, whether secured or unsecured.

But if company has any Outstanding Unsecured Loan then the company may apply for status of Dormant only after obtaining NOC from the lender.

- There is No Dispute in the Management of The Company.
- there are outstanding statutory taxes, dues, duties etc.
- there is default in payment of its workmen's dues
- the Company is a listed company.

Benefits / Exemptions provided to a Dormant Company

- Dormant Company shall hold only two board meetings in a year with a gap of 90 days in between the two board meetings.
- Dormant Company is not required to include the statement of cash flow in its financial statement.
- The provision of rotation of auditors is not applicable in case of the dormant company.

- Dormant companies enjoy the advantages of lower statutory compliance cost as there is little statutory compliance applicable to dormant company as compared to active company.
- Dormant status is an advantage to promoters who want to hold an intellectual property or an asset under the corporate shield for its usage at a later stage.
- Companies can enjoy the status of dormant company for a period of 5 consecutive years.

Compliance requirements by Dormant Company

- A dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.
- In order to retain the status of the dormant company, file “Return of Dormant Company” in form MSC -3 annually, within a period of 30 days from the end of each financial year.
- A Dormant Company need not enclose cash flow statements in its annual accounts.
- A Dormant Company is required to convene at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
- The rotation of auditors is not applicable to dormant companies.
- Company shall continue to file the return of allotment and change in directors.

Procedure to obtain the status of an Active Company from Dormant Company

Step 1:- An application for obtaining the status of an active company is required to be made in **Form MSC-4** along with fees, a return in **Form MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed.

Step 2:- The Registrar after considering the following aspects, shall issue a certificate in **Form MSC-5** allowing the status of an active company to the applicant.

- Where a dormant company do any act mentioned in the grounds in the application made for obtaining status of a

dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.

- Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, Registrar can initiate the proceedings for enquiry under section 206 of the Companies Act 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning.
- The Registrar can remove the name of such company from register of dormant companies and treat it as an active company.

Strike Off and Restoration of Name of the Company and LLP

Provisions applicable

- Section 248 to 252 of the Companies Act, 2013 and
- Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

Effective Date of commencement of this provision - 26 December 2016

Ways of Striking off of Companies

- By Registrar of Companies on suo-motto (Compulsory)
- By Company for removal of name/ Strike off (Voluntary)

Striking off of Companies by Registrar of Companies on suo-motto

In following situations Registrar of Companies can remove the name of the company from Register –

- a company has failed to commence its business within one year of its incorporation or;
- a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013.

Procedure for striking of the name of the Company by ROC suo-motto

Step 1:- Service of notice

The ROC is required to send a notice in **Form STK 1** to the company and all the directors of the company by registered post with acknowledgement due or by speed post, of his intention to remove the name of the company from the register of companies.

Such a notice should contain the reasons on which the name of the company is to be removed from the register of companies.

Step 2:- Reply to Notice

Within a period of 30 days from the date of the notice, the company and all the directors of the company are required to send their representations along with

copies of the relevant documents, explaining the reasons as to why the name of the company should not be removed from the register of companies.

Step 3:- Consideration of the representation made

The ROC will consider the representation made by the company and all the directors of the company.

If the ROC is satisfied with the representation made by the company and its directors, it may stop strike off the name of company.

But if the ROC is not satisfied with the representation made by the company and its directors, it may proceed to strike off the name of company.

Step 4:- Publication of Notice

The notice for removal of the name of the company in **Form STK 5** shall be given in following manner for inviting objection from general public within 30 days of publication-

- placed on the official website of the Ministry of Corporate Affairs;
- published in the Official Gazette;
- published in one English newspaper and at least once in Vernacular language newspaper in which the registered office of the company is situated.

Step 5:- Intimation to Regulatory authorities

Intimation to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company for filing their objections within 30 days of such intimation.

Step 6:- Striking off / Removal of the name of the company

After expiry of 30 days from the date of publication of the notice and intimation to regulatory authorities, if there are no objections received, the ROC can proceed to strike off or remove the name of the company from the Register of companies.

Step 7:- Provision for realisation of amount due

The ROC before passing an order for Striking off / Removal of the name of the company should satisfy that sufficient provision has been made for the realisation of all amounts due to the company and for the payment of its liabilities and obligations within a reasonable time. Registrar can obtain necessary undertakings from the director or other persons in charge of the management of the company.

Step 8:- Notice of dissolution of the company

The ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official

Gazette in **Form STK 7** and the same should also be placed on the official website of the Ministry of Corporate Affairs.

The company shall stand dissolved on the publication of this notice in the Official Gazette.

Restoration of the company

- Registrar of Companies can suo motu after issuing the notices under section 248(1) strike off the name of the company.
- In such a case it may happen that the name of the company may be struck off even though the company is active company but due to the non-filing of reply, the ROC has removed the name of the company from the Register.
- In such a case the directors of such a company have an option to approach NCLT by making an appeal for the restoration of the name of the company.

Case Law - 8th August, 2017

International Security Printers Private Limited

Vs.

ROC Delhi

In this case;

- Petition filed by the International Security Printers Pvt. Ltd and challenges the order of ROC for strike off the name of the Company.
- ROC exercises his power for strike off of Companies.
- ROC has struck off 6000 Companies.
- No notice was issued to them and neither did the ROC adhere to any legal procedure which required a letter to be sent to the Company.
- The gazette notification was required to be published and the copy of the notification was required to be sent to the registered office of the Company.
- **Decision of the HON'BLE BENCH:**

Principle of Natural Justice: ROC however have failed to prove the allegation that proper step were taken in compliance of the mandatory provisions of Section 252 (4),(5),(6) which are a pre requisite for striking off the name of Company from the Registrar. In the absence of impugned action of the Respondent would be

arbitrary, illegal and against the principles of natural justice. This Petition Accepted.

Strike Off by the Company itself (Voluntary)

Companies which cannot be removed by the itself (Voluntary)

- Listed Companies
- Companies registered under section 8 of Companies Act, 2013
- Companies having charges which are pending for satisfaction
- Companies whose application for Compounding is pending
- Companies against which any prosecution for an offence is pending in any court
- **Vanishing Companies**

(Means a Company registered and listed on stock exchange which has not filed its returns with the ROC and Stock Exchange for a consecutive period of 2 years, and not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange, and none of its directors are traceable.)

- Companies that have been delisted due to non-compliance of listing regulations or any other statutory laws;
- Companies where inspection or investigation is ordered and being carried out or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court.
- Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same.

Situations in which Company can not apply for Strike off

The Company shall not make any application for the strike off, if any time in the previous 3 month the company has done any of the following :

- Has Changed its name or
- Has shifted its registered office from one State to another;
- has made a disposal for value of property or rights held by it, immediately before cease of trade or otherwise carrying on of business, for the purpose of gain in the normal course of trading;
- has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application for striking off, or complying with any statutory requirement;

- has made an application to the Tribunal for the sanctioning of a Compromise or Arrangement or is being wound up whether voluntarily or by the Tribunal.

Grounds on which board of directors of Company can file an application for removal of name of company

- Where a company has failed to commence its business within one year of its incorporation or;
- Where a company is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013.

Procedure of striking off by the company itself voluntarily

Step 1:- Call and hold Board Meeting to pass Board resolution for the purpose of striking off of the name of the company subject to the approval of the shareholders of the company and to authorize any director to file an application, fixing date, date, time and venue for the Extra Ordinary General Meeting of the shareholder.

Step 2:- After passing of Board resolution, if there is any liability in the company, the company will set off /pay all liabilities.

Step 3:- Every director of the company should sign and execute indemnity bond in Form STK 3 and Affidavit in Form STK 4 which should be duly notarized.

Step 4:- Company should get the statement of accounts showing the assets and liabilities of the company made up to a day, not more than 30 days before the date of application. Such a statement should be certified by a Chartered Accountant.

Step 5:- General Meeting should be held and the special resolution should be passed by the shareholders or consent of 75% members in terms of paid-up share capital should be obtained.

Step 6:- Within 30 days from the date of the passing of the SR or after obtaining consent, company should file MGT-14.

Step 7:- Approval of concerned authorities is required in case of a company regulated by any other authority.

Step 8:- An application for removal of the name of the company shall be made in Form STK-2 along with following document and fee:-

- NOC from the appropriate concerned authority, if required (RBI, IRDA, Housing Finance, SEBI etc.
- Indemnity Bond from Every Director in Form STK-3
- Statement of Accounts certified by CA. Statement should not be older than 30 days from the date of application.
- An Affidavit from every Director in Form STK-4
- CTC of Special Resolution duly signed by each Director
- Statement regarding pending litigations, if any, involving Company.
- E-Form STK-2 shall be signed by authorized director.
- E-Form STK-2 shall be certified by CS in whole time practice or Chartered Accountant in whole time practice or Cost Accountant in whole time practice.

Step 9:- Public notice by ROC

The ROC shall publish a public notice in Form STK-6 inviting objections to the proposed strike off in following manner:-

- placed on the official website of the Ministry of Corporate
- published in the Official Gazette;
- Published in English newspaper and at least once in vernacular language newspaper, in which the registered office of the company is situated.

Step 10:- Intimation to Regulatory authorities

Intimation to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company for filing their objections within 30 days of such intimation.

Step 11:- Striking off / Removal of the name of the company

After expiry of 30 days from the date of publication of the notice and intimation to regulatory authorities, if there are no objections received, the ROC can proceed to strike off or remove the name of the company from the Register of companies.

Step 12:- Provision for realisation of amount due

The ROC before passing an order for Striking off / Removal of the name of the company should satisfy that sufficient provision has been made for the realisation of all amounts due to the company and for the payment of its liabilities and obligations within a reasonable time. Registrar can obtain necessary undertakings from the director or other persons in charge of the management of the company.

Step 13:- Notice of dissolution of the company

The ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official Gazette in **Form STK 7** and the same should also be placed on the official website of the Ministry of Corporate Affairs.

The company shall stand dissolved on the publication of this notice in the Official Gazette.

No objection certificate from appropriate Regulatory Authority in case of the following companies:-

- companies which have conducted or conducting non-banking financial and investment activities
- housing finance companies
- insurance companies
- companies in the business of capital market intermediaries
- companies engaged in collective investment schemes
- asset management companies

Penalty:

- If an application is made in violation of section 248(1), it shall be punishable with fine which may extend to one lakh rupees.

➤ Fraudulent Application for Removal of Name

If it is found that an application by a company has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, liable for the following:

- be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

- be punishable for fraud in the manner as provided in section 447.

- The Registrar has the power to recommend prosecution of the persons responsible for the filing of an application.

Status of Strike Off Company

- If a company stands dissolved under section 248, it shall on and from the date mentioned in the notice cease to operate as a company.
- The Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except following purpose:-
 - for the purpose of realising the amount due to the company and
 - for the payment or discharge of the liabilities or obligations of the company.
- The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under this section, continue and may be enforced as if the company had not been dissolved.

Appeal to NCLT for restoration of the name of the company

- Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC and if the Tribunal is of the opinion that the removal of name of company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the register of companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

- The ROC may, within a period of 3 years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company if it is satisfied that that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors.

- The company, member, creditor or workman before the expiry of 20 years from the publication of the notice of dissolution of the company may make an application to the Tribunal.

Procedure for making an appeal /application to NCLT

Step 1:- An appeal or application is to be filed before Hon'ble bench of NCLT where the registered office of the company is situated, in **form NCLT 9** along with various documents proving that the company is active company and that the name of the company should be restored in the Register of companies.

List of documents required to be filed with NCLT while filing application

- Document and/or other evidence in support of the statement;
- Affidavit verifying the petition;
- Evidence regarding payment of fee
- Memorandum of appearance with copy of the Board Resolution or the vakalatnama, as the case may be;
- Three copies of the petition; and
- Any other documents in support of the case.

Step 2:- A copy of the application shall be served on the ROC and on such other persons as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the application.

Step 3:- ROC may send his report to NCLT as to his comments and views on the restoration of the name of the company.

Step 4:- NCLT after hearing all the parties, will pass an appropriate order for restoration of the name of the company in the register of company maintained by ROC.

Step 5:- The company is required to file **E-form INC-28** to the ROC within 30 days from the date of order of NCLT for the order passed by the NCLT.

Step 6:- Thereafter, the Company is required to complete the pending filing of financial statements and annual returns with the ROC and other documents as may be directed by the NCLT.

Striking of the name of the limited liability partnership (LLP) from the register of limited liability partnerships

Provisions applicable for Striking of the name of LLP

- Section 75 of the Limited Liability Partnership Act, 2008 and
- Rule 37 of Limited Liability Partnership Rules, 2009

Procedure for striking of the name of the LLP by ROC on suo motto basis

Step 1:- Serve of notice

The registrar sends a notice with the reasons for which the name of the LLP is to be removed from the register, to the LLP and all the partners of the LLP.

Step 2:- Reply to Notice

The LLP and all the partners of the LLP are required to send their representations along with copies of the relevant documents, within a period of one month from the date of the notice, explaining the reasons as to why the name of the LLP should not be removed from the register.

Step 3:- Consideration of the representation made

The Registrar will consider the representation made. If the Registrar is satisfied with the representation made by the LLP and its partners, it may stop the strike off the name of LLP. But if the Registrar is not satisfied with the representation made by the LLP and its partners, it may proceed to strike off the name of LLP.

Step 4:- Publication of Notice

Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month, to give their objections to Registrar within one month of publication of the notice.

Step 5:- Striking off of the name of the LLP

After the expiry of one month if there are no objections received, the Registrar can strike off the name of the LLP from the Register of partnership.

Step 6:- Provision for realisation of amount due

The Registrar before passing an order for striking off of the name of the LLP should satisfy that the sufficient provision has been made for the realization of all amounts due to the limited liability partnership and for the payment or discharge

of its liabilities and obligations by the limited liability partnership within a reasonable time.

Registrar can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership.

Step 7:- Notice of dissolution of the LLP

After the expiry of the time mentioned in the notice, the Registrar can strike off the name of the LLP and publish it in the Official Gazette.

The LLP shall stand dissolved on the publication of this notice in the Official Gazette.

Procedure of Striking Off by the LLP voluntarily

Step 1:- Calling and holding the meeting of the partners of LLP and authorizing the partner to make the application to Registrar.

The consent of all partners of the LLP should be obtained before making an application to the Registrar.

Step 2:- All the pending filing including the Annual Filing of **form 8 and 11** up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations should be completed before making of an application.

Step 3:- Approval of concerned authorities should be obtained in case of a LLP regulated by any Special Law.

Step 4:- All the Designated Partners of the LLP must execute an affidavit, either jointly or severally, that the LLP ceased to carry on commercial activity and also declare that the LLP has no liabilities and indemnify any liability that may arise even after striking off its name from the Register.

The liability of the Partners would not be extinguished even after closure of a LLP while using **Form LLP 24**.

Step 5:- An application for striking of the name of the LLP shall be made in **Form 24** along with fees and following documents:-

- a statement of account disclosing nil assets and nil liabilities, certified by a Chartered Accountant in practice made up to a date not earlier than 30 days of the date of filing of Form 24.
- Copy of acknowledgement of latest Income tax return
- copy of the initial limited liability partnership agreement along with changes there of
- an affidavit signed by the designated partners, either jointly or severally, to the effect,—
 - that the LLP has not commenced business or where it commenced business, it ceased to carry on such business from(dd/mm/yyyy);
 - that the LLP has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;
 - that the Limited Liability Partnership has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account;
 - that the Limited Liability Partnership has not filed any Income-tax return where it has not carried on any business since its incorporation, if applicable.
 - Copy of Detailed Application- Mention full details of LLP plus reasons for closure
 - Copy of Authority to Make the Application- Duly signed by all the Partners.

Step 6:- Publication of Notice

Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month.

Step 7:- Striking off of the name of the LLP

After the expiry of the time limit of one month, if there are no objections received, the Registrar can proceed to strike off the name of the LLP

Step 8:- Provision for realisation of amount due

The Registrar before passing an order for striking off should satisfy that the sufficient provision has been made for the realization of all amounts due to the

LLP and for the payment or discharge of its liabilities and obligations by the LLP within a reasonable time.

Registrar can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership.

Step 9:- Notice of dissolution of the LLP

The Registrar can strike off the name of the company LLP from the Register.

The notice of striking off the name of the LLP from the register and its dissolution should be published in the Official Gazette.

The LLP shall stand dissolved on the publication of this notice in the Official Gazette.

Procedure for making an application to NCLT for restoration of the LLP

Step 1:- If an LLP, or any partner or creditor thereof, feels aggrieved by the LLP having been struck off, can make an application to the Hon'ble bench of NCLT where the registered office of the LLP is situated, in **Form NCLT 9**.

Such an application should be accompanied by various documents proving that the LLP is active LLP and that the name of the LLP should be restored in the Register.

Step 2:- A copy of application or appeal is required to be sent to Registrar concerned.

Step 3:- Registrar may send his report to NCLT as to his comments and views on the restoration of the name of the LLP.

Step 4:- NCLT after hearing all the parties shall pass an appropriate order for restoration of the name of the LLP in the register.

Defunct company means

The company which failed to commence business within one year from the date of registration without any proper reason which beyond the control of the company.

Again if a company is not filling its balance sheet for many years than also it will be traded as defunct company.

Corporate Insolvency Resolution Process, Liquidation and Winding Up: An Overview

Applicability

- Applicable to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is **one lakh rupees**.
- The Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than **one crore rupees**.

Important definitions

Adjudicating Authority means

National Company Law Tribunal (NCLT) constituted under Section 408 of the Companies Act, 2013.

Corporate Applicant means

- corporate debtor; or
- a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process of the corporate debtor; or
- an individual who is in charge of managing the operations and resources of the corporate debtor; or
- a person who has the control and supervision over the financial affairs of the corporate debtor.

Corporate Person means

- A company as defined in section 2(20) of the Companies Act, 2013,
- A LLP, as per section 2(1)(n) of the Limited Liability Partnership Act, 2008, or
- any other person incorporated with limited liability under any law

But shall not include any financial service provider.

Financial Creditor

- Means any person to whom a financial debt is owed and

- Includes a person to whom such debt has been legally assigned or transferred.

Financial Debt

- Means a debt along with interest, which is disbursed against the consideration for the time value of money and
- Includes the following:-
 - money borrowed against the payment of interest;
 - any amount raised by acceptance under any acceptance credit facility;
 - any amount raised by any note or the issue of bonds, debentures, or any similar instrument;
 - the amount of any liability in respect of any lease or hire purchase contract
 - receivables sold or discounted other than any receivables sold on nonrecourse basis
 - any purchase agreement, having the commercial effect of a borrowing;
 - any derivative transaction, only the market value of such transaction shall be taken into account;
 - any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

Insolvency professional means

A person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

Insolvency professional agency means

Any person registered with the Board under section 201 as an insolvency professional agency.

Insolvency resolution process costs means

- the amount of any interim finance and the costs incurred in raising such finance;

- the fees payable to any person acting as a resolution professional;
- any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- any other costs as may be specified by the Board

Liquidation commencement date means

The date on which proceedings for liquidation commence in accordance with section 33 or section 59.

Liquidation cost means

Any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.

Liquidator means

Insolvency professional appointed as a liquidator in accordance with the provisions.

Resolution Professional means

An insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

Company Secretaries are eligible to be registered as Resolution Professionals subject to meeting stipulated criteria.

Important Rules and Regulations

- Insolvency and Bankruptcy board of India(Insolvency Professional Agencies) Regulations, 2016
- Insolvency and Bankruptcy board of India(Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
- Insolvency and Bankruptcy board of India(Insolvency Professionals) Regulations, 2016
- Insolvency and Bankruptcy board of India(Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- Insolvency and Bankruptcy (Application to Adjudicating Authority)Rules, 2016

- Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
- Insolvency and Bankruptcy board of India (Voluntary Liquidation Process) Regulations, 2017
- Insolvency and Bankruptcy board of India (Information Utilities) Regulations, 2017

Who may initiate corporate insolvency resolution process?

Where any corporate debtor commits a default

- a financial creditor,
- an operational creditor or
- the corporate debtor

may initiate corporate insolvency resolution Process.

Resolution Process

Step 1:- A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority (NCLT) when a default has occurred.

Step 2:- The financial creditor shall, along with the application furnish—

- record of the default with the information or evidence of default;
- the name of the resolution professional proposed to act as an interim resolution professional; and
- any other information as may be specified by the Board.

Step 3:- The Adjudicating Authority (NCLT) shall, within **14 days** of the receipt of the application ascertain the existence of a default from the records of information or on the basis of other evidence furnished by the financial creditor.

Step 4:- Where the Adjudicating Authority (NCLT) is satisfied that—

- a default has occurred and the application is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
- default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

Before rejecting the application, the Adjudicating Authority (NCLT) shall give a notice to the applicant to rectify the defect in his application within **7 days** of receipt of such notice.

Step 5:- The corporate insolvency resolution process shall commence from the date of admission of the application.

Step 6:- The Adjudicating Authority shall communicate the order to the financial creditors and the corporate debtor within **7 days** of admission or rejection of such application.

Step 7:- An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.

Step 8:- The corporate debtor shall, within a period of **10 days** of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor—

- existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- the repayment of unpaid operational debt—
 - by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Step 9:- Interim Resolution Professional (IRP)

- The IRP takes over the management of the corporate debtor and become in charge of day to day affairs of the corporate debtor.
- He may appoint professionals and consultants to support him in his duties.
- The primary duty of the IRP is to:-
 - Make public announcement about the CIRP of the corporate debtor
 - Invite claims from creditors

- Get valuation of the corporate debtor done
- On receipt of claims from the creditors, the IRP shall verify the claims and make list of accepted claims.
- The IRP shall also prepare an Information Memorandum containing prescribed details of the corporate debtor.

Step 10:- Committee of Creditors (COC)

- Within **30 days** of commencement of CIRP, the IRP shall constitute a Committee of Creditors (COC) which primarily consists of all financial creditors of the corporate debtor.
- The COC at its first meeting shall appoint a Resolution Professional (RP). COC may either confirm the appointment of IRP as RP or appoint another RP of its choice. The RP then takes over the management of the corporate debtor from the IRP.
- The RP shall act under the guidance and superintendence of the COC.
- All decisions of the COC shall be taken by 75% majority. Each member of the COC has voting share in proportion to the amount of debt outstanding to the corporate debtor.

Step 11:- Resolution Plan

- **The corporate debtor is in insolvency due to various reasons like:-**
 - **market conditions,**
 - **business cycles,**
 - **wrongful acts of the promoters, etc.**
- The corporate debtor should get a fresh chance to revive it and recommence its operations either in the same management or a new management.
- The RP invites proposals to revive the corporate debtor. These proposals are known as “resolution plans” and they can be submitted by any person who is interested in revival of the company.
- The resolution plan is submitted to the RP who in turn places all such plans before the COC. The COC shall approve the most suitable resolution plan. Such resolution plan approved by the COC is submitted to the Tribunal for its approval.
- In case the Tribunal approves the resolution plan, the corporate debtor is out of CIRP.

- These plans include proposals to pay off the existing liabilities of the corporate debtor in part or in full and to restart its operations over a period of time.
- There are safeguards against a defaulting promoter submitting a resolution plan so that such defaulting promoter is not able to take over a debt free company at lower cost by way of a resolution plan.

Time limit of corporate insolvency resolution process (CIRP)

- CIRP shall be completed within **180 days** from the date of admission of the application.
- CIRP beyond 180 days, only by resolution of committee of creditors of 75% of the voting shares.
- CIRP may extend maximum for further 90 days only ones i.e. shall not be granted more than once.

Moratorium (Section 14 of the IBC)

On commencement of the CIRP, the adjudicating authority passes an order declaring moratorium for prohibiting all of the following:

- Institution of suits, continuation of pending suits, execution of any order in any court of law, tribunal, arbitration panel or other authority.
- Transferring, encumbering, and alienating by the corporate debtor any of its assets or any legal right or beneficial interest.
- Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI.
- The recovery of any property by an owner or lessor where such property is in the possession of the corporate debtor.
- The order of moratorium shall have effect from the date of order till the completion of CIRP or date of approval of resolution plan or order of liquidation, as the case may be.

Liquidation (Section 59 of the IBC)

- It is the process of selling off assets of company in order to pay its creditors.
- The Adjudicating Authority (NCLT) pass an order for liquidation in following situations:-

- When before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process does not receive a resolution plan.
- NCLT rejects the resolution plan for the non-compliance of the requirements.
- Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor.
- Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application for liquidation.
- The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

Voluntarily Liquidation

A corporate person who has not committed any default may initiate to liquidate itself voluntarily by following procedure of voluntary liquidation under IBC.

Step 1:- Submission of declaration(s) to ROC, stating that the company will be able to pay its dues and is not being liquidated to defraud any person.

Step 2:- Passing of special resolution for approving the proposal of voluntary liquidation and appointment of liquidator, within **4 weeks** of declaration.

If a corporate person owes debts, approval of **two-third majority** creditors would also be required.

Step 3:- Public announcement inviting claims of all stakeholders, within **5 days** of such approval (SR), in newspaper as well as on website of the corporate person.

Step 4:- Intimation to the ROC and the Board about the Approval, within **7 days** of such Approval.

Step 5:- Preparation of preliminary report about the capital structure, estimates of assets and liabilities, proposed plan of action etc., and submission of the same within **45 days** of such Approval;

Step 6:- Verification of claims, within **30 days** from the last date for receipt of claims and preparation of list of stakeholders, within **45 days** from the last date for receipt of claims.

Step 7:- Opening of a bank account in the name of the corporate person followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the corporate person.

Step 8:- Sale of assets, recovery of monies due to corporate person, realization of uncalled capital or unpaid capital contribution.

Step 9:- Distribution of the proceeds from realization within **6 months** from the receipt of the amount to the stakeholders.

Step 10:- Submission of final report by the liquidator to the corporate person, ROC and the Board and application to the NCLT for the dissolution.

Step 11:- Submission of NCLT order regarding the dissolution, to the concerned ROC within **14 days** of the receipt of order.

Step 12 :- Dissolution of Corporate Debtor

Once the assets of the corporate debtor are completely liquidated, the liquidator shall make an application to the NCLT for dissolution of the corporate debtor.

The Tribunal shall pass necessary order to dissolve the corporate debtor.

Waterfall Arrangement

Section 53 of the IBC provides for the manner of distribution of assets in case of liquidation and order of priority of distribution. This order of priority is

notwithstanding anything contrary which is contained in any other Central or State law. This order of priority is also known as the “waterfall arrangement”.

Priority order of distribution in Liquidation

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority:

- Insolvency resolution process costs and liquidation costs paid in full
- Following debts shall rank equally between and among the following:
 - Workmen’s dues for the period of **24 months** preceding the liquidation commencement date.
 - Debts owed to secured creditor in the event such secured creditor has relinquished security.
- Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date.
- Financial debts owed to unsecured creditors.
- Following dues shall rank equally between and among the following:
 - Any amount due to the Central / State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date.
 - Debts owed to a secured creditor for any amount unpaid following enforcement of security interest.
- Any remaining debts and dues
- Preference shareholders, if any; and
- Equity shareholders or partners, as the case may be.

Special Remarks:-

- Any contractual arrangements between recipients above with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.
- The fees payable to the liquidator shall be deducted proportionately from proceeds payable to each class of recipients and proceeds to the relevant recipient shall be distributed after such deduction.

Winding Up

- Winding up is the process of closing down the legal existence of a company or LLP.
- During this process, the assets of the entity are realized, its liabilities are paid off and surplus is distributed amongst the contributories.
- Once the adjudicating authority is convinced that these processes are completed, the entity is dissolved.
- During winding up, the management of the company / LLP is in the hands of the liquidator and not the governing body / board of directors.
- The assets and liabilities still belong to the company until dissolution takes place.
- On dissolution, the entity loses its legal existence.
- Section 270 of the Companies Act, 2013 regarding the Modes of winding up, has been deleted after the enforcement of this Code. It has been substituted by Winding up by Tribunal.

Difference between ‘Winding Up’ and ‘Dissolution’

- Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities paid off and surplus, if any, is distributed amongst the contributories.

Whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.

➤ The winding up process is handled by a liquidator / insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.

- Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists.
- Winding up need not result in dissolution in all cases.
- A company which is in winding up can be taken over / amalgamated by any other entity / company which will result in the company coming out of winding up process and being handed over to the shareholders.
- This is not possible in case of dissolution.

Winding Up by NCLT

As per Section 271 of the Companies Act, 2013, a company may be wound up by the Tribunal in following cases:

- If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that:-
 - the affairs of the company have been conducted in a fraudulent manner or
 - the company was formed for fraudulent and unlawful purpose or
 - the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct

and that it is proper that the company be wound up.

- If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding **5** consecutive financial years; or
- If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Procedure of Winding Up by NCLT

Step 1:- A petition along with statement of affairs is to be made to the Tribunal by any of the following persons:

- The company
- Any contributory or contributories
- The Registrar (only with previous sanction of the Central Government which shall be taken only after giving to the company a reasonable opportunity of being heard)
- the Central Government or a State Government
- Any person authorised by the Central Government in that behalf

Step 2:- Any petition filed under this section, apart from that filed by the Registrar himself, shall be served to the Registrar and the Registrar shall submit his views to the Tribunal within **60 days** of receipt of such petition.

Step 3:- The Tribunal may pass any of the following orders within **90 days** of presentation of the petition:

- Dismiss it, with or without costs;
- Make any interim order as it thinks fit;
- Appoint a provisional liquidator of the company till the making of a winding up order

(The Tribunal shall give an opportunity of being heard to the company before appointment of a Provisional Liquidator)

- Make an order for the winding up of the company with or without costs; or
- Any other order as it thinks fit.

Step 4:- The liquidator is required to submit to the Tribunal, a report containing the following particulars, within **60 days** from the order:-

- the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, and the negotiable securities, held by the company:
- valuation Report of the assets obtained from registered valuers
- amount of capital issued, subscribed and paid-up;
- the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts.

And in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

- the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- guarantees, extended by the company;
- list of contributories and dues, payable by them and details of any unpaid call;
- details of trademarks and intellectual properties, owned by the company;
- details of subsisting contracts, joint ventures and collaborations,
- details of holding and subsidiary companies,
- details of legal cases filed by or against the company; and

- any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

Step 5:- When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.

Step 6:- The Tribunal shall on an application filed by the Company Liquidator or when the Tribunal is of the opinion that it is just and reasonable, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.