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LEGAL FRAMEWORK FOR STARTUPS IN INDIA

- *ADRIKA SINGH*

INTRODUCTION

The term startup was coined in the year 1950 which referred to a company that is new. Over the time it has gained importance widening its definition and scope as it combats the issue of unemployment and lack of job opportunities. In India, more than 1lakh startups have been recognised under the “Startup India; Stand up India” initiative launched by the Indian government as of 2012 making it the third largest startup ecosystem in the world, after the US and China. However, in order to run a business effectively, it requires navigating through a series of complex legal regulations. This blog delves into the legal framework that governs a startup in India covering incorporation, its registration, compliances and intellectual property rights.

INCORPORATION

There are various types of legal entities which any startup founder can opt for. However, choosing the right legal entity shapes the future endeavours of any startup, hence it requires deep thinking- studying the advantages and compliance requirement of each structure.

- Sole Proprietorship- It is an unincorporated business with one owner. There is no legal separation between the company and the owner, who receives all profits but is liable for all debts and losses. It is a popular choice for small businesses, contractors and consultants.
- Partnership Firm- A firm is not a legal entity. Therefore, it has no legal identity distinct from the personalities of its constituent members. It has to be registered under The Indian Partnership Act, 1932.
- Limited Liability Partnership- It combines the benefits of a partnership with limited liability, giving all the partners limited liability. It has to be registered under the LLP Act, 2008.
- Private Limited Company- It is governed by the Companies Act, 2013. It is a separate legal entity, allows fundraising through equity, and limits liability. There is a clear ownership structure and ease of issuing shares making it the most preferred type of startup in India.

- One Person Company (OPC)- It is suitable for solo founders, with limited liability and corporate status. It offers entrepreneurs a formal corporate structure with the advantages of a company while retaining the control of a sole proprietorship.

STARTUP INDIA RECOGNITION

The following steps should be followed to be registered under the Startup India scheme allowing it to avail the government benefits:

Step 1: Incorporate your business as a PLC, LLP or a Partnership Firm following the normal procedures of registration of any business.

Step 2: Register with the Startup India.

Step 3: Get DPIIT Recognition. The Department for Promotion of Industry and Internal Trade (DPIIT) Recognition helps the startups to avail benefits like access to high-quality intellectual property services and resources, relaxation in public procurement norms, self-certification under labour and environment laws, easy winding of company, access to Fund of Funds, tax exemption for 3 consecutive years and tax exemption on investment above fair market value. It is done on the startup india website itself.

Step 4: Fill the recognition application.

Step 5: Submit the documents for recognition which includes Incorporation or Registration Certificate, along with the company's PAN and an authorization letter for the authorized representative. If available, it should also provide proof of funding, a proof of concept such as a pitch deck, website, or video, and details of any patents, trademarks, awards, or recognitions received.

Step 6: Then recognition number will be issued.

A company is recognised as an startup only when it's turnover has not exceeded ₹100 crore in any financial year and it is within 10 years of incorporation. It should be incorporated as a PLC, LLP, or registered partnership working on innovation, development, improvement of products/services/processes, or is a scalable business with high potential.

COMPLIANCES FOR STARTUPS

Startups in India need to comply with a variety of legal and regulatory requirements depending upon their structure and business activities.

- Tax Compliance- Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail

tax holiday for 3 consecutive financial years out of its first ten years since incorporation. It can even get Angel Tax Exemption under Section 56 of the Income Tax Act

- Company Law Compliances- It includes Annual General Meeting, Board Meetings, Mandatory filling of forms. It should maintain statutory registers under the Companies Act, 2013.
- Labour Laws based Compliance- Any startup should follow the The Employee's State Insurance Act, 1948, Employee Provident Fund Scheme, 1952, Maternity Benefit Act, 1961, Payment of Wages 1936 /Minimum Wages Act 1948, Contract Labour (Regulation & Abolition) Act, 1970/ Interstate Migrant Workmen (Regulation of Employment And Conditions of Service) Act, 1979, etc. All these transforms India into a welfare state.
- Data Protection and IT Laws- For tech-driven startups handling personal data, compliance with the Information Technology Act, 2000 and emerging data privacy regulations (like the Digital Personal Data Protection Act, 2023) is crucial.
- Intellectual Property Rights- Intellectual property rights need to be protected as startups are based on innovations. They protect the original literary, artistic, and software works.

Compliance ensures that no penalty is imposed on a start-up at any point in its growth, strengthening it's legal foundation leading to it's long term stability.

CONCLUSION

While the Indian startup ecosystem is thriving well, it can be daunting, even scary, for first-time entrepreneurs to navigate the laws in India. Therefore, it is crucial for entrepreneurs to understand the laws regarding incorporation, compliance laws, intellectual property laws, environment laws and laws governing employees, in order for them to create a sustainable business. After a startup has commenced its venture, its never too late to engage legal and financial advisors to avoid costly mistakes and to ensure you maximise the government incentives available to you. Indian startups should innovate adhering to the laws, encouraging economic development and long-term changes.

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